



2015 SESSION

ADDITIONAL DOCUMENTS

Business Page

[Signed by Chairman]

Roll Call

Standing Committee Reports

Tabled Bills

Fiscal Reports

Rolls Call Votes

Proxy Forms

Visitor Registrations

***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**

***Witness Statements that were not presented as exhibits.**

Montana Historical Society Archives

225 N. Roberts

Helena MT 59620-1201

2015 Legislative

E-Document Specialist Susie Hamilton

BUSINESS REPORT
MONTANA SENATE
64th LEGISLATURE - REGULAR SESSION
SENATE JUDICIARY COMMITTEE

Date: Friday, February 13, 2015
Place: Capitol

Time: 8:00 A.M.
Room: 303

BILLS and RESOLUTIONS HEARD:

HB 43 - Revise executive clemency laws - Rep. Margaret (Margie) MacDonald
HB 88 - Generally revise laws related to sex offender registration - Rep. Sarah Laszloffy
HB 133 - Authorize the public defender to award fixed-fee contracts - Rep. Margaret (Margie) MacDonald
SR 9 - Confirm Governor's appointments related to crime control and public safety - Sen. Scott Sales
SR 10 - Confirm appointee to board of pardons and parole - Sen. Scott Sales
SR 11 - Confirm chief water judge and associate water judge - Sen. Scott Sales
SR 15 - Confirm Governor's appointees to the judiciary - Sen. Scott Sales

EXECUTIVE ACTION TAKEN:

SB 187-Do Pass; failed, remains in committee

Comments:


SEN. Scott Sales, Chair

MONTANA STATE SENATE

2015 JUDICIARY COMMITTEE

ROLL CALL

DATE: 2/13/15

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
CHAIRMAN, SENATOR SCOTT SALES	—	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—	
SENATOR DIANE SANDS	—	
SENATOR ROBYN DRISCOLL	—	
SENATOR KRISTEN HANSEN		—
SENATOR JEDEDIAH HINKLE	—	
SENATOR DOUG KARY	—	
SENATOR CLIFF LARSEN	—	
SENATOR MARY MCNALLY	—	
SENATOR MARY SHEEHY MOE	—	
SENATOR NELS SWANDAL	—	
SENATOR CHAS VINCENT		—

MONTANA STATE SENATE

ROLL CALL VOTE

2015 JUDICIARY COMMITTEE

DATE 2/13/15 BILL NO SB187 MOTION NO 2

MOTION:

Do Pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT	<u>—</u>	<u>—</u>	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR DIANE SANDS		<u>—</u>	
SENATOR CLIFF LARSEN		<u>—</u>	
SENATOR ROBYN DRISCOLL		<u>—</u>	
SENATOR MARY MCNALLY		<u>—</u>	<u>—</u>
SENATOR MARY SHEEHY MOE		<u>—</u>	
SENATOR KRISTEN HANSEN	<u>—</u>		<u>—</u>
SENATOR JEDEDIAH HINKLE	<u>—</u>		
SENATOR DOUG KARY	<u>—</u>		
SENATOR NELS SWANDAL	<u>—</u>		
CHAIRMAN, SENATOR SCOTT SALES		<u>—</u>	

5/6

Voting Members

SENATE PROXY

I, Senator K. Hansen, hereby authorize Senator S. Fielder to vote my proxy before the Senate meeting held on 2/13, 2015.

Senator Signature

Date _____

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

SENATE PROXY

I, Senator MARY MCNALLY, hereby authorize Senator _____ to vote my proxy before the Senate JUDICIARY meeting held on 2/13, 2015.



Senator Signature (Sen. McNally)

2/13/15
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, February 13, 2015

HB 88 - Generally revise laws related to sex offender registration

Sponsor: **Rep. Sarah Laszloffy**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, February 13, 2015

HB 43 - Revise executive clemency laws

Sponsor: Rep. Margaret (Margie) MacDonald

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Harvey Sorkin HB	MT Taxpayers	✓		
Jean Nelson	Berry Beach	✓		
AL Smith	SELF	✓		
Sue Smith	Self	✓		
Johnelle Howanack CHM	Self	✓		
Melissa Clark CHM	Self	✓		
Timothy Allred				✓
JOHN RANUM	SELF	✓		
Joyce Ranum	-	✓		
Connie Dawson	Self	✓		
Amber Dorell	Self	x		
Russell Foster	Self	x		
Maureen Irigoin	Self	✓		
Bonnie Jorgensen	Self	✓		
HAN JORGENSEN	Self	✓		
Steve Cape	MT Const. for SAFETY + Justice	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, February 13, 2015

HB 133 - Authorize the public defender to award fixed-fee contracts

Sponsor: **Rep. Margaret (Margie) MacDonald**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, February 13, 2015

SR 15 - Confirm Governor's appointees to the judiciary

Sponsor: **Sen. Scott Sales**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, February 13, 2015

SR 11 - Confirm chief water judge and associate water judge

Sponsor: **Sen. Scott Sales**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

**MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE**

Friday, February 13, 2015

SR 10 - Confirm appointee to board of pardons and parole

Sponsor: **Sen. Scott Sales**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Friday, February 13, 2015

SR 9 - Confirm Governor's appointments related to crime control and public safety

Sponsor: **Sen. Scott Sales**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Judiciary

Additional Documents LC2279.01

SENATE: Judiciary

Date: 2/13/15Bill No. SR 9, 10, 11, 15SR SENATE RESOLUTION NO. 9INTRODUCED BY *[Signature]*

(Primary Sponsor)

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND
CONSENTING TO THE APPOINTMENTS TO THE BOARD OF CRIME CONTROL AND THE PUBLIC SAFETY
OFFICER STANDARDS AND TRAINING COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY
WRITTEN COMMUNICATION DATED JANUARY 9, 2015, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that
have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Danna Jackson, Helena, Montana, appointed to a term ending January 1, 2017.

Kelly McIntosh, Dillon, Montana, appointed to a term ending January 1, 2017.

(2) As members of the Public Safety Officer Standards and Training Council, in accordance with section
44-4-402, MCA:

Gina Dahl, Havre, Montana, appointed to a term ending January 1, 2019.

William Dial, Whitefish, Montana, appointed to a term ending January 1, 2019.

Lewis Matthews, Wolf Point, Montana, appointed to a term ending January 1, 2019.

Kevin Olson, Helena, Montana, appointed to a term ending January 1, 2019.

Ryan Oster, Hamilton, Montana, appointed to a term ending January 1, 2019.

Tia Robbin, Kalispell, Montana, appointed to a term ending January 1, 2019.

Jesse Slaughter, Great Falls, Montana, appointed to a term ending January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 64th Legislature of the State of Montana does hereby
concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately
deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

- END -

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



ANGELA McLEAN
LT. GOVERNOR

2013-2015 Interim Appointments

Boards, Councils and Commissions

Board of Crime Control

Danna Jackson
Kelly McIntosh

Included: Statute for Appointment

*Biographies, Resumes or other Application Materials for
interim appointees*

Danna R. Jackson is an Assistant United States Attorney and Tribal Liaison for the District of Montana. Jackson prosecutes violent crime in Indian Country and works to build relationships with tribal governments and law enforcement partners.

Before becoming an AUSA, Jackson worked in Washington DC for a decade. She spent over two years in the National Indian Gaming Commission's general counsel's office, followed by a tour on the Hill as Legislative Assistant to Senator Tim Johnson (D-SD). Her last gig in Washington was representing tribal interests as advisor/attorney for Akin Gump Strauss Hauer & Feld.

Jackson has served as visiting faculty for the University of Montana's School of Law's Indian Summer Program and is on the board of the American Indian Graduate Center.

Jackson received her J.D. from the University of Montana in 1996. She is a member of the Montana and DC bar associations.

Kelly McIntosh

Objective

To obtain a position on the Montana Board of Crime Control Board of Directors

Employment History

2010-Present Women's Resource/Community Support Center Dillon, MT

Executive Director

- Proficient in grant writing. Created budget for organization by successfully writing grants to provide services for non-profit domestic violence shelter. Type of grants written: foundation grants, state and federal grants, community based grants.
- Proficient in Non-profit edition of QuickBooks. Work comprehensively with contract accountant and Board of Directors Finance Officer to ensure all grant expenditures are appropriate, making certain checks and balances are adhered to. Manage all aspects of funding, incoming and outgoing expenditures.
- Superb executor of fundraising and awareness events for organization. Created and implemented two signature events which bring in substantial funds for operations, programs and services.
- Instituted new by laws, employee policy manual, and protocols for providing ethical and comprehensive victim services in coordination with local Law Enforcement, City and County Judges, and Attorneys.
- Certified Mediator in the state of Montana
- Provide direct services to victims of crimes and witnesses of crimes. Provide counseling and advocacy to victims and their families.
- Manage all personnel and human resource issues for five full time staff persons, two part staff time persons, one AmeriCorps VISTA volunteer, and 15 volunteer advocates.
- Provide daily directives to staff and volunteers of the organization.
- Manage twelve grant programs. Responsible for fiscal and narrative reporting to grantors.
- Proficient in Microsoft Office. Skilled in web page design and maintenance. Capable of technological trouble shooting.
- Practiced in AVID data base system for tracking victim services and reporting purposes.
- Proactive in the State of Montana Legislation and educated in the Montana Code Annotated. Basic understanding of the judicial system and processes. Practiced in the navigation of the judicial system for political, social, and humans service purposes.

2008 -2010 The University of Montana Western Dillon, MT

Retention Specialist / Guidance Counselor

- Grant writing for TRIO educational federal funding. Wrote new grant in 2009, TRIO program was awarded funding by federal government for five more years at the University.
- Manage assigned caseload, 80 plus students each semester (i.e. academic advising/counseling, tracking academic degree progress, making referrals to other campus resources, answering inquires about university policies and procedures, assisting students in completing university paperwork, advocate for students with faculty and advising related issues).
- Proficient in banner applications, Genesis for web page design and maintenance, and Microsoft office (i.e. word, excel, publisher, etc.)

Kelly McIntosh

Volunteer Work

- The Friendship Center (Helena, MT) 1998
- Four Georgians Elementary School (Helena, MT) 1998
- The Women's Resource Center (Dillon, MT) 2001-present
Board of Director's positions: Secretary in 2007-2008, Presidential Officer 2009-2010.
- YMCA (Dillon, MT) 2001-present
YMCA Board of Directors 2012-present
- PEACE Committee/UM-Western (Dillon, MT) 2008-2010
Presidential Officer 2009-2010
- CASA volunteer The Fifth Judicial District Voice for Children (Dillon, MT) 2009-present
- Member of Soroptimist International of Dillon (Dillon, MT) 2011-present
Soroptimist of Dillon Treasurer 2012-2013
- Rotary International/Rotary Dillon Club (Dillon, MT) member since 2010
President Elect of Rotary Club 2011-2012
President of Rotary of Club 2013-2014
- JC Auxiliary member since 2013

Personal Statement:

I am a Montana native, born and raised in Hamilton of the Bitterroot Valley. I was the first of my family to graduate college and then go on to pursue a Graduates Degree. I attended Carroll College in Helena and completed my general education credits. I then moved to Dillon where I attended the University of Montana Western and earned my degree in Social Science/Psychology. I worked for the University of Montana Western for many years while attending the University of Great Falls.

In 2010 I accepted a unique opportunity to keep our local domestic violence shelter open. Working as the Executive Director for the Women's' Resource Center has been one of the best experiences of my life.

I have always loved volunteering and giving back to my community. Currently, I served as the President for our Dillon Rotary Club. I also serve on the board for the Southwestern Montana YMCA. I am a member of the Dillon Soropitimist Club and served as Treasurer in 2012-2013. I belong to the Jaycee Auxiliary Club and was nominated in 2011 as Outstanding Young Woman of the Year.

After 11 years of marriage Eli and I share two wonderful sons and a love for fly fishing.

I look forward to contributing to this amazing Board of Directors.

Thank you!

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



ANGELA McLEAN
LT. GOVERNOR

2013-2015 Interim Appointments

Boards, Councils and Commissions

Public Safety Officer Standards and Training (POST)

Council

Gina Dahl

William Dial

Lewis Matthews

Kevin Olson

Chief Ryan Oster

Tia Robbin

Jesse Slaughter

Included: Statute for Appointment

*Biographies, Resumes or other Application Materials for
interim appointees*

Montana Code Annotated 2014

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44-4-402. Membership -- compensation. (1) The council consists of no more than 13 voting members appointed by the governor in accordance with 2-15-124 and as provided in this section.

(2) Membership must include but is not limited to:

- (a) one state government law enforcement representative;
- (b) one chief of police, who may be appointed based on recommendations from the Montana association of chiefs of police;
- (c) one sheriff, who may be appointed based on recommendations from the Montana sheriffs and peace officers association;
- (d) one representative from the department of corrections established in 2-15-2301;
- (e) one local law enforcement officer in a nonadministrative position, who may be appointed based on recommendations from the Montana police protective association;
- (f) one detention center administrator or detention officer;
- (g) one Montana-certified tribal law enforcement representative;
- (h) one county attorney, who may be appointed based on recommendations from the Montana county attorneys association;
- (i) two members of the board of crime control established in 2-15-2006; and
- (j) three Montana citizens at large who are informed and experienced in the subject of law enforcement.

History: En. Sec. 3, Ch. 506, L. 2007.

Provided by Montana Legislative Services

GINA DAHL

16 Lila Drive • Havre, Montana 59501

(406) 265-2652

e-mail: gina.dahl@bresnan.net

EDUCATION

UNIVERSITY OF MONTANA SCHOOL OF LAW • Missoula, Montana

Juris Doctor, May 2001

Activities: Women's Law Caucus
Phi Delta Phi

UNIVERSITY OF MONTANA • Missoula, Montana

Bachelor of Arts in Psychology, July 1995

Activities: Proctor for Introduction to Psychology Course
Honors: Dean's List

BAR ADMISSIONS

Montana - State and Federal

EXPERIENCE

September 2008 - present: *Hill County Attorney, Hill County, Havre, Montana*

Supervise two attorneys, four administrative assistants, and a misdemeanor supervision/probation officer; Represent both Hill County and the State of Montana within Hill County; Prosecute all felony crimes occurring in Hill County, and all misdemeanor crimes occurring outside the city limits of Havre; Defend and prosecute all civil claims for or against Hill County; Provide legal advice to all county departments, county boards and school district; Represent the Department of Public Health and Human Services in Youth in Need of Care cases; Prosecute Youth Court cases; Petition for mental health commitments and guardianships; and Serve as Personnel Officer (supervise Personnel Office and Personnel Clerk, train department heads, oversee county employee hiring/discipline/termination, respond to wrongful discharge complaints/requests for unemployment benefits, family medical leave, and develop policies/procedures).

September 2003- September 2008: *Chief Deputy Hill County Attorney, Hill County, Havre, Montana*

Report to three County Commissioners and County Attorney; Provide legal advice to all county departments, county boards and school districts; Majority of time spent on criminal law (prosecution of felony and misdemeanor crimes); Represent the Department of Public Health and Human Services in Youth in Need of Care cases; Petition for mental health commitments and guardianships; and Prosecute Youth Court cases.

September 2001 - August 2003: *Deputy Cascade County Attorney, Cascade County, Great Falls, Montana*

Report to three County Commissioners and County Attorney; Prosecute felony crimes occurring in Cascade County and misdemeanor crimes occurring outside the city limits of Great Falls; Represent the Department of Public Health and Human Services in Youth in Need of Care cases; and Prosecute Youth Court cases.

2000-2001: *Intern, Missoula County Attorney's Office, Missoula, Montana*

Report to Supervising Deputy Attorney and County Attorney; Prosecute misdemeanor cases occurring in Missoula County outside city limits of Missoula; Prepare all Pleadings and Court documents; Conduct Jury and Non-Jury Trials in Justice Court

1998-1999: *Crime Victim Advocate Volunteer, Missoula, Montana*

Conduct initial client intake interviews and assess their needs for services; Assist clients obtain Temporary Orders of Protection and accompany clients to initial hearings; Daily contact with judges, clerks of court, attorneys, and clients.

William Dial Bio

Bill Dial has been a law enforcement officer for 36 years. He started his career with the Illinois State Police where he worked as a patrol officer, undercover drug agent, and criminal investigator. He rose through the ranks to command two drug task forces and the Bureau of Training for the Illinois State Police. He became the Administrative Commander of a suburban Chicago Patrol District comprising over 100 Troopers. During his tenure with the State Police, Bill taught numerous courses at the Academy including search and seizure, criminal law, supervision and critical incident command. He also taught criminal law at a community college in Illinois.

In 2001, Bill became the Chief of Police in Whitefish. In 2007 he was granted a leave of absence to serve a year in Afghanistan as a contractor, teaching Afghans modern policing. During his time in Afghanistan he was promoted to Deputy Contingent Commander and was responsible for the day- to- day operation of 650 police trainers and a half a billion dollar budget

He has served as the Vice President of the Montana Association of Chiefs of Police and a member of the Montana Citizens Advisory Committee to Corrections. He currently is serving on the Montana Board of Crime Control, and the Public Safety Officer Standards and Training Council.

Bill has a Master Degree in Education from Northern Illinois University and is a graduate of the Illinois State Police Command College. Prior to becoming a police officer, Bill taught high school for nine years. He is an avid hunter, skier and races annually in the North American Police Ski Championships, a fund raiser for Special Olympics.

He and his wife Jo Ann, a professional writer, have two children, three grandchildren and three English Springer Spaniels.

Lewis G. Matthews
6904 Hwy 25
Wolf Point, MT 59201
Cell Phone: 406 768-8004
lmatthews@nemont.net

OBJECTIVE:

Reappointed to the Montana POST council-Tribal Law Enforcement

PROFESSIONAL EXPERIENCE

<u>Dates Employed</u>	<u>Job Title</u>	<u>Department</u>
9/2003 to Present Law and Justice	Police Officer/Criminal Investigator	Fort Peck Tribes

- Investigate Federal Crimes on the Fort Peck Indian Reservation
- Investigate Tribal Felonies
- Work with Federal Agents (ATF, FBI, DEA, OIG and EPA)
- Provide testimony in Tribal and Federal Courts

6/2001 – 9/2003	Police Officer	Wolf Point Police Dept.
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- Patrol the City of Wolf Point, MT
- Enforce State and Tribal Laws
- Responded to 911 calls
- Business and residential security checks

EDUCATION

<u>Dates attended</u>	<u>School</u>	<u>Degree</u>	<u>Location</u>
7/2007	FLETC CIP-726	Graduated	Glynco, Georgia
11/2001	MLEA	Graduated	Helena, Montana
8/2001	Minot State University		Minot, North Dakota
5/1999	Wolf Point High School	Graduated	Wolf Point, Montana

Chief Oster was born and raised in the Bitterroot Valley, in Western Montana. He graduated from Victor High School in 1992. He joined the Montana Army National Guard in January of 1991 and completed Basic Training and Advanced Individual Training prior to graduation from High School. He served with the National Guard until 1998.

Chief Oster attended Dawson Community College, in Glendive Montana, from 1992 to 1994 and earned an A.A.S. degree in Law Enforcement. He attended and graduated from the Montana Law Enforcement Academy in the fall of 1994 and began his law enforcement career with the Hamilton Police Department in December, 1994. Chief Oster served as a Patrol Officer, Detective and Patrol Sergeant prior to his appointment as Chief of Police in April of 2006.

Chief Oster was selected as the Law Enforcement Officer of the Year by the Montana American Legion in 2004 and holds Advanced, Supervisory, Command, and Administrative certificates issued by Montana P.O.S.T. He was selected to attend the 237th session of the F.B.I. National Academy, graduating from that program in June of 2009.

Chief Oster is married to his wife, Heather, and has two boys, Hunter and Trapper. He has been a long time member of the Hamilton Lions Club, is the Vice Chairman of the Ravalli County Economic Development Authority, and an Executive Board member of the Montana Association of Chiefs of Police. He is active in his church and enjoys spending time with his family hunting, skiing, and camping.

RESUME

KEVIN OLSON

91 Forest Park Drive

Clancy, MT 59634

(406) 265-0912

(406) 933-5288

➤ WORK HISTORY:

2004-

Montana Department of Justice
Law Enforcement Academy
2260 Sierra Road East
Helena, MT 59602

Current Position: Administrator

Duties: Responsible for the administration, management and operations of the programs, staff and facilities of the Montana Law Enforcement Academy. This includes collaborating with State, County, City and Tribal governments and working with the legislative branch for operational funding and capital projects.

1981-1987
1989-2004

City of Havre Police Department
520 4th Street
Havre, MT 59501

Position: Various Ranks – Served as Chief of Police 2000 - 2004

Duties: Responsible for the administration of the Police Department. Responsible for the oversight of municipal law enforcement, communication, and animal control services including budget management, long-range planning, grant writing, and recruitment and retention of police officers and other support staff.

1987-1989

Montana Department of Justice
Criminal Investigation Bureau
302 North Roberts
Helena, MT 59620

Position: Agent – Eastern Special Investigation Section – Billings, MT

Duties: Investigation of dangerous drug crimes through covert and overt techniques.

1980-1981

City of Chinook Police Department
PO Box 1177
Chinook, MT 59523

Position: Police Officer

Statewide Interoperability Executive Council
United States Attorney – District of Montana
Law Enforcement Coordinating Committee
Northern Montana Health Care Incorporated
Board of Directors
Havre / Hill County Local Emergency Planning Committee
Chairman
Havre / Hill County 911 Committee
Board Member
Havre Rotary Club

➤ **REFERENCES:**

Mr. Alan Hulse
PO Box 6669
Helena, MT 59624
(406) 495-7014

Mr. Darrell Bell
4541 Palisades Park Dr.
Billings, MT 59106
(406) 839-0135

Mr. Jim Thomas
PO Box 503
Canyon Creek, MT 59633
(406) 368-2349

Tia R. Robbin, Esq.

Northwest Montana Association of REALTORS®, Inc.
110 Cooperative Way
Kalispell, MT 59901

Phone: 406.752.4313
Fax: 406.752.7834
email: tiar@nmar.com

Employment

EXECUTIVE OFFICER AND GENERAL LEGAL COUNSEL
Northwest Montana Association of REALTORS®, Inc.
Northwest Montana Association of REALTORS®, MLS, Inc.

August 2010 – present
Kalispell, Montana

ATTORNEY, PARTNER
Measure, Robbin & Wilson, P.C.

August 2005 – August 2010
Kalispell, Montana

- General Civil Legal Practice, specializing in real estate, business and employment law

ATTORNEY, PARTNER
Robbin Law, P.C.

2004-2005

Kalispell, Montana

- General Civil Legal Practice, specializing in real estate and employment law

ATTORNEY, PARTNER
Kaufman, Vidal & Hileman, P.C.

1992-2004

Kalispell, Montana

- General Civil Legal Practice, specializing in real estate, business and employment law, and insurance defense litigation

ATTORNEY, ASSOCIATE
Wickens, Herzer & Panza, PLLC

1991-1992

Lorain, Ohio

- Litigation attorney, specializing in real estate, environmental claims, and employment law

OTHER: Law Clerk (1988-1991), *Boone, Karlburg & Haddon Law Firm*, Missoula, MT;
Medical Transcriptionist/Receptionist (1985-1988, part-time), *Rocky Mountain Eye Clinic*,
Missoula, MT; Tourguide/Docent (1980-1986, seasonal), *Conrad Mansion Museum*,
Kalispell, MT

EDUCATION

JURIS DOCTORATE (J.D.)
School of Law, University of Montana

1988-1991

Missoula, Montana

- Graduated with High Honors;
- Moot Court Team;
- Order of Barristers;
- *Montana Law Review*, editor & contributing writer

Jesse Slaughter

49 37th Avenue NE
Great Falls, MT 59404
406-868-8997 / jslaughter@greatfallsmt.net

PROFESSIONAL SKILLS

Creative Problem Solving
Proven Leadership
Effective Communicator
Technological Aptitude
Outside the Box Thinking

PROFESSIONAL EXPERIENCE

Great Falls Police Department (July 2002 – Present)

Detective- (2012-present)

Assigned as a Sex Crimes/ Crimes against Children investigator. My primary duty is to work Internet Crimes against Children. I'm responsible for complex and violent crimes against children to include Homicides.

High Risk Unit - HRU Member (2004 - Present)

Organized, documented, and instructed training and qualifications for team members.

Worked as both and Sniper and entry team member (current).

Downtown Officer/Special Projects -(July 2005 - July 2007/2009-2012)

Worked the downtown business district for 2 years. Investigated crimes such as Homicides, Suicides, Robberies, Burglaries, and several thefts. Conduct new hire background investigations. Facilitate the Citizen's Academy. **2006 Officer of Year.**

Patrolman (2002-2005/2007-2009)

Performed assigned patrol/law enforcement duties to include investigation of crimes or suspicious activities, enforcement of traffic laws, and response to citizen requests for service. **Promoted to Master Police Officer** (August 2007). **MACOP Medal of Honor Recipient for officer involved shooting** (July 2004).

Condition One Consulting, LLC. (2008 – Present)

Co-Owner/Instructor

Planned, organized, directed, and controlled start-up business that instructs civilians in the safe and proper use of firearms and use of force.

Gallatin County Coroners Office/Stillwater County Sheriff – Deputy Coroner/Sheriff
(1998-2002)

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



ANGELA McLEAN
LT. GOVERNOR

2013-2015 Interim Appointments

Boards, Councils and Commissions

Board of Pardons and Parole (BOPP)

Darryl Dupuis
Sandy Heaton
Mark Staples

Included: Statute for Appointment

*Biographies, Resumes or other Application Materials for
interim appointees*

Montana Code Annotated 2014

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2-15-2302. Board of pardons and parole -- composition -- allocation -- quasi-judicial. (1)

There is a board of pardons and parole.

(2) (a) The board consists of seven members, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. One member must be an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board.

(b) Board members must have knowledge of serious mental illness and recovery from serious mental illness gained through annual training as required by rules adopted by the board. One member must be a mental health professional as defined in 53-21-102.

(c) Board members must possess academic training that has qualified them for professional practice in a field such as criminology, education, medicine, psychiatry, psychology, law, social work, sociology, psychiatric nursing, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The governor shall attempt to establish geographic balance among board members.

(4) Board members shall serve staggered 4-year terms. The governor shall appoint three members in January of the first year of the governor's term, two members in January of the second year of the governor's term, and two members in January of the third year of the governor's term. The provisions of 2-15-124(2) do not apply to the board.

(5) The terms of board members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

(8) A favorable vote of at least a majority of the seven members of the board is required to implement any policy, procedure, or administrative rule. A favorable vote of at least a majority of the members of a hearing panel, as defined in 46-23-103, is required to make decisions regarding parole and executive clemency, and the provisions of 2-15-124(8) do not apply.

History: En. 82A-804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 78, Ch. 120, L. 1974; amd. Sec. 1, Ch. 333, L. 1975; R.C.M. 1947, 82A-804; amd. Sec. 1, Ch. 574, L. 1979; amd. Sec. 1, Ch. 154, L. 1989; amd. Sec. 22, Ch. 546, L. 1995; amd. Secs. 1, 2, Ch. 420, L. 1997; amd. Sec. 1, Ch. 559, L. 2003; amd. Sec. 1, Ch. 242, L. 2009; amd. Sec. 1, Ch. 102, L. 2011; amd. Sec. 1, Ch. 209, L. 2013.

Provided by Montana Legislative Services

DARRYL A. DUPUIS

31284 Arrowhead Trail
Polson, Montana 59860
(406) 249-7045

EDUCATION/TRAINING

1953: Graduate - Polson High School

1955-57: United States Army

1957-58: Wenatchee Jr. College, Wenatchee, WA

1958-60: Montana State University, Bozeman, MT
B.S. Degree - Health & Physical Education

1969-77: University of Montana, Missoula, MT (summer quarters)
Master's Degree - School Administration/Secondary Principal
Native American Graduate Fellowship
Superintendents Endorsement (Summer 1977)

EMPLOYMENT HISTORY

2002 - Present: Retired

2000-02: Confederated Salish & Kootenai Tribes, Pablo, MT
Tribal Council Member

1995-99: Salish Kootenai College, Pablo, MT
Development Officer

1976-95: Polson Public Schools, Polson, MT
Principal - Polson Middle School

1978-80: Youth Conservation Corps, Pablo, MT
Work Project Coordinator (summer employment)

1965-76: Polson Public Schools, Polson, MT
High School Health & Physical Education Teacher
Head Coach - High School Football, Wrestling & Track
High School Athletic Director (1970-76)

PERSONAL DATA SHEET

Sandy Heaton, MS, MPC, LCPC, LAC

1015 Kohrs St.

Deer Lodge, MT (406)846-2710

LICENSES:

1989-Present	Licensed Addiction Counselor #582
1996-Present	Licensed Clinical Professional Counselor #665

EDUCATION:

1995	University of Great Falls, Great Falls, MT. Master of Professional Counseling. Emphasis in family counseling.
1965	Colorado State University, Ft. Collins, CO Masters of Science in Sociology.
1960-1964	Colorado State University, Ft. Collins, CO. Bachelor of Science in Sociology. Minor in Psychology.

WORK EXPERIENCE:

11/2010-9/2012	<u>Contracted Mental Health Professional</u> for Community Counseling and Correctional Services, Inc. Butte, MT. Provided mental health services for clients at the Connections Program. Retired.
12/2007-8/2008	<u>Contracted Mental Health Consultant</u> for START program. Warm Springs, MT. Provided mental health services for clients in the program
5/2005-1/2012	<u>Contracted Mental Health Consultant</u> for Dept. of Corrections at the Missoula Assessment and Sanction Center. Completed mental health evaluations on offenders. Worked as part of a team to determine eligibility for community placement vs. incarceration.
5/2005-Present	Member of <u>the Correctional Health Care Review Team</u> . Department of Labor and Industry. Helena, MT. Review complaints filed by inmates against licensed or certified providers of health care or rehabilitative services to persons while they are confined in a county detention center or incarcerated. As part of the team, makes decision whether or not to forward the complaint on to the licensing board.

2/2004-12/2010	<u>Contracted Mental Health Consultant</u> for Dept. of Corrections at the Treasure State Correctional Training Center. Provided mental health services for clients in the program.
10/97-12/2003	<u>Treatment Program Manager</u> , Montana State Prison. Over saw Chemical Dependency and Sex Offender treatment programs. Conducted staff training. Coordinated the Critical Incident Stress Debriefing Team. Provided quality assurance for mental health treatment programs in regional and private prisons within the department. Retired from full time employment.
7/98-5/2006	<u>Mental Health Trainer</u> at Law Enforcement Academy for Probation and Parole Basic, for the Correctional Detention Officer Basic, and for Police Officers Academy.
5/92-1995	<u>Village Therapy</u> , Missoula, Mt. Co-Therapist for juveniles in outpatient setting.
1/99-Present	Provides <u>clinical supervision</u> as needed to individuals who have their LCPC but need supervision to get their hours for licensure.
6/89-10/99	<u>Sexually Abusive Behavior Evaluation and Recovery Program</u> , Missoula, MT. Co-therapist for two adult sex offender groups in outpatient setting.
1/87-10/97	<u>Psychology Specialist</u> . Provided mental health services for Montana State Prison.
9/85-1/87	<u>Acting Associate Warden of Treatment</u> , Montana State Prison. Oversaw treatment department and coordinated programming for all rehabilitative programs in the facility.
10/82-9/85	<u>Director of Classification and Treatment</u> , Montana State Prison. Monitored classification process and treatment programs.
9/79-10/82	<u>Director of Clinical Services</u> , Montana State Prison. Responsible for mental health programing including the completion of diagnostic and evaluation reports for Montana courts.
6/79-9/79	<u>Psychiatric Social Worker 11</u> , Montana State Hospital. Assessed mental illness of patients and formulated treatment plans.
10/77-6/79	<u>Assistant Supervisor of Social Service Department</u> , Montana State Prison. Provided mental health counseling as needed.
12/76-10/77	<u>Social Worker 11</u> , Montana State Prison. Provided mental health counseling to offenders.
12/75-12/76	<u>Social Worker 1</u> , Montana State Prison. Provided mental health counseling to offenders.

8/73-12/75

Case Interviewer, Montana State Prison. Interviewed Reception inmates obtaining a social history. Provided mental health counseling as needed.

TRAINING AND PRESENTATIONS:

May 2002-2005

Professional Instructor Certificate for Correctional Mental Health, Supervising Sex Offenders in the Community, Human Growth, and Cognitive Principles and Restructuring through the Dept. of Justice, Board of Crime Control.

1997

Testified at the Montana Legislature on bills affecting sex offender treatment at Montana State Prison.

9/97

Sentencing and Treatment of Sexual Offenders, Presenter at fall conference for District Judges, Butte, MT.

12/96

Treatment of Sexual Offenders, Governor's advisory Council on Corrections for Education and Rehabilitation, Helena, MT.

1993

Communication skills, Professionalism, Suicide Prevention. Trainer, new employee training, Montana State Prison.

1993

Stress Management, Presenter, Montana Correctional Association, Butte, MT

1983

Sex offender Treatment, Presenter, Montana Correctional Association, Glendive, Mt.

ACTIVITIES, AWARDS, AND MEMBERSHIPS:

9/03

Awarded Correctional Employee of the Year, Montana Correctional Association

2003

Governor's Montana Excellence in Leadership Award-ICCW

9/01

Compliance Monitoring Core Team-Appointed by the Director of the Dept. of Corrections. Instructed to develop a compliance-monitoring tool; provide direction with monitoring efforts, lead monitoring reviews, provide knowledge on standards and policy for adult correctional facilities in the state.

10/2000

Treatment Programs Committee- Appointed by DOC Director to standardize cognitive/behavioral treatment, improve programming consistency and evaluate new treatment approaches for adult correctional facilities in the state.

1/98

Director's Task Force for Community Supervision of Sexual Offenders, Co-Chair of committee. Establishing policy for introducing eligible sex offenders back into the community safely.

- 4/94 Member of Legislative Task Force Committee on legislation for supervision of sexual offenders.
- 7/92-present Montana Sex Offender Treatment Association-Clinical Member, Vice president, President, (1998-2000), Ethics committee member.
- 11/90-Present American Counseling Association, Clinical Member
- 10/89-Present National Association of Alcoholism and Drug Abuse Counselors. Professional Member

References available upon request.

MARK STAPLES
ATTORNEY/GOVERNMENT RELATIONS
PROFESSIONAL PROFILE

Mark Staples is the principal in Staples Law Firm, P.C., located in the capital city of Helena, Montana, with his practice reaching throughout the region. Emphases are government, lobbying, administrative and regulatory work. Mr. Staples has or has had law and lobbying retainers with the Montana Tavern Association, Montana Wholesale Distributors Association, Montana Contractors Association, Montana Chiropractic Association, Montana Cable Telecommunications Association, Montana Mortgage Brokers Association, Plum Creek Timber Company, Inc., Atlantic Richfield Corporation, Blue Cross/Blue Shield of Montana, Community Loans of America, CIT Small Business Lending Corporation, Hertz, Inc., Level 3 Communications, MCI Telecommunications Corporation, Holiday Companies, McLeodUSA Telecommunications, Verizon, Inc., Cigar Association of America, FICO, DRL/Topps' Manufacturing, National Association of Real Estate Investment Trusts, Town Pump, Inc., Take Charge America, The Yellowstone Club, National Popular Vote, Centene, CVS Caremark, Citigroup, and Newmont Mining Corporation. Mr. Staples served as contract counsel to the Montana Department of Commerce for the Boards of Realty, Nursing, and Surveyors and Engineers.

LEGAL EMPHASES:

Government and Public Affairs (Local, State and Federal); Regulatory Proceedings; Administrative Law.

RESUME

MARK STAPLES

Attorney at Law

34 West Sixth Avenue, Suite 2A

P.O. Box 1018

Helena, Montana 59624

Tel: (406) 443-4345

Fax: (406) 443-7706

Email: staplesmt@gmail.com

EDUCATION

1977 - 1980 Gonzaga University School of Law, Spokane, WA; J.D.

1967 - 1971 University of Montana, Missoula, MT; B.A., Political Science

PROFESSIONAL EXPERIENCE

1987-Present Private Attorney at Law/Lobbyist, Helena, MT

General practice of law with emphases on governmental and public affairs (Local, State and Federal), legislative drafting and functions, administrative law, criminal and civil litigation (defense emphasis), corporate law, liquor, gaming, licensing, real estate transactions, health care, insurance, finance, mining, timber, telecommunications, workers' compensation, regulatory law.

1982 - 1987 Pondera County, Conrad, MT

Deputy County Attorney, serving as both civil and criminal trial attorney for Pondera County, adviser to county commissioners, school districts, road department, sanitation, hospitals, airport authority, et al; extensive experience in administrative law, ordinances, zoning, public finance, insurance, employment discrimination and related matters, contracts, real estate, tort defense and avoidance, negotiations; numerous trials.

1982 - 1987 Private Attorney at Law, Conrad, MT

General practice of law over wide range of legal field: worker's compensation, constitutional law, torts for plaintiff and defense, estates, federal agency review, appellate practice, personal injury, wrongful death, contracts, real estate, and extensive trial work.

1980 - 1982 Christian, McCurdy and Wold, Attorneys at Law, Polson, MT

Associate of firm, working primarily with Douglas Wold on major tort litigation throughout the Northwest.

- 1979 - 1980 Gonzaga University Legal Assistance, Spokane, WA
Among select group of law school seniors permitted to practice law in the courts of Washington under clinical supervision; emphasis on indigent advocacy, public interest law, immigration representation, and student affairs and conduct.
- Summer 1978 Murphy, Robinson, Heckathorn & Phillips, Attorneys at Law, Kalispell, MT
Legal intern; emphasis on research and trial brief preparation, particularly on tax matters.
- 1980-Present Entertainment/Fundraising, nationwide

Composer, lyricist, recording artist, writer, emcee, fundraiser; have recorded 4 successful albums, performed hundreds of concerts and convention shows nationwide, personally raised over \$500,000 in 30 years for political, charitable, civic and educational entities, including both State Universities, emceed and performed at two Montana Governors' inaugurals, the 2002 Western U.S. Governors' Conference Banquet, and 8 Montana Governor's Cups; have had songs used as themes for institutions, cities, television and states; wrote music and lyrics for University of Montana's Repertory Theatre's musical, "Harvest"; formed and managed STAPLESONGS CORPORATION to handle business of above; wrote and performed "When Montana Sings", which was the State's nationwide tourism anthem for 8 years; awarded Addy's (Montana Ad Federation's highest honor) for Best Ad Campaign (3 times) for "When Montana Sings" and for Best Television Special for "Our Lady of the Rockies" for which I composed and performed the title hymn and soundtrack. Awarded "Outstanding Community Service Award" at University of Montana's Homecoming in 2008.

CLIENTS

Current full-time including bi-annual Legislative Sessions

- Atlantic Richfield
- CVS Caremark
- Montana Cable Telecommunications Association
- Montana Chiropractic Association
- Cigar Association of America
- Montana Tavern Association *
- Montana Wholesale Distributors' Association
- Plum Creek Timber Company
- Town Pump, Inc.
- Verizon, Inc.

*"Of counsel" status since January, 2013, no longer lobbying for them.

Other Recent Legislative Contracts (for special and specific issues)

- Citigroup
- Blue Cross/Blue Shield
- FICO
- DRL Enterprises/ Topp Manufacturing
- Take Charge America, Inc.
- NAREIT (National Association of Real Estate Investment Trusts)
- Montana Restaurant Association
- Montana Beer and Wine Wholesalers
- Altria
- Yellowstone Club
- National Popular Vote
- Centene Corporation

Past Legislative Contracts (for special and specific issues)

- Exxon USA
- Holiday Companies
- International Gaming Technology
- Montana Coin Operators Association
- Montana Contractors Association
- American Booksellers Association

Also have performed trouble-shooting contract work for a wide variety of business and corporate clients, including the American Booksellers Association, Western Firefighters Service Association, Hertz Corporation, '4B's Incorporated (formerly Montana's largest restaurant chain), Town Pump, Inc. (petroleum, trucking, hotels, C-stores, alcohol, gaming), Waverley Montana (rest homes), and Vivint, Inc. – home security systems.

BOARDS, COUNCILS AND DIRECTORSHIPS (Past and Present)

Director – Camp Mak-a-Dream, Since founding in 1980's

Director – National Affordable Housing Network, 1996 – present

Director/Co-founder - Treasure State Bank, 2006 – 2011

Member - Montana Board of Banking, 2003-2004

Member – School of Fine Arts Advisory Board, University of Montana, 1998 – present
President's Advisory Council, 2008 - present

President – Bear Harbor Homeowners Association, Polson, Montana 2003 – 2005

Member – Montana Board of Banking (Appointed by Governor), 2004/2005

House of Delegates, Alumni Assoc., University of Montana, (appointed 2008)
President's Advisory Council – appointed 2009

PROFESSIONAL REFERENCES:

The Honorable Steve Bullock, Governor of Montana, Helena, Montana

The Honorable Tim Fox, Montana Attorney General, Helena, Montana

The Honorable Mike McGrath, Chief Justice of the Supreme Court
State of Montana, State Capitol, Helena, Montana

Rep. Mark Blasdel, Speaker of the House
State of Montana, State Capitol, Helena, Montana

G. Daniel McCarthy, Vice-President & General Counsel
Hewlett Packard Capital, Whippany, New Jersey

Neil Geary, Vice President, Government and Public Affairs
Atlantic Richfield

Thomas Kenneally Jr., President & CEO
Town Pump, Inc., of Montana

Lynn Anderson, Executive Vice President & General Counsel
Holiday Companies

Marcus Nynas, D.C., President
Montana Chiropractic Association

Bruce Enott, Chairman of the Board,
Montana Tavern Association, Helena, Montana

(Many others if requested.)

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



SR15
ANGELA McLEAN
LT. GOVERNOR

2013-2015 Interim Appointments

Judicial

**Montana Supreme Court
Justice Jim Shea**

Included: Statute for Appointment

*Application Packet as provided by Judicial Nominations
Commission*

Montana Code Annotated 2014

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3-1-1010. Lists submitted to governor and chief justice -- report on proceedings. (1) If a supreme court justice, a district court judge, the workers' compensation judge, the associate water judge, or the chief water judge gives notice of the judge's resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the supreme court. If notice is not given, the commission shall meet as soon as possible after a vacancy occurs. The meeting must be held in compliance with 3-1-1007. The commission shall submit to the governor or chief justice, within the time period established under 3-1-1007, a list of not less than three or more than five nominees for appointment to the vacant position.

(2) The list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, letters and public comments received regarding each nominee, and the commission's reasons for recommending each nominee for appointment. The report must give specific reasons for recommending each nominee.

History: En. Sec. 6, Ch. 470, L. 1973; R.C.M. 1947, 93-710; amd. Sec. 9, Ch. 21, L. 1979; amd. Sec. 2, Ch. 423, L. 1979; amd. Sec. 1, Ch. 344, L. 1987; amd. Sec. 4, Ch. 651, L. 1987; amd. Sec. 4, Ch. 810, L. 1991; amd. Sec. 149, Ch. 61, L. 2007; amd. Sec. 2, Ch. 335, L. 2011.

Provided by Montana Legislative Services

APPLICATION FOR

JUSTICE OF THE MONTANA SUPREME COURT

A. PERSONAL INFORMATION

1. Full Name: **James Jeremiah Shea**
 - a. What name do you commonly go by: **Jim or Jimmy**
2. Birthdate: **April 13, 1966** Are you a U.S. citizen? **Yes**
3. Home Address: **724 South California, Helena, MT 59601**
Phone: **406.461.3167**
4. Office Address: **1625 11th Avenue, Helena, MT 59601**
Phone: **406.444.7794**
5. Length of residence in Montana: **Birth to 1992; 1996 to Present.**
6. List your place of residence for the past five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
August 2005 - Present	Helena	MT

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>
Butte Central Catholic High School	Butte, MT	May 1984	Diploma
University of Montana	Missoula, MT	June 1988	B.A.
University of Montana School of Law	Missoula, MT	June 1991	J.D.

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

High School: Honor Roll; Boys' State Delegate; Varsity Letters in Football, Wrestling, and Track; Varsity Team Captain in Football

College: President's Recognition Award for Outstanding Graduating Seniors

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

I was not a member of law review.

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: All State Trial and Appellate Courts	1995
United States District Court, District of Montana	1997

(I was admitted to the Oregon State Bar in 1991, but resigned my membership in 2006 after being appointed judge of the Workers' Compensation Court.)

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

Montana Workers' Compensation Court Judge since 2005.

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

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Montana Workers' Compensation Court	Judge	9/05 – Present
Paoli & Shea, P.C. 257 West Front Street, Suite A Missoula, MT 59802	Partner	11/01 – 9/05
Bricker, Zakovics, Querin, Thompson & Ritchey, P.C. 257 West Front Street Missoula, MT 59802	Member MT Resident Attorney	11/97 – 11/01
Ingebritson & Associates, P.A. 257 West Front Street Missoula, MT 59802 (From 11/96 to 3/97, my office was located at 815 E. Front Street in Missoula.	Associate MT Resident Attorney	11/96 – 11/97
Bricker, Zakovics & Querin, P.C. 621 S.W. Morrison Street, Suite 1300 Portland, OR 97205	Associate	9/94 – 11/96
Metropolitan Public Defender 630 S.W. Fifth Avenue, Suite 500 Portland, OR 97204	Trial Attorney	3/93 – 9/94
Underwood, Norwood & Hiefield 111 S.W. Fifth Avenue, Suite 2100 Portland, OR 97204	Associate	11/92 – 3/93
Hon. Paul G. Hatfield United States District Court District of Montana Great Falls, MT	Law Clerk	12/91 – 11/92

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

N/A

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.

Since September 7, 2005, I have been the presiding judge of the Montana Workers' Compensation Court. Except for specified regulatory matters, the Court has original jurisdiction over all disputes arising under the Workers' Compensation Act and the Occupational Disease Act. The Court's exclusive jurisdiction also extends to disputes involving independent contractor exemptions under both the Workers' Compensation Act and Unemployment Insurance Act, civil penalties for theft of workers' compensation benefits, and the two-year return to work preference specified in section 39-71-317(2), MCA. In workers' compensation regulatory matters over which the Department of Labor and Industry has original jurisdiction, the Workers' Compensation Court acts as an appellate court, conducting judicial review. Decisions issued by the Workers' Compensation Court are appealed directly to the Montana Supreme Court.

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

I was a federal law clerk for a year after law school. This was followed by a brief stint in an insurance defense firm in Portland, Oregon before I was laid off due to downsizing. I then practiced indigent criminal defense at the Metropolitan Public Defender in Portland, Oregon and tried numerous cases, both misdemeanors and felonies. After leaving the public defender's office in 1994 until I was appointed to the Workers' Compensation Court, my practice was nearly all civil law with an emphasis on Federal Employers' Liability Act litigation, although I also handled a few criminal law cases during this time.

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

Since September 2005, I have been the judge of the Montana Workers' Compensation Court.

17. Do you regularly appear in court? Yes

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

Federal Court	0%
State or local courts of record	100%
Administrative bodies	0%
Other	0%

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

100% judicial.

19. How frequently have you appeared in court?

Approximately 10 times per month on average.

20. How frequently have you appeared at administrative hearings?

Prior to being appointed to the bench, I appeared at administrative hearings on several occasions on behalf of pro bono clients seeking disability benefits from either the Social Security Administration or the Railroad Retirement Board.

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

Civil	90%
Criminal	10%
Other	0%

22. Have you appeared before the Montana Supreme Court within the past five years? If so, please 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.

Since being appointed judge of the Workers' Compensation Court, I have had numerous decisions appealed to the Montana Supreme Court. Many of these have been settled on appeal; however, thirty-nine of my decisions have been ruled upon by the Supreme Court. All of these cases involved disputes under the Montana Workers' Compensation Act or Occupational Disease Act.

23. State the number of jury trials that you have tried to conclusion in the past ten years. 1

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

All trials in the Workers' Compensation Court are non-jury trials. According to the court's statistics, I have presided over more than 200 trials in the past eight years, four months. This figure includes trials that resulted in bench rulings, and trials that may have settled shortly after trial and before the issuance of findings of fact, conclusions of law, and judgment. A review of the Court's published orders reflects that I have issued 136 findings of fact, conclusions of law, and judgments.

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

N/A

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

N/A

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

In 2003, I spoke at a CLE on the subject of "Establishing a Plaintiff's Practice" at the Montana Trial Lawyers Association "Seminar of the Masters" boot camp for young lawyers. In 2004, I co-chaired a CLE on the subject of "Electronic Courtroom and Visual Evidence" sponsored by the Montana Trial Lawyers Association.

Since being appointed to serve as Workers' Compensation Court Judge, I have spoken at the Governor's Conference on Workers' Compensation every year since 2006. I have guest-lectured to the workers' compensation class at the University of Montana School of Law on 4 occasions, most recently in 2012. I spoke at a CLE presented by the Montana Defense Trial Lawyers Association in 2005. I spoke at a CLE presented by the Montana Trial Lawyers' Association in 2006. I spoke to the Yellowstone County Bar Association in 2008. I spoke at a seminar presented by the Montana Chamber of Commerce in 2010. I spoke at CLEs sponsored by the Montana State Bar in 2008 and 2011. Currently, I am scheduled to speak at a labor and employment law CLE in Billings in March 2014, and at an employment law CLE in Helena in May 2014.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member and give 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 Judges Association	2005 – Present
State Bar of Montana	1995 – Present
Oregon State Bar	1991 – 2006
Western Montana Bar Association	2001 – 2005
Montana Trial Lawyers Association	1994 – 2005
Association of Trial Lawyers of America	1994 – 2005

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

I am a member of Our Lady of the Valley Catholic Parish where I serve as a lector and in the parish hospital ministry. I serve on the board of directors and am actively involved with Grandstreet Theatre, a nonprofit community theatre in Helena. For the last several years, I have volunteered on the planning committee for Great Conversations, an annual fundraiser to benefit the Helena Education Foundation.

30. Have you ever run for or held public office? If so, please give the details.

I have been the Montana Workers' Compensation Judge since being appointed to this position by Governor Schweitzer in September 2005. Governor Schweitzer appointed me to a second term in 2011.

E. PROFESSIONAL CONDUCT AND ETHICS

31. 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, give the particulars.

No.

32. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, please explain.

No.

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

When I was in college, I was arrested for driving under the influence of alcohol. The charge was reduced to reckless driving and I pled guilty to that charge and paid a fine.

34. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty, or unethical conduct? If so, please give details.

No.

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

No.

F. BUSINESS AND FINANCIAL INFORMATION

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

No.

37. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of such business, its nature, and the nature of your duties. State whether you intend to resign such position immediately upon your appointment as Supreme Court justice.

N/A

38. During the past five years, have you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization? If so, please identify the source and approximate percentage of your total income that the fees or compensation constituted over the past five years.

N/A

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

No.

40. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?

Yes

41. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?

No

42. Have you ever been found by the IRS to have willfully failed to properly disclose your income during the past five years? If so, please give details.

No

43. Please explain your philosophy of public involvement and practice of giving your time to community service.

By far, the greatest influence on my philosophy of public involvement and community service comes from my mother. From before my birth until her retirement nearly three decades later, my mom worked for – and ultimately served as Executive Director of – the Butte Anti-Poverty Council. My mom instilled in all of her children a sense of responsibility to those who are less fortunate, have been marginalized, or are otherwise facing adversity. When I was living in Missoula, I volunteered regularly at the Poverello Center through my parish's homeless ministry. Currently, I volunteer time to my parish's hospital ministry, bringing Communion to parishioners who are hospitalized.

After becoming a father, I became increasingly aware of the need to donate time to organizations that benefit children. When my family and I were still living in Missoula, I volunteered as a "coach" with

my daughter's youth soccer league. (I place the word "coach" in quotation marks because they were a team of first graders and I was barely competent in my knowledge of soccer.) Currently, I volunteer my time to Grandstreet Theatre, a nonprofit community theatre which runs an excellent children's theatre school and a summer camp. For the last several years, I have also donated my time to helping organize the Helena Education Foundation's annual fundraiser, Great Conversations.

Another element of community service in which I engage – though not in any formal or organized capacity – is working with others who are recovering or attempting to recover from alcoholism. As a recovering alcoholic myself with over 24 years of sobriety, I share my experience on a one-to-one basis with others who are dealing with the same or similar struggles I went through for whatever benefit they may derive.

G. WRITING SKILLS

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

Since I have been a judge for more than eight years, I obviously have not drafted any briefs in the last five years. However, the largest part of my job is researching and drafting various pretrial and post-trial orders, as well as findings of fact and conclusions of law. I do original research and drafting on a regular basis. As for documents of which the initial draft was done by a law clerk, they are all thoroughly reviewed and edited by me before being finalized.

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

N/A

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

Please see attached summary judgment order in *Nelson v. Montana Schools Group Ins. Authority*.

47. What percentage of your practice for the past five years has involved research and legal writing?

75%

48. Are you competent in the use of Westlaw and Lexis?

The Court uses Westlaw and I am very competent in its use. I have used Lexis in the past and am familiar with its use.

H. MISCELLANEOUS

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

I like to do as many family activities as my wife and I can coerce our daughters to do which has been increasingly difficult as they've become teenagers. Every summer, our family camps and hikes in Glacier National Park. Also, I am an avid hunter and I enjoy fly-fishing. In the last two years, I have become an avid distance runner, and I have run several marathons and half marathons, as well as other races of shorter distances.

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

As a teenager, I worked as a page in the Montana State Senate during the 1982 special session. I also worked mowing lawns, laying sod, and cleaning up parks for the Butte-Silver Bow County Parks Department.

In college, I helped pay for school by working summers for Butte-Silver Bow Metro Sewer and the Public Works Department. My work for the Public Works Department included street maintenance, asphalt work, and ripping out sidewalks that were scheduled for replacement. My work for Metro Sewer involved the maintenance of sewer lines and cement work building frames for manhole replacements. During the school year, I worked various work study jobs and I tended bar on weekends at the Knights of Columbus in Butte.

During both summers of law school, I worked as a summer law clerk for the Butte law firm of Corette, Pohlman, Black & Carlson. This was basically a legal research and writing position, primarily on civil defense cases.

My first job after law school was working as a law clerk for Judge Paul G. Hatfield of the United States District Court in Great Falls. My wife and I then moved to Portland where I worked briefly as an associate for an insurance defense firm before being laid off. I then went to work as a trial attorney for the Metropolitan Public Defender in Portland. At this job, I tried numerous jury trials and bench trials and appeared in court on a daily basis. I worked at the public defender's office for a year and a half but left to take a higher paying job in the private sector in anticipation of the birth of my first daughter.

From the public defender's office, I was hired as an associate attorney by Bricker, Zakovics & Querin, a civil firm that specialized in the representation of railroad employees who had sustained on-the-job injuries and occupational diseases. I worked for the Bricker firm for two years before taking a job with a Minneapolis based firm that was looking to open a Montana office, which enabled my wife and I to move home to Montana with our daughters. After a year with this firm, I was recruited to rejoin the Bricker firm as the firm's resident attorney in Montana. I remained with the Bricker firm for an additional four years before joining Paoli Law Office in 2001 to form the firm of Paoli & Shea. As a partner in Paoli & Shea, I continued to litigate railroad cases; however, I broadened my practice to other areas of civil law as well. My final jury trial before being appointed to the bench was a property dispute between two adjacent land owners in which I represented the defendant. I remained a partner with Paoli & Shea until being appointed Workers' Compensation Judge by Governor Schweitzer in 2005.

51. Please identify the nature and extent of any pro bono work that you have personally performed during the past five years.

As a judge, I am prohibited from engaging in the private practice of law.

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

My parents instilled in me a profound respect for the law, the courts, and lawyers. Neither of my parents attended college. However, they raised six children, all of whom have obtained college degrees and two of whom are now lawyers. I am the youngest child and my parents named me after a Butte District Court Judge, Jeremiah J. Lynch. Judge Lynch was a personal mentor of my dad's as he was growing up in Butte. Although Judge Lynch died before I was born, I was weaned on stories of his work as a judge. I was taught from an early age that our system of justice, though not perfect, should be respected; however, it is the responsibility of those who work in this system to continually earn and maintain that respect.

As an adult, my clerkship for Judge Hatfield influenced me a great deal because it was my first opportunity to witness our justice system from the vantage point of the bench. By the time I clerked for Judge Hatfield, he had served as a state district court judge, a supreme court justice and had been on the federal bench for well over a decade. It strikes me more in retrospect than it probably did at the time but, as easy as it might have been for him to become jaded over the years, my observation was that he still saw the litigants who came before him as individuals and judged with humility and compassion. During my clerkship with Judge Hatfield, I also had the benefit of working with, and learning from, current Magistrate Judge Jerry Lynch, who at the time was Judge Hatfield's senior law clerk. It is an experience for which I will always be grateful.

During my past eight-plus years on the bench of the Workers' Compensation Court, I have developed a new appreciation for the challenges a judge faces that I frankly did not appreciate in my previous thirteen years as an advocate. As an attorney representing a client, my primary focus was to advocate my client's position and seek a specific result for my client's benefit. Provided I was advocating honestly, ethically, and in good faith, I did not concern myself with what the "correct" result may be because I viewed the very nature of the adversarial system to be lawyers advocating honestly and in good faith on behalf of their respective clients. I have become acutely aware in my years as a judge, however, that a critical component in the success of the adversarial system is the presence of a truly neutral arbiter who is seeking the legally correct result, irrespective of personal feelings or extraneous pressures.

53. In the space provided, explain the qualities that you believe to be most important in a good Supreme Court justice.

It may seem obvious but I believe the most important quality in a good judge at any level is fairness. A Supreme Court Justice should recognize and respect the appropriate role of the court and strive constantly to apply the law fairly irrespective of his or her personal beliefs. If a judge is pursuing a personal agenda instead of assuming the role of neutral arbiter, it invites chaos into the system.

The fair application of the law also requires a Supreme Court Justice to have courage, particularly the courage to reach the legally correct result even if that result may be unpopular and even if it conflicts with the Justice's personal beliefs. This is particularly true in a system such as Montana's which elects its judges. Some time ago, I heard the courts described as the lighthouses that should remain constant despite the prevailing political winds. I thought that was an apt metaphor. It is not the court's function either to bend to those winds or try to sail against them.

Judicial temperament is also of critical importance. I have always expected the lawyers and litigants who come before the Workers' Compensation Court to conduct themselves with respect and civility towards each other and the Court. I believe they have the right to expect the Court to reciprocate in kind. A good judicial temperament also means that a Justice's decision will not be influenced by any personal passions or prejudices.

Another important quality in a Supreme Court Justice is a healthy dose of common sense and practical experience. Although judges must always strive to reach the legally correct result, we cannot lose sight of the real-world, practical implications and consequences of the decisions that we make.

Finally, I think that a good Supreme Court Justice has to bring a sense of humility and open-mindedness to the bench. In my current position, I have learned to my chagrin that omniscience doesn't come with the gavel and robe package. I consider myself extremely fortunate to have served these past years as the judge in a court that has exceptional lawyers from across the state practicing in it, and I have learned a great deal from these lawyers. If I lacked the humility to realize that I didn't know everything, I have no doubt that I would be a far less effective judge.

54. 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.

Although I currently serve as a trial court judge, I have become acutely aware in my current position of the importance of establishing a sound body of precedent. Because the Workers' Compensation Court is the only court for the entire state to adjudicate workers' compensation disputes, maintaining a consistent and coherent body of precedent takes on a unique level of significance. The decisions that are published by the Workers' Compensation Court have a state-wide impact on how claimants pursue their claims, employers establish workplace practices, and insurers adjust their claims handling. Workers' Compensation Court orders – both my own decisions and those of my predecessors – are regularly cited as precedent in cases that come before me. All of the stakeholders in the system have a right to expect that the decisions issued by the Court will be well-reasoned and consistent.

Maintaining a consistent, predictable, and well-reasoned body of precedent assumes even greater importance at the Supreme Court level. The Court's function in the separation of powers dynamic is to review and apply the laws that are created through the legislative process rather than operate as a political body. In that regard, it is not the function of a Supreme Court Justice to seek the reversal of established precedent just because he or she may personally disagree with the outcome of a previous case. The citizenry and our system of government are ill-served if cases are decided based on *who* is on the bench rather than *what* is the law.

That being noted, inevitably mistakes will be made from time to time, even within the collective judgment of an appellate court. When that happens, it is incumbent upon the court to correct those mistakes. Although the reversal of an established precedent should never be taken lightly, I doubt that many would dispute that the United States Supreme Court was correct to reverse *Plessy v. Ferguson* with *Brown v. Board of Education*. *Plessy* and *Brown* best illustrate that as important as it may be to maintain a consistent body of precedent, a court cannot be so rigid and doctrinaire that it perpetuates a wrongly decided case solely for the purpose of preserving a precedent.

55. In the space provided, state the reasons why you are seeking office as a Supreme Court justice.

I am a fourth generation Montanan. Both my wife Kathy and I are Montana natives with extended family throughout the state. In the 1990s, Kathy and I moved to Oregon so that she could attend graduate school. Although we enjoyed our four years in Portland, it was always our goal to return home to Montana and raise our children near our extended families. Shortly after the birth of our youngest daughter, we were fortunate enough to get jobs that enabled us to return home and raise our family in Montana. A fair and competent judiciary is critical to both the political and economic well-being of this state. Over the past eight-plus years, I have established a state-wide reputation as just such a judge. Therefore, when a number of lawyers who practice in the Workers' Compensation Court encouraged me to consider serving on the Supreme Court, it occurred to me that this was a chance to continue serving my state and to do my part to ensure that my daughters have the same opportunities that my wife and I had to return to (or hopefully remain in) Montana.

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

I am proud of the fact that during my years of service as a judge, 90% of my decisions have been affirmed by the Montana Supreme Court, with all but four of those decisions being affirmed unanimously. Since I have been on the bench, the Supreme Court has reviewed thirty-nine of my decisions on appeal; thirty-five of those decisions were affirmed, thirty-one unanimously. I believe that is reflective of the fairness and thoroughness I have brought to my service on the bench.

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

Throughout my tenure as judge of the Workers' Compensation Court, I have strived to be an even-handed, fair, and thoughtful judge. I believe my success in that effort is illustrated by comments made by the *Workers' Comp Insider*, an online publication that conducts a national survey of workers' compensation decisions and reports on other national developments in the workers' compensation arena. The *Workers' Comp Insider* has reviewed several of my published decisions over the years, and recently it characterized my work as follows: "Judge Shea appears to be a relentless seeker of fact and a dispassionate purveyor of justice." The review further commented: "Judge Shea's method and discipline are beyond reproach."

58. 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 Supreme Court justice candidate?

Whoever is appointed to this position will require confirmation by the Montana State Senate. In that regard, I believe it bears noting that in order to serve in my current judgeship, I have successfully completed this process on two prior occasions, most recently just this past March. After Governor Schweitzer first appointed me to the bench in September 2005, the appointment was submitted to the Senate for confirmation during the December 2005 special session. The full Senate confirmed my appointment by a vote of 49 to 1. Governor Schweitzer reappointed me to a second term in September 2011. Since the 2011 Legislature had already adjourned at the time of my reappointment, it was submitted to the Senate for confirmation during the 2013 regular session. At the time of my second confirmation vote, I had been on the bench for seven-and-a-half years and had developed an extensive body of case law for the Senate to review and consider. On March 26, 2013, the Senate confirmed my reappointment without opposition by a vote of 48 to 0.

Another factor I suspect will be unique to me is that I have an established reputation as a judge with both lawyers and litigants throughout Montana. The Workers' Compensation Court regularly holds court in five venues: Billings, Great Falls, Helena, Kalispell, and Missoula. When circumstances require it, I have also held court in other locations such as Butte, Bozeman, and Libby. I have been encouraged by attorneys from across the state, who represent both workers and insurers, to seek this position.

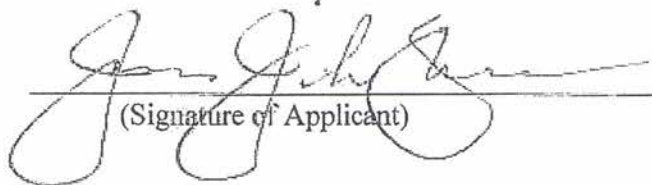
Since the job of a Supreme Court Justice is to review the decisions of the trial courts, I would bring the valuable perspective of someone who has been working as a trial judge for the past eight-plus years. Additionally, since all of the cases heard by the Workers' Compensation Court are bench trials, I would bring the unique perspective and understanding of someone who has served as the finder of fact in hundreds of cases.

Beyond my experience as a trial judge in general, I would also bring the experience of someone who has been immersed in an esoteric yet vital area of Montana law. The workers' compensation system has a significant impact on our economy and our workforce. This significance was illustrated during the 2011 Legislature as workers' compensation reform was debated. Over the past eight-plus years, I have developed a consistent, well-reasoned body of case law that has been fairly applied to all parties who have come before the Court. Not everyone may have agreed with the result that I reached in a given case; however, I am confident that the vast majority of those who have appeared before me would say that I was always well prepared, even-tempered, possessed a thorough understanding of the issues and a ready command of the law, and decided their cases based on the merits.

I. CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as Justice of the Montana Supreme Court, 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 Canons of Judicial Ethics, if appointed.

1/23/14
(Date)


(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Wednesday, February 12, 2014.

Mail the signed original to:

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

Send the electronic copy to: lmenzies@mt.gov

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2014 MTWCC 1

WCC No. 2013-3248

LAURIE NELSON

Petitioner

vs.

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer.

ORDER GRANTING IN PART AND DENYING IN PART
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: Respondent moves for summary judgment on two issues: (1) With respect to Respondent's denial of medical bills and travel expenses associated with treatment Petitioner received in 2011, Respondent contends that Petitioner failed to timely file her petition pursuant to § 39-71-2905, MCA. (2) With respect to Petitioner's claim for TPD benefits, Respondent contends that Petitioner is not entitled to these benefits because she has not suffered a wage loss.

Held: With respect to Respondent's denial of medical bills and travel expenses associated with the treatment Petitioner received in 2011, Respondent's motion is denied. The statute of limitations for Petitioner's claim commenced when Respondent denied her claim for benefits and Petitioner filed her petition within two years of Respondent's denial in accordance with § 39-71-2905, MCA. With respect to Petitioner's claim for TPD benefits, Respondent's motion is granted. Petitioner has not suffered a wage loss as a result of her injury and is therefore not entitled to TPD benefits pursuant to § 39-71-712, MCA.

¶ 1 Respondent Montana Schools Group Insurance Authority (MSGIA) moves this Court for summary judgment on two issues. First, MSGIA contends that Petitioner Laurie Nelson failed to timely file her Petition for Hearing in this Court relative to her request for payment of medical and travel expenses associated with her treatment by Dr. William Bugbee, and her claim is therefore time-barred pursuant to § 39-71-2905, MCA. Second, MSGIA contends that Nelson is not entitled to temporary partial disability (TPD) benefits pursuant to § 39-71-712, MCA, because Nelson's current wage is higher than her time-of-injury wage.¹

¶ 2 Nelson opposes MSGIA's motion on both issues. Regarding her treatment with Dr. Bugbee, Nelson contends that her petition was timely filed. Regarding her claim for TPD benefits, Nelson contends that facts in dispute preclude summary judgment.²

¶ 3 For the reasons discussed below, MSGIA's motion as it pertains to Nelson's treatment with Dr. Bugbee is denied. MSGIA's motion as it pertains to Nelson's claim for TPD benefits is granted.

Uncontroverted Material Facts³

¶ 4 On August 17, 2005, Nelson, who was both a teacher and the volleyball coach, fell off the side of a box while coaching and dislocated her left ankle.

¶ 5 MSGIA accepted Nelson's claim.

¶ 6 At the time of the injury, Nelson was making \$32,135 per year.

¶ 7 In addition, for the 2005-2006 school year, Nelson received a \$3,612 stipend for being the softball coach, a \$2,070 stipend for being the assistant volleyball coach, and a \$310 stipend for being a class sponsor.

¶ 8 Nelson also earned stipends in the 2004-2005 school year. She received \$645 for the assistant volleyball coach position, \$3,491 for the softball coach position, and \$284 for being a class advisor.

¹ Respondent Montana Schools Group Insurance Authority Motion for Summary Judgment, Docket Item No. 11

² Petitioner's Response to Respondent's Motion for Summary Judgment (Nelson's Response Brief), Docket Item No. 16.

³ Except as otherwise noted, the uncontroverted facts are taken from MSGIA's "Statement of Uncontroverted Facts," Montana Schools Group Insurance Authority's Brief in Support of Motion for Summary Judgment (MSGIA's Opening Brief), Docket Item No. 12, at 2-4.

¶ 9 Nelson initially treated with Gregory M. Behm, M.D., and eventually began seeing Michael R. Yorgason, M.D.

¶ 10 Nelson continued to have persistent ankle pain and swelling, and on November 28, 2006, Dr. Yorgason referred Nelson to William D. Bugbee, M.D.

¶ 11 Nelson began treating with Dr. Bugbee with an initial evaluation on January 12, 2007.

¶ 12 Nelson underwent a left medial hamitalus osteochondral allograft, placement, and removal of external fixation device and lateral ankle reconstruction with Dr. Bugbee and Michael J. Botte, M.D.

¶ 13 Nelson had a post-operative evaluation with Dr. Bugbee on January 17, 2008.

¶ 14 Nelson underwent a left ankle bipolar osteochondral allograft, placement, and removal of external fixation device, lateral ligament reconstruction, and tenolysis of the posterior tibial tendon on July 2, 2009.

¶ 15 Nelson saw Dr. Bugbee on two more occasions. MSGIA specifically pre-authorized all of the evaluations and surgeries with Dr. Bugbee.

¶ 16 During the time period that Nelson saw Dr. Bugbee, she continued to follow up with her authorized treating physicians in Montana. Nelson treated with Dr. Yorgason through 2009, who eventually referred her to Michael H. Schabacker, M.D., a pain management specialist at Northern Rockies Regional Pain Center.

¶ 17 Dr. Schabacker was designated as Nelson's treating physician in November 2009.⁴ On August 11, 2010, in response to Nelson's attempt to arrange for ketamine infusions, MSGIA's claims examiner, Katy Howell, advised Nelson that Dr. Schabacker, in his capacity as Nelson's treating physician, must review the treatment recommendations and indicate whether he agrees. Howell further advised Nelson that if she proceeded with the ketamine infusions without following this procedure, MSGIA would not authorize the treatment under her claim.⁵ On August 23, 2010, Howell again advised Nelson that Dr. Schabacker was her treating physician, that all prescriptions and referrals must come from him, and that Nelson needed to follow the correct pre-

⁴ MSGIA's Opening Brief, Ex. 14.

⁵ MSGIA's Opening Brief, Ex. 20.

authorization procedure for any future injections, infusions, or other treatment for her ankle.⁶

¶ 18 By letter dated October 27, 2010, Howell advised Nelson that Dr. Schabacker, as Nelson's treating physician, had ordered a neuropsychological evaluation prior to considering Nelson's request for additional ketamine treatment. Howell's letter also stated that MSGIA would not consider authorization for additional evaluations or medical opinions until after Nelson had completed the recommended neuropsychological evaluation and Dr. Schabacker had provided his treatment recommendations based on the results of the neuropsychological evaluation.⁷

¶ 19 In a letter to Howell dated December 3, 2010, Nelson's attorney, Patrick R. Sheehy, asserted that Dr. Schabacker was no longer one of Nelson's treating physicians. Sheehy's letter further stated that Nelson would seek treatment with other previously-authorized treating physicians, or physicians who agreed to be supervised by previously-authorized treating physicians, involved with her ketamine infusion treatment.⁸

¶ 20 By letter dated December 16, 2010, Howell responded to Sheehy's letter. Howell stated that since November 2009, Dr. Schabacker had been primarily responsible for coordinating Nelson's medical treatment. Howell noted that MSGIA had never authorized another change in treating physicians since authorizing treatment with Dr. Schabacker. Howell referenced § 39-71-1101, MCA, ARM 24.29.1510, and ARM 24.29.1517, and noted that the statute and regulations did not allow Nelson to repeatedly change treating physicians. Howell advised, "Dr. Schabacker is currently Ms. Nelson's only authorized treating physician," and noted that neither Dr. Bugbee nor Dr. Lubenow qualified as treating physicians under Nelson's claim since neither doctor was licensed in Montana nor had admitting privileges to a Montana hospital.⁹

¶ 21 On February 17, 2011, Nelson treated with Dr. Schabacker again, at which time he placed her at maximum medical improvement (MMI) and awarded her a 9% whole person impairment.¹⁰

⁶ *Id.*

⁷ MSGIA's Opening Brief, Ex. 12.

⁸ MSGIA's Opening Brief, Ex. 13.

⁹ MSGIA's Opening Brief, Ex. 14.

¹⁰ MSGIA's Opening Brief, Ex. 15.

¶ 22 By letter dated March 25, 2011, Howell advised Sheehy that since Nelson had reached MMI for her August 17, 2005, injury, all future treatment must be preauthorized.¹¹

¶ 23 On July 25, 2011, Nelson treated with Dr. Bugbee again without obtaining prior authorization from MSGIA.

¶ 24 By letter dated September 20, 2011, MSGIA denied payment for Dr. Bugbee's July 25, 2011, service due to Nelson's failure to obtain prior authorization as required by ARM 24.29.1517(5)(d).¹²

¶ 25 Nelson quit her coaching job prior to the 2012-2013 school year. At the time, her salary was \$56,189. In addition to her salary, Nelson received a stipend of \$479 for being a class advisor.

¶ 26 On July 30, 2013, Nelson filed her Petition for Workers' Compensation Mediation Conference to address MSGIA's denial of payment of medical bills and travel for treatment rendered by Dr. Bugbee and her entitlement to TPD benefits.¹³ The mediator's report and recommendation was issued on September 17, 2013.

¶ 27 On October 17, 2013, Nelson filed a Petition for Hearing in the Workers' Compensation Court.¹⁴

Analysis and Decision

¶ 28 For summary judgment to be granted, the moving party must establish that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.¹⁵ Summary judgment is an extreme remedy which should not be a substitute for a trial on the merits if a material factual controversy exists. All reasonable inferences which can be drawn from the evidence presented should be drawn in favor of the nonmoving party.¹⁶ In this case, MSGIA's motion for summary judgment regarding Nelson's treatment with Dr. Bugbee is not susceptible to summary disposition. MSGIA's

¹¹ MSGIA's Opening Brief, Ex. 16.

¹² MSGIA's Opening Brief, Ex. 18. (Although MSGIA's letter referenced ARM 24.29.1517(5)(d), because Nelson's treatment was received after June 30, 2011, the applicable rule is ARM 24.29.1593(1)(b). The rule change is immaterial to the Court's disposition of MSGIA's motion.)

¹³ MSGIA's Opening Brief, Ex. 19.

¹⁴ Docket Item No. 1.

¹⁵ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

¹⁶ *Delaware v. K-Decorators, Inc.*, 1999 MT 13, ¶ 55, 293 Mont. 97, 973 P.2d 818.

motion regarding Nelson's entitlement to TPD benefits, however, is susceptible to summary disposition.

¶ 29 This case is governed by the 2005 version of the Montana Workers' Compensation Act (WCA) because that was the law in effect at the time of Nelson's industrial accident.¹⁷

Issue One: Whether Nelson's Petition for Hearing as it pertains to her treatment with Dr. Bugbee was timely filed pursuant to § 39-71-2905, MCA.

¶ 30 Section 39-71-2905(2), MCA, provides: "A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied."

¶ 31 Essentially, MSGIA argues that the two-year statute of limitations relative to Nelson's 2011 claim for her treatment with Dr. Bugbee commenced in 2010 when MSGIA denied Nelson's demand to discontinue Dr. Schabacker as her treating physician and advised her that future treatment must be referred by Dr. Schabacker and pre-authorized by MSGIA. From these disputes, MSGIA concludes: "Further treatment with Dr. Bugbee was clearly denied."¹⁸ I disagree.

¶ 32 The record before the Court reveals that the 2010 disputes between Nelson and MSGIA centered principally around Nelson's desire to continue with ketamine infusions as a means of dealing with her pain and her dissatisfaction with Dr. Schabacker as her designated treating physician. During the course of these disputes, I find only two specific references to Dr. Bugbee. The first reference is in Howell's October 27, 2010, letter to Nelson, which merely lists Dr. Bugbee among the doctors who had rendered treatment to Nelson since her injury.¹⁹ The second reference to Dr. Bugbee appears in Howell's December 16, 2010, letter to Sheehy in which Howell refused Nelson's demand to change treating physicians. In this letter, Howell noted, *inter alia*, that § 39-71-1101, MCA, does not allow Nelson to repeatedly change treating physicians, and further noted that neither Dr. Bugbee nor Dr. Lubenow qualified as treating physicians since neither doctor was licensed in Montana nor had admitting privileges to a Montana hospital.²⁰

¶ 33 Regarding Howell's December 16, 2010, letter, I note that Nelson had not specifically requested that Dr. Bugbee replace Dr. Schabacker as her treating physician.

¹⁷ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¹⁸ MSGIA's Opening Brief at 5.

¹⁹ MSGIA's Opening Brief, Ex. 12.

²⁰ MSGIA's Opening Brief, Ex. 14.

Rather, Nelson asserted through her attorney that Dr. Schabacker was no longer one of her treating physicians and she expressed her intention to seek treatment with other previously-authorized treating physicians, or physicians who agreed to be supervised by previously-authorized treating physicians, involved with her ketamine infusion treatment. More to the point, however, even if Nelson had specifically requested that Dr. Bugbee replace Dr. Schabacker as her treating physician, MSGIA's denial of that request is not a categorical denial of any "further treatment with Dr. Bugbee" for purposes of commencing the two-year statute of limitations.

¶ 34 Howell's statement regarding Dr. Bugbee's lack of qualifications as a treating physician is clearly a reference to § 39-71-116(37), MCA, which provides in pertinent part:

"Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located[.]

¶ 35 That Dr. Bugbee does not qualify as a "treating physician" under § 39-71-116(37), MCA – i.e., the person primarily responsible for the treatment of Nelson's injury – is indisputable. The dispute presently before the Court, however, is not whether Dr. Bugbee either qualifies, or may be designated, as Nelson's treating physician under §§ 39-71-116(37) and 39-71-1101, MCA. Even without being designated the "treating physician" under the applicable statutes, Dr. Bugbee may nevertheless render treatment to Nelson provided the treatment is properly obtained within the parameters of the WCA. Therein lies the dispute that *is* presently before the Court: specifically, whether Nelson's 2011 treatment with Dr. Bugbee was properly obtained within the parameters of the WCA or whether MSGIA properly denied payment for the treatment because it was not pre-authorized. In order to find that the statute of limitations on MSGIA's 2011 denial of benefits began to run several months before the denial even occurred would require a conflation of two separate and distinct disputes.

¶ 36 MSGIA cites *Boyd v. Zurich Am. Ins. Co.*²¹ in support of its contention that Nelson's claim is time-barred. In *Boyd*, the Montana Supreme Court affirmed this Court's decision in which I held the claimant's claim for benefits was time-barred under § 39-71-2905(2), MCA, and granted summary judgment in favor of the insurer. Other than involving a motion for summary judgment based upon the same statute, however, I

²¹ *Boyd v. Zurich Am. Ins. Co.*, 2010 MT 52, 355 Mont. 336, 227 P.3d 1026 (overruled on other grounds by *Ford v. Sentry Cas. Co.*, 2012 MT 156, 365 Mont. 405, 282 P.3d 687).

find *Boyd* inapposite to the present case. In *Boyd*, the claimant brought a claim for a shoulder injury and the insurer "explicitly denied coverage for Boyd's shoulder injury claims."²² Although Boyd raised several arguments as to why the insurer's explicit denial of benefits should not have triggered the statute of limitations, there was no dispute as to what the denial of benefits entailed. Had MSGIA made a similar explicit denial of any further treatment with Dr. Bugbee, its reliance on *Boyd* might be well taken. Given the circumstances of this particular case, however, MSGIA's reliance on *Boyd* is misplaced.

¶ 37 In *Ereth v. Cascade County*, the Montana Supreme Court noted:

The policy underlying the bar imposed by statutes of limitations is, at its roots, one of basic fairness. As we have stated in the past, our system of jurisprudence is designed to achieve substantial justice through application of the law after the parties have had an opportunity to fully present both sides of a controversy.²³

The controversy in this case is whether MSGIA properly denied Nelson's claim for benefits relative to her 2011 treatment with Dr. Bugbee because it was not pre-authorized. Pursuant to § 39-71-2905(2), MCA, the time limit for filing the petition in this Court commenced when MSGIA denied the claim. After factoring in the time when the statute of limitations was tolled because the claim was in mandatory mediation,²⁴ Nelson's petition was timely filed.

Issue Two: Whether Nelson is entitled to temporary partial disability benefits pursuant to § 39-71-712, MCA.

¶ 38 Section 39-71-712, MCA, provides in pertinent part:

(1) . . . [I]f prior to maximum healing an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at

²² *Id.* ¶ 19.

²³ *Ereth v. Cascade County*, 2003 MT 328, ¶ 16, 318 Mont. 355, 81 P.3d 463.

²⁴ See *Fleming v. Int'l Paper Co.*, 2005 MTWCC 34, ¶ 21 (citing *Preston v. Transp. Ins. Co.*, 2004 MT 339, ¶¶ 36-37, 324 Mont. 226, 102 P.3d 527).

the time of the injury . . . and the actual weekly wages earned during the period that the claimant is temporarily partially disabled

¶ 39 MSGIA contends that Nelson is not entitled to TPD benefits because she did not suffer an actual wage loss as a result of her injury. Nelson does not dispute that she currently earns more than she earned at the time of her injury. However, Nelson contends that she has nevertheless suffered a wage loss because she can no longer coach due to her injury. Although Nelson's employment as both a teacher and coach was for the same employer, Nelson contends that because they were governed by separate employment contracts, the loss of her coaching position should be considered concurrent employment for purposes of determining whether she has suffered a wage loss.

¶ 40 I find no legal support for Nelson's argument that she has suffered a wage loss as a result of her injury. Section 39-71-123(1), MCA, defines "wages" as "all remuneration paid for services performed by an employee for an employer." (Emphasis added.) Nelson does not dispute that the total remuneration paid for her services to her employer is greater now than it was at the time of her injury. The statute does not bifurcate an employee's wages based on whether the services performed by the employee are performed under separate contracts and it is not the prerogative of this Court to insert such a bifurcation provision. "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted."²⁵

¶ 41 Even if I considered Nelson's teaching and coaching positions as concurrent employments, as Nelson urges, the result would be the same. Section 39-71-123(4)(c), MCA, provides that "compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the *aggregate* of average actual wages of all employments." (Emphasis added.) Nelson does not dispute that her current wages are greater than the aggregate of her wages at the time of her injury. Therefore, she has not suffered a wage loss due to the loss of her coaching position and is not entitled to TPD benefits under § 39-71-712, MCA.

¶ 42 Specific to MSGIA's motion for summary judgment on this issue, Nelson contends that I should deny the motion because "[t]here is a genuine issue of material fact regarding [Nelson's] coaching income, and the separate contracts which governed it. It should be considered to be concurrent employment income governed by a separate employment contract, totally unrelated to her teaching income."²⁶ As

²⁵ § 1-2-101, MCA.

²⁶ Nelson's Response Brief at 5.

discussed above, however, even treating Nelson's teaching and coaching positions as concurrent employment does not result in a wage loss entitling her to TPD benefits under § 39-71-712, MCA. Therefore, assuming for the sake of argument that an issue of fact exists, it is not a material issue that precludes summary judgment.

ORDER

¶ 43 MSGIA's motion for summary judgment on the issue of whether Nelson's Petition for Hearing as it pertains to her treatment with Dr. Bugbee was timely filed pursuant to § 39-71-2905, MCA, is **DENIED**.

¶ 44 MSGIA's motion for summary judgment on the issue of whether Nelson is entitled to TPD benefits pursuant to § 39-71-712, MCA, is **GRANTED**.

DATED in Helena, Montana, this 9th day of January, 2014.

(SEAL)

JAMES JEREMIAH SHEA
JUDGE

c: (via email and U.S. mail)

Patrick R. Sheehy

Oliver H. Goe

Morgan M. Weber

Submitted: December 20, 2013

JAMES JEREMIAH SHEA

P.O. BOX 1127
HELENA, MONTANA 59624

406.461.3167
JAMESJEREMIAH@BRESNAN.NET

January 23, 2014

Lois Menzies
Office of the Court Administrator
P.O. Box 203005
Helena, MT 59620-3005

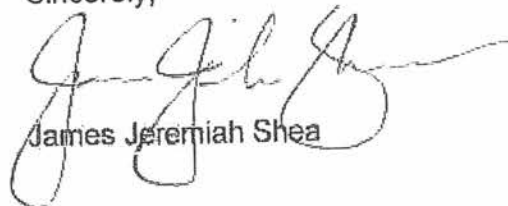
Re: James Shea Supreme Court Application

Dear Ms. Menzies:

Please find enclosed my completed application for the Montana Supreme Court vacancy as well as a summary judgment order in the case of *Nelson v. MSGIA*, which I am submitting as my writing sample. I emailed the electronic versions of these documents to you earlier today.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



James Jeremiah Shea

Enc.

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



SR15
ANGELA McLEAN
LT. GOVERNOR

2013-2015 Interim Appointments

Judicial

**Workers' Compensation Court Judge
Judge David Sandler**

Included: Statute for Appointment

*Application Packet as provided by Judicial Nominations
Commission*

Montana Code Annotated 2014

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

2-15-1707. Office of workers' compensation judge -- allocation -- appointment -- salary. (1)

There is the office of workers' compensation judge. The office is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but must be accorded retirement benefits under the public employees' retirement system.

History: En. 82A-1016 by Sec. 1, Ch. 537, L. 1975; R.C.M. 1947, 82A-1016; amd. Sec. 42, Ch. 613, L. 1989; Sec. 2-15-1014, MCA 1989; reds. 2-15-1707 by Code Commissioner, 1991.

Provided by Montana Legislative Services

APPLICATION FOR

WORKERS' COMPENSATION COURT JUDGESHIP

A. PERSONAL INFORMATION

1. Full Name: David Michael Sandler

a. What do you commonly go by? David or Dave

2. Birthdate: December 19, 1972

Are you a U.S. citizen? Yes.

3. Home Address:

9 Mountain Park Lane
Kalispell, MT 59901

4. Office Address:

Eddy Sandler Trial Attorneys, PLLP
The Montana Building
33 2nd Street East, Suite 1
Kalispell, MT 59901

5. Length of residence in Montana: 41 years

6. List your place of residence for the last five years:

Dates

City

State

2008-present

Kalispell

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>
Billings Senior High School	Billings, MT	1991	Diploma
Lewis & Clark College	Portland, OR	1995	B.S., Psychology
University of Montana School of Law	Missoula, MT	1998	<i>Juris Doctor</i>

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

In law school, I was awarded the Albin S. McCulloh Scholarship. I also earned membership in the Order of Barristers for participation in moot court.

9. Were you a member of the Law Review? If so, please state 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	1998
United States District Court, District of Montana	1998
Ninth Circuit Court of Appeals	2001

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

I am in a partnership with Amy Eddy. Our firm name is Eddy Sandler Trial Attorneys, PLLP.

12. State the name, dates and addresses of all law firms with which you have been associated in practice, and of all 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>
Montana Supreme Court	Law Clerk to Honorable James C. Nelson	1998-1999
Warden, Christiansen, Johnson & Berg, PLLP	Associate Attorney	1999-2001
Hammer, Hewitt & Sandler, PLLP	Partner	2001-2006
Bothe & Lauridsen, P.C.	Attorney	2006-2010
Bottomly, Eddy & Sandler, PLLP	Partner	2011-2013
Eddy Sandler Trial Attorneys, PLLP	Partner	2013-present

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

Not applicable.

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.

My present practice is approximately 90% civil litigation. I usually represent individual Montanans and small- to medium-sized businesses in various matters, including insurance coverage disputes, construction defect claims, and contractual disputes. I also handle personal injury claims and workers' compensation claims. Approximately 8% of my practice is drafting contracts and other legal documents for my clients. Approximately 2% of my present practice is criminal defense work, as I take overflow and conflict cases from the Office of the Public Defender. I am currently representing a defendant in an appeal in a case in which the Office of the Appellate Defender has a conflict.

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

From 1999 to 2006, my practice was primarily insurance defense work, approximately half of which was defense of workers' compensation claims. The other half was defense of personal injury claims. I also represented defendants in governmental liability claims.

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

I do not specialize in any particular field of law. The majority of my experience has been in civil litigation.

17. Do you regularly appear in court? Yes.

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

Federal court	<u>1</u> %
State or local courts of record	<u>98</u> %
Administrative bodies	<u>1</u> %
Other	<u>0</u> %

18. During the last five years, what percentage of your practice has been trial practice? Approximately 90%.

19. How frequently have you appeared in court? 4 times per month on average.

20. How frequently have you appeared at administrative hearings? Infrequently.

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

Civil	99%
Criminal	1%
Other	0%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, please 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.

Yes. I have had three direct appeals, including two cases that are currently in the briefing stage, a Petition for Writ of Supervisory Control, and an appearance as the attorney for an *amicus curiae*, in a workers' compensation case.¹ The five most recent cases are as follows:

A. *Plum Creek Marketing, Inc. v. American Economy Insurance*, 2009 MT 264, 352 Mont. 56, 214 P.3d 1238. I drafted the Brief of Appellant Jed Moser and the Reply Brief of Appellant Jed Moser.

Opposing counsel:

Todd A. Hammer
Angela Jacobs
Hammer, Jacobs & Quinn, PLLC
P.O. Box 7310
Kalispell, MT 59904-0310
(406) 755-2225

Mark S. Williams
Williams Law Firm, P.C.
P.O. Box 9440
Missoula, MT 59807
(406) 721-4350

Robert J. Phillips
Phillips Law Firm
P.O. Box 8569
Missoula, MT 59807-8569
(406) 721-7880

James Moore
Attorney at Law
P.O. Box 116
Kalispell, MT 59903
(406) 755-8332

¹ I am listed as counsel of record in three other cases appealed to the Montana Supreme Court during the last five years: *Chipman et al. v. Northwest Healthcare Corp.*, 2012 MT 242, 366 Mont. 450, 288 P.3d 193 (*Chipman I*) and 2014 MT 15, 373 Mont. 360, 317 P.3d 182 (*Chipman II*), and *Day v. CTA, Inc.*, 2014 MT 119, — Mont. —, 324 P.3d 1205. However, my law partner, Amy Eddy, was lead counsel on these appeals and did the majority of the work. I assisted her with minor drafting and editing of the briefs in these appeals and preparing her for oral argument in *Chipman I*.

B. *Brown v. The Montana Eleventh Judicial District Court*, OP 13-0591 (Order dated October 22, 2013).

I drafted the Petition for Writ of Supervisory Control.

Opposing counsel:

Todd A. Hammer
Angela Jacobs
Benjamin J. Hammer
Hammer, Hewitt, Jacobs & Quinn, PLLC
P.O. Box 7310
Kalispell, MT 59904-0310
(406) 755-2225

C. *Malcomson v. Liberty Northwest*, DA 13-0610 (case has been submitted to the Court *en banc*).

I drafted the *Amicus Curiae* Brief of the Montana Trial Lawyers Association. I also presented oral argument to the Court on May 6, 2014.

Opposing counsel:

Larry W. Jones
Wills Law Firm
323 West Pine Street
Missoula, MT 59802
(406) 541-8560

Kevin Braun
Special Assistant Attorney General
Montana State Fund
P.O. Box 4759
Helena, MT 59604-4759
(406) 495-5127

D. *State of Montana v. Morse*, Case No. DA-14-0052 (case is in briefing stage)

I drafted Appellant's Opening Brief, which was filed on June 3, 2014.

Opposing counsel:

C. Mark Fowler
Bureau Chief, Appellate Services Bureau of the Office of the Montana Attorney General
215 North Sanders
Helena, MT 59620-1401
(406) 444-2026

E. *Allstate Insurance Co. v. Posnien, Inc.*, Case No. DA 14-0183 (case is in briefing stage)
I will be drafting Appellant's Opening Brief, which is due on July 9, 2014.

Opposing counsel:

Kimberly More
Crowley Fleck, PLLP
1667 Whitefish Stage Road, Suite 101
Kalispell MT 59101
(406) 752-6644

23. State the number of jury trials that you have tried to conclusion in the last ten years. 3.
24. State the number of non-jury trials that you have tried in the last ten years. Approximately 5.
25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

A. *Allstate Insurance Co. v. Posnien, Inc.*, Flathead County Cause No. DV-11-1297A
Presiding Judge: Honorable Ted O. Lympus; (406) 758-5667

There was no trial, as this case was decided on summary judgment on February 25, 2014. It is currently on appeal to the Montana Supreme Court.

Adversary counsel:

Kimberly More
Crowley Fleck, PLLP
1667 Whitefish Stage Road, Suite 101
Kalispell, MT 59901
(406) 752-6644

Duncan Scott
Scott & Kienzle, P.C.
1001 South Main Street
Kalispell, MT 59901
(406) 752-1250

Jeffrey M. Doud
McKeon Doud, P.C.
60 Four Mile Drive, Suite 11
Kalispell, MT 59901
(406) 755-7600

B. *Whitefish Credit Union v. The Mortgage Source, Inc., et al.*, Flathead County Cause No. DV-11-326B

Presiding Judge: Honorable Robert B. Allison; (406) 758-5669

My client obtained a summary judgment ruling in his favor last year. The remaining parties in the case are scheduled to go to trial this fall.

Adversary counsel:

Sean S. Frampton
Morrison & Frampton, PLLP
Frank Lloyd Wright Building
341 Central Avenue
Whitefish, MT 59937
(406) 862-9600

Richard DeJana
Richard DeJana & Associates, PLLC
P.O. Box 1757
Kalispell, MT 59903
(406) 752-4120

Jeff Ellingson
Kaufman, Vidal, Hileman & Ellingson, P.C.
22 2nd Ave. West, Suite 4000
Kalispell, MT 59901
(406) 755-5700

Michael John McKeon, Jr.
McKeon & Morigeau Law, PLLC
201 Fourth Ave. East
Polson, MT 59860
(406) 883-6285

C. *Brown v. Sands Surveying, Inc., et al.*, DV-12-1294(C)

Presiding Judge: Honorable Heidi J. Ulbricht; (406) 758-5665

This case is scheduled to go to trial in the winter/spring of 2015.

Adversary counsel:

Daniel Hileman
Kaufman, Vidal, Hileman & Ellingson, P.C.
22 2nd Ave. West, Suite 4000
Kalispell, MT 59901
(406) 755-5700

Jay T. Johnson
Moore, Cockrell,
Goicoechea & Axelberg, P.C.
P.O. Box 7370
Kalispell, MT 59904-0370
(406) 751-6000

Randall Snyder
Snyder Law Offices, P.C.
P.O. Box 717
Bigfork, MT 59911-0717
(406) 837-4383

Thomas A. Marra
Marra, Sexe, Evenson & Bell, P.C.
P.O. Box 1525
Great Falls, MT 59402-1525
(406) 268-1000

Todd A. Hammer and Benjamin J. Hammer
Hammer, Hewitt, Jacobs & Quinn, PLLC
P.O. Box 7310
Kalispell, MT 59904-0310
(406) 755-2225

Anne Biby
Hash, O'Brien, Biby & Murray, PLLP
136 1st Ave West
Kalispell, MT 59901
(406) 755-6919

Paul Tranel and Katie Guffin
Bohyer, Erickson, Beaudette & Tranel, P.C.
283 W. Front Street, Suite 201
Missoula, MT 59801
(406) 532-7800

Kimberly More
Crowley Fleck, PLLP
1667 Whitefish Stage Road, Suite 101
Kalispell, MT 59901
(406) 752-6644

D. *Hineman v. Erickson's Pools and Spas, Inc.* DV-11-700D
Presiding Judge: Honorable David Ortley; (406) 758-5752
This case settled prior to trial.

Adversary counsel:

Dale R. Cockrell
Moore, Cockrell,
Goicoechea & Axelberg, P.C.
P.O. Box 7370
Kalispell, MT 59904-0370
(406) 751-6000

Robert B. Pfennigs
Jardine, Stephenson, Blewett & Weaver, P.C.
P. O. Box 2269
Great Falls, MT 59403-2269
(406) 727-5000

E. *Brunetto v. State of Montana*, Flathead County Cause No. DV-12-1089B
Presiding Judge: Honorable Robert B. Allison; (406) 758-5669
This case was tried to a jury on January 7, 8, and 9, 2014.

Adversary counsel:

Pamela Snyder-Varns
Montana Department of Administration
Risk Management & Tort Defense Division
P. O. Box 200124
Helena, MT 59620-0124
(406) 444-1816

Mikel Moore
Moore, Cockrell,
Goicoechea & Axelberg, P.C.
P.O. Box 7370
Kalispell, MT 59904-0370
(406) 751-6000

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

I do not recall any adversary proceedings before administrative boards or commissions within the last 5 years.

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

I have given two presentations at CLE seminars over the last two years for the National Business Institute. On January 29, 2013, I presented on the topic of subrogation and lien issues at a CLE on litigating underinsured and uninsured motorists claims. The attendees were attorneys from western Montana. On December 6, 2013, I presented on the topic of ethical issues that arise with an attorney's use of social media at a CLE on various litigation topics. The attendees were attorneys from the Flathead Valley.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all the bar associations and legal professional societies of which you are a member and give 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.

State Bar of Montana, 1998-present.

Northwest Montana Bar Association, 1999-present (President for one year in early 2000s).

Montana Trial Lawyers Association, 2006-present (Board Member, 2013-present; Annual Convention Co-chair, 2013 and 2014).

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

Flathead Land Trust (Board Member 2012-present; Secretary, 2013). My activities have been primarily reviewing the necessary information to make informed votes on the the direction of the organization.

Trout Unlimited.

30. Have you ever run for, or held, public office? If so please give the details.

No.

E. PROFESSIONAL CONDUCT AND ETHICS

31. 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, give the particulars.

No.

32. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, please explain.

No.

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

No.

34. 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, please give details.

No.

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

No.

F. BUSINESS AND FINANCIAL INFORMATION

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

No.

37. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of such business, its nature, and the nature of your duties. State whether you intend to resign such position immediately upon your appointment as Workers' Compensation Court judge.

I am a managing partner in my law firm, Eddy Sandler Trial Attorneys, PLLP. I would withdraw from this partnership upon appointment.

38. 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, please identify the source and the approximate percentage of your total income that it constituted over the last five years.

Not applicable.

39. 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.

No.

40. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? Yes.

If not, please explain.

Not applicable.

41. Do you have any liens or claims outstanding against you by the Internal Revenue Service?

No.

If yes, please explain.

Not applicable.

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

No.

43. Please explain your philosophy of public involvement and practice of giving your time to community service.

I think everyone who is able should volunteer time to make their community a better place. Since I have two school-age children, I use most of the time I have for community service for activities in which they are involved. I coach my son's Miracle League baseball team, a league for children and adults with any type of disability. I also coach my daughter's fast-pitch softball team, and have coached her basketball teams as well. The rest of my time for community service over the the last two years has been time time I have volunteered to serve on the Board of the Flathead Land Trust.

G. WRITING SKILLS

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

I do all my own research and brief writing, as I have never had an associate to do work for me. However, my law partner and I collaborate on cases and typically edit each other's work.

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

I have drafted many different types of legal documents, including contracts for many different types of business deals; settlement brochures; settlement agreements; assignments; employment policies and procedures; and real estate documents.

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

I have attached 10 pages from Plaintiffs' Brief in Opposition to the City of Kalispell's Motion to Dismiss, a brief I drafted in *Brown v. Sands Surveying, et al.*, Flathead County Cause No. DV-12-1294(C).

47. What percentage of your practice for the last five years has involved research and legal writing? 75%

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

Yes. I use Westlaw every week.

H. MISCELLANEOUS

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

I spend as much time with my family as possible in various activities and supporting my children in their activities. I am an avid golfer. I also enjoy fly fishing and fly tying. I enjoy camping and rafting. I like skiing with my family each winter. I run as much as my knees will allow each week. I am a fan of most sports, especially baseball, golf, and football.

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

The first job I had was delivering newspapers for the Billings Gazette while in junior high and high school. I also mowed lawns in my neighborhood during this time.

I had various work-study jobs in college, mostly working in the athletic facilities and keeping statistics during football and basketball games. During my summer breaks from college, I coached American Legion baseball in Billings. I also worked on the grounds crew at the softball fields at Stewart Park in Billings.

I had a summer internship for the Honorable Jack D. Shanstrom, United States District Court Judge, after my first year of law school. The following summer I had an internship at the firm that is now known as Crowley Fleck, PLLP. The rest of my past employment is listed in my answer to question #12.

51. Please identify the nature and extent of any *pro bono* work that you have personally performed during the last five years.

I have drafted documents and provided legal advice to a local nonprofit organization. I have also advised several people regarding various legal issues, including workers' compensation claims, in situations in which I did not think they could afford an attorney. Earlier this year, I drafted an *amicus curiae* brief and orally argued the case to the Montana Supreme Court. Over the last five months I have helped a colleague in the defense of a client charged with homicide, a case that is scheduled to go to trial in September.

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

There have been several people who have influenced my views on our system of justice. The first who comes to mind is the Honorable James C. Nelson, former Justice of the Montana Supreme Court. I had the honor of serving as one of Justice Nelson's law clerks for one year after graduating from law school. I observed over the course of my clerkship that Justice Nelson worked tirelessly in every case to make the correct decision under the law. If, for example, the case involved statutory construction, he studied the statute, its legislative history, and every prior case interpreting it, regardless of whether the parties cited all of the cases in their briefs. In short, he did not leave any stone unturned. His work ethic and his unwavering goals of making the correct decision under the law and of making the law consistent gave me confidence in our system of justice.

The second example that comes to mind are the attorneys I have met who work for the Office of the Public Defender. Over the last year I have taken overflow and conflict cases from the Office of the Public Defender and an appeal from the Office of the Appellate Defender. As one would expect, some of these cases and clients can be challenging. However, these attorneys work extremely hard providing a defense to their clients, at times with little appreciation from their clients for their hard work and expertise. I have observed several of them in court and have read several briefs they have filed. Their efforts in providing their clients with a vigorous defense and ensuring that their client's constitutional rights are protected has reminded me that although there are flaws, our system of justice usually works, and is the best system that human beings have devised, as even those charged with crimes who cannot afford a lawyer are provided with an advocate to defend them and their constitutional rights.

53. In the space provided, explain the qualities that you believe to be most important in a good Workers' Compensation Court judge.

A good Workers' Compensation Court judge will, of course, be fair and impartial. A good Workers' Compensation Court judge will have four other qualities: First, a good Workers' Compensation Court judge will be a hard worker and efficient. Having represented insurers and injured workers, I know that all parties in a case before the Workers' Compensation Court want the case to be decided in a timely manner. Second, a good Workers' Compensation Court judge will be respectful to all who appear before the Court and remain humble. Third, a good Workers' Compensation Court judge will have the courage to make the tough decisions and to be forthright about the reasons behind their decisions. Fourth, a good Workers' Compensation Court judge will write detailed and concise decisions that addresses all of the parties' arguments. Such a decision serves the parties, as they can evaluate the case for appeal, and provides the Montana Supreme Court with a proper decision to review should the case be appealed.

54. 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.

This answer depends upon whether the court being discussed is a trial court or an appellate court. For a trial court, the judge should adhere to all precedent, as doing so fosters predictability. The Workers' Compensation Act specifically states that the Workers' Compensation Court judge is "bound by common law and statutory rules of evidence." Section 39-71-2903, MCA. In the Montana workers' compensation system, predictability allows claims examiners to make decisions on their claims and allows lawyers to evaluate cases for their clients. If a party to a workers' compensation case thinks precedent was wrongly decided, they should expect that the Montana Supreme Court will be the court that decides whether it is an appropriate case to reverse the existing precedent. I once argued to the Workers' Compensation Court that the Montana Supreme Court had wrongly decided a case that served as precedent. Judge Mike McCarter agreed that the case was wrongly decided, but stated that the Workers' Compensation Court was not in a position to disregard the precedent and that the case would have to be appealed to the Montana Supreme Court. This is the correct approach for the judge of any trial court, including the Workers' Compensation Court.

The Workers' Compensation Court is somewhat unique when compared to Montana's district courts in that its prior decisions dating back to 1993 are readily available on its website, searchable, and organized by topic through November 2010. For cases that were not appealed to the Montana Supreme Court, the Workers'

Compensation Court judge should follow the precedent of those decisions unless a party to the case proves that a significant mistake was made, a situation that would be unusual, based upon my experience researching and applying these decisions.

As for an appellate court, one of the aspects that makes our system of justice the best devised is that these courts are guided by precedent, which they adhere to in the vast majority of cases, but retain the flexibility to correct a past mistake in those infrequent circumstances where a prior case proves to have been wrongly decided. Without this flexibility, there would be situations in which justice was denied in perpetuity. There are famous cases where an appellate court has overruled precedent to correct an injustice — e.g., *Brown v. Board of Education* rejecting *Plessy v. Ferguson* — but less obvious ones as well. In *State v. District Court of Eighteenth Judicial District*, 2010 MT 263, 358 Mont. 325, 246 P.3d 415, for example, a unanimous Montana Supreme Court candidly recognized that the procedural rules it had articulated for the introduction of character evidence in criminal cases resulted in an unworkable situation for prosecutors and a “gross injustice” in some cases. Therefore, the Court overruled the cases setting forth the procedural rules. In reaching its decision, the Court noted that the district court did what it was supposed to do by following the prior cases, but that the prior cases were wrongly decided. This case serves as an example that the Montana Supreme Court, as the highest court in Montana, must retain the authority to overrule a case in those rare circumstances when experience shows that its prior decision is causing a problem in the administration of cases or a gross injustice.

55. In the space provided, state the reasons why you are seeking office as Workers’ Compensation Court judge.

I have the skills to be an excellent judge, and am particularly well-suited to be the judge of the Workers’ Compensation Court. I have an even temperament and am analytical. My strengths include research and writing. I can make a decision and explain the reasons for that decision. In my career as a lawyer, I have enjoyed handling workers’ compensation claims and litigating cases before the Workers’ Compensation Court. I have found the issues presented in these cases to be interesting and challenging. I have the experience for the office. I have represented private insurers, a self-insured, the Montana State Fund as outside counsel, employers in litigation involving the exclusive remedy of the Workers’ Compensation Act, and injured workers. The cases I have litigated have included cases with constitutional challenges to statutes, statutory interpretation, and factual disputes. See, e.g., *Hardgrove v. Transportation Ins. Co.*, 2004 MT 340, 324 Mont. 238, 103 P.3d 999; *Preston v. Transportation Ins. Co.*, 2004 MT 339, 324 Mont. 225, 102 P.3d 527; *Fleming v. Montana Schools Group Ins. Authority*, 2010 MTWCC 13, and *Driggers v. Liberty Northwest Insur. Corp.*, 2007 MTWCC 60. Therefore, I have seen most of the sides of the system and know how the system is balanced. I would appreciate the honor of serving the people of Montana because the Workers’ Compensation Court performs an important service, as it is a system that can affect the lives of people from all walks of life.

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

Four things come to my mind in response to this question: First, I am proud that I have a collegial relationship with the vast majority of attorneys I have litigated against, and with others on the opposing sides of my cases, such as workers’ compensation claims examiners. I am a strong advocate for all of my clients but strive to be professional with the opposition. When I told a friend of mine who is a workers’ compensation claims examiner that I was submitting this application, she remarked that I have “been firm but fair” when I

have represented injured workers. Second, I am proud of the job I did during an oral argument I presented to the Montana Supreme Court in 2004 on behalf of an insurer in a complicated workers' compensation case with constitutional issues. After the argument, a now-former Supreme Court Justice complimented my argument in a presentation he gave to the Northwest Montana Bar Association, stating that I and the opposing attorney gave one of the best arguments he had seen. Third, I am proud that I spend the time to give my clients the best representation I can regardless of whether I am representing them in a complex civil case or for a misdemeanor charge in Justice Court. Finally, I am proud that I have balanced my career with my family life, particularly since I have a son with autism.

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

I cannot think of anything that has not already been covered elsewhere in this application.

58. 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 Workers' Compensation Court judge applicant?

I suspect that my broad experience will differentiate me from other applicants. Over the last 14 years, I have represented private insurers, a self-insured, the Montana State Fund, employers, and injured workers. I have advocated the positions of my clients in all of these cases which, I think, shows that I am applying for the position of judge of the Workers' Compensation Court without any agenda other than to analyze the Workers' Compensation Act, the Department of Labor & Industry's Rules and Regulations, and precedent to make the correct decision in each and every case.

I. CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as Workers' Compensation Court Judge, 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 Canons of Judicial Ethics, if appointed.

June 16, 2004
(Date)

David M. Janell
(Signature of Applicant)

A signed original and an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Thursday, June 19, 2014.

Mail the signed original to:

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

Send the electronic copy to: lmenzies@mt.gov

it was not possible to comply with Condition #11; by finding that Condition #11 was met when it was not, in fact, met; by approving the engineering plans; and by approving the building permit to build a house on Lot 4 when it was apparent from the documents submitted that the proposed building site was too close to the steep slope, and not in compliance with Condition #11.” (*Id.*, ¶ 59.)

IV. LAW AND ARGUMENT

A. The City of Kalispell had legal duties.

“The plaintiff in a negligence case must establish that the defendant had a legal duty, that the defendant breached that duty, and that the breach caused injury and damages.” *Gatlin-Johnson v. City of Miles City*, 2012 MT 302, ¶ 13, ___ Mont. ___, ___ P.3d ___ (citation omitted). The Montana Supreme Court has explained, “In analyzing whether a duty exists, we consider whether the imposition of that duty comports with public policy, and whether the defendant could have foreseen that his conduct could have resulted in an injury to the plaintiff.” *Fisher v. Swift Transportation Co., Inc.*, 2008 MT 105, ¶ 17, 342 Mont. 335, 181 P.3d 601 (citation omitted). “Under Montana law, the duty element of negligence turns primarily on foreseeability.” *Lopez v. Great Falls Pre-Release Services, Inc.*, 1999 MT 199, ¶ 27, 295 Mont. 416, 986 P.2d 1081. Foreseeability “depends upon whether or not the injured party was within the scope of risk created by the alleged tortfeasor; that is, whether the injured party was a foreseeable plaintiff.” *Gatlin-Johnson*, ¶ 13 (citing *Lopez*, ¶ 28.) Thus, the Montana Supreme Court has explained, “We ask ‘whether the defendant could have reasonably foreseen that his or her conduct could have resulted in an injury to the plaintiff.’” *Id.*

When this question is asked in the case at bar, the answer is obvious: the City of Kalispell could have reasonably foreseen that approving the Ashley Meadows Subdivision could result in injury and damages to the Browns, as future residents, due to the steep slope on the northeast and east side of the subdivision. In fact, the Subdivision Regulations – which were enacted by Ordinance No. 1238 – conclusively show that the City of Kalispell actually foresaw the potential hazards of steep slopes, unstable slopes, landslides, and subsidence and that the City of Kalispell knew that property damage could occur if property with evidence of these hazards was approved for a subdivision. “Under Montana law, it is well established that a duty may arise from a statutorily imposed obligation.” *Prindel v. Ravalli County*, 2006 MT 62, ¶ 29, 331 Mont. 338, 133 P.3d 165 (citations omitted).

Section 3.03 of the Subdivision Regulations states in relevant part as follows:

3.03 LANDS UNSUITABLE FOR SUBDIVISION:

Lands where there is evidence of possible hazard conditions occurring such as flooding, snow avalanches, rock falls, *land slides, slopes in excess of 25% grade, subsidence*, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, air or vehicular traffic hazards or congestion, or other features which may be detrimental to the health, safety or general welfare of existing or future residents . . . *shall not be subdivided for building or residential purposes* unless the hazards are eliminated or will be overcome by approved design and construction plans.

(Emphasis added.) Likewise, § 3.04 of the Subdivision Regulations states in relevant part:

3.04 PLANNING CONSIDERATIONS

The subdivision design shall take into consideration the following considerations:

A. Particular consideration shall be given to the topography in relation to slope stability. (Types of soils/steepness of grades.)

F. Land subject to hazardous conditions (such as land slides, rock falls, subsidence, shallow water table, open quarries, floods and polluted or non-potable water supply) shall be identified.

Section 3.06 of the Subdivision Regulations states, "Each lot shall contain a satisfactory building site which is properly located to topography"

These Subdivision Regulations, by themselves, demonstrate that it was foreseeable to the City of Kalispell that slopes such as the one on the property that is now the Ashley Meadows Subdivision are possibly hazardous. It is obvious that the reason that "particular consideration" was to be given to slope stability, and the reason that each lot was to have a "satisfactory building site which is properly located to topography," was because it was known to the City of Kalispell that slope failures cause considerable damage. Thus, when the property was in the subdivision process, the City of Kalispell had legal duties under the Subdivision Regulations to conduct an investigation to determine if the steep slope was hazardous. If the slope was hazardous – *i.e.*, it was unstable because of the types of soils and steepness of grade, which were to be given "particular consideration" – the City of Kalispell had a legal duty to either reject the subdivision outright or impose conditions to "eliminate" the hazard, or impose a condition so that the hazard would be "overcome by approved design and construction plans." See § 3.03, Subdivision Regulations. The Subdivision Regulations imposed legal duties on the City of Kalispell.

Moreover, the common law imposed legal duties on the City of Kalispell. When the property was in the subdivision process, the City of Kalispell's employees and agents also had, as everyone has, "the common law duty to exercise the level of care that a reasonable and prudent person would under the same circumstances." *Fisher*, ¶ 16 (citation omitted). When the property was in the subdivision process, the employees and agents of the City of Kalispell with specialized training -- such as the professional planners and the professional engineers -- had the

duty to exercise the skill and knowledge normally possessed by member of their profession. See *Durbin v. Ross* (1996), 276 Mont. 463, 471, 916 P.2d 758, 763 (citation omitted).

The City of Kalispell also had a legal duty to enforce the conditions it placed upon the Ashley Meadows Subdivision. See *Ledbetter v. City of Great Falls*, 123 Mont. 270, 213 P.2d 246 (1950) (holding that City of Great Falls had a duty to enforce its ordinances regarding the blockade and lighting of trenches, even though it granted a permit to a plumber to dig the trench). As set forth above, condition #11 for the Ashley Meadows Subdivision states: "Lots 4 and 5 shall have a minimum 40 by 40 foot building pad indicated on the plat that comply with the zoning setbacks of the R-4 zone [and] are not on slopes in excess of 25 percent." The Browns allege that the City of Kalispell did not enforce this condition. (Compl. and Demand for Jury Tr., ¶¶ 24, 30, 34, and 59.)

Because it was foreseeable to the City of Kalispell that the steep and unstable slope to the northeast and east of Lot 4 was a potential hazard, the City of Kalispell owed the legal duties to the Browns, as the current owners of Lot 4. "A plaintiff is a foreseeable plaintiff if she or he is within the foreseeable zone of risk created by the defendant's negligent act." *Fisher*, ¶ 21 (citation omitted). As noted above, § 3.06 of the City of Kalispell's Subdivision Regulations states that the City of Kalispell was not to allow a subdivision if the land contained features that "may be detrimental to the health, safety or general welfare of existing or *future residents*" (Emphasis added.) In other words, the very purpose of the regulations regarding the place to build is to avoid a situation like the one underlying this case; *i.e.*, the purpose of the regulations is to protect those who purchase a home in an approved subdivision in the City of Kalispell from hazards such a slope failure, landslide, and subsidence. The City of Kalispell, therefore, owed

legal duties to the Browns, as well as the other owners of the lots impacted by the slope failure, because they were all within the "zone of risk" of the City of Kalispell's conduct.

Finally, imposing these legal duties on the City of Kalispell upholds public policy. To evaluate whether a defendant owes a duty of care to a plaintiff, Montana's courts consider: (1) The moral blame attached to defendant's conduct; (2) the prevention of future harm; (3) the extent of the burden placed upon defendant; (4) the consequences to the public of imposing such a duty; and (5) the availability and cost of insurance for the risks involved. *Fisher*, ¶ 28 (citation omitted).

The fact that the City of Kalispell passed the Subdivision Regulations, with provisions to protect the "future residents" from hazards such as landslides and steep slopes, conclusively shows that public policy favors imposing a legal duty on the City of Kalispell. *See Fisher*, ¶ 28 (holding that when duties are statutorily imposed, the duty is deemed to be supported by public policy). Moreover, placing a duty on the City of Kalispell to use reasonable care when property in the subdivision process will prevent future harm and will not place excess burden on the City of Kalispell, or any other municipality. The duty requires the City of Kalispell to do what the Subdivision Regulations require so as to prevent future harm to residents of an approved subdivision in the City of Kalispell. There are clearly no negative consequences to the public in enforcing the Subdivision Regulations. Finally, the City of Kalispell has insurance from MMIA for negligence claims against it. Public policy favors imposing legal duties on the City of Kalispell.

Without even mentioning foreseeability, the City of Kalispell argues that it did not owe a duty to the Browns. It relies upon a premises liability case -- *Papp v. Rocky Mountain Oil and Minerals, Inc.* (1989), 236 Mont. 330, 769 P.2d 1249 -- and argues that it cannot be liable to the

Browns on a negligence theory because it does not own, possess, or control the property on which the Browns' house sits. Comparing *Papp* to the instant case, however, is comparing apples and oranges.

Alex Papp died in 1985 from exposure to hydrogen sulfide while working for Balcron Oil. *Papp*, 236 Mont. at 332-33, 769 P.2d at 1251. At the time of his death, Papp was replacing pipes inside an oil "separator" building jointly owned by Balcron and Buckeye Energy Corp. *Id.* at 332, 769 P.2d at 1251. Since Balcron and Buckeye both claimed immunity from suit under the exclusive remedy of the Workers' Compensation Act, as they claimed to be in a joint venture, Papp's wife and his estate sued Rocky Mountain Oil and Minerals, Inc., alleging that Rocky Mountain was negligent in the manner in which it had rebuilt the oil "separator" building in 1971, and for failure to warn of the dangers of hydrogen sulfide. *Id.* at 341-42, 769 P.2d at 1256. Rocky Mountain had sold its interest in the building in 1978, and argued that it could not be liable for a death that occurred seven years after it had sold the building. *Id.* The court stated that the issue involving the claims against Rocky Mountain was, "Whether the negligence issue must be dismissed on the grounds that the builders of the separator facility are too remote." *Id.* at 341, 769 P.2d at 1256. The court did not discuss whether Rocky Mountain owed a duty to Papp; rather, the court addressed the facts to determine whether Rocky Mountain's alleged negligence could be the cause of Papp's death. *Id.* at 342, 769 P.2d at 1256. The Court held that Rocky Mountain's alleged negligence was "too remote," as a "former owner is not subject to liability for injuries sustained on the property long after he relinquished ownership and control." *Id.* In other words, the Court determined that Rocky Mountain's alleged negligence was not a cause of Papp's death because it was "too remote."

The City of Kalispell's reliance upon *Papp* is misplaced. *Papp* addresses causation, not duty. Moreover, this is not a premises liability case and, therefore, the standard of care for a premises liability case does not apply. The Montana Supreme Court recently reversed a grant of summary judgment to a property owner because the district court applied the standard of care applicable in construction site cases to a premises liability case. In *Steichen v. Talcott Properties, LLC*, 2013 MT 2, ____ Mont. ____, ____ P.3d ____, Steichen contracted with Bresnan to clean its office space, which Bresnan leased from Talcott Properties. *Id.*, ¶ 3. He suffered injuries when he slipped and fell on a puddle of water in a dimly lit restroom. *Id.*, ¶¶ 3-5. The Supreme Court held that the district court erred in granting summary judgment to Talcott Properties because the district court applied the wrong standard of care:

The District Court correctly determined that Talcott had a duty to Steichen to use ordinary care in maintaining the building in a reasonably safe condition, as explained in *Richardson*. The District Court erred, however, in applying the construction industry liability standards to this case, and in determining that Talcott owed no duty to Steichen as an independent contractor. ***This is not a construction site case and there is no reason to make any duty decision based upon Steichen's status as an independent contractor with Bresnan.*** Independent contractor status is relevant in construction industry cases, but not in ordinary premises liability cases.

Id., ¶ 13 (emphasis added).

This rationale is applicable to the instant case. This is not a premises liability case, and there is no reason to apply the premises liability standard of care. This case is not akin to an injured party suing a former property owner for a dangerous condition on the property. The Browns are not alleging that they suffered personal injury on property that the City of Kalispell used to own. Suffice it to say here the Browns allege that the City of Kalispell was negligent during the subdivision process by approving a subdivision when it should have known under the Subdivision Regulations that the steep and unstable slope made the property unsuitable for

subdivision. (Compl. and Demand for Jury Tr., ¶¶ 24, 30, 34, and 59.) As set forth above, the legal duties to be applied in this case are the duties imposed upon the City of Kalispell by the Subdivision Regulations and the common law duties of the planners and engineers to use reasonable care when determining whether the property is suitable for subdivision. Moreover, the City of Kalispell had duties to enforce the conditions it placed upon the subdivision. Finally, the City of Kalispell's negligence is not "too remote" from the Browns' damages. The Browns' damages occurred as a result of the City of Kalispell's negligence as City of Kalispell's negligence was a substantial factor in "bringing about" the Browns' damages. *See Busta v. Columbus Hospital* (1996), 276 Mont. 342, 916 P.2d 122. *Papp* is simply irrelevant to the issue of whether the City of Kalispell had legal duties.

The foregoing conclusively demonstrates the City of Kalispell had legal duties. The Browns alleged that the City of Kalispell had these duties, that it breached these duties, and that the breach caused them damages. (Compl. and Demand for Jury. Tr., ¶¶ 24, 30, 34, 59, and 60.) Thus, the Browns have set forth a negligence claim against the City of Kalispell upon which relief may be granted. Accordingly, this Court must deny the City of Kalispell's Motion to Dismiss.

B. The public duty doctrine does not shield the City of Kalispell from liability.

The City of Kalispell's fall back position is that it is shielded from liability by the public duty doctrine. The public duty doctrine provides: "a governmental entity cannot be held liable for an individual plaintiff's injury resulting from a governmental officer's breach of a duty owed to the general public rather than to the individual plaintiff." *Gatlin-Johnson*, ¶ 14 (citation omitted). "The rule protects municipalities . . . from liability for failure to adequately enforce

general laws and regulations, which were intended to benefit the community as a whole.” *Id.* Notwithstanding, for either of the following reasons, this Court must reject the City of Kalispell’s argument.

1. The public duty doctrine is unconstitutional under the Montana Constitution.

Article II, Section 18 of the Montana Constitution states, “[t]he state, counties, towns, and all other local governmental entities shall have no immunity from suit for injury to person or property, except as may be provided by law by a 2/3 vote of each house of the legislature.” The Montana Legislature has not, by 2/3 vote, granted municipalities immunity. In fact, § 2-9-102, MCA, states, “[e]very governmental entity is subject to liability for its torts and those of employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature.”

Because the Montana Legislature has not granted sovereign immunity to municipalities, the public duty doctrine cannot be applied in Montana under Article II, Section 18. *See, e.g., Gonzales v. City of Bozeman*, 2009 MT 277, ¶¶ 69-70, 70352 Mont. 145, 217 P.3d 487 (Nelson, J., dissenting); *Nelson v. State*, 2008 MT 336, 346 Mont. 206, 195 P.3d 293 (Nelson J., dissenting); and *Prosser v. Kennedy Enterprises, Inc.* 2008 MT 87, 342 Mont. 209, 179 P.3d 1178 (Nelson, J. dissenting) (“The public duty doctrine frustrates the will of the people as expressed in Article II, Section 18, and this Court errs in perpetuating the doctrine’s existence 36 years after the adoption of the Constitution. It is long past time we consign this antiquated doctrine to the dustbin of history, where it belongs.”)

Notwithstanding, the Montana Supreme Court has never directly addressed a challenge to the issue of the constitutionality of the public duty doctrine. The Browns are now making such a challenge. Suffice it to say here that as Justice Nelson pointed out in his dissent in *Gonzales*,

“many other courts, as well as other members of this Court, have likewise recognized that the public duty doctrine cannot survive the abrogation of governmental immunity.” *Gonzales*, ¶ 70. This Court should simply hold that the public duty doctrine is unavailable as a defense for municipalities under Article II, Section 18 of the Montana Constitution and, therefore, rule that the doctrine does not shield the City of Kalispell from the Browns’ negligence claims.

2. Assuming, for sake of argument, that the public duty doctrine was constitutional, it is inapplicable to the case at bar.

Even if the public duty doctrine was viable in Montana, it does not apply in this case because the Browns have not alleged that the City of Kalispell is liable “for failing to adequately enforce general laws and regulations.” Rather, the Browns have alleged that the City of Kalispell is liable by failing to adequately enforce specific laws, namely the Subdivision Regulations, which were expressly designed to protect the “existing and future residents” of subdivisions from particular types of harm, including slope failures and subsidence. Sections 3.03 – 3.05, Subdivision Regulations. Thus, the Subdivision Regulations are for the benefit of a “specific class of persons from a particular type of harm.” The public duty doctrine is therefore inapplicable to this case. See *Prosser*, ¶ 22 and *Gatlin-Johnson*, ¶ 14.

The fact that the Subdivision Regulations are for the benefit of a “specific class of persons from a particular type of harm” is what makes this case distinguishable from *Prosser*, a case that the City of Kalispell is sure to cite in its reply brief. In that case, the court held that under the public duty doctrine, the City of Hamilton could not be liable to neighbors of a casino for its failure to enforce its ordinances regarding noise, light, and other nuisances. *Prosser*, ¶¶ 20-31. The court explained that the ordinances were general ordinances for the “benefit the general public” and not a “specific class of persons from a particular type of harm.” *Id.*, ¶ 22. Thus, the court held that the public duty doctrine shielded the City of Hamilton from its failure to

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



SR15
ANGELA McLEAN
LT. GOVERNOR

2013-2015 Interim Appointments

Judicial

13th Judicial District Judge Michael Moses

Included: Statute for Appointment

*Application Packet as provided by Judicial Nominations
Commission*

Montana Code Annotated 2014

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

3-1-1010. Lists submitted to governor and chief justice -- report on proceedings. (1) If a supreme court justice, a district court judge, the workers' compensation judge, the associate water judge, or the chief water judge gives notice of the judge's resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the supreme court. If notice is not given, the commission shall meet as soon as possible after a vacancy occurs. The meeting must be held in compliance with 3-1-1007. The commission shall submit to the governor or chief justice, within the time period established under 3-1-1007, a list of not less than three or more than five nominees for appointment to the vacant position.

(2) The list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, letters and public comments received regarding each nominee, and the commission's reasons for recommending each nominee for appointment. The report must give specific reasons for recommending each nominee.

History: En. Sec. 6, Ch. 470, L. 1973; R.C.M. 1947, 93-710; amd. Sec. 9, Ch. 21, L. 1979; amd. Sec. 2, Ch. 423, L. 1979; amd. Sec. 1, Ch. 344, L. 1987; amd. Sec. 4, Ch. 651, L. 1987; amd. Sec. 4, Ch. 810, L. 1991; amd. Sec. 149, Ch. 61, L. 2007; amd. Sec. 2, Ch. 335, L. 2011.

Provided by Montana Legislative Services

APPLICATION FOR

DISTRICT COURT JUDGESHIP
13th Judicial District

A. PERSONAL INFORMATION

1. Full Name: Michael Glen Moses
 - a. What do you commonly go by? Mike
2. Birth date: 08/18/1952 Are you a U.S. citizen? Yes
3. Home Address: 903 Delphinium Drive
Billings, Montana 59102
Phone: 406-252-2617
4. Office Address: 175 North 27th Street
Wells Fargo Bank Building, Suite 1202
Billings, Montana 59101
Phone: 406-248-7702
5. Length of residence in Montana: 61 Years
6. List your place of residence for the past five years:

Dates

City

State

November of 1978 to the present Billings

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>
Billings Senior High	Billings, MT	1970	High School Diploma
University of Montana	Missoula, MT	06/09/1974	B.A. Political Science
Lewis & Clark Law School	Portland, OR	06/04/1978	Juris Doctorate

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

Boys State – 1969

Tuition Waiver, Freshman Year University of Montana 1970-1971

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

No. No articles published.

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 State Courts	10/26/1978
Federal Court for the District of Montana	01/18/1979
Ninth Circuit Court of Appeals	03/22/1979
U.S. Court of Claims	08/23/1983

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

Moses and Lansing, P.C. My Professional Partner is Jay F. Lansing.

12. State the name, dates and addresses of all law firms with which you have been associated in practice, and of all 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>
Moses, Tolliver and Wright	Associate	1978 - 1979
Moses Law Firm	Partner	1979 - 1994
Moses Law Firm, P.C.	Principle	1994 - 2005
Moses and Lansing, P.C.	Principle	2005 - Present

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

I have been in private practice continuously since 1978 in Billings, Montana.

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 practice in a two member private law firm. The major types of law that I practice are:

1. Criminal defense	60%
2. Plaintiff's Personal Injury/Business Torts	25%
3. Estate Planning/Wills/Probate	10%
4. Mediations	5%

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

I have enjoyed a diverse practice for 35 years to include:

Family law; adoptions; name changes; grandparent visitation; guardianships; conservatorships; elder law; end of life planning; abuse and neglect; juvenile law; worker's compensation; medical negligence; social security disability; human rights and employment law; immigration law; environmental law; farm and ranch law to include mineral rights, coal rights, access, easements, partitions and water disputes; landlord tenant law; and all kinds of contract disputes. I have not been a lobbyist. I have not been a teacher.

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

Criminal Law

17. Do you regularly appear in court? Yes

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

Federal Court	5%
State or local courts of record	94%
Administrative bodies	1%
Other	0%

18. During the past five years, what percentage of your practice has been trial practice? 85%

19. How frequently have you appeared in court? 5 - 10 times per month on average

20. How frequently have you appeared at administrative hearings? Not often (See Question No. 26)

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

Civil	25%
Criminal	75%
Other	—%

22. Have you appeared before the Montana Supreme Court within the past five years? If so, please 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.

Yes. (See Exhibit #1)

23. State the number of jury trials you have tried to conclusion in the past ten years. 5

24. State the number of non-jury trials you have tried in the past ten years. 3

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and

telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

(See Exhibit #2)

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

Commission on Practice – Adjudicatory hearing on behalf of an attorney

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

No publications of legal book or articles. More than 20 years ago I was a presenter at a CLE on criminal law. In 2005 I was a presenter and Panel Member at the 2005 Courts of Limited Jurisdiction Conference.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all the bar associations and legal professional societies of which you are a member and give the titles and dates of any office 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.

State Bar of Montana

Yellowstone Area Bar Association: Board Member for two terms in 1990's Served as President
2000-2001

American Association for Justice, 1984 - 2009

Montana Trial Lawyers Association since the early 1980's

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

Walleyes Unlimited

Montana Pikemasters, Billings Chapter

30. Have you ever run for, or held, public office? If so please give the details.

No

E. PROFESSIONAL CONDUCT AND ETHICS

31. 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, give the particulars.

No

32. Have you ever been found guilty of contempt of court, or sanctioned by any court for any reason? If so, please explain.

No

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

No

34. 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, please give details.

No

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

No

F. BUSINESS AND FINANCIAL INFORMATION

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

No

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

Moses and Lansing, P.C., Practice of Law. President and Principle in a two (2) attorney law practice involved in day to day business of the Practice.

38. State whether during the past 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, please identify the source and the approximate percentage of your total income it constituted over the past five years.

No

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

No

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

41. Do you have any liens or claims outstanding against you by the Internal Revenue Service?
☐ Yes ☒ No

42. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five (5) years? If so, please give details.

No

43. Please explain your philosophy of public involvement and practice of giving your time to community service.

Montana is a great place to live and raise a family. It is great because we care and give our time to our communities --- the greater the contribution, the better for the next generation. My practice of giving has primarily been in two areas: Education and Law. Education: My wife and I have been huge supporters of education. A sampling of my support over the years includes: Coaching First and Second Graders in T-Ball and Soccer; Counselor/Chaperone at School District 2's Drug Free Camp On the

Boulder (6th Graders); nearly every year hosting students attending special events in Billings in our home; Booster Club Supporter (High School); and in three of the last four years we have hosted college foreign exchange students from China. The Law: The practice of law has been my passion. I have been active in the Yellowstone County Bar Association; I served on the Site Selection Committee for our Detention Center; I participated in Law Day Activities in the schools; I presented a program on the Judicial System to the High School Civics Class for many years; I was a member of the Board of the Yellowstone Area Bar Association for 6 years; and I served as President of the Yellowstone Area Bar Association in 2000 - 2001.

G. WRITING SKILLS

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

My researching of legal issues and drafting of briefs has been extensive over the last five year. I do all of my own research and all of my own writing.

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

I have engaged in "legal writing" on a daily basis to include: legal correspondence; pleadings; discovery; motions; briefs; settlement agreements; plea agreements; waivers; contracts; estate plans; and legal memorandums of all kinds.

46. Please 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 attached Exhibit #3.

47. What percentage of your practice for the last five years has involved research and legal writing?
25 %

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

Yes on both.

preparation plus hard work and perseverance make a difference, and (3) Our Judicial System guarantees a level playing field for all.

2. I argued *State v Boyer* before the Montana Supreme Court on April 20, 2001 at the University of Montana, University Theater. My writing sample comes from that case. Once again, my client had the courage to fight for our constitutional rights and I was proud to represent him in that fight. The decision established a body of law in Montana balancing the individual constitution rights of privacy and freedom from unreasonable searches and seizures with the constitutional right to a clean and healthful environment. The case required hard work. It required detailed preparation starting in Justice Court defending a fish and game citation. The case was a pleasure to be involved in at every level. It confirmed my passion for the practice. I still think Justice Nelson's dissent was brilliant.

3. I was elected by my peers President of the Yellowstone Area Bar Association in 2000.

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

My experience and personal relationships are the most positive reflections on my career. I am not aware of any information that would reflect adversely.

58. 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 candidate?

My diverse, extensive experience will differentiate me from other applicants. I have been privileged to stand with my clients before judges in courtrooms all across Montana. Over the course of 35 years I have had jury trials in serious criminal cases and complex civil cases of all kinds. There were many non-jury trials, legal arguments, and other appearances before many different judges. All of these experiences provided a good look at what it takes to be a good district court judge. Along the way, I have done my best to maintain a civil and respectful relationship with lawyers, judges and others in the legal community. This has truly made the practice of law a pleasure. Such experience and education has provided the foundation to be the best district court judge candidate.

I. CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 13th 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 Canons of Judicial Ethics, if appointed.

1-27-2014
(Date)

Michael G. Mow
(Signature of Applicant)

EXHIBIT NO. 1

MONTANA SUPREME COURT APPEALS

LAST FIVE YEARS

CASE NAME OPPOSING COUNSEL	SUPREME COURT CASE NUMBER	COURT WHERE	TYPE OF CASE	DATE OF DECISION
In Re Estate of A frank Patrick G. Begley 104 Cooper Lane West Cody, WY 82414 (307) 586-5465	DA-12-0202	16 th Judicial District	Creditor Claim in Estate	12-18-2012

In the Matter of The Estate of Louisa Ann Swanson and Swen Paul Swanson Steven T. Potts Thompson, Potts & Donovan, P.C. P.O. Box 2799 Great Falls, MT 59403 Tel: (406) 452-0065	DA 07-0247	First Judicial District Lewis & Clark County	Estate Claims	06-20-2008
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EXHIBIT NO. 2

OPPOSING COUNSEL AND JUDGES IN LITIGATION CASES

LAST TWO YEARS

EXHIBIT 2

OPPOSING COUNSEL AND JUDGES IN CASES LITIGATED LAST TWO YEARS

CASE	OPPOSING COUNSEL	JUDGE
State of Montana v. Boschee District Court Phillips County DJ-2013-2 Resolved 09/09/13	Ole Olson Assistant Attorney General P.O. Box 201401 Helena, MT 59620-1401 Tel: (406) 444-2026	Judge John McKeon P.O. Box 470 Malta, MT 59538 Tel: (406) 654-1062
State of MT v Turner District Court Judith Basin County DC-12-07 Trial: 03/10/2014	Catherine Truman Assistant Attorney General PO Box 201401 Helena, MT 59620-140 Tel: (406) 444-2026	Judge Jon A. Oldenberg 712 W. Main Street PO Box 1124 Lewistown, MT 59457 Tel: (406) 535-8028
In the Matter of Nathan Funk District Court Musselshell County DJ-13-05 Resolved by Consent Decree 12/22/13	Kent Sipe 506 Main Street Roundup, MT 59072 Tel: (406) 323-2230	Judge Randal Spaulding 506 Main Street Roundup, MT 59072 Tel: (406) 323-1701
State v. Kolka Justice Court Powder River County TK-2013-6391 Resolved by Plea 12/16/13	Jeff Noble PO Box 240 Broadus, MT 59317 Tel: (406) 436-2365	Justice of the Peace Catherine A. Landa PO Box 692 Broadus, MT 59317 Tel: (406) 436-2503
State v. Kindsfather District Court Yellowstone County DC-12-0675 No Trial Date	Robert Spoja Deputy County Attorney PO Box 35025 Billings, MT 59107 Tel: (406) 256-2870	Gregory R. Todd PO Box 35026 Billings, MT 59107 Tel: (406) 256-2901
State v Gotschall District Court Stillwater County DC-12-30 Resolved 09/19/13	Nancy Rohde Deputy County Attorney PO Box 179 Columbus, MT 59019 Tel: (406) 322-4333	Judge Blair Jones PO Box 1268 Columbus, MT 59019 Tel: (406) 322-5406

Tillett v Tillett
District Court
Big Horn County
Cause No. DV-05-49
Resolved

Mark Parker & Casey Heitz
Parker Heitz & Cosgrove
PO Box 7212
Billings, MT 59103
Tel: (406) 245-9991

Judge Blair Jones
PO Box 1268
Columbus, MT 59019
Tel: (406) 322-5406

Steve Theusen
23 North Broadway, Suite 201A
Red Lodge, MT 59068
Tel: (406) 446-2043

Patrick Bagley
104 Cooper Lane West
Cody, WY 82414
(307) 586-5465

Blakley v Rehurek
District Court
Big Horn County
DV-08-70
No Trial Date

Brad Arndorfer
1921 1st Avenue North
Billings, MT 59101
Tel: (406) 252-3911

Judge Blair Jones
PO Box 1268
Columbus, MT 59019
Tel: (406) 322-5406

Estate of Meyer
District Court
Yellowstone County
DP-13-192
Trial Date: 10/20/14

Gary Everson & Daniel Ball
Hendrickson Law Firm
208 N. Broadway, Suite 324
Billings, MT 59103-2502
Tel: (406) 245-6238

Judge Watters
Replacement to be
Determined

John Christensen
Christensen, Fulton & Filz, PLLC
2825 3rd Avenue North
Billings, MT 59103-0339
Tel: (406) 248-3100

Zurich American Ins.
V. Lerma, et.al
U.S. District Court
Billings Division
CV-12-70-BLG-SEH
No Trial Date

Steve Reida
27 North Tracy
PO Box 1
Bozeman, MT 59771
Tel: (406) 586-4351

U.S. District Judge
Sam E. Haddon
Missouri River
Courthouse
125 Central Ave. W.,
Suite 301
Gt. Falls, MT 59620
Tel: (406) 727-8877

RECENT MEDIATIONS

Estate of Thomas N. Glennie

John Christensen
Christensen, Fulton & Filz
PO Box 339
Billings, MT 59103-0339
Tel: (406) 248-3100

Eric E. Nord
Crist, Krogh & Nord
The Securities Building
2708 First Avenue North, Suite 300
Billings, MT 59101
Tel: (406) 294-0398

Mark Parker
Parker, Heitz & Cosgrove
PO Box 7212
Billings, MT 59103
Tel: (406) 245-9991

Kris A. Birdwell
Stogsdill Law Office
505 W. Main Street, Suite 313
Lewistown, MT 59457
Tel: (406) 538-2623

Sealy v. Campbell
District Court
Yellowstone County
DV12-0672

John Christensen
Christensen, Fulton & Filz
PO Box 339
Billings, MT 59103-0339
Tel: (406) 248-3100

Jock West
West Law Firm
2722 3rd Avenue North, Suite 400
Billings, MT 59101
Tel: (406) 252-3858

EXHIBIT NO. 3
WRITING SAMPLE

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. 00-183

STATE OF MONTANA,

Plaintiff and Respondent

v.

JAMES WILLIAM BOYER,

Defendant and Appellant

* * * * *

EXCERPT FROM REPLY BRIEF FOR APPELLANT

* * * * *

search. The State has not appealed that finding. (T.T. p. 75, l. 2-13.)

ARGUMENT

Did the District Court err in denying the Motion to Suppress and Dismiss?

A. The Welfare Check.

The State argues that because this search and seizure began as a welfare check by a Game Warden, a recreationalist does not have a reasonable expectation of privacy while utilizing a public body of water engaging in an activity that is highly regulated. Boyer respectfully disagrees.

The Montana Supreme Court has specifically talked about legal stops. In the case of *Grinde v. State* (1991), 249 Mont. 77, 813 P.2d 473, the Court stated:

“A legal stop can occur when a police officer has a particularized suspicion comprised of (1) objective data from which an experienced officer can make certain inferences; and (2) a resulting suspicion that the occupant of a certain vehicle is or has been engaged in wrong doing or was a witness to criminal activity.” [*Grinde v. State, supra*, at 813 P.2d 473, 475.]

The Court, *in dicta*, went on to state:

“Legal stops can also occur in non-criminal, non-investigatory contexts. For example, nothing prevents a police officer from making a stop to deliver an emergency message, assist a stranded motorist or warn of an impending danger. A police officer can legally stop a vehicle for a bona fide reason which is related to functions within his authority and duties. See *People v. Davis* (1977), 39 Colo.App. 63, 565 P.2d 1347. If, after making such a stop, the police officer reasonably believes the driver to be under the influence of alcohol, he can make an arrest and require submission to a chemical test.” [*Grinde, supra*, 813 P.2d 473, at 476.]

The factual circumstances here are that the Warden made a welfare check. He did not make a stop to deliver an emergency message. He did not make a stop to assist a stranded motorist. He did not make a stop to warn of any impending danger. The specific stated reason for the stop was for safety reasons. (T.T. p. 19, l. 11.) The “welfare check” is over when Mr. Boyer immediately states that he is okay. (T.T. p. 7, l. 5.) This should be the end of the inquiry and the end of the contact.

In *State v. Carlson*, 57 St.Rep. 1348, ___ Mont. ___, ___ P.3d ___, decided December 12, 2000, this Court specifically addressed the issue of when a reasonable investigation ends and when an unreasonable search and

seizure begins.

This Court stated:

“Pursuant to Sec. 46-5-403, an investigative stop authorized by Sec. 46-5-401 may not last longer than necessary to effectuate the purpose of the stop. The United States Supreme Court has recognized the limited scope of investigative stops: ‘The scope of the detention must be carefully tailored to its underlying justification’. *Florida v. Royer* (1983), 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229. We recognize that the purpose of the initial stop may change as officers acquire additional information. See e.g., *State v. Henderson*, 1998 Mont. 233, 291 Mont. 77, 966 P.2d 137.” [*State v. Carlson*, 57 St.Rep. 1348 at 1350.]

This Court went on to hold that the subsequent search of the interior of the Carlson vehicle for drugs was not required in the investigation of a trespass. The search and seizure of the interior of the car was therefore unconstitutional and the drug investigation exceeded the purpose of the initial stop. *State v. Carlson, supra*, at 1351.

In the case at bar, the facts necessary to support a welfare check were readily apparent to the Warden when Mr. Boyer sat up and said he was okay. After that point in time, the officer had no particularized suspicion of

any kind that the defendant was committing any other offenses. He had no particularized suspicion that would allow him to further investigate the presence of the fishing boat. He had no objective data which would allow him to further investigate the possibility of an over-limit of fish. His further detention of Mr. Boyer and his specific stated purpose not to leave the boat until he saw all the fish (T.T. p. 14, l. 1-3) was an unreasonable search and seizure and a violation of this defendant's constitutional rights.

B. The Search.

This Court recently defined what a search was. It stated:

"We have defined 'search' as the use of some means of gathering evidence which infringes upon a person's reasonable expectation of privacy. *Hulse*, para. 22. When determining whether there has been an unlawful government intrusion into one's privacy in search and seizure situations, we look at the following factors:

"(1) Whether the person has an actual expectation of privacy;

"(2) Whether society is willing to recognize that expectation as objectively reasonable; and

"(3) The nature of the state's intrusion. *Desserly v. Department of Corrections*,

(Mont. February 15, 2000, 2000 W.L. 193539, star 4." [*State v. Elison*, 2000 Mont. 288, 57 St.Rep. 1206, ___ Mont. ___, ___ P.3d ___, decided November 16, 2000.]

There can be no question about the fact that the Warden in this particular case tied off his boat to the Boyer boat. That he initially stepped onto the back of the Boyer boat and then ultimately had to board the Boyer boat to actually take the fish out of the Boyer live well and count them. (T.T. p. 29, l. 12-16.) That was the clear gathering of evidence. Pursuant to *Elison*, *supra*, that is a clear search.

C. Expectation of Privacy.

The State of Montana argues that Boyer had no expectation of privacy and specifically argues that Boyer "never established that he had a subjective and reasonable expectation that he could not be contacted by a Game Warden while utilizing a public body of water". (State's Brief, p. 13.) Boyer strongly disagrees with the State of Montana.

In *Elison, supra*, at 1214, this Court stated the following:

"We believe Elison had an actual expectation of privacy in the items stowed behind his seat, and we believe his actual expectation of privacy was reasonable. Placing an object beyond the purview of the public in a place

from which the person has the right to exclude others evidences an actual or subjective expectation of privacy. 'What a person knowingly exposes to the public is not protected, but what an individual seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected'. *Bullock*, 272 Mont. at 375, 901 P.2d at 70." [*Elison, supra*, at p. 1214.]

Boyer was in his duly registered and licensed fishing boat on April 18, 1999. His fish were placed in a closed live well beyond the purview of the public. They were placed in a compartment within his private boat, a compartment that Boyer had a right to exclude others from. Those fish were not knowingly exposed to the public. We submit that Boyer clearly established that he had a subjective and reasonable expectation of privacy when he placed those fish in an enclosed live well on his private boat.

The State did not provide the District Court with any reason to believe that Boyer's actual expectation of privacy was unreasonable.

"When a person takes precautions to place items behind or underneath seats, in trunks or glove boxes, or uses other methods of insuring that those items may not be accessed and viewed without permission, there is no obvious reason to believe that any privacy interest with respect to those items has been surrendered simply because those items

happen to be in an automobile.” [*Elison, supra*, at p. 1215.]

There is no evidence presented by the State of Montana that Mr. Boyer did anything other than take precautions to place fish in an enclosed live well insuring that those fish would not be accessed or viewed without permission. We submit Mr. Boyer had an actual expectation of privacy on April 18, 1999.

D. Show Me Your Fish.

The State argues that Sec. 87-1-502(6), MCA, provides a Game Warden with authority to demand sportsmen to provide them with a license and also to show them their fish. (State’s Brief, p. 17.) Sec. 87-1-502(6), MCA, must be read in conjunction with the entire statute concerning the authority of Game Wardens. When read in conjunction with the enforcement powers of Game Wardens, Sec. 87-1-506, MCA, specifically the power to search, the Court can see:

“(b) Search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package, or their contents upon probable cause to believe that any fish or game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur bearing animals has been violated.” (Sec. 87-1-506(1)(b), MCA).

[Emphasis supplied.]

The statute is clear. It says "probable cause". The search of the Boyer boat required either probable cause or a warrant. The search of the Boyer live well required either a warrant or probable cause. That is what Sec. 78-1-506, MCA, says.

E. Pervasive and Continuing Governmental Regulation and Controls.

The State of Montana argues that boating is a "regulated activity in Montana" (State's Brief at p. 13.). The State of Montana argues that fishing is also a regulated activity (State's Brief at p. 14.) The State of Montana argues that because of those highly regulated circumstances, a Warden may contact, stop, and inquire and inspect boaters and fishermen and that such individuals do not have a reasonable expectation of privacy in such inspections. We strongly disagree. We submit that this Court strongly disagrees. In *State v. Elison, supra*, at page 1215, this Court specifically addressed the issue of reduced expectation of privacy derived from the pervasive regulation of vehicles. This Court specifically found:

"We do not find the Supreme Court's
'reduced expectation of privacy' analysis

compelling. We do believe that when a person rides in an automobile, that person accepts that their actions and any items left uncovered on the dash board or on the seat are no longer private because of their public visibility. Even in Montana, when persons leave the privacy of their home and expose themselves and their effects to the public and its independent powers of perception, it is clear that they cannot expect to preserve the same degree of privacy for themselves or their affairs as they would expect at home. *State v. Scheetz* (1997), 286 Mont. 41, 49, 950 P.2d 722, 726 . . . Furthermore, there is no reason to believe that the 'pervasive and continuing governmental controls and regulations' of automobiles could serve to reduce someone's expectation of privacy in items so stowed. Although the state may have a legitimate interest in securing compliance with safety and traffic regulations, there is absolutely no logical connection between prohibitions such as driving with expired registration stickers or a noisy muffler, and the state's need to conduct a warrantless search behind the seat of an automobile. Visual inspections of license plates for expired tags do not entail searches of glove boxes, trunks, and underneath seats. See generally 3 Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* Sec. 7.2(b) at 470, 3d Ed. 1996." [*Elison, supra*, 1215.]

Pervasive and continuing governmental regulations and control simply do not justify unlawful searches and seizures and violations of an individual's right

of privacy in the State of Montana.

F. Compelling State Interest.

The State argues in its brief that a compelling State interest exists because of the Montana constitutional provision, Art. IX, Sec. 1(1) "The State and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." This Court addressed the issue of a compelling state interest in *Elison, supra*, at 1215 and 1216. The Court stated that notwithstanding a compelling state interest, "the state may not invade an individual's privacy unless the procedural safeguards attached to the right to be free from unreasonable searches and seizures are met." *Hulse*, para. 34. [*Elison, supra*, at 1215.] The Court went on to state:

"Rather, as we have consistently held, a warrantless search of an automobile requires the existence of probable cause as well as generally applicable exception to the warrant requirement such as a plain view search, a search incident to arrest, or exigent circumstances." [*Elison, supra*, at p. 1216.]

There was no warrant on April 18, 1999. There was no probable cause to search the live well (T.T. p. 11, l. 20-25). There was no "plain view search" as the fish were contained within a live well that the Warden could not

see into. There was no search incident to arrest. There were no exigent circumstances.

G. Consent to Search.

The District Court held very clearly that there was no consent to search. (T.T. p. 75, l. 2-13.) This finding was not appealed.

CONCLUSION

The State of Montana and the Department of Fish, Wildlife & Parks argues that they should not be subject to the rights of sportsmen to be free from unreasonable searches and seizures and/or be entitled to exercise their right of privacy. They argue for a Game Warden exception to fundamental constitutional rights that we enjoy here in the State of Montana. We submit that any officer of the State of Montana, whether he or she is a Game Warden or not, should not intrude upon the constitutional rights of sportsmen without probable cause, without reasonable suspicion, or without any particularized suspicion that an offense has been committed.

The search in this case clearly violated Mr. Boyer's constitutional rights. The Motion to Suppress should have been granted. The evidence in this case should have been suppressed. The case should have been dismissed.