

APPLICATION FOR

**DISTRICT COURT JUDGESHIP  
Seventeenth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: Helge Naber

a. What name do you commonly go by? Helge

2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes

3. Home Address: [REDACTED]

Phone: [REDACTED]

4. Office Address: 600 Central Avenue Suite 425, Great Falls Montana 59401

Phone: 406 452 3100

5. Length of residence in Montana: 15 years

6. Place of residence for the last five years:

| <u>Dates</u>        | <u>City</u>        | <u>State</u>   |
|---------------------|--------------------|----------------|
| <u>2003-present</u> | <u>Great Falls</u> | <u>Montana</u> |

## 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>         |
|--|---------------------|-----------------------|-----------------------|
| Gymnasium a.d. Hermann-Böse-Strasse      | Bremen/Germany      | 1990                  | Highschool Diploma    |
| Rheinische Friedrich-Wilhelm Universität | Bonn/Germany        | 1997                  | J.D. (equivalent)     |
| Widener University School of Law         | Wilmington/Delaware | 1998                  | LL.M. (Corporate Law) |
| University of Montana School of Law      | Missoula/Montana    | 2003                  | J.D.                  |

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

ASCAP UM Nathan Burkan Copyright Writing Competition 2002 (1<sup>st</sup> Prize)

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

I was not on any 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> |
|---|--------------------------|
| <u>Landgericht Bremen, Domsheide 22-24, 28195 Bremen/Germany</u>                | <u>Jan 2002</u>          |
| <u>Montana Supreme Court</u>  | <u>Oct 2003</u>          |
| <u>U.S. District Court for the District of Montana</u>                          | <u>Oct 2003</u>          |
| <u>U.S. Court of Appeals for the 9<sup>th</sup> Cir.</u>                        | <u>Oct 2007</u>          |
| <u>U.S. Executive Office of Immigration Review (eFiling privileges dormant)</u> |                          |
| <u>U.S. Bankruptcy Court for the Middle District of Florida (pro hac vice)</u>  | <u>Dec 2008</u>          |

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

I have been the sole shareholder and executive officer of Naber PC since January 2005.

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

| <u>Employer's Name</u>   | <u>Position</u>                       | <u>Dates</u>                |
|--|---------------------------------------|-----------------------------|
| <u>Landgericht Krefeld, Nordwall 131, Krefeld/Germany</u>  | <u>Associated Judge</u>               | <u>1998 through 2000</u>    |
| <u>Rechtsanwälte Robert Kempas Segelken, Sögestrasse 95, Bremen/Germany</u>                          | <u>Law Clerk/Associate/Of Counsel</u> | <u>1998 through 2005</u>    |
| <u>McPherson &amp; Hutchison PLLC, 300 Central Avenue Suite 320, Great Falls Montana (dissolved)</u> | <u>Associate</u>                      | <u>2003 through 2004</u>    |
| <u>Rechtsanwalt Markus Rausch, Freiherr-vom-Stein-Strasse 27, Mettlach/Germany</u>                   | <u>Of Counsel</u>                     | <u>2014 through present</u> |

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

The German educational system for lawyer differs significantly from the education and training in the U.S. I completed the academic portion of the German education in 1997. An additional prerequisite for licensure is then a 2-year appointment as an associate judge in a government position as a public servant. Due to the number of graduates in relation to the number of available positions, there is a wait time. I bridged that wait time of approximately 12-15 months to complete the U.S. master degree in Corporate Law & Finance. The 2-year trainee program concludes with a 2<sup>nd</sup> non-academic examination administered by the appellate court in the district in which the trainee is employed, and comprised at the time of 9 8-hour written essay exams taken over the course of 1 month. If successful, the candidate is then summonsed to a 1-day oral examination before a panel of appellate judges. Again due to the number of candidates in relation to the number of judges, this process can take between 6-8 months. I completed all these steps in due course, but that course is lengthy and interrupted by procedural wait times. I possess the formal qualification as a judge in Germany, which is also a prerequisite to the admittance to practice law as an attorney-at-law (*Rechtsanwalt*), and have been licensed as such since 2002.

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 current practice comprises of immigration law (30%), civil matters with focus on consumer rights, consumer finance, debt defense, bankruptcy, and banking law (30%), criminal law (25%), business law (10%), international law (5%), and what I would summarize as 'oddities' law (5%) in various fields.

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

I have not left private practice since 2002, but was temporarily hired as exempt staff to the Montana State Auditor John Morrison in 2007/2008 where I worked in securities and insurance regulations.

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

Though there is no formal specialization for immigration law in Montana, I like to think I have acquired above-average expertise in this area of law over the years.

17. Do you regularly appear in court? Yes. \_\_\_\_\_

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

|                                 |       |    |   |
|---------------------------------|-------|----|---|
| Federal court                   | _____ | 15 | % |
| State or local courts of record | _____ | 70 | % |
| Administrative bodies           | _____ | 15 | % |

Other \_\_\_\_\_ 0 %

18. During the last five years, what percentage of your practice has been trial practice? 33-50%

19. How frequently have you appeared in court?  
10-12 days per month, sometimes on several cases per day.

20. How frequently have you appeared at administrative hearings?  
0-1 times per month on average.

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

|          |           |   |
|----------|-----------|---|
| Civil    | <u>50</u> | % |
| Criminal | <u>35</u> | % |
| Other    | <u>15</u> | % |

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

I have not appeared before the Montana Supreme Court in the last five years.

23. State the number of jury trials that you have tried to conclusion in the last ten years. 2

24. State the number of non-jury trials that you have tried in the last ten years. about 10

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

A. Robert Elgidely Esq.  
GENOVESE JOBLOVE & BATTISTA PA  
200 E Broward Blvd Suite 1100  
Ft Lauderdale Florida 33301  
T 954 331 2807  
*Attorney for Trustee*

*In re Ulrich Engler & P.C.O. Inc.*  
08-bk-04360 (Bankr. M.D. Fla.)  
Hon. Michael Williamson  
T 803 301 5520  
- pending -

B. Paulette Stewart Esq.  
U.S. ATTORNEY'S OFFICE  
901 Front Street Suite 1100  
Helena Montana 59626  
T 406 457 5120  
*Attorney for Appellee*

U.S. v. Faherty  
12-30340 (9<sup>th</sup> Cir.)  
Hon. Johnnie Rawlinson  
T 206 224 2200  
- decided 18 April 2014 -

C. Ryan Weldon Esq.  
U.S. ATTORNEY'S OFFICE

U.S. v. Radasa  
cr-15-57 (D. Mont.)

119 1<sup>st</sup> Avenue North Suite 300  
Great Falls Montana 59401  
T 406 454 7715  
*Attorney for Plaintiff*

Hon. Brian Morris  
T 406 454 7800  
- sentenced 2 March 2016 -

D. Valerie Winfield Esq.  
CASCADE COUNTY ATTORNEY  
121 4<sup>th</sup> Street North  
Great Falls Montana 59401  
T 406 454 6915  
*Attorney for Petitioner*

*In re S.L.*  
bdn-14-146 (MtDCt8)  
Hon. Elizabeth Best  
T 406 771 3950  
- decided 17 Aug 2016 -

E. Ryan Mickelson Esq.  
HILL COUNTY ATTORNEY'S OFFICE  
315 4<sup>th</sup> Street  
Havre Montana 59501  
T 406 265 5481  
*Attorney for Plaintiff*

*State v. Larsen*  
dc-14-116 (MtDCt12)  
Hon. Daniel Boucher  
T 406 265 5481  
- trial concluded 9 Mar 2016 -

F. Barbara Banchemo Esq.  
MONTANA DEPARTMENT OF  
PUBLIC HEALTH & HUMAN SERVICES  
111 North Sanders Street  
Helena Montana 59620  
T 406 444 5625  
*Attorney for Respondent*

*K.E.N. v. Mont. Dept. of Public Health &  
Human Service et. alt.*  
cv-15-29 (D. Mont.)  
Hon. Brian Morris  
T 406 454 7800  
- pending -

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

I have represented clients before the Immigration Court in removal proceedings, the Board of Immigration Appeals appealing denials of visa applications, and the Montana Board of Public Assistance. With respect to immigration, almost every case commences before the U.S. Citizenship & Immigration Service; cases in which the U.S. Department of Homeland Security seeks to remove a person from the U.S. commence in Immigration Court. An Immigration Court action is procedurally comparable to a fair hearing before a State or Federal agency. However, most agency decisions are not reviewable by a U.S. District Court or U.S. Court of Appeals; therefore Immigration Court proceedings are substantively comparable to a trial court proceeding even though the Immigration Court is part of the U.S. Department of Justice's Executive Office of Immigration Review.

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

I have not published any books or articles. I have, however, presented on matters of intellectual property and eCommerce upon invitation of the Great Falls Economic Development Authority in 2008, cyber law in 2010 (I was invited by a commercial CLE organizer to present in Billings, but do not remember the name of it), the correlations between criminal and immigration law representing non-citizen defendants in State and Federal

courts upon invitation of the Yellowstone County Bar Association in 2013, and most recently on ethical implications and pitfalls in representing business entities upon invitation of the National Business Institute in Billings and Missoula in 2016.

#### D. PROFESSIONAL AND PUBLIC SERVICE

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

Montana State Bar – Member – since 2003

Hanseatische Rechtsanwaltskammer Bremen – Member – since 2002

American Immigration Lawyers' Association – Member – since 2005

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

I have been a board member at-large of the Falls Aquatic Swim Team since 2013, and was *interim* treasurer from February through August 2016. FAST is a parent-run not-for-profit organization that comprises of about 70 swim families and employs 5 professional part- and full-time coaches. FAST hosts 3 swim meets per season with up to 250 athletes in attendance. My responsibilities on the board vary as needed and span from keeping minutes to manning concession to marshaling the pool to organizing fund raisers or – these last few months – being acting treasurer. On meet weekends all parents put in a minimum of 25 hours over 3 days to make things happen; we don't really ask, we just do.

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

No.

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

Given the unfortunate reputation that sometimes precedes our profession, I find it important to pursue engagements in non-legal capacities any which way possible and suitable. We all at times can and have to be everything that gives lawyers a bad name, so I think it is important to show that we are just regular people, engaged community members, and dedicated parents.

### E. PROFESSIONAL CONDUCT AND ETHICS

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

I have not been disciplined for any unethical or unprofessional conduct or sanctioned under Mont. or Fed. R. Civ. Pro 11.

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

I have not been found guilty of contempt of court or sanctioned by a court.

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

I have not been arrested for or convicted of any violation of any laws.

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

No.

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

I do not believe so.

### F. BUSINESS AND FINANCIAL INFORMATION

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

No. Law is all I know.

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

I have been the sole shareholder and executive of Naber P.C. since 2005. Upon appointment, I will resign from that position and relinquish any interest I hold in the firm. I will also terminate my Of Counsel-affiliation with the law office of Markus Rausch in Germany even though the cases assigned to me have no connection to Montana and would likely not pose a conflict of interest, however, I will avoid the taint of any impropriety. I have been a board member of the Falls Aquatic Swim Team since 2013; though I do not believe this position would pose a conflict with judicial office outside the 8<sup>th</sup> Judicial District, I will nonetheless resign from that position because I do not think it feasible to hands-on contribute meaningfully to the team from afar.

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

I have not received any fees or compensation in the last five years that were not related to legal services.

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

No.

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

Yes.

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

If not, please explain.

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

If yes, please explain.

---

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

No. 

---

## G. WRITING SKILLS

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

I conduct all my of my own research, be it in preparation of an initial consultation, oral argument, or for a complex or appellate brief, motion or complaint. I delegate proof-reading and "sense-checking" to my paralegals in order to optimize overall comprehensiveness, logic, and flow of my writing because I am not a native English speaker.

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

Yes, I have drafted business plans, financial predictions, articles of incorporation, operating agreements, powers of attorney, employment contracts, affidavits, and contracts for clients, either as stand-alone documents or as part of visas applications or other transactions.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.
48. What percentage of your practice for the last five years has involved research and legal writing?  
25 % (as part of the scope of representation)
49. Are you competent in the use of Westlaw and/or Lexis?

Yes, my firm has had a Lexis subscription for the past 11 years, and I used Westlaw while in law school.

## H. MISCELLANEOUS

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

Since "spare time" is a rarely used term in my profession, I'm relying on spellcheck to get it right. We try to do as much as we can as a family. We enjoy family roads trips that usually revolve around some sporting event: we currently have swimmers, cheerleaders, basketball players, volleyball players, soccer players, and track runners, ranging from 3 to 15 years old. We have travelled as far as Duluth and Seattle over long weekends and during school breaks, and I am also trying to have my kids see their grand- and God parents in Germany as much as possible. I am a passionate Lego builder, alongside with my kids, though I am certainly not the master builder of the family. I encourage and help the kids compete for awards at the Montana State Fair for their creations, but have not won anything myself. I also enjoy swimming long distances, playing squash, and have interests in history, philosophy and - oddly - physics.

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

While in high school and attending German university, I worked as an assistant manager at a McDonald's. Upon graduation from high school in 1990, I joined the German military for 18 months and was discharged honorably as the equivalent of a U.S. Sergeant (reserve). During my time at Bonn University, I worked as a bar manager for the State Representative of my home state Bremen to the German Federal government, experiencing 'politics behind the scenes' first hand and at (very) late nights during the time of the German reunification. During the summers I worked as a life guard on a German island and built Mercedes cars, and during winter breaks I worked as a Rent-a-Santa.

Upon moving to Montana and attending UM Law School in 2001, I was limited to on-campus employment due to my visa status and worked as a legal intern for UM Legal Counsel and the UM Vice President for Development & Research, a law library attendant, a dorm night watch (at times concurrently) and later also interned at Datsopoulos McDonald & Lind during my last term of law school. I also was a teaching assistance for civil procedure for Prof. Cynthia Ford and contract for Prof. Scott Burnham. Later in my career, I was temporarily appointed as exempt staff to the Montana State Auditor as a Special Assistant Attorney General in 2007/2008.

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

We frequently receive calls and inquiries in the areas of immigration law and consumer rights, I'd say about once a week on average. I treat these inquiries as any other initial consultation, just without the expectation of any fee. These consultations can include reviewing forms and notices, transactional documents, credit reports, answering questions or simply ascertaining a case status. Sometimes those consultations require follow up meetings, extensive research and preparation on my part, but I do not treat these matters with any less diligence or attention as I would if it was a prospectively paying client. I prefer to meet with people face-to-face if at all possible, even though this preference absorbs more time than a simple phone consultation. It helps to avoid any misunderstandings on their or my part and allows me to review original documents rather than being read what they contain over the phone.

I have also drafted parenting plans and dissolution petitions on a *pro bono* basis if I feel the standardized templates available through self-help websites do not fit the need of a person or family, but do not require any more help than a shaping up a draft, relying upon the Supreme Court's Order AF-07-157 allowing me to "ghostwrite" these documents upon making a limited appearance in a case without assuming formal representation. This often (and sadly) involves a non-citizen spouse or children who are afraid of the unknown process, face language barriers, fear for their own destiny standing up for themselves, or are concerned going against a prejudicial system. I am on occasion asked by a Judge to assume representation of an indigent client in family law matters or act as a guardian, with which I have always complied.

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

The biggest personal imprint on my view of the U.S. justice system has been left by U.S. District Court Judge Sam Haddon who is now retired. He had a reputation as a "tough" Judge, and many (many!) people cautioned me when I first began building a Federal practice in Great Falls. However, I found him to be a diligent, fair, predictable, responsible jurist and utmost cognizant of the respective job everyone was called upon to do in his court room. I believe we established a mutually respectful, efficient, and result-driven working relationship over the years (I never dared to ask if he shared my perception though). I appreciated that he took control, closely oversaw case management and questioned even details of each party's pursuit of a certain result. He also held the players equally accountable to their roles and questioned their actions when warranted, instead of letting cases (i.e. people) dangle in the system. I was also told by other defenders that, in retrospect, I was able to get the "best" sentences for my clients, which I take not only as a sign of his trust and confidence in my positions and representations to the Court, but also as recognition that neither his nor my work has gone unnoticed.

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

I believe a good judge is independent and makes decisions solely based on facts. I believe a good judge is impartial and renders his or her ruling based on the applicable law, not on the players presenting it. I believe a good judge is diligent and knows each and every case before him or her just as well the attorneys pursuing it – if not better. I believe a good judge is consistent and predictable in his or her rulings. I believe a good judge is patient to allow the legal process room to develop, but remains cognizant of the impact of that process upon the parties before her or him during the lifetime of a case. I believe a good judge is curious and questions facts and strategies he or she is observing, if and when necessary.

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

My formal education taught me that law is a science that is designed to reproduce predictable, just, consistent and precise results each and every time. Life or situations before a Court, however, are not tailored to match such a scientific approach, and in fact rarely do. Precedent decisions based upon the law and its purpose/history, in my understanding, refine and interpret what a society as a whole has agreed upon to be the common solution to generalized problems or situations. It is important for a Court to exercise its equitable

powers and discretion to balance an individual situation or conflict against those established principals of uniformly manifested "justice". There cannot be an One-Size-Fits-All solution to every legal issue, but there needs to be standardized 'sizes' establishing common core societal values as a smallest societal common denominator. It is then a Court's role and responsibility to ascertain, respect, and preserve that 'standardized' value or principal, and then exercise its equitable powers to tailor a solution that is nonetheless consistently fair and just under the unique situation at hand.

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

I am seeking a position as district court judge because I consider such a position as much of a personal and intellectual challenge as I think of it as a professional opportunity to put the precision of the legal science and dedication to equity and justice to work not only for those who can afford it, but to all who seek it. As a party representative I am confined to promote and serve the interests of any one party, as a judge I would be able to serve all parties in their quests for justice and resolution. A truly fair result is one that no one is happy with but everyone can live with. As a judge, I can define and deliver those results wholeheartedly to the best of my ability; as an attorney, I can only accept them as they are given to me.

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

The most forming experience was a removal case I defended on behalf of a young woman who was an undocumented non-citizen spouse married to a U.S. Air Force member. She was brought into U.S. by her parents, walking through the desert and crossing into the U.S. on foot at age 2. She went to school in the U.S., became a certified nurse assistant, and had worked in health-care since. She also was recognized for her support of other military families. When her husband underwent security clearance upon reassignment to Malmstrom Air Force Base, her lack of status became known, and base personnel reported her to Immigration & Customs Enforcement which then commenced removal proceedings against her. The couple had 2 under-school age children for which she was the sole care-taker. During the pendency of the case, her husband received orders to transfer to a U.S. base in Italy. Because of the lack of any status in the U.S., she was unable to accompany him and her children because she had no legal right to return to the U.S., hence Italy refused to grant her status under the NATO Treaty as a military dependent. Counsel for ICE would not stipulate to any relief in advance. We accelerated the case to the next available trial date before the Immigration Court in Portland/Oregon, flew to Portland to try it, and won. She was granted U.S. permanent resident status and was not only able to unite with her family in Italy, but is now also able to legally live in the U.S. after years in fear of detection and separation from her family. This case taught me that justice will prevail over even the mightiest of opponents if someone just takes the time and effort to provide a forum and listens.

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

I am not legally married, but have been living in what I refer to as the "Brady Bunch XL" for 6 years. I understand that to some there may be stigma associated with this composition. My significant other brought 4 children from a previous marriage, I brought 2 children from a previous marriage, and she and I welcomed our youngest boy 3 years ago. We were both married once before, and it did not work out for either one of us, so we

have held the idea in abeyance since. We have no reason to doubt that our commitment and dedication towards each other and our family is less sincere or durable as if we were.

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

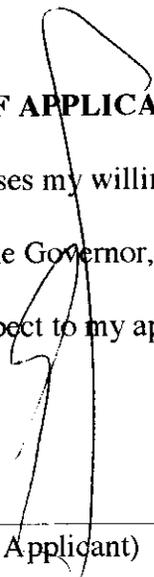
I believe all applicants seeking this position will be equally qualified, well-versed in formal education and practical experience, and promising candidates to fill the legacy Judge McKeon has left. My background, education, career, and experiences are as unique as anyone's seeking this position with the added bonus of international training and a Master's degree.

**CERTIFICATE OF APPLICANT**

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 17th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

AUG 31 2016

\_\_\_\_\_  
(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 September 1, 2016.**

**Mail the signed original to:**

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

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

Helge Naber  
Montana Bar Id. 7059  
NABER PC  
300 Central Avenue Suite 320  
Great Falls Montana 59401  
Phone (406) 452 3100  
Fax (406) 452 6599  
ATTORNEY FOR PLAINTIFF

U.S. DISTRICT COURT FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

---

WILLIAM M. McGEE,  
- Plaintiff -

VS.

JPMORGAN CHASE BANK, et. alt.  
- Defendants -

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

CAUSE NO. 12-CV-9-BU-SEH

---

**MEMORANDUM IN SUPPORT OF MOTION SEEKING CLASS  
CERTIFIATION  
PURSUANT TO Fed. R. Civ. Pro. 23(a), (b)(1), (b)(3)**

---

Helge Naber, counsel for Plaintiff William McGEE, hereby respectfully seeks Class Certification against Defendant JPMorgan pursuant to Fed. R. Civ. Pro. 23(a), (b)(1), (b)(3), and presents and reasons as follows:

**SCOPE OF AND STANDARD FOR CERTIFICATION**  
[Fed. R. Civ. Pro. 23]

Pursuant to Fed. R. Civ. Pro. 23(a),

one or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Pursuant to Fed. R. Civ. Pro. 23(b),

a class action may be maintained if Rule 23(a) is satisfied and if :

- (1) prosecuting separate actions by or against individual class members would create a risk of:
  - (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
  - (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
- (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
- (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
  - (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
  - (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
  - (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
  - (D) the likely difficulties in managing a class action.

Pursuant to Fed. R. Civ. Pro. 23(c)(4), when appropriate, an action may be maintained as a class action with respect to particular issues. Pursuant to Fed. R. Civ. Pro. 23(c)(1)(c), an order that grants or denies class certification may be altered or amended before final judgment.

### MEMORANDUM IN SUPPORT

As provided by Fed. R. Civ. Pro. 23(c)(4), Plaintiff Michael McGee, and others similarly situated, seek class certification with respect to the Class Counts alleged in the Amended Complaint and Class Action Complaint.

///

///

///

**I. The Court Should Grant Class Certification concerning Class Counts I through VI Because The Requirements of Fed. R. Civ. Pro. 23(a) Are Met.**

**NUMEROSITY**  
[Fed. R. Civ. Pro. 23(a)(1)]

1. Pursuant to Fed. R. Civ. Pro. 23(a)(1), class certification may be considered if the class is so numerous that joinder of all members is impracticable. There is no threshold size for class action, and the issue of numerosity must be determined on a case-by-case basis. See Rivera v. Wyeth-Ayerst Lab., 197 F.R.D. 584, 589 (S.D. Tex. 2000) [reversed on other grounds by Rivera v. Wyeth-Ayerst Lab., 283 F.3d 315 (5<sup>th</sup> Cir. 2002)]. However, if there is 15 or less prospective class members, the numerosity requirement is not met. See Harik v. Cal. Teachers' Ass'n., 326 F.3d 1042, 1051 (9<sup>th</sup> Cir. 2003).

2. Since the inception of the MHA Program, Defendant JPMorgan received 1,411,720 modification requests from homeowners across the nation. See HAMP Application Activity by Servicer (9/2012) attached hereto as *Exhibit 01*. Approximately 0.1% of all modification activities concern mortgages attached to residential properties sited in the District of Montana. See MHA Program Performance Report p. 9 attached hereto as *Exhibit 02*. Thus, Defendant JPMorgan received requests for relief under the MHA Program concerning approximately 1,412 loans and mortgages linked to residential properties located across the District of Montana, affecting at least 1,412 individual debtors.

a. With respect to Class Counts I and III, Montana law provides for a private foreclosure procedure that does not require any court action, but can be conducted privately based upon a contractual power of sale in case

of breach of any obligation underlying a mortgaged security interest. See Mont. Code Ann. §§71-1-111, 71-1-223, 71-1-224. Thus, only Defendant JPMorgan, Defendant JPMorgan's local counsel, and the individual debtors would know if and when a private foreclosure sale was initiated or moved forward during the pendency, and such data is still sought in discovery. However, even if this was the case in only 1 out of every 20 of all of the approximately 1,412 processed consumer requests for relief, the practice sought to be outlawed in Class Count I alone, assuming that there is only one debtor liable for the obligations under each of the 1,412 mortgaged residential properties, affects at least 71 individual mortgagors within the District. The numerosity prong under Fed. R. Civ. Pro. 23(a)(1) is thus met.

b. With respect to Class Counts II, IV, V, and VI, Defendant JPMorgan denied 947,091 of the 1,411,720 received modification requests nationally, and allowed 408,530 or 28.9%. See MHA Program Performance Report p. 18 attached hereto as *Exhibit 02*. Extrapolating these ratios to the MHA activity Defendant JPMorgan processed regarding properties within the District of Montana, only 408 MHA modification requests out of the total of 1,412 submitted were ultimately granted, including the request of the Plaintiff. Only Defendant JPMorgan and the affected individual debtors know the extent to which relief was granted, whether timely, untimely, meaningful or unmeaningful. However, even if only 1 out of 10 granted modification requests conveyed less than meaningful relief after unreasonable amount of time, the practices sought to be outlawed in the remaining class counts affects at least 40 individual mortgagors within the District, again under the premise that under the premise that there is only one debtor/owner for each of the 1,412 residential properties affected. The numerosity prong under Fed. R. Civ. Pro. 23(a)(1) is thus met.

c. Further with respect to Class Counts II, IV, and VI, out of the 1,411,720 modification requests Defendant JPMorgan received nationally, 540,298 or 38.3% were not accepted for modification because of, *inter alia*, insufficient documentation. See MHA Program Performance Report p. 18 attached hereto as *Exhibit 02*. In 102,381 out of the 540,298 denied modification requests, or 18.9%, the affected mortgagor ultimately lost his or her home due to foreclosure, short sales, or deeds-in-lieu-of-foreclosure. See *id.* Extrapolating these ratios to the MHA activity Defendant JPMorgan processed regarding properties within the District of Montana, approximately 540 MHA modification requests were turned down, and approximately 102 homes were ultimately lost to foreclosures, short sales, or deeds-in-lieu-of-foreclosure. Only Defendant JPMorgan and the affected individual debtors know the reason for the denial and the destiny of the residence concerned. However, even if only one third of the affected debtors ultimately lost their respective homes due to the practices sought to be outlawed in the remaining class counts, at least 34 individual mortgagors in the District are affected. The numerosity prong under Fed. R. Civ. Pro. 23(a)(1) is thus met.

3. It would be impractical to join all class members individually because the affected properties and their respective mortgagors cannot be ascertained on an individual basis, without Defendant JPMorgan responding to discovery. Such joinder would delay the matter considerably, as each affected debtor would need to be individually served, and subjects the matter to numerous potential challenges based upon venue. Joinder pursuant to Fed. R. Civ. Pro. 19 is not feasible because there are more than 15 debtors adversely affected by Defendant JPMorgan's actions in contravention of the law. Further, individual decisions issued by various

judges, even of the same district could result in widely disparate outcomes, lacking consistency and continuity.

### COMMONALITY [Fed. R. Civ. Pro. 23(a)(2)]

Pursuant to Fed. R. Civ. Pro. 23(a)(2), class certification may be considered if there are questions of law or fact common to the class. “The commonality requirement is met as long as the members of the class have allegedly been affected by a general policy of the defendant, and the general policy is the focus of the litigation.” Alemdares v. Palmer, 222 F.R.D. 324, 331 (N.D. Ohio) [2004 U.S. Dist. LEXIS 13514 at \*18-\*19]. “[W]hen that [policy] is made as part of class-wide discriminatory practices, courts bear a special responsibility to vindicate the policies [...] regardless of the position of the individual plaintiff.” Senter v. GMC, 532 F.2d 511, 524 (6<sup>th</sup> Cir. 1976).

1. The central common question of fact is whether or not Defendant JPMorgan’s policies, practices, and tactics in carrying out its respective obligations under the Participating Servicer Agreement, and the program guidelines it agreed to operate under, as further specified in Class Counts I through VI in ¶¶46-56 of the Amended Complaint, are fraudulent, deceptive, misleading, or otherwise contradictory to the Make Home Affordable Program, its program guidelines, goals, and objectives, and applicable Federal and state statutes, and regulations.

a. The Participating Servicer Agreement is the agreement between Defendant JPMorgan and Fannie Mae, the latter acting as agent of the United States, in carrying out, administering, and overseeing the MHA Program. It sets forth a servicer’s obligations towards borrowers and the

Federal government in consideration for, *inter alia*, receiving Federal funds to equalize the expenses of administration of the MHA Program and substantive losses associated with the modification of existing mortgage obligations for the benefit of struggling homeowners under the various options of the MHA Program. See MHA Participating Servicer Agreement attached hereto as *Exhibit 03*.

b. In the Participating Servicer Agreement, Defendant JPMorgan committed itself to operate

"in compliance with, and covenants that all Services will be performed in compliance with, all applicable Federal, state and local laws, regulations, **regulatory guidance**, statutes, ordinances, codes and requirements, including but not limited to, the Truth in Lending Act, 15 USC 1601 § et seq., the Home Ownership and Equity Protection Act, 15 USC § 1639, the Federal Trade Commission Act, 15 USC § 41 et seq., the Equal Credit Opportunity Act, 15 USC § 701 et seq., the Fair Credit Reporting Act, 15 USC § 1681 et seq., the Fair Housing Act and other Federal and state laws designed to prevent unfair, discriminatory or predatory lending practices and all applicable laws governing tenant rights." See *id.* at p. B-3 [emphasis added].

c. Regulatory guidance is provided by and condensed into the MHA Handbook . See Screenshot <https://www.hmpadmin.com/portal/programs/guidance.jsp> (last visited November 28, 2012) attached hereto as *Exhibit 04*. The MHA Handbook is periodically revised, but has consistently contained, and still contains the provision that

"**Each servicer** and any sub-servicer that the servicer uses **will be subject to** and must fully comply with all federal, state, and local laws, including statutes, regulations, ordinances, administrative rules and orders that have the effect of law, and judicial rulings and opinions including, but not limited to, the following laws that apply to any of its practices related to MHA: [...] **the Fair Debt Collection Practices Act**". See MHA Handbook v4.0 Chapter 1.6 pp. 29-30 attached hereto as *Exhibit 05* [emphasis added].

d. Therefore, the element of commonality, as required by Fed. R. Civ. Pro. 23(a)(2), is met as there are common questions of fact as to whether Defendant JPMorgan's policies, practices, and tactics in carrying out its respective obligations under the Participating Servicer Agreement, and the program guidelines it agreed to operate under, as further specified in Class

Counts I through VI in ¶¶46-56 of the Amended Complaint, are fraudulent, deceptive, misleading, or otherwise contradictory to the Make Home Affordable Program, its program guidelines, and applicable Federal and state statutes, and regulations.

2. The central common question of law is whether or not such policies, practices, and tactics can and should be outlawed under the Fair Debt Collection Practices Act and related federal and state statutes. As presented *supra*, the Fair Debt Collection Practices Act, as well as all other state and local laws, are applicable to the factual circumstances presented.

3. However, neither question has to be adjudicated substantively by the Court in determination the suitability of class action certification, as Fed. R. Civ. Pro. 23 encompasses the mere procedural consolidation of numerous individual claims in a fashion tailored to fostering judicial economy, consistency, and transparency. Therefore, the prerequisite of commonality, as established by Fed. R. Civ. Pro. 23(a)(2), is met.

#### TYPICALITY

[Fed. R. Civ. Pro. 23(a)(3)]

"The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" Evon v. Law Offices of Sidney Mickell, 688 F.3d 1015, 1030 (9<sup>th</sup> Cir. 2012). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9<sup>th</sup> Cir. 1998). Typical to all Class Counts is that they are based on claims arising out of the Fair Debt

Collection Practices Act, 15 U.S.C. §§1692 et. seq., in conjunction with related, applicable Federal and state statutory and common law, rules, regulations, guidelines and executive directives.

1. The principal applicability of the Fair Debt Collection Practices Act has already been established *supra*. Defendant JPMorgan conceded thereto by entering into a Participating Servicer Agreement with Fannie Mae. The Participating Servicer Agreement specifically refers to the Program Guidelines which expressly include the MHA Handbook. See Screenshot <https://www.hmpadmin.com/portal/programs/guidance.jsp> last visited November 28, 2012 attached hereto as *Exhibit 04*. The MHA Handbook, in its current version and all previous versions, establishes the applicability of the Fair Debt Collection Practices Act for any action a participating servicer undertakes in carrying out the MHA Program. See MHA Handbook v4.0 Chapter 1.6 pp. 29-30 attached hereto as *Exhibit 05* [emphasis added]

2. The claims of all other debtors who were subject to Defendant JPMorgan's the practices sought to be outlawed, as further specified in Class Counts I through VI, do not conflict with one another. As the alleged violations are based on an allegedly repetitive pattern or policy applied towards all prospective class members, the claims of one plaintiff does not depend upon, exclude, compromise, or negate the claims of another similarly situated claimant.

3. Therefore, the prerequisite of typicality, as established by Fed. R. Civ. Pro. 23(a)(3), is met.

///

///

## ADEQUACY OF REPRESENTATION

[Fed. R. Civ. Pro. 23(a)(4)]

“Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9<sup>th</sup> Cir. 1998).

1. All of the affected debtors subject to the practices sought to be outlawed in Class Counts I and III faced unlawful foreclosure and loss of their respective homes while Defendant JPMorgan still determined the merits of their respective requests, based upon the same practice or policy Defendant JPMorgan implemented to carry out the administration of the MHA Program, thereby placing undue duress upon the debtors if and when given an offer of modification.

2. A number of affected debtors, as presented *supra*, subject to the practices sought to be outlawed any further specified by Class Counts II, and IV through VI in fact did lose their homes. Those who did not, still remained subject to the practices sought to be outlawed, as further specified by Class Counts I through VI. Whilst it may be necessary to divide affected debtors into distinct subclasses, all affected debtors fall under one or more groups to be formed under the Class Counts, hence the issues and interests of all affected debtors are in close proximity to those of Plaintiff McGee.

3. The factual and legal basis of Plaintiff’s claims are typical and commonly shared amongst other debtors similarly situated in that they are raised against the same defendant, based upon a business practice or policy adopted Defendant JPMorgan in administering and assessing