

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eighteenth Judicial District**

A. PERSONAL INFORMATION

1. Full Name: **Andrew J. Breuner**
 - a. What name do you commonly go by? **Andy**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes.**
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: **Belgrade City Court, 91 E. Central, Belgrade, MT 59714**
Phone: **(406) 388-3774**
5. Length of residence in Montana: **14 years**
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
Nov. 2002--Present	Gallatin Gateway	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>
Miramonte High School	Orinda, CA	June 1985	HS diploma
Univ. Cal. San Diego	La Jolla, CA	March 1990	B.A., Political Science
Santa Clara University	Santa Clara, CA	May 1993	J.D.

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

School of Law Merit Scholarship (Santa Clara)

School of Law Certificate of Excellence in Legal Analysis, Research and Writing (Santa Clara)

Graduated with distinction (*cum laude*) (UCSD)

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.

Yes--Senior Comments Editor

Expression by Association: Towards Defining an Expressive Association Defense in Unruh-Based Sexual Orientation Discrimination Actions, 33 Santa Clara L. Rev. 467 (1993)

Comment was addressed to the scope and interpretation of California's Unruh Civil Rights Act.

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.S. District Court—MT	Dec. 2003
Montana Supreme Court/State Bar MT	Oct. 2003
U.S. Court of Appeals (for the 9th Cir)	Feb. 1994
U.S. District Court-CA (Northern Dist.)	Jan. 1994
California Supreme Court/State Bar CA	Dec. 1993

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

Belgrade City Court Judge

Attorney (self-employed)

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>
City of Belgrade	City Judge	Mar. 2015-present
Law Office of Andrew J. Breuner	Owner	Oct. 2003-present
B&B (commercial/wholesale coffee roasting)	Owner/Buyer	Jun. 1999-Oct. 2002
Santa Clara University School of Law	Clinic Dir./Adjunct	Aug. 1998-May 1999; Aug. 1996-Dec. 1997
Office of the San Francisco Public Defender Intern/Volunteer Atty:		
	Adult Div.	Mar. 1996-July 1997
	Juvenile Div.	Aug. 1995-Feb. 1996
Squaw Valley Ski Corp.	Ski Instructor	Nov. 1994-May 1995
Crosby, Heafey, Roach & May (Now ReedSmith)	Litigation Assoc.	Oct. 1993-Nov. 1994

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

Between January and July 1998 I was researching and preparing a business plan for a commercial wholesale coffee roasting business. In the spring of 1998 I was offered a position at Santa Clara University with a start date in August 1998 (please see above).

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

I am currently the (full-time) city court judge in Belgrade, Montana. I continue to practice some criminal litigation in other counties. I also represent parents in dependency-neglect matters across the state. I do a small balance of transactional and business law.

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

■ *I was a litigation associate at a large insurance defense firm following my admission to the California bar which primarily included drafting briefs and memoranda, propounding and responding to discovery, and taking depositions in asbestos and other toxic tort matters;*

■ *I served as the full-time Director of the Santa Clara University Criminal Defense Clinic for two academic years in the late 1990's where I supervised law students in open court on a weekly basis and taught a weekly class in law office management;*

■ *I also taught the law school's criminal procedure course in the spring of 1999;*

■ *I represented clients in contested hearings before the California Department of Motor Vehicles (DMV). I have also assisted clients by resolving driver's license status issues with California DMV and Montana Motor Vehicle Division;*

■ *Upon my admission to the Montana Bar in 2003, I spent several years representing clients in a variety of civil law matters including personal injury, landlord-tenant, business law litigation, and construction law;*

■ *In the last 10 years, I litigated § 1983 actions in state and federal court;*

■ *I have represented and advised clients in contested matters before the Child Support Enforcement Division (CSED) and successfully litigated the issue of unlawful wage garnishments from parents without the required Title 41 district court hearing in dependency neglect matters;*

■ *I have represented both petitioners and respondents in contested order of protection proceedings;*

■ *I have drafted simple wills for a number of clients over the years and prepared powers of attorney for military families and others;*

■ *I have advised clients in education matters and before school boards and interdisciplinary teams;*

■ *I represented numerous VA clients (From the Vietnam era forward) with whom I have had to navigate the VA benefits system;*

■ *I have advised clients before the Sentence Review Division and Parole Board at various facilities including the Montana State Prison (Deer Lodge); the Montana Women's Prison; and START in Anaconda;*

■ *I have represented petitioners in contested post-conviction hearings;*

■ *I have spent extensive time at Montana's youth facilities and private youth facilities consulting with clients in Galen, Boulder, and Billings;*

■ *I have served as substitute defense counsel on the Gallatin County Treatment Court Program team on a number of occasions;*

■ *I have represented a number of clients over the years in involuntary guardianships and with mental health commitments. With respect to the latter, I am well familiar with the Montana State Hospital*

campus having spent many hours there consulting with patients and coordinating client business with the Warm Springs staff.

17. Do you regularly appear in court? **Yes.**

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

Federal court	1%
State or local courts of record	98%
Administrative bodies	1%
Other	0%

18. During the last five years, what percentage of your practice has been trial practice? **98%**

19. How frequently have you appeared in court? **12** times per month on average.

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

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

Civil (including dependency-neglect cases)	35%
Criminal	65%
Other	0%

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.

Defense and appellate counsel in *State v. Douglas Wayne Levanger*, 2015 MT 83, 344 P.3d 984

Jonathan Krauss, Assistant Attorney General, Helena, MT 49620, (406) 444-2026

Brandon Mills, Deputy County Attorney (now in private practice as Mills Law, P.L.L.C.)

2078 Stadium Drive, Suite 103, Bozeman, MT 59715 (406) 579-6121

Trial and appellate counsel in *In re TR1 and TR2*, 2012 MT 188N

Jonathan Krauss, Assistant Attorney General, Helena, MT 49620, (406) 444-2026

Lucy W. Hansen, Assistant Attorney General (now in private practice with Judnich Law Office)

2419 Mullan Rd., Missoula, MT 59808, (406) 215-2340

Hon. John C. Brown (MT Eighteenth Judicial District Court, Gallatin County) (406) 582-2150

<i>State v. Bronson, J.</i> (DC 2016-156AX)	Eric N. Kitzmiller Chief Deputy County Attorney Judge Guenther Memorial Center 1709 W. College, Ste. 200 Bozeman, MT 59715	(406) 582-3745	Trial date: NA
<i>State v. Jensen, R.</i> (DC 2013-006AX)	Eric N. Kitzmiller Chief Deputy County Attorney (Please address above)	(Please see phone above)	Trial date: NA
<i>State v. Mulkey, M.</i> (DC-2013-22C)	Deb Pratt Deputy County Attorney (Please see address above)	(Please see phone above)	Trial date: NA
<i>In re N.D.</i> (DN-2015-2C)	Deb Pratt Deputy County Attorney (Please see address above)	(Please see phone above)	Trial date: NA
<i>State v. Pedrazzi, R.</i> (DC-2014-110C)	Erin Murphy Deputy County Attorney (Please see address above)	(Please see phone above)	Trial date: NA
<i>In re S.R.D.</i> (DN-2010-16C)	Deb Pratt Deputy County Attorney (Please see address above)	(Please see phone above)	Trial date: NA
<i>In re T.S.</i> (DN-2010-16C)	Deb Pratt Deputy County Attorney (Please see address above)	(Please see phone above)	Trial date: NA
<i>State v. Vaydick, C.</i> (DC-2007-109C)	Eric N. Kitzmiller Chief Deputy County Attorney (Please see address above)	NA (Please see phone above)	Trial date: NA

Hon. DeeAnn Cooney (MT First Judicial District Court, Lewis and Clark County) (406) 447-8205

<i>State v. Ingold, R.</i> (BDC-2016-51)	Melissa Broch, Deputy County Attorney Ann Penner, Deputy County Attorney 228 Broadway Helena, MT 59601	(406) 447-8221 (406) 447-8221	Trial date: NA
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Hon. Brenda Gilbert (MT Sixth Judicial District Court, Park County) (406) 222-4130

State v. Jewart, J. Bruce Becker (406) 222-4150
(DC-2015-09; County Attorney
DC-2015-10; 414 E. Callender
DC -2015-56; Livingston, MT 59047
and DC-2015-77) Trial date: NA

State v. Marshall, J. Bruce Becker (Please see phone above)
(DC-2015-43) County Attorney
(Please see address above) Trial date: NA

State v. Randall Bruce Becker (Please see phone above)
(DC-2015-14) County Attorney
(Please see address above) Trial date: NA

In re Taylor, R. Bruce Becker (Please see phone above)
(DJ-2014-01) County Attorney
(Please see address above) Trial date: NA

State v. Wilcowski Bruce Becker (Please see phone above)
(DC-2015-32) County Attorney
(Please address above) Trial date: NA

Hon. Kurt Krueger (MT Second Judicial District Court, Silver Bow County) (406) 497-6410

In re O.R. and J.R. Karen Kane (406) 329-1564
(companion causes Assistant Attorney General
DN-2013-761; and 2677 Palmer St., Ste. 300
DN—2015-772) Missoula, MT, 59808
Trial date: August 2, 2016

Hon. Mike Menahan (MT First Judicial District, Lewis and Clark County) (406) 447-8205

State v. Roope, M. Katie Jerstad (406) 447-8221
(ADC-2016-49) Deputy County Attorney
228 Broadway
Helena, MT 59601
Trial date: NA

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Hon. James P. Reynolds (MT First Judicial District Court, Broadwater County) (406) 447-8205

State v. Benton, N. Cory Swanson (406) 266-9225
(DC-2014-21) County Attorney
515 Broadway St.
Townsend, MT 59644 Trial date: NA

State v. Rindal, D. Cory Swanson (Please see phone above)
(DC-2014-05) County Attorney
(Please see address above)

Hon. Mike Salvagni (MT Eighteenth Judicial District, Gallatin County) (406) 582-2140

State v. Allen, J.J. Eric N. Kitzmiller (406) 582-3745
(DC-2006-128B) Chief Deputy County Attorney
Judge Guenther Memorial Center
1709 W. College, Ste. 200
Bozeman, MT 59715 Trial date: NA

State v. Bullock, R. Eric N. Kitzmiller (406) 582-3745
(DC-2013-186B) Chief Deputy County Attorney
(Please see address above) Trial date: Feb. 11, 2015

In re C.M. Deb Pratt (Please see phone above)
(DN-2014-22A) Deputy County Attorney
(Please address above)

State v. Eisenstein, N. Chris Gregory (Please see phone above)
(DC-2014-297B) Deputy County Attorney
(Please see address above) Trial date: NA

In re G.K. and P.K. Deb Pratt (Please see phone above)
(companion causes Deputy County Attorney
DN-2015-4B and (Please address above)
DN-2015-5B) Trial date: NA

State v. Gilhousen, P. Eric N. Kitzmiller (Please phone above)
(DC-2012-179B) Chief Deputy County Attorney
(Please address above) Trial date: July 1, 2014

State v. Royster, D. Shannon Foley (670) 236-2980
Deputy County Attorney (Now Asst. U.S. Atty-Northern Marianas Islands)
P.O. 500377
Saipan, MP 96950-0377 Trial date: Oct. 7, 2014

State v. Silflow, Z. Erin Murphy (Please see phone above)
(DC-2014-298B) Deputy County Attorney
(Please see address above) Trial date: NA

State v. Smith, N. Eric N. Kitzmiller (Please see phone above)
(DC-2013-192B) Chief Deputy County Attorney
(Please see address above)

State v. Trevino, E. Chris Gregory (Please see phone above)
(DC-11-132B) Deputy County Attorney
(Please address above) Trial date: NA

Hon. Kathy Seeley (MT First Judicial District, Lewis and Clark County) (406) 447-8209

In re H.E. and A.E. Tara Harris (406) 513-1412
(companion causes Deputy County Attorney (now in private practice as Harris Law, P.L.L.C.)
CDN-2013-80; 825 Great Northern Blvd., Ste. 328
and CDN-2013-81) Helena, MT 59601 Trial date: May 2, 2014

State v. Kelsey, J. Luke Berger (406) 447-8221
(CDC-2015-133) Deputy County Attorney (Lewis and Clark County)
228 Broadway
Helena, MT 59601 Trial date: NA

Hon. Rod Souza (MT Thirteenth Judicial District Court, Yellowstone County) (406) 256-2901

State v. Dill, R. Ed Zink (406) 256-2870
(DC-2014-672) Chief Deputy County Attorney for Criminal Litigation
PO Box 35025
Billings, MT 59107 Trial date: NA

Hon. Gregory Todd (MT Thirteenth Judicial District Court, Yellowstone County) (406) 256-2901

State v. Dittmer, K. Juli Pierce (406) 256-2870
(DC-2014-880) Chief Deputy County Attorney
(PO Box 35025
Billings, MT 59107 Trial date: Oct. 4, 2016

Hon. Loren Tucker (MT Fifth Judicial District Court, Beaverhead County) (406) 683-3745

State v. Johnson, J. Jed C. Fitch (406) 683-3730
(DC-2014-3600) County Attorney
2 S. Pacific, CI. #2
Dillon, Montana 59725 Trial date: NA

In re O.R. and J.R. Mike Gee (Please phone above)
(companion causes Deputy County Attorney (Beaverhead County)
DN-2013-761; and (Please address above)
DN—2015-772) Trial date: NA

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

I represented a student in contested expulsion proceedings. During this period I have also advised clients with pending, contested matters before the Child Support Enforcement Division, Montana Department of Public Education and the Department of Labor and Industry.

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 taught a semester of criminal procedure as an adjunct (approximately twenty-five (25) (75 minute) lectures to approximately 80 second and third year law students) at the Santa Clara University School of Law for the Spring 1999 semester. As a city judge I have regularly given traffic law/court procedure presentations to the driver education program at Manhattan High School (Nov. 11, 2015; Mar. 22, 2016; and June 1, 2016). I was a guest presenter on the local criminal justice system to the Stephen's Ministry-Evangelical Free Church (Bozeman, MT)(Winter 2011); and a panel member addressing law enforcement contacts and youth to Truckee-Tahoe (CA) Alternative High School students (Spring 2000).

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.

State Bar of Montana (since 2003)
State Bar of California (since 1993)

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.

Gallatin Valley Love In the Name of Christ ('Love INC.'); Member-Board of Directors
(Jan. 2012-Dec. 2014).

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.

You cannot understand your local community or be vested in it in any meaningful way unless you serve it some capacity. It is human nature to serve---and our lives are more fulfilling when we do. Service to one's community is also restorative in the offender context. Finally, service teaches humility which fosters good character.

My own practice is to serve my community professionally (both as an attorney and judge); through membership on non-profit boards (KOFK Catholic Radio; Petra Academy, and Love INC); volunteering at church and school activities; and through interpersonal outreach to those in need (e.g., providing temporary housing; visiting home-bound seniors; moving projects, snowplowing etc.).

I also support and encourage my wife in her public service which includes her active involvement in church and as a board member of the Manhattan Christian School.

Our family has been the beneficiary of the generosity of others in times of need. I believe that the giver benefits as much as the recipient and sometimes more. That has certainly been true for me relative to those I have been privileged to serve.

E. PROFESSIONAL CONDUCT AND ETHICS

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

No.

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

No.

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

-Minor in Possession of Alcohol (Bay (Richmond) Municipal (CA) Ct. May 1985/plead guilty/fine

-Disturbing the Peace (Placer County Justice (CA) Ct. July 1985/plead guilty/fine

-DUI (Walnut Creek-Danville Municipal (CA) Ct. May 1986/plead guilty/fine; probation; community service; required classes.

These misdemeanor offenses occurred during and after my senior year in high school and (the DUI) during my freshman year of college. The above-referenced courts no longer exist as limited jurisdiction courts--- they were consolidated into the state's superior courts in 1998. My offenses all involved the illegal, irresponsible use of alcohol and I regret them tremendously. These events were

very impactful on me and still are. They do play a role in how I interact with young people with respect to alcohol use. I do not object to responsible, social drinking----but I have not consumed alcohol since 1995.

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

No.

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

No.

F. BUSINESS AND FINANCIAL INFORMATION

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

My wife and I owned and operated B&B Finest Custom Coffees in Truckee, California from June 1999 to October 2002. We were an Organic Crop Improvement Association (OCIA) certified organic roasting and packaging (for wholesale) facility. I was involved in every aspect of the business from green/raw coffee purchases at the Port of Oakland to merchandizing at grocery store and restaurant accounts in the San Francisco Bay Area and Reno-Tahoe area. I worked part-time as a ski instructor at Squaw Valley during this period and also (earlier) during the 1994-1995 ski season. I took on a part-time night shift milking cows at a local dairy over the winter of 2008.

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

I am a sole practitioner and the owner of my law office. I would cease my practice upon appointment. I am already in process of reducing active cases because of my current city judge

position. I have also assessed my active caseload which is comprised of assigned counsel matters---all matters which, if I am appointed (and if the cases are still unresolved) I believe can be re-assigned to new counsel in a proper, non-prejudicial manner.

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

None.

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

None.

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

Yes.

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

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

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 have regularly engaged in legal research and writing over this period. I have prepared in excess of 75 briefs and at least 25 sets of proposed findings and conclusions. The research and writing was entirely mine.

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

I prepare orders on a daily basis as a city judge. I regularly prepare orders of protection. As an attorney, I have prepared approximately 400 motions and 300 proposed orders during this period. I have drafted both demand letters and responses to demand letters in civil matters. I have advised a business client on proposed contracts and employment agreements. I also helped to prepare bylaws for a private school and mission statement for a non-profit organization.

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.

Attached (with some name changes to protect party and witness privacy)

48. What percentage of your practice for the last five years has involved research and legal writing?
50 %

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

Yes to both. And Fastcase.

H. MISCELLANEOUS

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

My wife, Susan Beth Breuner, is the center of my life. We have a 16 year old son who enriches our lives tremendously. Our Christian faith is an integral part of our family life. We have been part of the same weekly Bible study group for over 12 years. I enjoy bird hunting, fishing and other outdoor activities with my son. He also competes nationally in karate----so my wife and I have enjoyed the travel and fellowship with other families associated with his competitions. My father served on a USAF (SAC) bomber crew in the 1950s and inspired in me a lifelong interest in military history. I also build scale model aircraft. I am an avid fan of Stanford football from childhood and still follow games on their student operated radio station (KZSU). I also grew up with the Raiders, Athletics and Warriors---and I closely follow the successes (and failures) of those teams. Our family raises chickens and sheep---and I have named most of them.

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

I worked for the same landscape nursery business (McDonnell Nursery in Orinda, California) from my sophomore year of high school through college on both a full and part-time basis (I was accepted into Cal Poly's ornamental horticulture department but went a different route). I also did landscape maintenance work on my own during this time. I did construction work for a commercial contractor in downtown Oakland and general maintenance work for a manufacturing/industrial park the summer after high school graduation. I did not work during law school except for a summer associate position with Crosby, Heafey, Roach and May (now ReedSmith) in Oakland following my second year. My work at the firm both during and after law school largely involved insurance defense in the areas of

asbestos and other toxic tort litigation. The balance of my work history is as described in nos. 12 and 37 above.

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

I have always met the minimum required by the Montana State Bar, generally rendering approximately 60 hours a year.

Examples of this work includes:

■ *Advising non-profits in my capacity as a director (I have served in this capacity for 9 of the last 12 years);*

■ *Consulting with school administrators with regard to school policy issues;*

■ *Advising clients with respect to contested disciplinary and licensing matters;*

■ *Providing representation to petitioners and their families in abusive relationships in contested order of protection proceedings;*

■ *I have also provided cost free representation to individuals who were self-referred or were referred to me by different individuals or organizations and who were unable to pay for a private attorney.*

These services included extensive consultation and advice, as well as actual representation of clients in criminal defense matters and post-conviction proceedings. As a recent example, I represent a (pro bono) Department of Corrections inmate I first represented as assigned counsel ten years ago in litigating a jurisdictional issue in district court.

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

■ *My (now) 85 year old high school English literature teacher, Frank Thomas, helped me to develop my own social conscience. I remain in regular contact with him. He drew from his life experiences as a pastor and chaplain at San Quentin State Prison, as well as teaching classic literature, to instill in me and my classmates the importance of challenging the biases and stereotypes that are ingrained in our culture and justice system;*

■ *I was a high school and college student during Pope John Paul II's papacy of the 1980's and at the height of Archbishop Desmond Tutu's anti-apartheid efforts in South Africa. The public ministries of both men illuminated for me principles of human dignity and social justice our justice system is designed to respect and protect;*

■ *My college internship with the Public Defender at San Francisco's juvenile detention center at the height of the free base cocaine/'crack' epidemic of the late 1980's was profoundly impactful. It exposed me to the interplay between the juvenile justice system, a marginalized inner-city youth population, and how chemical dependency impacts the individual, the family, and the community.*

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

A good district court judge is thorough, decisive, pragmatic and respectful of the parties, court staff, and others in the courtroom. Thoroughness promotes the accurate application of the law to well-understood facts. Decisiveness promotes efficiency in case-handling and instills confidence in the court. Pragmatism holds parties' accountable for problem-solving and reduces procedural delay. A good district court judge does not tolerate bullying. Rather, he or she promotes civility and order in the

courtroom by treating those with business before the court with professional courtesy and kindness, and by providing clear expectations for courtroom conduct.

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

The conscientious application of case precedent ensures consistency and fairness in resolving contested issues. The principle of stare decisis is properly balanced with flexibility in the law when an established body of authority is applied in a novel way or to a new situation in a manner which is lawful, rational and consistent with legislative intent and sound public policy. Ultimately, the law is about safeguarding human dignity---that is, the law serves humanity. If the application of established law comes to violate human dignity then a measured exercise of flexibility may be necessary to diverge from precedent and return to deeper constitutional grounding or even natural law principles that are incorporated into a new line of authority respectful of societal customs and values.

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

I am strongly motivated to serve my community and our justice system in that position for which I am best-equipped as a legal professional. At this time and at this stage in my legal career, I believe that position is the district court judicial seat being vacated by the Hon. Judge Mike Salvagni. I am particularly excited about this vital role because I know the Eighteenth Judicial District is comprised of professionals and practices committed to high standards. Judge Salvagni has had much to do with that. As a judge, I am also very interested and motivated to serve a broader scope of legal needs by utilizing and applying an expanded area of the law, which a district court position requires.. Additionally, I have thoroughly enjoyed the relationships that I have formed over the last twelve years in our law and justice

community and this position provides an opportunity to enrich those relationships and grow them in a manner that serves the court and community well.

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

I am very privileged to have participated professionally in our nation's justice system. I most proud of situations where I have been able to provide a measure of comfort and guidance to clients in difficult circumstances. I also believe I possess a unique ability to work well with clients who have presented with particularly challenging mental health needs—sometimes after having had a number of prior attorneys. Finally, I believe the dependency-neglect matters are the most important cases we attorneys litigate and I have been privileged to advocate for clients in these difficult proceedings.

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

I believe that applicable information is fairly disclosed in my other responses.

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 am currently a judge and have judicial experience going back over two years. In that time I have demonstrated relational skills and a temperament that is well suited to the bench.

Over the past 13 years I have observed the Hon. Judge Mike Salvagni's extraordinary contributions to our courts and community. Working with Judge Holly Brown and Judge John Brown, Judge Salvagni leaves a legacy of standards, practices and resources that I believe set our judicial district apart from all others in Montana. I believe our district possesses a 'federal court' standard of professionalism. I appreciate and understand the practices and resources that sets us apart and, as a district court judge, would work to promote the continuation of these practices. I have practiced in no

fewer than 20 different courts across the state and I am able to draw from these experiences to sustain and advance best practices here.

My unique experience, both as a judge and as an attorney, have brought me a solid understanding of the relatively generous court resources available in our judicial district including a relatively new detention facility, Court Services, the Victim Assistance Program, the GAL program, Alcohol and Drug Services and a host of other non-profit resources like HRDC, Haven, AA, Life Recovery, and many others. I have spent literally hundreds of hours between no less than 15 detention facilities across the state. I know the conditions and I have an appreciation for the work the professionals do at these facilities---especially at the Gallatin County Detention Center. I have also trained and practiced in civil litigation matters, propounding discovery and discovery responses, taking depositions, and participating in mediations. Between and civil and criminal matters, I have participated in hundreds of negotiations to settle cases or contested matters within cases. This range of experience as well as my temperament and character are distinctively well suited to meet the demands of the district court.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 18th 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.

17 September 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 Wednesday, September 21, 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

BELGRADE CITY COURT, GALLATIN COUNTY, STATE OF MONTANA
91 E Central, Belgrade, MT 59714 406.388.3774 406.388.3779-fax

STATE OF MONTANA, CITY OF BELGRADE vs. John A. Doe, <div style="text-align: right;">Defendant.</div>	Case No: TK-2015-0000 <div style="text-align: center;">ORDER</div>
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On August 5, 2016 defendant John A. Doe (“J.D.”) filed his Motion to Dismiss on Lack of Probable Cause.

Timely response and reply briefs were filed.

The Court is fully advised and prepared to rule.

BACKGROUND

Belgrade Police Officer John Owens filed his Affidavit and [Proposed] Order Re: Probable Cause/Complaint on September 20, 2015.

In his affidavit, Officer Owens alleged that in the early morning hours of September 20, 2015, he responded to a vehicle crash at the Flying J truck stop. The reporting party (“R.P.”), a truck driver, claimed that another truck driver had hit his truck but denied it at the scene.

R.P. explained that he had been asleep in the sleeper portion of his parked rig when he was awakened by something striking his vehicle. He then observed the other truck driver, later identified as J.D., park next to his truck and examine the hood.

When R.P. confronted J.D., J.D. denied causing the collision and retreated to the sleeper portion of J.D.’s truck.

Upon arrival at the scene, Officer Owens observed obvious damage to the front portion of R.P.’s truck. He also observed other physical evidence consistent with J.D.’s truck striking R.P.’s truck including paint transfer between the two vehicles.

Officer Owens awakened J.D. J.D. denied striking R.P.’s truck or even talking to him. He admitted that he had been drinking but was unable to provide details. Officer Owens advised J.D. of his rights per *Miranda* and J.D. waived them and agreed to talk to Officer Owens without

an attorney present. He was unable to provide a consistent timeline with respect to his arrival at the Flying J parking area. Officer Owens also noted that the hood of J.D.'s truck was still warm which he believed was inconsistent with J.D.'s claim that he had been parked there all night.

Officer Owens concluded that J.D. was not being truthful.

Officer Owens cited and arrested J.D. for obstructing a peace officer (§ 45-7-302, MCA); failure to notify law enforcement of accident by quickest means (§ 61-7-108, MCA); and failure to identify self to other party involved in accident (§ 61-7-105, MCA).

Following review of the affidavit, the Court dismissed (without prejudice) the Title 61 offenses for lack of probable cause.

The Court found probable cause with respect to the City's obstructing peace officer complaint.

The dismissed Title 61 charges were later refiled under new citations. Those citations were accepted for filing and are pending under a separate case number (i.e. TK-2015-000).

DISCUSSION

J.D. argues that the constitutionally mandated probable cause standard requires dismissal of the obstructing charge. J.D., citing *State v. Barnaby*, 2006 MT 203 and other authorities, states that the Court should apply the probable cause standard to the "sufficiency" of the obstructing charge.

J.D. also maintains that there can be no probable cause here because he complied with all of Officer Owens' requests and thus did not hinder the investigation (even agreeing to speak further after being advised of his rights). J.D. points out that police investigations necessarily involve assessments of credibility and different accounts of events. The fact that the investigating officer finds one person's account more credible than another's does not justify the conclusion that the former party has obstructed the officer within the meaning of § 45-7-302, MCA.

J.D. argues that credibility determinations are ultimately the province of the trier-of-fact.

Additionally, J.D. refers to the nature of the allegations, including J.D.'s cooperation at the scene, and requests that constitutional and societal imperatives support the Court's exercise of discretion to dismiss the charge in furtherance of justice pursuant to § 46-13-401, MCA.

J.D. also suggests that dismissal is appropriate because the citation is facially defective given the “conclusory” nature of the citing language (relative to the pleading requirements in § 46-11-401(1), MCA) in Officer Owens’ complaint and in consideration of the presumption of innocence.

Finally, J.D. maintains that the allegations of obstructing an investigation that lead to multiple citations will necessarily lead to a “trial within a trial.”

The State responds that the alleged facts would “warrant a reasonable person to believe” (citing *Hulse v. Department of Justice*, 1998 MT 108) that J.D. was deliberately lying in an attempt to obstruct Officer Owens’ investigation.

The State also argues that the charge of obstruction does not require that the State prove that the investigation was “actually impaired” ----- but rather that it is only necessary to show that defendant made an effort to do so and was aware of his conduct.

From these arguments, the Court observes three (3) potential bases for dismissal: 1) the State’s complaint fails to satisfy the minimum pleading requirements of § 46-11-401(1), MCA; 2) the alleged facts do not satisfy the probable cause standard; and 3) dismissal in furtherance of justice is an appropriate exercise of discretion in this case (and which exercise of discretion would include consideration of the potential danger of a “trial within a trial”).

The Court addresses each of these:

Form of Charge

According to § 46-11-401(1), MCA, the charge must be:

in writing and in the name of the state or the appropriate county or municipality and must specify the court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

The complaint here addresses all of the particular requirements in § 46-11-401, MCA. The charge is not conclusory---it identifies the offense and as well as the how (i.e., “by providing false information about crash”), when, and where of it. The complaint satisfies the constitutional

requirement that the accused be informed of the “nature and cause of the accusation.” See *State v. Barker* (1993), 260 Mont. 85, 88, 858 P.2d 360, 362 citing U.S. Const., Amend VI and Mont. Const. Art. II, § 24.

The charge is sufficient as to form.

Probable Cause

The Court agrees that probable cause is the appropriate standard for assessing the sufficiency of the charge. See *Barnaby*, supra (acknowledging purpose of standard as to integrity of charges); see also *State v. Ditton*, 2009 MT 57, ¶ 28 (stating that probable cause to arrest is the standard for determining the lawfulness of a notice to appear) and § 46-11-110 (if affidavit filed, examination for probable cause required for filing of charge).

In this case, the court made an affirmative probable cause determination as to the obstructing charge on September 20, 2015 based on Officer Owens’ affidavit. So J.D. is effectively asking the court to reconsider that determination.

For the Court to accommodate contested hearings on the issue of probable cause with respect to misdemeanor charges would be tantamount to introducing preliminary hearings into City Court proceedings----a greater degree of due process, in practice, than is afforded to felony matters.

That does not mean that such a hearing should never happen----either because the Court believes that requested reconsideration is appropriate and would be well informed by an evidentiary hearing or because of collateral information (e.g., evidence of false information) in the affidavit of probable cause that is appropriately addressed in a hearing pursuant to *State v. Worrall*, 1999 MT 55 (modifying standard in *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed. 2d 667 (1978)).

Probable cause exists “if the facts and circumstances within an officer’s personal knowledge . . . are sufficient to warrant a reasonable person to believe that another person is committing or has committed an offense.” *City of Missoula v. Iosefo* (2014), 376 Mont. 161, 330 P.3d 1180, 1182 quoting *State v. Williamson*, 1998 MT 199, ¶ 21.

Here, the Court finds that probable cause is satisfied in Officer Owens’ affidavit. That is, a reasonable person could certainly conclude based on Officer Owens’ alleged observations and

extended questioning on multiple issues that J.D. was making deliberate falsehoods and knowingly hindering a police investigation by impeding the officer's ability to make timely and accurate investigative findings.

On this note, the Court disagrees with the State that the mere 'awareness of conduct' is sufficient for the "knowingly" element or that it need not show an element of obstruction in the police investigation. Both a result-oriented definition of knowingly and actual obstruction must be proved beyond a reasonable doubt (in addition to the requisite *mens rea*). See *City of Kalispell v. Cameron*, 2002 MT 78, ¶¶ 9-13 (conviction for obstructing reversed and entry of acquittal ordered where prosecution could not prove the element of obstruction and district court had denied defendant's motion for directed verdict at trial); and *State v. Johnston*, 2010 MT 152, ¶¶ 10-12 (conviction for obstructing reversed where jury was not instructed on (and defense counsel failed to address) the result-oriented version of 'knowingly' which requires that the defendant was aware that it was "highly probable" that his conduct would obstruct the police investigation) citing *Cameron*, *supra*.

Here it is possible that the trier of fact could conclude that the investigation was not in fact hindered despite the fact that Officer Owens' found J.D.'s statements untruthful and/or that J.D. did not knowingly intend to obstruct the investigation. See *Johnston*, *supra*, at ¶ 14 (dishonest answer to police question by itself not sufficient for obstructing charge) citing *Cameron*, *supra*.

But that consideration is for the jury and does not defeat the Court's conclusion that probable cause exists here.

Furtherance of Justice

Based on the findings above and because the Court finds that J.D. has been afforded the due process to which he is entitled to under the law (including the presumption of innocence), the Court declines J.D.'s invitation to dismiss in furtherance of justice pursuant to § 46-13-401, MCA.

Additionally, while J.D.'s concern that having a "trial within a trial" is valid, that can be avoided here where Title 61 charges were filed separately and consolidation is not required. Additionally, appropriate *in limine* motions and instructions to the jury can address issues of any

