

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eighteenth Judicial District**

A. PERSONAL INFORMATION

1. Full Name: **DANIEL J. ROTH**

a. What name do you commonly go by? **Dan**

2. Birthdate: [REDACTED]

Are you a U.S. citizen? **Yes**

3. Home Address: [REDACTED]

Phone: [REDACTED]

4. Office Address: **2417 W. Main Street, Suite 2
Bozeman, Montana 59718**

Phone: **(406) 586-8615**

5. Length of residence in Montana: **26 years**

6. Place of residence for the last five years: **Bozeman, Montana**

B. EDUCATIONAL BACKGROUND

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

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Benilde-St. Margaret's	St. Louis Park, Minnesota	1976	HS Diploma
St. John's University	Collegeville, Minnesota	1980	B.A.
Wm. Mitchell College of Law	St. Paul,	1985	J.D.

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

Relevant to this Application I was part of a two person team that was the ATLA National Student Trial Advocacy Competition Regional Champion and runner Up National Finalist in 1984. This competition involved a "mock" trial from opening statements through final arguments, together with the preparation of trial memoranda. We advanced through the local competition, and won the regional competition argued at the 8th Circuit Court of Appeals in St. Louis, Missouri. The national competition was held in Washington D.C. and we were ultimately defeated by the national champion.

Multiple awards for football 1972-76

Multiple awards for wrestling 1972-76; captain 1975-76

All-State Rugby player 1980-85

Martindale-Hubbell rated AV Preeminent, Peer Rated for Highest Level of Professional Excellence

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

No.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

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

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
State of Montana	1991
Montana Federal District Court	1991
8th Circuit Court of Appeals	1986

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

Daniel J. Roth, P.C., Sole Practitioner

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>
Hennepin County District Court, MN	Law Clerk	1982-1985
Austin & Roth Minneapolis, MN	Associate	1985-1988
Lundquist & Roth Minneapolis, MN	Partner	1988-1991
Kommers & Roth Bozeman, Montana	Partner	1991-1998
Daniel J. Roth, P.C.	Sole Practitioner	1999-present

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

I have been employed continuously.

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.

For the first 20+ years of my legal career my primary practice focus was providing quality trial work for my clients. The cases I handled involved personal injury representation for either plaintiffs or defendants, which comprised approximately 80% of my litigation practice. These cases involved automobile, commercial, and home owner liability claims. Also during that period I handled criminal and domestic relations litigation matters.

Beginning in 2003, I began serving as mediator in family law and general civil litigation matters. I have served as a mediator in approximately 650 cases. I find mediation work to be challenging, interesting, and rewarding. I am presented with diametrically opposed positions and arguments as well as diverse personalities. I enjoy a reputation of being a very capable and successful mediator who treats all parties and counsel with respect, with the ability to get to the heart of the matter to assist the litigants in reaching a resolution. Although a mediator does not make any binding decisions, a successful mediator must sift through the factual and legal arguments made by the parties and provide a perspective as to what a likely outcome might be for each party, should the matter proceed to trial.

Approximately 60% of my current work is as a mediator, the remaining 40% of my practice is handling family and criminal matters and general civil litigation.

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

**Adjunct Professor, Wm. Mitchell College of Law
Civil Practices Skills Clinic 1987-1989**

I was appointed by the State of Minnesota, Fourth Judicial District Court to serve as an eminent domain commissioner from 1986-1989. In this capacity I acted as the chairperson of a three member panel charged to determine the appropriateness and necessity of governmental taking of private property for the expansion and construction of Interstate 394 in Hennepin County, Minnesota. As the chair I presided over evidentiary hearings on no less than 30 separate cases brought by the State of Minnesota and/or aggrieved land owners.

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

Mediation and general litigation.

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

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

Federal court	0%
State or local courts of record	98%
Administrative bodies	2%
Other	

18. During the last five years, what percentage of your practice has been trial practice? **40%**

19. How frequently have you appeared in court? **Eight (8) times per month on average.**

20. How frequently have you appeared at administrative hearings?

My administrative hearing work has declined in recent years, although I still handle occasional cases before the Child Support enforcement Division and the Montana Department of Labor and Industry Professional Licensing Board.

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

Civil	90%
Criminal	10%
Other	0%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases. **No.**

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

Approximately five (5).

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

Approximately thirty (30).

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.

IN RE THE MARRIAGE OF KELLY and CAMP

**Montana 6th Judicial District Court, Park County Cause No. DR 14-40
Judge Trial on July 20-22, 2016**

**Opposing Counsel: Attorney Kevin S. Brown, PAOLI & BROWN
116 W. Callendar, Livingston MT 59047
Telephone: (406) 222-4420**

**Presiding Judge: Hon. Brenda R. Gilbert
Telephone: (406) 222-4130**

IN RE THE MARRIAGE OF ALTHANS

**Montana 18th Judicial District Court, Gallatin County Cause No. DR 15-156B
Judge Trial on December 2 and 16, 2015**

**Opposing Counsel: Christopher J. Gillette
11 E. Main Street, Suite C, Bozeman, MT 59715
Telephone: (406) 582-7918**

**Presiding Judge: Hon. Magdalena C. Bowen, District Court Standing Master
Telephone: (406) 582-2156**

IN RE THE MARRIAGE OF SHELDON and CRABTREE

**Montana 18th Judicial District Court, Gallatin County Cause No. DR 12-212A
Judge Trial on October 30, 2015**

**Opposing Counsel: P.Mars Scott / Ryan A. Phelan
P.O. Box 5988, Missoula, MT 59806
Telephone: (406) 327-0600**

**Presiding Judge: Hon. Magdalena C. Bowen, District Court Standing Master
Telephone: (406) 582-2156**

IN RE THE MARRIAGE OF BIDEGARAY

**Montana 6th Judicial District Court, Park County Cause No. DR 13-63
Judge Trial on December 3, 4, and 5, 2014**

**Opposing Counsel: Dennis Munson / Kasting Kauffman & Mersen
716 S. 20th Avenue, Suite 101, Bozeman, MT 59718
Telephone: (406) 586-4383**

**Presiding Judge: Hon. Brenda R. Gilbert
Telephone: (406) 222-4130**

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

My experience has involved claims before the Department of Labor and Industry involving wrongful termination, sex discrimination or fair labor standards allegations. I have represented individuals in administrative hearings involving the Child Support Enforcement Division. I have also appeared before the Montana Department of Labor and Industry, Montana Board of Behavioral Health, Business Standards Division regarding complaints made against licensed counselors and therapists.

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.

January 12, 2001, *Insurance Law Update: Don't Litigate Without It*, Montana Trial Lawyers Association. I presented a lecture and written outline regarding tavern keeper liability. I was requested to speak at the Trial Lawyers seminar after successfully litigating a case against a Bozeman tavern which resulted in the largest personal injury verdict to date in Gallatin County history (\$1.16 million).

February 25, 2005, Annual Bench/Bar CLE, I was requested to moderate the State Bar Annual Bench/Bar CLE. I also participated as a panel member on the topic of *What Happened to the Contemplative Profession and Why am I in This Pressure Cooker?*

D. PROFESSIONAL AND PUBLIC SERVICE

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

Montana State Bar Association 1991 – present

Gallatin County Bar Association, Director 1999 – 2000

Lawyers Helping Lawyers 2003 – 2006

**Member of the Montana State Bar Association
Judicial Relations Committee** 2003 – present

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.

Valley View Golf Club Board of Directors Board Member 2013 – present

President 2016

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

In 2006 I ran for Gallatin County District Court Judge and was defeated in the general election by the Honorable Holly Brown.

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

We have a history of public service in my family too lengthy to include here. I would be happy to share that history with the commission if asked. It is important to me to carry on that family tradition.

I believe members of the legal profession have an obligation to be publicly involved in a positive manner. As a member of a visible profession that often garners press coverage, I have endeavored to represent the legal profession to all of those I have come into contact with by exhibiting honesty, integrity, respect and compassion. I am honored when potential clients contact me upon referral from former clients or members of the general public, with whom I am not familiar, because of my reputation for being a zealous and effective advocate.

I volunteer my time to local non-profits and legal services organizations. I was on the THRIVE Board of Directors from 2006 through 2008. I was on the board of the Gallatin County

CASA/GAL Program from 2010 through 2013. I provide legal advice at the monthly clinic put on by the Gallatin Legal Assistance Clinic. I also volunteer at the Community Café, an HRDC program providing “pay as you can” meals to all who walk in.

The local victim advocate/battered women’s network (Haven) is aware of my availability at any time, to serve as legal counsel, pro bono, to individuals in abusive relationships who request protection. I have been called upon repeatedly over the years to counsel and appear in court with these individuals.

I serve in the Gallatin County Pro Bono Project and have taken referrals on those cases. I also donate my legal services, on a pro bono basis, to individuals who contact my office and indicate they are unable to afford legal representation. I typically do not charge a fee for domestic relations cases involving abuse. I do not take a fee for representing parents in adoption proceedings.

If appointed to the bench I will continue in the positive presentation of the legal profession through my actions on the bench and through service to various committees, projects and local agencies.

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.

In 1993 I was arrested for DUI, plead guilty at my initial appearance and was convicted and sentenced in the Gallatin County Justice Court. I served a mandatory 24 hours in jail, was fined and required to attend the ACT course. My driver’s license was also suspended as required by law. As a result of that experience I obtained an increased awareness of the impact that chemical use and dependency has on individuals and society as a whole. I became active in Lawyers Helping Lawyers and have also worked with and mentored many individuals who are struggling or coping with chemical dependency issues upon referral from the State Bar and otherwise.

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.

Since 2003 through the present I have served as a mediator at the request of counsel or appointed by the court in litigated matters. Over the past 13 years I have mediated approximately 650 cases.

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.

DANIEL J. ROTH, P.C. I am the president and sole shareholder of this corporation which is my legal services office.

TWO-FOURTEEN, L.L.C. I am the sole member of this limited liability company which owns the office where my practice is currently located.

Each of these positions will be relinquished as necessary if I obtain appointment to the judicial office.

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

As a sole practitioner I have been personally responsible for all aspects of legal research and writing necessary in my busy litigation practice. I have not relied on associates or others to perform that research or writing.

My legal research and writing involves briefing for summary judgment, discovery motions, motions to compel, motions in limine, motions to suppress, motions to dismiss, post verdict and post judgment issues and proposed findings of fact and conclusions of law. I have also researched and drafted “non-standard” jury instructions, trial memoranda and appellate briefs.

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

I have drafted numerous real estate deeds of conveyance, promissory notes, trust indentures, buy-sell agreements, business formation documents, articles of incorporation, shareholder agreements, etc. I have prepared wills, living wills, and durable powers of attorney. I have also prepared non-competition agreements and exclusive distributorship agreements.

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

See attached.

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

Approximately 50%

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

H. MISCELLANEOUS

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

I have been involved in athletics my entire life and enjoy weight training, skiing, golf, hiking and other outdoor activities. I enjoy leisure reading, fiction and non-fiction, movies with the family and family dinners.

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

Beginning in high school and continuing through my formal education, I had a variety of jobs in construction and related trades. I worked as a landscape laborer, concrete laborer and in a meat packing plant “lugging” sides of beef.

While attending night law school, I was fortunate to work full-time during the days as a law clerk in the Fourth Judicial District Court, County of Hennepin, State of Minnesota (see attached correspondence from Peter J. Lindberg, Judge of District Court, dated October 17, 1990). Prior to working with Judge Lindberg, I worked as an “on-call” law clerk in the Hennepin County District Court from November 1982 to February 1983, in a full-time capacity.

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

As referred to above, I have participated in the Gallatin County Pro Bono Project and have provided pro bono services at the request of the victim advocate/battered women’s network in Gallatin County. These cases typically involve domestic or family law situations, dissolution proceedings, orders for protection and related issues. I have also donated my time to the Gallatin Legal Assistance Clinic.

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 father, George, was a trial lawyer for nearly 30 years. Following service in the Pacific theater during WWII, my father attended college. He was recalled to the Korean conflict, leaving my mother and older sister and brother at home. Upon return to the States, he attended night law school and worked full-time while raising his young family. His work ethic was remarkable and my mother often told the story about how she convinced him that once he made partner in his firm, he could quit going to work on Sundays. My father never complained of his workload and he was often gone before I awoke and arrived home as I was preparing for bed.

My father had a deep and abiding respect for the legal system and the clients he served. I particularly remember a case where my father was representing a southern Minnesota farmer who had been sued by the parents of a neighbor girl who, while playing with the farmer's children, ran into a clothesline pole that had been on the place, in the same location, for many, many years. The farmer did not have insurance and was worried that he would lose his place if a verdict were returned against him as the young girl sustained some significant head injuries. My father received the telephone call from the court that the jury had returned its verdict finding that the farmer was not liable for that unfortunate accident. My father telephoned his client and gave him the news. As I listened to my father report the jury's verdict, he kept repeating "you're welcome" because of the farmer's repeated thank yous. We learned that the farmer was in tears because of the relief he felt. Most impressive, my father did not discuss this result as a "win." My father expressed real concern and compassion over the young girl's injuries, but no doubt conducted himself professionally and effectively in the representation of his client's interests. From that young age I was impressed with the enormity of the stakes with which the judicial system deals.

Fast forward 30 years from that event and I found myself representing an individual who had been brutally knifed in the back in a local tavern. I was told by countless individuals and lawyers that there was no hope of prevailing on this claim against the bar. Even if I were able to establish liability, the insurance coverage applicable to the bar had a "liquor liability exclusion." My client had no option but to reject the minimal settlement offer made by the defendant, as that would not cover the medical lien filed in the case. After a trial of several days, which I tried solely on a negligence theory to avoid the liquor liability exclusion, and nearly six hours of deliberation, the jury returned a verdict finding liability against the bar and awarding the largest personal injury verdict in Gallatin County history. That verdict was paid in full, with interest, within six weeks of its return. Despite the size of the verdict, I was humbled as my partially paralyzed client would gladly have endorsed the check over to anyone who could restore the use of his leg.

I continue to be impressed with the successes and concerned about the shortcomings of our judicial system. I am optimistic that continued positive improvements will occur in our system and am excited about being involved in that development locally. Ours is the best system in the world as people can air their differences, without violence, and obtain a result and, ideally, closure. In each of the above examples bad things happened to good people. I believe each is an example of a fair and just result through our legal system.

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

Broad based legal knowledge and a balanced temperament.

I feel that a good work ethic, unimpeachable integrity, fairness, respect for all, compassion, courage and decisiveness are invaluable to a sitting judge. Sharp thinking and a keen awareness of people and understanding the diverse needs and interests of those who appear before the court, including the witnesses, litigants, counsel, and jurors, are qualities that distinguish and serve a judge well.

A good judge recognizes that it is impossible to please everyone who brings their case before the court, and renders a fair, objective and well-reasoned decision even if it may result in disgruntled parties/attorneys or causes.

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.

I believe our system of justice depends on reliability, certainty and uniformity in the application of the law to the controversy pending before the court. However, our society is changing at a pace that boggles the mind. A judge may come with a complete package of intelligence, humor, legal knowledge, and the wisdom of Solomon, but will still face difficult and wrenching decisions, at a pace that will allow no time for delay. A judge must be guided by constitutional and statutory law and there will be many issues to decide in which the judge's personal opinion is irrelevant. Our basic system of justice is founded upon the separation of powers and a judge's role is to interpret and apply the law as enacted. However, if possessing compassion, a good work ethic, fairness and integrity, a sitting judge will be better situated to identify situations that require the necessary flexibility in the law and exercise sound discretion in arriving at a just, fair, and legally supportable result.

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

I believe it is my time to serve. I have greatly enjoyed serving my clients for 31 years. I have represented those injured by the carelessness of others as well as those who have made mistakes causing injury. I have represented victims of crimes as well as those accused of committing crime. I have represented parties in child custody disputes and have seen the shocking selfishness of parents ignoring their children's needs in abuse and neglect cases. I can communicate with corporate CEOs and those performing the most menial labor with equal effectiveness, respect and rapport. I know I can make a positive difference in presiding over the cases I am called upon to decide and, in so doing, cause people to be encouraged and positive about our legal system.

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

I am most proud of representing clients in some of the most important affairs of their lives. Helping people navigate through the judicial process and, most importantly, having them feel they had their “fair day in court” is the reason I became an attorney. I look forward to continuing this service from the bench.

During law school I worked from 8:00 a.m. to 4:30 p.m. five days a week and attended evening classes from 6:30 p.m. to 10:30 p.m. In my third year of law school I also participated in the ATLA National School Trial Advocacy Competition and took first place at the local level, first place at the regional level and was ultimately the runner up to the national champion.

I am requested by plaintiff and defense counsel to act as a neutral mediator and have the respect, trust and confidence of both plaintiff and defense attorneys. I have been retained by two district court judges to represent their interests.

I often receive referrals from previous adverse parties, indicating not only their trust in my ability, but their view of my fairness to them and the legal process.

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

My personal and legal background has been diverse. Although I have dealt with complex legal issues, I have often had cases that taxed my heart more than my brain. As a sole practitioner I am individually responsible for managing a very full and hectic caseload, conducting the necessary legal research and writing, administrating my staff, and meeting deadlines. I have handled all areas of the law that will come before me as a district judge, civil, criminal, probate, involuntary commitment, juvenile, etc. I enjoy have the respect of my fellow members of the bar and the reputation for being patient, respectful, intelligent, hardworking, fair, decisive, and of even temperament. I enjoy a happy and healthy home life with my family. I was selected as the captain and leader of my high school football and wrestling teams. I was captain and player coach for many rugby teams on which I have played, and have participated at a national level in that competitive sport. I believe I possess toughness of mind and body and the courage to make the right decision. I have a sense of purpose to serve my community and fellow citizens and recognize that there is no small, insignificant or unimportant person or matter that might come before me as a district judge of the Eighteenth Judicial District.

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?

First and foremost, I have extensive courtroom experience in a variety of legal matters. I am very comfortable in the courtroom, familiar with courtroom procedure, Rules of Evidence, and protocol and would be able to conduct a jury trial and otherwise preside over courtroom proceedings with relative ease and efficiency upon my appointment to the bench.

Equally important, I believe I have the temperament, decisiveness, and humility to be an effective district court judge. Respect is mutual, shared and earned. I will treat those in my courtroom with respect, fairness, and the dignity they deserve, and believe that I will receive the same, as that has been my experience in my legal practice and life.

I am highly motivated and possess a healthy appreciation for fair competition. I am a positive individual, quick to recognize the good in others. I realize that some individuals require a firm and decisive consequence in order to grow and make positive changes as a result of the action/choice that brings them before the court. I maintain that our children are our greatest asset and must be dealt with in a manner that will provide direction, encouragement, and support for their future.

This is my third application seeking appointment to the district court bench. In 2004, Judge Holly Brown was appointed. In 2005, Judge John Brown was appointed. In 2006, I ran against Judge Holly Brown. Judge Holly Brown and I recently conversed about that campaign. We also discussed the importance of the three district judges in Gallatin County being able to work cooperatively together. I believe that both Judges Holly Brown and John Brown would agree that the three of us would be able to cooperatively work together in managing the increasingly difficult caseload in Gallatin County.

Since 2006 I have often been asked by individuals and colleagues whether I would pursue a district court judgeship in the future. My answer was always a speedy reply, "no." Perhaps that was because there was not an opportunity available at the time of those inquiries. When Judge Salvagni announced his retirement, and the prospect of a judicial vacancy arose, I was once again asked by a number of individuals and colleagues if I would consider applying for the judgeship. I reflected earnestly upon why I did not again respond with a speedy "no." I believe that my experiences to date have prepared me for this opportunity to once again seek appointment to the district court bench. I enjoy the full support of my family, loved ones, many colleagues, and a great number of individuals in Gallatin County.

I am confident that my experience and success in a multifaceted practice, and my personal triumphs and setbacks, provide a broad and well-rounded perspective with which to serve the citizens and litigants of the Eighteenth Judicial District.

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.

31 August 2016
(Date)


DANIEL J. ROTH

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

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT



PETER J. LINDBERG
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487
(612) 348-4900

October 17, 1990

Committee on Character and Fitness
State Bar of Montana
46 North Last Chance Gulch
Box 577
Helena, MT 59624

Re: Daniel J. Roth Application to Montana Bar

To Whom it May Concern:

I have been a Trial Judge in the Fourth Judicial District since 1974. In February of 1983 I hired Daniel J. Roth to serve as my judicial law clerk. Mr. Roth worked in this capacity full-time until June of 1985. During this period of time Mr. Roth was attending evening law school classes at William Mitchell College of Law.

Mr. Roth was sworn in to the State Bar of Minnesota on October 18, 1985. I am personally aware that Mr. Roth has been engaged in the practice of law as a principal occupation from that date to the present.

Mr. Roth was an excellent law clerk. It was very apparent to me that he would be a success in the practice of law. During his tenor as my law clerk, Mr. Roth's intelligence, dedication, diligence, enthusiasm and humor served me well. I have been pleased to observe his continued professional success. I recommend Dan highly and am confident that he will continue to serve the profession of law admirably in the State of Montana. Minnesota's loss is Montana's gain.

Yours truly,

Peter J. Lindberg
Judge of District Court

PJL/sgr

<http://www.martindale.com/>

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http://www.martindale.com/Contact_Us/index.aspx



Daniel J. Roth

Member

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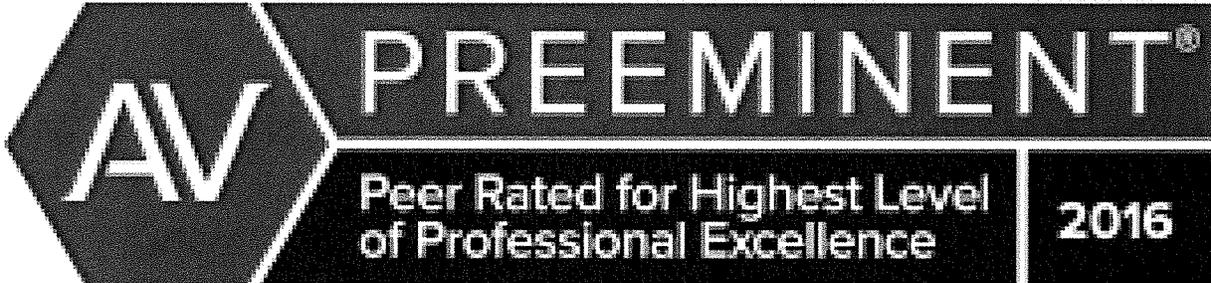
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Attorney for Respondent

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

IN RE THE MARRIAGE OF:)	
)	Cause No. DR 14-40
BRIDGET J. KELLY,)	
Petitioner,)	
)	RESPONDENT'S ANSWER BRIEF
and)	IN OPPOSITION TO PETITIONER'S
)	VERIFIED MOTION FOR
JOSEPH S. CAMP III,)	FAMILY SUPPORT
Respondent.)	
)	

Respondent above-named, through his attorney of record, Daniel J. Roth, submits the following Answer Brief in Opposition to Petitioner's Verified Motion for Family Support.

Presumably, Petitioner's Motion is premised on §§ 40-4-203 and 40-4-204, MCA. Under § 40-4-203, a court:

- (1) In a proceeding for dissolution of marriage ... may grant a maintenance order for either spouse **only** if it finds the spouse seeking maintenance:
 - (a) lacks sufficient property to provide for the spouse's reasonable needs; and
 - (b) is unable to be self-supporting through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

- (2) The maintenance order must be in amounts and for periods of time that the court considers just, without regard to marital misconduct, and after considering all relevant facts, including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to that party, and the party's ability to meet the party's needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet the spouse's own needs while meeting those of the spouse seeking maintenance.

Emphasis added.

Child support is governed by § 40-4-204, MCA. Of relevance here, the Court is to consider all relevant factors, including "the financial resources of the parents." § 40-4-204(2)(b), MCA. Further, the Court is to "determine the child support obligation by applying the standards of this section and the uniform child support guidelines ..." Petitioner does not provide a Montana Child Support Guidelines Worksheet in support of her Motion.

Petitioner's Motion seeks an order of this Court requiring Respondent to pay her \$3,000 per month in addition to making the monthly mortgage payments on the jointly owned home in which she resides, located at 520 S. 11th, Livingston. Petitioner does not break down her request between a maintenance figure and a child support figure.

It must be remembered that Petitioner has alleged, and Respondent has denied, a common law marriage. If the Court determines at the upcoming trial that there is no marriage, Respondent would owe no obligation to Petitioner for maintenance under § 40-4-203. On this basis alone, the Court should deny Petitioner's blended motion for "family support."

Petitioner is also unable to establish that she “lacks sufficient property to provide for [her] reasonable needs and is unable to be self-supporting through appropriate employment.”

Petitioner asserts that she is currently working 7.5 hours per day and earns \$19.40 per hour. Petitioner’s Affidavit, ¶ 12. This equates to 1,950 hours per year for an annual income of \$37,830. While it is unclear from her Affidavit as to whether Petitioner works 52 weeks per year or only 36 weeks (nine month school year) even assuming she just works those nine months, Petitioner’s income would be \$26,190. Petitioner does not provide her tax returns in support of her claimed income.

Petitioner also neglects to advise the Court of the income she is receiving, or is capable of receiving, under the Eugene C. Kelly Trust. As Gene Kelly’s daughter, Bridget is a beneficiary under this Trust. As set forth in the Affidavit of Respondent, filed contemporaneously herewith, he is aware through his work in the film industry that every single time Gene Kelly’s image is used in film, print, amusement parks, etc., there is a payment made to the Trust for those rights. Those rights are usually paid for each second that Gene Kelly’s image is “used and seen.” Respondent is aware that Gene Kelly’s image and voice was featured in the major Hollywood movie, *The Intern*, in a four minute scene. Further, Gene Kelly’s likeness and voice from the movie *Singin’ in the Rain* is featured at Walt Disney World in Disney’s Hollywood Studios, on The Great Movie Ride. Respondent’s Affidavit, ¶¶ 25-26.

Petitioner also does not account for the fact that she owns an undivided one-half interest under the Lois McClelland 2006 House Trust. That Trust owns a home located in Beverly Hills, California, conservatively estimated to have a value of \$1.5 million. Rental income for that

property is conservatively estimated in excess of \$4,000. Petitioner has apparently acquiesced in her brother living in that home rent free. *Id.*, ¶ 26.

Petitioner also overstates Respondent's income. Petitioner's Affidavit, ¶ 7. Petitioner claims that Respondent earned \$311,947 in 2013. In fact, he earned \$161,590. Petitioner claims that Respondent earned \$474,669 in 2012. In fact, Respondent earned \$282,540. Petitioner erroneously asserts that in 2011, Respondent earned \$217,700. In fact, Respondent earned \$165,339. See Respondent's Affidavit, ¶ 20. Respondent credibly asserts that he is capable of earning \$140,000 to \$200,000 per year. *Id.*, ¶ 18.

Petitioner is able to be self supporting through appropriate employment and could return to work in the film industry if she chose to do so. Respondent could adjust his out-of-town work schedule to coincide with Petitioner's out-of-town work schedule so that the minor child would continue to be well taken care of. Respondent's Affidavit, ¶ 28.

Petitioner has failed to carry her burden of proof that she lacks sufficient property to provide for her needs and is unable to be self-supporting through appropriate employment. Petitioner understates her financial situation and grossly overstates Respondent's income.

Petitioner also overstates her claimed monthly expenses in ¶ 14 of her Affidavit. Petitioner claims prescription expenses of \$50 per month, medical/dental of \$500 per month, and the minor child's school and extracurricular activities of \$200 per month. Prescription and medical/dental expenses should be covered through insurance. Respondent's Affidavit ¶ 16. In addition, Respondent is the one paying for the child's school and extracurricular activities. *Id.* Petitioner's other claimed monthly expenses also appear unreasonable, e.g., home maintenance:

\$500/month; vehicle maintenance: \$300/month; food: \$700/month; clothing: \$200/month; recreation/entertainment/travel: \$400/month; and personal allowances/incidentals: \$525/month. Petitioner may also be getting financial assistance from her boyfriend who resides with her off and on. Respondent's Affidavit, ¶ 15. If she is not, she should be.

Petitioner also impermissibly includes evidence of settlement discussions between her and Respondent from May 2013, in violation of M.R.Evid. 408. See Petitioner's Affidavit, ¶ 9, and Respondent's Affidavit, ¶ 21. Any alleged "agreement" arising from an e-mail exchange on May 13, 2013, should be stricken as not admissible to prove liability for a claim or its amount.

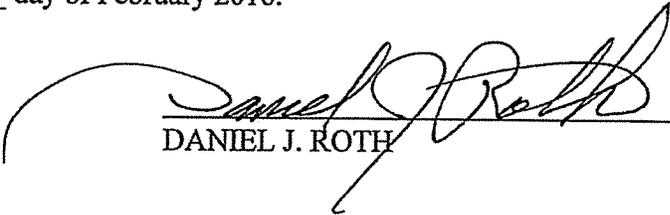
Respondent is willing to pay Petitioner child support in the amount calculated under the Montana Child Support Guidelines. Assuming that Petitioner works nine month's per year at her stated hours and hourly rate, she would be receiving wages of \$26,190 per year. Assuming Petitioner would receive income from the Gene Kelly Trust and rental income from the Beverly Hills property, a reasonable estimate of that additional taxable income is \$3,000 per month, for a total of \$ 36,000 per year. Attached hereto as *Exhibit 1* is a Montana Child Support Guidelines Worksheet utilizing these income figures for Petitioner and \$200,000 for Respondent. The health insurance premium, paid by Respondent, is \$600 annually. Respondent's Affidavit ¶ 16. Under the Montana Child Support Guidelines, Respondent's child support obligation would be in the amount of \$1,596.

Respondent agrees to pay child support in the amount of \$1,600 per month, on an interim basis, pending further discovery as to the actual income Petitioner receives or is capable of receiving. In addition, Respondent agrees to continue servicing the necessary expenses

associated with the mortgage, taxes and insurance on the jointly owned home at 520 S. 11th, the auto insurance on the jointly titled truck that Petitioner drives, and any agreed upon reasonable and necessary expenses for the minor child. Respondent's Affidavit, ¶ 29.

Accordingly, Respondent respectfully requests that the Court issue its order in conformity with the relief set forth herein.

DATED this 11th day of February 2016.



DANIEL J. ROTH

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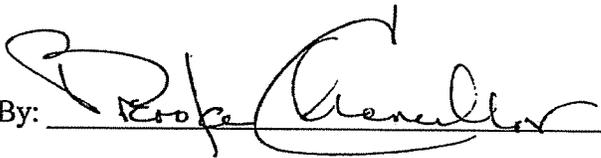
CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 11th day of February 2016, a true and accurate copy of the foregoing *Respondent's Answer Brief in Opposition to Petitioner's Verified Motion for Family Support* was served on:

Kevin S. Brown
PAOLI & BROWN, PC
116 West Callender
Livingston, MT 59047

jenn@paolibrown.com

via: U.S. MAIL E-mail Facsimile Hand delivery Other _____

By:  _____