

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Fifth Judicial District**

A. PERSONAL INFORMATION

1. Full Name: Matthew Lowery Erikson

a. What name do you commonly go by? Matt Erikson

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

3. Home Address: [REDACTED] Phone: [REDACTED]

4. Office Address: 3104 W. Broadway, Missoula, MT. 59808

Phone: 406-542-3186

5. Length of residence in Montana: 38 years

6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
02/2011-Present	Missoula	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>
Billings Senior High School	Billings, MT.	06/1977	H.S. Diploma
Ricks Collage	Rexburg, ID.	12/1981	Associates
BYU	Provo, UT.	12/1983	BA Communication
John Marshall Law School	Chicago, IL.	01/1993	J.D. Law

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

None.

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 Bar of Illinois	May, 1993
State Bar of Montana	October, 1994
9 th Circuit Federal District Court	October, 1999

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

Director of Legal Services, Collection Professionals Inc.
Interim County Attorney, Mineral County.

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>
Gary B. Freidman	Associate	1993-1994
Berkshire Mortgage Corp	In-house Council	1994
John Nudo Law Office	Associate	1994
Erekson Law Office	Owner	1995-2010
City of Laurel, Montana	City Attorney	2000-2001
Stillwater County, Montana	Deputy County Attorney	2006-2010
Collection Proffessionals	Director of Legal Services	2011-Present
Mineral County, Montana	County Attorney	09/01/2016-Present

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

NA

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.

Collections, FDCPA Compliance, 75%
Prosecuting felony and misdemeanor cases for Mineral County, 25%

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

Taught the Paralegal Certificate Course at MSU, Billings.
Have presented CLE Indian Law, Debt Collection, FDCPA Compliance.
Practiced Criminal Defense, Family Law and have maintained a general practice.

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

Collections, FDCPA.

17. Do you regularly appear in court? Yes.
What percentage of your appearance in the last five years was in:

Federal court	<u>0</u>	%
State or local courts of record	<u>75</u>	%
Administrative bodies	<u>0</u>	%
Other Non-Record	<u>25</u>	%

18. During the last five years, what percentage of your practice has been trial practice? 25 %

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

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

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

Civil	<u>80</u>	%
Criminal	<u>20</u>	%
Other	<u>0</u>	%

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

Yes, over the past five years I have appeared before the Montana Supreme Court twice.

-Decided in 2011, Sheryle Crasco vs. Credit Service Co., Inc, Supreme Court Case No. DA 11-029. I was the Attorney for the Appellee. The Attorney for the Appellant was D. Michael Eakon, currently of 406 Law, Billings, Montana 59103, 406-969-6003. This was a debt collection issue interpreting a statute under Montana Law.

-Decided in 2015, Shannon Amour vs. Collection Professionals *et al*, Supreme Court Case No. DV-2012-024. I was the Attorney for the Appellee. The Attorney for the Appellant was Terry Wallace, Esq., P.O.Box 5566, Missoula, Montana 59806, 702-207-8105. This was a FDCPA violation claim.

23. State the number of jury trials that you have tried to conclusion in the last ten years. 6
24. State the number of non-jury trials that you have tried in the last ten years. 50
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.

The majority of my cases in the past two years have been against *Pro Se* litigants.

Kirk Krutilla
407 Alder
Superior, MT. 59872
406-822-4428
(various felony and misdemeanor matters while serving as Deputy County Attorney)

Charles W. Schuyler
103 South 5th Street East
Missoula, MT. 59801
(in regards to MacAlister vs. MacAlister)

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

I have represented people in two cases of Child Support Negotiations.

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.

-Indian Law CLE, 2000, spoke regarding Indian Child Welfare ACT
-2005, various church groups regarding wills and estates
-Fair Debt Collection Practices Act CLE, 2007
-2015, various community groups concerning marriage dissolution and child custody

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 Bar Association Lawyers Assistance Program Committee Member, 2007-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.

Member of the Missoula Chess Club

Member of the Missoula Interfaith Collaborative

Member of the High Council of the Church of Jesus Christ of Latterday-Saints, 2015-present. Member of the presiding council which coordinates teaching and training for the leadership of the church in the Missoula area.

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

Candidate for Justice of the Peace in Missoula County, 2014.

Candidate for Justice of the Peace, Yellowstone County, 2006.

Candidate for 13th Judicial District Court Judge, 2008.

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

Giving to the community is an important part of my life. I regularly meet with people of all incomes after hours to discuss their legal needs and situations, counseling them to make the appropriate decisions for their circumstances. I participate in the LDS Church welfare program, volunteering to fill food and supply orders for those in need. I have been involved in every aspect of The Boy Scouts of America, from Scout Master to Scout Committee Member, and have been awarded Eagle Scout Mentor.

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.

Yes. PR 07-0105 Public Censure. This occurred shortly after an emotional and stressful divorce. I failed to represent the needs of my California client in a custody matter.

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

No.

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

No.

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

No.

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

No.

F. BUSINESS AND FINANCIAL INFORMATION

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

No.

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.

Not engaged in the management of any business.

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, I am prepared to disclose the information required.

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.

I do all of my own legal research and writing of briefs. I use electronic methods and also have used the University of Montana's Law Library.

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 draft and write settlement agreements, releases of liability, and I review contracts. I have prepared wills, Power of Attorney and Power of Attorney for Health Care. I also draft complaints and judgements.

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.

48. What percentage of your practice for the last five years has involved research and legal writing?
5 %

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

Yes, and Fastcase.

H. MISCELLANEOUS

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

During the summer, I enjoy camping and spending time with my family outdoors. I support Boy Scouts of America, teach Sunday School class regularly and love to read books about history. With my children, I collect Legos and spend a lot of free time building anything from old cars to elaborate castles. I bike ride frequently, weather permitting. I like cooking, especially baking cookies and home-made pizza with my family.

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

Pacer Campers- worked at our family-owned business when I was in high school. We built camper shells for pick-up trucks. I learned various carpentry and metal-working skills.
Telecommunications Inc. – started as a cable TV installer after collage and worked my way up to be the manager of Cheyenne Cable TV.
Gary B Freidman Law Office – worked as a law clerk while attending night law school. My duties included research, to writing, to meeting with clients.

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

Over the last five years I have worked an average of five hours per week on pro bono matters. Sometimes I just listen and other times I give direct counsel as to the proper legal steps to take. I have represented DUI's, estate matters, and divorce and contract disputes. I have also reviewed *Pro Se* prepared documents for court fillings.

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

When I was a 12-year-old Boy Scout, attorney Ken Peterson of Billings spoke to my troop. He explained the law and the cases he was handling. He was so persuasive that three of the five Scouts present that night went on to become lawyers. He taught me the good that can be done by attorneys, including the need to defend everyone's individual Constitutional rights, and kindled in me a desire to learn the law and serve the public.

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

A District Court Judge must be and remain open-minded. He/She must listen to the facts as presented and remain objective. Being fair and consistent, while dispensing justice, is crucial for the overall practice of law. Knowledge of the law is vital to being a District Court Judge, yet being willing to research the nuances of the law when not entirely certain is an important component to this position. A District Court Judge must be professional in his/her conduct, on and off the bench. This professionalism is reflected in courtroom demeanor, as well as in the way he/she prepares for hearings and reviews motions.

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.

In the courtroom, justice must be served. This requires the right decision by the judge. After reading the law and the case precedents and hearing the evidence, the judge must come to a conclusion that serves justice. Justice is not always fair. The laws are not always fair. But justice and the right decision are always correct.

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

Since becoming an attorney, becoming a judge has been one of my long-term goals. I believe that I have the temperament to listen to all sides of an argument, and knowledge to know what the law dictates, and the ability to make a decision. I believe I am fair, and respectful to all parties. I have had the experience of being Judge *Pro Tem* in Missoula Justice Court for the last four years. I understand courtroom decorum. Even though my practice over the last five years has focused on debt collection, my background in the law is varied. I have been a prosecutor as well as a criminal defense attorney. Thus, I believe I bring many personal attributes and extensive courtroom experience to this position. Being a district court judge would be an honor that I would excel at.

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

I am proud of my career in law; from moving to Chicago to attend night law school while supporting a family of four, to returning to Billings to begin my practice, to most recently having the privilege to serve as the Mineral County Attorney. Throughout my 23 years of practice, I have enjoyed the opportunities that I have had to be the Deputy County Attorney in Stillwater County and City Attorney in Laurel, while running my own law firm. I am proud of the knowledge I have gained while serving in so many positions in Montana. My reputation is something I have worked very hard to build and maintain.

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

After moving from Billings to Missoula five years ago, I had an unforeseen financial deficit. My house in Billings, which I had been certain would sell quickly, was on the market for over three years. The stress this put on my finances, paying for a house mortgage while sustaining my new home in Missoula, caused me to file bankruptcy in 2015.

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

I believe the expertise and experience I bring to being a judge is unique. Having sat on the bench, I know many facets of the position and have learned enough to make the transition to district court judge smooth, without needing to delay daily business. Not being from the 5th Judicial District, I bring a fresh perspective to the community with new energy and focus to serve justice to the best of my ability.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 5th 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.

10/17/16

(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 Monday, October 31, 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

STATEMENT OF THE ISSUE

1. Whether the District Court correctly granted Summary Judgment in favor of Collection Professionals, Inc., (CPI) with respect to the FDCPA. Claim, because this was not a consumer debt protected by the FDCPA.

2. Whether the District Court correctly granted Summary Judgment in favor of CPI, on the Counterclaim, with respect to the amount due and owing, and interest.

STATEMENT OF THE CASE

Shannon Amour (Amour) filed suit against CPI, and Nancy Smith (Smith) in the Montana Fourth Judicial District Court, Mineral County. Amour alleged that CPI had violated the Fair Debt Collection Practices Act (FDCPA), while attempting to collect on the underlying debt. Amour also brought suit against Smith for damages she claimed she received while Smith served as the GAL in a marriage dissolution matter.

CPI answered denying the FDCPA violation and counter claimed for the monies owed on the underlying debt. Smith answered denying Amours claims. CPI filed a Motion for Summary Judgment on Amour's FDCPA claim. Smith also filed a Summary Judgment Motion with respect to the claims against her. Both Motions were granted.

CPI then filed a Motion for Summary Judgment on its Counterclaim regarding the debt owed by Amour. The District Court held a hearing on this Summary Judgment Motion. The District Court granted CPI's Summary Judgment Motion and Ordered Amour to pay \$7,408.70 to CPI. Amour is appealing the District Court's Orders granting Smith's and CPI's Summary Judgment Motions.

STATEMENT OF FACTS

On or about August 17, 2007 a petition for the Dissolution of the Plaintiff's marriage was filed. (See Cause No. DR-2007-26). Shannon Amour, f.k.a. Shannon Hollenback, (Amour) was the Respondent in a Marriage Dissolution proceeding. In the Dissolution Proceeding the District Court issued an Order dated January 24, 2008, which appointed Smith as the *Guardian Ad Litem (GAL)*. Amour did not request the services of Smith.

During the pendency of the dissolution proceedings Amour entered into and signed a contract for the services of Smith, dated February 4, 2008. As Ordered by the Court Smith prepared and filed 8 Status Reports.

In the District Court's Findings of Fact, Conclusions of Law, and Order Dated January 20, 2012, the Court Ordered:

“11. The Parties' individual debts including credit card debt, medical debt and their individual debt to the GAL are the responsibility of each party individually.”

On or about November 17, 2011 Smith assigned the debt to CPI. CPI attempted to collect the debt. A Justice Court Complaint was filed by CPI as the Plaintiff against Amour on March 15, 2012. Amour was served and filed an answer which included a counterclaim which exceeded the Justice Court's jurisdictional limit.

The Case was then dismissed by the Justice Court. There was a miss understanding as to the proper procedure to follow, however, Amour filed this action on or about May 29, 2012.

From the Counterclaim and the Plaintiff's Answers, it is admitted:

1. The co-Defendant NANCY SMITH was Court Ordered to act as the *Guardian Ad Litem* for the Plaintiff, in Cause No DR-2007-26, Fourth Judicial District, Mineral County, on January 24, 2008.
2. The District Court Order granting the Dissolution of the Marriage and the Division of the marital property was issued on January 20, 2012, to the Plaintiff.
5. The District Court's Order dated January 20, 2012 stated, "11. The Parties' individual debts including credit card debt, medical debt and their individual debt to the GAL are the responsibility of each party individually." (Plaintiff's Answer to Counterclaim, Dated June 21, 2012.)

In the Amour's answers to the Smith's First Requests for Admissions she stated as follows:

REQUEST FOR ADMISSION NO. 2: Please admit the document entitled "Acknowledgment and waiver of Potential Conflict of Interest" attached hereto as Exhibit A, is a true and accurate copy of the document you signed on February 4, 2008.

RESPONSE: DENIED as to content. It is the document I was ordered to sign by Judge Harkin.

REQUEST FOR ADMISSION NO. 3: Please admit the document entitled "Contract for Services" attached hereto as Exhibit B, is a true and accurate copy of the document you signed on February 4, 2008.

RESPONSE: DENIED See answer to No. 2, above; (Plaintiff's Response to Defendant Nancy Smith's First Request for Admissions dated September 10, 2012)

The debt at issue herein was the result of a Court Order. They were not entered into freely or as the result of a consensual transaction.

Smith assigned Amour's bills to CPI. It was not until after Smith had assigned Amour's delinquent bill to CPI that Amour claimed she did not owe Smith for the services rendered.

STANDARDS OF REVIEW

The standard of review in appeals from summary judgment rulings is *de novo*. *Hajenga v. Schwein*, 2007 MT 80, ¶ 11, 336 Mont. 507, 155 P.3d 1241; *J.L.G., BNY v. M.F.D.*, 2014 MT 114.

SUMMARY OF ARGUMENT

The District Court correctly applied the applicable summary judgment standards, in dismissing all claims against CPI. The underlying debt was a court ordered debt and as such was not subject to the FDCPA. Therefore as a matter of law Summary Judgment was proper.

The District Court correctly held that the evidence presented justified the amount of monies due and owing.

The District Court correctly interpreted Montana Law that when a contract is silent as to the amount of interest which can be charged the court can grant the statutory amount.

ARGUMENT

Amour, miss understands the legal issue presented in this matter. The issue is “is this debt one protected by FDCPA”. In Amour’s brief on page 4 she sates: “A Guardian Ad Litem [Smith] was appointed by the court.” ... “The court ordered Shannon (Amour) to enter a contract for the GAL services.” As such this is a court ordered debt. Not all debts are covered or protected by the FDCPA. The legal question is, was this a **consensual consumer transaction**.

The Parties’ is valid. However; the Law is clear, that under the FDCPA a “debt” arises only in the context of business dealing or other **consensual consumer transaction**. The Amour’s sworn position is that she was ordered to sign the contract at issue here. This act does not void the contract, but it does remove the transaction from those covered by the FDCPA.

In the Dissolution matter the District Court’s Findings of Fact, Conclusions of Law, and Order Dated January 20, 2012 stated:

“11. The Parties’ individual debts including credit card debt, medical debt and their individual debt to the GAL are the responsibility of each party individually.”

The legal question is not the validity of the debt or contract, as it is valid.

The legal issue is what does the FDCPA cover or protect?

The FDCPA, does not cover this debt. When the debt is not covered by the FDCPA then there cannot be a FDCPA violation.

Fair Debt Collection Practices Act (FDCPA)

In determining the validity of an FDCPA claim, the first step is to review the FDCPA for its applicability to the debt in question. The FDCPA 5 USC § 1601 *et seq.* is directed primarily at eliminating abusive debt collection practices by debt collectors, including conduct meant to harass, oppress, or abuse any person in connection with the collection of a debt. The FDCPA is to protect the “consumer” against debt collection abuse.

The term “consumer” means any natural person obligated to pay any debt. 15 U.S.C. § 1692a (3).

The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to a judgment. 15 U.S.C. § 1692a (5).

Under this definition as explained by case law a “debt” for the purpose of the FDCPA, arises only in the context of business dealing or other **consensual**

consumer transaction. *Shannon v. ACS State & Local Solutions*, No. 08-594, 2008 U.S. Dist. LEXIS 43368, 2008 WL 2277814, (D. Minn. May 30, 2008). (County-levied fines and restitution do not meet the FDCPA criteria of a “debt” as defined by the Act.)

The FDCPA limits its reach to those obligations to pay arising from **consensual transitions**, where the parties negotiate or contract for consumer-related goods or services.

Courts have held that **not all** debts are not “debts” under the FDCPA.

A judgment to pay a former spouse’s attorney fees in post dissolution litigations is not a “debt” within the FDCPA. *Beal v. Himmel & Bernstein, LLP* (SD NY 2009) 615 F. Supp.2d 214. Likewise, property settlement obligations under the terms of a marriage dissolution judgment are not debts within the meaning of the Act. *Hicken v. Arnold, Anderson & Dove, P.L.L.P.* (D.MN 2001) 137 F.Supp.2d 1141.

Smith was court ordered to act as the GAL

The debts are not debts subject to the FDCPA as they do not arise out of a **“consensual consumer transaction.”** Amour stated in her Court Filings that she “did not want the services” and “was forced to sign the documents by the judge.” Where there is no consensual consumer transaction there is no debt covered by the

FDCPA. When the debt is not covered by the FDCPA then there cannot be a FDCPA violation.

The Debt Was Part of a Property Settlement

As stated in the District Court's Findings of Fact, Conclusions of Law, and Order Dated January 20, 2012, stated:

“11. The Parties’ individual debts including credit card debt, medical debt and their individual debt to the GAL are the responsibility of each party individually.”

This is clearly a property settlement: The Judge ordered a division of the debts of the marital estate and of the parties. Property settlements are not debts under the FDCPA.

Property settlement obligations under the terms of a marriage dissolution judgment are not debts within the meaning of the Act. *Hicken, P.L.L.P.* (D.MN 2001) 137 F.Supp.2d 1141.

The Debt is Part of a Valid Court Order

As stated above, the Court Order date January 12, 2012, is a valid Court Order. It orders the Plaintiff to pay the GAL. The debt is still due and owing.

No action of a third party assignee can change the facts under which the parties entered into a contract.

The Amount Due and Owing

As stated in the lower Court's opinion, the monies due and owing to CPI were sworn to in an affidavit from Nancy Smith, stating that Seven Thousand, Four Hundred, eight Dollars and Seventy cents (\$7,408.70) is due and owing from the Amour.

Interest

In the Pleadings and at Trial, CPI requested prejudgment interest on the debt. It is clear that the Court found that the Contract did not provide for interest, however, CPI is correct in claiming prejudgment pursuant to M.C.A. 27-1-211.

27-1-211. Right to interest. Each person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover that is vested in the person upon a particular day is entitled also to recover interest on the damages from that day except during the time that the debtor is prevented by law or by the act of the creditor from paying the debt.

The Montana Supreme Court reviewed the application of MCA 27-1-211 in *Ramsey v. Yellowstone Neurosurgical Assocs.*, 2005 MT 317, 329 Mont. 489, 125 P.3d 1091. There the Court stated:

“Section 27-1-211, MCA, entitles a person to prejudgment interest when they possess a right to recover damages that vests upon a particular day. A party must satisfy three criteria in order for a court to award prejudgment interest pursuant to the statute: (1) the existence of an underlying monetary obligation; (2) the amount of recovery is certain or capable of being made certain by calculation; and (3) the right to recover the obligation vests on a particular day.” *Ramsey*

The *Ramsey* Court then looked at each parties claim and found that even though the lower court awarded an amount that differed from the amount prayed for in the Complaint, it was still an amount that was certain or capable of being made certain by calculation. In *Ramsey* the Court agreed with the District Court that damages were capable of being made certain.

In *James Talcott Const. v. P & D*, 2006 MT 188, 333 Mont. 107, 141 P.3d 1200, the Montana Supreme Court restated the three criteria listed above. Talcott relied on *Price* to support its claim for prejudgment interest notwithstanding the other parties' challenge to the amount of Talcott's claim. The Court explained its reasoning in *Price Bldg. Service, Inc. v. Holms* (1985), 214 Mont. 456, 693 P.2d 553. The Court held:

“In *Price*, we rejected the argument that prejudgment interest can be awarded only where there is an account stated or where there is a fixed contract price. We stated that the statute “merely requires that the damages be certain, or capable of ascertainment by calculation.” *Price*, 214 Mont. at 467, 693 P.2d at 559. Moreover, we noted that “[a] dispute on the amount owed on part or all of a claim in the form of a denial of part or all of the amount owed, or in the form of a counterclaim for construction delay and defective performance, does not transform a plaintiff's claim into one that does not bear prejudgment interest.” *Price*, 214 Mont. at 467, 693 P.2d at 559. *James Talcott Const.* ¶ 43.

In the case at bar the underlying debt is an account stated, and the amount due is fully capable of being made certain. (\$7,408.70)

The Court in *Talcott* quoted *Price* as to the purpose of the statute.