

APPLICATION FOR

**DISTRICT COURT JUDGESHIP  
Fifth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: **Lori Ann Harshbarger**
  - a. What name do you commonly go by? **Lori A. Harshbarger**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]  
Phone: [REDACTED]
4. Office Address: **336 Waterloo Road, Whitehall, MT 59759**  
Phone: **(406) 287-7933**
5. Length of residence in Montana: **41 years**
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
<b>2006-Present</b>	<b>Whitehall</b>	<b>Montana</b>

**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>
<b>Twin Bridges High School</b>	<b>Twin Bridges, MT</b>	<b>May, 1982</b>	<b>Diploma</b>
<b>Montana State University</b>	<b>Bozeman, MT</b>	<b>June, 1986</b>	<b>Bachelor of Science, Microbiology</b>

University of Washington	Seattle, WA	Attended 1989	Studied Biomedical Ethics while working at the University
Thurgood Marshall School of Law	Houston, TX	May, 1993	Doctor of Jurisprudence
Cambridge University	Cambridge, England	Summer, 1992	International Law, Contracts, Law of War, History of Law
PCCI (Professional Christian Coaching Institute)	Edgar Springs, MO	Will receive December, 2016	CPLC (Certified Professional Life Coach)

8. List any scholarships, awards, honors and citations that you have received:  
**High School Salutatorian and several scholarships**  
**Out of State Fee Waiver based upon high LSAT score-Thurgood Marshall School of Law**  
**Pro Bono College of the State Bar of Texas**

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 I wasn't a member of law review. I was however, chosen to serve as the research assistant to Tax Professor, James Beard. During that time, we worked on a law review article, *The Effect of the Innocent Spouse Doctrine on Community Property.***

**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>
Texas State Bar	November, 1993
Montana State Bar	September, 1999
United States District Court, District of Montana	March, 2001
Arizona State Bar	July, 2005
United States Bankruptcy Court, District of Montana	September, 2009

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

**I am a sole practitioner and owner of JD Law Firm, P.C. which has recently transitioned to d/b/a Harshbarger Law Firm located in Waterloo, Montana which is 14 miles south of Whitehall, between Whitehall and Twin Bridges.**

**I also am the City Attorney for Twin Bridges.**

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>
<b>Rausch Law Office McAllen, Texas</b>	<b>Associate</b>	<b>November, 1993-December, 1995</b>
<b>Law Office of Ramon Rosales, Jr. Mission, Texas</b>	<b>Associate</b>	<b>January, 1996-March, 1997</b>
<b>Armstrong Law Office, P.C. Hereford, Texas</b>	<b>Solo Practitioner</b>	<b>March, 1997-August, 1998</b>
<b>Keller, Reynolds, Gillespie &amp; Drake, P.C. Helena, Montana</b>	<b>Contract Attorney</b>	<b>November, 1998-September, 1999</b>
<b>McCarthy Law Office Butte, Montana</b>	<b>Contract Attorney then Associate</b>	<b>March, 1999-September, 2002</b>
<b>JD Law Firm, P.C. Butte, Montana</b>	<b>Solo Practitioner</b>	<b>September, 2002-August, 2003</b>
<b>Edwards Law Firm Butte, Montana</b>	<b>Associate</b>	<b>August, 2003-April, 2005</b>
<b>JD Law Firm, P.C. Tucson, Arizona</b>	<b>Solo Practitioner</b>	<b>July, 2005-September, 2006</b>
<b>JD Law Firm, P.C. Whitehall, Montana</b>	<b>Solo Practitioner</b>	<b>September, 2006-Present</b>

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

**Between August and November, 1998, I had moved back home to Montana from Texas and was looking for employment.**

**Between April and June, 2005, I had gotten married and relocated to Tucson, Arizona.**

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 have a general law practice that is located 14 miles south of Whitehall on our ranch. I employ a paralegal and an office manager. Our practice covers a wide variety of cases; however, the majority of our practice is: Civil Litigation (including family law, personal injury, commercial litigation) 50%, Real Estate (including water law, real estate transactions, advice, agricultural law) 20%, Estate Planning & Probate 15%, Commercial transactions 13% and Criminal Law 2%.**

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

**I also practice as the attorney for the Town of Twin Bridges, dealing with governmental matters unique to municipal law as well as litigation, zoning and regulations, human resources, contracts and ordinances.**

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

**I have not specialized in one area of law. Being a rural, solo practicing attorney, I have experience in most areas of law with the exception of immigration.**

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

<b>Federal court</b>	<b>25%</b>
<b>State or local courts of record</b>	<b>60%</b>
<b>Administrative bodies</b>	<b>15%</b>
<b>Other</b>	<b>----%</b>

18. During the last five years, what percentage of your practice has been trial practice? **80%**

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

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

21. What percentage of your practice involving litigation has been:
- |                 |            |
|-----------------|------------|
| <b>Civil</b>    | <b>90%</b> |
| <b>Criminal</b> | <b>5%</b>  |
| <b>Other</b>    | <b>5%</b>  |

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

**I have appeared before the Montana Supreme Court 5 times during the last five years.**

- 1) **Ganoung & Mason v. Stiles, et al.** Case #DA-16-0441  
Case is in initial briefing stage.

Appeal from District Court decision regarding the scope of an express easement.

Opposing Counsel for Ganoung & Mason:

John Warren

LAW OFFICE OF JOHN WARREN

P.O. Box 28

116 E. Reeder Street

Dillon, MT 59725

Tel: (406) 683-2363

- 2) **Jenrich & Munro v. Lost Tree Building, LLC et al.** Case # DA-16-0208  
Case settled at appellate mediation.

This involved an appeal from an arbitration decision. Jenrich and Munro were nurse practitioners in Butte who dissociated from Lost Tree Building, LLC members of which were physicians. Arbitration decision was that Jenrich and Munro preferentially dissociated. Lost Tree appealed to District Court who affirmed arbitration decision. Lost Tree then appealed to Montana Supreme Court. Case settled at mediation.

Opposing Counsel for Lost Tree Building, et al.

Patrick Thomas Fleming

FLEMING & O'LEARY, PLLP

510 E. Park St., Suite 200

P.O. Box 527

Butte, MT 59703-0527

Tel: (406) 723-5600

- 3) **North Pac. Ins. Co. v. Stucky**, 2014 MT, ¶ 1, 377 Mont. 25, 26, 338 P.3d 56, 57.  
Case # OP-14-0016, Decided November 13, 2014

This was a certified question from the United States District Court, District of Montana, Hon. Dana Christensen to determine whether Montana law recognized a claim for loss of consortium for the by the adult child of an injured parent, which the Court ultimately held was yes. The Court also established that to assert such a claim, the plaintiff must show, first, that a third party tortiously caused the parent to suffer a serious, permanent, and disabling mental or physical

injury compensable under Montana law, and, second, that the parent's ultimate condition of mental or physical impairment is so overwhelming and severe that it has caused the parent-child relationship to be destroyed or nearly destroyed. Relevant considerations include the severity of injury to the parent, the actual effect that the parent's injury has had on the relationship and is likely to have in the future, the child's age, the nature of the child's relationship with the parent, and the child's emotional, physical and geographic characteristics.

Opposing Counsel for North Pacific Insurance:

Jesse Beaudette  
John E. Bohyer  
BOHYER, ERICKSON,  
BEAUDETTE & TRANEL, P.C.  
283 West Front, Suite 201  
Post Office Box 7729  
Missoula, MT 59807-7729  
Tel: (406) 532-7800

Amicus Montana Trial Lawyers Assoc.:

Jonathan McDonald  
203 E. Ewing St.  
P.O. Box 1570  
Helena, MT 59624  
Tel: (406) 442-1493

Anders Blewitt  
HOYT & BLEWITT, PLLC  
501 2<sup>nd</sup> Ave. N  
P.O. Box 2807  
Great Falls, MT 59403-2807  
Tel: (406) 781-1960

- 4) **Crowley v. Crowley**, 2014 MT, ¶ 1, 374 Mont. 48, 49, 318 P.3d 1031, 1034  
Case # DA-13,0419, Decided February 18, 2014

Marital dissolution. Supreme Court reversed the apportionment of property because the findings were insufficient to determine whether all of the assets and liabilities of the husband and wife were considered; therefore, it could not be determined on appeal whether the marital estate was equitably distributed.

Opposing counsel for Dennis Crowley:

Mark A. Vucurovich, Esq.  
HENNINGSEN, VUCUROVICH  
& RICHARDSON, P.C.  
P.O. Box 399  
116 West Granite  
Butte, MT 59702  
Tel: (406) 723-3219

- 5) **Lowry v. Lowry**, 2011 MT 26N, Case # DA-10-0281, Decided February 16, 2011

Marital dissolution. The trial court dissolved the parties' marriage and divided their property. The trial court did not abuse its discretion in distributing the marital estate under Mont. Code Ann. § 40-4-202. The trial court properly denied the wife's motion for a new trial on the basis that her legal and factual theories were not substantiated by the evidence. Except for items of personal property that he destroyed, the husband did not dissipate the marital estate. The trial court did not err in refusing the wife's request for attorney fees because the husband had to borrow money to pay his own attorney fees.

Opposing counsel for David Lowry:

Michael Alterowitz  
 ALTEROWITZ LAW OFFICES, P.C.  
 217 Hastings Ave.  
 Missoula, MT 59801  
 (No phone number available. He is retired.)

23. State the number of jury trials that you have tried to conclusion in the last ten years. **3**
24. State the number of non-jury trials that you have tried in the last ten years. **7**
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.

<p><i>North Pacific Insurance Company v. Stucky</i>          United States District Court, State of Montana          Cause #          Judge: Hon. Dana Christensen          (406) 829-7140          Trial date: 3/9/2015          Case settled before trial.</p>	<p>Opposing Counsel:          Jesse Beaudette          John E. Bohyer          BOHYER, ERICKSON, BEAUDETTE          &amp; TRANEL, P.C.          283 West Front, Suite 201          Post Office Box 7729          Missoula, MT 59807-7729          Tel: (406) 523-7800</p>
<p><i>Stucky v. Schmautz</i>          Montana Third Judicial District Court          Cause # DV-11-62          Judge: Hon. Ray Dayton          (406) 563-4044          Trial date: 10/06/2014          Case settled.</p>	<p>Opposing Counsel:          Kathleen L. DeSoto          GARLINGTON, LOHN &amp; ROBINSON PLLP          350 Ryman St.          P.O. Box 7909          Missoula, MT 59807          Tel: (406) 523-2500</p>

<p><i>Jenrich &amp; Munro v. Lost Tree Building, LLC et al.</i>  Montana Second Judicial District Court  Cause #  Judge: Hon. Brad Newman  (406) 497-6420  Hearing: 09/10/2013  Arbitrator: Tom Welsch  (406) 490-9600  Arbitration date: 09/25/2012</p>	<p>Opposing Counsel:  Patrick Thomas Fleming  FLEMING &amp; O'LEARY, PLLP  P.O. Box 527  Butte, MT 59703  Tel: (406) 723-5600</p>
<p><i>Ganoung v. Stiles, et al.</i>  Montana Fifth Judicial District Court  Cause # DV-29-14-52  Judge: Hon. Jon A. Oldenburg  (406) 535-8028  Trial dates: 4/20-4/21/2016</p>	<p>Opposing Counsel:  John Warren  Law Office of John Warren  116 E. Reeder St.  P.O. Box 28  Dillon, MT 59725  Tel: (406) 683-2363</p>
<p><i>Anderson v. Stender</i>  Montana Fifth Judicial District Court  Cause # DR-29-2013-8  Judge: Hon. Loren Tucker  (406) 843-4235  Trial date: 01/11/2016  Case settled day of trial.</p>	<p>Opposing Counsel:  Peter Tomaryn  Law Office of Peter Tomaryn  P.O. Box 888  Dillon, MT 59725  Tel: (406) 925-2153</p>
<p><i>Lee v. Lee</i>  Montana Eighteenth Judicial District Court  Cause # DR-13-53B  Judge: Standing Master Magdalena Bowen  (406) 582-2156  Trial date: 08/13/2014  Case settled before trial.</p>	<p>Opposing Counsel:  Dennis Munson  716 s. 20<sup>TH</sup> Ave., #101  Bozeman, MT 59718  Tel: (406) 586-4383</p>
<p><i>Rorabaugh v. Rorabaugh</i>  Montana Eighteenth Judicial District Court  Judge: Standing Master Magdalena Bowen  (406) 582-2156  Trial date: 12/17-12/20/2013  Case continued ongoing after trial.</p>	<p>Opposing Counsel:  Christopher Gillette  11 E. Main St., Ste C  Bozeman, MT 59715-6205  Tel: (406) 582-7918</p>

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

**During the last 5 years, I have regularly represented clients with regard to Child Support Enforcement hearings before Administrative Judges for determination of child support.**

**Earlier in my career, I represented clients in social security and worker's compensation hearings.**

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

**I have not published any legal books or articles. I have been invited to speak at a CLE on the topic of Elder Law and Medicaid sponsored by the National Business Institute.**

#### **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.

<b>Phi Alpha Delta Law Fraternity, International</b>	<b>1992-Present</b>
<b>State Bar of Texas</b>	<b>1993-Present</b>
<b>Montana State Bar</b>	<b>1999 -Present</b>
<b>Arizona State Bar</b>	<b>2005-Present</b>
<b>Montana Trial Lawyers</b>	<b>2000-Present</b>
<b>American Bar Association</b>	<b>2006-Present</b>
<b>Fifth Judicial District Bar Association</b>	<b>2006-Present</b>
<b>League of Cities and Towns</b>	<b>2011-Present</b>

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.

**St. Teresa Catholic Church, Ladies' Auxiliary: I served as President for two years, but that was from 2007-2009. While President, I led the organization to implement hospitality in the church, to raise money to be able to donate back, led monthly meetings and increased enrollment in the organization. I also was the speaker at the Spring Banquet.**

**Twin Bridges FFA Alumni: I served as Vice President for one year in 2011-12 when we formed the Alumni chapter in conjunction with reinstating FFA in the high school.**

**Harley Davidson Owners Group (HOG) member**

**Montana Farm Bureau Federation member**

**Twin Bridges Falcon Booster Club member**

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

**Yes. I have continuously served as a Trustee on the Twin Bridges School Board since 2010 when I was appointed to fill a term. I was to run for election when my term was up in 2011 but since I was unopposed, I continued on the Board by proclamation. I then successfully ran for election on the Board in 2014 for a three year term that will be up in May, 2017.**

**I have served as the Vice Chairman of the Board since May, 2015.**

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

**I have always been involved in public affairs and giving back to my community through agricultural related activities, 4H, FFA, advocacy, church and school.**

**Much of the time and service I give to my community is not affiliated with an organization. I have given to members of the community who are in need such as a family who is struggling financially, the homeless, children who need an ear to talk about their struggles, a neighbor who needs physical or financial help, the elderly who need someone to talk to, the church, widows, and colleagues.**

**This year, I have been mentoring and assisting my friend and colleague, Kathryn Mazurik, in establishing and operating her law practice, Element Law, PLLC, as she has been battling breast cancer. I am overseeing the construction of her office, intake of clients, development and mentoring her associates until she completes her cancer treatment and recovers from surgery in January.**

**In a sense, I view the position of District Judge as giving of my time and service to the public. Yes, this is a compensated position, but by accepting the oath, I would be accepting the greater responsibility of serving the public in the administration of justice above and beyond the compensation.**

#### **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.

**Thirty-three years ago, when I was 19 years old and in college at Montana State University in Bozeman, after spending time with friends downtown, I made the mistake of driving my vehicle. I was arrested for DUI, plead guilty and spent 24 hours in jail. I have shared this experience selectively with young people to remind them that one bad choice can have long term consequences.**

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.

**1994-1995: Manager of Pharr Plantation Development and Country Club**

**One of our law firm clients from Mexico had purchased this development. There was conflict between the Mexican nationals who owned the property and the residents who were mostly “Winter Texans” from the northern United States. Because of the language barrier, I was assigned by my employer, Jim Rausch, to manage the facility and mediate between the two parties to bring them together in a unified front.**

**1999-Present: Ranching**

**My father passed away in 1999, a month before I took the Montana bar. My brother and I had to continue to run the ranch which consisted of cattle, irrigation and hay operation. In 2006, my husband and I purchased another ranch in the area and have continued ranching.**

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.

**JD LAW FIRM, P.C. This is a professional corporation in which I am the sole shareholder and operate my law firm. If I am selected, I will wind up the practice by my appointment.**

**HARSHBARGER COACHING & CONSULTING: This is my life coaching and consulting business that I operate in conjunction with my law firm. If appointed, I would no longer be able to coach law firms or lawyers, so would cease to operate this business.**

**RANCHING: This is an ongoing family enterprise in which I help my husband with feeding cattle, farming, irrigation and whatever else is needed. This business will continue if I am appointed. I will continue to be involved as able. Some people golf to relieve stress. I irrigate and take care of livestock.**

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

**I receive minimal fees at this time from Harshbarger Coaching & Consulting as I have been acquiring my hours for certification. The amount earned is approximately 0.1% of my total income.**

**Approximately 43% of our family income comes from ranching.**

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.

**With one exception, I have exclusively performed all of my research on legal issues and drafting briefs using Westlaw and Lexis. On one occasion, I contracted with a law student to research an insurance issue.**

**I also have completed research into legislative history with regard to particular statutes. On those occasions, I have utilized the assistance of the State Law Library to pull the history.**

**I regularly submit briefs in support of motions, proposed findings and appellate briefs. I have never had an associate assist me with this area.**

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.

**Over the last 5 years, I have drafted and prepared the following documents:**

Civil Litigation	(Federal and State Courts) Complaints, answers, petition for declaratory judgment, injunctive relief, motions and briefs (intervene, stay, continue, vacate, dismiss, summary judgment, in limine, etc.) discovery (interrogatories and requests for production, notices of deposition), summons, subpoenas, jury instructions, orders and decrees, findings, verdicts, judgments
Criminal Defense	Motions, notice of appearance and plea, waiver of speedy trial, , jury instructions, verdict, subpoenas
Estate Planning Documents	Wills, trusts, statutory powers of attorney, powers of attorney for health care
Probate	Applications for formal and informal probate both intestate and testate, letters testamentary, orders, inventory, accounting, distribution agreements, disclaimers, settlement documents, orders closing estates, supplementary probate and ancillary probate
Guardianship and Conservatorship	Petitions for appointment of guardian and conservator, letters of appointment, orders, inventory, accounting, settlement agreements, closing documents
Municipalities	Ordinances, resolutions, employee manuals, interlocal agreements, zoning regulations, contracts
Family Law	Petitions for dissolution, parenting plans, adoption, child support, summons, protective orders; motions to amend the same; prenuptial agreements, marital property settlement agreements, decrees, orders, qualified domestic relations orders, motion for contempt and to enforce, motions for support
Real estate	Buy-sell agreements and leases (ranches, residential, commercial), deeds, easements, covenants, tax liens, real estate closing documents
Water Rights	Water right updates, motions and pleadings relevant to adjudication in Water Court, documents regarding the division of water rights, articles of association and by-laws for ditch corporations and associations

Corporate/Business	Contracts, documents to form business entities, operating agreements, by-laws, resolutions, minutes
Commercial Transactions & Banking	Promissory notes, security agreements, mortgages, deeds of trust, foreclosures, agricultural agreements, covenants not to compete, contracts
Collaborative Law	Agendas, agreements
Elder Law	Medicaid applications and caregiver agreements
Mediation	Settlement brochures, reports, settlement 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.  
**Attached is a Motion for Leave to Amend Counterclaim and for Substitution of Parties and Brief in Support.**
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, both.**

#### H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.  
**Mentoring & Coaching:** I enjoy mentoring younger lawyers and executive/leadership life coaching. My greatest joy is helping someone else grow and move toward their goals.
- Agriculture:** Having grown up on a ranch here in Montana, I am involved in agriculture, animals and cattle. I enjoy irrigating and helping my husband on the ranch when I can.
- Children:** I enjoy spending time with our children and watching them grow and evolve into their own lives. Our youngest son is a senior in high school and plans to play college football. The other children are all adults and are in college, roping, fireman, airline pilot and a nurse. It is also a pleasure to be able to watch our nephew and grandchildren learn, grow and discover things.
- Learning:** I am an avid reader and learner of the human condition including culture, law , psychology and the social condition of society.
- Recreation:** Scuba Diving (PADI certified), reading, family events, taking an annual multi-day motorcycle ride with my husband and attending classic car shows.
51. Describe the jobs that you have held during your lifetime.

**Growing up on a ranch, my primary job was flood irrigating and baling hay. This began when I was about 12 years old and continued until I was 17. When I was 17, I worked as a nanny for our**

neighbors. During my senior year of high school, I worked as a waitress at the Blue Anchor Café and the Diamond Three in Twin Bridges. During college, I worked as a locker room attendant at Romney Gym at MSU in Bozeman; as a cook at the Virginia City Café, Burger King, layaway clerk at Kmart, hotel room cleaner, certified nurse's aide, and my friend and I started our own lawn mowing and house cleaning business.

After college, I was employed as a Medical Technologist at a family practice clinic in Hamilton and also worked in home health care taking care of a quadriplegic on weekends. I then worked at MSU in Bozeman in the Microbial Ecology Department as a Research Assistant. From there, I worked at the University of Washington in Seattle doing cancer research with the Departments of Neurology, Radiation Oncology and Neurosurgery.

During law school I interned between my first and second year in the legal department of The Institute for Rehabilitation and Research (TIRR) in the Houston Medical Center. Between my second and third year of law school, I interned at the Fort Bend County District Attorney's Office in Fort Bend, Texas. During my third year of law school, I worked graveyard shift three nights per week in a medical reference laboratory as a medical technologist.

I have been employed as an attorney since graduating from law school.

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

At all times, I have at least one pro bono family law case going on, usually involving a Petition for Parenting Plan or Divorce. Additionally, I have done some pro bono work for the elderly in assisting them with Medicaid questions or reduced fee estate planning.

I have also represented St. Teresa Catholic Church in Whitehall with regard to a fence and easement dispute with the Town of Whitehall.

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

The way I view our system of justice has been influenced in multiple ways and includes the lawyers I have worked for and with, each from which I learned something; judges that have spent time mentoring and guiding me; clients that have taught me lessons in dealing with people; the times that I have found myself researching and reviewing decisions and how they have evolved as well as legislative history and why decisions were made to enact particular laws.

Jacqueline Lenmark has been my female role model for lawyers. She is kind, considerate, brilliant and sincere. Even though she has primarily done defense work, I have seen Jackie work fairly and collaboratively with Plaintiff's counsel in achieving a fair and just result. She has been an inspiration to me, lifting me up when life was low; encouraging me to take steps I thought I couldn't take. Her character represents the true, lady of justice that we, as female attorneys, should seek to portray.

An event that had a significant impact on my view of the justice system was when I attended the Montana Trial Advocacy program at the University of Montana in 2003. At that time I had minimal courtroom experience, had opened my own firm and knew I wanted to do more litigation. While attending the program, I was able to meet and become acquainted with some of the best trial lawyers and judges in Montana including Cliff Edwards, Steve Harman and Judge Dana Christensen to name a few.

Cliff Edwards worked with me on a difficult case I had and became my mentor, friend and employer. I was able to learn from Cliff and to this day, incorporate many of those skills in my own practice. I have utmost respect for him and his dynamic personality and thirst for making things right for folks in Montana. When an issue seems insurmountable, I often think, “What would Cliff do?”

Steve Harman became a friend and mentor. Over the years, I have appreciated his insight, ability to read people, his knowledge of the law and fairness and try to incorporate those qualities in my pursuit of justice.

Dana Christensen was a brilliant lawyer, kind, considerate and respectful and remains the same as a judge. When he presided over our case in federal court, he took the same approach and helps to shine light on difficult situations and to move the case along in fairness and justice.

What is the common thread amongst all of these folks? They exhibit qualities that the justice system should reflect... a voice for people in the legal system, respect, consideration, being strong and assertive when necessary, yet compassionate and caring when called for, evidence that righteousness does prevail, that two different sides can work together to seek a resolution and a true and sincere, belief in people and the justice process.

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

**Good listener. Thorough. Studious and abreast of the law. Research skills. Resourceful. Open minded and willing to listen to both sides of the argument prior to formulating an opinion. Able to separate the Judge’s feelings or emotions from the decision making. Rendering prompt, decisions that clearly delineate the findings of fact, incorporate the conclusions of law and reach a conclusion. Emphasis on prompt. An ability to encourage the parties to resolve disputes. To be discerning in sentencing. Empathetic to situations at times involving unrepresented parties. Professional demeanor.**

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 reaching a balance, the court should do the following:**

- 1) **If applicable, black and white, apply precedent.**

- 2) **If grey, first look at the existing statutory law and case precedent in Montana. If necessary, look to other jurisdictions to see how other states have examined and possibly expanded the law.**
- 3) **Research the evolution of the law on that particular issue in Montana through looking at legislative history as well as the chronological evolution of common law through case precedent.**
- 4) **Look to see if there is a trend throughout the decisions and/or movement in the direction of expansion of the law to be more applicable to the given situation.**

**The Court is in the role of applying law to moving, bending and evolving situations. While the law at times is fixed and can be applied, at other times, the application must be able to flex. Given the generational differences and progression of society, there must be room in the law for growth and expansion within limits.**

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

**I have spent 23 years practicing law, advocating to arbitrate the collisions of society. After going away to college and seeing other parts of the country and the world, I returned full circle to where I started and practice law where I was raised.**

**When I was young, I remember looking around the courtroom and seeing the faces of those who held the office of District Judge in our three counties and thinking, "I want to be there someday." When I went to law school in 1990, I believed that one day I would return home and hold that position.**

**I have been trained and have experience in every area of law in this district except immigration. I know the people. I have advocated in this district for 17 years. I now want the authority to not only advocate justice, but to impart justice; to have the power to effectuate resolution between parties; when sentencing, to speak to the defendants in language they understand so as to move them in the direction of rehabilitation; to enforce orders when a party chooses to disregard the same; to encourage resolution between parties and restoration of relationships at times; to help the law evolve and to enforce the law for the safety of others.**

**I know what it is like to represent a family that is tearing apart and what those parties long to hear from the Judge. I know what it is like to need a rapid decision that affects a person's life.**

**I feel that I am armed with the knowledge and experience to handle the varying situations before me as Judge and to render justice applicably.**

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

**The items or events in my career that distinguish me or of which I am most proud are those that have impacted people's lives beyond the letter of the law as follows:**

**Little boy in Texas:**

**There was a young Mexican American boy about age 7 who came to my office in Texas. He brought his Dad, step-mom and sister. Only he spoke English. He told me that his biological mother was beating**

and abusing him and his sister and he needed help. At the time, I didn't practice much family law, but for some reason, this young boy touched my heart and I agreed to help him.

I filed an emergency motion to modify the parenting plan and we appeared in Court. That particular day, the courtroom was packed. The District Judge in Hidalgo County, Texas, cleared the courtroom so he could talk to those two children. I believed them. He believed them. He changed the parenting plan to protect the children from abuse.

A few weeks later, the boy and his family came to my office and the young boy was having some troubles. I met with him and reminded him how important his word was; that I believed him and so had the Judge; that if he ever felt unimportant, he should remember how the Judge cleared the courtroom just for him and his sister because that was how much they mattered.

For several months, I met with the young boy for one hour every week and tried to encourage him and to show him the way.

### **My client "N"**

When I was first licensed in Montana, a lady named "N" came to our office for a will. The attorney I was working with didn't really do wills, so was hesitant to draft it. I had done many of them, so agreed to do so. At the time, N shared with me that she really didn't like lawyers or trust them much, but she trusted me.

A few years later, her common law husband was killed on the job. N came to me to see if she could qualify for his social security benefits. When I learned of the accident, I told her that I believed she had a claim to the insurance proceeds. She said her husband's children were pursuing a claim, but their attorneys told her that they didn't believe she had a claim because she really wasn't "married". Because N and I had established a trust relationship, she agreed to pursue the claim.

It was an uphill battle for N. We first had to establish common law marriage through the social security proceeding, which ultimately was successfully appealed to the Federal Court. We then fought for her share of the insurance proceeds successfully and finally, we were able to obtain her worker's compensation death benefits.

N was one of the most grateful clients I have had and truly received justice in her pursuit of righteousness. She delivered three dozen roses to my office, one for each aspect of the battle that was won.

### **GAL-little girl**

I thoroughly enjoyed serving as Guardian Ad Litem for children in dependency and neglect cases when I practiced in Butte. There was one particular case that involved a young girl whose mother could not break her addiction to drugs. I was able to counsel the mother to understand that her daughter could have a life with this adoptive family that she would never be able to provide her.

At one point, while the Mother was incarcerated, she contacted me and said, "I realized that this little girl really isn't mine. She was loaned to me by God to love and care for and I now must share her with this family so they can love and care for her."

She voluntarily relinquished her rights so the family could adopt her daughter. Years later, I saw that little girl as a teenager with her adoptive mother. They have a strong, bonded relationship and they were able to somewhat keep in touch with her biological mother. The child's life was blessed and I was so happy to have been a part of this blessing.

### **Orphans**

There was a tragic, fatal car accident near Silver Star that took the lives of two parents. The children, one in college and one a senior in high school, were left alone with little money. Normally, with a wrongful death claim, the case would be handled on a contingency fee; however, in this case, I felt those kids needed the funds and this would easily be a policy limits case. I agreed to represent them on an hourly basis rather than 1/3 contingency fee. In the end, my fee was 10% of what it would have been had I taken the case on a contingency basis; however, those kids went on and had funds to put in trust, complete college and establish their lives. One has graduated with a Ph.D. in Polish History and the other a degree in sports broadcasting. I am very proud of them and felt so good to put more money in their pockets to go forward with their lives.

### **Stucky**

Certain cases in our careers change our lives and the lives of many that follow. That was my case involving Cal, Renee, Sadee and Calie Jo Stucky. Cal suffered a traumatic brain injury from a motor vehicle accident which forever changed the family's life. Even though the tortfeasor caused irreparable damage to the Stuckys' lives, when he was deposed, Cal's wife Renee, expressed remarkable forgiveness. There was an uphill battle for additional insurance coverage which at times, seemed discouraging. However, through that process Montanans lives were forever changed when a question was certified to the Montana Supreme Court that established a cause of action for an adult child to pursue a claim for loss of consortium when his or her parent suffers a severe injury. I am thankful to the Montana Trial Lawyers for their input in the briefing and am proud to play a role in forever changing Montana law. To this day, I still work with the family in trying to mend, heal and move forward.

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

**I attended the most ethnically diverse law school in the nation. By doing so, I can relate, not only to the folks here at home, but to diverse cultures, which is so essential today. I have an understanding and ability to relate to varying types of people without losing who I am, but respecting where they are coming from.**

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?

**Being a 5<sup>th</sup> generation Montanan, I understand the history of the people, personalities and concerns. This District is where I was raised. I have a vested interest in the residents of this District and the legal concerns that they have.**

**I have experienced death, divorce and difficulties. I lost my mother at a young age to breast cancer. I lost my father right before I took the bar examination in Montana in 1999. I have been divorced. I have been a single parent. I live in a blended family.**

**I am licensed to practice in 3 states, Montana, Texas and Arizona. Having taken multiple bar examinations, I am confident I can learn the law in any aspect that is needed. I have had a multifaceted practice whereby I was the technician, the manager and the entrepreneur. I have been involved in business and know how every decision matters and time costs money.**

**I have served as counsel in three class action lawsuits involving hundreds of plaintiffs and issues concerning the WARN Act and plant closure; one against Parker Hannifin in Texas, one against Montana Resources in Butte and one against Touch America in Butte. This experience is valuable in balancing multiple parties and issues.**

**I have training and experience in mediation, collaborative law and coaching in addition to trial and transactional experience. Having this experience, I will be able to take a different and unique approach to the position. Having spent most of my career in solo practice, I appreciate what is necessary to succeed, to take a stand for what is right and to make difficult decisions when no one else has your back and without support.**

**Being a circuit judge in rural Montana, I believe a judge would face similar circumstances. I am prepared and ready to do so and to remain steadfast as a servant to the people of this District.**

### **CERTIFICATE OF APPLICANT**

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

10/31/2016  
(Date)

  
(Signature of Applicant)

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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](mailto:mtsupremecourt@mt.gov)**

1 Lori A. Harshbarger  
2 JD LAW FIRM, P.C.  
3 336 Waterloo Road  
4 Whitehall, MT 59759  
5 Tel: (406) 287-7933  
6 Fax: (406) 287-3175  
7 Email: jdlawfirm@msn.com

8 Attorney for Defendant/Counterclaimant

9 **MONTANA FIFTH JUDICIAL DISTRICT COURT, MADISON COUNTY**

10 ASHLEE GANOUNG and AMBER MASON,

11 Plaintiffs,

12 vs.

13 MATTHEW E. STILES,

14 Defendant.

15  
16  
17 MATTHEW E. STILES,

18 Counterclaimant,

19 vs.

20 ASHLEE GANOUNG and AMBER MASON,

21 Counterdefendants.  
22  
23

Cause No: DR 29-14-52

Judge Jon A. Oldenburg

**DEFENDANT/COUNTERCLAIM'S  
MOTION FOR LEAVE TO AMEND  
COUNTERCLAIM and FOR  
SUBSTITUTION OF PARTIES AND  
BRIEF IN SUPPORT**

24  
25 COMES NOW, Defendant/Counterclaimant, MATTHEW E. STILES, by and through his  
26 counsel of record, Lori A. Harshbarger of JD Law Firm, P.C., and submits this Motion for Leave  
27 to Amend Counterclaim and for Substitution of Parties and Brief in Support as follows:  
28

1 DEFENDANT/COUNTERCLAIMANT'S MOTION FOR LEAVE TO AMEND COUNTERCLAIM AND  
FOR SUBSTITUTION OF PARTIES AND BRIEF IN SUPPORT

1 **FACTUAL BACKGROUND**

2 1. On April 19, 1995, Matthew Stiles executed a Power of Attorney appointing  
3 Bonnie Stiles as his agent.

4 2. On April 19, 1995 Matthew and Bonnie Stiles prepared a revocable trust called the  
5 Stiles Family Trust with Matthew and Bonnie serving as Trustees.  
6

7 3. On October 20, 2014, an Answer and Counterclaim were filed on behalf of  
8 Matthew, but verified by Bonnie Stiles as his agent pursuant to Power of Attorney and as Trustee  
9 of the Stiles Family Trust.  
10

11 4. Matthew Stiles' condition was deteriorating and the Stiles' real property had not  
12 been transferred to the Trust so on October 22, 2014, the property owned by Matthew that is the  
13 subject of this litigation, was conveyed to the Stiles Family Trust. (See Exhibit 1, attached.)

14 5. On March 23, 2015, Matthew Stiles was declared incapacitated and Bonnie Stiles  
15 and Krista Berry were appointed as Matthew's co-guardians and conservators.  
16

17 6. Through this process of preparing for mediation and litigation, it has become clear  
18 that there is no current power or utility access to the Stiles parcel.

19 7. Each of the parcels owned by Plaintiffs and Defendant were once owned as one  
20 parcel with unity of ownership in Mary C. Stiles.  
21

22 8. Up until the fence was constructed on the property by Matthew Stiles, the Stiles parcel  
23 and Plaintiffs' parcels were operated as one unit. There is power and utilities on the Plaintiffs'  
24 parcel.  
25

26 9. Because the parcels were once a unified unit that had utility service, and the  
27 Defendant's parcel does not have any access to utilities other than across the lands of Plaintiffs,  
28 Defendant has a claim for an easement for necessity for utilities.



1 18(a), M. R. Civ. P., a party asserting a claim to relief may join as many claims either legal or  
2 equitable or both as the party has against an opposing party.

3           The Montana Supreme Court has held that a district court should allow amendment  
4 unless the party seeking to amend is guilty of “undue delay, bad faith, dilatory motive, undue  
5 prejudice to the opposing party, futility of the amendment, etc. *Farmers Co-Op Ass’n v.*  
6 *Amsden, LLC*, 2007 Mt 286, ¶ 12, 393 Mont. 445, ¶171 P.3d 690, ¶ 12. In determining whether  
7 an amendment would cause undue prejudice, a court must balance the prejudice suffered by the  
8 opposing party "against the sufficiency of the moving party's justification of the delay." *Bardsley*  
9 *v. Plugger*, 2015 MT 301, ¶ 20, 381 Mont. 284, 289, 358 P.3d 907  
10  
11

12           The Court looks at whether there are extraordinary circumstances or reasonable  
13 justification for the delay. *Bardsley v. Plugger*, 2015 MT 301, ¶ 22, 381 Mont. 284, 289, 358 P.3d  
14 907

15           In this case, the parties have been in negotiations regarding the easement since June.  
16 Plaintiffs have been aware that Defendant is seeking an easement for utilities in addition to  
17 ingress and egress. The delay in filing this motion to amend was due to the fact that the parties  
18 were continuing to negotiate and Defendant sought to avoid additional fees. Before we knew it,  
19 the time for pretrial conference is upon us and there is no agreement and the counterclaim has  
20 not been amended to include utilities.  
21  
22

23           Defendant respectfully requests leave of court to file the Amended Counterclaim that is  
24 attached hereto as Exhibit 2, to include the easement for necessity for utilities. (Changes from the  
25 original Answer and Counterclaim are either struck through or typed in bold font.)  
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DATED this 30th day of November, 2015.

JD LAW FIRM, P.C.

By: \_\_\_\_\_  
LORI A. HARSHBARGER  
Attorney for Defendant/Counterclaimant

1 **CERTIFICATE OF SERVICE**

2  
3 I hereby certify that the foregoing was duly served upon the following by mail, hand  
4 delivery, Federal Express, facsimile transmission or electronic transmission as indicated:

5  
6 John S. Warren  
7 Davis, Warren and Hritsco  
8 P.O. Box 28  
9 Dillon, MT 59725

10 **Attorney for Plaintiffs**

- 11  U.S. Mail
- 12  Federal Express
- 13  Hand Delivery
- 14  Facsimile Transmission
- 15  Electronic Transmission

16 this 30th day of November, 2015.

17 JD LAW FIRM, P.C.

18  
19  
20 By: \_\_\_\_\_  
21 Lori A. Harshbarger