

APPLICATION FOR

**DISTRICT COURT JUDGESHIP  
Fifth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: **Mathew James Johnson**  
a. What name do you commonly go by? **"Matt" Johnson**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]  
Phone: [REDACTED]
4. Office Address: **54 N. Last Chance Gulch, Suite 6, Helena, MT 59601**  
Phone: **406-603-0075**
5. Length of residence in Montana: **Almost 47 years**
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
<b>09/01/2000 to present</b>	<b>Clancy</b>	<b>MT</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>Helena High School</b>	<b>Helena, MT</b>	<b>May 1988</b>	<b>HS Diploma</b>
<b>University of Montana</b>	<b>Missoula, MT</b>	<b>May 1992</b>	<b>BA, Poly Sci</b>

<b>University of Montana</b>	<b>Missoula, MT</b>	<b>May 1994</b>	<b>MS, Nat Res Con</b>
<b>University of Montana</b>	<b>Missoula, MT</b>	<b>May 1999</b>	<b>JD</b>
<b>Direct Officer Training</b>	<b>Fort Sill, OK</b>	<b>October 2009</b>	<b>Completed</b>
<b>JAOBC JAG Basic Officer Course</b>	<b>Charlottesville, VA</b>	<b>May 2009</b>	<b>Completed</b>

8. List any scholarships, awards, honors and citations that you have received:  
**High "A" Civil Procedure Second Semester Law School 1997**

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>
<b>Montana State Bar/Montana Supreme Court</b>	<b>September 1999</b>
<b>United States District Court, District of Montana</b>	<b>September 1999</b>

11. Indicate your present employment. (List professional partners or associates, if any.)  
**Law Office of Mathew Johnson PC (Solo 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>
<b>Office of Consumer Affairs 1424 9<sup>th</sup> Ave Helena, MT</b>	<b>Legal Intern</b>	<b>06/97-09/97</b>

<b>Gough Shanahan Johnson Waterman 33 S. Last Chance Gulch Helena, MT</b>	<b>Legal Intern</b>	<b>05/98-08/98</b>
<b>Cederberg Shott &amp; Smith 210 East Pine Street Missoula, MT</b>	<b>Legal Intern</b>	<b>03/98-10/98</b>
<b>Department of Agriculture, General Counsel Missoula, MT</b>	<b>Legal Intern</b>	<b>08/98-05/99</b>
<b>Hoffman &amp; Suenram, Dillon, Montana</b>	<b>Associate</b>	<b>09/99-06/00</b>
<b>Jackson Creek Law Office 11 Friendship Lane Clancy, MT 59634</b>	<b>Solo Practitioner</b>	<b>06/00-01/03</b>
<b>Jefferson County PO Box H Boulder, MT 59632</b>	<b>County Attorney</b>	<b>01/03-12/16</b>
<b>Montana Army National Guard 1956 Mt. Majo St Fort Harrison, MT 59602</b>	<b>JAG Attorney</b>	<b>10/08-12/13</b>
<b>Law Office of Mathew Johnson PC 54 N. Last Chance Gulch, Suite 6 Helena, MT 59601</b>	<b>Solo Practitioner</b>	<b>01/16-present</b>

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

**I have been employed continuously since graduating from law school.**

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

**My present law practice focuses on criminal defense (40% of my practice), family law (40% of my practice), dependent and neglect cases (10% of my practice), government relations (5% of my practice), and estates, probates, and guardianships (5% of my practice).**

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

**I was county attorney in Jefferson County for thirteen years. I was responsible for prosecuting all felony crimes committed in the county, as well as misdemeanor crimes committed outside of Whitehall and Boulder town jurisdiction, but within Jefferson County. Having two Interstates bringing traffic through the County and two cities (Helena and Butte) bordering the County lines, Jefferson County was one of the busiest county attorney offices in the State of Montana. I was responsible for all of the County's involuntary commitment cases, dependent and neglect cases, juvenile cases, and elder law/guardianship cases.**

**As county attorney, I represented Jefferson County's elected officials, department heads, and various volunteer boards, including school boards and planning boards in all civil litigation. With that obligation of representation, I supplied legal advice in various areas including personnel, open meeting laws, and statutory interpretation. As one of the fastest growing counties in Montana, I also assisted in areas of zoning, planning, public health, and easements and road law.**

**I further held the position of the public administrator for Jefferson County for thirteen years. I was tasked as personal representative for various estates where other parties were in conflict or where there were no other family members. I also assisted with indigent burial cases and management of estates with no family or friends.**

**As a JAG Attorney for the Montana Army National Guard, I acted as defense counsel for soldiers appearing in various administrative boards and Article 15 actions. I was also tasked to provide briefings on various applications of military law. Finally, I provided legal assistance to hundreds of soldiers throughout Montana prior to deployments overseas including drafting of wills, preparing power of attorneys, and ensuring an understanding of legal rights in a wide area of law including family law, finances, and military law.**

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

**My specialty includes criminal law, local government law, family law, probate, land use law, and public road law.**

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

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

<b>State or local courts of record</b>	<b>90%</b>
<b>Administrative bodies</b>	<b>5%</b>
<b>Justice Court, non-court of record</b>	<b>5%</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? **10-15 times per month on average.**

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

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

<b>Civil</b>	<b>40%</b>
<b>Criminal</b>	<b>60%</b>
<b>Other</b>	<b>0%</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.

**MONTANA ENVIRONMENTAL INFORMATION CENTER, Plaintiff and Appellant, v. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY and Golden Sunlight Mines, Inc.,** Defendants and Appellees, Jefferson County, a Political subdivision of the State of Montana, Defendant and Intervenor. 382 Mont. 102, 365 P.3d 454 (2016). I represented Jefferson County as Intervenor along with Peter Scott of Bozeman, Montana (406-585-3295). The issue was whether a local mine was required to backfill a pit or not and whether the State properly issued its EIS.

MEIC was represented by David Wilson Jr of Morrison, Sherwood, Wilson & Deola, PLLP, Helena, MT (406-442-3621) and Elizabeth Brennan of Brennan Law & Mediation, PLLC, Missoula, MT (406-543-5146). Montana Department of Environmental Quality was represented by John North and Ed Hayes, DEQ, 1520 East Sixth Ave Helena, MT 59620 (406-444-3620). Golden Sunlight was represented by KD Feedback, Toole & Feedback, PLLC, 702 Main Street, P.O. Box 907, Lincoln, Montana 59639, Phone: (406) 362-4025.

**STATE of Montana, Plaintiff and Appellee, v. Michael Kurt CHILINSKI, Defendant and Appellant, 376 Mont. 122, 330 P.3d 1169 (2014).** I represented the State of Montana through trial and the Attorney General's Office represented the State through the appeal.

Issues: Defendant was convicted in the Fifth Judicial District Court, Jefferson County of 91 counts of animal cruelty. Defendant appealed.

Betty Carlson, Defense counsel, PO Box 46, Neihart, Montana (406) 236-5984. Wade Zolynski, Chief Appellate Defender, 555 Fuller Ave, Helena, MT 59620 (406) 444-9505, Koan Mercer, Assistant Appellate Defender, 610 N. Woody, Missoula, Montana (406) 523-5140.

**JEFFERSON COUNTY, a political subdivision of the State of Montana, By and Through its BOARD OF COMMISSIONERS, Petitioner and Appellee, v. DEPARTMENT OF ENVIRONMENTAL QUALITY, an agency of the State of Montana, Respondent and Appellant, and Northwestern Corp, d/b/a Northwestern Energy, Intervenor and Appellant, 362 Mont. 311, 264 P.3d 715 (2011).**

I represented Jefferson County as Petitioner and Appellee along with Peter Scott of Bozeman, Montana (406-585-3295).

Issues: County petitioned for mandamus relief against Department of Environmental Quality (DEQ), alleging that DEQ failed to consult with county concerning draft environmental impact statement (EIS) for proposed electrical transmission line, and energy company intervened. Montana Department of Environmental Quality was represented by John North and Ed Hayes, DEQ, 1520 East Sixth Ave Helena, MT 59620 (406-444-3620). Northwestern Corporation was represented by John Tabaracci and Robert Erickson of Sullivan, Tabaracci & Rhoades, P.C.; 1821 South Ave W #300, Missoula, MT 59801, (406) 721-9700.

23. State the number of jury trials that you have tried to conclusion in the last ten years.  
**I estimate at least 10 jury trials.**

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

**I estimate at least 10 bench trials, excluding numerous sentence revocations, hearings on suppression issues, and sentencing hearings.**

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.

**City of Helena v. Buchanan, Case No. TK-2016-0002289 (Helena Municipal Court), 10/24/2016 – 10/25/2016.** Opposing counsel, Iryna O'Connor, 316 North Park Avenue, Room 203, Helena, Montana 59623, telephone number is (406) 457-8595. Presiding Judge, Bob Wood, 228 Broadway Ave, Helena Montana 59601, the telephone number is (406) 447-8466.

**In re L.A.B. Case No BDN 2016-41 (First Judicial District Court), non-jury Youth in Need of Care litigation.** Opposing counsel, Anne Peterson, County Courthouse-Lower Level, 228 E. Broadway Helena, Montana 59601, the telephone number is (406) 447-8221. Presiding Judge, Hon. DeeAnn Cooney, 228 Broadway Ave, Helena, Montana 59601, phone number is (406) 447-8218.

**Warren v. Warren (Family Law Trial) DR 2011-35 (5<sup>th</sup> Judicial District Court, Jefferson County) 08/08/2016.** Co-counsel, Greg Beebe of 1085 Helena Ave, Helena, MT 59601, phone number is (406)

442-3625. Opposing counsel, David Gallik of 1124 Billings Ave, Helena, MT 59601, phone number is (406) 443-0009. Presiding Judge, Hon. Blair Jones, 809A East 4th Avenue P.O. Box 1268 Columbus, MT 59019 322-5406.

**State v. Hollis Johnson, TK-2008-0004 (Lewis and Clark County Justice Court) 07/13/2016** (bench trial). Opposing counsel, Fallon Stanton of 228 Broadway Helena, MT 59601, phone number is (406) 447-8221. Presiding Judge, Michael Swingley, 228 Broadway, Room 102 Helena, Montana, 59601, phone number is (406) 447-8202.

**State v. Anthony Woody, DC-2015-10 (5<sup>th</sup> Judicial District Court, Jefferson County)**, non-trial criminal disposition, sentenced September 16, 2015. Brad Custer opposing counsel, 121 Financial Drive, Suite C Kalispell, Montana 59901, phone number is (406) 721-2493. Presiding Judge, Hon. Loren Tucker, 110 W. Wallace P.O. Box 185 Virginia City, MT 59755 phone number (406) 843-4235.

**State v. Nathan Wagner, DC-2015-06 (5<sup>th</sup> Judicial District Court, Jefferson County)**, non-trial criminal disposition, sentenced September 16, 2015. Brad Custer opposing counsel, 121 Financial Drive, Suite C Kalispell, Montana 59901, phone number is (406) 721-2493. Presiding Judge, Hon. Loren Tucker, 110 W. Wallace P.O. Box 185 Virginia City, MT 59755 phone number (406) 843-4235.

**State v. Brandi Powers, DC-2013-30 (5<sup>th</sup> Judicial District Court, Jefferson County)**, non-trial criminal disposition, sentenced August 19, 2015. Michael Kakuk opposing counsel, 1717 Harrison Ave. Helena, Montana 59601-2542, phone number (406) 594-0515.

**State v. Cal Mullen, DC 2014-13 (5<sup>th</sup> Judicial District Court, Jefferson County)**, non-trial criminal disposition (vehicular homicide), sentenced May 13, 2015. Chris Abbott opposing counsel, 139 N. Last Chance Gulch P.O. Box 200145, Helena, Montana 59620-0145, phone number (406) 444-0104. Presiding Judge, Hon. Loren Tucker, 110 W. Wallace P.O. Box 185 Virginia City, MT 59755 phone number (406) 843-4235.

**State v. Rodney Mortimore, DC 2014-08 (5<sup>th</sup> Judicial District Court, Jefferson County)**, non-trial criminal disposition (sexual intercourse without consent), sentenced April 8, 2015. Mariah Eastman opposing counsel, P.O. Box 1010 Three Forks, Montana 59752-1010, phone number (406) 285-6724. Presiding Judge, Hon. Loren Tucker, 110 W. Wallace P.O. Box 185 Virginia City, MT 59755 phone number (406) 843-4235.

**State v. Timothy J. Cheetham, Sr., DC 2014-02 (5<sup>th</sup> Judicial District Court, Jefferson County)**, trial August 20-21 2014 (sexual intercourse without consent), sentenced February 4, 2015. Steven Scott opposing counsel, 139 N. Last Chance Gulch, P.O. Box 200145, Helena, Montana 59620-0145, phone number (406) 444-7827. Presiding Judge, Hon. Loren Tucker, 110 W. Wallace P.O. Box 185 Virginia City, MT 59755 phone number (406) 843-4235.

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

**Within the Montana Army National Guard between January 2010 and December 2013, I represented more than ten soldiers before administrative boards for punishment and/or separation from the Guard.**

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.**

#### **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.

**I am a member of the Montana State Bar.**

**I have not held any offices within the Montana State Bar.**

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

**I am a member of the First Assembly of God in Helena, Montana.**

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

**I ran for county attorney of Jefferson County and was elected in November 2002. I served as county attorney/public administrator from 2003 through 2015; I was re-elected twice. I chose to go to private practice at the end of 2015 after ensuring I had a well-qualified deputy county attorney who could take over the position. This allowed me the opportunity to run for the judgeship in the 5<sup>th</sup> Judicial District without having a large caseload within the district that I would be conflicted from, if elected.—**

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

**I have always felt strongly that public involvement and giving time to community service is important. I exercised that belief by seeking public office at an early stage in my career as an attorney. Having been a public official for most of the last 14 years, I have been active publicly in representing my constituents of Jefferson County. Public service as an elected official is one of the greatest ways to contribute to one's community. Further, I joined the Montana Army National Guard to also give back to my community. I am proud to have served my country and State. Also, having five children to raise over these years, my wife and I have had the responsibility of ensuring that our children are raised to be good citizens and possible future leaders for their communities. Thus, much time has been invested in our children. As my children grow older and seek their own paths, I feel that is the time to contribute additional time through other community service efforts. Through each stage of our lives, there are various ways to give time to the community and each person should determine how they too can contribute.**

#### **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.

**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.  
**I worked for the Montana Department of Corrections as a relief community corrections counselor at the Riverside Juvenile Facility in Boulder, Montana from approximately January 2004 until January 2006. I was an on-call employee and filled shifts when required, supervising female juvenile inmates and assisting with their daily programming during evenings, weekends, and holidays. The approximate hours were less than ten a week.**
- I am also part-owner of a business, Formula Physique, a health and fitness business that my wife operates in Montana City. I assist with some training programs, run with clients when needed, and assist my wife in various business tasks when needed. This business has been in operation for the last 8 years.**
38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.  
**I own and operate the Law Office of Mathew Johnson PC, a private law office for which I plan to close if I am appointed as a district court judge.**
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.

**Besides a military retirement/VA compensation which is less than 20% of my total income, I have not received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise.**

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 county attorney, I performed legal research on issues in court and in response to criminal defense issues raised. Likewise, in handling civil litigation for Jefferson County, I had the responsibility of ensuring that various legal issues were well researched. In the past, a deputy county attorney or paralegal may have provided some legal research when time allowed, but that was not generally the case. I would generally write my own briefs, but on several occasions, I had assistance on brief writing with co-counsel.**  
**In my current practice, there are legal issues that come up that require my own research and brief writing as I have no assistance from others.**
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 was tasked to write resolutions for the County Commission. While in the Montana Army National Guard and in my current practice, I have drafted numerous power of attorney documents and wills.**
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.  
**Please see the attached writing sample from *State v. Michael Chilinski*.**
48. What percentage of your practice for the last five years has involved research and legal writing?  
70 %
49. Are you competent in the use of Westlaw and/or Lexis?  
**I am competent in the use of Westlaw.**

## H. MISCELLANEOUS

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

**My primary focus and interest has been my family as they bring the greatest joy to my life. Any family get together, outing, event, or dinner is a blessing. I further enjoy the outdoors including hiking, jogging, fishing, and camping. My wife and I participate in weekly runs together and we have a goal of completing at least one half-marathon a year. Before an injury, I would participate in marathons and ultra-marathons.**

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

**From the age of 9 until 14, I was a paperboy in Helena, Montana. I was responsible for delivering newspapers each day of the week in all types of weather and even when sick.**

**At 15, I worked at a restaurant in Helena (Bonanza) until getting a job at a grocery store my senior year of high school.**

**From 1988 until 1994, while enrolled in school, I worked as a stocker and with the night crew at Buttreys Foods (later bought out by Albertsons) in Helena and then Missoula.**

**Between graduate school and law school, I worked for almost a year for the Montana Film Office within the Department of Commerce as an assistant. I then worked at the Lt. Governor's Office an assistant for seven months before leaving to law school.**

**While in law school, I again worked the night crew at Albertsons in Missoula from 1996 until 1999.**

**Legal work experience is provided in the answer to question 12.**

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

**While county attorney, my ability to provide pro bono work was limited. Instead, I provided mock trials for school civics classes. I also provide as much direction as I could to those calling the office in need of legal help on landlord tenant disputes, parenting disputes, and issues of estates and guardianships.**

**Since entering private practice, I have represented various parties pro bono in family law matters. I have also provided free advice to various individuals whom have called my office or stopped in seeking guidance on issues of parenting plans, family services cases, and seeking advice on criminal law questions whom were unable to pay for services.**

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

**One person who has significantly influenced my view of our system of justice is that of the current Fifth Judicial District Court Judge, Honorable Loren Tucker. Having primarily practiced before Judge Tucker for the past 16 years, there is no doubt that he has influenced the way I view the judicial system. Judge Tucker may be feared by some attorneys and others may dislike his lengthy discourse and demand for details in cases. However, he has instilled in me the fact that the system requires an attention to the details and sufficient knowledge of the facts and law to be effective. At the same time, one must be compassionate to the parties and mindful of the power of the decision that one makes as a judge, including issuing bond orders, signing search warrants, amending parenting plans, signing arrest warrants, issuing an order of protection, or sentencing someone to prison. Judge Tucker has always been mindful of the importance and effect of every decision he has made. He understands that each decision requires careful consideration prior to issuing a decision.**

**Judge Tucker has molded my respect for justice and the demand for near perfection as a lawyer, even though that is an unattainable goal. However, striving for such a result only strengthens our system. Judge Tucker has instilled in me the drive and motivation to ensure that our justice system is respected and is accountable to our constituents. I do not always agree with Judge Tucker's approach, but I value his ability to remain compassionate to the parties, ensure that each party has had their opportunity to be heard, and that the decision made has been well analyzed to ensure it is a respected decision. I believe that I am a better attorney because of my experience before him in court and that the system of justice is more respected because of his time on the bench.**

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

**Some critical qualities that I believe are important in a good district court judge include those traits that I described in question 53, such as motivation for perfection of the system, respect of the gravity of each decision to be made, quest for knowledge, and compassion for the fairest result possible.**

---

**Also, to be a good district court judge, one must also have the trait of working hard. Without the willingness to work hard to ensure that the system of justice works, then the end result may fail. A district court judge must be willing to work long hours, keep up on the caseload, be willing to travel when**

necessary to attend to the demands of the caseload in the three counties, and dedicate the time necessary to ensure that cases are decided on a timely basis.

Another quality of a good district court judge is one whom can multi-task and efficiently run his or her court. Not only does the judge have hearings and trials to attend to, but there are always cases awaiting decisions that require a judge to be able to use their time wisely, switch cases at a moment's notice, and ensure a thorough understanding of the facts and law of each case to make a well thought decision.

Finally, a district court judge must be fair, compassionate, and have a mild-mannered temperament. Many of the family law cases are pro-se and require compassion of a party's position in the legal system without representation. Many of the criminal cases include defendants that have made mistakes but are not outright bad people. Litigants come from various socio-economic classes with varying backgrounds, but they all still deserve a fair result. Without compassion for the parties, the patience to allow parties to present their case, and a temperament that allows a party to be heard, then the results may not appear fair to various parties.

I believe that I carry each of these qualities.

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.

**Stare decisis is a legal principle by which judges are obligated to respect the precedent established by prior decisions. this is understood to mean that courts should generally abide by precedent and not disturb settled matters. Precedent allows for one to view a decision as consistent and fair. Precedent allows lawyers and litigants to assess the merits of a claim and the likely outcome of a claim. Precedent allows for predictability of the law. At the same time, there must be flexibility when facts do not fit the body of precedent. That flexibility should be constrained to unique facts or questions of law that create a miscarriage of justice if forced to follow precedent. Even then, one must follow the Constitution, existing statutory law, and common law.**

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

**I have valued serving my community through the Montana Army National Guard and in serving as county attorney in Jefferson County. After thirteen years of public service as county attorney, it was time to use my experience in other ways for the community. The next logical step is as a district court judge. I feel strongly that this district deserves to have a judge that has close ties to the district, lives within the district, and will provide compassion, knowledge, and hard work to the position of judge to ensure justice for our communities.**

57. What items or events in your career have distinguished you or of which you are most proud?  
**I am most proud of my time representing the citizens of Jefferson county as the county attorney. During my terms as county attorney, Northwestern Energy sought to build a transmission line that was planned to go through the entire Fifth Judicial District from Jefferson County, down the Jefferson Valley into Madison County and exiting into Beaverhead County. The Jefferson County Commissioners and I litigated the matter to protect the environment and property rights of the entire district and to be sure that the route was well thought out and placed in the best location for the citizens. In the end, the plan was abandoned by Northwestern Energy after litigation, saving its users and the communities a costly transmission line that was unnecessary.**

**While county attorney I prosecuted various high profile cases including the case against *Mike Chilinski* for abusing a large number of Alaskan malamutes. This case strained the resources of Jefferson County and required a considerable amount of my attention for over a year. However, prosecution was necessary and in the end, Chilinski was convicted of 91 counts of animal cruelty and well over one hundred and fifty malamutes were provided new homes.**

**Another rewarding criminal case was the prosecution of *Timothy Cheetham*, whom was convicted of sexually assaulting a six year old girl who will face life-long psychological problems as an aftermath to the assault. Having the satisfaction of telling the victim that the perpetrator will be going to prison for over 100 years left a smile of relief on the face of the victim that I will not forget.**

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.  
**I believe that all pertinent information is disclosed within my entire application.**

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 have primarily practiced within the Fifth Judicial District Court for the past seventeen years. I have an understanding and appreciation for this district and its constituents that other applicants do not have. As a public defender between 2000 and 2002 I traveled extensively between each of the three courthouses weekly and gained an understanding of the amount of travel required for the district court judge. While county attorney in Jefferson County, I learned how difficult it was to obtain the judge when needed as he only traveled to Jefferson County one day of the week at best. I took cases to the judge in Virginia City and Dillon when a matter needed attention and could not obtain a hearing for possibly many weeks. With that experience, I understand the importance of the availability of the judge in each county and the demands required to ensure that there is access to the judge. I am more than willing and capable of traveling to ensure that cases are not delayed and to provide equal access to all constituents within the district. I also have the most hands-on experience within this district of all candidates and the greatest amount of experience as a county attorney within the district.**

**My breadth of legal experience likewise differentiates myself from others. I have both experience as a criminal defense attorney and experience as a prosecutor. I have gained considerable experience in civil litigation while county attorney in Jefferson County as it has had its share of litigation, being one of the fastest growing counties. Another area of law that I practice is family law. Family law requires compassion and the understanding of its intricacies as these cases are some of the most demanding cases for time and immediacy of decisions from a judge. I have also gained considerable experience in drafting wills and discussing estate planning through my five years as a JAG attorney during a time of constant deployments in the War on Terror.**

**Finally, I can provide the Fifth Judicial District a hard work ethic. From being a paperboy in my childhood, to working my way through law school at night stocking grocery shelves, I learned the value of hard work. I am young enough to keep up with the demands of this district, but hold enough years of legal experience to be an effective judge. With my experience and traits, I am the most well rounded candidate for the next Fifth Judicial District Court Judge.**

## 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)

---

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 Mathew J. Johnson  
2 Jefferson County Attorney  
3 Courthouse, PO Box H  
4 Boulder, Montana 59632  
5 (406) 225-4010

6 **MONTANA FIFTH JUDICIAL DISTRICT COURT, JEFFERSON COUNTY**

7 STATE OF MONTANA, )

Cause No. DC-2011-45

8 Plaintiff, )

**STATE'S SECOND RESPONSE TO MOTION**  
**TO SUPPRESS**

9 v. )

10 MIKE CHILINSKI, )

11 Defendant. )  
12 \_\_\_\_\_ )

13 **COMES NOW**, Mathew Johnson, representing the State of Montana, and hereby file's  
14 it's Second Response to a Motion to Suppress and to Dismiss or in the Alternative a Request  
15 for a Frank's Hearing. Since the first Response, the Defendant suddenly "incorporates hereby  
16 reference all of the relevant facts, arguments, and authority from the motions, briefs and  
17 declaration filed by Chilinski in a US District Court Case under *Criminal No. CR 12-12-H-*  
18 *CCL.*" The State continues in its response as follows and respectfully requests that said  
19 Motion to Suppress/Dismiss and request for a Frank's hearing be denied based upon the State's  
20 First Response and Second Response.

21 **1. The Application for Search Warrant by Deputy McFadden Provides Sufficient**  
22 **Probable Cause for the Search Warrant Issued.**

23 That State asserts that the application for search warrant when reviewed as a whole  
24 within the totality of the circumstances as reported by Deputy McFadden provides sufficient  
25 probable cause. Defendant's assertion of "an abundance of conflicting and confusing  
26 information regarding the "five written" complaints" is merely an effort to confuse a situation  
27 that otherwise is very simple. Deputy McFadden assets that: "*I was aware of the owner and*  
28 *the location of this incident because of at least five other written reports by other deputies in*

1 *this office concerning animal neglect having involved our office and go as far back as February*  
2 *of this year, 2011.”* When reading the entire Application for Search Warrant, it is clear that  
3 Deputy McFadden relied upon Dean Hildebrand’s June 2011 and August 2011 investigations  
4 as well as the Peterson’s complaint for probable cause for a search warrant. The only reason  
5 Deputy McFadden referenced “five other written reports” was to indicate that he was familiar  
6 with Chilinski and the location within the beginning of his affidavit of probable cause.  
7 Wherefore, this was not false information to mislead the Court. Deputy McFadden was aware  
8 of the Chilinski property, kennels, and location through other complaints as well as the fact that  
9 he had previously visited the Chilinski property for an investigation.

10  
11 **2. Within Said Search Warrant, There Is Sufficient Description of Evidence of Cruelty**  
12 **to Animals Or Aggravated Cruelty.**

13 Within the Application for Search Warrant as well as the Search Warrant, potential  
14 crimes are included, Cruelty to Animals as well as Aggravated Animal Cruelty. Said potential  
15 violations of the law could include various elements of cruelty including torturing, injuring,  
16 killing, confining the animal in a cruel manner, failing to provide an animal in the person’s  
17 custody with food and water of sufficient quantity and quality to sustain the animal’s normal  
18 health, and in cases of immediate, obvious, serious illness or injury, providing licensed  
19 veterinary or other appropriate medical care. Defendant argues that the Search contains no  
20 information that describes evidence of cruelty to animals or aggravated animal cruelty.  
21 However, each item listed as potential evidence on page 1 and page 2 of the Search Warrant  
22 starting at line 25 is potential evidence to be discovered for which would be evidence of cruelty  
23 to animals. Any dog, living, yet to be born, and deceased would be evidence as each animal  
24 could be used as evidence to demonstrate illness, injury, or lack of normal health. In this case,  
25 each animal has been alleged to be subjected to cruelty and thus was seized as evidence and  
26 where arguably all dogs are exculpatory evidence for the Defendant likewise.

27 Further, dog feces, dog food, containers and packages used to store food or water, any  
28 medications for dogs, dog records including veterinarian bills and records, advertisements for  
selling and giveaways of dogs, correspondences concerning dogs, photographs of dogs, and any  
Page 2. STATE’S SECOND RESPONSE TO MOTION TO SUPPRESS

1 video-tapes, DVD's hard drives, and computers which may be used to store records and  
2 information on dogs at the premises are all items of evidence which could be used to prove  
3 abuse of dogs. Evidence of lack of medical care or evidence of medical care is important in  
4 an animal neglect case. Evidence of food and water and their containers or lack of food and  
5 water and containers is also important in an animal abuse and neglect case. However, the dogs  
6 themselves are the best evidence of abuse. Evidence of whether dogs were merely to be sold  
7 or given away is important in order to determine the state of the animal breeding facility/puppy  
8 mill and whether there are problems. A world class breeder would not be giving animals away  
9 or have a problem giving animals away. Correspondences related to dogs could further prove  
10 problems with animals, deaths, or even the number of dogs and size of breeding facility/puppy  
11 mill. Evidence to show that there were too many dogs at the facility for one person is also very  
12 important in this case. Records and photographs of dogs are important likewise to show  
13 evidence of the size of animal breeding facility/puppy mill which could further be evidence of  
14 neglect for having too many dogs for one person. Records of the number of deaths of dogs  
15 amongst the facility in a given year and records of any evidence of medical issues or care are  
16 likewise potential evidence of abuse or neglect.

### 17 18 **3. The Use Of Volunteers For Execution of The Search Warrant Was Lawful**

19 The Jefferson County Sheriff's Office is a small law enforcement agency with minimal  
20 capability to handle the execution of a search warrant on an animal breeding facility/puppy mill  
21 with over 100 dogs. Thus, Jefferson County was reliant upon outside assistance with special  
22 training to safely and efficiently handle all evidence including dogs and including  
23 documentation and seizure. Defendant challenges the ability of Deputy McFadden to oversee  
24 volunteers used to assist in gathering dogs upon the Chilinski property. Though the Defendant  
25 himself asserts he could care for over 160 animals, he does not believe Deputy McFadden could  
26 oversee the operation. However, regardless of Defendant's speculation, Deputy McFadden did  
27 supervise the operation. Those volunteers permitted to be on site at the property were merely  
28 used to assist in the transport of animals from the pens and kennels as well as assist in

1 photography and video-taping for evidentiary purposes. Any alleged release of a portion of  
2 video or photographs from Chilinski's property was not granted permission by the Jefferson  
3 County Attorney or Sheriff's Office as it was evidence to be used at trial.

4 Defendant argues that any video or photographs released from Chilinski's property is  
5 a violation of *Wilson v. Layne*, 526 U.S. 603 (1999) (see the attached case). The State asserts  
6 that this is a dissimilar case. In *Wilson*, media accompanied law enforcement in entering the  
7 home of the Plaintiffs but did not engage in the execution of the warrant and did not assist the  
8 police in their task. In this case, there was no media. Volunteers were assisting Jefferson  
9 County in seizing and documenting animals including the use of camera and video. The  
10 volunteers were agents of Jefferson County. The volunteers did not enter Chilinski's home nor  
11 did any video filmed by the deputies get released to the public.

12 Of greater relevance is the recent case cited as *United States v. Duenas*, 2012 WL  
13 3517605(C.A.9 (Guam)) (See attached case). In *Duenas*, DEA agents allowed media to roam  
14 the property of the Duenases freely. *Id.* at p. 10. The Defendants in *Duenas* sought to suppress  
15 evidence, but the Court ruled that suppression was not the appropriate remedy if there was a  
16 Fourth Amendment violation. *Id.* at p.13. The case of *Wilson v. Layne* was a Bivens action  
17 where the Court at that time did not decide the exclusionary rule, *Wilson* at 526 U.S. at 608, 119  
18 S.Ct. 1692. Within the *Duenas* case, the Court held that any Fourth Amendment violation does  
19 not automatically trigger the exclusionary rule. *Duenas* at p. 13. The rule should apply only  
20 where the benefit of deterrence outweighs the rule's substantial social costs. *Davis v. United*  
21 *States* 131 S.Ct. 2419, 2427, 180 L.Ed.2d 285 (2011). In *Duenas*, the Court agreed that the  
22 media being present on the property did not expand the scope of the search beyond the warrant's  
23 dictates where the Court then stated any Fourth Amendment violations would be better suited  
24 as a Bivens action or a 42 U.S.C. §1983 action. *Duenas* at p.14.

25 In Montana case-law, evidence obtained through search and seizure in violation of the  
26 Fourth Amendment constitutes "fruit of the poisonous tree" that falls under the exclusionary  
27 rule. *State v. Therriault*, 2000 MT 286, ¶ 57, 302 Mont. 189, ¶ 57, 14 P.3d 444, ¶ 57.  
28 Montana recognizes three exceptions to the "fruit of the poisonous tree doctrine." *Therriault*,

1 ¶ 58. The evidence will be admissible notwithstanding a Fourth Amendment violation if it is  
2 (1) attenuated from the constitutional violation so as to remove its primary taint; (2) obtained  
3 from an independent source; or (3) determined to be evidence that inevitably would have been  
4 discovered apart from the constitutional violation. , ¶58 (citing *State v. New*, 276 Mont. 529,  
5 536, 917 P.2d 919, 923 (1996)).

6 The State denies any violations of Chilinski's Fourth Amendment rights did occur. In  
7 this case, the volunteers were not media. They assisted in the gathering and moving of dogs and  
8 in documentation by video and photographs when needed by deputies. There was no tampering  
9 with any evidence, no violation of the terms of the warrant, nor any tainting of evidence to be  
10 admitted to the Court at trial. The Court would first have to determine if there was evidence  
11 which would be declared as "fruit of the poisonous tree". Not knowing specifically what the  
12 Defendant would argue is fruit of the poisonous tree, but inferring that it was the release of a  
13 portion of video from the search at a later time and place, the State would counter that it's  
14 release then was from volunteers outside the scope as an agent assisting the Sheriff's Office in  
15 the search.

16 If the Defendant is arguing over the fact volunteers were used over other law  
17 enforcement agents which were not available within Jefferson County, even if Defendant could  
18 prove that use of volunteers was a violation to his Fourth Amendment rights, said exceptions  
19 to the fruit of the poisonous tree still results in denial of suppression of evidence. Said photos  
20 and/or video taken by the volunteers would still be inevitably discovered by law enforcement,  
21 as they were on scene with a valid search warrant and had the ability to document evidence  
22 equally, but the process, which took two days would have taken much longer without volunteer  
23 assistance.

24 Here, the actions of having volunteers assist in seizing animals is not egregious, for  
25 which to impose the exclusionary rule if even it could be argued as a Fourth Amendment  
26 violation by Chilinski. Any alleged release of video or images from Chilinski's property would  
27 be attenuated so as to remove any taint as it happened after the fact, after the search. Instead,  
28 as in *Duenas*, the State argues any perceived allegation of a Fourth Amendment violation by

1 Chilinski is more appropriately addressed through some type of civil action.

2  
3 **4. Service Of Warrant On Chilinski Was Lawful and Proper**

4 In their briefing, Defendant continues to argue that Deputy McFadden did not serve him  
5 with a search warrant. However, the State's First Response had an attached affidavit of Deputy  
6 McFadden where he explained that the search warrant had taken two days to complete. Before  
7 Deputy McFadden was even finished executing the search warrant, Chilinski was able to get  
8 the Undersheriff to bring him a copy at the jail. Upon completion of the execution of the  
9 warrant and after leaving Chilinski's property, Deputy McFadden immediately went to the  
10 County Jail and served Chilinski with the Search Warrant, Return, and Receipt. Therefore,  
11 Chilinski was served by Deputy McFadden and said service was immediately at the completion  
12 of the execution of the search.

13  
14 **5. State Properly References the Civil Hearing to Counter Chilinski's Argument that Seized Dogs Were Healthy.**

15 Defendant next objected to the State "improperly asking the Court to take Judicial  
16 Notice" of the civil animal welfare hearing. The only reason that said evidence from the civil  
17 hearing was brought to the Court's attention was due to the fact Chilinski argued that the dogs  
18 seized did not demonstrate any evidence of abuse. The State merely provided civil hearing  
19 findings to again counter the distorted perceptions and arguments of Chilinski.

20  
21 **6. Defendant's Inclusion of Federal Briefs and Motions Should Instead Be Excluded**

22 Defendant believes they can magically incorporate by reference all relevant facts,  
23 arguments, and authority from the motions, briefs, and declaration of Chilinski from another  
24 case within the Federal Court. The State objects to consideration of any other brief or motion  
25 or affidavit filed in another court being inferred into the Defendant's briefs and motions in this  
26 case. The objections are multiple and begin with the State first asserting that all briefs were due  
27 August 6, 2012. This August 6, 2012 deadline is after a briefing deadline that had passed in  
28 early July as well as a previous briefing deadline that had passed much earlier in 2012. To wait

1 well over 8 months to suddenly attach new briefs and motions is unfair and prejudicial to the  
2 State. Wherefore, new arguments by the Defendant should be disregarded.

3 Second, Defendant's briefs from another jurisdiction should be discounted as they are  
4 not the arguments of this Defendant's attorney nor signed by her. Third, said briefs exceed the  
5 page limit of this Court's rules. Fourth, Defendant did not seek permission from this Court to  
6 infer these multiple briefs. Fifth, the attached Motions and Briefs reference or cite some other  
7 documents, but said documents are not available to the State for which to understand the matters  
8 raised by the Defendant in the Federal case. And finally, said attached Briefs and Motions are  
9 not fact for which this Court should consider as facts as apparently insisted by the Defendant.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

The Defendant's briefs and motions contain many falsities and mis-truths. The Application for Search Warrant does not include false statements and Chilinski failed in his burden to prove false statements. Within the four corners of the Application as well as weighing the totality of the circumstances, the Court can find probable cause sufficient for a search warrant. Said Search Warrant was not over-broad, and no items should be suppressed. Wherefore, the Defendant's Motions and request for a Frank's hearing should be denied in its entirety.

DATED this \_\_ day of August, 2012.

**Mathew J. Johnson**  
**Jefferson County Attorney**