

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
4th Judicial District**

A. PERSONAL INFORMATION

1. Full Name: Brenda Constance Desmond
 - a. What name do you commonly go by? Brenda
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: Missoula County Courthouse, 200 W. Broadway, Missoula MT 59802
Phone: (406) 258-4728
5. Length of residence in Montana: 36 years
6. List your place of residence for the last five years:

| <u>Dates</u> | <u>City</u> | <u>State</u> |
|-----------------------|-------------|--------------|
| 2-12-2010 – 2-11-2015 | Missoula | MT |

(Missoula resident since 1986)

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> |
|---|--------------------|-----------------------|---------------|
| St. Mary Seminary | Buffalo, New York | 1968 | College Prep. |
| Fordham University | New York, New York | 1968-1970 | good standing |
| Katholieke Univ. Leuven | Belgium | 1972 | BA Phil. |
| State University of NY at Buffalo Law School | Buffalo, NY | 1976 | J.D. |

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

State Bar of Montana annual George L. Bousliman Professionalism Award, 2008, “For establishing a reputation and a tradition as defined by Dean Roscoe Pound: the pursuit of a learned art as a common calling in the spirit of public service.”

National Alliance on Mental Illness, Montana chapter, 2008, annual appreciation award.

Award, “Presented [to Brenda Desmond] in Appreciation for Outstanding Guidance and Support in Connection with the Establishment of the Wayne County Missouri Juvenile Drug Court, November 17, 2005.”

As a co-founder and back-up judge of the Missoula Youth Drug Court, (est. 1996), I share in awards the court has received, including the United States Department of Justice’s 1998 selection of the Missoula Youth Drug Court as a Mentor Court Site. Since that time, our court has trained participants from over 50 jurisdictions in drug court design and practice. Additionally, the Missoula Youth Drug Court is included as one of seven “Exemplary Juvenile Drug Court Programs” in the United States Department of Justices JAIBG Bulletin of May 2001, NCJ No. 184744.

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

I was not a member of law review.

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> |
|-------------------------------------|--------------------------|
| Montana Supreme Court | 11-1980 |
| U.S. District Court, W.D.N.Y. | 4-1979 |
| U.S. District Court of Montana | 11-1980 |

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

District Court Standing Master for the State of Montana Fourth Judicial District.

Chief Justice, Fort Peck Tribal Court of Appeals, Poplar, Montana (part-time)

12. State the name, dates and addresses of all law firms with which you have been associated in practice, all 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> |
|-----------------------------|--|--------------|
| Alaska Legal Services | Staff Attorney (VISTA) | 1977 |
| Crow Tribal Court | Court Advisor | 1978-1980 |
| Montana Legal Services | Staff Attorney | 1980-1982 |
| Montana Legislative Council | Staff Attorney | 1982-1986 |
| | House Judiciary Committee Stream Access Interim Committee Committee on Indian Affairs | |
| UM School of Law | Visiting Assistant Professor | 1985-1994 |
| | Indian Law Clinic Supervising Attorney Legislative Bill Drafting Project Courses Taught: Legislation, Legal Writing and Practice, Appellate Practice, Public Land and Resource Law | |

| | | |
|---|---|-----------------|
| Fourth Judicial District | Standing Master (formerly Special Master and Judicial Staff Attorney) | 1994 to present |
| Confederated Salish and Kootenai Tribes Court of Appeals | Associate Justice (part-time) | 1997-2003 |
| Fort Peck Tribes Court of Appeals | Chief Justice (part-time) | 2006 to present |

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

With the exception of the period between September 1977 and March 1978, when I was traveling, I have been continuously employed since completing 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.

As a Standing Master for the Fourth Judicial District under the authority of Mont. Code Ann. §§3-5-122 et. seq., I conduct preliminary matters in adult criminal cases, including arraignments, setting bond and conditions of release. I also conduct preliminary matters in juvenile delinquency proceedings, including detention and release hearings. In civil matters, on referral from District Court Judges or by stipulation of the parties, I conduct hearings, including final hearings, in dissolution of marriage and parenting cases, mental health commitment proceedings, guardianship proceedings and discovery disputes. I serve as a mediator in the initial stage of child protection cases and serve as pro bono settlement master or mediator in approximately ten cases per year.

Beginning in 2003, along with local service providers and prosecution and defense attorneys, I initiated and led the planning and establishment of the Missoula Co-Occurring Treatment Court, (formerly known as the Missoula Mental Health Court). In 2011, we added a separate Veterans Court, the first in Montana. Participants in both court programs have been charged with a crime and have mental health and substance abuse challenges that factored into the commission of the charged crime. Our court is patterned after similar courts around the country that promote community safety by providing long-term community-based treatment services along with monitoring and supervision. I preside over the program's weekly court sessions.

In my part-time position as Chief Justice of the Fort Peck Tribal Court of Appeals, I travel quarterly to Poplar, Montana to conduct appellate hearings with the other two justices, work with the court administrator to manage the caseload, determine, with the other justices, whether to accept petitions for review, when review is not automatic and, with the other justices, write decisions.

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

I taught at the UM School of Law for nine years. As Supervising Attorney of the UM Indian Law Clinic, I worked with the students and the Montana-Wyoming Tribal Court Judges Association on

the planning and presentation of legal seminars and the establishment, in 1990, of the Montana-Wyoming Indian Supreme Court. The Indian Law Clinic provided legal and administrative assistance to the Court. I taught Indian law for seven years in the legal assistant program of Missoula College.

As noted above, I worked for the legislature for four years, staffed the House Judiciary Committee and several interim committees, drafted bills and wrote annotations for the Montana Code Annotated. As a private citizen, I have regularly testified about pending legislation.

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

My specialties include family law, legislation, mental health law, federal Indian law and tribal law. As well, I am a specialist/generalist in a broad range of substantive and procedural issues that most often come before the District Court in criminal and civil matters. I am also a specialist in drug treatment court matters.

17. Do you regularly appear in court?

Yes, I regularly preside over court proceedings. Please see answer to Question 14.

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

| | |
|---------------------------------|-----|
| Federal court | 0% |
| State or local courts of record | 95% |
| Administrative bodies | 0% |
| Other | 5% |

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

Almost all of my work is related to cases pending in District Court, some of which go to trial. The remainder of my work concerns tribal appellate court proceedings.

19. How frequently have you appeared in court?

I preside in court numerous (15-20) times per month, sometimes for hearings several days in length and weekly for the law and motion calendar and for the Missoula Co-Occurring Treatment Court and Missoula Veterans Court hearings.

20. How frequently have you appeared at administrative hearings?

I do not currently appear at administrative hearings.

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

| | |
|----------|-----|
| Civil | 50% |
| Criminal | 30% |
| Other | 20% |

22. Have you appeared before the Montana Supreme Court within the last five years? If so, please 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.

Due to the nature of my current position with the state court system, I have not practiced before the Montana Supreme Court within the last five years.

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

None, Standing Masters preside over non-jury trials only.

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

As a Standing Master I preside over approximately 20 cases per year that go to full hearing. Many more cases involve preliminary and pre-trial hearings but are later settled outside of court.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

This question does not apply to my current position.

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

None. This question does not apply to my current position.

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

Mental Health Courts: An Effective way for Treating Offenders with Serious Mental Illness, 34 Mental Health and Disability Law Reporter 525, (2010) (co-authored with Hon. Paul Lenz).

Presentations:

Conferences:

Best Practices in Tribal Governance Conference, Confederated Salish and Kootenai Tribes, Polson, MT, July 2014, Panelist, "Due Process and Transparency."

National Rural Institute on Alcohol and Drug Abuse, Menominee, WI, June 2014, Instructor, 12 hour Track: "Effective Leadership and Operation of Drug Treatment Courts."

Tribal Court Trial Advocacy Program, Bureau of Indian Affairs, Office of Justice Services, Missoula, MT, May 2012, Panelist, “Veterans Courts, Sentencing and Re-Entry.”

Organizations:

Sentinel Kiwanis Club, Missoula, MT, November 2014 “Missoula Veterans Court and Co-Occurring Treatment Court.”

P.E.O. International, Missoula, MT, November 2014, “Missoula Veterans Court.”

Western Montana Bar Association, Missoula, MT, November 2013, “Drug Courts in Missoula.”

Western Montana Military Officers Association, Missoula, MT, February 2012, “Missoula Veterans Court.”

Lake County Local Advisory Council, Polson, MT, May 2012, “Missoula Veterans Court.”

Missoula Exchange Club, Missoula, MT, November 2011, “Missoula Veterans Court.”

Colleges and Universities:

Missoula College, Licensed Addiction Counseling Program, November 2014, December 2013, “Drug Treatment Courts in Montana.”

University of Montana, School of Law, Missoula MT, June 2014, Veterans Law course, “Veterans Courts.”

University of Montana, Mansfield Center, August 2011, Visiting Chinese Educators, “Court Issues Involving Youth in Montana.”

Suffolk Law School, Boston, Massachusetts, November 2009, “Tribal Courts in Montana, Jurisdiction and Practice.”

Workplaces:

Western Montana Mental Health Center, Missoula, MT, October 2014, “Missoula Co-Occurring Treatment Court and Veterans Court.”

Montana Department of Public Health and Human Services, Child and Family Services Division, Missoula, MT June 2014, “Missoula Co-Occurring Treatment Court and Missoula Veterans Court.”

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member and give 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.

Alternative Dispute Resolution Committee, State Bar of Montana, 1987-1988.

Continuing Legal Education Board, State Bar of Montana, 1991-1993.

Indian Law Section, State Bar of Montana, 1993 to present.

Margery Hunter Brown Award Selection Committee, 1996 to present.

Women's Law Section, State Bar of Montana, Vice President 1988-1990, member 1984 to present.

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

American Legion Auxiliary, 2011 to present.

League of Women Voters of Missoula, Board Member, 2010 to present. (Board members set priorities and activities for the organization.)

Montana Board of Crime Control, 2007 to 2014.

National Alliance on Mental Illness (NAMI), 2010 to present.

Toastmasters International, Breakfast Forum Club, 2010 to present.

Run Wild Missoula, running club, 2010 to present.

Western Service Area Authority, Board Member, 2010 to present. (Pursuant to Mont. Code Ann. § 53-21-1006, the Board collaborates "with the department [of Public Health and Human Services] for the purpose of planning and oversight of mental health services of the service area.")

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

In the general election of 2010, I ran unsuccessfully for the position of Fourth Judicial District Judge.

In the primary election of 2006, I ran unsuccessfully for the position of Fourth Judicial District Judge.

E. PROFESSIONAL CONDUCT AND ETHICS

31. 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, give the particulars.

No.

32. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, please explain.

No.

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

No.

34. 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, please give details.

No.

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

No.

F. BUSINESS AND FINANCIAL INFORMATION

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

No.

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

I am the sole proprietor of a small family ranch located in Stillwater and Sweetgrass counties that will eventually be transferred to my sons. I do not operate the ranch. I lease the property and receive income. Unless to do so implicates the Code of Judicial Conduct, I will continue to manage the property.

38. 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, please identify the source and the approximate percentage of your total income it constituted over the last five years.

I have received compensation for reviewing federal grant applications for a private agency, Aspen Systems Corp., of Rockville, MD. I receive lease income from the property mentioned in Question 37. This income comprises approximately 3% of my total income.

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

No

40. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?

Yes No

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

Yes No

If yes, please explain.

42. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, please give details.

No.

43. Please explain your philosophy of public involvement and practice of giving your time to community service.

I grew up in a time, a place and a family in which public involvement and service was simply an expectation. I have passed this expectation on to my adult children. My parents served on various boards, for example, my father served on the zoning board and my mother served on a community theater board as well as on numerous school committees. As children, we were expected to consider other people less fortunate than we were and do our part. Since that time, I have continuously volunteered in a number of settings, primarily working with young people in school, church, sports and service groups, such as Big Sisters. Our family participated in the International Friendship Program at the University of Montana, through which local families welcome international students into their homes for visits and activities.

My parents also demonstrated the importance of taking seriously our civic duty to participate in voting and elections. While they had their personal views on issues, the strongest message we received

from them was not to follow their views but rather to develop views of our own and engage ourselves in civic life through informed participation. The success of our country depends on accepting this responsibility.

G. WRITING SKILLS

44. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. Please state if associates or others have generally performed your research and the writing of briefs.

I have drafted and researched almost all of my written work. Very occasionally, I discuss a research or writing issue with court staff, but I do not have staff legal research or writing assistance. In some cases, attorneys have submitted proposed Findings of Fact and Conclusion of Law that are of assistance. But, of course, I review and integrate them into my own work product. As noted earlier, I taught legal writing for a number of years at the University of Montana School of Law. I very much enjoy research and writing.

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

In my work for the Fort Peck Court of Appeals, I draft opinions, published at <http://www.fptc.org>.

46. Please attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.
47. What percentage of your practice for the last five years has involved research and legal writing?

60%

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

I am competent in both Westlaw and Lexis.

H. MISCELLANEOUS

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

I am an enthusiast and I am energetic. Thus, throughout my life I have participated in a broad range of activities and hobbies from travel and music and art appreciation, to swimming, gardening and tennis. Currently, my main interests and activities include outdoor activities, e.g., running, hiking, camping, indoor activities, e.g., reading, music and singing, and, of course, all sorts of activities involving my family.

I have been a runner for over 30 years. I find running relaxing and convenient. No matter where you go, you can just lace up your shoes and run. I have run numerous races and I ran my first full marathon in the summer of 2014. I have enjoyed hiking and camping ever since I was very young and

belonged to Girl Scouts. A camping highlight, several years ago, was when I spent a week winter-camping in Yellowstone National Park.

I have always loved reading and have been a library user since I learned to print my name, a requirement for a library card when I was a child. My taste has changed over the years. Now, I prefer non-fiction history and biographies, although I still throw in a few mysteries. I sing in a church choir. Also, for the last 8 years or so, I have joined Sweet Adelines for the Christmas season. We practice in the fall and then sing at retirement homes and nursing homes during the holidays.

I take my work life seriously. I also take seriously the need for balance and invigoration in life. I find this in absorbing interests and in spending time with good friends and family.

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

My first job was during the summer after 8th grade when three other girls and I ran a day camp for which we charged one dollar a day and thought we were well paid. I worked summers, all through high school and college, everything from baby-sitting to working in an accounting office, interning in a social work agency, working in a bean-canning factory and working for a weekly newspaper. Following college, I worked as a nanny for a young family in Belgium. During law school, I worked in the law library and in a neighborhood café. One law school summer I worked in the county attorney's office and the other summer I worked for the New York State Department of Environmental Quality. My legal positions since admission to practice are discussed above.

51. Please identify the nature and extent of any pro bono work that you have personally performed during the last five years.

Since I work for the court system and cannot represent parties in court, my pro bono work has mostly involved training on legal topics, including presentations made to the Montana-Wyoming Tribal Court Judges Association and service on community boards. I have provided legal advice, short of litigation to a number of low-income persons who are involved in tribal court matters. I am also on the advisory committee of the Missoula Self Help Law Center.

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

So many people and events have contributed to my positive outlook toward the legal system. My father, a lawyer in private practice, instilled in me a deep respect for the legal system as a forum for justice. My uncle, an appellate judge, told wonderful stories that taught me to remember that, alongside interesting or challenging legal disputes are always the people most affected by them, the parties. The trial judge for whom I clerked in law school taught me that the most effective judges take their work, but not themselves, seriously.

The person who most impacted my outlook was the late Professor Margery Brown, with whom I worked in the University of Montana Law School Indian Law Clinic. As noted above, most of the work of the Indian Law Clinic at that time involved the tribal justice systems of Montana. A number of forces, including developments in federal statutory and decisional had combined to focus attention on tribal justice systems, nationally and locally.

Part of the work of the students and staff of the Indian Law Clinic was to develop and present legal seminars for tribal judges in Montana and Wyoming. Collectively the judges represented eight tribal courts and fourteen Indian tribes, each with its own history, tradition and culture. The judges themselves came from a variety of backgrounds. Some, but not many, were lawyers. Others had some previous legal or law enforcement experience. Some maintained traditional practices and beliefs. Some had moved away from strictly traditional approaches in favor of other viewpoints. Their educational levels varied a good deal. As I look back, I realize that even though the seminar program was a collaborative effort of students, staff, tribal judges and visiting speakers, it was Professor Brown who led us in the process of distilling the essence of delivering justice, regardless of the setting, so that we could provide effective legal education. Largely by her example, she taught us that, above all, a judge must listen to all viewpoints and act in a manner fair to all parties. She emphasized the necessity of learning and understanding applicable law. She also underscored the importance of explaining decisions to promote understanding and predictability. This has turned out to be a description of what I now believe to be a good judge.

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

The qualities most important in a good district court judge begin with a sense of fairness, a willingness to consider each case individually and the ability to set aside personal prejudices. As well, a good district court judge must have extensive legal knowledge and skills and the ability to remain current on the law. A good judge must have the strength of character to make difficult or unpopular decisions. Additionally a good judge must be mature, stable and act in a respectful manner to all who come before the court. A good judge must carefully consider decisions but not belabor questions. A good judge is not troubled by conflict and recognizes the variety of valid points of view on many topics. A good judge is courteous in all working relationships. A good judge does not hesitate to hold parties accountable for their actions. Finally, a good judge is active and has outside interests that provide balance in life.

54. 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.

For courts to engender trust in the citizenry, courts must follow and apply precedent. While there is a need for flexibility in the absence of precedent, in my experience, more often than not, applicable precedent is available. For litigants and other citizens to maintain a sense of security as well as the ability to plan future actions, judges must take seriously our system's deference to relevant precedent. Judges must make efforts to determine cases based on established precedent and let the legislature fill in the gaps, if they exist.

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

I seek office as a district court judge because I have something to offer – I am good at being a judicial officer. I am smart, ethical, energetic and have high standards. As well, I do not take things personally. The cases in district court include issues upon which the parties may disagree with vigor and sometimes with venom. I am realistic. All points of view will not prevail. Everyone cannot “win.”

In my work as a standing master, I have experienced the challenges and stress of a judicial position. I have learned I am able to handle courtroom proceedings. I enjoy the give-and-take of courtroom legal and evidentiary discussions. I am quite capable of setting aside my own personal feelings and beliefs in the interests of fair and impartial decision-making because I understand it is essential to an effective court system. Although I have a genuinely congenial and respectful manner, I do not seek friends in the courtroom and am willing to make difficult decisions. Finally I am aware of the gravity of a judicial position and am able to accept it.

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

I am most proud of my continuing, enthusiastic, commitment to maintaining the quality of the justice system as well as to its improvement, particularly in the area of access to justice. I chose to become a lawyer to contribute to society by working to ensure access to justice for those to whom access is not assured. During my career I have held a number of positions that demonstrate my commitment to equal justice for all. My first job after law school was as a VISTA attorney for Alaska Legal Services. My next position, which began my longstanding support of tribal justice systems, was as Court Advisor for the Crow Tribal Court. Next, I worked for Montana Legal Services in the office that served both the Crow and Northern Cheyenne Indian reservations.

Following a four-year position as a legislative staff attorney, I began nine years of work at the University of Montana School of Law. As part of my work, I focused on tribal justice systems and tribal code revision. I also designed and obtained federal funding for a program for law students who planned to work in tribal government public service. I am proud of the significant contributions already made to tribal governments by recipients of the fellowships.

I take pride in my current work to better address the needs of persons with serious mental illness and co-occurring substance abuse disorders involved in the criminal justice systems and the needs of society through the Missoula Co-Occurring Treatment Court and through the Missoula Veterans Court. These court programs are designed to reduce re-offenses and promote community safety by providing access to treatment services and holding participants accountable for engaging in treatment.

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

I have nothing to add beyond the contents of this application. I am happy to supplement the application if the commission has questions.

58. 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 candidate?

My twenty years of work in the district court system has demonstrated my seriousness of purpose, balanced temperament and demeanor, respect for litigants and recognition of the significance of each party's situation, and energy to acknowledge and address issues in need of improvement.

I. CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 4th 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 Canons of Judicial Ethics, if appointed.

(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 Thursday, February 19, 2015.

Mail the signed original to:

**Lois Menzies
Office of Court Administrator
P.O. Box 203005
Helena, MT 59620-3005**

Send the electronic copy to: MTsupremecourt@mt.gov

Application form approved 7/10/93
Revised 9/15/2009

1 Brenda C. Desmond
2 Standing Master
3 Fourth Judicial District, Dept. 2
4 Missoula County Courthouse
5 Missoula, MT 59802
6 (406) 258-4773

7 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

8 IN RE THE PARENTING OF:

9 G.B.D.

10 A minor child,

11 JOHN QUILL,

12 Petitioner,

13 and

14 MARY DOE,

15 Respondent.

Cause No.:
Dept. 2

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER ON PARENTING
PLAN AND NAME**

16 The above-entitled matter came before this Court on April 23, 2012. Petitioner John
17 Quill, (“John”), was represented by . Respondent Mary Doe, (“Mary”) was represented by . Prior
18 to the hearing, the parties had resolved all issues concerning parenting of their child, George,
19 except the summer schedule when George begins school and what George’s surname should be.
20 Additionally, the parties seek an Order directing re-calculation of child support. Based on the
21 evidence presented and the arguments of counsel, This Court now makes the following:

22 FINDINGS OF FACT

- 23
- 24 1. The parties are the parents of George Brian Doe, who is three years old.
 - 25 2. George was born on June 20, 2009, in Missoula where Mary was then living.
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3. When George was born, John was not immediately made aware of his birth. Initially John's name was not put on the birth certificate but now it is. Apparently Mary was not certain at first that John was George's father.
4. Once John was told about George by Mary, he took a DNA test and assumed responsibilities of parenthood, including paying child support, and health insurance costs and spending parenting time with George.
5. George's current surname is Doe. John prefers for his surname to be Quill partly because John is the only Quill left in his family who can pass on the name. Mary objects to the requested name change but would agree to non-hyphenated Quill Doe. John does not agree with her suggested order or hyphenation.
6. John resides in Casper, Wyoming.
7. Mary has resided in Santa Barbara California since April 1, 2011. Prior to that time, John had regular parenting time in Missoula with George and initially objected to Mary's move to California because it would take George further away from him; John later withdrew his objection.
8. Mary lives with her parents, and younger brother all of whom have the surname Doe.
9. Beginning in June 2011, following the move to California, the parties began an agreed-upon schedule of John parenting George on a quarterly basis. As well, the parties agree John may spend time with George in Mary's home in California any time he happens to be there.
10. For the first parenting period after the move, John traveled to California to visit George. Then John, Mary and George traveled back to Casper and stayed in

1 John's home for a few days. Then Mary and George traveled back to California
2 alone.

3 11. The original plan was for John to visit George in California for the second
4 parenting period. However, Mary agreed that John could instead, pick up George
5 in California and bring him back to Wyoming without staying in California and
6 without Mary.

7
8 12. John's third and subsequent parenting periods have been as follows. John drives
9 about two and one-half hours from Casper to Salt Lake City and then flies to the
10 Los Angeles airport where he meets Mary and George. John then flies back with
11 George the same day. Upon arrival in Salt Lake City, John and George either stay
12 in Salt Lake with John's sister or drive directly to Casper. At the end of two
13 weeks, John again drives to Salt Lake City with George, flies to Los Angeles and
14 meets Mary at the Los Angeles airport.

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16 13. John pays for all travel costs except the cost of Mary's trip to and from the Los
17 Angeles airport from her home. The cost to John is about \$800 to \$900 per trip.
18 He intends to continue to pay the costs.

19 14. When George is with Mary, John and George visit by Skype at least once a week.
20 John also talks to George and his maternal grandfather frequently by telephone.

21 15. John believes that George's trips to Wyoming have gone very well. Mary agrees,
22 although she testified that when George returns from Wyoming he is tired and
23 unusually "clingy" for a while.

24 16. When George is in Wyoming, he spends some time in daycare and some time
25 with John and his partner of several years.

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27 17. George is fortunate to have two parents who are very committed to his well-being.
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18. No evidence was presented indicating that George has any developmental difficulties or other special needs.

19. If George begins kindergarten when he is five years old, he will begin in the fall of 2014. If he begins when he is six years old, he will begin in the fall of 2015.

20. When George begins kindergarten. John would like his parenting time to change. Specifically, John would like to parent George (in odd years) from a few days after his birthday until one week before school starts, with mid-summer parenting time in Wyoming with his mother. In even years, John would like his parenting period to include George’s birthday.

21. Mary is concerned that George will not be ready for such a lengthy parenting period with his father when he starts school. She proposes instead, that John’s parenting time be four weeks in the summer, with two weeks with Mary at the beginning of the summer and two weeks with Mary at the end of the summer.

22. In the coming two years, George will mature and develop. If his father continues his regular, consistent parenting and frequent Skype and telephone contact, and there is no reason to think he will not, John’s proposed summer parenting plan schedule is reasonable and in George’s best interests.

23. John seeks at least 6 weeks with George. (According to the testimony, the academic year schedule in the Santa Barbara school district, and thus the length of the summer vacation, is slightly uncertain at this time.) This is well within the Missoula Fourth Judicial District Guidelines applying to summer parenting when the child is over age five and the parents live more than 200 miles apart. Specifically, Section 3.1 Extended Parental Contact states in relevant part: “All but three weeks of the school summer vacation.”

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- b. George is too young for his wishes to be considered.
- c. George has positive relationships with both parents, with his mother’s extended family and with his father’s partner. John’s proposed summer parenting plan supports these important relationships.
- d. George appears to be well-adjusted.
- e. No evidence was submitted concerning this factor.
- f. No evidence was submitted concerning this factor.
- g. No evidence was submitted concerning this factor.
- h. Continuity and stability of care are supported by John’s proposed summer parenting plan.
- i. John’s proposed schedule is well within the developmental needs of a child the age George will be when he starts school.
- j. This factor does not apply.
- k. This factor does not apply.
- l. Both parents encourage frequent and continuing contact with the other parent. John’s proposed summer parenting plan is consistent with this factor.
- m. This factor does not apply.

- 4. It is in the discretion of the District Court to change the name of a minor child. *Firman v. Firman*, 187 Mont. 465, 470, 610 P.2d 178, 181 (1980).
- 5. The standard for determining a child’s name change question is “the best interest of the child”. *In re the Custody of J.C.O.*, 1999 MT 325, 993 P.2d 667 (1999).
- 6. The Montana Supreme Court has provided guidance on the meaning of “best interests of the child” in this context in *J.C.O.*, stating that the “District Court

1 correctly applied the “best interests of the child” standard in a nonsexist,
2 nonpaternalistic manner, focusing on the concerns of the child as opposed to a
3 concern with the wishes of either parent; and in particular, whether the father’s
4 surname ... will be carried on into future generations.” 1999 MT at ¶ 13, 993 P.2d
5 at 670.

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7 7. The Court in *J.C.O.* also questioned the value of the traditional preference for the
8 father’s name. 1999 MT at ¶ 12, 993 P.2d at 669, citing Barz, J., dissenting in
9 *Matter of Iverson*, 241 Mont.140, 144, 786 P.2d 1, 4.

10 8. In a special concurrence, in *J.C.O.*, Justice Nelson proposed adopting the
11 guidelines suggested by Justice Barz in her dissent in *Matter of Iverson*,
12 specifically.

13 1. the child's surname preference, if any; 2. the length of time the child has
14 had the surname; 3. the impact of the requested name change on both the
15 mother-child and father-child relationships; 4. any misconduct by either
16 parent that would make that parent's surname possibly deleterious; 5 the
17 child's age; 6. the child's embarrassment or discomfort when bearing a
18 surname other than the family the child is presently living with; 7. the
19 effect a surname may have on easing relations with a new family; and 8. if
the child has siblings, the child's relationship to those siblings and the
impact on the child of having a surname different from the sibling's
surname.

20 1999 MT at ¶ 26, 993 P.2d at 672

21 9. Other states have applied specific factors similar to this proposal that help inform
22 the meaning of “best interests” in this context. For example, in Ohio, the
23 following may be considered: “the length of time that the child has used a
24 surname, the effect of a name change on the father-child relationship and on the
25 mother-child relationship, the identification of the child as part of a family unit,
26 the embarrassment, discomfort or inconvenience that may result when a child
27 bears a surname different from the custodial parent's, the preference of the child if
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1 the child is of an age and maturity to express a meaningful preference and any
2 other factor relevant to the child's best interest.” *Hodge v. Gentit*, 1991 Ohio
3 App. LEXIS 3802.

4 10. As well, in Delaware, a somewhat similar list of factors has been developed and
5 applied: “(1) the length of time a child has used a surname; (2) the effect of a
6 change of name on the parent/child relationship; (3) the identification of a child as
7 part of a family unit; (4) the role that a surname other than the natural father's may
8 play in easing relations with a new family versus the importance of maintaining
9 the biological father-child relationship; and (5) the embarrassment or discomfort a
10 child may experience when he bears a surname different from the rest of his
11 family. *J.E. v. A.G.*, 2003 Del. Fam. Ct. LEXIS 47.

12 11. An Iowa Court, in *Uker v. Dowda*, 2011 Iowa App. LEXIS 435 (Iowa Ct. App,
13 June 15, 2011), analyzed the issue in a manner applicable to this case when it
14 reversed the trial court’s decision to deny the father's request to have the name on
15 his daughter's birth certificate changed from the mother's surname to a hyphenated
16 surname consisting of his surname and the mother's stating in part,

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18 We believe the administrative convenience that comes through sharing the
19 family name of Dowda with her mother and half-brothers is substantially
20 outweighed by the positive effect changing her name to Dowda-Uker
21 would have on her bond with her father and his side of the family. We are
22 persuaded by the following legal scholarship:

23 ‘[N]oncustodial parents who cannot have daily contact with their children
24 nevertheless feel that their children are part of their families. They do not
25 want to see their children "adopted" away from them into another family,
26 even if only via a surname. The child may feel that [he or she] belongs to
27 two families, particularly if [the child] has frequent contact with the
28 noncustodial parent. Whether or not [the child] sees [the] father often, the
dual surname will help [the child] to remember that [the child] belongs to
[the] father as well as to [the] mother.

In addition to protecting the family's right to self-determination, a
presumption favoring a dual surname would protect the child's interests. A

1 dual name would help the child to identify with both parents, a state of
2 mind that child psychologists say is essential to the child's adjustment to
3 divorce. At the same time, sharing a name with the custodial family may
4 give the child a greater sense of security.' Beverly S. Seng, *Like Father,
Like Child: The Rights of Parents in Their Children's Surnames*, 70 Va. L.
Rev. 1303, 1349-50 (1984).

- 5 12. Reviewing the issue in light of the relevant factors proposed by Justice Barz in
6 Iverson and the factors used by courts in other states supports the surname change
7 to Doe-Quill. George is too young to have a surname preference. Parental
8 misconduct is not an issue. While he has had the name Doe for three years, he is
9 still a very young child. To change his name to reflect that he has two involved
10 parents will have a good impact on his relationship with both parents. As noted
11 above, in an era in which many children live with other people with surnames
12 different from theirs, a hyphenated name should not be a source of
13 embarrassment.
- 14 13. The best interests of the minor child dictate that the minor child's surname be
15 changed to Doe-Quill. This is not discriminatory against his mother, or
16 supporting a preference for the father's last surname in general. It is a reflection
17 of the fact that he has two involved parents each with a different last name.
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21 **ORDER**

22 Based on the foregoing Findings of Fact and Conclusions of Law,

23 IT IS HEREBY ORDERED,

- 24 1. Child Support shall be re-calculated by CSED effective April 23, 2012.
25 2. The Respondent's proposal for summer parenting is adopted.
26 3. The parties should submit a Final Parenting Plan in accordance with their prior
27 agreement and this Order within 30 days.
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4. The minor child's surname name will become George Brian Doe-Quill.

DATED this ____ day of December, 2012.

Brenda C. Desmond

Cc: