

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eleventh Judicial District**

A. PERSONAL INFORMATION

1. **Full Name:** John R. Quatman

a. What name do you commonly go by? "Jack"

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

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

4. **Office Address:** Closed the law practice on June 30, 2015 and sold the office building
Phone: 406-863-2385

5. **Length of residence in Montana:** 17 years

6. **List your place of residence for the last five years:**

<u>Dates</u>	<u>City</u>	<u>State</u>
1997-present	Whitefish	Montana

B. EDUCATIONAL BACKGROUND

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

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
St. Joseph High School/Seminary	Mtn. View, California	June, 1965	H.S. Diploma
St. Patrick College/Seminary	Mtn. View, California Philosophy	June, 1967	A.A.--

Univ. of California	Berkeley, California	June, 1969	B.A.—Pol.Sci.
Univ. of California (Hastings College of the Law)	San Francisco, California	June, 1972	J.D.

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

None

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.

Court	Date of Admission
a. State Courts & Supreme Court of California	December, 1972
b. U.S. District Court for the Northern District of California	December, 1972
c. U.S. Ninth Circuit Court of Appeals	December, 1972
d. U.S. Supreme Court	August, 1976
e. State Courts & Supreme Court of Montana	October, 1997
f. U.S. District for the District of Montana	November, 1979

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

Since March of 1998 I have been a partner in Quatman & Quatman, P.C. My partner during this time has been Phyllis M. Quatman. The law firm was closed on June 30, 2015 with my retirement from the active practice of law.

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>
Alameda County District Attorney's Office, 1225 Fallon Street, Oakland, California	Senior Trial Deputy District Attorney	01/2/1973—01/08/1998
Quatman & Quatman, P.C., Whitefish, Montana	Partner	03/01/1998—06/30/2015

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

I was unemployed from 01/08/1998 to 03/01/1998. I left the District Attorney's Office and took approximately 2 months to formulate and open Quatman & Quatman.

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.

At Quatman & Quatman I had a general litigation practice which included:

- Criminal law** representing those accused of crime (50%);
- Civil Litigation** representing both plaintiffs and defendants (10%);
- Corporate/business law**, including formation of new business entities and general business problems (10%);
- Family law** including dissolutions, child custody, child support and guardian/conservator situations (20%); and
- Probate, wills and trusts** (10%).

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

I have practiced in the additional areas:

- Environmental protection;
- Consumer fraud;
- Contractor fraud.

I have taught in the following areas:

- Death penalty litigation (including jury selection);
- Homicide litigation;
- Basic and advanced trial advocacy;
- Consumer fraud litigation;
- Advanced homicide investigations for police officers;
- Police shooting guidelines for police officers; and
- Search and seizure for police officers.

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

Criminal law.

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

Yes.

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

Federal court	3%
State or local courts of record	93%
Administrative bodies	3%
Other	1%

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

90%

19. **How frequently have you appeared in court?**

15-20 times per month on average.

20. **How frequently have you appeared at administrative hearings?**

2-3 times a year on average.

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

Civil	10%
Criminal	75%
Other (family law)	15%

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.

I have never appeared before the Montana Supreme Court (it is not the nature of my practice).

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

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

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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.

I have not tried a jury trial in the last two years. Below are listed four of the cases I tried over a 10 period of time.

- a. State v. Roedell, DC-05-357-Murder case--Ed Corrigan, County Attorney, Flathead County, Judge Katherine Curtis, retired
- b. State v. Torres DC-09-258-Felony assault on police officers--Allison Howard and Travis Ahner (Flathead County Attorney's Office) Judge Stewart Stadler, retired
- c. State v. Farr, DC-06-106—Children molestation--Dan Guyzinski and Lori Adams (Flathead County Attorney's Office) Judge Stewart Stadler, retired.
- d. State v. Carraway, DC-05-405—Rape--Guyzinshi (Flathead County Attorney's Office—Judge Kathrine Curtis, retired

(Dan Guyzinski is now with the Attorney General's Office in Helena)

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

In the last five years I have only appeared in front of the Flathead County Health Board on behalf of clients seeking a reversal of the County Health Director's decision on various issues. I have appeared at four (4) of those hearings.

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.

I have not published any legal articles.

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.

- a. State Bar Association of California, from December of 1972 to present.

- b. Lawyers Club of Alameda County (California):
- | | |
|--------------------|----------------------------|
| Member | 1975 to 1998; |
| Board of Directors | 1975-1985, 1990-1998 |
| President | 1980-81, 1991-92. 1992-93. |
- c. Alameda County Criminal Courts Bar Association (California):
- | | |
|--------------------|--------------|
| Member | 1974 to 1985 |
| Board of Directors | 1978 to 1982 |
| President | 1981-1982 |
- d. Alameda County Bar Association (California):
- | | |
|--------|--------------|
| Member | 1974 to 1998 |
|--------|--------------|
- e. California District Attorneys' Association:
- | | |
|----------------------------|--------------|
| Member | 1975 to 1998 |
| Criminal Justice Committee | 1980 to 1989 |
- f. State Bar Association—California
- | | |
|---------------------------------|--------------|
| Heating Referee | 1977 to 1994 |
| Fee Arbitration Hearing Officer | 1988 to 1998 |
- g. State Bar Association of Montana
- | | |
|--------|-----------------|
| Member | 1997 to present |
|--------|-----------------|
- h. North-West Montana Bar Association
- | | |
|----------------------|-----------------|
| Member | 1998 to present |
| Editor of newsletter | 2000-2002 |
| Vice president | 2001-2002 |

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.**

a. Whitefish Kiwanis

Member 1998 to 2010

President 1999 to 2000

b. Whitefish Rotary

Member 1999 to present

c. Whitefish Lions

Member 2010 to present

President 2012 to present

d. Knights of Columbus

Member 1998 to 2013

President 2003 to 2005

e. Stumptown Historical Society

Member 1999 to 2010

f. Glacier Twins American Legion Baseball Team

Board of Directors 2003 to 2006

g. Montana Civil Air Patrol

Member 2000 to present

Chief legal counsel 2002 to present

h. Coaching

In California, I coached Girls soccer and Boys baseball

In Montana, I coached Boys baseball

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

I have never held public office. In California, I ran for Superior Court Judge in 1996 but was defeated in the general election. In Montana, I registered to run for County Attorney but withdrew prior to the election for family reasons.

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

My personal philosophy is that it is important to give back to both the legal field and the non-legal field for that which has been given to me. My resume shows that I have been highly involved with the legal field especially in California. Since coming to Montana, I have stressed involvement in organizations which assist and give back to the public. The Whitefish Kiwanis main focus was assisting youth including scholarship awards for college bound students. The Whitefish Rotary stressed infrastructure development that assisted youth: the building of the play area and structures for the kiddie park; the new soccer field at the sports complex; and the building of the pavilion for the Whitefish trails system. The Whitefish Lions stress sight and hearing. We test all of the students in the Whitefish school district for potential eye sight problems. We provide the money for both glasses and hearing aids for those who cannot afford them. We also started a large vegetable garden and with the help of the middle school students which provides organic food for the school cafeteria. Finally, on thirteen dates each year we display American flags in the downtown area (rain, shine or snow). The Civil Air Patrol is the official auxiliary of the United States Air Force. As such, we provide aero-space education, search and rescue training and flight training to the youth members. Although I am not a pilot I teach and train the cadets in Customs and Courtesies of the Air Force. I also donate my legal time as the state counsel for the Air Patrol.

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, give the particulars.

No

33. **Have you ever been found guilty of contempt** of court or sanctioned by any court for any reason? If so, please explain.
- No
34. **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 (other than speeding tickets)
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, please give details.
- No
36. **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

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, please give details, including dates.
- No
38. **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.
- None—any position which I hold in a volunteer organization which poses a “conflict” with an appointment, I will resign from.
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, please identify the source and the approximate percentage of your total income it constituted over the last five years.
- No

40. **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
41. **Have you filed appropriate tax** returns as required by federal, state, local and other government authorities?
- Yes
42. **Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?**
- No
43. **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

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 always done my own research and have never relied on another person(s) to do it for me. My practice includes researching, writing and filing numerous briefs not only in the criminal but also in the civil litigation area. Because of the nature of my practice, trial work necessitates the briefing and filing of search and seizure motions, pre-trial motions and motions in limine.
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.
- I also draft wills, trusts, business memos and parenting plans.
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.
- See exhibit "A" which is a Writ of Supervisory Control to the Montana Supreme Court. After full briefing by both sides the Supreme Court ruled in my client's favor.

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

40%

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

I am very versed in the use of Westlaw. I do not use Lexis

H. MISCELLANEOUS

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

In the winter time I enjoy downhill skiing on the Big Mountain. During the summer, I bike, hike, and water ski. Since April of 2014, I enjoy taking care of our new grandson.

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

My parents were not a well to do family. My father was a lumber salesman and my mother a nurse. With 5 children to take care of, there was not a lot of extra money around. So I started working early:

Age 12—paper boy with a double route of over 100 papers.

Age 13 (summer)---worked in the fruit sheds cutting fruit before drying.

Age 14 (summer)---worked in the fruit sheds cutting fruit before drying.

Age 15 (summer)---worked distributing flyers door to door for Key Insurance Company.

Age 16 (summer)---worked as a laborer on a building construction site.

Age 17 (summer)---Worked as a junior engineering aid on a road surveying crew for the County of Santa Clara, California.

Age 18 (summer)---Worked as junior engineering aid for Santa Clara County.

Age 19 (summer)---Worked as an engineering aid for Santa Clara County.

Age 20 (summer)---worked as an instrument man on a survey crew for Santa Clara County.

Age 21 (summer)---Worked as a roadway construction inspector for Santa Clare County.

Age 22 (summer)---Worked as an inspector for Santa Clara County.

Age 23 (summer)---Worked as an inspector for Santa Clara County.

Age 24 (summer)---Worked as an inspector for Santa Clara County.

Age 25 (summer)---Worked as an inspector for Santa Clara County.

Age 26 (summer)---Studied for the California Bar Exam.

During my college and law school years I worked as a food handler on the campus of the University of California.

During my 2nd. and 3rd. years of law school I worked as an intern for the Alameda County District Attorney's Office in Oakland, California.

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

I have provided and continue to provide pro bono legal services on an as needed basis to the Stumptown Historical Society, the Glacier Twins American Legion baseball team, and the Civil Air Patrol. Given the state wide reach of the Civil Air Patrol, most of my pro bono time has been provided to them. On a case by case basis I also provide pro bono services to individual clients who cannot afford an attorney and do not fall under the coverage of some other organization.

52. **Please explain how and why any event or person has influenced the way you view our system of justice.**

My first boss, D. Lowell Jensen, District Attorney of Alameda County (eventually appointed a Federal District Judge in California) had the biggest influence on my career and my view of the justice system. He stressed integrity and patience. He would often say that with the incredible discretionary power of the prosecutor's office comes the inherent responsibility to use that power correctly. His second rule was to be patient. The people you deal with (victims or accused) are human beings and they should not be embarrassed, ridiculed or abused. Listen to them for they are trying to tell you something. Unfortunately I have seen over my 43 years of practice a lack of integrity and of patience displayed by some judges.

53. **Explain the qualities that you believe to be most important in a good district court judge.**

Many qualities go into forming a good District Court Judge: intelligence, reverence for the law, judicial decorum, and knowledge of the law. However, the two most important are patience and integrity. The ability to be patient with litigants, witnesses and even attorneys is foremost. Too many judges display a lack of patience on a frequent basis. I believe that the people before you are human beings; they have something to tell you; they have something to teach you. A judge needs to patiently listen to them no matter how "in artful" the presentation. The other quality is integrity. A judge needs to be able to make decisions based on the law no matter how difficult, how politically stressful or how unpopular. Unfortunately this does not always happen. Many decisions are rendered with an eye on the political correctness and/or an eye on reelection.

54. **Explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.**

Since the Supreme Court renders decisions setting new legal directions or setting new legal precedent, the job of a district court judge is to know what the law is, to know how to apply the law and to make decisions within the guidelines of that law as set forth. Where the law is vague the district judge needs to recognize how that vagueness occurred, attempt to determine what caused that vagueness occurred, and rule as best that judge can. Unfortunately, the term, flexibility, has been used to mask a judge's attempt to change the law or to cover a personal dislike for a particular law. That should never happen.

55. **State the reasons why you are seeking office as a district court judge.**

I have practiced law for 43 years as a prosecutor, criminal defense attorney, civil litigator, family law attorney, and business attorney. As a prosecutor I twice managed the felony trial staff of approximately 60 attorneys: setting their schedules; assisting them in trial tactics and problems; and sending them to trial. In that position I had to manage a case flow of over 500 cases to make sure the cases were prepared correctly, ready for trial and not clogging the calendar. I feel that I bring a unique combination of legal experience to the table which sets me apart from other applicant. Criminal cases and family law matters amount to a great portion of the district court's calendar. I have practiced in this area, do not need to come "up to speed". These matter take so much time that other areas suffer such as calendar of civil cases.

I have strong opinions on how to clear the court's calendar; how to streamline the courts procedures; how to make the court more responsive to litigants; and how to make the 11th. Judicial District's four judge system work better. I feel that "we have always done it this way" is the present mantra of the court. That needs to be changed. With my back ground and experience I can help make that change.

Finally, I will be 69 in September of this year and closed my practice on June 30, 2015. I am looking at it as an opportunity to help make much needed changes for the betterment of the court and of the litigants. I am not looking to this appointment as a retirement job, a career job, or a next step job in my career. My decisions will not be made with one eye on re-election. I have viewed the justice system in Flathead County with clear eyes. It needs to be fixed. With my experience I will not need a learning period; a get up to speed time; a close down the practice time period. I can and have handled virtually any type of case that would come before me. I am ready to go on day one or sooner. I have the overall experience, the vision, and work ethic to make a change in a very short time.

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

I have provided legal representation to a wide range of clients (here in Montana) not only in Flathead County but throughout the state. I have accepted clients in need of help many of which were turned down by other attorneys. Many of those cases were not popular with the citizens at large, but I believed, and staked my career on that belief, that all persons are entitled to representation whether or not their case is popular. In many of those instances the clients did not have the money to hire me but I felt that their representation was important to the well-functioning of our justice system. As a result, I (and my

wife) have been the brunt of unpleasant publicity and personal animosity. I am proud of the fact that no matter how unpopular the case I always stayed the course.

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

Due to the nature of my practice, I have been the brunt of much negative publicity and animosity. Due to the nature of the cases I took, very little positive has been printed or disseminated in the press. Should the committee wish to see examples of this simply google the law firm of Quatman & Quatman or John Quatman.

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?**

As I have stated herein, I have a very unique combination of experience which sets me apart from the other applicant. As a prosecutor in a very crime active jurisdiction (Oakland, California) I tried hundreds of felony jury trials to verdict including high profile death penalty cases (four death penalty cases). Also as a prosecutor for 25 years, I managed the felony trial staff on two separate tours of duty; spent almost three years practicing family law; and four years practicing consumer fraud and business transactional civil cases.

As a private practitioner in Montana for 18 years, I have represented numerous criminal law cases, family law cases, corporate/business law cases, and probate matters (including will and trusts preparation). I am no stranger to the court room and am familiar with virtually any type of case which comes before the court. No other candidate has that depth of experience.

There will be no learning curve nor start up time necessary. With the closure of my practice on June 30, 2015, I am ready to start on day one.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 11th 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.

August 10, 2015

/S/ John R. Quatman

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Wednesday, August 12, 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

1 John R. Quatman
2 QUATMAN & QUATMAN, PC
3 600 8th Street East
4 Whitefish, Montana 59937
5 Phone: (406) 863- 2385
6 Fax No.: (406) 863-2387
7 qqlaw1@gmail.com

8 Attorneys for Petitioner

9 IN THE SUPREME COURT OF THE STATE OF MONTANA

10 ZACHARIAH TORRES,

11 Petitioner,

12 v.

13 ELEVENTH JUDICIAL DISTRICT
14 COURT, COUNTY OF FLATHEAD, THE
15 HONORABLE HEIDI J.
16 ULBRICHT, DISTRICT JUDGE,

17 Respondent.

Case No. _____

**PETITION FOR WRIT OF
SUPERVISORY CONTROL FROM
A DECISION OF DISTRICT JUDGE
HEIDI J. ULBRICHT,
ELEVENTH JUDICIAL DISTRICT,
FLATHEAD COUNTY**

18 The Petitioner, Zachariah Torres, by and through counsel, Quatman &
19 Quatman, PC and John R. Quatman, hereby petitions the Supreme Court of
20 the State of Montana, for a Writ of Supervisory Control, pursuant to Article
21 VII § 2(2) of the Montana Constitution and § MRAppP, Rule 14(3)(C), from a
22 ruling of Heidi J. Ulbricht, District Judge, on the following ground:

**Failure to Grant a Substitution of District Judge pursuant to § 3-1-804,
MCA.**

I. REASON FOR WRIT OF SUPERVISORY CONTROL

23 Pursuant to § MRAppP, Rule 14(3)(C), this Court has supervisory
24 control over all other courts. The writ is appropriate when:
25
26

1 transitioning out of pre-release, Petitioner was placed on probation in the
2 State of Washington pursuant to Interstate Compact. Present counsel,
3 John R. Quatman, was counsel of record before, during and after trial, and
4 remains counsel of record today.

5 At the end of 2012, Judge Stadler retired; Heidi Ulbricht won the
6 election to replace him, and took the bench in January, 2013. Quatman &
7 Quatman, PC, as attorneys of record, never received notice of Judge
8 Ulbricht's assumption of jurisdiction of Judge Stadler's cases. Research of
9 the Court's four (4) files in this matter, done on July 22, 2014, shows that a
10 notice of assumption of jurisdiction by Judge Ulbricht of Judge Stadler's
11 cases was never sent out by the Clerk, nor is there a certificate of service in
12 the file (Exhibit "A" - Affidavit of John R. Quatman).

13 On May 29, 2014, counsel Quatman along with attorney Anthony
14 Brian Gallic, filed a request for Conditional Discharge from Probation for
15 Petitioner (Exhibit "B"). Upon filing, the request was stamped with Judge
16 Ulbricht's name. On June 5, 2014, seven (7) days after the filing of the
17 request counsel Quatman filed a Motion for Substitution of Judge Ulbricht
18 pursuant to § 3-1-804, MCA (Exhibit "C"). On June 10, 2014 Judge Ulbricht
19 denied the motion for substitution on a timeliness basis (Exhibit "D").
20 On July 11, 2014 counsel Quatman filed a Motion to reconsider with a brief
21 in support (Exhibit "E"). On July 15, 2014 Judge Ulbricht denied the
22 Motion to reconsider on the grounds that no such motion exists (Exhibit
23 "F").

24 **III. LAW AND ARGUMENT**

25

26

1 Substitution of a district judge is controlled by § 3-1-804, MCA. As
2 general rule, each adverse party has a statutory right to one judicial
3 substitution in district court. § 3-1-804(1), MCA; *Swan v. State*, 2006 MT
4 39 ¶ 23, 331 Mont. 188, 130 P.2 624; *Patrick v. State*, 2011 MT 169 ¶ 15, 361
5 Mont. 204, 257 P.3 365. The Judge for whom substitution is sought has
6 jurisdiction to determine timeliness of the motion. § 3-1-804(4), MCA;
7 *Taylor v. Matejovsky*, (1993) 261 Mont. 514, 517-18, 863 P.2 1022, 1024;
8 (modified by *Mattson v. Montana Power Company*, 2002 MT 113 ¶ 13, 309
9 Mont. 506, 48 P.3 34, to read, in civil cases, that only parties named in the
10 original complaint have the power to substitute pursuant to § 3-1-804,
11 MCA). The district court's ruling on a motion to substitute a district court
12 judge presents a question of law. *Patrick v. State*, 2011 MT 169 ¶ 12, 361
13 Mont. 204, 257 P.3 365; *In Re The Marriage of Archibald*, 1999 MT 258 ¶ 4,
14 297 Mont. 20, 993 P.2 653. This Court reviews the district court's
15 conclusions of law to determine whether the interpretation of the law is
16 correct. *In Re EW*, 1998 MT 135 ¶ 11, 289 Mont. 190, 959 P.2 951;
17 *Eisenhart v. Puffer*, 2008 MT 53 ¶ 113, 341 Mont. 508, 178 P.3 139.

18 Herein, when Judge Ulbricht assumed jurisdiction of Judge Stadler's
19 cases after election, the Clerk of Court failed to send a notification of the
20 assumption of jurisdiction to Mr. Torres or his counsel, Quatman &
21 Quatman, PC. § 3-1-804(7), in part, reads:

22 When a new district judge has accepted jurisdiction, the Clerk of
23 Court shall provide a copy of the assumption of jurisdiction . .
24 . to each attorney or party of record. A certificate of service
25 must be attached to the assumption of jurisdiction form in the
26 court file. (Emphasis added)

1 Petitioner and his counsel received no notice of assumption of jurisdiction
2 and, therefore, had no notification of Judge Ulbricht's assumption of
3 jurisdiction. In *Patrick v. State*, 2011 MT 169, ¶ 27, 361 Mont. 204, 257 P.3
4 365 this Court discussed the service of the notice of assumption of
5 jurisdiction and providing actual notice to the parties of the substitution of
6 a new district judge. In *State, ex rel. Dusek v. 8th Judicial District Court*,
7 2003 MT 303 ¶ 12, 318 Mont. 166, 79 P.3 242 in discussing when the ten
8 (10) day time limit began to run for an § 804 substitution, this Court stated:
9 Personal service (of the information) upon the Defendant is
10 required and if that does not occur until the arraignment then
11 the ten (10) day time period under § 3-1-804, MCA does not
begin to run until the arraignment.

12 The requirement of personal service is to assure that the Defendant
13 knows whom the judge is that is presiding over his case. § 3-1-804(8),
14 MCA (in part) sets forth that if a new judge assumes jurisdiction, the right to
15 move for substitution is reinstated and that the time period runs anew
16 from the date of service of notice or other document identifying the new
17 district court judge (emphasis added). (See also *Patrick v. State*, 2011 JT
18 169 ¶ 17, 361 Mont. 204, 257 P.3 365). Petitioner's first notice of Judge
19 Ulbricht's assumption of jurisdiction occurred on May 29, 2014, when the
20 notice for conditional discharge was filed.

21 **IV. CONCLUSION**

22 The ruling of Judge Ulbricht denying substitution on a timeliness
23 basis is an erroneous interpretation of § 3-1-804, MCA and Judge Ulbricht
24 proceeding under a mistake of law is causing a significant injustice and the
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26

1 remedy by appeal is inadequate. Petitioner prays that this Court will
2 assume supervisory control pursuant to Article VII §2(2) of the Montana
3 Constitution (1972) and MRAppP - Rule 17.

4 DATED this ____ day of _____, 2014.

5 QUATMAN & QUATMAN, PC
6 Attorneys at Law

7 By: _____
8 John R. Quatman

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12 CERTIFICATE OF SERVICE

13 The undersigned hereby certifies that a true and correct copy of the
14 foregoing **PETITION FOR WRIT OF SUPERVISORY CONTROL FROM A**
15 **DECISION OF DISTRICT JUDGE HEIDI J. ULBRICHT, ELEVENTH JUDICIAL**
2014, by: _____
DISTRICT, FLATHEAD COUNTY was served this ____ day of _____,

16 ____ Hand Delivery
17 ____ Facsimile
18 ____ First Class mail, postage
19 prepaid
20 ____ Other: _____

21 Addressed as follows:

22 Hon. Heidi J. Ulbricht, District Judge
23 Eleventh Judicial District Court
24 920 South Main, Ste. 310
25 Kalispell, MT 59901
26 Flathead County
Attorney's Office
920 South Main,
Ste. 201
Kalispell,
MT 59901

Sandee S. Isakson, Legal Assistant

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced times new roman text type face of 14 points; is double spaced; and the word count calculated by WordPerfect 12 is not more than 4,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

DATED this _____ day of _____, 2014.

John R. Quatman, Attorney for Petitioner