

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eleventh Judicial District**

A. PERSONAL INFORMATION

1. Full Name: **Daniel Richard Wilson**
 - a. What name do you commonly go by? **Dan Wilson**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: **920 South Main Street, Suite 210, Kalispell, Montana 59901**
Phone: **(406) 758-5643**
5. Length of residence in Montana: **21 years**
6. List your place of residence for the last five years:

Dates

City

State

September 1995-present

Kalispell

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>
State College Area High School	State College, Pennsylvania	1983	Diploma
Pennsylvania State University	University Park, Pennsylvania	1987	B.A., General Arts & Sciences
University of Minnesota Law School	Minneapolis, Minnesota	1993	J.D. cum laude

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

During high school I received a scholarship to attend the Berklee College of Music in Boston and spent the summer there following my junior year. I was named to the Dean's List while earning my undergraduate degree at Penn State. Several years ago I was named a Rotary International Paul Harris Fellow.

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 the 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	1993
U.S. District Court for the District of Montana	1994
U.S. Court of Appeals for the Ninth Circuit	2001
U.S. Supreme Court	2006

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

I am serving a second term as Flathead County Justice of the Peace in Department 1.

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>
Cascade County	Deputy County Attorney	1993-1994
Blaine County	Deputy County Attorney	1994-1995
Flathead County	Deputy County Attorney	1995-1998
Daniel R. Wilson, P.C.	Owner /Sole Practitioner	1998-1999
Quatman, Wilson & Quatman, P.C.	Shareholder	1999-2000
Daniel R. Wilson, P.C.	Owner / Sole Practitioner	2000-2001
Measure & Wilson, P.C.	Shareholder	2001-2006
Measure, Robbin & Wilson, P.C.	Shareholder	2006-2010
Measure & Wilson, P.C.	Shareholder	2010-2011
Flathead County	Justice of the Peace	2011-present

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

Not applicable

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 current duties require that I preside over one-half of the misdemeanor criminal cases and one-half of the civil cases filed in the justice court. The number of cases filed on an annual basis amounts to approximately 3,700 criminal and 2,000 civil cases. Because the justice court is a court of limited jurisdiction, judgments in civil cases may not generally exceed \$12,000 and may not determine title to real property or award money against the state. In light of these limitations the claims filed in the justice court routinely include contract and negligence actions, landlord/tenant disputes, and collection matters.

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

I have lectured before various groups on issues including ethics, the judicial function, small claims, and probate. While I have not worked as a lobbyist I have testified before the Legislature on behalf of the Montana Magistrates Association.

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

During my years of private practice in Kalispell I did not specialize in any particular area of law. I engaged in a general practice representing individuals, businesses, and financial institutions. I represented both plaintiffs and defendants in civil litigation. My areas of practice included contracts, construction disputes, personal injury, corporations, banking law, real estate, criminal defense in both state and federal courts, contested and uncontested probate matters, guardianships, trusts, estate planning, family law, and bankruptcy (representing creditors). I also served as an arbitrator and a mediator.

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

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

Federal court	0%
State or local courts of record	100%
Administrative bodies	0%
Other	0%

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

I preside over civil and criminal trials on a regular basis.

19. How frequently have you appeared in court?

As a sitting justice of the peace I appear in court and conduct hearings and trials on most days the court is open for business.

20. How frequently have you appeared at administrative hearings?

While I was in private practice I appeared at administrative hearings involving wage claims and child support modification requests, although infrequently. I estimate having participated in three or four such hearings. On one occasion I served as a panel member for a proceeding before the Montana Chiropractic Legal Panel.

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

While I was engaged in private practice I estimate the breakdown of my litigation practice as follows:

Civil	30%
Criminal	65%
Other	5%

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 not appeared 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.

While in private practice I tried four jury trials to conclusion from 2005 to 2010. As a justice of the peace I have presided over 25 jury trials from 2011 to the present.

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

While in private practice I estimate having tried between ten and fifteen non-jury trials from 2005 to 2010. As a justice of the peace I typically preside over ten to twenty non-jury trials per week.

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.

Not applicable

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

Not applicable

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.

<u>Presentation Topic</u>	<u>Group / Event</u>	<u>Date</u>
Ethical Issues in Criminal Defense	Northwest Montana Bar Association's Beat the Deadline CLE	03/2009
Arizona's Immigration Initiatives at the Supreme Court	Kiwanis Club of Kalispell	08/2010
Probate Law for Funeral Directors	Montana Funeral Directors Association	07/2012
Reducing Suppression Motions to Their Basics	Montana Courts of Limited Jurisdiction Conference	04/2014
Introduction to the Judicial Function (guest lecturer)	Flathead Valley Community College	10/2014
Nuts & Bolts (best practices forum for limited jurisdiction court judges)	Montana Courts of Limited Jurisdiction Conference	04/2015
Mock Trial	Montana Courts of Limited Jurisdiction Conference	04/2015
Small Claims Issues for Lawyers	Northwest Montana Bar Association	05/2015

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.

State Bar of Montana	Member, Adjunct Bar Examination Grader	1993 – present
National District Attorneys Association	Member	1996 -1998
Montana Association of Criminal Defense Lawyers	Member	2000 - 2002
Northwest Montana Bar Association	Member, CLE Coordinator, Treasurer, President	1996 - present
Montana Magistrates Association	Member, Serving on Bench Book Revision Committee and Legislative Committee	2011 - present
National Conference of Bar Examiners	Member of the Multistate Professional Responsibility Examination Committee	2014 - 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.

Rotary Club of Kalispell Daybreak. I have been a member since 2000 and served as president during 2009-2010. As president I led weekly club meetings, monthly meetings of the board of directors, and oversaw activities of the various committees. As a special project I undertook to revise the club’s bylaws for approval by the members.

Kiwanis Club of Kalispell. I joined the club in 2010 and currently serve as its secretary and member of the scholarship committee. I also assist in the club’s fundraising efforts. The club sells kettle corn at community events and the earnings provide support to youth organizations and scholarships to graduating seniors of Kalispell high schools.

Boys & Girls Club of Glacier Country. Since 2012 I have served on the board of directors. In light of my obligations under the Code of Judicial Conduct I have not solicited funds or contributions to the club.

4H Club parent volunteer

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

I ran for and was first elected to the justice court in Flathead County in 2010. In 2012 I ran for a seat on the Eleventh Judicial District Court and was not successful. I was re-elected to the justice court in 2014.

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

I believe that living and working in a place makes one a resident. Becoming involved in public service in that place makes one a member of the community and makes living in that community worthwhile.

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

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.

Not applicable

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

If not, please explain.

Not applicable

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

No

If yes, please explain.

Not applicable

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 researched and drafted each of the orders and opinions I have issued.

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 am a member of a committee undertaking to revise the forms used by judges of courts of limited jurisdiction. The bench book contains forms for carrying out the day-to-day work of a limited jurisdiction court judge in both criminal and civil matters.

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.

A sample of my writing is attached.

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

I estimate that I draft and issue orders or opinions requiring research and legal writing in approximately twenty percent of cases which are actively litigated in the justice court.

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

I have used Westlaw and Lexis for legal research, and I am competent in both.

H. MISCELLANEOUS

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

I enjoy fly fishing, hunting, and hiking with my family.

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

I have worked as a paperboy, busboy, dish washer, sandwich maker, salesperson, bicycle mechanic, musician, music instructor, band leader, radio announcer, insurance claims handler, surety bond account auditor, lawyer, and justice of the peace.

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

As a full time justice of the peace for the last five years I have not engaged in the practice of law outside of my court duties.

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

Many people and events have shaped how I view our system of justice, but one person shaped my views so strongly and at such a formative time it would be difficult not setting him apart from the others.

When I attended law school Judge Donald P. Lay was an active judge on the Eighth Circuit U.S. Court of Appeals and an adjunct professor of criminal procedure. By that time in his career he was not carrying a particularly heavy teaching load in addition to his duties as a judge, and I had no idea how lucky I was to draw him as a professor.

In the classroom from day to day he studied and discussed the cases along with us, mostly landmark decisions of the U.S Supreme Court that he must have read already dozens of times. From the lectern he would challenge our initial understanding of the cases and through his searching questions often cause us to abandon our original positions and take up his. Then after we had conceded the superiority of his arguments, he would often switch sides and take up our original positions to demonstrate how we could have advocated our cause with arguments carrying much more force and appeal. His goal in teaching, as I came to appreciate it, was not to show us how distill a case down to its simplest rule. It was to demonstrate that thinking like a lawyer means the ability to reflect upon an issue from more than one vantage point without becoming too partial to one argument over another during the process. And that the art of lawyering is not so much founded upon the ability to argue as it is grounded in the ability to consider.

At that point in my education I needed someone to show me the law is not something merely to read about or study. With the benefit of hindsight I can see that my other professors had been trying, mostly in vain, to convey this same message. Perhaps it was happenstance that Judge Lay came along at a time when I was ready to absorb the lesson.

For Judge Lay, the law was a majestic thing of inestimable value. After spending a lifetime learning the law he still stood in awe of it. For me, law school was a time spent searching for a reason not only to make a career in the law but to devote my working life to it. Judge Lay showed me that reason, and I have spent my career striving to live up to his example.

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

I believe these qualities include fairness, patience, diligence, and devotion to the law.

As for fairness, a judge with an abiding sense of this quality comes to understand that fairness is not merely the result of deciding a case in the absence of bias or prejudice. And fairness is not merely achieved by the sincere desire to find the truth and apply the law without flinching from it. Fairness is also the ability to preside in a matter without heaping insult or praise upon either party or insinuating happiness or regret in the outcome. Fairness is both in deciding the case impartially and acting impartially.

I believe a good judge demonstrates patience by treating the parties and their attorneys with dignity and by maintaining a courtroom atmosphere of mutual respect.

Diligence is demonstrated not only by adequate study and preparation by the judge. Diligence is also the result of a commitment to making timely decisions. Justice delayed is not merely justice denied. A judge's unwarranted delay in decision making imposes additional costs and frustrations upon the parties, and these burdens are not rightfully theirs to endure.

The forces which may come to bear upon a judge are many. A good judge remains devoted to the law because that devotion is, perhaps, the only way to steer clear of influences that could otherwise corrupt a judge's decision making.

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.

Courts operate differently from the other branches of government in this primary respect. Executive officers and legislators have no obligation to explain their 'yes' votes or 'no' votes (although they certainly may), because the law does not count a yes vote or a no vote any differently based on the officer's explanation of it. If a measure attracts a certain number of yes votes, it passes. If not, it fails.

The common law tradition for decision making in the courts rests on a different foundation. In that tradition a court must not only announce whether the decision is in favor of one party or the other. It is essential that the court explain the reason for the ruling in light of the facts. The reason for the ruling is as much a part of the law as the result. According to the common law it is not only important to determine which party prevails. It is essential for the court to say why. A body of precedent emerges from the fundamental recognition by courts that similar situations demand similar outcomes.

A court maintains necessary flexibility in the law when it recognizes the facts in a new case are sufficiently different from the facts in the prior cases that the previous explanations no longer apply. In short, a rule of law must be sturdy enough to provide stability and predictability in the law. But the rule of law derived from a line of cases cannot become so rigid and irrationally fixed that common sense goes by the wayside.

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

Some years back I experienced a moment of mid-life questioning. Not so much questioning whether I wanted to continue working in the profession, but in what capacity. It occurred to me as I sat at my desk looking back over more than ten years in private practice that I could remember very few events in the intervening time, except when I was involved in hearings or trials. For those I could remember the parties and the disputes, the arguments and testimony, the judges and the rulings, and most of it vividly. And it struck me that I am most at home in the courtroom.

By that time I estimated having tried approximately 25 cases to a jury and more than 100 non-jury trials, mostly due to my years of work as a deputy county attorney. And I had gained the kind of rounded experience I believe would suit me well as a judge. I had handled divorce cases and tried at least one to conclusion, along with child support and child custody matters including one multi-jurisdictional dispute. The work I did in federal criminal cases kept my trial skills honed, and I had argued three cases before the Ninth Circuit. In one of those cases I petitioned successfully for a writ of certiorari in the Supreme Court. I had represented corporations and individuals and financial institutions in litigation involving liens, mortgages, judicial and non-judicial foreclosures, consumer complaints, insurance contracts, personal injury claims, civil rights claims, contested and uncontested probates, and guardianships. A few of the federal cases I litigated were notable. One involved the 1895 treaty between the Blackfeet Tribe and the United States and a second one ultimately changed the scope of prosecution available for false statements made to a federal court under 18 U.S.C. Section 1001. I believed my overall experience put me in good stead.

But I did not seek a district court judgeship right away. As much as I felt I had learned about being a lawyer I was willing to admit I did not know about being a judge. Within a few years a pathway to explore the judgeship option became clear. A justice court seat came open and I ran for the position. I decided that if I won the election and did not particularly enjoy the work of a judge I could retire after one term and transition fairly seamlessly back into private practice. On the other hand, if I enjoyed the work I could seek a position on the district court.

I am aware the citizens of Montana make a substantial investment in their district court judges. I was determined not to put them in a position of making that investment if it turned out I was not entirely committed to the job.

I am applying for the district court judgeship because I believe I am qualified by experience to do the work and because it is my sincere hope the members of the Judicial Nomination Commission and Governor Bullock, along with the voters in Flathead County, happen to agree.

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

I was never quite so proud of my profession as when, after many months of effort, I was able to negotiate the settlement of a meritorious claim for ineffective assistance of counsel filed in federal court on behalf of a mentally challenged woman. I was appointed to represent her after she had been convicted at trial and sentenced to prison for 158 years.

The original sentence was the unfortunate and, perhaps, unforeseen consequence of mandatory minimum sentencing laws enacted by Congress. Although the settlement did not clear my client of all criminal liability or discontinue her supervision by the government, it provided for her release from prison, a just sentence, and the future safety of the community. More satisfying than all of that was watching the settlement arise from the good faith commitment to fairness by both the U.S. Attorney and the U.S. District Court. Sometimes things work out according to our deepest yearnings for justice and, on that occasion, I was happy to have played a small part in it.

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

I am not aware of any information that should reflect adversely on me. Information that reflects positively on me has been included in other responses within this application.

I have been married to Kalispell attorney Tia Robbin for 19 years. She serves as corporate counsel for the Northwest Montana Association of Realtors and its Multiple Listing Service. I would recuse myself from any matter involving these entities.

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?

The members of the Judicial Nomination Commission and Governor Bullock have the unenviable task of choosing among the various applicants, and I believe my responses within this application are sufficient to highlight my particular strengths.

Aside from that, I have charted the path of my career through both success and failure by resolving (and indeed trying) to judge myself against the standard of my own best efforts. Whether I emerge from this process having been selected for the position or not, I feel privileged and honored for being able to take part in it.

Thank you.

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.

(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 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

Justice Court
Flathead County Justice Center
920 South Main, Suite 210
Kalispell, MT 59901
(406) 758-5643

**IN THE JUSTICE COURT OF RECORD
FLATHEAD COUNTY, MONTANA**

Whitefish Investment Group dba)	
Colorado Village Apartments,)	
)	Docket No.: CV-2014-0001808-LT
Plaintiff,)	
vs.)	ORDER DENYING DEFENDANT'S
)	MOTION TO DISMISS
Louis E. Bell,)	
)	
Defendant.)	

Defendant's motion to dismiss came on for hearing October 3, 2014. Counsel for the parties appeared and offered the various exhibits attached to their briefs in support of their respective arguments. Neither party objected to the Court receiving these documents into the record in consideration of the Defendant's motion to dismiss. Likewise, neither party objected to opposing counsel making representations of fact for the Court's consideration in reference to Defendant's motion. The Court being so advised enters the following.

Defendant argues three grounds for dismissal. First, he argues the federal regulation applicable to the parties' lease agreement requires the landlord to give him notice of an alleged lease violation and an opportunity to correct the violation before the landlord may terminate the lease. *Def.'s Brf. 2* (Aug. 18, 2014). Defendant maintains he was not given an opportunity to correct the violation but that he did, in fact, correct the violation before he received the landlord's notice of terminating the lease. *Def.'s Brf. 2-3*. Accordingly, he argues there is no basis to terminate the lease. *Def.'s Brf. 3*. Second, Defendant argues the notice the landlord gave

him did not contain a “specific reference to the provisions of the lease or occupancy rules that, in the [landlord’s] judgment, have been violated by the tenant[.]” *Def.’s Brf.* 4 (citing 7 C.F.R. § 3560.159(b)(2)). Third, Defendant argues that the landlord’s eviction notice was not proper and, as such, this Court is deprived of subject matter jurisdiction to further consider the merits of Plaintiff’s claim for eviction. *Def.’s Brf.* 5-6.

The Montana Justice and City Court Rules of Civil Procedure and the Montana Uniform Rules for the Justice and City Courts govern suits of a civil nature filed in a justice court. § 25-24-Rule 1, MCA. Defendant has not cited any rule or statute authorizing the filing of his motion to dismiss for lack of subject matter jurisdiction, as such. Unlike the Rules of Civil Procedure applicable to actions in a district court, the rules that apply in a justice court do not authorize a motion to dismiss for lack of subject matter jurisdiction. *Compare* Rule 12(b)(1), M. R. Civ. P. (authorizing motion to dismiss for lack of subject matter jurisdiction), *with CBM Collections, Inc. v. Ferreira*, 2005 MT 170, ¶ 10, 327 Mont. 479, 115 P.3d 211 (rules of civil procedure do not apply in justice court); *see, also*, § 25-24-Rule 1(a), MCA (Montana Uniform Rules for the Justice and City Courts (Title 25, Ch. 24, MCA) and Montana Justice and City Court Rules of Civil Procedure (Title 25, Ch. 23, MCA)). Under Rule 21 of the Montana Justice and City Court Rules of Civil Procedure a defendant seeking an order of dismissal prior to trial may either move for judgment on the pleadings or summary judgment. § 25-23-Rule 21.A(4), (5), MCA. Judgment on the pleadings is warranted “if the pleadings themselves construed in the light most favorable to the party opposing the judgment, show that it would be impossible for the party against whom the judgment is entered to prevail at trial.” § 25-23-Rule 21.A(4), MCA. When a motion is made for judgment on the pleadings a court may not consider matters outside the pleadings. *Id.* The parties have offered documents outside of the pleadings as evidence the

Court should consider in connection with the Defendant's motion to dismiss. Consequently, the Defendant's motion to dismiss must be treated as a motion for summary judgment under Rule 21.A(5), which provides the following:

Either party may move for, and the judge may grant, summary judgment on one or more of the issues raised by the pleadings. In so moving, responding to the motion, and ruling on the motion, the parties and the court shall follow the procedures specified in Rule 56 of M. R. Civ. P.

Defendant has consented to his motion being treated as a motion for summary judgment and the Plaintiff has not objected. *Def. 's Brf. 5.*

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, demonstrate that no genuine issue as to any material fact exists and that the moving party is entitled to judgment as a matter of law. *Phelps v. Frampton*, 2007 MT 263, ¶ 15, 339 Mont. 330, 170 P.3d 474. Once the moving party establishes that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law, the burden shifts to the nonmoving party to demonstrate with substantial evidence, not mere denial, speculation, or conclusory assertions, that a genuine issue of material fact exists or that the moving party is not entitled to judgment as a matter of law. *Hinderman v. Krivor*, 2010 MT 230, ¶ 13, 358 Mont. 111, 244 P.3d 306.

Ordinarily, a court must limit its consideration to admissible evidence when deciding a motion for summary judgment and may not consider conclusory statements lacking specific factual support in the record. *In re Estate of Robert*, 2014 MT 264, ¶ 14, ___ Mont. ___, ___ P.3d ___ (citing *PPL Mont., LLC. v. State*, 2010 MT 64, ¶ 84, 355 Mont. 402, 229 P.3d 421). At the hearing on Defendant's motion counsel for both the Plaintiff and the Defendant urged the Court to consider the content of each of the exhibits attached to their various pleadings and briefs. And without any objection from opposing counsel both counsel made representations of fact not

supported by affidavit or other admissible evidence and urged the Court to consider their factual assertions. The law concerning a motion for summary judgment is plain; the motion must be supported by admissible evidence. However, Defendant requested that his motion to dismiss be treated as a motion for summary judgment and neither party objected to the Court considering as admissible evidence the exhibits attached to the pleadings and briefs and the representations of fact made by counsel. While the rules of procedure ordinarily should not be shrugged aside, the parties' representations and manner of presenting both facts and evidence convinces this Court that any objection as to the admissibility of documents and representations of counsel have been waived. The motion will be decided upon the merits as the parties have presented them. *Cf.* § 25-23-Rule 1 (rules administered in manner to secure just, speedy, and inexpensive determination of action).

1. Whether the federal regulation applicable to the parties' lease agreement requires the landlord give notice of an alleged violation and an opportunity to correct the violation before the lease may be terminated.

Plaintiff is the landlord and administers the lease for the residential rental unit at 445 Wisconsin Avenue in Whitefish. Defendant is the tenant. The lease agreement provides that the lease is subject to 7 C.F.R. § 3560.159, and subsection (a) of 3560.159 states:

Prior to terminating a lease, the [landlord] must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.

Defendant notes the 30-day notice of termination given to him on July 1, 2014, informed him the lease would be terminated because the "Utilities meter being disconnected and pulled several month you having to remind you to pay the Utilitis (sic)." Defendant maintains he was not given an opportunity to correct the violation. *Def.'s Brf.* 2. Defendant argues that by the time he had

received the notice on July 1 he had already corrected the violation by paying the delinquent electric bill and having the electricity restored and, therefore, his lease cannot be terminated. *Def.'s Brf.* 3. The argument lacks merit. Defendant was served with written notice on two prior occasions that he had failed to make timely payment of the electric bill. On March 10, 2014, he was warned by the landlord that his electric utility would be disconnected and he was advised he must keep it paid every month. On May 18, 2014, he was given a second warning from the landlord that his utilities were past due and that he must pay immediately. On both occasions the notices -- however lacking they may be in grammatical niceties -- constitute documentation that Defendant was given notice of the violations prior to the initiation of this action and notice that the violations would result in termination of the lease. As Plaintiff's counsel explained at the hearing, Defendant's failure to pay the utility bill ultimately resulted in the removal of the electric meter and loss of electric service to both Defendant's rental unit and to others.

Defendant has not shown that Plaintiff failed to comply with the notice and opportunity to cure provision of § 3560.159(a) before giving notice on July 1, 2014, that the lease would terminate on August 1, 2014. Defendant is not entitled to judgment as a matter of law on his first argument.

2. Whether the notice the landlord gave Defendant should have contained a “specific reference to the provisions of the lease or occupancy rules that, in the [landlord’s] judgment, have been violated by the tenant[.]”

Subsection (b) of 3560.159 sets out various notice requirements a landlord must undertake when a tenant's lease is terminated at the conclusion of a lease term or when a tenant no longer meets eligibility requirements for subsidized housing. 7 C.F.R. § 3560.159(b). Specifically, subsection (b)(2) requires:

At a minimum, the occupancy termination notice must include the following information:
[a] statement of the basis for lease termination with specific reference to the provisions of

the lease or occupancy rules that, in the [landlord's] judgment, have been violated by the tenant in a manner constituting material non-compliance or good cause[.]

In this matter the term of the lease renews from year to year each 11th day of February, provided Defendant meets income guidelines. Plaintiff is not seeking to terminate the lease at the end of its term or because Defendant no longer meets income guidelines. The notice of termination was served on Defendant near the mid-point of the lease term for various violations of the lease. The notice requirements of 3560.159(b)(2) do not apply. Defendant is not entitled to judgment as a matter of law on his second argument.

3. Whether Plaintiff's failure to give proper notice of eviction deprives this Court of subject matter jurisdiction over Plaintiff's claim.

Defendant cites *Housing Authority of Newark v. Raindrop*, 87 N.J. Super. 222, 670 A.2d 1087 (1996), for the proposition that a justice court is deprived of subject matter jurisdiction over a landlord/tenant action if the landlord fails to give the tenant proper notice of eviction. Defendant's reliance upon *Housing Authority of Newark* is misplaced. In that case a New Jersey state appellate court applying a New Jersey statute held the landlord's failure to comply with the notice requirements of New Jersey's Anti-Eviction Act deprived the trial court of subject matter jurisdiction over an eviction action. 287 N.J. Super. at 226, 670 A.2d at 1090. New Jersey's Anti-Eviction Act has no application in a Montana courts.

According to Montana's Constitution it is the exclusive province of the Legislature to define the subject matter jurisdiction of the justice courts. *Art. VII, Sec. 5(2), Mont. Const.* There is no provision in Montana law allowing the question of subject matter jurisdiction of the justice courts to be resolved by referring to the laws of any other state. For this reason the New Jersey state court's opinion in *Housing Authority of Newark* has no bearing on the issue whether

a Montana justice court has subject matter jurisdiction to entertain the merits of a landlord/tenant case filed in Flathead County.

The Legislature has granted justice courts concurrent subject matter jurisdiction with the district courts in landlord/tenant cases. §§ 3-10-302, 70-27-101(2), MCA. The grant is nowhere contingent upon evidence that a landlord has provided a tenant with proper notice before the landlord may initiate the action the action and before the justice court may determine the merits of the case. Subject-matter jurisdiction is a court's fundamental authority to hear and adjudicate a particular class of cases or proceedings. *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 57, 345 Mont. 12, 192 P.3d 186. While a landlord's failure to give proper notice to a tenant may go to the merits of the landlord's claim for eviction,¹ the lack of proper notice by a landlord does not deprive a justice court of the authority to hear and determine the case in the first instance. Defendant's argument that this Court lacks subject matter jurisdiction fails. Finally, Defendant's assertion that he remedied the utilities violation before he was served with the notice of eviction is unavailing.

Section 3560.159(a) allows a landlord to terminate a lease "for material non-compliance with the lease provisions" after the landlord has given the tenant written notice of the opportunity to correct the violation. Further, "termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice . . . that [his] activities would result in occupancy termination." On two occasions prior to July 1, 2014, Defendant was given written notice that he must not become delinquent in his payment of the

¹ *Cf. Whalen v. Taylor*, 278 Mont. 293, 299, 925 P.2d 462, 465 (1996) (landlord may only recover possession in cases of the tenant's abandonment or surrender of the rental unit or by acting in compliance with the Residential Landlord and Tenant Act of 1977, Title 70, Ch. 24, MCA); *see, also*, § 70-24-422(2), MCA (landlord must give tenant 3-day notice in advance of terminating rental agreement for unpaid rent).

electric bill or eviction would result. The first written notice was mailed on March 20, 2014, and the second notice was mailed on May 8, 2014. When Defendant's continuing failure to pay the electric bill resulted in disconnection of electrical service to his rental unit, Plaintiff served Defendant with a written notice dated July 1, 2014, that the rental agreement would terminate August 1, 2014. Paragraph 10 of the lease agreement requires Defendant to pay for electricity and further provides that "[f]ailure to pay utilities is a Lease violation" and "ALL UTILITIES SHALL BE PAID PROMPTLY WHEN DUE BY THE PERSON . . ." *Pl.'s Resp. Brf. Ex. A* (Sept. 2, 2014) (emphasis in original). Defendant has failed to demonstrate he is entitled to judgment as a matter of law on his third argument.

Defendant's motion to dismiss or for summary judgment is denied.

SO ORDERED.

DATED: October 7, 2015.

/s/
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