

APPLICATION FOR

**DISTRICT COURT JUDGESHIP  
Sixteenth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: Wyatt Arthur Glade
  - a. What name do you commonly go by? Wyatt Glade
2. [REDACTED] Are you a U.S. citizen? Yes
3. [REDACTED] Phone: [REDACTED]
4. Office Address: 1010 Main Street, Miles City MT 59301  
Phone: 406-874-3310
5. Length of residence in Montana: 39 years (although I left Montana for college and Law School, I maintained my residence in Montana.)
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
2002 to present	Miles City	MT

## 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>
Terry High School	Terry, MT	May, 1994	Diploma
Montana State University	Bozeman, MT	NA (transferred prior to degree)	
Tarleton State University	Stephenville, TX	December, 1999	BS- Animal Science
University of New Mexico School of Law	Albuquerque, NM	December, 2002	JD

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

1991 Montana High School Rodeo State Champion Bull Rider

1995 National Intercollegiate Rodeo Assoc. Champion Men's Team, member, MSU

1996 Montana Pro Rodeo Circuit Rookie of the Year

I was awarded a rodeo scholarship in my undergraduate studies

I attended law school on an academic scholarship

While in law school, I was both an honor roll and a dean's list student

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

No, I 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 State Bar	April, 2003

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

Custer County Attorney.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Brown and Huss, PC	Associate	April 2003 to October 2003
Wyatt Glade, AAL	Owner	October 2003 to April 2006
Custer County	Deputy County Attorney	April 2006 to August 2006
Custer County	County Attorney	August 2006 to present

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

I have been continuously employed since the completion of my formal education.

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

I primarily prosecute crimes occurring in Custer County, but I also represent the State of Montana in dependent and neglected child cases, involuntary mental health commitments, and youth court actions. Further, I represent Custer County in civil actions, and serve as general legal advisor to county personnel. My practice is approximately 70 percent criminal prosecution, 20 percent civil litigation, and 10 percent general counsel duties.

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

For three years I was engaged in private legal practice, with a major focus on criminal defense. I also engaged in the practice of family law, as well as a general civil practice.

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

Though I do not consider my work to be specialized, most of my practice involves criminal law and procedure.

17. Do you regularly appear in court? Yes.

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

Federal court	<u>1%</u>
State or local courts of record	<u>90%</u>
Administrative bodies	<u>1%</u>
Other	<u>8%</u>

18. During the last five years, what percentage of your practice has been trial practice? 90%

19. How frequently have you appeared in court? 60 times per month on average.

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

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

Civil	<u>20%</u>
Criminal	<u>80%</u>
Other	<u>0%</u>

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

I have not appeared personally before the Supreme Court. However, in the last five years the Court has decided a number of the cases that I litigated at the district court level. The appellate division of the Attorney General's office represented the state in those cases.

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

I estimate the number of jury trials to be 15.

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

40. Again, this is an estimation. I have included civil adjudication hearings (youth court and dependent and neglect cases), as well as trials on involuntary mental health commitments in the tally.

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

Fred Snodgrass: (406) 294-8396 PO Box 2157, Billings, MT 59103: no trials within last two years, but numerous cases before Judge Michael Hayworth, Sixteenth Judicial District Court, Custer County.

L. Sanford Selvey: (406) 252-7503 316 N. 33rd Street, Billings, MT 59101; no trials within last two years, but numerous cases before Judge Michael Hayworth, Sixteenth Judicial District Court, Custer County.

Ali Moulton: (406) 939-6671 PO Box 1327, Glendive, MT 59330: no trials within last two years, but numerous cases before Judge Michael Hayworth, Sixteenth Judicial District Court, Custer County.

David Arthur, 2722 3rd Ave N, Billings, MT 59101 Phone: 406-794-9272, *State v. Misty Mitchell*, DC 13-23, jury trial in 2014 before Judge Michael Hayworth, Sixteenth Judicial District Court, Custer County.

Sheila Newman, 614 Division St Room 103, Port Orchard WA 98366, 360-337-7015, *In re the Matter of N.H.*, Custer County Youth Court DJ 14-3, a juvenile, jury trial in 2014 before Judge Michael Hayworth.

Joe Zavatsky, *Regional Deputy Public Defender*, 11 South 7th Street, Suite 100, Miles City, MT 59301 (406) 234-1702, *State v. Tanmoy Bhattacharya*, DC 13-47, jury trial in 2014 before Judge Michael Hayworth, Sixteenth Judicial District Court, Custer County.

Penelope Strong, 2517 Montana Ave, Billings, MT 59101, Phone:(406) 839-9220, *State v. Robert Dobrowski*, DC 13-62, jury trial in 2015 before Judge Michael Hayworth, Sixteenth Judicial District Court, Custer County.

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

I represented a local School District in a wage dispute before the Human Rights Commission. The case was resolved by settlement without a trial or hearing.

I also recently represented the State of Montana before the Sentence Review Division in the case of *State v. Vernon Killsontop*. This case is 25 years old, and is quite notorious. The Sentence Review Division declined to modify Killsontop's sentence. Killsontop applied for rehearing, and both parties briefed the issue. The Sentence review division did not grant his application for rehearing.

I have also been involved in a few cases before the Human Rights Commission by virtue of my employment as the Custer County Attorney.

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

I spoke at a training on 1/26/2010 in Miles City, MT, on the subject of Prosecuting Stalking Cases. The training was sponsored by CNADA, a victim's rights group. The group consisted of a mixture of law enforcement officers advocates, mental health professionals, among others.

I lectured at the State Bar CLE regarding DUI Prosecution on 5/11/2012 in Bozeman, MT. The group consisted of members of the Montana State Bar.

On 3/6/ 13 in Bozeman, MT, at the Montana Narcotics Officer's Association meeting, I spoke about how to obtain information from the Montana Prescription Drug Registry. The group consisted of law enforcement officers and attorneys.

I have also spoke on numerous occasions to various groups in Custer County. The topics I spoke on were all related to my employment as the Custer County Attorney. These groups include but are not limited to the local Eagles Club, local law enforcement officers, and professionals in the health care field regarding sexual assault cases and involuntary mental health commitments.

#### D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

Montana Attorney General's Prescription Drug Advisory Commission: August, 2009 to present.

National District Attorney's Association: 2006 to present

Montana County Attorney's Association: 2006 to present

Fight Crime, Invest in Kids: 2010 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. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

Miles City Bucking Horse Sale Board of Governors: I am on the horse racing committee, and helped organize and manage the event. I have been the Vice President for the last fiscal year.

National Reined Cowhorse Association: member

Central Montana Reined Cowhorse Association: member, board member

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

Yes, Custer County Attorney. I ran in 2006, 2010, and 2014. My election was contested in 2014. I am currently serving my third term.

I ran for 16th Judicial District Judge in 2012, but was not elected.

I served as a member of the Kircher School Board for one year in 2010.

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

Attorneys benefit greatly from the communities where they practice. I believe that attorneys owe a debt of service to their communities. Many attorneys, elected officials in particular, are viewed as leaders in their communities. Attorneys can do a lot for their communities merely by becoming involved in community service.

I provide services to the community as the Custer County Attorney on a daily basis. A few examples of my community service are serving as a guest lecturer at the Custer County District High School, speaking to youth groups about my profession, advocating for improvements to local mental health services, and coordinating with the local hospital on services offered to victims of sexual assault. I have also served in the past as a school board member.

I also served as a board member of the Custer County Community Health Center, which is a federally qualified health care center providing quality affordable health care to the people of Montana.

Most recently I have served my community through the Miles City Bucking Horse Sale Board of Governors. The Board is responsible for organizing and managing one of the largest events in eastern Montana. The Bucking Horse Sale is a huge economic boost to the local economy. Economic development is a primary challenge in eastern Montana, and the Bucking Horse Sale brings a great deal of money into our community. The money brought in by the sale provides income for local merchants and workers, and is a great benefit to my community.

### **E. PROFESSIONAL CONDUCT AND ETHICS**

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No.

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No.

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

I was arrested and charged with Minor in Possession of Alcohol in May 1995. I did not contest the citation, and paid a fine.

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No.

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

No.

### **F. BUSINESS AND FINANCIAL INFORMATION**

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

Yes. I am cattle and horse rancher, and have been for most of my life.

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

I am the president of Glade Land and Cattle Co., which is our family business. My wife and I run a small ranching operation on our ranch near Miles City. I grew up on a cattle ranch, and this small operation is more for my peace of mind than for profit. Ranching, even on a small scale, keeps me grounded, and I want my

children to share the experiences that I had growing up in this environment. I do not intend to resign. I do not believe that it will interfere with my official duties in any way, assuming that I am appointed. If it does interfere, I will resign from Glade Land and Cattle Co.

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

I received wages from Glade Land and Cattle Co in the following amounts: \$10,000.00 in 2014 and \$5,000.00 in 2015. This accounts for less than 5% of my total income over the last five years.

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

No.

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes.

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?  Yes  No

If not, please explain.

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?  
 Yes  No

If yes, please explain.

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

No.

## G. WRITING SKILLS

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

I research a broad range of legal issues on a daily basis. The majority of briefs that I draft are related to criminal prosecution in the 16th judicial district court. For example, I research the applicability of criminal charges, draft and respond to motions, and draft pretrial briefs and sentencing memorandums. I also research civil issues related to mental commitments and dependent and neglected child cases on a regular basis. I do my own research and writing. I also supervise the Deputy County Attorney in her research and writing, and occasionally supervise a summer intern as well.

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

I draft contracts for the county, create forms, and do other general writing required from a county attorney. Occasionally I write a letters to the editor of the local newspaper as a means to inform the public on important issues. For example, I wrote a letter urging the community's participation in the local Prescription Drug Take-Back program.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

48. What percentage of your practice for the last five years has involved research and legal writing?  
70%

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

Yes. I have used both services extensively. I currently subscribe to Lexis, and use it on a daily basis.

## H. MISCELLANEOUS

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

More than anything I enjoy spending time with my family. I have three children, ages 11, 10 and 6. They are the light of my life, and they keep my wife and I very busy. My children are involved in 4H, and they compete in youth rodeos throughout the summer. I greatly enjoy taking them to rodeos and watching learn the same lessons that I learned as a young cowboy.

My wife and I are also still competitive in equine sports. My wife trains barrel racing horses, and I train and compete on reined cowhorses.

I also enjoy ranching. I love being outside and around animals, and I hope to give my children the same kind of childhood I had. It is a great way of life, and it also compliments the legal profession pretty well.

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

Attorney, county attorney, legal research assistant, rancher, ranch hand, shop cleaner, professional rodeo cowboy, horse groom, horse trainer, newspaper reporter.

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

I represented a young man in a dispute with a lender involving his student loans. My representation consisted primarily of correspondence with the lender.

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

There are many people and events that have influenced the way that I view our justice system. Judge Joe Hegel, J. Dennis Corbin, and numerous cases that I have worked on come to mind. But the person who most significantly influenced the way that I view our system of justice is the late Judge Gary L. Day. I had the honor of practicing before Judge Day for the first ten years of my career.

Judge Day was an excellent jurist. He made rulings quickly, often from the bench. He was almost always right. Even when he wasn't right, he had good reasons for his decisions. Though I respected him for many reasons, primary among them was his ability to make difficult decisions. Judges are expected to make tough decisions, but not all judges have the ability that Judge Day had. He had an indescribable way of making decisions in tough cases that drew respect from the litigants and parties. Obviously not everyone, myself included, agreed with him all of the time, but I always respected him. There were times that I was extremely upset with his decisions, and I questioned his reasoning, or his motivation. But even then, I knew in my heart that he did what he thought was right. No judge can make all of the people happy all of the time. No one knew this better than Judge Day. He didn't try to make people happy. He treated them with respect and fairness, made the best decision that he possibly could, and made no apologies for it. People respected him for that. I couldn't expect more from any judge.

Judge Day was more than an excellent jurist, he was a leader. He could command the attention of everyone in a crowded room merely by walking through the door. I often thought it was because of his position, but I really think it was just because of who he was. I always send out juror questionnaires after a

trial. One of the items on the questionnaire asks the jurors to rank the attorneys and the judge from one to five on their professionalism, knowledge of the law, etc. I secretly hoped to get higher marks, but in all the years of trying cases in this district, Judge Day consistently marked higher than everyone else.

He took his position as a leader seriously. He made active efforts to promote fellowship among the local bar. Though he never strayed from the confines of judicial ethics, he mentored many young attorneys, myself included, through the way he conducted business in his court. I recall one incident where I was having difficulty operating the video equipment in the courtroom during a jury trial. I had not tested the equipment prior to the trial, and I think he knew that. When I attempted to play the video the television displayed a blank screen. I asked for a recess so that I could get the equipment working outside the presence of the jury. Judge Day said, with a slight grin, "No, we're going to sit here and watch you struggle with it." I eventually managed to play the video, red-faced and flustered. I NEVER made that mistake again.

It is difficult to describe the entirety of how Judge Day influenced the way that I view our justice system. He showed me that intellect, confidence, consistency, courage, experience and leadership are great qualities for a District Judge to possess. When a district judge has all of these qualities, it not only makes the day to day business of the courtroom go smoothly, it promotes the quality of the legal profession in the district. I would never claim to be able to replace Judge Day, but if I am given the chance to be a district judge, I will strive to be like him.

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

A good judge must be honest, and respectful of others. A good judge must know the law, understand people, and must have compassion for others. Most importantly, he or she must be fair to a fault.

Though simply stated, honesty and respect are very important qualities in a district court judge. The way the judge treats others in the courtroom sets the tone for the relations of the entire judicial district. The judge leads by example. If the judge treats others well, attorneys, witnesses, and everyone else in the courtroom will follow his example.

A good judge must know the law. He or she must come to court well prepared. To do otherwise is not fair to the litigants, and leads to injustice. A good judge also knows when he or she needs to research an issue further, rather than issuing an ill-advised opinion. If the judge makes a mistake, all parties suffer. In that situation it is better to take the time to properly research the issue. This approach will eliminate an appellate issue, provide final resolution to the matter, and save the litigants the trouble of having to go through the process again.

To be an effective judge, a person must and have compassion for other people. A judge often sees people at their worst. It is an easy thing to look down upon a convicted criminal, or a parent who has physically neglected a child. It is tempting to treat them harshly because they are "bad people." It is at those times that a judge must avoid that temptation and do what is legal, just, and right. A good judge has the ability to see beyond what people appear to be, and see what they can become. Often a judge's task is not to punish, but to provide people with the tools to reach their potential. To do this, a judge must have compassion and understanding for other people.

Finally, and most importantly, a judge must be fair. A good judge must be able to separate personal feelings from professional judgment. Anyone who cannot do this has no business being a judge. Many times a judge must issue rulings that he or she does not personally agree with. However, the interests of justice must take priority over personal opinions, at all costs. Further, a judge must treat people fairly regardless of their station in life. Regardless of their money, or power, or lack thereof, a judge must treat all people fairly. To do otherwise is a violation of the public trust.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

There exists constant struggle between precedent and flexibility in the law. Consistency is important. Litigants must know what to expect from a judge, because it allows them to better advise their clients regarding legal strategy. It also makes all types of cases flow more smoothly, and thus enables the district to efficiently manage the flow of cases.

However, not all cases are the same, and unique situations require closer scrutiny. Thus all cases, to some extent, must be handled on a case by case basis.

I think the best way to maintain the required balance is to establish precedent, and to make sure that the attorneys practicing in the district are aware of the precedent. However, a deviation from the precedent must be made if facts requiring it are presented. In those instances, the court must be sure to explain its reasoning for departing from the precedent.

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

I want to serve my community in the most effective way possible. I love this place. I have tried to move away several times, yet I always came back. I used to think I wanted to live in the mountains, but apparently I belong on the prairie. Because I love this community, I want to serve it in the most useful way. For me, that is as a district court judge.

I have a very broad and well balanced background that suits me for the position. I spent three years in private practice prior to becoming a county attorney. In that time I handled many different types of cases, including family law, corporate work, and estate planning. I also learned how to operate a small business. Further, I spent a good deal of time doing court-appointed criminal defense work. This experience has proven invaluable for me since becoming a prosecutor. Not only can I anticipate defendant's arguments, I can relate to defense attorneys. This is particularly helpful when negotiating cases. Finally, I understand defendants. I know what it is like to discuss with a defendant how long he will be going to prison. I know what it is like to be the only ally to a defendant in a courtroom full of angry people. I have seen the effects the system has on these people, their families, and even the community. This type of perspective can only be had as a defense attorney, and it is invaluable for a judge.

Likewise, my time as the county attorney in the busiest county in the district qualifies me for the position. The practice of a county attorney is a broad one. In addition to being the general legal advisor for the county, I represent the county in civil suits. Furthermore, my caseload constitutes a majority of the district judge's caseload, at least in Custer County. Between the criminal cases, the child abuse and neglect cases, the mental commitments and the youth court cases, the district judge deals with the county attorney on a very frequent basis. These cases make up a vast majority of the cases that are actually litigated in front of the district court judge. Having been involved in these cases for 10 years gives me an excellent foundation for serving as a district judge.

Also, I think that my personal values, such as honesty, my work ethic, and fairness, make me a good candidate for the position. The values I learned growing up on a cattle ranch have served me well in the past, and they will serve me well in this job. These values enabled me to succeed as a rodeo cowboy, which paid for my undergraduate education. They also enabled me to succeed as a law student. Because of these values, I was able to obtain an academic scholarship to law school. These values prepared me to operate my own law firm 6 months after being licensed. They also prepared me to be the

Custer County Attorney at the age of 30. It is also because of these values that I have achieved an excellent trial record.

Finally, and above all, I will be a good judge because I am fair. Anyone seeking judicial office will claim to be fair. I have proven it. I have proven my commitment to justice through my years of service to this community. In doing so I have demonstrated that I will go to great lengths to see justice prevail. I will bring that same level of commitment to the district court judge's office if appointed.

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

I am proud of many events in my career. I am proud of the work that I did in private practice during my first three years as an attorney. When I left law school I said there were two things that I would never do: criminal defense and divorce work. Within six months of being admitted to the bar I was doing both. I initially went to work for an attorney in Miles City after I graduated from law school. However, he did not renew my contract after 6 months of working for him. My wife was pregnant at the time with our first child, and we had just bought a house. With a family to support and bills to pay, I was in no position to turn down work. Fortunately, Dennis Corbin, an established attorney, allowed me to practice out of his spare office in the loft of his building. I found myself doing a lot of court appointed criminal defense, and quite a bit of divorce work. It was difficult to adapt to doing work that I did not want to do. I am proud that I was able to prioritize the needs of my family over my own personal preferences about the work that I did.

I am also proud of the business that I built. I started off doing my own secretarial work. After a few months I was having trouble keeping up, so I hired someone part time. A few months later I moved here up to full time. Not only was I paying the bills, my business was thriving, and providing employment for a member of my community. I take great pride knowing that I managed a successful small business.

After doing the work for a while I even began to enjoy it, particularly criminal defense. I loved seeing the constitution treated as a living document, and seeing it applied to real world situations every day in court. I am also proud of the clients whom I helped, and proud of the insight that I gained into the criminal justice system.

I am proud of the work that I have done as a county attorney. Serving as the Custer County Attorney is a difficult job. Not only must you be proficient in both criminal and civil law, you also must supervise 5 employees when fully staffed. I was only 30 years old when I took the helm of the busiest county in the district. It was not an easy thing for me to adjust to, but after a period of trial and error I got the hang of it. Fortunately, I was blessed with a very competent and pleasant staff when I took the job, which made the transition that much smoother.

I am proud that I have been given the opportunity to serve my community as a county attorney. I am most proud of the times where I was able to assist people who had been victimized by others. I enjoy having the ability to help those who have been harmed. I personally strive to provide the best service that I possibly can to those people who have been seriously victimized. I enjoy meeting with them, explaining criminal procedure to them, and conferring with them about the direction of the case. Some of my proudest memories are of times where I was able to secure justice for a victim of crime.

One example is *State v. Thorp* 2012 MT 92. Thorp was convicted after a jury trial of Sexual Intercourse Without Consent. Thorp is a serial rapist, as this was his second conviction for rape. Because this was his second conviction, he was sentenced to life in prison without parole. This trial was particularly difficult. Thorp had taken his niece to the Yellowstone River to look for sticks to make dream-catchers with. There he forcibly raped her. The Victim didn't report it until years after it happened, and there was no physical evidence. However, the Defendant made admissions to his brother via text message. Fortunately the State was able to reconstruct the conversation and argue that he admitted the offense.

The Victim was reluctant to testify, and had a difficult time doing so. With a great amount of help from her counselor and a lot of prep work, she was able to muster the courage required to get through it. The jury believed her, and Thorp was convicted. My paralegal's young daughter gave me a dream-catcher that she had made as a 4H project. I used it as a trial exhibit. It is still hanging in my office. The Victim struggled with the issues that many victims of sexual abuse do. She didn't think people would believe her. She was ashamed. She thought they would judge her. The case depended on her testimony, but testifying at trial was difficult for her. She broke down on direct examination. The court took a short recess to allow her to regain her composure. When I spoke with her in the hallway she broke down again, and ended up sobbing on my shoulder. I encouraged her, and she regained her composure.

When the defense attorney confronted her on cross examination she found her courage. I was so proud of her for her courage in the face of something so difficult for her. I had always believed her, but I didn't know how the jury would see it. Those were tense hours between closing arguments and the verdict! The jury convicted Thorp. I was very relieved to hear the verdict, but my reaction paled in comparison to hers. It was a great feeling to see the relief and gratitude in her eyes. I am proud that I was able to secure justice for her.

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

I am very well rounded, having served both as a prosecutor and a criminal defense attorney. For example, I have been on both sides of the same legal issue at the Supreme Court level. I was defense counsel at the district court level in *State v. Morrison* 2008 MT 16. I objected to the district court revoking Morrison's suspended sentence before he began serving it. The district court overruled my objection, and the Supreme Court affirmed the ruling. In *State v. Ledeau* 2009 MT 276, I represented the State at the district court level. Like Morrison, Ledeau faced revocation of a suspended sentence that he had not begun to serve. Ledeau cited Morrison in his motion to dismiss his revocation, so I had to argue against my own logic. The district court agreed with me, and Ledeau's suspended sentence was revoked. The Supreme Court affirmed the district court. The Supreme Court has since reversed both Morrison and Ledeau in *State v. Stiffarm* 2011 MT 9, holding that the plain meaning of the statute at issue required that the petition to revoke be filed during the time the defendant is serving his sentence. That was my original position in Morrison.

Additionally, I believe that I am a very electable candidate for this position. In 2012 I ran for this position against George Huss. I received almost 50% of the primary vote, and approximately 43% of the vote in the general election. Many voters in the district are already familiar with me from that election. Further, I recently won a contested election for Custer County Attorney in 2014. In a year that proved difficult for incumbent county attorneys, I believe that I was the only one to win a contested election in the entire state. I feel like I have political momentum, and therefore I am very electable.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

I believe that my life experiences enable me to understand people better than most, which makes me the best candidate. By the time I was 20 I had traveled most of the United States and parts of Canada and Mexico as a professional rodeo cowboy. I have seen people at their best, and at their worst. There aren't many better ways to learn about people.

In addition, in my career as an attorney I have experienced both sides of the criminal and civil issues that affect the public. As a private attorney I primarily represented indigent clients. Doing so

gave me a perspective on the human condition that very few people get to experience. As a county attorney I deal with the same issues, but this time as a representative of the State. The things I learned as a defense attorney have made me a very compassionate, yet fair county attorney.

Being a judge requires so much more than knowledge of the law. The ability to understand people is one of the most important attributes of a good judge. Without understanding, even the smartest jurist will be out of touch, and justice will suffer because of it. My life experiences enable me to understand people better than most lawyers. This understanding will serve me well as a district court judge.

### CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 16th 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.

12/1/15

(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, December 2, 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](mailto:mtsupremecourt@mt.gov)**

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6 406-874-3450 (Fax)  
7 Counsel For State

8  
9  
10 MONTANA SIXTEENTH JUDICIAL DISTRICT COURT CUSTER COUNTY

11 STATE OF MONTANA, 12 13 Plaintiff, 14 15 -vs- 16 17 <b>LEWIS G. THORP,</b> 18 19 Defendant.	20 Criminal Cause No. <u>DC 08-02</u> 21 22 23 24 25 26 27 28 <b>HONORABLE GARY L. DAY</b>  <b>RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS</b>
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12 The State of Montana, through Wyatt A. Glade, Custer County Attorney,  
13 respectfully offers the following in response to the Defendant's Motion In Limine to Exclude  
14 Evidence of Other Crimes, Wrongs, or Acts.

15 The Defendant has objected to the State introducing evidence at trial of 1)  
16 Defendant's 1991 conviction of Child Rape in the first degree from Washington State; 2) text  
17 messages between the Defendant and Barbara England's daughter; and 3) videos and pictures  
18 of a lewd nature retrieved from the Defendant's cell phone. See Defendant's Brief in Support  
19 of Motion *in Limine* to Exclude Evidence of Other Crimes, Wrongs, or Acts on page 4, line  
20 18. The State will not attempt to introduce the evidence referenced in numbers 2) and 3) in its  
21 case in chief. Therefore, the Court's inquiry in this matter should be limited to the 1991  
22 conviction for Child Rape.

23 Because the Defendant accurately sets forth the requirements of *Just and Matt*  
24 on pages 3 and 4 of his Brief, the State will not do so here. The Defendant first challenges the  
25 admission of the 1991 conviction on the grounds that such evidence is irrelevant in violation  
26 of 401 and 402. To that end, the Defendant argues that the crimes are not similar. The  
27  
28

1 Defendant lists minor differences in the cases, and bases his argument on those minor  
2 differences. However, the Defendant cites no controlling authority to support his argument.

### 3 I. SIMILARITY

4 The Supreme Court has consistently held that other acts do not have to be  
5 identical to the charged conduct, only sufficiently similar. *State v. Weldy* (1995) 273 Mont.  
6 68, 74, 902 P. 2d 1, 5. There is no rigid rule for determining when conduct is sufficiently  
7 similar, rather, the determination of similarity depends on whether that conduct has some  
8 relevance to prove an issue in dispute. *Weldy*. 74, 5

9 In *State v. Whitlow*, the Court held that evidence of the defendant's prior  
10 conviction were sufficiently similar to the charges. (1997) 285 Mont. 430, 949 P. 2d 239. The  
11 defendant had been charged in Alaska with touching his daughter's breasts and genitals and  
12 attempting to engage in penetration. The Montana charges alleged that he had touched and  
13 penetrated the victim's genitals, but not touched the child's breasts. The charges were  
14 different in that the Alaska charges involved touching and no penetration, the Montana  
15 charges involved penetration. However, the Court ruled that the charges were similar, even  
16 though not identical.

17 Additionally, in *State v Henderson*, (1996) 278 Mont. 376, 925 P. 2d 475, the  
18 Court found that simulated sexual acts were sufficiently similar to the charged conduct  
19 involving sexual intercourse without consent. In that case the defendant argued that simulated  
20 sex acts were dissimilar with the act with which he was charged because they did not involve  
21 sexual intercourse and because he did not participate in the simulated sexual acts. The trial  
22 court denied his motion, he was convicted and appealed. The Supreme Court affirmed the  
23 trial court, stating that the defendant was responsible for all of the acts, and they were  
24 performed solely for his sexual gratification. In addition, the Court noted that the acts were  
25 relevant to prove an issue in dispute. The defendant had claimed mistaken identity as a  
26 defense, and the acts were admissible to prove both identity and common scheme.



1 in time. The Court stated “(u)nlike the present case, *Ray* did not involve any incarceration,  
2 and as noted above, a lack of opportunity to reoffend while incarcerated - here from 1996 to  
3 2000- makes the time between the prior act and the charged offense less significant.”  
4

5 *Swenson*, paragraph 22.

6 The Defendant is correct that there is a significant time lapse between the 1991  
7 conviction and the current offense, but the Defendant did not have the opportunity to re-  
8 offend during much of that time, therefore the prior acts are not too remote in time. Like the  
9 defendants in *Whitlow* and *Swenson*, the Defendant spent a significant amount of time  
10 between the prior acts and the current charges in prison or on parole. Specifically, the  
11 Defendant was convicted on February 11, 1991, and sentenced on December 9, 1991. The  
12 Defendant was incarcerated as a result of this sentence from December 24, 1991, until  
13 November 27, 1999. He remained under the supervision of the Washington DOC until  
14 January 1, 2004. See attached Exhibit “1”. Therefore, like in *Whitlow* and *Swenson*, the prior  
15 acts in this case are not too remote in time.  
16  
17

### 18 III. THE PURPOSE OF THE EVIDENCE

19  
20 The State intends to admit the evidence contained in the 1991 conviction to  
21 show the Defendant’s preparation, knowledge, motive and intent. In *State v. McKnight*, the  
22 Supreme Court ruled that the evidence of the defendant’s similar prior sexual assaults was  
23 admissible to show the defendant’s motive and intent. (1991) 250 Mont. 457, 820 P. 2d 1279.  
24

25 In *McKnight*, the defendant was originally charged with three counts of sexual  
26 intercourse without consent, and three counts of sexual assault. The defendant moved to  
27 dismiss the charges as being barred by the statute of limitations. The Court granted the  
28

1 motion, and all of the charges but one count of sexual intercourse without consent were  
2 dismissed. The State then filed a *Just* notice of intent to introduce the evidence from the  
3 charges dismissed. The defendant objected to the evidence. The court held a hearing and  
4 overruled the defendant's objection. The State did not introduce evidence from the dismissed  
5 sexual intercourse without consent charges at trial, but did introduce evidence from the  
6 dismissed sexual assault cases. The defendant was convicted and appealed. The Supreme  
7 Court held that the other crimes wrongs or acts tended to prove defendant's motive and intent.  
8  
9

10 Like in *McKnight*, the other crimes evidence in this case are probative of the  
11 Defendant's motive and intent. Both show that the Defendant raped a young and naive victim  
12 in the absence of the victim's parents. The fact that both victims were under the age of  
13 consent illustrates the fact that the Defendant had the motive to take advantage of young,  
14 impressionable victims unable to perceive the threat that he posed to them and to protect  
15 themselves.  
16

17 Additionally, the facts from the 1991 conviction are probative of preparation in  
18 the present offense. The facts alleged in the present offense are that the Defendant lured the  
19 Victim into the scene of the crime by asking her for a ride to Pirogue Island to collect dream  
20 catcher sticks. The fact that the Defendant has been convicted for raping a child in the  
21 absence of the child's mother leads to the inference that the Defendant planned to lure the  
22 Victim in this case away from her parents in order to perpetrate this offense against her.  
23 Therefore, the evidence is admissible for preparation.  
24  
25

26 The facts from the 1991 conviction are also illustrative of the Defendant's  
27 knowledge in the underlying offense. Having been convicted of raping a child, the Defendant  
28

1 certainly is aware that people under the age of consent can not legally consent to sexual  
2 intercourse. In text messages to his brother, Dean Thorp, the Defendant made statements  
3 indicating that the Victim initiated the sexual acts against him, and that he was only guilty of  
4 failing to stop her. He may rely on the defense of consent at trial, or that he reasonably  
5 believed that the Victim was over the age of 16 at the time of the conduct. These are material  
6 elements of the offense. Given that he was previously convicted of raping a child and  
7 incarcerated for that action, it is reasonable to conclude that the Defendant would be hyper  
8 vigilant about whom he chooses to have sexual intercourse with. A person who had been  
9 incarcerated for such conduct likely would not take chances with anyone near the age of  
10 consent, for fear of suffering the same result. Therefore, the 1991 conviction is admissible to  
11 show knowledge.  
12  
13

#### 14 IV. PROBATIVE VALUE

15  
16 The probative value of the evidence from the 1991 conviction is not  
17 outweighed by unfair prejudice to the Defendant. In *State v. Swenson, supra*, the Supreme  
18 Court stated, “We have repeatedly noted that probative evidence will frequently and inevitably  
19 be prejudicial to a party. Moreover, when the other acts evidence meets the first three prongs  
20 of the modified *Just* rule, it necessarily carries great probative weight.” *Swenson, supra*, at  
21 paragraph 25, internal citations omitted. The State has met the first three prongs of *Just*.  
22 Therefore, the probative value of this evidence is quite strong. That this evidence will be  
23 prejudicial to the Defendant goes without saying. However, that alone does not make it  
24 unduly prejudicial. In this case the probative value of the evidence clearly outweighs any  
25 prejudice.  
26  
27  
28

1 In conclusion, the State has met all of the criteria of the modified *Just* rule.  
2 Therefore, the State respectfully requests that the Defendant's objection be denied, and the  
3 evidence deemed admissible.  
4

5 DATED this \_\_\_\_ day of November, 2008.

6  
7 \_\_\_\_\_  
8 WYATT A. GLADE  
9 CUSTER COUNTY ATTORNEY  
10

11  
12 **CERTIFICATE OF MAILING**

13 This is to certify that an exact and true ( ) copy ( ) original of the foregoing was placed  
14 in the outgoing office mail or ( ) hand delivered to the address below or ( ) FAXED to the  
15 following person(s):

16 Fred Snodgrass  
17 Attorney at Law  
18 P.O. Box 2157  
19 Billings, MT 59103

20 Scott Hagen  
21 Attorney at Law  
22 208 N. 29<sup>th</sup>, Suite 223  
23 Billings, MT 59101

24 DATED this \_\_\_\_ day of November, 2008.

25 \_\_\_\_\_  
26 Ronda J. Petroff  
27  
28