

APPLICATION FOR

DISTRICT COURT JUDGESHIP

Eighteenth Judicial District

A. PERSONAL INFORMATION

1. **Full Name:** Magdalena Cain Bowen.
 - a. **What name do you commonly go by?** Mitzi.
2. **Birthdate:** [REDACTED]. **Are you a U.S. citizen?** Yes.
3. **Home Address:** [REDACTED]. **Phone:**
4. **Office Address:** Law and Justice Center, 615 S.16th Ave., Room 200, Bozeman, MT.
Phone: 406-582-2156.
5. **Length of residence in Montana:** Continuous Montana residency since 1994.
6. **Place of residence for the last five years:**

<u>Dates</u>	<u>City</u>	<u>State</u>
1994 - Present	Bozeman	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</u>	<u>Degree</u>
Bozeman Sr. High School	Bozeman, MT	1975	H.S. Diploma
Middlebury College	Middlebury, VT	Attended 1975-76	N/A
Montana State University	Bozeman, MT	1981	B.Sc. Earth Sciences w/ Honors
University of Colorado Law School	Boulder, CO	1990	Juris Doctor

Southern Methodist University Law School Dallas, TX 1989-90 N/A

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

American Jurisprudence Awards: Wills and Trusts 1988; Business Associations 1989.

Phi Kappa Phi, University Honor Society.

Most Valuable Person, Middlebury College Ski Team 1976.

Individual National Collegiate Nordic Champion and Member of National Collegiate Ski Championship Team

Member of the United States Nordic Ski Team 1974-1978.

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.

Yes, I was a member of the University of Colorado Law Review and recipient of the “Workhorse of the Year” Award. My unpublished student note was on the risks and rewards of the Colorado Ski Safety Act.

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 District Court/Supreme Court	1992
Montana Federal District Court	1994
Ninth Circuit Court of Appeals	1994
Colorado District Court/Court of Appeals/Supreme Court (Inactive Status)	1990
Colorado Federal District Court	1991
Tenth Circuit Court of Appeals	1991

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

Montana 18th Judicial District Court Standing Master since 2010.

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>
Colorado Court of Appeals, Denver, CO	Law Clerk to the Hon. Frank Dubofsky	1990-91
Berryhill, Cage & North, Denver, CO	Associate	1991-94
Quist & Bowen, Bozeman, MT	Partner	1994-96
Bowen & Parker, Bozeman, MT	Partner	1996-2010

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

N/A.

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 position as Standing Master for the 18th Judicial District Court was established in 2010. In my position I adjudicate cases referred to me by the three presiding District Court judges. These primarily include domestic relations matters from their filing through trial, including issuance of emergency ex parte orders, interim orders, and final written orders. I also adjudicate the majority of the District Court's Order of Protection matters. The decisions include whether to issue a temporary order, whether a temporary order should be made permanent following a hearing, and appeals from the Gallatin County Justice Court and Bozeman Municipal Court. I also preside over guardianship and conservatorship cases, termination of parental rights and adoption cases, and name changes.

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

I was engaged in complex civil litigation including Banking, Business, Securities, and Employment Law while practicing as an associate with Berryhill, Cage & North in Denver, including both plaintiff and defense work. When returning to Montana in 1994 I practiced general civil litigation including Business, Employment, Human Rights, Public School Law, and Family Law - both plaintiff/defense and petitioner/respondent work. I was also a Gallatin County Justice Court Public Defender beginning in 1994 and shared the Justice Court contract with another law firm until state assumption of the Public Defender Program in 2006. I have appeared as defense counsel in criminal jury and judge trials in both state and federal court. I have appeared before the Montana Human Rights Commission in administrative hearings as well as in Montana Child Support Enforcement Division administrative hearings.

I am committed to educational outreach. I taught at Montana State University in the College of Business as a Business Law Adjunct Professor and as a professor for the Freshman Seminar program. Even as a Standing Master I still teach annually at Bozeman High School on evidentiary issues and related legal matters and preside as a judge over mock jury trials performed by Bozeman High School students.

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

I do not have a legal specialty as defined by Montana Rule of Professional Conduct 7.4. At the present time my practice primarily concentrates on domestic relations law. Approximately one third of the District Court case load is domestic relations related; I handle nearly all of those cases.

17. Do you regularly appear in court?

Yes, I preside over weekly law and motion matters and have hearings and trials regularly. Prior to my appointment as Standing Master I frequently appeared in Gallatin and Park County District Courts as well as Gallatin County Justice Court, Bozeman Municipal Court, and Belgrade, Manhattan, and Three Forks City Courts as counsel in civil and criminal matters.

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%

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

100%

19. How frequently have you appeared in court?

On average multiple days per week.

20. How frequently have you appeared at administrative hearings?

None at this time.

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

Prior to my position with the District Court, I was engaged in:

Civil	75%
Criminal	25%

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.

No. The last five years I have not appeared as counsel in matters before the Montana Supreme Court due to my position as Standing Master.

23. State the number of jury trials that you have tried to conclusion in the last ten years. I do not preside over jury trials in my present position.

Prior to 2010, I generally tried one civil or criminal jury trial per year, depending on my caseload.

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

I presently preside over multiple judge trials per month. Prior to 2010, I averaged four-five civil or criminal judge trials per year.

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.

In the last two years I have not been involved in any adversarial proceedings, due to the nature of my current position.

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

I have not appeared in adversary proceedings before administrative boards or commissions during the last five years. Prior to my current position I appeared as associate counsel for the Bozeman School District at school board hearings and later as counsel for students appearing in expulsion hearings in the Bozeman and Manhattan School Districts. I appeared before hearing officers in Montana Human Rights Commission cases of discrimination; I appeared before the Montana Child Support Enforcement Division for child support determinations. The cases were initiated in a variety of ways and either resolved by negotiation or adjudicated on the merits after a full hearing, subject to appeal.

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

I have been requested to lecture or appear as a panelist for a variety of legal events. Most recently on April 22, 2016, I presented the “*Do’s and Don’ts for the Beginner to the Experienced Practitioner*” for the Montana Bar Family Law Toolkit CLE held in Bozeman, MT; I was a member of the Dispute Resolution/Judicial Panel for the Montana State Bar Conference in Bozeman on October 11, 2013; I was a panelist at the Community Mediation Center’s Special Needs forum on July 17, 2013.

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.

Gallatin County Bar Association 1994 through present.

Montana Bar Association 1994 through present

Colorado Bar Association 1991-94.

Denver Bar Association 1991-94.

American Bar Association 1991-94.

Phi Delta Phi Legal Honor Society 1988-94.

- 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.**

Voting Member of the Gallatin County Family Justice Coordinating Council (FJCC) 2010-present – Judge Holly Brown organized the council as a forum for regular contact between professionals and the court to address practices and procedures in family law cases, primarily youth in need of care matters.

Bridger Ski Foundation, Bozeman, MT. Former longtime board member and officer of nonprofit to promote community skiing in all disciplines for all ages.

Museum of the Rockies, Bozeman, MT. Volunteer and co-chairperson of the Night at the Museum “Pompeii” event 2016.

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

No.

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

My commitment to public involvement centers around the belief that contributing time and talent to projects with short-term goals creates long-term positive consequences in the community. My chief contributions focus on applying my skills and energy on causes that build local communities and mentor young people. For instance, this year I was co-chair of the Museum of the Rockies’ major fundraising event. There, I focused my energies on the short-term goal of designing a gala and auction. As a result, the Museum of the Rockies was able to raise money to support its long-term mission of educational outreach and serve as a center for dispersing scientific information on our geologic past, natural history, and western heritage to all Montana school children free of charge. Additionally, the gala itself brought together a number of Bozeman community members from diverse backgrounds who share a passion for knowledge and education. I also bring my legal expertise to events mentoring young people such as presiding as judge for high school speech and policy debate tournaments, high school mock jury trials, and the Gallatin County Rural Declamation Contest to promote citizenship and written and oral advocacy. I enthusiastically share my knowledge and expertise in Nordic skiing through the Bridger Ski Foundation programs which include young skiers, their parents, and older “masters.” I participate in events such as trail building and community clean up because there is camaraderie and a collective power in having many hands make light work.

E. PROFESSIONAL CONDUCT AND ETHICS

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

No.

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

No.

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

No.

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

No.

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

No.

F. BUSINESS AND FINANCIAL INFORMATION

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

No.

- 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 do not presently hold a position as an officer or director, and am not otherwise engaged in the management of any business.

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.

None.

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

No.

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

Yes.

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

Yes.

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

No.

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

No.

G. WRITING SKILLS

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

As the Standing Master I do not have a law clerk for assistance and therefore, I perform all of my own legal research and drafting of orders and opinions.

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.

N/A.

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.

See Attached.

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

50%

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

Yes.

H. MISCELLANEOUS

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

I am a lifelong Nordic ski racer and am passionate about mountain life. I still enjoy competing in Nordic racing both nationally and internationally. In the summer I like to trail run, hike, camp, and climb mountain peaks.

My husband of 36 years is a geologist. We enjoy working with students, scientists, and scholars including geologists, paleontologists, archeologists, and art historians (as well as the general public) on interesting field projects. These include visits to dinosaur dig sites in Montana and excavations in Italy (one of which is presently being exhibited at the Museum of the Rockies).

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

I was a member of the United States Nordic Ski Team for four years, where my primary job was to train and represent the United States at national and international ski competitions. I worked as a Nordic ski club coach after my retirement from the team. I worked as an apartment manager, a full time geologist, and in retail sports related jobs prior to/and during the early years of my marriage before having children and attending law school.

During law school I worked for Cantey & Hanger in Texas as a summer associate. After graduation from law school, I have been working full-time in the legal profession as set forth in paragraph 12 above.

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

In my current position as Standing Master I have been involved in efforts to improve access to justice programs. I review and edit Family Law Self Help Forms used by the *Montana State Self Help Law Center's* court based programs. I also review self-help forms used by the Bozeman Community Mediation Center. Recently, Gallatin County has been selected by *The Court Help Program* to serve as a pilot program in introducing revised and updated self help forms; I have been providing feedback and recommendations in anticipation of the pilot launch.

Prior to my current position, I was involved in direct pro bono representation for victims of domestic violence and for low-income families.

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

Growing up in Bozeman, I watched members of my community who were able to do extraordinary things for the people of Montana. Dorothy Eck, a family-friend, is someone I admire and has influenced my view of Montana's system of justice. She was one of the members of the 1972 Constitutional Convention and drafted Montana's groundbreaking constitution. Her work changed the course of our State's justice system. The underpinnings of Montana's unique system of justice are derived from our Constitution, which explicitly guarantees a right to privacy, a right to a jury trial, and a right to examine documents and attend open meetings. Montana's Constitution is exemplary: Article II, Section 3 pioneered truly innovative ideals such as the inalienable right to a "clean and healthful environment" and to "seek safety, health and happiness in all lawful ways." But, at the same time, it strikes an important balance in highlighting the "corresponding responsibilities" of each person. Later, as a State Senator, Dorothy advocated for the least represented segments of the population, including women, children, and those with mental health disorders. She forged a pathway to justice that begins with the Montana Constitution, continues with legislative enactment of laws through the senate and house,

becomes alive through the pen of the governor, and then is protected by the courts. Her belief in the power of one positive person to effect change has long been a guiding light in my life. It has strongly influenced my view of the purpose of our justice system and my choice to practice law. I embrace her conviction that the legal system plays a vital role in protecting the most vulnerable segments of society. In my private practice I have personally advocated for financially struggling parents who do not receive court child support or need protection from physical violence occurring in their homes as well as for criminal defendants who have mental health disorders. In my role as a Standing Master I often encounter *pro se* litigants who are unable to obtain or afford legal representation and are fearful of the court system. My commitment to access to justice reminds me to exercise patience, encourage the efficient and open use of the court system, and ensure a fair hearing and due process protections for all litigants.

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

Fairness, both actual and as perceived by the litigants. This quality is best personified by keeping an open mind on all issues until the parties have a full opportunity to present their positions to the judge and submit their case for final decision. Fairness requires keen concentration during proceedings, despite long hours of sitting, and the ability to recall multitudes of facts accurately; it requires a genuine interest in the testimony of each witness and the skill to quickly ascertain the importance of supporting documentation. It requires the courteous treatment of all parties and their legal counsel, all witnesses, and all observers. It requires the ability to keep pace with complex concepts and voluminous documents, take copious notes to quickly resolve any discrepancies in the testimony that might arise, and at appropriate intervals to be able to demonstrate that the Court grasps the complexity of the issues and the general and specific statutory/legal framework to resolve the matters.

The ability to maintain the decorum of the courtroom. It is a remarkable tradition that any citizen may appear in court, wait for their turn to speak, and have their dispute resolved or case adjudicated. It is critical that the space be safe from any physical danger, the atmosphere be free from ridicule or intimidation, free from distracting electronics or disruptive influences, and free from offensive language or behavior. A good district court judge calmly explains expectations and educates parties and observers

regarding procedure, explaining the consequences for failure to comply. Violation of the established rules must be dealt with swiftly and firmly.

A sound and fundamental understanding of all aspects of civil and criminal law and a genuine interest in staying current with emerging case law, legislative changes, technology, and science. A good judge has the ability to incorporate and apply best practices from related fields of sociology, psychology, domestic violence research, children's development, and addiction/chemical dependency and treatment to specifically tailor options enforceable through the power of a court order to effectuate positive change.

A genuine interest in people and how to move them forward in positive ways. In any given day a judge may see up to a hundred separate people on varying matters. The ability to acknowledge individuals, be committed to their outcomes, and require accountability is a powerful motivator for change in the behavior of litigants.

I strive to incorporate these qualities in my practice by setting forth clear expectations for litigants and witnesses, assuring each party understands courtroom rules, and providing adequate and fair opportunity for presenting matters to the court. I require formality in the courtroom and most litigants are respectful and act accordingly. I explain the reasoning behind my decisions and encourage positive changes in their behavior. I often share the latest scientific research with litigants to refocus their energies, including recent studies that demonstrate children have better long term outcomes if parents are able to cooperate and treat one another with respect. I acknowledge their progress and encourage their future success. I am most successful in my position when I am able to personify these qualities.

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

Case precedent is formulated and communicated by the Montana Supreme Court. It is effective in reducing district court time otherwise spent adjudicating similar matters. Case precedent allows citizens to make informed decisions by providing predictable outcomes in both civil and criminal arenas. Often, case law has not been sufficiently developed to address each matter before the Court. A district court

must make informed decisions in the interstitial space where case precedent leaves off. This requires both flexibility and the ability to discern and adhere to the legal bases upon which precedent itself relies. A recent example of this balancing process involves the long standing case of *Bonamarte v. Bonamarte*, 263 Mont. 170, 866 P.2d 1132 (1994) which rejected the telephonic appearance of a party and required her personal presence at trial to satisfy the confrontation clause right to cross examine witnesses as well as meeting other policy factors. Almost all lower courts thereafter have relied on *Bonamarte* to deny telephonic appearances by a party or a witness, upon objection of the opposing party. However, recently the Missoula Municipal Court allowed the Skype appearance of a witness based on new technology and by addressing specific policy concerns and making a determination that the personal presence of a witness was impossible or impractical due to distance or expense. In *City of Missoula v. Duane*, 2015 MT 232, 380 Mont. 290, 355 P.3d 729, the Montana Supreme Court upheld the lower court's decision and set precedent in a way that acknowledges how technology is changing courtroom dynamics. The appropriate balance between precedent and flexibility requires careful application of specific facts to established precedent, to come to reasoned and supported decisions.

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

Six years ago the Standing Master position was created and advertised in the 18th Judicial District. I was intrigued and considered it a great fit for my legal skills and desire for meaningful service. At that time, I resolved to apply all of my energy and talents to the position and become a strong contributor to our court system.

After six years my resolve to serve the people of Montana in the courtroom has not diminished. I believe the district court judge vacancy has opened at an opportune time in my legal career and personal life. I am deeply committed to this community and state and have broad experience in both the civil and criminal arena, including pretrial practice and judge and jury trial work. I have been fortunate to have observed and learned from three experienced district court judges. This eased my initial transition from private practice to the bench, as there is a steep learning curve from advocate to adjudicator.

Legal work in the district court is infinitely interesting and important. Even though the district court is facing a number of challenges—funding, inadequate facilities, an ever-increasing caseload—I am

confident in our ability to accomplish justice for the people of Montana. These are challenges I am both prepared and excited to meet.

I have a clear understanding of the responsibilities and possibilities afforded by the district court judge position. I am aware the position requires tremendous energy, diligence, inner strength, and intellect to render thoughtful decisions with the pressing caseload. I have a calm and firm judicial demeanor. I enjoy utilizing humor, but am fiercely protective of the sanctity of the courtroom. My favorite part of the profession is my time spent with litigants in the courtroom fashioning a workable solution to problems considered unsolvable by agreement. There is often great progress made in fractured relationships when parties sit side by side in the courtroom and are treated respectfully by the court. I am seeking this position because I am inspired to continue serving the people of Montana.

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

I have a reminder posted on my desk that states: “Try to see the humanity in every person you meet.” It is critical for me to remember that each person who appears in the legal arena is dealing with significant matters affecting their future, including loss of personal freedom, loss of time with family, protection from violence, and financial compensation. They often do not appear at their best in this atmosphere of fear and uncertainty. With this high stakes emotional backdrop (especially for pro se litigants) I proceed carefully to deescalate emotions and threats of violence by equally apportioning time, by explaining in detail our court procedures, and by assuring each party they will have their turn and an opportunity to tell me everything they think is important for me to know. Pro se litigants have immediately responded by calming down and engaging in the process. If a decision is ultimately rendered against their interest, they still acknowledge that I listened to them and explained why I made the decision I did. As a result of this process I receive feedback that even when they disagree, they are better able to accept the final result. A surprising number of times I hear sincere thank you’s from all parties and their supporters involved in a contested matter at the conclusion of a proceeding. I am most proud of my ability to connect on a professional level with parties who appear before me for resolution of their conflicts.

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

Every annual review of my work from the District Court Judges for the last six years has resulted in the highest marks of excellence in every employee category. I am working hard to address one of the greatest challenges of the Standing Master position, which is to reduce the backlog associated with an immense case load. Even without full-time dedicated support staff, I am still making progress in resolving outstanding matters while staying current with newly appointed matters.

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?

During the time I have been with the Court I have forged important working and personal relationships with our outstanding District Court Administrator, our District Court Judges and their top notch staff, and our District Court Clerk's office. These collaborative relationships reduce miscommunication, minimize delays, correct oversights, and allow for a well-functioning court to serve the public. As a result of these relationships and of my acquired knowledge of court procedures and court technology there would be minimal disruption in the full operation of Department 2 of the 18th Judicial District Court.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 18th 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.

9/21/2016
(Date)

M.C. Bowen
(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, September 21, 2016.

Mail the signed original to:

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

Send the electronic copy to: mtsupremecourt@mt.gov

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

IN RE THE PARENTING OF:)
P.R.F.,)
 A Minor Child,)
JOSH FAUST,)
))
 Petitioner,)
))
 and)
))
GEORGINA KENNEDY,)
))
 Respondent.)
_____)

Cause No. DR-14-23B

**ORDER DENYING RESPONDENT’S
MOTION TO DISMISS**

BACKGROUND

On January 27, 2014, Petitioner Josh Faust (hereafter “Father”) filed a Verified Petition for Name on Birth Certificate and for Parenting Plan and Petitioner’s Proposed Interim and Final Parenting Plan. Respondent Georgina Kennedy (hereafter “Mother”) was served with these documents and the Summons on February 6, 2014, in Oakland, Oregon. On February 24, 2014, Mother filed a Combined Motion and Brief to Dismiss Petition for Name on Birth Certificate and for Parenting Plan and Response to Petition. Therein, Mother represented that she had filed a parenting action on February 12, 2014, in the Circuit Court of the State of Oregon, County of

Douglas, *In the Matter of Georgina Margaret Kennedy vs. Joshua William Charles Faust*, Petition for Custody, Parenting Time and Child Support, Case No. 14DO0180CU. A Temporary Status Quo Order was issued by Circuit Court Judge, George W. Ambrosini on February 13, 2014.

On March 13, 2014, Father filed his Response to Motion to Dismiss. On April 3, 2014, Mother filed her Reply. On June 10, 2014, the Oregon Court contacted the Montana Court to schedule a communication concerning a proceeding arising under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), Sections 40-7-101, et seq., MCA. Essentially the courts recognized there were two separate proceedings involving the child pending in two state courts. On June 11, 2014, this Court issued a Notice of Communication Between Courts Pursuant to Section 40-7-139, MCA, for June 12, 2014, at 2:00 p.m. On June 12, 2014, the Montana Court held the communication and Josh Faust personally appeared with his Montana counsel Margaret Reader. Georgina Kennedy appeared telephonically from Oregon and her Montana counsel Kirsten Mull Core personally appeared. The Honorable George Ambrosini, Circuit Court Judge of Douglas County, Oregon appeared telephonically. In his Oregon courtroom, Georgina Kennedy personally appeared with her Oregon counsel Andrew Johnson. Josh Faust’s Oregon counsel Patrick Crowley appeared telephonically through the Oregon courtroom. After testimony taken and legal arguments made by counsel this Court determined that Montana is the “home state” of the child, P.R.F., according to this Court’s application of the UCCJEA, specifically Sections 40-7-201(1)(a) and 103(7), MCA, wherein this state has jurisdiction to make an initial custody determination if it was the home state of the child within 6 month before the commencement of the proceeding and the child is absent from the this state but

a parent continues to live in the state.

In this instance P.R.F. was born in Montana and resided in Montana until November 24, 2013 – a period of over seven months. Mother then left the state of Montana with P.R.F. and went to Oregon. Father continued to live in Montana. Father filed his parenting action in Montana on January 27, 2014; Mother filed her parenting action in Oregon on February 14, 2014. The Commissioner’s Note for Section 40-7-109, MCA, contemplated this scenario and does not allow a parent to take a child from the home state and seek an original child custody determination in another state, if the remaining parent files a parenting action within the elapsing six month period. This Court noted the Oregon Court confirmed there was no temporary emergency jurisdiction over the child being exercised by the Oregon Court or requested by the parties as provided for under Section 40-7-204, MCA. Although Montana is the “home state” of the child and this Court has the jurisdiction to make a child custody determination, it may decline to exercise such jurisdiction if it determines that it is an inconvenient forum under the circumstances and that another court is a more appropriate forum. The Court set the matter for hearing on whether this is an inconvenient forum for July 17, 2014.

On July 17, 2014, Father personally appeared with his counsel Margaret Reader. Mother personally appeared with her counsel Kirsten Mull Core. The Court heard testimony from the parties and legal argument by counsel and considers itself fully advised to make to make the following:

FINDINGS OF FACT

1. Father testified that Mother did not tell him she was permanently leaving the state of Montana for Oregon when she left in November of 2013 with their child. He objected to her

leaving with the child and thereafter had difficulty reaching Mother and the child. He left many messages for her to call him which she did not return. When Mother finally made contact with Father she said she was sorry for cutting off contact. She told him he did “not have a case” for parenting their child because his name was not on the birth certificate. Thereafter, Father filed the present action.

2. Father has traveled to Oregon twice to have parenting with the child, the latest of which was for two-three days. He has now been able to have telephonic contact with the 18 month old child on a regular basis. Father is self employed as a carpenter and taxidermist in Gallatin County, Montana where he has resided for the last 24 years. The parties lived for three years together in his cabin which is built on his father’s property. The child was born in Montana on April 6, 2013, and lived together with Father and Mother in Montana until Mother left in November 2013. Father intends to remain in Montana.

3. Father’s income is generally \$20,000-30,000 per year. He testified that he can make \$15-\$30 per hour as a construction worker, but at a minimum could make \$15 per hour if he worked for someone else and did not have self employment expenses. Father pays \$500 per month to his father for rent related to the cabin. Father has paid Mother \$2,200 in child support since the action began. He paid \$200 in January/February 2014 and \$2,000 in April 2014, when he received his income tax refund. Father claimed the minor child as an exemption for tax year 2013, which the Court finds appropriate because the child lived with Father for over six months and Mother did not intend to file a tax return. Father was not obligated to share the refund with Mother.

4. On May 26, 2014, Mother indicated to Father that she loved and missed him and was

returning to Montana. Mother started to drive back, but did not complete her journey. Mother now states that she has no intention of returning with the child to live in Montana. She is presently living with her brother and his family in a home on the ranch that her family owns in Oregon. Mother does not pay rent, but pays utilities/phone in the amount of \$150 per month. She lives 45 minutes from the Eugene Oregon Airport. It is a 14 hour drive from Montana to Oregon. Mother now works full time (45 hours per week) for \$13.00 per hour at the Oakland Meat Locker where she wraps meat. While she is working an unrelated babysitter cares for the minor child at a cost of \$125 per week. Mother also has a car payment.

5. Mother states that she left Montana to return to her family home in Oregon after three years with Father because Father is an alcoholic and she is afraid of him. She states there was a November incident where he drank too much at a friend's birthday party which ended in a physical altercation and Father putting a loaded rifle to his head and stating he was going to shoot himself. Mother indicates she left the residence and went to Father's father's home on the property. Mother did not report the incident, did not seek assistance from law enforcement and did not raise this issue to the Oregon Court. She raised this issue for the first time in her responsive pleading to this Court. Father does not have any criminal history of domestic violence or other criminal activity.

6. Mother states that in the event of litigation she would call her employer as a witness as well as the child's day care provider. She alleges all relevant evidence related to the minor child is now located in Oregon. Father responds that the domestic violence issue which was raised by Mother is alleged to have occurred in Montana and therefore, all such evidence is located here.

7. Any factual findings contained in the following Conclusions of Law are hereby

incorporated herein.

From the foregoing Findings of Fact, the Court now enters the following:

CONCLUSIONS OF LAW

1. Any conclusions of law contained in the foregoing Findings of Fact are hereby incorporated herein.

2. The Court has jurisdiction over the parties, their child, and the subject matter in this proceeding.

3. In deciding whether the State of Montana is an inconvenient forum, Section 40-7-108(2), MCA, requires this Court to consider all relevant factors, including but not limited to:

- (a) Whether domestic violence occurred and is likely to continue in the future and which state could best protect the parties and the child[ren];
- (b) The length of time that the child[ren] have] resided outside the state;
- (c) The distance between the court in this state and the court in the state that would assume jurisdiction;
- (d) The relative financial circumstances of the parties;
- (e) The agreement of the parties as to which state should assume jurisdiction;
- (f) The nature and location of the evidence required to resolve the pending litigation including testimony of the child[ren];
- (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (h) The familiarity of the court of each state with the facts and issues in the pending

litigation.

4. This Court has considered all of the above stated factors, specifically that the issue of domestic violence was not raised in Oregon by Mother and if domestic violence occurred in Montana then this Court is the best place to hear the evidence and protect Mother/child. The child resided in Montana for the first seven months of her life and has now lived in Oregon for nearly eight months while this litigation has proceeded - which is recognized as a relatively short time period. The distance between jurisdictions is a one day drive for either party to attend legal proceedings. Each party has financial constraints, but overall the parties are generating similar incomes and it would be a hardship for one party to attend in either jurisdiction. There is no agreement between the parties which state should assume jurisdiction. There is evidence in the state of Montana which would help resolve issues between the parties, including the alleged domestic violence incident as well as the child's birth records and pediatric records. However, Oregon would be appropriate for new events affecting the child and Mother. Each Court is in a relatively similar circumstance regarding its docket, but this Court is now more familiar with the facts/circumstances of the parties as a result of the additional hearing.

5. Under all of these circumstances this Court concludes that Montana should continue to exercise exclusive, continuing jurisdiction and that Montana is not an inconvenient forum to decide all child custody issues arising under the facts and circumstances of this case. The Oregon Court should be relieved of any duties regarding the child custody matter. For good cause now appearing,

IT IS HEREBY ORDERED:

1. This Court has jurisdiction in this matter pursuant to Section 40-7-201, MCA,

and the authority to issue an initial child custody determination and has exclusive, continuing jurisdiction in this matter.

2. Respondent's Motion to Dismiss for Inconvenient Forum is **DENIED**.

3. The Oregon Court should be relieved of any duties regarding the child custody matter and all temporary orders of the Oregon Court should be vacated. All further proceedings should be decided by the Montana Court.

PLEASE NOTE that with the sending of this document each party is being served with notice of the filing of the findings and conclusions and/or order of this Court.

DATED this _____ day of July, 2014.

Honorable Magdalena C. Bowen
District Court Standing Master

cc: Margaret Reader
Kirsten Mull Core
Hon. George W. Ambrosini, Circuit Court Judge, Douglas County, Oregon