

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eighteenth Judicial District**

A. PERSONAL INFORMATION

1. Full Name: **Jenny Colleen Herrington**
 - a. What name do you commonly go by? **Colleen**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: **2050 W. Dickerson St, Ste B, Bozeman, MT 59718**
Phone: **(406) 219-0820**
5. Length of residence in Montana: **11.5 years**
6. Place of residence for the last five years: **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 of Degree</u> | <u>Degree</u> |
|--------------------------------------|-----------------|-----------------------|---------------------------------------|
| Clear Lake High School | Clear Lake, TX | N/A | N/A |
| Linganore High School | Frederick, MD | May 1996 | HS Diploma |
| Frederick Community College | Frederick, MD | N/A | N/A |
| Mercer University | Macon, GA | May 2000 | Bachelors' of Business Administration |
| University of Maryland School of Law | Baltimore, MD | May 2003 | J.D. |
| Georgetown University Law School | Florence, Italy | N/A | N/A |
| Montana State University | Bozeman, MT | January 2009 | Masters of Professional Accountancy |

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

I competed for and won the Penfield Scholarship from Mercer University for four years. This scholarship was awarded for academic excellence. I was also awarded the Van Greene Scholarship from Mercer University. This scholarship was from donors to award academic excellence as well.

I was on the President's list several times during my four years for my grade point average and graduated with honors from Mercer University.

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

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> |
|---|--------------------------|
| Maryland Court of Appeals | December 2003 |
| State Bar of Montana | May 2005 |
| United States Federal District Court - District of Montana | March 2009 |

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

I am currently employed as a solo practitioner at my own firm, BD&H Law Firm, PLLC. Additionally, I am a part-time municipal court judge and am a Captain in the Montana Army National Guard (MTARNG). In the National Guard, I am an attorney in the Judge Advocate General (JAG) Corps.

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> |
|---|---------------------------------|--------------------|
| Mayer, Brown, Rowe & May 1999 K Street NW Washington, DC 20006 | Contract Law Clerk | 9/03-10/03 |
| Wilmer, Cutler, & Pickering 1875 Pennsylvania Ave, NW Washington, DC 20006 | Contract Law Clerk | 10/03-2/04 |
| Stacy LeBow Seigel, LLC 29 W. Susquehanna Ave Towson, MD 21204 | Associate Attorney | 02/04-12/04 |
| Office of the State Public Defender Gallatin County 502 S. 19th Ave, Ste #211 Bozeman, MT 59718 | Public Defender Attorney | 04/05-03/09 |

| | | |
|---|------------------------------|----------------------|
| Wittich Law Firm, PC 602 S. Ferguson Ave Bozeman, MT 59718 | Attorney | 04/09-10/11 |
| Montana National Guard 1956 Mt. Majo St Helena, MT 59602 | JAG Officer/Attorney | 09/10-present |
| Deschenes & Sullivan Law Offices 115 W. Kagy Blvd, Ste O Bozeman, MT 59715 | Attorney | 10/11-9/13 |
| Bozeman Municipal Court 615 S. 16th Ave, Room 123 Bozeman, MT 59715 | Municipal Court Judge | 1/12-present |
| BD&H Law Firm, PLLC 2050 W. Dickerson St, Ste B Bozeman, MT 59718 | Owner/Attorney | 9/13-present |

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

When I first moved to Montana, I took a few months off to study and sit for the bar exam and wait for the results. I was not employed in the legal profession from January 2005 through April 2005. I was a substitute teacher during that time.

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 private practice work at BD&H Law Firm, PLLC constitutes 45% of my work. In that work, I represent debtors in bankruptcy and collection actions, and other general civil litigation (50% of total case load). I also take conflict cases for the Office of the State Public Defender outside of Gallatin County in the area of criminal defense (45% of total case load). The last 5% of my practice covers transactional law, including drafting wills, contracts, and other necessary documents for clients.

My work as a Bozeman Municipal Court Judge constitutes 45% of my current legal practice. As a judge, I preside over 40% of the caseload for Bozeman Municipal Court. My work includes criminal misdemeanors and orders of protection hearings in the city limits of Bozeman. I preside over judge trials, jury trials, and all hearings, including initial appearances and arraignments, bond hearings, motions, omnibus, change of pleas, petitions to revoke and other hearings.

Finally, my work as a JAG Officer constitutes 10% of my work. I am currently the Command Judge Advocate for the 1889th Regional Support Group and advise commanders on all legal matters in a myriad of areas. I also represent the Government in Administrative Board hearings and provide legal assistance to National Guard Soldiers.

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

I have practiced in a small divorce firm in Maryland. I represented clients in divorce and family law proceedings, including uncontested divorces, child custody issues, complex divorce litigation and mediation. I attended and received certification in Alternate Dispute Resolution in Maryland. I have worked on large litigation cases in Washington, DC working on discovery issues and productions. I have litigated in Federal Bankruptcy Court for creditors involved in large Chapter 11 bankruptcies. Other areas of law that I have practiced include contract disputes, land disputes, conservatorship matters, felony criminal matters, abuse and neglect cases, and mental health/developmentally disable commitments.

In law school, I interned with a solo practitioner researching and writing memorandum on complex estate and trust issues. I also interned with Black and Decker's corporate tax office preparing intercompany pricing memorandum for the company's subsidiaries all over the world. My last internship was with the Semester Intern Program at Securities and Exchange Commission, where I worked for the fall semester of my third year.

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

As a solo practitioner, I take many different types of cases. The majority of my caseload is in bankruptcy, general civil litigation, and conflict criminal work through the Office of the State Public Defender.

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

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

| | |
|--|-------------|
| Federal court | <u>45%</u> |
| State or local courts of record | <u>50%</u> |
| Administrative bodies | <u> </u> % |
| Other: Administrative boards in MTARNG | <u>5%</u> |

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

65%

19. How frequently have you appeared in court?

10-15 times per month on average

20. How frequently have you appeared at administrative hearings?

I have appeared in 6+ administrative hearings for the MTARNG.

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

| | |
|----------|------------|
| Civil | <u>35%</u> |
| Criminal | <u>60%</u> |
| Other | <u>5%</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.

WLW Realty Partners, LLC v. Continental Partners VIII, LLC, 2015 MT 312, DA 14-0663 – Appeal on damages

Co-Counsel: Margot Barg Ogburn, Ogburn Law Firm, PLLC, 777 East Main St, Ste 203A, P.O. Box 7020, Bozeman MT 59771; (406) 600-5821

Opposing counsel: James H. Goetz, Robert K. Baldwin, Goetz, Baldwin, & Geddes, PC 35 North Grand Ave, PO Box 6580, Bozeman MT 59771-6580; (406) 587-0618

23. State the number of jury trials that you have tried to conclusion in the last ten years.
10+ jury trials as an attorney; 15+ jury trials as a presiding judge
24. State the number of non-jury trials that you have tried in the last ten years.
9+ bench trials as an attorney; 25+ bench trials as a presiding judge
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.

Here is a selection of my cases for the past two years. If more are needed, I can provide the full list to the commission.

***State v. Joshua Brown*, ADC 2013-180 and ADC 2014-70 – Sentenced on both matter, August 6, 2014**

First Judicial District Court, Lewis and Clark County, Honorable Mike Menahan – (406) 442-8205

Opposing Counsel: Leo Gallagher and Luke Berger, Lewis and Clark County Attorneys, 228 Broadway, Helena, MT 59601; (406) 447-8221

***State v. Levi Plumb*, multiple cases – entered into a global plea agreement and sentenced Helena Municipal Court, Honorable Bob Wood – (406) 447-8466**

Opposing Counsel: Todd Baker, Helena Deputy City Attorney; 316 N. Park Ave, Rm 203, Helena, MT 59623; (406) 457-8595

***State v. Toby Edwards*, DC 2014-10 – sentenced September 23, 2014**

Fifth Judicial District, Jefferson County, Honorable Loren Tucker – (406) 225-4042

Opposing Counsel: Joseph Nevins, formerly with the MT Department of Labor, 3624 Green Meadow Dr, Helena, MT 59602; (406) 465-9917

***State v. Derik Miller*, DC 2015-45 – Sentenced held on August 19, 2016**

Broadwater District Court, Honorable James P. Reynolds – (406) 447-8205

Opposing Counsel: Cory Swanson, Broadwater County Attorney, 515 Broadway Street, Townsend, MT 59644; (406) 266-9226

***State v. Austin Calder*, DC 2016-29 – currently pending**

Broadwater District Court, Honorable James P. Reynolds – (406) 447-8205

Opposing Counsel: Cory Swanson, Broadwater County Attorney, 515 Broadway Street, Townsend, MT 59644; (406) 266-9226

State v. Adam Russell Freeman, BDC 2016-366 – currently pending
First Judicial District Court, Honorable DeeAnn Cooney - (406) 447-8205
Opposing Counsel: Lisa Leckie, Lewis and Clark Deputy County Attorney, 228 Broadway,
Helena, MT 59601; (406) 447-8221

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

I have represented the Government in administrative boards with the MTARNG against soldiers that have violated the Army Regulations for misconduct or unsatisfactory participation. All of these boards have been for enlisted soldiers.

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 presented multiple times to the Courts of Limited Jurisdiction (COLJ). There is a regular presentation called Nuts and Bolts. A three-judge panel takes submitted questions from the other COLJ judges and provides best practice answers to the group with discussion during the presentation. I was on the panel from April 2014-April 2016. Additionally at the Fall 2015 Conference, I participated with several other judges and we presented a mock motion hearing and partial trial on domestic violence issues.

Earlier this year, I sat on the Access to Justice Forum for this area. It was a wonderful presentation that allowed nine groups to present information and concerns related to pro se litigants and the difficulty of accessing our justice system.

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.

I am an inactive member of the Maryland Bar Association. I am also an active member of the State Bar of Montana. I have also been a member of the bankruptcy section since 2010.

I am currently a member of the Montana Magistrates Association through the Courts of Limited Jurisdiction. I have been a member since I was first appointed as a Judge in 2012.

I am on the Criminal Justice Coordinating Committee for Gallatin County. It serves as the central planning body for the criminal justice system.

I have been a member of the Gallatin County Bar Association for most of my years of practice in Gallatin County. I have found in recent years, I have not been able to participate with this group due to my other commitments.

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.

Bozeman Area Community Foundation – Board Member from 2009-2012 - We provided services to other non-profits in the surrounding area. I was also on the grant committee. This committee reviewed grant applications and made recommendations to the board on which non-profits should be awarded grants.

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.

I believe wholeheartedly in volunteering and giving time to my community. It is incredibly important to me to be involved, give back, and support my community. I hope that my involvement has and will continue to help this exceptional community. Shortly after I moved to Bozeman, I had the opportunity to become a Public Defender. This gave me the opportunity to serve individuals who could not afford an attorney. During that time, I volunteered time at the Gallatin Valley Rest Home, reading to and spending time with residents that wanted to have company.

After 4 years as a Public Defender, I went into private practice, but felt that something was missing. At that time, I applied to become a JAG Officer with the Montana Army National

Guard. I felt this would be an excellent way to not only serve my Country but also the State of Montana. In this position, I am able to aid soldiers here in Montana and provide them with the support to flourish in their roles as citizen soldiers. I also continue to volunteer with different organizations. Earlier this summer, I joined Gallatin Valley's Big Brother, Big Sister program and was recently matched with a little sister. This relationship is just starting, but I believe that we will be able to teach each other and change each other's lives for the better. I have served on the Board of Bozeman Area Community Foundation, which serves all non-profits in the Gallatin Valley Area.

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.

I attempted to find legal employment prior to moving to Montana, but was unsuccessful. I continued to look for legal employment while I was studying and sitting for the bar exam. In order to stay busy and bring in income, I became a substitute teacher during the first few months

after I moved to Montana. Upon finding out that I had passed the bar, I was hired by the Gallatin County Public Defender's Office.

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 Owner/Manager and sole attorney with my firm, BD&H Law Firm, PLLC. My firm will close if I am appointed as a district court judge.

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 receive pay as a soldier of Montana Army National Guard, which is approximately 10% of my income.

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.

I have performed all of my own research and brief writing for the past five years. Additionally, when I had opened a Bozeman office for Deschenes & Sullivan, I researched and drafted briefs and pleadings for other attorneys. I also research and draft orders for my cases in Bozeman Municipal Court.

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 have drafted wills and trust documents, real estate deeds, business organization documents, and contracts for clients. This extent depends on caseload and need of clients. For the MTARNG, I provide simple wills to soldiers that are deploying or in need of a new will.

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?
45%

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

Yes, I worked for Lexis when I was in law school and became very proficient. At the JAG office, we use Westlaw, so I have also become very proficient with this program. In Bozeman Municipal Court, we switched from Westlaw to Fastcase, to reduce the cost of research for the court. I also use Fastcase in my private practice and am learning this program very quickly.

H. MISCELLANEOUS

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

I enjoy the outdoor activities that this area affords. I love hiking with my dog, playing golf, reading, and spending time with family and friends. I am active in several groups, including a book club and movie club.

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

During high school and college, I had the pleasure to work in many different fields. They have ranged from waitressing, to working retail, to being the assistant to the Special Events Coordinator at Mercer University. In order to learn more about my double major in business and accounting, I spent one summer working for a bank in Macon, Georgia. I also had the opportunity for a paid internship with the Air Force Audit Office for almost two years while I was attending classes. I provided childcare to a wonderful little boy throughout law school. I participated in several internships in law school as well, including at Black and Decker, the Securities and Exchange Commission, and a small sole practitioner. I also worked for Lexis and Bar/Bri in law school.

These jobs are all in addition to the legal experience listed above.

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

I participate with the State Bar Modest Means Program and help clients with bankruptcy cases and other debt issues. I also volunteer through Montana Legal Services Association and provide advice and review petitions for clients that utilize the File Your Own Bankruptcy program. In addition, I had the great opportunity to sit on the Access to Justice Forum that has been held throughout the State. The forum highlighted the importance of pro bono work and the difficulties that self-represented litigants experience in the legal system.

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

I have been very lucky to have a number of mentors in the legal profession. Each of these individuals has shaped my view of our justice system. However, during law school, one event stands out to me that shaped my view of our system of justice. This occurred while I was studying abroad in Florence, Italy. As part of the experience, we had a tour of a special Italian Court that was built to try the cases for the defendants charged with the Mafia bombing of the Uffizi. This court was built under ground to provide protection for the entire court system. It was incredibly secure and contained due to the threats and the nature of the charges being tried. The defendants were being tried for terrorist acts, murder, and other serious crimes. Inside the courtroom, the highest judge of that court gave us a tour and provided explanation of the lay out of the court. It looked similar to our courtrooms, but with one large difference. Along one side of the courtroom were large barred boxes, which had a bench and long restraints in each enclosed area. We were

told that while any hearing occurred, defendants were kept in those boxes. They were not allowed to sit next to counsel, nor were they allowed to be out of those boxes for any reason.

As the judge explained to us, Italy has a different system. Defendants are not provided with the same rights and expectations as in our system of justice. As a law student, just beginning my legal career, this was an eye opening and slightly disturbing event. I realized that in Italy, the judge is given a constant view of a caged defendant. How does one see the possibility of innocence when your daily view is of a restrained person in a barred cell?

I have been raised understanding the presumption of innocence and knowing that I am afforded certain inalienable rights. The comparison of the Italian system to our system here in the United States, gave me an appreciation of what we are afforded as citizens of this country. It also highlighted the importance of the system to which I was going to become a member, upon passing the bar and joining the ranks of attorney. This American system is not perfect and is flawed, just as any human system is flawed. But it does provide us with a foundation that means each person that enters our system is deserving of respect and fair opportunity, which I believe is so important.

Now, after almost five years as a sitting judge, thinking back on this experience, I have a new appreciation of how that visit to the Italian Court has shaped my understanding and support of our legal system. I am reminded of the idea that how someone is presented in court influences the perception of the participants. It highlights how fundamentally important it is to provide each participant with a fair trial and the ability for each person to exercise the rights afforded to each of us. This foundational virtue is why I believe in and work so hard as an attorney and a judge.

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

A judge needs to be a good impartial listener. A large portion of this position involves hearing facts and legal arguments. Without being an active listener, a judge will not be able to discern truth from fiction, incorrect arguments from correct ones, as well as hear the unsaid information that may be vital in deciding the outcome for the matter presented.

I also believe that a good judge has the ability to manage their time efficiently. For example, as caseloads increase, a judge is not provided more hours in a day. This enforces the necessity to multitask in order to keep tract of the numerous responsibilities occurring at one time. The caseload of a district court judge contains criminal cases, youth cases, family law cases, complex civil cases, abuse and neglect case, to name a few. So, I believe that it is essential to have the ability to multitask in order to do well in this job. The ability and desire to continue to learn and be challenged is also imperative for this position, as each matter presented will be unique.

I further believe that as our society changes, the legal system must be flexible enough to alter with it. In my career, I have seen and even felt the change of perception of the judicial branch. This shift requires a judge that will strive to understand, perceive, and adjust throughout their time on the bench. Individuals that appear in front of a judge deserve to be treated with respect, compassion, and fairness.

A good judge must fairly and consistently apply the law to each and every litigant that appears in court. I further believe that a good district court judge utilizes one's strengths and weaknesses. Each person has their own personality and beliefs that if they attempt to fit into a preconceived box of what makes something successful can actually backfire. I believe that if a judge is trying to be someone that they are not, that insincerity shines through. I have learned that being true to myself as a judge allows me the confidence and ability to treat each person that appears in front of me with respect and dignity. This I consider to be a hallmark of an effective judge.

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.

I have watched the number of pro se litigants increase exponentially in the past five years on the bench. The majority of pro se litigants do not have the training or knowledge to apply or argue precedent case law. Because of this increase, it is imperative that, as a judge, we adhere to the judicial canons that require that we treat all parties fairly, whether they are represented by counsel or represent themselves. Each participant in the legal system must be allowed to present their case, which requires the judge, on many occasions, to assist in helping pro se individuals. In order to do this, a judge must be flexible in the law. However, our system of justice is based on case law, which provides consistency and structure. Parties have the ability to search and know that if there is a case similar, the results should be similar. It allows participants to trust the system.

This balance between the past law and the need for change must be decided on a case-by-case basis. It is the uniqueness of the facts and individuals appearing that will help the judge to make a determination where the scales tip. The judge must balance both precedent and flexibility in order to maintain consistency, trust, and integrity in the legal system, yet still allow for adaptation as the world changes.

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

I am seeking office as a district court judge because I believe that I can be of service to my community in this position. I know that it will stimulate me professionally. As a municipal court judge, I have been able to utilize my broad base of experience and enjoy my job immensely. It is difficult job, but it fulfills me. Every day, every case is different. It has been a steep learning curve that has challenged me professionally and personally. This experience has illustrated to me that I want to advance to the district court.

I believe that each of my legal experiences have provided me with the perseverance to follow my purpose and my goals. The Public Defender's office gave me the ability to think on my feet quickly and efficiently use my time to represent my clients in a difficult situation in their lives. While at the Public Defender's office, I juggled the demands of work while I obtained my Master's in Professional Accountancy from Montana State University. This illustrates my ability to multitask, which will be helpful to me as a district court judge. When I left the PD's office, I went into the private sector and established a niche bankruptcy practice. In doing so, I was able to fine tune my skills and learn new areas of practice. Now, in the position of judge, I know that I will be

presiding over cases unlike what I have seen before, but because of my previous experiences, I know I can learn quickly and adapt to the demands that the position requires.

In order to become a JAG Officer, I had to leave both Montana and my practice for almost six months. During that time, I utilized technology and worked remotely with clients in order to support their needs while I attended the necessary training. This gave me the tools needed to partner with an out of town firm shortly after returning to Bozeman. The new office allowed me the ability to apply for and accept the part-time judge position. Each step has encouraged and shaped my desire to become a district court judge. Throughout my entire legal career, I have constantly sought out mentors and continue to improve and learn. I know that all of these skills and traits will help me as a district court judge.

I look forward to the challenges and complexity of issues that would be presented to me in this position. I am ready and excited for this opportunity.

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

There are two distinguishable events that I am very proud of in my career. The first is my time with the Public Defenders office and the second is my service in the MTARNG. When I was in law school, I did not believe that I ever wanted to be a trial lawyer. However, after moving to Montana, I accepted the opportunity to work for the Public Defender's office. I found it to be such a difficult but stimulating experience. It gave me the chance to help individuals in a way that I had never imagined. I was able to help people navigate the legal system during a tumultuous and trying time in their life. In order to do this, I had to re-define my beliefs about success. Instead, success became not about winning or losing, but about providing my clients with the most accurate advice and knowledge in order to protect their legal rights and assistance in making the best decisions for their case.

I am very proud of my service with the MTARNG. This opportunity has afforded me the opportunity to enjoy different areas of legal practice that encompass both federal and state issues. I value helping soldiers with legal assistance and providing legal counsel to my commanders. It is not always easy giving up one weekend a month and carving out the time for annual training from my practice and my judgeship, but the rewards far outweigh the hardships.

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

As the current part-time municipal court judge, I am developing a veteran's court to serve the veterans of Southwestern Montana. I want continue to work on this project if I am appointed to the District Court and would volunteer my time to get the court up and running. The need for this court is great and the support for it has been very encouraging, so I want to keep the momentum moving forward. I believe that this is an essential project for Gallatin County. I have started a working group to help with the planning and grant request that will be required to gain the federal funds needed for the implementation of this court.

The Gallatin County Felony Treatment Court is at its capacity and despite proving to be an excellent tool, it cannot currently be expanded. Southwestern Montana has the largest population of veterans in the State. Having a specific Veteran's Court provides the support and camaraderie that many soldiers had in the military and may have lost leaving the service. It can provide them with the foundation to gain access and tools to overcome both alcohol and drug issues that may have been exacerbated from their experience during their service. As a current National Guard officer and veteran, it is crucial that this opportunity be created in our community.

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 age and professional experience differentiates me from other applicants. I have the ability for longevity, as I am in my late thirties, and want to make this position a career. I was concerned that my age may be a deterrent to some, so I sought advice from fellow judges. I was recently told, that I am the same age as Judge Sherlock when he first became a district court judge. This information inspired me and gave me hope that I could be successful in this position at my age. Judge Sherlock had a long, distinguished career, which enabled him to earn an incredible base of knowledge that I aspire to.

In order to challenge myself and gain a large amount of experience, I have tried to accept varied opportunities to gain a broad base of knowledge and proficiency to support my desire to be a district court judge. Additionally, I believe that I will continue to be a JAG Officer with the National Guard, because that service is very important to me and am aware that other district court judges have maintained this duality.

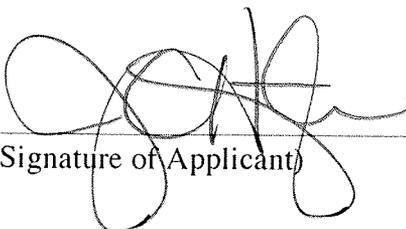
I know I have a desire and drive that will be helpful in taking on an extremely large case volume. I want to be active in my role as judge and take on extra duties. I also will seek to work cooperatively with the other district court judges and the lower court judges. I have a strong conviction that as judges, in whatever court we work in, we are on the same team and should be available to each other for support, questions, and advice.

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.

9/15/2016

(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, 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

IN THE MUNICIPAL COURT OF THE CITY OF BOZEMAN
COUNTY OF GALLATIN, STATE OF MONTANA

STATE OF MONTANA,
Plaintiff

v.

STEVEN BRUNER,
Defendant,

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Docket No. TK ~~13-0636~~ 12-05514

ORDER

THIS CAUSE is before the Court on Defendant's Motion to Suppress and Dismiss. The Court held an evidentiary hearing on September 9, 2013. Ryan McCarty was present on behalf of the City of Bozeman, Steven Bruner, the defendant, was present and Charles Cromwell was present on behalf of the Defendant. Based on the arguments in the parties' briefs and the testimony presented in court, the Court makes the following Findings of Facts:

1. On November 10, 2013, at approximately 4:45 p.m., Sgt Veltkamp and Officer St. Aubyn responded to an anonymous tip called into dispatch from the Continental Motor Inn. The tip indicated that there was an argument between two males in Room 215. The anonymous tip also did not indicate that physical violence was occurring or had occurred at any point.
2. Sgt. Veltkamp was just coming on shift when he responded to the Continental Motor Inn. He had no further information provided before he responded. St. Aubyn also responded to the dispatch report. Veltkamp responded first and St. Aubyn shortly thereafter. Officer Shepherd responded as backup to the two other officers.

3. Officers Veltkamp and St. Aubyn testified that they walked directly to Room 215, without stopping anywhere to corroborate the anonymous tip. Veltkamp testified that he had no knowledge if the occupants of the room had weapons.
4. Both officers testified that when they approached the door, the door was slightly ajar and they stopped and listened outside of Room 215 for at least 30-40 seconds.
5. The officers testified that they heard a female voice and two male voices coming from inside the Room 215.
6. The Defendant testified that he and Wynton Magee were in a relationship and had been living together in Room 215 at the Continental Motor Inn for several months. They had quarreled that day because Magee was drinking the night before. The Defendant also testified that their quarrel never once turned violent, and that there was no physical injury or property damage that resulted from the argument. They did not receive a complaint from neighbors or the management for being too noisy.
7. The officers had their recording devices activated and recorded the events of November 12, 2012. The recordings from Veltkamp and St. Aubyn were entered as State's Exhibits 1 and 2, and were played for the court during the hearing.
8. In the recording, a female can be heard asking for one of the males to go home with her. She was later identified as Rose Hoff. Neither the Defendant nor Magee can be heard arguing, shouting, or otherwise loudly discussing anything. Ms. Hoff did sound upset on the recording.

9. The officers testified that they overheard arguing or bickering, but each testified that no other violence or criminal activity was overheard or observed prior to Veltkamp knocking on the door and both officers announcing their presence.
10. The officers' testimony differs as to what occurred next. Neither can remember who entered the room first. Veltkamp testified that he knocked and both he and St. Aubyn announced, and then Ms. Hoff opened the door and came outside to talk. In contrast, St. Aubyn testified that someone knocked and both officers announced. He also testified that Ms. Hoff came to the door, but was unsure whether she opened the door or another person opened the door.
11. Veltkamp testified that he entered the room, but did not receive any invitation from the males in the room. He stated that he entered the room to have a better view because the room was darker than outside and it was difficult for him to see into the room. However, Mr. Bruner testified that two lamps were on in the room and it was well lit.
12. There was conflicting testimony from the officers and defendant that indicated that Ms. Hoff opened the door and that the police opened the door. However, there was no clear evidence that the officers entered the room with permission from the male resident occupants in the room.
13. The officers' audio and testimony regarding the incident did not reveal any indication that they felt immediate entry was necessary. The officers also testified that there was no indication of criminal activity – before or after their entry – and that they only observed bickering and arguing from outside the door prior to entering the room.
14. Both officers testified that they did not have a warrant for Room 215.

Based upon the above Findings of Facts, the Court makes the following Conclusions of Law:

1. The Fourth Amendment of the United States Constitution, and Article II, Section 11, of the Montana Constitution, afford all people the freedom from unreasonable searches and seizures.
2. Warrantless searches and seizures conducted inside a home are *per se* unreasonable, except for a few carefully drawn exceptions. *State v. Rushton* (1994), 264 Mont. 248, 870 P.2d 1355.
3. In Montana, the same protection against unreasonable searches and seizures that applies to private residences extends to guests in motel rooms. *State v. Wakeford*, 1998 MT 16, ¶ 21, 287 Mont. 220, 953 P.2d 1065.
4. The State admitted to a warrantless search, but asserted the existence of an exigency. Under the exigent circumstances exception, the State bears the heavy burden of showing, through specific and articulable facts, that: 1) probable cause existed that a crime was being committed; and, 2) exigent circumstances existed sufficient to justify entering without obtaining a search warrant. *Id.* at ¶¶ 22-24.
5. “Probable cause exists if the facts and circumstances within an officer’s personal knowledge or imparted to the officer by a reliable source are sufficient to justify a belief in a reasonable person that the suspect has committed an offense.” *State v. McBride*, 1999 MT 127, ¶ 14, 294 Mont. 461, 982 P.2d 453.
6. This incident began with an anonymous tip that an argument between two males was occurring in a motel room on the afternoon of November 10, 2012. Upon approaching the room and waiting outside, the officers did not observe any illegal activity. The

officers testified that they overheard arguing or bickering, but that there was no indication of physical, violent, or any other criminal activity. The officers did not have a reasonable belief that an offense was being committed in the room at the time that they were standing outside the door.

7. The exigent circumstances exception holds that a warrantless entry “may be legal when there is a compelling need for official action and no time to secure a warrant.” *Wakeford*, ¶ 23. A compelling need includes: prevention of physical harm, destruction of evidence, escape of a suspect, or something else that would improperly frustrate law enforcement. *State v. Anderson*, 1999 MT 60, ¶ 18, 293 Mont. 490, 977 P.2d 983.
8. The heavy burden of showing the existence of exigent circumstances is the State’s responsibility. *Welsh v. Wisconsin* (1984), 466 U.S. 740, 749-50, 104 S.Ct. 2091, 2097, 80 L.Ed.2d 732, 743.
9. The State can meet its burden only by “demonstrat [ing] specific and articulable facts to justify the finding of exigent circumstances.” *United States v. Driver* (9th Cir.1985), 776 F.2d 807, 810.
10. The State must establish that the circumstances, as they appeared at the moment of entry, would lead a reasonable officer to believe that someone in the house or motel room required immediate assistance. *United States v. Salava* (7th Cir.1992), 978 F.2d 320, 324.
11. The above Findings of Fact show there was no exigency. The officers did not have a compelling need for prompt action to prevent physical harm or for any other justifiable reason.

12. In Montana, simply knocking and announcing before making a warrantless entry is insufficient: the occupants must be afforded an opportunity to comply. *Cassady v. Yellowstone County Mont. Sheriff Dep't*, 2006 MT 217, ¶ 26, 333 Mont. 371, 143 P.3d 148.
13. While the officers did testify that they knocked and announced, they failed to give the occupants the opportunity to comply, as required by the law. Neither male occupant gave permission to the officers to enter the hotel room. The police in this matter failed to comply with the knock and announce rule when Veltkamp entered the room without permission, probable cause, or exigent circumstances.

THEREFORE, having reviewed the briefs and case law and making the above Findings of Fact and Conclusions of Law; it hereby is ORDERED AND ADJUDGED that the Defendant's Motion to Suppress is GRANTED and all evidence obtained after the police entered Room 215 without permission is hereby suppressed. Without this evidence, the state cannot prove probable cause to justify the charge.

IT IS FURTHER ORDERED that this case is hereby dismissed without prejudice.

DONE AND ORDERED this 30th day of September, 2013.



J. COLLEEN HERRINGTON
Bozeman Municipal Court Judge

cc: Asst. City Attorney, Ryan McCarty
Defense Attorney, Charles Cromwell