

APPLICATION FOR
DISTRICT COURT JUDGESHIP
First Judicial District

A. PERSONAL INFORMATION

1. Full Name: Deborah Fern Butler
 - a. What name do you commonly go by? Deborah
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: Room 160, State Capitol, PO Box 201705, Helena, MT 59620-1705
Phone: 406-444-3203
5. Length of residence in Montana: 54 years
6. List your place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
10/13 to present	Helena	Montana
1997 to 10/13	Jefferson City	Montana

B. EDUCATIONAL BACKGROUND

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

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Hellgate High School	Missoula, MT	1979	Diploma
University of Montana	Missoula, MT	1985	BA-Economics
Thomas M Cooley Law School	Lansing, MI	1989	Juris Doctor
Temple University, Beasley School of Law	Philadelphia, PA	2007	Master of Law (LLM) In Trial Advocacy

8. List any scholarships, awards, honors and citations that you have received: Not applicable
9. Were you a member of the Law Review? If so, please state the title and citation of any article that was published and the subject area of the article. Not applicable

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>
<u>Montana State Courts</u>	<u>April 1990</u>

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

State of Montana – Legislative Branch – Legislative Audit Division – Legal Counsel

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

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Legislative Audit Division—Legislative Branch	Legal Counsel	8/2011 to present
State of Montana, Department of Justice	Assistant Attorney General	11/2007 to 8/2011
State of Montana, Department of Justice, Division of Criminal Investigation, Law Enforcement Academy	Assistant Attorney General	1/1997 to 11/2011
Jefferson County Attorney's Office	Deputy County Attorney	10/1991 to 12/1996
Graybill, Ostrem, Warner & Crotty	Associate	6/1990 to 9/1991
Brighton District Court, Howell, MI	Judicial Clerk/Bailiff	1/1987 to 3/1990

13. If you have not been employed continuously since the completion of your formal education, describe what you were doing. No applicable

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

- Represents the Legislative Auditor, Legislative Audit Division, and Legislative Audit Committee in legal proceedings as may be required.
- Provides on-site assistance to audit staff when conducting the audit (5%)
- Conducts legal research and provides independent legal counsel to audit staff to ensure independence of the audit function. (35%)
- Key member of the Legislative Auditor's Office management team. (2%)
- Represents the Legislative Auditor's Office in criminal matters. Provides legal counsel to audit staff on fraud related investigations. Interacts with federal, state, and local criminal investigators and law enforcement agencies. (1%)
- Develops and maintains legal compliance checklists for all state agencies for audit testing procedures necessary to ensure state agency compliance with statutes and rules governing agency operations. (10%)
- Researches and prepares legal opinions on statutory interpretation for potential audit findings. (25%)
- Provides legal review prior to LAD internal meetings on all audit report drafts for logic, consistency with state and federal law, and potential liability to the division and its personnel. (8%)
- Reviews all proposed legislation and new administrative rules for effect on audit requirements and implementation of audit recommended legislation, and drafts necessary legislation or amendments to proposed legislation to implement audit requirements or audit recommendations. (5%)
- Prepares or reviews all contractual agreements to be entered into by the Legislative Audit Division. (1%)
- Serves as a member of the State Records Management Committee to establish records retention schedules and approve records destruction requests for all state agencies. (3%)
- Maintains a liaison with other legal officials in the state government including the Attorney General's Office, Legislative Services Division, legal personnel in state agencies, and where applicable, in the federal government and the private legal profession. (1%)
- Deals appropriately with agency personnel and maintains a good working relationship and open communication with agency management. Represents the Legislative Audit Division in a number of different situations, such as before the public, committees, legislators, and state agency personnel. (2%)

- In accordance with the Government Auditing Standards, maintains objectivity and independence in fact and appearance when providing audit services. This maintenance of objectivity and independence requires continuing assessment of relationships with the audited entities in the context of the responsibility to the public.
- Participates in audits, investigations or other duties as assigned by the legislative auditor. (1%)
- Provides legal counsel to Pro Bono clients in family law (1%)

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

Prepared and prosecuted complex felony and misdemeanor offenses. Provided legal counsel to the Public Safety Officers Standards and Training Council (POST). Trained and educated state and local law enforcement, correction/detention officers, public safety communicators, coroners, probation and parole officers, and motor carrier services officers regarding legal procedure, report writing, current laws, and Supreme Court trends. Counsel for POST in administrative hearings. Mediation in family law matters.

16. If you specialize in any field of law, what is your specialty? Not applicable

17. Do you regularly appear in court? Since my employment with Legislative Audit I appear in court on a limited basis in family law matters. Prior to this employment I was in court on a weekly basis if not daily.

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

Federal court	_____	%
State or local courts of record	98	%
Administrative bodies	2	%
Other	_____	%

18. During the last five years, what percentage of your practice has been trial practice? 3%

19. How frequently have you appeared in court? In the last five years, one time per month on average.

20. How frequently have you appeared at administrative hearings? In the last five years, less than one time per month on average.

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

Civil	5	%
Criminal	90	%
Other	5	%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, please state the number and types of matters handled. Include the case caption, case citation (if any), and names addresses and phone numbers of all opposing counsel for the five most recent cases. Not applicable

23. State the number of jury trials that you have tried to conclusion in the last ten years. 5

24. State the number of non-jury trials that you have tried in the last ten years. 2
25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.
 Rob Cameron, PO Box 1715, Helena, MT (406) 442-8560 DDA-2014-21 Adoption/Termination of Parental Rights (hearings only) Honorable James P. Reynolds (406) 447-8205
 John Bobinski, PO Box 5117, Helena, MT (406) 442-9000 ADR-2013-153 Parenting Plan (hearings only) Honorable Mike Menahan (406) 447-8205
26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years. Not applicable
27. If you have published any legal books or articles, other than Law Review articles, please list them, giving citations, dates, and the topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, please state the date, topic and group to which you spoke.

From 1997 to 2007 I trained and educated public safety officers regarding legal procedure, report writing, current laws, and Supreme Court decisions and trends. I prepared lesson plans, PowerPoint presentations, and handouts for these trainings. From 2011 to present I have trained auditors on legal issues, government structure, and the legislative process. I prepared lesson plans, PowerPoint presentations and handouts for these trainings. I have also given presentations to the Legislative Audit Committee regarding the Fraud, Waste, and Abuse Hotline I administer for the Legislative Auditor.

D. PROFESSIONAL AND PUBLIC SERVICE

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

Montana State Bar – April 1990 to present

Montana State Bar – Public Law Section – January 2015 to present

First Judicial District Pro Bono Committee; member since 2012; Chair – January 2014 to present

Montana Mediation Association – member January 2015 to present

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. Please state the title and date of any office that you have held in each organization. If you held any offices, please describe briefly your activities in the organization.

Association of Certified Fraud Examiners – Member and Certified Fraud Examiner

Montana Hope Project, Inc., Treasurer – Collect and acknowledge donations and memorials; make deposits, pay vendors, coordinators, and other bills; reconcile bank statements and prepare reports for Board of Directors. This is a non-profit organization that grants wishes to critically/chronically ill Montana Children.

American Council on Criminal Justice Training, President – Collect payments for classes, make deposits, pay vendors, instructors, and other bills, reconcile bank statements. Train public safety officers on scenario based training. This is a non-profit organization that provides low cost training to public safety officers and no cost public safety education training to citizens across the United States.

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

Ran, unsuccessfully, for Jefferson County Attorney in 2010.

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

I believe there is no greater calling than public/community service. I people should find out what they are passionate about and give of whatever time or resources they can spare to better the lives of others and their community. I have immersed myself in causes I am passionate about (children, animals, access to justice, training) and have given of my time and resources to help those less fortunate, without resources, or a voice to better their lives and the community. I have given to needy families through donations, money, and pro bono legal assistance. I have assisted at spay/neuter clinics, and fundraising events for AIDS research, juvenile diabetes, and the Montana Hope Project. I have worked with survivors of domestic/sexual violence and have been a big sister through the Big Brothers/Big Sisters Program. Through my public service I have grown as a person and believe that I have helped others and my community.

E. PROFESSIONAL CONDUCT AND ETHICS

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, give the particulars. Not applicable

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, please explain. Not applicable

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

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, please give details. Not applicable

36. Is there any circumstance or event in your personal or professional life which, if brought to the attention of the Commission, the Governor or the Montana Supreme Court would affect adversely your qualifications to serve on the court for which you have applied? If so, please explain. Not applicable

F. BUSINESS AND FINANCIAL INFORMATION

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

- Owned and operated Elkhorn Alpacas & Property Management, LLC for approximately 10 years. I sold all livestock and equipment and closed the business in 2011.
- From 2009 until August 2015 I worked at Sommeliers as a bartender. It is a wine bar that is owned by Toby DeWolf and is part of Bert & Ernie's in Helena. I worked between three nights a week to two nights a month during my employ.

38. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.
President, American Council on Criminal Justice Training (see pg 6 for details) I do not intend to resign this position upon appointment as district judge.
Treasurer, Montana Hope Project, Inc. (see pg 5 for details) I do not intend to resign this position upon appointment as district 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, please identify the source and the approximate percentage of your total income it constituted over the last five years.
Not applicable

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or which in any manner or for any reason might embarrass you? If so, please explain.
Not applicable

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

If not, please explain. Not applicable

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

If yes, please explain. Not applicable

43. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, please give details. Not applicable

G. WRITING SKILLS

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

I have always done my own legal research and drafted my own legal briefs or opinions. I have and had access to briefs and legal opinions written by others and have used those documents as reference when faced with an unfamiliar issue.

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

I have drafted legal opinions/analysis of audit issues; parenting plans, petitions for guardianship, divorce, and adoption. I have drafted complex motions and responses in both civil and criminal matters. I have drafted proposed judgments, findings of fact, conclusions of law and orders. I have also written administrative rules, statutes, policies, resolutions, etc.

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

47. What percentage of your practice for the last five years has involved research and legal writing?
80 %

48. Are you competent in the use of Westlaw and/or Lexis? I have used Westlaw but am competent in the use of Lexis.

H. MISCELLANEOUS

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

I enjoy spending time with my dogs; walking, obedience and agility training; or just playing. I love to read, both fiction and non-fiction. I like to work in my yard; mowing, planting and tending flowers and a vegetable/herb garden. I enjoy learning about wine, culinary arts, and other cultures. I enjoy time with family and friends at home, at music festivals, plays, dance productions, etc. I love to travel and have been to Europe, Mexico, Canada, Costa Rica, Panama, and many places in the US.

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

Besides the practice of law, I have been a waitress at several establishments during high school, college and law school. I worked for Domino's during college and became the personal assistant to the franchise owner. I also traveled to newly opened Domino's franchises in Montana and Idaho and trained employees on the phone and the art of making a perfect pizza. I have been a bartender at local wine bar in Helena.

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

I have handled several pro bono cases in the past five years. I have done parenting plans, divorces, and a guardianship for a grandmother caring for her daughter's five children. I represented a step-parent in an adoption and termination of the natural parent's rights action. I represented a woman in a divorce/parenting plan action whose husband was in prison for child abuse. I also represented a woman with Asperger's Autism in a parenting plan action for which I shared the receipt of the 2009 First Judicial District Bar Association Pro Bono Award.

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

I believe that our system of justice is one of the best the world has to offer. While not perfect and at times not expedient, I think we get it right most of the time. I am always shocked when I read a news account or watch a news report that chronicles individuals accused of crimes, convicted, and at times executed without even so much as a hearing. It is stories like these that drew me to the practice of law initially and to criminal prosecution for most of my legal career. As a prosecutor I was more concerned about making sure the defendant received fair treatment and that the ideals of our justice system were maintained than obtaining a conviction. If I had to pick a specific event that influenced my view of our justice system; I would have to say my jury service on a criminal case of Sexual Intercourse Without Consent while I was in college. I failed to show on the date set for trial because I forgot about the summons. When the sheriff's deputy came to my economics class and told me that the judge was requesting my presence in court, NOW; I knew I was in trouble. I was impressed with judge's stern but not angry lecture about timeliness and civic duty. I figured that the attorneys would not want someone like me (late for court and close in age and same sex as the victim) so I settled back, observed, and participated in voir dire. Needless to say, I was selected. During the weeklong trial the attorneys were civil to each other and respectful to the court. The judge had control of his courtroom and the proceedings. He was decisive and appeared fair in his rulings. He was courteous to the attorneys, staff, and jurors; even me. We spent 48 hours sequestered during deliberations only to fail to reach a unanimous verdict. I was interviewed by both the defense counsel and the prosecutor after the trial. The defendant was retried and convicted. I knew after the experience I wanted to be a lawyer, someday a judge, and have the privilege to participate in our legal system.

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

I believe a good district judge must have a high level of expertise in the law, evidence, and procedure. They must have the ability to quickly absorb and analyze information and apply it to the law of the case

and its underlying principles. They must be able to recognize what they do not know and the ability to acquire the knowledge through research, study, and thoughtful process. A judge must have integrity and independence of mind, sound judgment, decisiveness, objectivity, and the ability and willingness to learn and develop professionally. They must also have the ability to work constructively with others. A judge must treat everyone with respect and sensitivity, whatever their background, and must possess the willingness to listen with patience and courtesy. A judge should have the ability to explain the procedure and any decisions reached clearly and succinctly to all those involved and to inspire respect and confidence. They should have the ability to maintain authority when challenged. They need to work quickly, under pressure, with the ability to organize their time effectively and produce clear reasoned decisions, expeditiously. They should exhibit leadership and managerial skills on and off the bench.

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

The established body of precedent should be maintained and followed absent mistakes of law, constitutional interpretations, or statute changes. The flexibility of the law is found in the factual analysis of each case and how the distinguishable facts of an individual case relates to the established body of precedent. Balance is reached when thoughtful legal reasoning uses the body of precedent and applies it to the facts of an individual case that is consistent with that precedent.

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

I believe that I have the temperament, expertise, and skills to be a fair, honest, and thoughtful jurist. I believe I possess those qualities and competencies I described in #53 above. I have a strong work ethic; from selling Campfire candy to pay my way to several weeks of camp each summer, to working a full-time job during the day and going to law school in the evenings. I have been a student of the law my entire career, never tired of learning and honing my skills as a lawyer, mediator, or collaborator. I am able to make well-reasoned decisions based on facts and law and communicate those decisions in an understandable and thoughtful manner. I would be honored to serve as a district judge in the First Judicial District.

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

When I was the Deputy Jefferson County Attorney, the county attorney resigned on the Wednesday prior to the start of a Monday morning Homicide trial. I had been doing all of the misdemeanor and Youth Court cases prior to that Wednesday and had little or no involvement in this case. I think everyone believed that I would have asked for a continuance, and might have been granted one. However, the defendant had been incarcerated since his arrest and a few continuances had already been granted. I felt it was unfair to the defendant and the county, since it would have incurred additional expenses should the trial be postponed. The Division of Criminal investigation had conducted most of the investigation so the State was already involved in the case. I requested assistance from the Prosecution Services Bureau of the Attorney General's Office. We all worked through the weekend to get both myself and the Assistant Attorney General assigned to the case up to speed. We spent a week trying the case and the jury convicted the defendant. He was sentenced to 75 years in prison with a 25 year parole

eligibility restriction. Two issues were raised on appeal to the Supreme Court: suppression of exculpatory evidence and a jury instruction error. The defendant's conviction was upheld by the Supreme Court. I was at the time and continue to be proud that my hard work, diligence, and legal expertise prevailed over what seemed, at the time, an almost insurmountable obstacle.

57. State any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission. Nothing that has not already been disclosed.
58. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge candidate?

I believe that I have a varied background in both my personal and professional life, allowing me to become a well-rounded individual with the skills, knowledge, and abilities to be a levelheaded, fair, impartial, and respected district judge.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 1st 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.

9-4-15

(Date)



(Signature of Applicant)

Deborah F. Butler
Attorney for Petitioner
PO Box 201705
Helena, MT 59620-1705
(406) 444-3203

NANCY SWENEY
CLERK DISTRICT COURT

2014 DEC 17 PM 3:40

FILED

BY T. JOHNSON

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

IN RE THE ADOPTION OF:)	
)	Cause No. DDA 2014-21
)	
D.M.P.,)	BRIEF IN SUPPORT OF PETITION
)	FOR ADOPTION AND TERMINATION
A Minor Child,)	OF PARENTAL RIGHTS
)	
CANDACE PAYNE,)	
)	
Guardian ad Litem.)	

The Petitioner, Jesse Taylor, by and through his attorney of record, Deborah F. Butler, respectfully submits this post-hearing brief in support of his Petition for Adoption of D.M.P., his stepchild, and the termination of the parental rights of the natural father, Travis Price. A hearing was held on this matter on December 1, 2014 and continued to December 3, 2014 where testimony and exhibits were received by this Court.

BACKGROUND

D.M.P. was born in May 2008 to Amanda Taylor (Amanda), natural mother and Travis Price (Travis), natural father. Amanda and Travis were never married and ended their relationship in the later part of 2010.

For most of the 18 months that D.M.P. lived with both natural parents, Travis was unemployed while Amanda was both working and going to college on a full time basis. D.M.P. was enrolled in daycare for some of those months, but often Travis would be the child's primary caregiver. During this time period, Travis continuously consumed alcohol and was often intoxicated. Additionally, he was twice convicted of Partner/Family Member Assault (PFMA) where Amanda was the victim. On one occasion Travis hit Amanda on the back of head and she fell to the ground while holding D.M.P. On one occasion, late in their relationship, Amanda

returned from work early one evening and found the child alone in the home crying. Amanda was at the home for more than an hour when Travis returned, intoxicated, indicating he had just left the child for a few minutes to go to a neighbor's home. Because of Travis' inability to properly care for their child while she was working or attending classes, his continuous consumption of alcohol, the prior PFMA's, and financial instability, Amanda was fearful harm would come to herself or her child if she remained in a relationship with Travis, so she ended the relationship.

Since 2010, Travis has been employed as a ranch hand, laborer for a roofing company, mechanic, and bartender but has not provided any support, monetary or otherwise, to D.M.P.

With the exception of one short visit, Travis has not had any contact with D.M.P. since the child was approximately 18 months old. Travis has called Amanda, but never to speak with D.M.P. as the calls occurred after 10:00 p.m., some as late as 2:00 a.m. Exasperated with the late night phone calls, Amanda changed her phone number. Travis also tried to visit Amanda at her place of employment, but was asked to leave and not return because he was intoxicated, loud, and disruptive. Amanda indicated the contact with Travis was not in an effort to see D.M.P. but to reestablish a relationship with Amanda. Travis has Petitioner's phone number, communicated with Petitioner through Facebook, and has Virginia "LeAnn" Vischer's, Amanda's mother, address but has not made any substantial effort to contact D.M.P. through anyone of these avenues. Prior to the filing of this petition, the last contact from Travis was in October 2012. Amanda indicated that there would be months where she and Petitioner did not know where Travis was.

D.M.P. received counseling from Martha Morgan, LCSW and was diagnosed with Reactive Attachment Disorder. Ms. Morgan indicated this disorder manifests itself by D.M.P. wanting to be loved by everyone, even those that may want to hurt the child. Ms. Morgan last saw D.M.P. in September 2013. D.M.P. has recently reestablished counseling in Helena, with Jason Peccia, LCPC. Amanda's understanding from both counselors is that D.M.P. is not mentally or emotionally able to handle any contact with Travis at this time. D.M.P. is not aware that Travis is the child's natural father, in fact does not remember who he is when his name is mentioned. D.M.P. is aware of the different last names and does not like that fact. Amanda intends to talk to D.M.P. about the natural father when the counselor indicates that it is in the best interests of the child. Amanda believes that it should be D.M.P.'s choice, at a time when the child is emotionally and mentally ready, to decide what the relationship, if any, will be with the

natural father. Amanda is fearful that any contact before that time with Travis would be harmful to D.M.P. because of his past behaviors, his lack of proven sobriety and lawful behavior, and the child's diagnosed disorder.

The Petitioner, Jesse Todd Taylor (Jesse), began a relationship with Amanda in 2011 and Amanda moved into Jesse's home with D.M.P. and Jesse's children from a previous marriage. Jesse has three children who are now 10, 8, and 6 years old. The 8 year old child has been diagnosed with Autism and slight mental retardation and Jesse has been the residential parent since his divorce. The other two children have also at times lived with or visited Jesse and Amanda. Jesse and Amanda were married in June 2013 and they have a two year old child together. The family has resided in Helena, Montana, for the 60 days preceding the filing of the petition for adoption and provides a stable nurturing environment for D.M.P. During the early stages of Amanda and Jesse's relationship D.M.P. referred to Jesse as "Jesse"; but as time went on and the other children called him "dad" so too did D.M.P. Jesse and Amanda never corrected D.M.P. because Jesse, unlike Travis, had demonstrated a timely commitment to the responsibilities of parenthood and was the only father the child knew.

Travis has at least one other child, who is now nine years old, and was also born out of wedlock. The natural mother, Terra Otto, of Havre Montana, is the residential parent and has been since the birth of the child. Ms. Otto indicated that during their relationship, Travis drank heavily and was often intoxicated. She stated there has been very limited communication between Travis and this minor child, there is no parenting plan in place, and no child support has been paid.

Travis has a substantial criminal record including multiple convictions for bad checks, PMFA, a conviction for deceptive practices, theft of auto parts from his employer, DUI, MIP, and disorderly conduct. In several cases in Lewis and Clark County, from 2006 to 2012, Travis' sentence was revoked and a bench warrant issued for his arrest. On September 3, 2013, Travis was convicted of Forgery by Common Scheme, a felony and Theft, a misdemeanor in Cause Number DC-12-147 in the Twelfth Judicial District Court in Hill County. He was given a three year deferred imposition of sentence on the felony and a six month suspended sentence on the misdemeanor, with credit for days in jail previously served. The Honorable Daniel A. Boucher stated in the Judgment: "This is Defendant's first felony offense, and this sentence provides an opportunity for him to have the conviction removed from his record if he is compliant with the terms and conditions herein. Defendant has a substantial history of theft and, if such behavior

continues, he will have few options.” Travis was not compliant, and on September 25, 2013, Travis appeared and admitted to the allegations of the State’s Petition for Revocation of Deferred Sentence. On October 3, 2013, Travis’ previous deferred sentence was revoked and he was sentenced to the Department of Corrections for a period of five years with three years suspended. Judge Boucher state that the reason for the sentence was Travis “had been given many opportunities in the past to conduct himself on community supervision...has charges throughout the State on his record...will still have the opportunity to gain the tools to deal with alcohol issues and skills to conduct himself as a productive citizen, but public protection and punishment components must be considered to address Defendant’s failure to comply with conditions.” After spending some time at Montana State Prison, he was placed in pre-release and currently resides at the Helena Pre-Release Center, where he is to remain until May 2015.

In approximately June 2012 a child support order was established for D.M.P. by the Child Enforcement Support Division of the Department of Public Health and Human Services. Travis’ monthly obligation is \$33.00 and the arrearage amount is \$1116.77. Travis has never voluntarily made a child support payment. Beginning in February 2014, Travis’ inmate worker pay was garnished three times by the Division; the total amount garnished has been \$5.23.

On May 14, 2014, Jesse, with the consent of Amanda, filed a petition to adopt D.M.P. and terminate the parental rights of Travis Price. Subsequent to the filing of the petition, Candace Payne, was appointed as Guardian ad Litem (GAL) to represent the interests of D.M.P. The report of the GAL was filed with the Court on November 10, 2014.

STANDARD OF PROOF

A court may terminate a natural parent’s fundamental liberty interest to custody of a child if it can be shown, by the Petitioner, by a preponderance of the evidence, that termination is in the best interests of the child and then by showing, by clear and convincing evidence that the respondent is unfit under §§ 42-2-607(2) and -608, MCA. In this context, clear and convincing proof is a requirement that a preponderance of the evidence be definite, clear, and convincing, or that a particular issue must be clearly established by a preponderance of the evidence or by a clear preponderance of proof. *In re Adoption of Snyder*, 2000 MT 61, P11; 299 Mont. 40, 43; 996 P.2d 875, 877 and *In re J.L., D.L., and A.G.*, 277 Mont. 284, 289; 922 P.2d 459, 462 (1996). This does not mean the evidence must be unanswerable or conclusive; it must be more than a mere preponderance but not beyond a reasonable doubt. *Id.*

ARGUMENT

For a child to be available for adoption, written consent of both parents is generally required. *See* §42-2-301, MCA. Written consent has been filed with this court by the natural mother of D.P.M. However, written consent is not required from a parent, whose parental rights have been judicially terminated, thus making the child available for adoption. *See* §42-2-302(1), MCA. This judicial termination may be made in a variety of ways. The facts of this case support a judicial finding of termination pursuant to various subsections of §42-2-608, MCA, where the Court makes a determination that the parent, in this case the natural father, is unfit and termination of his parental rights is in the best interests of D.M.P.

First, §42-2-608(1)(c), MCA, states: “The court may terminate parental rights for purposes of making a child available for adoption on the grounds of unfitness if:...(c) it is proven to the satisfaction of the court that the parent, if able, has not contributed to the support of the child for an aggregate period of one (1) year before the filing of a petition for adoption;...” It is clear from the evidence that Travis has not contributed to the support of D.M.P. since the later part of 2010, more than three (3) years prior to the filing of this petition for adoption. Further, the Montana Supreme Court has held any child support payments should first be applied to the arrearages and such arrearage payments are not “support” as contemplated in the context of a termination proceeding under this statute. *Matter of Adoption of R.A.S.*, 208 Mont. 438, 443; 679 P.2d 220 (1984). Therefore, Travis’ minimal amounts of child support in the early months of 2014 are payment of the arrearages and not “support.”

Additionally, the Montana Supreme Court’s basic policy in adoption cases has been “...a statute should not be interpreted in favor of a father who seeks the benefit of parental rights but shuns the burden of parental obligations.” *Id.* Travis was able to provide, even minimal, support over the three years prior to the filing of this petition. He had earning ability, a willingness to earn an income, and there were jobs available, as evidenced by the fact that he was employed, as a general laborer, a roofer and a mechanic. His admitted consumption of alcohol, often times to the point of intoxication, shows he was providing for himself beyond the bare necessities of life. *Matter of Adoption of K.L.J.K.*, 224 Mont. 418, 730 P.2d 1135 (1986). Travis was able to support, either financially or otherwise, D.M.P. but voluntarily chose a lifestyle filled with self-inflicted alcoholism and criminal activity thereby choosing not to both support or visit his child. Where a parent’s lifestyle choices affect his ability to contribute to the support of his child, the

Court has held where “[t]he father voluntarily chose a lifestyle inconsistent with his parental obligations. That he had the right to choose such a lifestyle is conceded. That he had a legal right to prevent the adoption of his child, however, is not consistent with his voluntary failure to contribute to the child's support.” *Matter of Adoption of S.L.R.*, 196 Mont. 411, 415, 640 P.2d 886, 888 (1982).

Second, in addition to not providing support for D.M.P., Travis is also statutorily unfit under §42-2-608(g), MCA, which states: “a finding is made for a parent who is given proper notice of hearing: (i) that the parent has been convicted of a crime of violence....; and (ii) the facts of the crime...and the parent's behavior indicate that the parent is unfit to maintain a relationship of parent and child with the child;” Travis was given proper notice of the hearing for termination and was twice convicted of PFMA; once where, while intoxicated, he hit Amanda in the back of the head while she was holding D.M.P. The facts of this conviction make it a crime of violence and Travis’ behavior indicates that he is unfit to maintain the relationship of parent and child with D.M.P.

Third, the facts of this case also show that Travis is statutorily unfit pursuant to §42-2-608(h), MCA. This subsection also requires proper notice of the hearing, and a finding that he is the respondent to the petition to terminate parental rights and: “(i) by a preponderance of the evidence, it is found that termination is in the best interests of the child; *and* (ii) upon clear and convincing evidence, it is found that *one of the following grounds exists:...*(C) placing the child in the respondent's legal and physical custody would pose a risk of substantial harm to the.... psychological well-being of the child because the circumstances of...the respondent's behavior...since the child's birth...indicates that the respondent is unfit to maintain a relationship of parent and child with the child; *or* (D) failure to terminate the relationship of parent and child would be detrimental to the child.” (*Emphasis added.*)

Petitioner has shown, by clear and convincing evidence, that placing D.M.P. in Travis’ legal and physical custody would pose a risk of substantial harm to the psychological well-being of the child because of the circumstances of his behavior since the child's birth. *See* §42-2-608(h)(ii)(C), MCA. He has abused alcohol, has a lengthy criminal history; including incarceration at Montana State Prison, and has been unable to maintain sobriety or law abiding behavior in a community setting. Further, D.M.P. suffers from a psychological disorder that is attributed to Travis’ failure to properly care for the child during the first 18 months of life as well as his voluntary absence from the child’s life for the last four years. Further, licensed counselors

have indicted to the GAL, natural mother, and Petitioner that D.M.P. is not, currently, mentally or emotionally able to handle contact of any kind with Travis.

Additionally, Petitioner has shown, by clear and convincing evidence, through the facts stated above, that failure to terminate the parental relationship between Travis and D.M.P. would be detrimental to D.M.P. *See* §42-2-608(h)(ii)(D), MCA. The only way to protect D.M.P.'s fragile emotional and mental health is to assure that contact with Travis will be only when the child is determined by a licensed professional to be mentally and emotionally able to handle such contact; and the child chooses to have a relationship with Travis. Termination of the parental relationship between Travis and D.M.P. is the only way to assure that this will occur. Without termination, Travis will maintain his rights as a parent and can reestablish contact without consideration as to the impact that will have on the mental and emotional health of D.M.P. His selfish, manipulative, behaviors and lifestyle for the past 4 years should not be rewarded by allowing this parental relationship to continue to the detriment of a 6 year old child.

In making this determination the statute requires the Court to consider any relevant factor, including those set out in §42-2-608(2), MCA. Travis has made little or no effort to obtain or maintain legal and physical custody of D.M.P. Once the relationship ended between Travis and Amanda, the parental relationship between Travis and D.M.P. was voluntarily terminated by Travis. The only restrictions Amanda and Petitioner placed on Travis' efforts to assert his parental rights was to require that he call or visit at reasonable hours and at times when he had not been consuming alcohol. Travis was never able to abide by these reasonable restrictions. Travis, because of his behavior and lifestyle has not been able nor is he currently able to care for D.M.P. For the past 4 years he has not maintained a stable or responsible lifestyle, conducive to the care of a 2 now 6 year old child. Additionally, there has been no proof of a quality relationship, at any time, between Travis and D.M.P., or between Travis and his child from another relationship. Further, D.M.P. has been in a loving stable custodial environment for the past 4 years. Any change in this environment would be detrimental to the child's emotional and mental health.

Finally, with respect to §42-2-608(h)(i), MCA, Petitioner has shown, notwithstanding the report of the GAL, by a preponderance of the evidence that termination is in the best interests of D.M.P. While the GAL's recommendation that Travis be allowed to immediately re-enter D.M.P.'s life, appears on its face to be well thought out and reasoned, it is based on generalities rather than specific facts related to this case, personal bias, and a personality conflict with

Petitioner that has no basis in fact to this case. Travis has not demonstrated a timely commitment to the responsibilities of parenthood as stated by the GAL. The only effort he has made as been as a response to the petition for termination of his parental rights, not as a responsible, committed parent for the life of this child. Additionally, these purported efforts have been made at a time when Travis has been incarcerated. He has not had to find and maintain employment, he has not had to maintain his sobriety without being constantly monitored and tested for alcohol consumption, and most telling, he has not had to provide for himself even the bare necessities life; a place to live and food to eat. All of his efforts have been directed at keeping himself out of prison, not showing a timely commitment to the responsibilities of parenthood. In the report to the Court, the GAL minimizes Travis' past behaviors, poor choices, lack of stability, and poor parenting skills and when presented with additional information at the hearing, unreasonably continued to maintain that contact, sooner rather than later, between the two was in the best interests of D.M.P. This is particularly troubling since licensed professionals believe that D.M.P. is not mentally or emotionally ready to have contact with Travis.

Termination of Travis' parental rights is the only way to ensure that D.M.P.'s best interests are protected now and into the future. Termination will allow this child to continue to flourish and grow without the additional uncertainty and instability that Travis has shown toward this child in the past. Any second chance at a relationship between Travis and D.M.P. should be at the request of the child, at a time when the child is emotionally and mentally prepared to handle that relationship, not because a parent who has failed to maintain or prove he can maintain a healthy sober lifestyle is asserting his parental rights to the detriment of the child.

CONCLUSION

Based on the forgoing law, facts, and evidence presented in this case, the Petitioner, Jesse Taylor, step father to, along with Amanda Taylor, natural mother of D.M.P. request that this Court issue an order terminating the parental rights of Travis Price, natural father of D.M.P and grant the Petition of Adoption.

Respectfully submitted this 17th day of December, 2014.


Deborah F. Butler, Attorney for Petitioner

Certificate of Service

I do hereby certify that on the 17th day of December, 2014, a true and correct copy of the foregoing was duly mailed, postage prepaid, to the following:

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