

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
First Judicial District**

A. PERSONAL INFORMATION

1. Full Name: Lisa Gae Leckie
 - a. What name do you commonly go by? Lisa Leckie
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: Lewis and Clark County Courthouse, 228 Broadway, Helena, MT 59601
Phone: (406) 447-8221
5. Length of residence in Montana: 58 years
6. List your place of residence for the last five years: Home address listed above.

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>
Billings West High School	Billings, MT	1975	Diploma
University of Montana	Missoula, MT	1979	B.A., Economics
University of Montana	Missoula, MT	One year of graduate work in Economics	
University of Montana School of Law	Missoula, MT	1983	J.D., with honors

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

I graduated with honors from the University of Montana both undergraduate and as a law school student.

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

I was a member of the The Public Land & Resources Law Review from 1982-1983.

I co-authored with Marjorie Borozan Thomas a Comment entitled, "The Metamorphosis of the Non-Reserved Water Rights Theory," 4 Pub. Land L. Rev. 114-133.

PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana Supreme Court	1983
United States District Court	1983

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

Lewis and Clark County Attorney's Office

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>
Montana Supreme Court Room 414, State Library Building 215 N. Sanders Helena, MT 59620	law clerk for Justice Sheehy	1983-1984
Browning, Kaleczyc, Berry & Hoven 800 N. Last Chance Gulch Helena, MT 59601	associate	1984-1988
Lewis and Clark County Attorney's Office Courthouse, 228 Broadway Helena, MT 59601	deputy county attorney	1988-present

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

Not applicable.

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

My work consists of prosecution of criminal cases and representation of the Department of Public Health and Human Services in dependent/neglect cases. As such, I provide advice to law enforcement agencies, answer questions from the public, review reports, determine applicable charges, draft motions and briefs, negotiate plea agreements, interview and assist witnesses, try cases, make sentencing arguments, respond to petitions for post-conviction relief, present evidence at coroner's inquests and conduct hearings on petitions to revoke deferred or suspended sentences. For the dependent/neglect cases, I review petitions, advise the local Child Protective Services office, appear at initial appearances, show cause hearings, adjudication hearings, dispositional hearings and termination hearings.

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

Lobbied for alternative power producers on avoided cost legislation and for the independent bankers' association; practiced before the Public Service Commission on rate cases for telephone cooperatives; appeared before the Human Rights Commission; appeared before the Workers' Compensation Court; and taught classes at the Law Enforcement Academy and to local law enforcement agencies.

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

Criminal law. When I was in private practice I specialized in commercial law.

17. Do you regularly appear in court? Yes, I am in district court almost daily.

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

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

18. During the last five years, what percentage of your practice has been trial practice? 100 %

19. How frequently have you appeared in court?

25 to 30 times per month on average. Some days I appear in multiple courts on multiple matters. For example, each judge has a weekly criminal law and motion and a weekly dependent/neglect law and motion, so I could be in court for hearings 8 or more times per week.

20. How frequently have you appeared at administrative hearings?

None in my current occupation. During my civil practice, I did appear in administrative hearings.

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

Civil (Dependent/neglect cases)	20 %
Criminal	80 %

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.

No, the Montana Attorney General's Office handles all criminal appeals.

23. State the number of jury trials that you have tried to conclusion in the last ten years. Approximately 15.

24. State the number of non-jury trials that you have tried in the last ten years. None.

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.

In re the Matter of Y.G., ADN 2014-74 (child abuse and neglect, termination of parental rights)

Hearing took place on July 21, 2015, July 29, 2015 to July 31, 2015 and August 3, 2015 before Hon.

Mike Menahan, (406) 447-8205. Opposing counsel was Chris Abbott and Suzanne Seburn, Office of the Public Defender, 139 N. Last Chance Gulch, (406)444-0104. George Pearce was attorney for the child, P O Box 1698, Helena, MT 59624-1698, (406)217-2727.

State v. Knows His Gun, ADC 2014-474. Sentencing scheduled for September 16, 2015 before Hon.

Mike Menahan. Opposing counsel was Chris Abbott.

State v. Lawrence, ADC 2014-247. Jury trial, guilty verdict. Trial March 9 to March 11, 2015 before

Hon. Mike Menahan. Opposing counsel for trial was Betty Carlson, Office of the Public Defender, 615 2nd Ave. N, 3rd Floor, Great Falls, MT 59401 (406) 770-3200.

State v. Keeney, BDC 2014-52. Sentencing was May 28, 2015 before Hon. Jeffrey Sherlock (406) 447-

8205. Opposing counsel was Michael Kakuk, Kakuk Law Offices P.C., 1717 Harrison Ave., Helena, MT 59601, (406)594-0515.

State v. Mashek, DDC 2013-49. Sentencing was February 4, 2014, February 11, 2014 and February 18,

2014 before Hon. James Reynolds (406) 447-8209. Opposing counsel was Mariah Eastman, 217 South Main Street, P O Box 1010, Three Forks, MT 59752, (406) 285-6724.

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

None in the past 5 years.

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.

None.

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.

None.

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.

None.

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

No.

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

Being a prosecutor is being involved with the public each and every day. It involves defending and protecting those who cannot do so for themselves and sometimes those who do not recognize the need for assistance or intervention in their lives. Prosecutors do not seek fame or fortune. They are driven by a strong sense of justice and the desire to make their world or community better.

E. PROFESSIONAL CONDUCT AND ETHICS

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

No.

- 33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, please explain.
No.
- 34. Have you ever been arrested or convicted of a violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations unless they also included a jail sentence.
No.
- 35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, please give details.
No.
- 36. Is there any circumstance or event in your personal or professional life which, if brought to the attention of the Commission, the Governor or the Montana Supreme Court would affect adversely your qualifications to serve on the court for which you have applied? If so, please explain.
No.

F. BUSINESS AND FINANCIAL INFORMATION

- 37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, please give details, including dates.
No.
- 38. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.
I am not engaged affiliated with any business.
- 39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, please identify the source and the approximate percentage of your total income it constituted over the last five years.
My sole source of income has been my salary.
- 40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or which in any manner or for any reason might embarrass you? If so, please explain.
No.

- 41. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? Yes No
- 42. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)? Yes No
- 43. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, please give details. No.

G. WRITING SKILLS

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

I conduct the research for and draft all of my own briefs.
- 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 routinely draft motions and orders in criminal matters such as motions in limine, affidavits, jury instructions and findings of fact and conclusions of law in dependent/neglect cases.

- 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.

See attached. Some names have been redacted to protect the privacy of the individuals.

- 47. What percentage of your practice for the last five years has involved research and legal writing?
15 %

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

Yes, I used Lexis for research for both civil and criminal matters.

H. MISCELLANEOUS

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

My family, including my two young grandsons, keep me grounded and balanced in my personal life. After spending a day seeing only the darker side of human nature, just listening to my daughters' stories of what happened during their day or getting goofy with my grandsons can put everything back into perspective. So, spending time with my family is a priority for me.

I have also had the opportunity to do some travelling both here and abroad. Travelling can challenge the way one views the world and other people. It has made me more self-reliant and open to new ways of looking at things. Rarely have I been disappointed. More often I have been impressed with the diversity that makes us unique, yet the common bonds that we share.

Growing up in Montana, I also get up and into the great outdoors whenever possible. Kayaking down a river or hiking up a mountain trail has a way of setting my mind at ease.

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

I have worked all of my life. I have worked as a call center operator, a nurse's aide in nursing homes, packaging and assembling garage door parts, as a research assistant for a geology graduate student, newspaper delivery and proofreader, file clerk, business manager for the Montana Kaiman and assistant for Scholar's Press at the University of Montana. I worked these jobs in addition to attending school. While employed with the Lewis and Clark County Attorney's Office, I also worked as a volunteer firefighter with the Lewis and Clark County volunteer fire department.

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

I cannot perform pro bono work due to the nature of my occupation.

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

One of my brothers was working as an auditor for an accounting firm and was coming back from Bozeman to Billings with a colleague. His colleague, who had just gotten married, was driving. My brother heard her scream and looked up in time to see a car coming at them head on in their lane of traffic on the highway. My brother tried to grab the wheel of the car to try and avoid getting hit, but he was too late to do so. When my brother regained consciousness he could not see due to the blood coming from his head and covering his eyes. He could not move due to a crushed arm and injuries to his back. When help arrived my brother learned that his colleague was killed due to the impact from the on-coming car. The person driving the car that hit my brother and his colleague and friend was a minor who had several previous convictions for driving under the influence of alcohol. This experience has been a constant reminder to me that what I do impacts and affects people on a personal level. The victims of crimes and their families and even more generally, the members of our community, are not numbers or statistics and should not be forgotten or lost in the criminal justice system.

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

A good district court judge must first fully believe in the integrity of the judicial system. Though imperfect, the system is designed to achieve justice. A judge is responsible for insuring that justice is achieved within the framework of the applicable law. They must enter the courtroom each day without any bias or prejudice. It is a job that requires one to be empathetic yet objective. A good judge must have the fortitude to make the correct decision, even when it may not be the popular decision.

I have been fortunate in that in the 32 years that I have been a practicing attorney, I have been able to look to the examples set by the district court judges in the First Judicial District. I may not have always agreed with the decisions that were made, however I always knew that the decisions were made after fair and honest deliberation.

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.

Precedent begins with a single set of facts and a single outcome. A body of precedent becomes established as the rule or holding of the case is applied to other cases with similar facts and the reasoning continues to be valid. Precedent is important in that it provides some certainty in the law. However, over time the reason or rationale for the rule can become thread bare and the rule must be re-examined. As attorneys, we do this by distinguishing the case at hand from the cases forming the precedent or by illustrating the fallacies contained in the reasoning leading to the precedent. The court, rather than just blindly following precedent, must examine the rule for internal consistency. That is, does the rule make sense? If the purpose of a trial is a search for the truth then the rule should be consistent with that goal. If not, it should be re-examined. That is not to say that a court should ignore precedent. If the rule has survived the test of time, generally it has done so for a reason and a court should follow the precedent. However, if the rule does not serve the purpose for which it was intended a court should not abandon common sense, either.

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

One of the reasons that I have particularly enjoyed practicing law both as a civil lawyer and as a criminal lawyer is that it offers endless opportunities to challenge the intellect. I have learned about agricultural financing, water rights, securities, insurance, medicine, arson, the effects of drugs, psychology, anatomy, cattle rustling and much more. There are always new dilemmas to ponder or a new issue to consider. Being a district court judge would bring greater challenges and would allow me to continue to serve my community.

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

My response to this question is unusual in that it is not a case that I have won or an honor that I have received. My youngest daughter decided to attend law school and asked me to review her essay that she would be submitting to school. In her essay, she talked about how much her mother I had influenced her in her decision to attend law school. That she saw what I have done as a prosecutor in serving the citizens of our community as a worthwhile endeavor and a truly honorable career is very rewarding.

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

None.

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 am a well-rounded candidate as far as experience in different areas of the law. In my civil practice, I worked on complex cases ranging from reserved water rights to banking. As a prosecutor, I have

prosecuted homicide cases as well as working for the best interests of children in dependent/neglect cases. As a trial attorney, I am also adept at thinking on my feet which a district court judge must do during any hearing or trial. As a public servant I am familiar with the long hours and the burgeoning workload that our district court judges face daily. I know how to work efficiently and effectively and get the work done. Finally, I have no affiliation with any cause or any group that would raise any issue of bias or prejudice.

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.

Sept. 13, 2015
(Date)

Lisa Leslie
(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 Sunday, September 13, 2015.**

Mail the signed original to:

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

Send the electronic copy to: mtsupremecourt@mt.gov

1 LISA LECKIE
2 Deputy County Attorney
3 Lewis and Clark County
4 Courthouse - 228 Broadway
5 Helena, MT 59601
6 406-447-8221

COURT
FILED
TA PAASO

7
8 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

9 *****

10 THE STATE OF MONTANA,

11 Plaintiff,

12 -vs-

13 [REDACTED],

14 Defendant.

No. [REDACTED]

15 STATE'S SENTENCING
16 MEMORANDUM

17 *****

18 On or about November 21, 2013, the defendant herein pled guilty to the offenses of Theft,
19 common scheme, a felony in ADC 2012-305 and to the amended charged of Criminal
20 Endangerment, a felony, and Theft, a misdemeanor, in DDC 2013-49. Testimony was heard by
21 Christa Smelko, a licensed clinical psychologist, Mike Touchette, an adult probation and parole
22 officer, and Officer Trevor Tangen on behalf of the State and James Murphey, licensed clinical
23 psychologist, Lori [REDACTED], Andi [REDACTED], Jenny Kelly on behalf of the defendant. The
24 defendant also made a statement.

25 On February 11, 2014, the Defendant filed a Sentencing Memorandum. The following
26 sets forth rebuttal to the argument presented by the defendant in his Sentencing Memorandum
27 and further sentencing argument by the State.
28

1 Officer Tangen, the loss prevention officer at ShopKo and possibly the public that chose to go
2 shopping that day.

3 **II. Walker v. State of Montana does not apply to the Defendant's situation.**

4 **Walker v. State of Montana**, 2003 MT 134 is a post-conviction relief cases wherein the
5 Montana State Prison found that the BMP (Behavior Modification Program) applied to the
6 defendant and the living conditions of the A block at Montana State Prison at the time
7 constituted cruel and unusual punishment as it exacerbated the defendant's mental illness.

8 However, Walker's mental illness and situation differs drastically from that of the defendant.

9 Walker was diagnosed with ADHD for which he was taking Ritalin and later when he was in a
10 correctional facility with Hebephrenic Schizophrenic Disorder and was prescribed Lithium.

11 Walker was eventually revoked on a suspended sentence and moved from the Cascade
12 County Detention Center to Montana State Prison. While at the detention center Walker was
13 taking his Lithium only sporadically and then, due to discomfort from the Lithium shortly
14 following his admission to Montana State Prison, Walker discontinued taking his Lithium. This
15 resulted in a progressive decline in his mental health resulting in a change from a timid and quiet
16 inmate to an excited, belligerent, hostile, disruptive and suicidal inmate. Walker averaged 2
17 severe disciplinary infractions a month for the first 6 months that he was at Montana State Prison
18 and progressed to averaging 11 severe disciplinary infractions per month for the following 6
19 months and three suicide attempts. Walker was placed into 5 BMPs during this time. However,
20 according to several correctional officers they noticed no difference in Walker's behavior as a
21 result of the BMPs.

22 While the psychologists and psychiatrists employed by the defense and the prison differed
23 in the applicable diagnosis of Walker, what was clear was that while the defendant was taking
24 Lithium he was able to effectively control his moods and behaviors and when he was not taking
25 Lithium he was unable to do so resulting in over 100 disciplinary write ups.

26 In contrast, the only time that the defendant was placed on a BMP was for the 6 months
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1 following his suicide attempts at the Great Falls Regional Prison. In the annual review report
2 dated May 2009 the A Unit case manager referred to that 6 month period and wrote that, "There
3 has been a noticeable improvement since that time. He has completed the BMP, maintained clear
4 conduct and completed CD-ITU." Contrary to the defendant's assertion that he was denied
5 parole due to his behavior, the report also states that his application for parole on 11/30/08 was
6 denied due to him not meeting the conditions of obtaining his GED, NEXUS and acceptance in a
7 prerelease program. *See Exhibit 2.*

8 In addition, the only severe disciplinary infractions that the defendant was written up for
9 following the BMP were for engaging in sexual acts and inappropriate conduct with a visitor on
10 July 1, 2009. The defendant subsequently paroled on February 9, 2010 following 7 months of
11 clear conduct.

12 During the defendant's second admission to Montana State Prison on December 30, 2010,
13 he was placed on Seroquel and maintained clear conduct except for one severe disciplinary write
14 up for insolence on May 10, 2011. The defendant was granted parole on January 9, 2012
15 following 8 months of clear conduct.

16 Unlike Walker, the defendant did better at Montana State Prison than elsewhere. Walker
17 was subjected to sanctions which could have been controlled by medication, but the defendant
18 actually was placed on medication at Montana State Prison that helped his behaviors. Walker's
19 actions were based upon conduct clearly attributable to mental health issues, but the defendant's
20 few disciplinary write ups were based more upon anti-social behavior. The defendant was also
21 placed on a BMP only once and his behavior improved, not numerous times with a worsening or
22 lack of positive change in behavior.

23 The defendant notes that the Montana Supreme Court noted in its opinion that Montana
24 State Prison mental health personnel sought to downplay inmates mental health condition due to
25 having to provide medication and counseling only to inmates diagnosed with an Axis I diagnosis.
26 The State has scoured the opinion multiple times and cannot find this language and is assuming
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1 that it is actually argument. However, such an assertion is not supported by any of the evidence
2 that was presented at the sentencing hearing.

3 The defendant also presents a theory that the defendant is always taken off of his
4 medication when entering into a detention center. However, despite the availability of records
5 regarding this allegation, the only testimony regarding this came through the defendant or cross-
6 examination by his counsel. That the medications received by the defendant were less effective
7 or non-effective has not been proven. Although the testimony was that generics can have a
8 different effect than a name brand name medication, there was no testimony that any of the
9 medications given to the defendant were less effective or non-effective. In fact, in **Wilson v.**
10 **State**, 2010 MT 278, the Montana Supreme Court held that an inmate is not entitled to a specific
11 medication and that as long as the medication that is given to an inmate provides for the inmate's
12 mental health issues the inmate was not subjected to cruel and unusual punishment as in
13 **Walker**.¹

14 The defense also asserts that the defendant cannot be sentenced to Montana State Prison
15 as he is seriously mentally ill and sets forth the conclusions of Dr. Murphey. The State does not
16 doubt the testimony of the defendant's mother that the defendant was placed at Shodair and the
17 Yellowstone Boys' and Girls' Ranch, which are residential treatment programs for children with
18 mental health issues. The State does believe that the defendant is a very troubled young man
19 with serious mental health issues. However, that the defendant has serious mental health issues
20 does not mean that his behaviors are not voluntary and are not being used to manipulate others.

21 Dr. Murphey's assessment of the defendant must be viewed with a certain degree of
22 caution. There is a fundamental difference between a clinical evaluation which a mental health
23 provider would perform if that person was going to treat an individual as opposed to a forensic
24

25 ¹ Interestingly, the Montana Supreme Court also noted that the defendant had mental and behavioral
26 problems prior to being placed at Montana State Prison so the conditions there did not rise to cruel and unusual
27 punishment. The Court also noted that spending time in prison often exacerbated the behavioral problems of young
28 inmates in general, not just those with mental health issues. **Wilson**, at ¶ 34.

1 evaluation which a provider would perform if that person was going to offer an opinion to a court
2 in a criminal matter. In a clinical evaluation, rapport with the individual would be required in
3 order to determine how best to treat that person. A focus on the individual's perception and
4 history might be beneficial in establishing a therapeutic relationship. With regard to a forensic
5 evaluation, the evaluator would rely more on objective, rather than purely subjective evidence
6 such as diagnostic testing and a review of collateral sources. Dr. Murphey performed the
7 standard MMPI-2 which was invalid and despite the availability of other tests to determine if the
8 subject was malingering, decided to go no further. In addition, despite the availability of a
9 plethora of collateral sources such as the defendant's prison records, the jail records, and the
10 Department of Corrections records regarding his history, Dr. Murphey formed an opinion mainly
11 on the questionable history provided by the defendant. This was the same sort of evaluation that
12 the Montana Supreme Court questioned when conducted by the prison mental health
13 professionals at Montana State Prison in **Walker**. The Montana Supreme Court pointed out that
14 the other professionals that were retained by Walker administered several mental evaluation tests,
15 reviewed all of Walker's medical records and interviewed Walker's family. The expert, Dr.
16 Kupers, likewise reviewed all of the other evaluations that were conducted, various legal
17 documents, depositions and Walker's disciplinary record.

18 Dr. Christa Smelko, who was asked by the State to review all of the records received by
19 the State from Montana State Prison, the Department of Corrections, the Gallatin County jail was
20 able to discern a pattern to the defendant's behaviors which were indicative of manipulation
21 which is not uncommon among those with the type of personality disorder that even Dr. Murphey
22 concluded that the defendant exhibits. Indeed, the testimony was that 60 to 70 % of the inmate
23 population in a correctional facility suffer from a personality disorder of one kind or another.

24 The first recorded threat by the defendant of suicide while in the correctional system was
25 following his placement at NEXUS. The defendant was at NEXUS for approximately 2 weeks
26 before he threatened suicide and made a suicidal gesture. He claims it was due to the combative
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1 nature of the program. However, NEXUS is a dual diagnosis program and is structured for those
2 with mental health issues as well as addiction issues and is based on a therapeutic community
3 model of treatment.

4 The Department of Corrections records indicate that he had threatened that he was going
5 to do something for a day or so previous to actually cutting on his wrists. This resulted in him
6 being removed from the program which is what he wanted.

7 The next attempt was at the Great Falls Regional Prison. The records show that he made
8 a threat to the nurse when she told him that she could not give him Tylenol at that time but would
9 see if she could get it to him the following day. The defendant responded that if he did not he
10 would scatter medications all over and that it would take more than three people to stop him.
11 Shortly following that threat, the defendant made a suicidal gesture which resulted in him being
12 moved from the Great Falls Regional Prison to Montana State Prison which again is what he
13 wanted. The defendant was very angry and uncooperative following the incident and obstructed
14 the transport officers who tried to move him to the transport van and tried to choke himself with
15 a strap while being transported. The defendant later admitted to a mental health technician at the
16 prison that he was angry when he tried to choke himself.

17 The defendant's behavior when he is in the community is also problematic. When he
18 knew that he was going to be arrested for a D.U. I. he threatened suicide and when he knew that
19 he would be violated in the T.A.P. program for illegally using drugs.

20 Likewise, the incidents at the Gallatin County jail were telegraphed to jail personnel and
21 were in response to the jail doing something that the defendant did not want or not doing
22 something that the defendant had requested.

23 That the defendant may have suffered some negative consequences as a result of his
24 actions, such as injuring himself, being placed in a protective cell or given food loaf, was
25 secondary to his primary goal, that of forcing the correctional or jail system to alter or change
26 their plan for him and to cause a disruption. Unfortunately, as Dr. Smelko testified to, those with
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1 personality disorders often threaten or attempt suicide and sometimes, whether intended or not,
2 they actually succeed. In the defendant's case, he has come to use this particular threat and
3 action as a forum to express his anger with being controlled by others. The defendant makes
4 repeated demands for "help" but, as noted in his prison records and as evidence through his
5 testimony to the Court, he cannot elaborate on exactly what it is that he wants the jail and
6 correctional system to do. Then he becomes frustrated and acts out when he is not immediately
7 "fixed."

8 The defendant alleges that his behavior in jail is based upon the neglect of the criminal
9 justice system, but there is another motive to consider. The defendant has come to learn that his
10 disruptive and suicidal behavior has limited the choices available to him through the Department
11 of Corrections for treatment and rehabilitation and now that includes holding him in jail for
12 violations of his conditions of probation or parole, leaving this Court with limited options for
13 him as well, prison or the streets. If the Court chooses the street, despite his history on
14 supervision and with the Department of Corrections and having committed two new felony
15 criminal offenses, the defendant's actions will have gotten him exactly what he wanted.

16 **III. The Sentencing recommendation for the Defendant is not grossly unfair.**

17 The defendant is arguing that he should not be sentenced to Montana State Prison on
18 either sentence as statistically those sentenced for those offenses are not sent to Montana State
19 Prison. However, neither the defendant nor his correctional history is typical. This is not the
20 defendant's first offense. A deferred sentence is generally offered for an offender's first offense
21 and is warranted as an incentive to those whose first offense will be their last offense. As the
22 Court is aware, the statistics as to what sentence is suspended are also misleading. If a defendant
23 is charged with more than one felony offense, such as the defendant here, the State generally does
24 not ask that a defendant be sent to the Department of Corrections on all offenses. The State
25 generally asks that an offender be committed to the Department of Corrections for one offense
26 and then asks that the remaining offenses be suspended. Statistically, this would give the
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1 appearance that one of the two offenses is taken less seriously or viewed more leniently when it
2 simply is not the case. It is just the result of someone not being imprisoned on every offense for
3 which they are convicted.

4 Again, the Department of Corrections usually has more options to offer to an offender
5 such as Connections, NEXUS, ISP or prerelease but the defendant has foreclosed those
6 possibilities. Therefore, the statistics are particularly inapplicable in this case.

7 CONCLUSION

8 The defendant has asked that he be given fully suspended sentences. To do so would be
9 to ignore his criminal behavior that has put him again before the courts and his failure to follow
10 the conditions of his probation. The defendant has proven that he is unable or unwilling to
11 abstain from the use of illegal drugs and to remain law-abiding. He places the blame for his
12 actions on anyone or anything but himself. Without some insight into his responsibility for the
13 situation in which he currently finds himself, he will not ever be able to function successfully in
14 society.

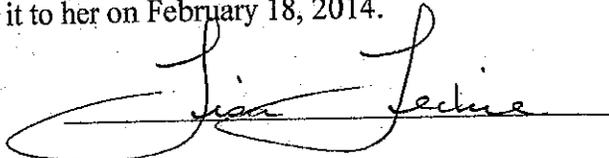
15 Rather than placing him in the community and hoping that the third time is a charm with
16 regard to therapy and staying clean and sober, the defendant should have a solid plan in place for
17 the Department of Corrections or the parole board so that when he is eventually released into the
18 community there is a more reasonable chance of success.

19 Respectfully submitted this 14th day of February, 2014.

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22 LISA LECKIE, Deputy County Attorney
Lewis and Clark County

23 CERTIFICATE OF SERVICE

24 The undersigned certifies that a copy of the foregoing will be served upon the
25 defendant's attorney by hand delivering it to her on February 18, 2014.

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