

**APPLICATION FOR
DISTRICT COURT JUDGESHIP
First Judicial District**

A. PERSONAL INFORMATION

1. Full Name: Michael F. McMahon
 - a. What name do you commonly go by? Mike
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes.
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: 40 West Lawrence Street, P.O. Box 1713, Helena, MT 59624-1713
Phone: (406) 442-1054 (Ext. 102)
5. Length of residence in Montana: 45 years (combined)
6. List your place of residence for the past five years: Helena

<u>Dates</u>	<u>City</u>	<u>State</u>
September 2002 to present	Helena	Montana

B. EDUCATIONAL BACKGROUND

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

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Capital High School	Helena, MT	May 1983	H.S. Diploma
Carroll College	Helena, MT	N/A	N/A
National College	Rapid City, SD	May 1988	B.S.
Gonzaga University School of Law	Spokane, WA	May 2001	J.D.

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

High School: National Honor Society; Varsity Cross Country and Basketball; Member of 1983 State AA State Championship Team; Coached Small Fry Championship Team; and Inducted into Helena Sports Hall of Fame (2012).

College: *Cum Laude*; Coached Small Fry Championship Team; Varsity Basketball, National College (1986-88); Member of two-time NLCAA National Champion Basketball Team; and 1988 National College Outstanding Achievement Award in Business Administration.

Law School: *Magna Cum Laude*; Staff Member, Gonzaga Law Review (1989-90); Editor-in Chief, Gonzaga Law Review (1990-91); and Executive Board Member, National Conference of Law Reviews (1990-91); Gonzaga Liaison, Washington Young Lawyers Division (1989-91); National Finalist, American Trial Lawyers Association Competition (1990); Member, Gonzaga Moot Court Council (1990-91); Committee Member, Spokane Bar Pro Bono Student Assistance Program (1990-91); and Co-Chairperson, Gonzaga Public Interest Legal Program, Student Pro Bono Committee (1990-91);

Professional Practice: 2002 "Pro Bono Publico" Chairperson's Award; 2003 ALPS Bonnie J. Henkel "Gold Star" Award; AV Martindale-Hubble Rating (2009-present); AV Martindale-Hubble Judicial Rating Edition (present); and Mountain States Super Lawyers (2009-present).

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.

Yes. Staff Member, Gonzaga Law Review (1989-90); Editor-in Chief, Gonzaga Law Review (1990-91); and Executive Board Member, National Conference of Law Reviews (1990-91).

Note, *Legislative Solution for Washington Courts' Disfavor of Land Forfeitures*, 25 Gonz. L. Rev. 157 (1990).

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>
State Bar of North Dakota	1991
State Bar of South Dakota	1992
State Bar of Montana	1992
U.S. District Court of North Dakota	1992
U.S. District Court of Montana	1996
U.S. Court of Appeals, Ninth Circuit	1996

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

I am the managing member of McMahon, Wall & Hubley, PLLC. Stefan Wall is the firm's other current member. Bernie Hubley retired from MWH in December 2014. MWH's associates are Mike McLean and Denny Palmer.

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

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Washington State Attorney General's Office West 1116 Riverside Spokane, WA 99201	Law Clerk for the Department of Labor and Industries	5/89-5/90
Pearce & Durick, PLLP 314 East Thayer P.O. Box 400 Bismarck, ND 58502-0400	Law Clerk Associate Attorney	6/91-10/91 10/91-4/96
Harrison, Loendorf, Poston & Duncan, P.C. c/o Greg Duncan P.O. Box 1319 Helena, MT 59624-1319	Attorney	4/96-10/97
Hughes, Kellner, Sullivan and Alke, PLLP P.O. Box 1166 Helena, MT 59624-1166	Attorney/Partner	10/97-5/02 and 10/02-8/08
Zuger, Kirmis & Smith 316 N. 5 th Street P.O. Box 1695 Bismarck, ND 58502-1695	Attorney/Limited Partner	6/02-9/02
McMahon, Wall & Hubley, PLLC P.O. Box 1713 Helena, MT 59624-1713	Attorney/Managing Member	9/08-Present

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

N/A

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

My present law practice is general in nature with an emphasis in professional malpractice defense, professional discipline defense, commercial transaction defense, class action defense, and outside counsel for Caring For Montanans, Inc., f/k/a Blue Cross and Blue Shield of Montana, Inc. I also provide professional legal services relative to domestic relations/family law, alternative dispute resolution, health care, insurance law, insurance defense, business law, business planning, estate planning, real estate, probate and administrative law.

Civil Litigation Defense:	65%;
Corporate/Business:	20%;
Domestic Relations:	5%;
Wills/Trust/Probate:	5%; and
Real Estate	5%.

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

I've defended a number of product liability cases for auto, ladder and animal feed manufactures. In addition, I've presented various Continuing Education Seminars on legal ethics, malpractice avoidance, and estate planning topics. I have also lobbied before the North Dakota Legislature as well as made non-representative presentations to various Montana Legislature committees.

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

My practice emphasis is representing attorneys in legal malpractice and disciplinary matters and outside counsel for Caring For Montanans, Inc.

17. Do you regularly appear in court? Yes.

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

Federal Court	25%
State or local courts of record	55%
Administrative bodies	20%

18. During the past five years, what percentage of your practice has been trial practice? 65%

19. How frequently have you appeared in court? On average, I appear four times per month in court.

20. How frequently have you appeared at administrative hearings? On average, I appear two times per month in administrative hearings.

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

Civil	98%
Criminal	2%
Other	_____ %

22. Have you appeared before the Montana Supreme Court within the past 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.

Yes. I have represented approximately twenty-five clients before the Montana Supreme Court. The types of these cases range from attorney discipline, professional malpractice, class actions, employment, health insurance, administrative agency rulings, personal injury matters, student rights to title insurance matters.

Stokes v. Duncan et al., 2015 MT 92 (professional malpractice defense); Rusty Murphy, P.O. Box 2639, Missoula, MT 59806, (406)728-2671;

Victory Ins. Co. v. Montana State Fund et al., 2015 MT 82 (commercial defense); Linda Deola, 401 N. Last Chance Gulch, Helena, MT 59601, (406) 442-3261;

Passmore v. Watson, 2014 MT 287 (professional malpractice defense); Terence Passmore (pro-se), CCC2150027, 50 Crossroads Drive, Shelby, MT 59474 (Mr. Passmore is a MSP inmate so his phone number unknown);

Miller v. Goetz et al., 2014 MT 150 (professional malpractice defense); James Miller (pro-se), A.O. #31793, Montana State Prison, 700 Conley Lake Road, Deer Lodge, MT 59722 (Mr. Miller is a MSP inmate so his phone number is unknown);

Ayers v. Nygren, 2014 MT 144N (professional malpractice defense); Twain Ayers (pro-se), A.O. 2073192, 50 Crossroads Drive, Shelby, MT 59474 (Mr. Ayers is a MSP inmate so his phone number unknown); and

Pallister v. BCBSMT et al., 2013 MT 149 (class action/health insurance): James Hunt and Jonathan McDonald, 310 Broadway, Helena, MT 59601, (406) 442-8552; Jory Ruggerio, 303 W. Mendenhall St., Suite 1, Bozeman, MT 59715, (406) 587-1900; Robert McCarthy, 3738 Harrison Ave., Suite A, Butte, MT 59701, (406) 494-2500; and Jacqueline Lenmark, P.O. Box 598, Helena, MT 59624, (406) 442-0230;

23. State the number of jury trials that you have tried to conclusion in the past ten years. 0

24. State the number of non-jury trials that you have tried in the past ten years. 7

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the past 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.

Flesch v. Graybill, BDV-14-721, Montana Eighth Judicial District Court, Cascade County (Hon. Julie Macek, (406) 771-3950); Bonnie and LeRoy Flesch (pro-se), P.O. Box 873, Conrad, MT 59425 (clients' summary judgment motion granted on August 18, 2015);

In re the Parenting of ZDLB, ADR 2005-27, Montana First Judicial District Court, Lewis and Clark County (Hon. Michael Menahan (406) 447-8205); Alice Hinshaw and Michele Vanisko, 1 N. Last Chance Gulch Suite 3, Helena, MT 59601, (406) 442-1925 (client's motion to amend parenting plan granted on August 14, 2015);

Hukill v. Netzer et al., DV 15-21, Montana Seventh Judicial District Court, Richland County (Hon. Richard A. Simonton (406) 377-2666); Stephen C. Mackey, P.O. Box 30457, Billings, MT 59107, (406) 248-7337 (clients' summary judgment motion granted on July 30, 2015);

Martinson v. Hrubes, DV 14-113, Montana Seventh Judicial District Court, Dawson County (Hon. Randal I. Spaulding (406) 323-1701), Penny Strong, 2517 Montana Ave., Billings, MT 59101, (406) 839-9220 (case is still in active litigation);

Martinson v. Dawson County Domestic Violence Program, DV 15-38, Montana Seventh Judicial District Court, Dawson County (Hon. Richard A. Simonton (406) 377-2666); Penny Strong, 2517 Montana Ave., Billings, MT 59101, (406) 839-9220 (case is still in active litigation);

Ellis v. Panasuk et al., ADV-2014-993, Montana First Judicial District Court, Lewis and Clark County (Hon. Michael Menahan (406) 447-8205); Jeff A. Turner, P.O. Box 30457, Billings, MT 59107, (406) 248-7337 (client's motion to dismiss granted May 4, 2015);

McConnell v. McLean et al., DV-14-1153, Montana Fourth Judicial District Court, Missoula County (Hon. Robert Deschamps III (406) 258-4772); Doug Scotti, 341 Central Ave., Whitefish, MT 59937, (406) 862-9600 (case is still in active litigation);

Micheletti v. McLean et al., DV-15-67, Montana Third Judicial District Court, Anaconda-Deer Lodge County (Hon. Ray Dayton (406) 563-4044); William O'Leary, P.O. Box 527, Butte, MT 59703, (406) 723-5600 (case is still in active litigation);

ALPS v. McLean et al., DV-12-2014-00000-OC, Montana Third Judicial District Court, Anaconda-Deer Lodge County (Hon. James Haynes (406) 375-6790); Martha Sheehy, P.O. Box 584, Billings, MT 59103, (406) 252-2004 (case is still in active litigation);

In re Marriage of Antonick, CDR 2014-609, Montana First Judicial District Court, Lewis and Clark County (Hon. Kathy Seeley ((406) 447-8205); John Bobinski, P.O. Box 5117, Helena, MT 59604, (406) 442-9000 (case settled);

Kinzer-Johnson v. Johnson, CV-2013-00000198-OP, Jefferson County Justice Court, Jefferson County (Hon. Dennis Giulio (406) 225-4056); Greg Beebe, 1085 Helena Ave., Helena, MT 59601, (406) 442-3625 (client's protective order granted);

In re the Marriage of Johnson, DDV-2014-72, First Judicial District Court, Lewis and Clark County (Hon. James Reynolds (406) 447-8209); Greg Beebe, 1085 Helena Ave., Helena, MT 59601, (406) 442-3625 (case settled);

In re Marriage of Northey, CDR-2014-456, First Judicial District Court, Lewis and Clark County (Hon. Kathy Seeley (406) 447-8205); Robyn Weber, 221 5th Ave., Helena, MT 59601, (406) 449-4433 (case settled);

In re Marriage of Traynor, BDR-2015-166, First Judicial District Court, Lewis and Clark County (Hon. Jeffrey Sherlock (406) 447-8205); Sarah LaRue, 50 South Last Chance Gulch, Suite 4, P.O. Box 598, Helena, MT 59624, (406) 442-0230 (case settled);

Dali, LLC v. Wenz et al., DDV-12-0066, Montana Eighth Judicial District Court, Cascade County (Hon. Dirk W. Sandefur (406) 771-6566); Jason Holden, P.O. Box 2466, Great Falls, MT 59403, (406) 452-6500 (case settled following summary judgment hearing);

Bates v. Anderson et al., DV-08-1498C, Montana Eleventh Judicial District Court, Flathead County (Hon. Brenda Gilbert (406) 222-4132); Larry Jent, 506 East Babcock, Bozeman, MT 59715, (406) 586-1373 (case settled);

Ibsen v. Caring For Montanans, Inc. et al., BDV-2014-993, Montana First Judicial District Court, Lewis and Clark County (Hon. Jeffrey Sherlock (406) 447-8205); Linda Deola and John M. Morrison, 401 North Last Chance Gulch, P.O. Box 557, Helena, MT 59624, (406) 442-3261: (client's summary judgment granted on March 23, 2015, and is on appeal to Montana Supreme Court);

In re the Marriage of Rice, ADR-2010-474, Montana First Judicial District Court, Lewis and Clark County (Hon. Michael Menahan (406) 447-8205); Brian Miller, 401 N. Last Chance Gulch, Helena, MT 59601, (406) 442-3261 9 (client's motion to amend parenting plan granted on May 12, 2015);

Miller v. Goetz et al., Cause No. DV-10-803A, Montana Eighteenth Judicial District Court, Gallatin County (Hon. Holly Brown, (406) 582-2160); John Miller (pro-se), A.O. 31793, 700 Conley Lake Road, Deer Lodge, MT 59722 (Mr. Miller is MSP inmate so there is no phone number for him): (clients' summary judgment motion granted and affirmed by Montana Supreme Court);

Huggins v. G. et al., Cause No. DV-13-0870, Montana Thirteenth Judicial District Court, Yellowstone County (Hon. Gregory Todd, (406) 256-2901); John Morrison, 401 N. Last Chance Gulch, Helena, MT 59601, (406) 442-3261: (case settled as to my clients);

Blixseth v. Brown et al., CV 11-85-M-DWM, United States District Court for the District of Montana (Hon. Donald W. Molloy (406) 542-7286); Andrew E. Hawes, P.O. Box 2153, Boise, ID 83701, (503) 501-7190; Christopher J. Conant, 730 17th Street, Suite 200, Denver, CO 80202, (303) 298-1800; Joseph M. Grant, 94 A Drew Street, Houston, TX 77006, (713) 880-3331; Michael J. Ferrigno, 802 W. Bannock, 5th Floor, Boise, ID 83702, (208) 995-3912; Robert F. James, #2 Railroad Square, Suite B P.O. Box 1746, Great Falls, MT 59403-1746, (406) 771-0007; Robert C. Weaver, Jr. and Kathleen C. Bricken; 121 SW Morrison Street, 11th Floor, Portland, OR 97204-3141, (503) 228-3939; David L. Charles, P.O. Box 2529, Billings, MT 59103-2529, (406) 252-3441; Danielle Ann Rand Coffman, P.O.

Box 759, Kalispell, MT 59903-0759, (406) 752-6644; Mikel L. Moore and Dale R. Cockrell, 145 Commons Loop, Suite 200; P.O. Box 7370, Kalispell, MT 59904-7370, (406) 751-6000; and Robert K. Baldwin and Trent Morris Gardner, 35 N. Grand; P.O. Box 6580, Bozeman, MT 59771-6580, (406) 587-0618: (case dismissed on defendants' respective dismissal motions);

Essex Ventures, LLP et al. v. Patten et al., DV-11-99, Montana Fourth Judicial District Court, Missoula County (Hon. Karen Townsend) (406) 258-4774; Mark S. Connell, 502 W. Spruce Street; P.O. Box 9108, Missoula, MT 59807, (406) 327-1517; and Donald V. Snavely, P.O. Box 16570, Missoula, MT 59808, (406) 721-8899: (case settled);

Steingruber et al. v. Steingruber et al., DV-2013-09, Montana Fifth Judicial District Court, Jefferson County (Hon. Loren Tucker) (406) 683-3745; Brandy A. Carestia, 2944 Stratford Lane, Missoula, MT 59808, (406) 531-1501; Lynda S. White, One West Main St., Bozeman, Montana 59715, 406-587-3181; and Edward Moriarity, 736 South 3rd Street West, Missoula, MT 59801-2514, (406) 586-8458: (case settled);

Scrantom v. Waterman et al., DV-13-327A, Montana Eighteenth Judicial District Court, Gallatin County (Hon. David Cybulski) (406) 286-5615; Christopher Gillette, 11 East Main Street, Suite C, Bozeman, MT 59715, (406) 582-7918; Neil G. Westesen and Whitney M. Kolivas, 45 Discovery Drive, P.O. Box 10969, Bozeman, MT 59719-0969, (406) 556-1430; and Charles E. Hansberry, 350 Ryman Street, P.O. Box 7909, Missoula, MT 59807, (406) 523-2500: (case settled);

Scrantom v. Masters., DR-09-318A, Montana Eighteenth Judicial District Court, Gallatin County (Hon. Holly Brown) (406) 582-2160; Christopher Gillette, 11 East Main Street, Suite C, Bozeman, MT 59715, (406) 582-7918; Neil G. Westesen and Whitney M. Kolivas, 45 Discovery Drive, P.O. Box 10969, Bozeman, MT 59719-0969, (406) 556-1430; Charles E. Hansberry, 350 Ryman Street, P.O. Box 7909, Missoula, MT 59807, (406) 523-2500; and Ryan Jackson, 234 East Mendenhall, Bozeman, MT 59715, (406) 585-3300: (case is still in active litigation);

Passmore v. Watson, DV-13-110, Montana Sixth Judicial District Court, Park County (Hon. Brenda Gilbert) (406) 222-4132; Terence R. Passmore (pro se), CCC 2150027, 50 Crossroads Drive, Shelby, MT 59474, (Mr. Passmore is MSP inmate so there is no phone number for him): (client's summary judgment motion was granted and affirmed by Montana Supreme Court);

Williams v. Donnelley, ADV-2012-165, Montana First Judicial District Court, Lewis and Clark County (Hon. Michael Menahan) (406) 447-8205; Gregory S. Williams (pro se), 13220 Bradshaw Road, Peyton, CO 80831, (719) 502-0088: (case dismissed on client's motion);

Keystone Group, LLC et al. v. Dougherty et al., DV-10-1266, Montana Fourth Judicial District Court, Missoula County (Hon. John Larson) (406) 258-4773; Larry Jent, 506 East Babcock, Bozeman, MT 59715, (406) 586-1373; and George R. Farneth, II, #920, 3300 US Steel Tower, Pittsburgh, PA 15219, (412) 281-8000: (case settled);

Bragg v. Hilten et al., DV-12-1362, Montana Thirteenth Judicial District Court, Yellowstone County (Hon. Russell Fagg) (406) 256-2906; Alexander (Zander) Blewett, III and Joseph P. Cosgrove, 501 Second Avenue North, P.O. Box 2807, Great Falls, MT 59403-2807, (406) 761-1960; J. Daniel Hoven

and W. John Tietz, 800 North Last Chance Gulch, P.O. Box 1697, Helena, MT 59624-1697, (406) 443-6820; and Jared S. Dahle, 2619 St. Johns Avenue, Suite E, Billings, MT 59102, (406) 867-7000: (case settled);

In re Stokes, Duncan et al. v. Stokes, Case No. 09-60265-7, United States Bankruptcy Court for the District of Montana (Hon. Ralph Kirscher (406) 497-1240); Edward Murphy, P.O. Box 2639 Missoula, MT 59806, (406) 728-2671: (case remanded by BAP for lack of jurisdiction);

Stokes v. Duncan et al., CDV-2012-156, Montana First Judicial District Court, Lewis and Clark County, (Hon. Kathy Seeley (406) 447-8205); John Stokes (pro se), 12887 Raven Way, Big Fork, MT 5991, (406) 837-2283: (case dismissed on summary judgment and affirmed on appeal);

Pedersen v. Carlson, BDV-2013-766, Montana First Judicial District Court, Lewis and Clark County, (Hon. Jeff Sherlock (406) 447-8205); Ross D. Tillman, 201 West Main Street, Suite 300, P.O. Box 9199, Missoula, MT 59807-9199, (406) 543-6646: (case settled);

Jones v. Alhambra, Inc., CDV-2009-807, Montana First Judicial District Court, Lewis and Clark County, (Hon. Kathy Seeley (406) 447-8205); Frank C. Crowley, P.O. Box 1185, Helena, MT 59624-1185, (406) 443-2211: (favorable judgment after bench trial);

Henderson et al. v. Moudree et al., ADV-2012-734, Montana First Judicial District Court, Lewis and Clark County (Hon. Mike Menahan (406) 447-8205); Douglas A. Buxbaum, 228 West Main, Suite A, P.O. Box 8209, Missoula, MT 59807, (406) 327-8677; and J. Daniel Hoven, 800 North Last Chance Gulch, P.O. Box 1697, Helena, MT 59624-1697, (406) 443-6820: (case settled);

Marsden v. BCBSMT, ADV-2012-260, Montana First Judicial District Court, Lewis and Clark County, (Hon. Dorothy McCarter (ret.) (406) 447-8205); Linda M. Deola, 401 North Last Chance Gulch, Helena, MT 59601, (406) 442-3261: (case settled);

Richards v. Caring For Montanans, Inc., DV-09-0677, Montana Thirteenth Judicial District Court, Yellowstone County (Hon. Susan Watters (406) 247-4490); Calvin J. Stacey, 100 North 27 Street, Suite 700, P.O. Box 1139, Billings, MT 59103-1139, (406) 259-4545: (case settled);

Sangwin v. State of Montana et al., BDV-10-05666(C), Montana Eighth Judicial District Court, Cascade County (Hon. Kenneth R. Neill (406) 454-6897); Alexander (Zander) Blewett, III, 501 Second Avenue North, P.O. Box 2807, Great Falls, MT 59403-2807, (406) 761-1960; and Maxon R. Davis, The Milwaukee Station, Third Floor, 101 River Drive North, P.O. Box 2103, Great Falls, MT 59403-2103, (406) 761-5243: (case settled as to my client);

In the Matter of the Conversion of Blue Cross and Blue Shield of Montana, Inc. and Alliance with Health Care Service Corporation, Case No. Ins.-2012-238, Before the Commission of Securities and Insurance, Office of the State Auditor, State of Montana (Hon. William Leaphart (ret.) (406) 443-5307; Jacqueline T. Lenmark, 50 South Last Chance Gulch, Suite 4, P.O. Box 598, Helena, MT 59624, (406) 442-0230; Stanley T. Kaleczyc, P.O. Box 1697, Helena, MT 59624, (406) 443-6820; Helen E. Witt, 300 North LaSalle Street, Chicago, Illinois 60654, (312) 862-2000; Jesse Laslovich and Nick Mazanec, 840 Helena Avenue, Helena, MT 59601, (406) 444-2040; Jay Angoff, 1250 Connecticut Avenue, NW, Suite

300, Washington, DC 20036; and Michael Black and Kelley Hubbard, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, (406) 444-2026: (administrative proceeding resolved favorably for client following administrative public hearing);

Frank v. Caring For Montanans, Inc. et al., ADV-2013-608, Montana First Judicial District Court, Lewis and Clark County (Hon. Mike Menahan (406) 447-8205); Scott L. Peterson, P.O. Box 280 Helena MT 59624-0280, 449-8200: (case settled);

Parsons v. Sisters of Charity of Leavenworth Health Systems, Inc. et al., CV-10-47-BLG-RFC, United States District Court for the District of Montana (Hon. Richard Cebull (ret.) (406) 247-4490); Neel Hammond, 234 East Pine Street, P.O. Box 9155, Missoula, MT 59807-9155, (406) 543-2494; and Andy Forsythe and Gregory G. Murphy (ret.), Suite 1900, Crowne Plaza, P.O. Box 2559, Billings, MT 59103-2559, (406) 248-7731: (Ninth Circuit Court of Appeals affirmed summary judgment order awarded to defendants);

Zinn v. Chevallier Ranch, Inc. et al., BDV-2010-1111, Montana First Judicial District Court, Lewis and Clark County, (Hon. Jeff Sherlock (406) 447-8205); Timothy B. Strauch, (Co-counsel), 257 West Front Street, Suite A, Missoula, MT 59802, (406) 532-2600; G. Andrew Adamek and 800 N. Last Chance Gulch, Suite 101, P.O. Box 1697, Helena, MT 59624-1697, (406) 443-6820; Thomas Q. Johnson, 50 South Last Chance Gulch, Third Floor, P.O. Box 598, Helena MT 59624-0598, (406) 442-0230; C. J. Johnson, 225 Adams, P.O. Box 8568, Missoula, MT 59807-8568, (406) 721-9800; Alan L. Joscelyn 33 South Last Chance Gulch, P.O. Box 1715, Helena, MT 59624, (406) 442-8560; Norman C. Peterson (ret.), Agency Legal Services Bureau, 1712 Ninth Avenue; P.O. Box 201440, Helena, MT 59620-1440, (406) 444-2026; and Paul R. Haffeman, 101 River Drive North, P.O. Box 2103, Great Falls, MT 59403-2103, (406) 761-5243: (case still in active litigation on CRC's counterclaim against State; all other claims were settled);

Ayers v. Nygren, DV-2013-74, Montana Sixteenth Judicial District Court, Custer County, (Hon. Michael Hayworth (406) 874-3335); Twain Newman Ayers (pro se); AO# 2073192, 50 Crossroads Drive. Shelby, MT 59474; (Mr. Ayers is MSP inmate so there is no phone number for him): (client's motion for summary judgment granted and affirmed by the Montana Supreme Court);

Budd and Pallister v. Caring For Montanans, Inc., (consolidated proceedings) CV-09-62-H-SEH, United States District Court for the District of Montana, (Hon. Sam Haddon (406) 727-8877); Jory C. Ruggiero and J. Breting Engel, 303 West Mendenhall, Suite 1, Bozeman, MT 59715, (406) 587-1900; and James G. Hunt and Jonathan McDonald, 310 Broadway, Helena, MT 59601, (406) 442-8552: (case is still in active litigation);

Fossen et al. v. Caring For Montanans, Inc., f/k/a Blue Cross and Blue Shield of Montana, Inc., CV-09-61-H-CCL, United States District Court for the District of Montana, (Hon. Charles Lovell (406) 441-1350); Lawrence A. Anderson, 300 Fourth Street North, P.O. Box 2608, Great Falls, MT 59403-2608, (406) 727-8466; and John M. Morrison, 401 North Last Chance Gulch, P.O. Box 557, Helena, MT 59624, (406) 442-3261: (summary judgment awarded to CFM and affirmed by Ninth Circuit Court of Appeals);

Fuss v. Caring For Montanans, Inc., DV-07-485, Montana Fourth Judicial District Court, Missoula County, (Hon. Robert Deschamps, III (406) 258-4772); Rex Palmer, 301 W. Spruce, Missoula, MT 59802, (406) 728-4514; and Lawrence A. Anderson, 300 Fourth Street North, P.O. Box 2608, Great Falls, MT 59403-2608, (406) 727-8466: (case is still in active litigation);

McPhail v. Caring For Montanans, Inc., DV-13-0901, Montana Thirteenth Judicial District Court, Yellowstone County, (Hon. Russell Fagg (406) 256-2906); A. Clifford Edwards and Triel D. Culver, 1648 Poly Drive, Suite 206, Billings, MT 59102, (406) 256-8155: (case settled);

In re Blue Cross and Blue Shield of Montana, Inc., n/k/a Caring For Montanans, Inc. and Montana Comprehensive Health Association Insurance Litigation, DV-08-553 and DV-09-401, Montana Second Judicial District Court, Silver Bow County, (Hon. Bradley Newman (406) 497-6420); Robert G. McCarthy, 3738 Harrison Avenue, Butte, MT 59701, (406) 494-2500; Jory C. Ruggiero, 303 West Mendenhall, Suite 1, Bozeman, MT 59715, (406) 587-1900; and James G. Hunt and Jonathan McDonald, 310 Broadway, Helena, MT 59601, (406) 442-8552; Jacqueline T. Lenmark, 50 South Last Chance Gulch, Suite 4, P.O. Box 598, Helena, MT 59624, (406) 442-0230; Rex Palmer, 301 W. Spruce, Missoula, MT 59802, (406) 728-4514; and Lawrence A. Anderson, 300 Fourth Street North, P.O. Box 2608, Great Falls, MT 59403-2608, (406) 727-8466: (case is pending objectors' fourth appeal to the Montana Supreme Court); and

Wilson-Reich v. Caring For Montanans, Inc., DV-13-694BX, Montana Eighteenth Judicial District Court, Gallatin County, (Hon. John Brown (406) 582-2150); Daniel B. Bidegaray and Bert J. Certain, 2042 Stadium Drive, Suite 1, Bozeman, MT 59715, (406) 522-7744: (case settled).

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

During the last five years, I have appeared before: (a) the Montana Commission on Practice in attorney discipline matters; (b) the Montana Board of Medical Examiners in physician discipline matters; (c) the Montana Medical Legal Panel in healthcare provider proceedings; and (d) the Commission of Securities and Insurance, Office of the State Auditor, in health insurer regulatory proceedings.

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.

CLE Presentations:

"Basic Probate Procedures and Practice in Montana," September 17, 1999, National Business Institute, Helena, Montana;

"Legal Ethics in Montana," January 25, 2008, Lorman Education Services, Helena, Montana;

"Malpractice Prevention," March 13, 2009, State Bar of Montana, Missoula, Montana; and

"Ethical Considerations," October 9, 2009, Montana Defense Trial Lawyers Annual CLE, Missoula, Montana.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member and give 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.

Burleigh County Bar Association, 1991-1996
American Bar Association, 1991 - present
Defense Research Institute, Inc., 1992 - present
Montana Defense Trial Lawyers, Inc., 1996 - present
Lewis & Clark County Bar Association, 1996 - present
First Judicial District Pro Bono Committee, 1998 - 2002
Member of Montana Commission on Rules of Evidence, 2001-2009 (three terms)
Professional Liability Defense Federation, 2011 - present

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

Our Lady of the Valley Catholic Church Member;
Montana Coaches Association Member;
Capital High Booster Club Member;
Carroll College Athletic Association Member;
Montana Mule Deer Foundation Member;
Montana Wilderness Association Member;
Green Meadow Country Club Member;
Montana Republican Party Sustaining Member;
National Republican Senatorial Committee Sustaining Member; and
Georgetown Lake Homeowners' Association Member.

30. Have you ever run for or held public office? No.
31. Please explain your philosophy of public involvement and practice of giving your time to community service.

My parents inspired all of their children to do their best to make life better for others. They believed, and instilled in all of us, the philosophy that we should strive to do something for someone else on a daily basis. Their exceptional role modeling in this regard was, and has been, the foundation for my commitment to public community involvement. Over the years, this path has led me to giving my time to youth related activities in the community. From coaching youth football, soccer, baseball, basketball and softball, to serving on a variety of nonprofit boards, and being a judge at high school Montana DECA and *We the People* competitions. In

addition, my wife and I, as well as MWH, have made concerted efforts to financially contribute to a variety of nonprofit organizations whose respective missions are to assist others, especially children and students.

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? No.
33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? 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.

Yes. In 1984, I pled guilty to a misdemeanor (prank phone calls) in Helena City Court. The ticket case number, to the best of my knowledge, was #3-4045. I paid the imposed fine.

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty, or unethical conduct? No.
36. Is there any circumstance or event in your personal or professional life that, if brought to the attention of the Commission, Governor or Montana Supreme Court, would affect adversely your qualifications to serve on the court for which you have applied? 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.

Yes. I have been employed by the Helena School District as a basketball (girls and boys) and fastpitch sub-varsity coach from 2008 to the present.

In addition, I am a twenty-five percent limited partner in KAML, LLP. The company owns a business condominium unit located at 40 West Lawrence Street, Suite B, in Helena, Montana. McMahan, Wall & Hubley, PLLC rents the space from KAML. The other KAML limited partners are A. Rogers Little, III, John Alke, and Stuart Kellner. Mr. Little is the managing limited partner.

38. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of such 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 a Healthy Mothers, Health Babies-the Montana Coalition president and board member. It is a Montana nonprofit corporation. HMHB's mission is to ensure that no Montana babies zero to three are in jeopardy, and instead are welcome, safe, healthy, and treasured. In 2013, among other things, it implemented the PURPLE Cry Program, continued its efforts in the Safe Sleep Program, and developed and promoted Text4Baby. If required, I will resign the position immediately upon my appointment 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, please identify the source and approximate percentage of your total income that the fees or compensation constituted over the past five years.

Yes. I have received compensation from the Montana State Bar for grading bar exams. The stipends are \$750.00. In addition, in 2008, 2009, 2012, 2012, 2013 and 2014, I received approximately \$2,100.00 per year from the Helena School District for coaching sub-varsity basketball and/or fast pitch teams. This additional compensation is less than 5% of my total annual net income.

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

G. WRITING SKILLS

44. In the past 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.

MWH is a small firm. As such, each attorney must individually research and prepare their respective briefs unless the assignment is given to Mr. Palmer. During the last five years, I estimate that seventy-five percent of all the briefs which I have signed, I personally drafted and performed the underlying research.

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

During the last five years, I have also personally prepared other types of legal writing, including, but not limited to: estate plans, organizational related documents, contracts (simple and complex), trusts, settlement agreements, releases, parenting plans, mediation brochures, case evaluation opinions, proposed affidavits, jury instructions, proposed findings and conclusions, proposed orders, corporate minutes, and corporate resolutions.

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.

I have attached a writing sample that I wrote myself.

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

At least 70% of my practice the last five years has involved research and legal writing.

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

Yes. Although, I am more proficient using Lexis since that is the service MWH subscribes to for its internet based research.

H. MISCELLANEOUS

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

I enjoy spending time with my family, especially at our lake cabin. My wife and I enjoy golfing, hiking and horseback riding together.

I coach at Capital High School so naturally, I spend many hours there each year. I find coaching a tremendous opportunity to help student/athletes. In reality, however, it is an excellent mental break for me. I certainly "get" more than I "give" coaching student/athletes.

I enjoy big game hunting, working in the yard, and tending my rose bushes. I try to do some sort of physical exercise on a daily basis. I enjoy watching any nature or sports related television show. Obviously, reading is a big part of my life.

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

Before college, I worked primarily for my parents doing a variety of manual labor. From helping with my father's "hobby" outfitting business to fixing fence; anything that needed to be was done. My parents also built two-log homes during my youth so I helped with those projects. In addition, I worked at a local bookstore, furniture store, fast-food restaurant, and an auto dealership.

During college, I was a college dormitory resident assistant, college gym coordinator, sold shoes in a mall specialty store, dug sewer and water line trenches, cleaned barns, bartended, worked basketball camps, drove for an airport limousine and Black Hills tour company, and delivered airline freight.

During law school, I was a summer clerk for the Washington Attorney General's Office and was the Editor-in-Chief for the Gonzaga Law Review.

Following law school, I've been a full-time attorney and part-time coach.

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

Beginning in law school, pro bono service has, and remains, an important aspect of my professional work. I endeavor to provide at least fifty hours of pro bono representation on an annual basis. I am proud that I usually exceed that goal. My annual pro bono services are almost entirely devoted to some aspect of family law. Whether it is representing a person in a divorce, youth court, adoption, guardian-ad litem work, mediation

or in parenting plan dispute.

I firmly believe an attorney's choice to provide pro bono services is a personal choice. It is not a choice that, in my opinion, should be forced upon an attorney or even a law student for that matter. There is probably nothing more rewarding than doing something for another person in which when you expect nothing in return. Although, the personal satisfaction of doing something nice for someone else usually is, and should be, the greatest reward of all.

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

My parents have had the greatest influence on how I view our justice system. By their example, I learned the importance of treating others with honesty, dignity and fairness. They expected their children to be accountable and responsible for their actions. I've never seen anyone be more convincing by their personal example about the power of doing the right thing than my parents. Each day I endeavor to follow their life long lessons. Justice embodies all of the simple, lifelong childhood lessons I learned from my father and mother.

I represent large corporations as well as poor individuals. I view an unfair accusation against an insurance company just as unjust as one against an individual. Our justice system should provide equal treatment to all that come before it. Justice can't be assumed or given lip service for everyone. Personal agendas need to be discarded if justice is truly going to be served to all in our justice system. Justice is owed to everyone, "big or small." It is my duty as an attorney to seek justice for everyone I represent. It is the "right thing" for all attorneys and judges to do . . . work as hard as you can to treat others the way you want to be treated. Do it competently, diligently, honestly, fairly and to the best of your ability each and every day.

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

A district court judge should, each and every day, strive to serve litigants pursuant to his/her constitutional duties and in accordance with the Montana Rules of Civil Procedure as well as the Montana Rules of Evidence. He/she should do so with dignity, compassion, credibility, fairness, accountability, intellectual honesty, equality, predictability, diligence, and above reproach. Every party who comes before a Montana district court judge deserves to have their case heard by a neutral and fair jurist who, if necessary, will decide the case on the controlling statutory, common, and/or constitutional law. Finally, at all times, a district judge must cast away their personal agendas.

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.

In my opinion, *stare decisis* adherence is how a court should reach an appropriate balance between the establishment of a body of precedent and the necessary flexibility in the law. It is not a court's duty to "legislate from the bench." In this regard, a court should never substitute or exercise of its own judgment to decide what the law should be. I believe there is no place in the judicial system for result orientated decisions. The public, litigants and attorneys must have faith in and assurances from all Montana courts that they will adhere to the principles of *stare decisis* and its objectives of predictability, stability and equality. A district judge must always follow and adhere to the controlling law.

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

I am seeking office as a Montana district court judge because I view it as an excellent opportunity for me to better serve the public and those that rely upon and believe in the Montana legal system. My decision to submit this application was not made in haste. Ultimately, it was based upon the fact that if I wanted to try to make a positive difference for others, then, seeking Governor Bullock's appointment for the vacancy created by Judge Sherlock's retirement was the right thing to do. At the very least, by submitting this application, I am trying to do the right thing. In essence, I had two options: I could sit back and do nothing, or, I could take the necessary proactive action to try to serve the public in a more meaningful manner. I chose the latter because that is what I would expect from my children, just as my parents expect it from their children.

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

I am a blessed man. I have a wonderful family. Above all, I am proudest of my children.

Professionally, it is a tremendous honor and privilege to be asked by fellow Bar members to represent them in civil or disciplinary matters. Words are simply insufficient to express my gratitude with their continued confidence in my ability to competently and effectively represent them in any such proceeding or seek my advice and counsel on non-adversarial ethic or malpractice prevention related questions.

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

My first wife and I were divorced in April 2005 following a seventeen-year marriage. In 2008, at my request, the Tribunal of the Diocese of Helena, Montana issued a Declaration of Invalidity of Marriage.

Lt. Governor McLean is married to Mike McLean of MWH.

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 confident that all applicants will be uniquely qualified in their own right. I simply would like to extend my sincere appreciation to the Judicial Nomination Commission and Governor Bullock for their respective consideration of my application.

I. CERTIFICATE OF APPLICANT

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

August 20, 2015
(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 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: lmenzies@mt.gov

Application form approved 7/10/93
Revised 9/15/2009

NANCY SWEENEY
CLERK DISTRICT COURT

2015 FEB 12 PM 1:54

C. Potuzek

BY _____
DEPUTY

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2 DENNY K. PALMER
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5 Helena, MT 59624
6 (406) 442-1054
7 mike@mlfpllc.com
8 denny@mlfpllc.com

9 ATTORNEYS FOR LYLE R. PANASUK

10 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

11 *****

12 MICHAEL DANA ELLIS,

13 Plaintiff,

14 vs.

15 STATE OF MONTANA, OFFICE OF THE
16 STATE PUBLIC DEFENDER; LYLE R.
17 PANASUK; CYNTHIA K. THORTON; and
18 JOHN DOES 1-3.

19 Defendants.

20 CAUSE NO. ADV-2014-993

21 Honorable Mike Menahan

22 MR. PANASUK'S BRIEF IN SUPPORT
23 OF HIS MOTION TO DISMISS
24 MR. ELLIS' COMPLAINT

25 Lyle R. Panasuk ("Mr. Panasuk"), by and through his attorneys of record, McMahon,
Wall & Hubley, PLLC, respectfully submits the following Brief in Support of his Motion to
Dismiss Michael Dana Ellis' ("Mr. Ellis") Complaint against him with prejudice.

WELL-PLED ALLEGATIONS

Mr. Ellis alleges that Mr. Panasuk represented him in a revocation hearing on
February 9, 2001. (Compl. ¶ 8.) He also contends that Mr. Panasuk represented him at a
dispositional hearing on February 13, 2001. *Id.* Mr. Ellis admits that Mr. Panasuk was his
attorney in 2001. (Compl. ¶ 18.) He contends Mr. Panasuk "failed to use the requisite skill or
take ordinary care in performance of [his] duties and to properly represent and defend

///

1 [Mr. Ellis'] legal rights." *Id.* Finally, Mr. Ellis alleges that Mr. Panasuk failed to provide effective
2 assistance of counsel. (Compl. 30.)

3 ARGUMENT

4 **A. RULE 12(B)(6) STANDARD.**

5 When presented with a motion to dismiss pursuant to Rule 12(b)(6), M.R. Civ. P., the
6 Montana Supreme Court has held that:

7 [a] complaint should not be dismissed for failure to state a claim unless it
8 appears beyond doubt that the plaintiff can prove no set of facts which would
9 entitle [her] to relief. When considering a motion to dismiss under Rule 12(b)(6),
all well-pled allegations and facts in the complaint are admitted and taken as true,
and the complaint is construed in a light most favorable to the plaintiff.

10 *Schaefer v. Safeco Ins. Co.*, 2014 MT 73, ¶ 14, 374 Mont. 278, 320 P.3d 967 (*citing Sinclair v.*
11 *Burlington N. & Santa Fe Ry.*, 2008 MT 424, ¶ 25, 347 Mont. 395, 200 P.3d 46).

12 A district court, however, is "under no duty to take as true legal conclusions or
13 allegations that have no factual basis or are contrary to what has been already adjudicated."
14 *Cowan v. Cowan*, 2004 MT 97, ¶ 14, 321 Mont. 13, 89 P.3d 6 (*citing Powell v. Salvation Army*,
15 287 Mont. 99, 102, 951 P.2d 1352, 1354 (1997)). Moreover, in ruling upon a motion under
16 Rule 12(b)(6), M.R. Civ. P., a district court may only consider the complaint and any document
17 it incorporates by reference. *See Cowan*, 2004 MT 97, ¶ 11 (*citing City of Cut Bank v. Tom*
18 *Patrick Const., Inc.*, 1998 MT 219, ¶ 20, 290 Mont. 470, 963 P.2d 1283). Here, this Honorable
19 Court can issue its ruling on Mr. Panasuk's motion to dismiss based only upon Mr. Ellis'
20 Complaint and all of the exhibits it incorporates by reference.

21 **B. MR. PANASUK'S MOTION TO DISMISS SHOULD BE GRANTED.**

22 In legal malpractice actions, the applicable statute of repose is set forth in section
27-2-206, MCA:

23 An action against an attorney licensed to practice law in Montana .
24 . . . based upon the person's alleged professional negligent act or
25 for error or omission in the person's practice must be commenced
within 3 years after the plaintiff discovers or through the use of
reasonable diligence should have discovered the act, error, or
omission, whichever occurs last, **but in no case may the action**

1 **be commenced after 10 years from the date of the act, error,**
2 **or omission.**

3 Mont. Code Ann. § 27-2-206 (2013) (emphasis added.)

4 Mr. Ellis claims that Mr. Panasuk was negligent when he represented Mr. Ellis in the
5 February 2001 hearings. The Montana Supreme Court has held that “[T]he last phrase of
6 [section 27-2-206] articulates the unconditional ten-year statute of repose.” *Joyce v. Garnaas*,
7 1999 MT 170, ¶ 12, 295 Mont. 198, 202, 983 P.2d 369; *see also*, *Snyder v. Love*, 2006 MT 317,
8 335 Mont. 49, 153 P.3d 571. The *Joyce* Court also stated that “. . . a statute of repose is
9 typically an absolute time limit beyond which liability no longer exists and is not tolled for any
10 reason because to do so would upset the economic balance struck by the legislative body.”
11 *Joyce*, 1999 MT 170, ¶ 14, *citing authority*. Moreover, the statute of repose contained in
12 section 27-2-206, MCA, also forecloses all forms of equitable relief. *Id.* The Montana Supreme
13 Court has also recognized with approval that a time limitation set forth in a statute of repose
14 can lapse before the cause of action accrues. *Hardgrove v. Transportation Ins. Co.*, 2004 MT
15 340, ¶ 8, 324 Mont. 238, 103 P.3d 999, *citing P. Stolz Family P’ship L.P. v. Daum*, 355 F.3d 92,
16 103 (2nd Cir. 2004).

17 Here, Mr. Ellis contends Mr. Panasuk was negligent in February 2001. He commenced
18 this legal malpractice action against Mr. Panasuk on December 29, 2014. In order to have
19 complied with Montana’s absolute and unconditional legal malpractice statute of repose,
20 Mr. Ellis was required to commence this action against Mr. Panasuk by at least February 12,
21 2011. He failed to do so by approximately three years. As such, Mr. Ellis’ Complaint against
22 Mr. Panasuk is precluded by the statute of repose set forth in section 27-2-206, MCA.
23 Accordingly, Mr. Ellis’ Complaint, as against Mr. Panasuk, should be dismissed with prejudice.

24 Mr. Ellis literally has no cause of action because of the application of section 27-2-206,
25 MCA, against Mr. Panasuk. He is statutorily prevented from bringing what otherwise might be a
 cause of action against Mr. Panasuk since the ten year statute of repose had expired from the

1 dates, as alleged in his complaint, "of the act, error, or omission." Mont. Code Ann. § 27-2-206
2 (2013).

3 Since Mr. Ellis failed to commence this action by approximately three years after the
4 running of the ten year unconditional repose limitation period; his complaint against
5 Mr. Panasuk is precluded by the application of section 27-2-206, MCA. In this regard, taking
6 the facts pleaded as true for purpose of this motion to dismiss, Mr. Panasuk's "act, error or
7 omission" occurred on February 9, 2001 and/or February 13, 2001, and Mr. Ellis' Complaint
8 was filed on December 29, 2014. Mr. Ellis' Complaint against Mr. Panasuk was filed
9 approximately thirteen years after Mr. Panasuk's alleged "act, error or omission," and is
10 therefore barred by section 27-2-206's ten year statute of repose.

11 **CONCLUSION**

12 Mr. Panasuk's motion to dismiss should be granted on the basis that Mr. Ellis' legal
13 malpractice claims against him are barred by the statute of repose set forth in section 27-2-206,
14 MCA. Accordingly, Mr. Ellis' Complaint against Mr. Panasuk should be dismissed with
15 prejudice.

16 Dated this 12th day of February 2015.

17 **McMAHON, WALL & HUBLEY, PLLC**

18
19 By



20 **Michael F. McMahon**
21 P.O. Box 1713
22 Helena, MT 59624

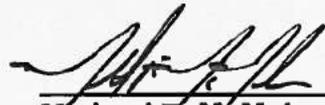
23 **ATTORNEYS FOR LYLE R. PANASUK**
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CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **MR. PANASUK'S BRIEF IN SUPPORT OF HIS MOTION TO DISMISS MR. ELLIS' COMPLAINT** was served upon the following by mailing a true and correct copy thereof on this 12th day of February 2015, addressed as follows:

**JEFF A TURNER
TOWE BALL MACKEY SOMMERFELD & TURNER PLLP
2525 SIXTH AVENUE NORTH
PO BOX 30457
BILLINGS MT 59107-0457**



Michael F. McMahon