

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eighteenth Judicial District**

A. PERSONAL INFORMATION

1. **Full Name:** Audrey Schultz Cromwell
- a. **What name do you commonly go by?** Audrey
2. **Birthdate:** [REDACTED] **Are you a U.S. citizen?** Yes
3. **Home Address:** [REDACTED]
- Phone:** [REDACTED]
4. **Office Address:** 1871 S 22nd Ave, Suite 2, Bozeman MT 59718
- Phone:** (406) 570-7652
5. **Length of residence in Montana:** 24 years
6. **Place of residence for the last five years:**

<u>Dates</u>	<u>City</u>	<u>State</u>
2011 – present	Bozeman	Montana

B. EDUCATIONAL BACKGROUND

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

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Billings West High School	Billings, MT	2000	<i>High School Diploma</i>
Carleton College	Northfield, MN	2005	<i>Bachelor of Arts (American Studies) Minor (Spanish)</i>

Alexander Blewett III Missoula, MT 2009 *Juris Doctor*
School of Law
University of Montana

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

- Bozeman Chronicle’s top 20 Under 40 (2017) *See* https://issuu.com/bozchron/docs/businessjournal_jan17/4
- MSU Program of the Year – Student Legal Services (2017 & 2018)
- Merit Scholarship for Academic Excellence (2007-2009)
- Ralph Wright Memorial Scholarship (2008)
- Russell & Mary Ruth Smith Scholarship (2008)
- NITA Trial Preparatory Course Certificate (2008)
- Carleton College, graduated *cum laude* (2005)
- Certificate of advanced study in foreign language in Spanish (2005)
- Comprehensive Exercise on Criminal Justice within Indian Reservations (2005)
- Billings West High School, *high honors*; National Honors Society (2000)

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

Yes. *Montana Law Review*; Co-Editor-in-Chief (2008-2009); Staff (2007-2008)

As *Montana Law Review*’s Co-Editor-in-Chief, I managed the editing and production of UM Law School’s prominent state-wide legal journal. I also coordinated the Law Review’s biennial Browning Symposium in 2009 focused on Montana’s unique issues surrounding rural law and public lands, which featured panels, presentations, and discussions from academic leaders in the field, Governor Schweitzer, State Legislators, Congressional staffers, lawyers, ranchers, sport fisherman, and the USDA.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

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

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana State Bar	2010
U.S. District Courts, District of Montana	2011

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

I am the founder and managing partner of Cromwell Law, PLLC in Bozeman. I work with my partner Charlie Cromwell and our associate attorneys Shannon Foley and Jason Armstrong.

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

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Cromwell Law, PLLC	Managing Partner	2011 – present
Associated Students of Montana State University (ASMSU) Student Legal Services Program	Co-Director & Clinical Supervisor	2014 – present
13 th Judicial District Drug Court	Defense Attorney	2010 – 2011
Office of the State Public Defender	Attorney	2010 – 2011
U.S. Senate Finance Committee	Law Clerk	2009 – 2010

During Law School I worked for the following:

Missoula County Attorney's Office	Student Prosecutor	2008 – 2009
Montana Legal Services Association	Clinical Intern	Summer 2008
Crowley Fleck PLLP	Summer Associate	Summer 2007

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

I have been continuously employed.

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.

In late 2011, I founded Cromwell Law PLLC, a general practice law firm focused on providing Montanans with access to quality, affordable legal care. After a number of years representing clients in criminal law and dependency and neglect proceedings, my current private practice focuses primarily on

collaborative family law, mediation, limited scope representation, adoptions, pre-marital contracts and immigration. Collaborative family law is a complex legal negotiation process that bypasses traditional litigation and rather focuses on interest-based problem solving to reach amicable and lasting divorce settlements.

In 2014, after undergoing a competitive vetting process, Montana State University (MSU) selected Cromwell Law's comprehensive proposal to provide full and limited scope legal services to MSU students. As Co-Director of the Associated Students of Montana State University (ASMSU) Student Legal Services Program, I personally advise and assist approximately 120 students per year on legal issues related to misdemeanor and felony charges, family law, consumer protection, and immigration. Students pay \$10 for legal services and the MSU student government reimburses us at significantly reduced rates. Our Student Legal Services Program services between 400-500 students per academic year and has twice been selected as ASMSU's program of the year (2017 & 2018).

In addition to representing students in both a full and limited scope capacity, I manage the program, advise the ASMSU student government, oversee our legal services attorneys and staff, and oversee our 3rd year clinical law student as a Supervising Attorney for the Alexander Blewett III School of Law Clinic Program. Additionally, I organize annual legal outreach events such as: the MSU Law School Mixer, an annual event held in partnership with ABIII School of Law and ASMSU to introduce students to the practice of law by hosting a panel discussion and allowing students to meet with practicing attorneys, judges, law professors, military lawyers, and a supreme court justice (typically Justice Rice); and, the MSU DUI Wet Lab, an event held in partnership with the MSU Police Department, Montana Highway Patrol, the Montana State Crime Lab, and Bozeman City Attorney's office focused on DUI education and prevention.

Since 2015, I have served as Substitute Judge *Pro Tempore* in Gallatin County Justice Court. I set bond and bail conditions for defendants facing felony criminal charges; arraign, hear and sentence defendants during open court and scheduled hearings; handle omnibus hearings; rule on motions and orders of protection; and, partake in other corollary judicial and administrative matters.

My current practice is comprised of the following:

Family Law Advocacy – 30%

Family Law Mediation – 30%

Student Legal Services (Criminal, Family, Consumer Protection) – 30%

Immigration – 5%

Judge *Pro Tempore* – 5%

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

In 2007, Crowley Fleck PLLP hired me as a summer associate. I researched and drafted complex memoranda for Crowley partners in a variety of legal disciplines, including: oil and gas, property, insurance defense, and estates and trusts. I drafted appellate briefs, motions, and otherwise assisted civil litigation attorneys with discovery, depositions, and trial preparation.

In 2008 and 2009, I prosecuted criminal defendants for the Missoula County Attorney's Office in both justice and district court under Montana's Student Practice Rule. During my year at the County Attorney's, I prosecuted defendants in several jury trials and numerous bench trials. I negotiated plea agreements with defense attorneys, counseled victims, and drafted responses, briefs and motions.

In 2009, I served as a law clerk in the U.S. Senate Finance Committee and supported then committee chairman Senator Max Baucus and his personal staff. I researched legislative policy and drafted memoranda on constitutional, health care, criminal, immigration, Indian affairs, and climate change policy. I supported the Finance Committee by compiling reports on the Chairman's health care mark and assisted the majority whip to determine internal support for the Affordable Care Act.

In 2010, I joined the Public Defender's Office in Billings where I represented over 460 clients with matters involving everything from traffic tickets and criminal misdemeanors to felony charges and felony revocations. My caseload averaged over 100 cases at any given time throughout my tenure at the Public Defender's Office. From 2010-2011, I was appointed to serve on the 13th Judicial District Felony Drug Court where I represented clients charged with felony drug possession and use. From 2012 through 2014, I continued to represent misdemeanor and felony defendants as contract OPD counsel at Cromwell Law, PLLC. At the time, I practiced in city, justice, and district courts in the following counties: Gallatin, Park, Lewis and Clark, Broadwater, Jefferson, and Silver Bow.

From 2012 through 2014 I represented parents in dependency and neglect cases in the 18th Judicial District. I briefed issues, filed motions and advocated for clients in meetings with CFS officials and county attorneys, mediations, show-cause hearings, adjudication hearings, disposition hearings, and permanency and termination proceedings.

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

Given my experience practicing in multiple areas of law, I tend to consider myself a generalist. However, over the past 2-3 years, I have specialized more in family law advocacy, mediation, and student legal services (which includes criminal, family, immigration, and consumer protection law).

17. Do you regularly appear in court? Yes

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

Federal court	0%
State or local courts of record	95%
Administrative bodies	5%
Other	0%

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

25%

19. How frequently have you appeared in court?

2-3 times per month on average

20. How frequently have you appeared at administrative hearings?

1-2 times per year on average

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

Civil	34%
Criminal	66%
Other	0%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

No

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

7 jury trials.*

**Since 2009, I have tried 11 jury trials to completion.*

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

13 bench trials.*

**Since 2009, I have tried 19 bench trials.*

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

Adversary Counsel: Eric Goldwarg, Attorney
Angel, Coil & Bartlett
125 West Mendenhall, Suite 201
Bozeman, MT 59715
Tel: (406) 586-1926
Caption: *In re the Marriage of Donovan*, DR 19-249B

February 2019 – June 2019

Reopened: December 2019 – March 2020

District Court Standing Master Magdalena C. Bowen (406) 582-2140

Disposition: *Collaborative Family law case settled and the parties filed for joint dissolution.*

Adversary Counsel: Kyla Murray, City Prosecutor

City of Bozeman

121 N. Rouse Ave

Bozeman, MT 59771

Tel. (406) 582-2309

Caption: *State v. Polastro*, TK 115-2020-0828

January 2020 – April 2020

Judge J. Colleen Herrington (406) 582-2040

Disposition: *Deferred Prosecution Agreement.*

Adversary Counsel: CJ Cook, Attorney

Law Office of CJ Cook, PLLC

389 S. Ferguson Ave, Suite 205

Bozeman, MT 59718

Tel. (406) 924-3410

Caption: *In re the Marriage of Guthrie*, DR 19-334A

August 2019 – November 2019

District Court Judge Holly Brown (406) 582-2140

Disposition: *Settled at Mediation.*

Adversary Counsel: Ashley Carroll, Deputy County Attorney

Judge Guenther Memorial Center

1709 West College

Bozeman, MT 59715

Tel. (406) 582-3745

Caption: *State v. Pallegama*, TK 19-5382

Dec 2019 – May 2020

Judge Rick West (406) 582-2140

Disposition: *Change of Plea, Deferred Imposition of Sentence.*

Adversary Counsel: Justin Bryan, Attorney

Bryan Law Firm, PC

11 East Main St., Suites B&D

Bozeman, MT 59715

Tel. (406) 586-8565

Pre-Martial Contract Negotiation and Drafting (Note: Mr. Bryan and I have represented opposing parties on several pre-marital contracts over the past two years. The respective parties settled amicably and signed all pre-marital contracts.)

Adversary Counsel: Joseph Raffiani, Attorney

Raffiani Law Firm, P.C.

303 North Broadway, Ste. 705

Billings, MT 59101

Tel. (406) 839-9363

Caption: *In re the Marriage of Sands*, DR 18-489B

January 2019 – April 2019

District Court Standing Master Magdalena C. Bowen (406) 582-2140

Disposition: *Settled at Mediation*.

**I have recently served as mediator in the following cases:*

Caption: *In re the Parenting of V.M.J.*, DR 16-342A

Mediation: March 30th, 2020

Counsel: Katherine Hamilton, Attorney

Hamilton Law Firm, PLLC

1247 Stoneridge Drive

Bozeman, MT 59718

Tel: (406) 600-2500

Counsel: Kirsten Mull Core, Attorney

Law Office of Kirsten Mull Core, PC

1700 W Koch St #9

Bozeman, MT 59715

Tel. (406) 556-8485

Caption: *In re Marriage of Burns (early resolution, neither party filed a Petition)*

Mediation: April 29th, 2020

Counsel: Angie Cavallini, Attorney

Cavallini Law Office, PLLC

389 S. Ferguson, Suite 209

Bozeman, MT 59719

Tel: (406) 634-6623

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

Over the past five years, I have advocated on behalf of clients for the determination of appropriate child support in Department of Public Health and Human Services (DPHHS) administrative hearings for the Child Support Enforcement Division (CSED).

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

Presentation, Family Justice Coordinating Council, 18th Judicial District (FJCC)

May 27th, 2020

Topic: *Collaborative Law Option*. Along with my collaborative colleagues, I presented on the benefits of collaborative divorce as a means to reduce the 18th Judicial District Court contested family law docket.

Lecture, MSU Course BMGT 420: Leadership and Influence

November 11th, 2018

Topic: *Dispute Resolution*. I presented to MSU undergraduate students on the basics of dispute resolution, the types of conflict resolution we learn from our family of origin, the steps necessary to have difficult conversations, and the attorney's role in dispute resolution.

Mediation Instruction, Montana State University

August 20th-21st, 2018

Topic: *Basic Mediation Training*. Over two days, I helped train Resident Advisors (RAs) on mediation fundamentals in connection with the Community Mediation Center while serving as interim Executive Director.

Lecture, International Student Orientation, Montana State University

January 9th, 2018

Topic: *Federal and Montana Law Overview*. As part of MSU's international student orientation, I lectured on federal and Montana laws related to traffic and criminal issues, landlord-tenant, consumer protection, immigration, and the resources available to students.

Presentation, Family Justice Coordinating Council, 18th Judicial District (FJCC)

September 27th, 2017

Topic: *MSU Diversity Initiative*. I presented MSU's Diversity Initiative to the FJCC. The presentation included an ASMSU proposal that the Court consider allowing students to file gender change petitions under seal due to safety risks associated with gender reassignment.

Presentation, Gallatin County Bar Association Pro Bono CLE

March 23rd, 2017

Topic: *Limited Scope Representation as a Pro Bono Option*. I presented on the fundamentals of limited scope representation at the Gallatin County Bar Association's Pro Bono Panel CLE. The presentation was designed to give local attorneys additional options to fulfill annual pro bono requirements.

Presentation, Family Justice Coordinating Council, 18th Judicial District (FJCC)

September 28th, 2016

Topic: “*Uniform Collaborative Law Act*,” *Mont. Code Ann. § 25-40-101 et seq. (2015)*. I presented on the Uniform Collaborative Law Act and why my collaborative colleagues and I advocated for the Act’s introduction, sponsorship, and passage in the 2015 Montana Legislature.

Presentation, MT Supreme Court Access to Justice Panel

May 18th, 2016

Topic: *Limited Scope Representation*. I presented to Listening Panel Members of the Montana Supreme Court Access to Justice Commission regarding limited scope representation fundamentals and its positive impacts on access to justice.

Presentation, Family Law Section Toolkit CLE, MT State Bar

April 22nd, 2016

Topic: *Collaborative Family Law: A Different Approach*. During this Toolkit CLE, I introduced collaborative family law to the Montana family law bar as an alternative to litigation in qualifying cases.

Presentation and Discussion, Montana State University Law Day Panel

April 21st, 2016

Topic: *Constitutional Issues in Krakauer v. State*. In preparation for the MT Supreme Court’s annual Law Day oral argument at MSU, I presented and discussed the legal issues in *Jon Krakauer v. State of Montana* as part of multi-disciplinary panel at Montana State University.

Presentation and Testimony, Law and Justice Interim Committee, Montana State Legislature

June 27th, 2014

Topic: Along with several colleagues, I introduced the concept of Collaborative Law to legislators and interested parties. This included proposing confidentiality protections that required statutory codification to protect the Collaborative Law process and practitioners. We encouraged passage of the Uniform Collaborative Law Act now codified at *Mont. Code Ann. § 25-40-101 et seq.*

D. PROFESSIONAL AND PUBLIC SERVICE

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

[American Immigration Lawyers Association](#) (AILA); *Member*; 2020 – present

[National Legal Aid & Defender Association – Student Legal Services](#) (NLADA); *Member*; 2019 – present

[Montana Collaborative Professionals](#) (MCP); *Founder, Member, & Treasurer*; 2015 – present

[International Academy of Collaborative Professionals](#) (IACP); *Member*; 2013 – present

[Gallatin County Bar Association](#); *Member*; 2011 – present

[Montana Bar Association](#); *Member*; 2010 – present; *Member*; Dispute Resolution Committee; 2017 – 2020

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

Board of Visitors, Alexander Blewett III School of Law, University of Montana; 2019 – present

Board of Directors, Community Mediation Center; 2018 – present

Member, Prospera Business Network; 2018 – 2020

Board of Pilgrim Connect, Youth and Family Ministries, Pilgrim Congregational Church; 2017 – 2019

Board of Directors, Bozeman Symphony Orchestra; *Secretary*; 2012 – 2015

Family Readiness Group Leader for the 6th Legal Operations Detachment, U.S. Army Reserve Legal Command; 2012 – 2015

Member, [Military Spouse J.D. Network](#); 2012 – present

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

No

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

I chose a career in law because I feel deeply committed to serving my community. I believe attorneys are public servants, regardless of the type of law they practice. As officers of the court, we must possess the desire to protect, preserve, and improve American society through the promotion and pursuit of justice – the primary pillar upon which our society stands. Our founding fathers and elected officials, heeding the public’s desire for a fair and just democracy, fashioned a legal system bent on protecting and enforcing the rights and freedoms we hold dear. Attorneys and judges are in a unique position to be at the forefront of public service. We must continuously and consistently honor and respect the public’s desire for a fair system; one that promotes justice and facilitates societal progress.

I also believe attorneys have the responsibility to serve the public outside of traditional advocacy. Accordingly, I have consistently committed to public and community service throughout my life from serving on community organizations' boards of directors to filling an interim leadership role to assist a nonprofit in need. I feel serving the public is an obligation everyone – and especially attorneys – should eagerly accept.

E. PROFESSIONAL CONDUCT AND ETHICS

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

No

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

No

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

No

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

No

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

No

F. BUSINESS AND FINANCIAL INFORMATION

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

Yes. In January 2017, the Community Mediation Center (CMC) Board of Directors, a Bozeman-based nonprofit, asked if I would be willing to serve as part-time, interim Executive Director (ED) after the prior ED left unexpectedly. I accepted the offer until the CMC could raise funds sufficient enough to hire a fulltime ED. As ED, my duties included running the nonprofit, managing over 80 volunteers and staff, overseeing the CMC's Project Settle Mediation program which served Gallatin County Justice Court, and the CMC's Family Mediation program which served pro se litigants in the 18th Judicial District Court. During my time as interim ED, I wrote four grant proposals for the CMC, all of which were approved, totaling \$57,500 for operational and program sustainment and development. In addition, I developed a partnership program with MSU Resident Life to train Residential Life staff and Residential Advisors (RAs) in mediation and conflict resolution. During my tenure, the CMC trained MSU employees, MSU RAs, volunteers, and employees of Big Sky Youth Empowerment in healthy dispute resolution skills and techniques. I served as part-time, interim ED until October 2018 when the Board of Directors hired a full-time Executive Director.

- 38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.**

I am the managing partner and hold a majority membership interest in Cromwell Law, PLLC. If appointed as district court judge, I would resign my position and divest my interest in Cromwell Law, PLLC immediately upon appointment.

- 39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.**

Yes. The Community Mediation Center (CMC) paid me for my services as part-time, interim Executive Director from 2017-2018. This totaled 10% of my total income over the past five years.

Additionally, since 2015, I have received W-2 wages from Gallatin County for my role as Substitute Judge *Pro Tempore* in Gallatin County Justice Court. This accounts for less than 2% of my total income during the past five years.

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

No

- 41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you**

hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes

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

Yes

If not, please explain.

N/A

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

No

If yes, please explain.

N/A

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

No

G. WRITING SKILLS

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

During the past five years I have primarily researched legal issues in the following areas of law: constitutional, criminal, family, dependency and neglect, civil and criminal procedure, and immigration. Most recently I have drafted motions and briefs challenging the constitutionality of searches and seizures, addressing family law issues related to property and children, and for family law contempt matters. With a few exceptions, I draft and perform the legal research for matters in which I am lead counsel.

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

I routinely draft family law documents such as Petitions, Answers, Discovery, Memoranda of Understanding, Property Settlement Agreements, Parenting Plans, Prenuptial Agreements, Findings of Fact, Conclusions of Law, and Final Decrees. In addition, I draft demand letters, contracts, and memoranda for clients through our ASMSU Student Legal Services Program.

- 47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable. The writing sample should be as recent as possible.**

See attached Memorandum. Note: the recipient's name has been redacted since it was not otherwise disclosed as a matter of public record in the criminal matter referenced in the Memorandum. All other information contained in the Memorandum is a matter of public record having been briefed and argued in State v. Tarbell (Bozeman Municipal Court, Cause No. TK-19-3609).

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

50%

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

Yes, I am competent in both Westlaw and Lexis.

H. MISCELLANEOUS

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

As the managing partner of my firm and the parent of an energetic 6-year-old, my most recent focus has been participating in activities that increase my resiliency. My priority is physical and mental health and well-being. To that end, I enjoy daily exercise such as running, ultimate frisbee, mountain biking, hiking, classic and skate skiing, and downhill skiing. Since we took the training wheels off of my son's bicycle, he and I have adventured together along Bozeman's wonderful Gallagator and Main Street to Mountains trail systems while I run alongside him on his bike.

I believe in taking time for contemplation to allow myself to internally process my external reality. I love listening to *Hidden Brain* and *This American Life* podcasts and reading articles and books that contemplate our country's minute shifts, societal trends, and greater transformations. As a former American Studies major, I have always been interested in the interplay between sociology, psychology, politics, economics, race and gender, anthropology, popular culture, art, music, history and literature.

I am intentional about making sure I connect with others on a regular basis including my husband and son, family members, friends, and new associations. Cultivating meaningful relationships has given me greater emotional resilience in the face of life's stressors. Recently, my son and I planted a vegetable garden together and I felt a sense of renewal watching him learn about the cyclical nature of our world and his awe at the growth of our food from tiny seeds.

My resiliency practice allows me to be present and energizes me to face greater challenges.

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

Since turning 15 years old, I have been employed in various industries. In high school I worked in the healthcare industry at Saint John's Lutheran Home serving elders in the Alzheimer's unit. After high school, I took a gap year to tour and perform music around the United States with the *Up With People* Program. In college, I worked in the restaurant service industry and in a work-study capacity at the Carleton College bookstore.

In 2004, I interned for the U.S. Senate Finance Committee, which included aiding and assisting Senator Max Baucus and his committee staff. I helped organize congressional hearings, briefed the Senator, wrote legislative memos, and worked on the 2004 Jobs Creation Act.

Between college and law school I worked for Vail Resorts in Breckenridge, Colorado as a child and adult ski instructor. Directly prior to law school, I served as an AmeriCorps VISTA in Minneapolis, Minnesota tutoring Somali and urban American Indian children in basic literacy and writing.

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

I believe pro bono practice is not only essential to the well-being of our profession, it is critical to the public's access to justice. During the past five years, I have earned pro bono credit by volunteering for the Community Mediation Center as a family mediator, taking on several pro bono family law cases in a limited scope capacity, representing clients charged with misdemeanors, and organizing trainings for Montana attorneys and professionals in mediation and collaborative family law.

Furthermore, through our ASMSU Legal Services Program, I advocate for student clients at significantly reduced hourly rates. Student legal services are incredibly affordable for MSU students, with our clients paying only \$10 for their limited scope or full representation legal services.

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

In June 2009, the U.S. Supreme Court ruled on *Safford Unified School Dist. #1 v. Redding*, 557 U.S. 364 (2009), involving a thirteen-year-old girl subjected to a strip search by school authorities searching for unauthorized prescription medication. During oral arguments and deliberations, Justice Ginsburg sat as the lone woman on the Supreme Court after Justice O'Connor's recent retirement. Responding to her colleagues' comments during oral arguments, Justice Ginsburg stated, "They have never been a 13-year-old girl. It's a very sensitive age for a girl. I didn't think that my colleagues, some of them, quite understood."

Since 2009, Justice Ginsburg's comment stuck with me as I navigate the legal profession. I had for the longest time considered and held as opposites the following philosophies: the importance and value of having gender and racial diversity in the judiciary, and the fundamental nature of the judiciary which is to eliminate bias and remain objective. After contemplation, I have found that these two ostensibly opposing philosophies are not in fact opposite, but rather complimentary.

Any judge appointed or elected comes to the bench with a unique background, personal philosophy, social and cultural impacts, and complex life experiences. Judicial Canon 2, Rule 2.3 of the *Montana Code of Judicial Conduct* expressly prohibits bias and prejudice. Yet, an appointment or election to the bench does not in itself magically insulate an individual from potential bias. Judges are not robots and judicial decision-making is not software or a logic script. As psychologists have shown, our biases are influenced by our own experiences, cultural conditioning, media portrayal, and upbringing, among others. Psychologists have long discussed whether and how implicit or unconscious bias can be overcome. While there is no simple answer, it has become clear to me that greater diversification of adjudicators leads to a higher probability that biases can and will be identified and checked.

I believe different viewpoints expand the scope of discussion and can present additional information for consideration, thereby leading to better decision-making. A gender perspective, like Justice Ginsburg's in *Safford*, shows that rulings even from the highest court can illuminate unknown biases among those who enforce our laws and promote our system of justice. While judges are charged with following the law regardless of personal opinion, a diverse judiciary utilizes a broader lens to examine and evaluate cases, which can enhance fairness and lead to better outcomes for everyone.

Since diversification of the judiciary enhances objectivity, this, in turn, creates additional public trust in the judiciary. A more diverse court composition creates inclusivity and is more representative of the people seeking guidance and justice from the courts.

As Justice Ginsburg pointed out in her interview after *Stafford*, the differences between male and female justices are "seldom in the outcome." But then, she added, "it is *sometimes* in the outcome." (emphasis added).

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

I believe a good district court judge must fulfill four equally important judicial roles, each requiring different qualities to be effective.

A Judge's most recognized role is externally-focused and adjudicative. While in Court, a Judge must carefully listen to opposing parties, maintain courtroom decorum, determine facts, and appropriately apply the law. I believe a good Judge ensures procedures are followed, successfully manages their courtroom during hearings and trials, and seeks to instill public confidence in our judicial system. However, I believe the most important quality a judge can possess in this role is *legal courage*. A Judge must be willing to do what the law requires even though the decision may be unpopular. Regardless of

popularity, a Judge is charged with the responsibility to follow the laws promulgated by our legislature and by judicial precedent.

Second, a judge has an internally-focused and contemplative role: to soberly analyze and consider a matter before rendering a decision. In this role, I believe the most important quality is *integrity*. Judicial integrity necessarily includes a commitment to impartiality and the rejection of personal positions, opinions, and outside influences. To that end, judges must not allow identity, race, gender, sexual orientation, political status, wealth, or relationships with counsel to interfere. I also believe judicial integrity requires judges to think critically about potential biases they may hold and ensure they are not expressed in their decision-making.

Third, a judge's role is that of a manager. Judges must effectively manage their courtroom, caseload, staff and their own time. The quality most important in this role is *efficiency*. As I've experienced in my own practice, an efficiently run process resulting in an expeditious decision, even when adverse to a client, is preferable to a drawn-out process or delayed decision. Delays result in additional litigation costs and unnecessary suffering while parties languish in emotional uncertainty.

Fourth, I believe a judge serves as a steward of the Montana and Federal constitutions and our modern legal system – all of which form the bedrock upon which our society stands. In carrying out this great responsibility, I believe an important quality is maintaining *connection* to community. Judges have a civic and professional responsibility to educate the public about their role in governance, to seek feedback on how the judicial system can improve to better serve its community, and to ensure public confidence in the judiciary.

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

I do not believe there is necessarily inherent friction between *stare decisis* and flexibility in the law.

The doctrine of *stare decisis* – letting the decision stand – is an important and necessary concept in our judicial system. Recognizing and adhering to judicial precedent creates predictability and stability for those who find themselves before the court. The structure that precedent creates guides society and shapes our behavior within it.

In order for a prior decision to serve as precedent for a new case, the prior decision must have similar questions of law and factual bases. Take, for example, the U.S. Supreme Court's ruling in *Miranda v. Arizona*, 384 U.S. 436 (1966). The Court in *Miranda* established police officer requirements to advise an arrested person of their rights prior to questioning them. Because subsequent legal challenges contained similar legal questions and facts, the Court has upheld *Miranda* through *stare decisis* and *Miranda* warnings have become a socially accepted legal principle. This is proper under the doctrine of *stare decisis*.

On the other hand, there are plenty of times in the practice of law where novel legal questions or facts arise. In these circumstances, practitioners present novel arguments and the presiding judge must be

contemplative and exercise measured flexibility in their decision-making. Rather than basing a decision solely on precedent, the judge must conform the decision to the current legal landscape, which would include statutory interpretation and considering persuasive common law.

There are, however, rare examples of friction occurring when the court must break from precedent in the name of flexibility. For example, the Supreme Court, in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), overruled *Plessy v. Ferguson*'s "separate but equal" precedent. The Court recognized its precedent authorizing the separation of black and white students in public schools was anathema to both 20th century American society and, most importantly, the U.S. Constitution.

The doctrine of *stare decisis* allows our legal system to remain predictable. At the same time, flexibility in the law can coexist. This doctrinal harmony allows our legal system to grow and adapt to societal changes without significant disruption or conflict. Both doctrines remain necessary to achieve a stable, yet relevant, legal framework.

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

I believe the role of district court judge is critically important to a functioning, stable community. Not only can a judge be instrumental in improving an individual's life trajectory, a judge also protects children and the community from harm, resolves disputes between community members in a fair and just way, and upholds the legal framework of society. I care deeply about protecting our community's children and vulnerable populations, ensuring disputes are resolved in a healthy and efficient manner, and, to the degree it's possible, ensuring our system of justice affords community members the best life experience possible.

I see a variety of ways a judge can positively change the course of an individual's life, which conforms with my beneficent philosophy. In civil cases, a judge must ensure that individuals have the opportunity for their viewpoint to be heard and acknowledged, which alone can provide some relief for individuals. When the law is properly applied to the facts and the judge rules, finality replaces the uncertainty litigants shouldered throughout the suit. In criminal cases, a judge's sentence offers both peace to victims and their families and an opportunity for the defendant to correct their life course through treatment and rehabilitation.

Judges also positively impact a community through decisions that protect society's most vulnerable populations. In dependency and neglect cases, a judge has the unique role of protecting children and ensuring they are placed in a safe environment where they will have the best chance at a healthy, happy life. A judge, through ordering guardianships and conservatorships, ensures our growing elderly population and other vulnerable members of society are cared for and protected. In involuntary commitment proceedings, a judge seeks to ensure an individual is given the opportunity for treatment and assistance to meet their mental health needs. It resonates with me that judges have immediate, positive, and lasting impacts on our most vulnerable populations.

In addition to helping vulnerable populations, protection of the community as a whole cannot be overstated in importance. The behavioral choice an individual makes to injure another human can leave

deep and lasting scars – literally and figuratively – on victims, their families, and our community. As a judge, I would take on the responsibility to ensure that particular individual never has the opportunity to injure another person in the same manner. Instead, and whenever possible, I would seek to empower the offender to change his or her life’s course and repair the harm they have caused. It is important to me for us all to feel safe in our community, and I recognize the role a judge has in ensuring a safe environment.

Another judicial role that interests me is the ability to resolve the disputes of everyday life in a fair and just way. As a collaborative attorney and mediator, I have seen the magic and lasting relief between parties when we thoughtfully resolve their disputes in ways that satisfy or address their underlying interests. The judge sees community members in conflict and is tasked with bringing about social peace through justice.

In sum, I am seeking the district court judgeship because the diverse and impactful roles a judge fulfills are important to me as an attorney, a parent, and a member of our community.

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

In 2008, my peers elected me as Co-Editor-in-Chief along with fellow 3L Zachary Strong to lead the *Montana Law Review*. During my tenure as Co-Editor-in-Chief, I managed the publication and state-wide circulation of the *Montana Law Review*. Under my leadership, we unveiled a newly designed cover and updated website complete with electronic versions of the articles, increased circulation by 20%, incorporated student authorship into the *Review* as short comments, and organized the weeklong Browning symposium on rural law. The *Montana Law Review* is a highly regarded professional publication used as an important reference for legal research and legal trends affecting Montana’s practitioners. Furthermore, since Montana has adopted many uniform acts and has a relatively new, progressive state constitution, practitioners from other jurisdictions look to the *Montana Law Review* for guidance on emerging issues. As Co-Editor-in-Chief, I felt honored to take on a leadership role focusing on maintaining the legacy of and modernizing the *Montana Law Review*.

In 2011, I started Cromwell Law, PLLC a general practice law firm which, at the time, was one of the first firms in the state to provide limited scope representation as an affordable option for low and middle-income Montanans. I designed Cromwell Law to be a flexible, agile law firm operating entirely in the cloud while diligently conforming to the rules of professional conduct and client confidentiality. Since 2011, Cromwell Law has grown from just one employee (me) to four attorneys and staff. I have also been intentional about making Cromwell Law fundamentally collaborative in nature. Not only do we ensure our employees collaborate with each other but we also value and support the partnership our attorneys cultivate with each client. Furthermore, I ensure we conduct weekly office-wide meetings focused on resiliency, the social and cultural changes impacting our legal practice, and case conceptualization. I am proud of the firm model I have worked so hard to create over the past decade and am assured of its continued success.

This spring when COVID-19 first swept through the United States, Cromwell Law acted swiftly and without hesitation. We were able to transition operations completely online within a matter of hours and

to maintain continuity of client care through virtual legal services. Since March, our employees have predominantly worked from home armed with the latest technology and software platform subscriptions. Clients can schedule virtual meetings online and we have held all client meetings and my mediations via Zoom without complaint or hesitation from existing or new clients. I am also one of the few notaries in the state trained and certified to provide remote online notary services. Our understanding and training on the use of technology allowed us to respond quickly and efficiently to COVID-19 shut-downs and restrictions. We have continued to serve all of our clients, including our MSU student population, through virtual legal services. We have retained our business levels, kept all of our employees productive and on payroll, and most importantly, ensured the safety of our employees and clients. I feel incredibly proud of my firm's performance and comradery during this incredibly difficult time.

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

As a wife, mother, military spouse and attorney I have felt tension in the management of my many responsibilities. I have been challenged in my roles and competing interests, and I have worked incredibly hard to ensure these responsibilities can calmly co-exist. Despite the challenges, I appreciate the opportunities my multiple roles afford to keep me connected with my family, friends, and community. This has also allowed me to witness first-hand the dynamic social context from which disputes brought before a judge typically arise.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

Montana district court judges are some of the last legal generalists in an era of specialization – and they have to be. A district court judge has jurisdiction to hear not only civil, criminal, abuse and neglect, family, juvenile, and probate cases, but also to serve as the appellate court for our courts of limited jurisdiction. This reveals that the district court must address nearly every type of dispute that can arise in our great state.

I have always been drawn to generalism, its neutrality as a discipline, and the ability for generalists to divine inspiration from seemingly disconnected fields in order to analyze and answer difficult questions. As an American Studies major at Carleton, I integrated several subjects, methods and materials from numerous academic disciplines in order to study and better understand the United States and its place in the world. I found many of the most powerful and efficient ideas for resolving societal complications came from cross-disciplinary thinkers.

When I worked for the Public Defender's Office in Billings, I applied and was selected to serve as the defense attorney on the 13th Judicial District Drug Court. The drug court employs an interdisciplinary model that unites attorneys, judges, probation officers, and treatment providers to reduce recidivism and support felony drug offenders' recovery from drug and alcohol addiction. Watching my clients' transformation over the course of their time in Drug Court gave me optimism and hope that similar interdisciplinary models can be effective tools to solve complex societal problems.

My work in collaborative law also shows the value in interdisciplinary models and neutrality. In collaborative divorce, each client hires a collaboratively trained attorney and the parties together hire a neutral mental health professional and a neutral financial planner. The outcomes we see in our collaborative cases leave clients on good co-parenting terms, satisfied that their underlying interests were met, and their fears assuaged. Furthermore, instead of seeking relief from the Court for future disputes, clients return to the collaborative process for parenting plan modifications or to resolve potential contempt issues before filing, thus reducing the District Court contested family law caseload.

I have always been intellectually curious about analyzing and understanding the different perspectives and interests held by individuals and groups in disputes. This has no doubt drawn me to the neutral space in the practice of law, in my interdisciplinary work, my mediation practice, and successfully acting as Judge *Pro Tempore*. I believe my experience would make me a great district court judge and I sincerely thank the commission for considering me for this prestigious position.

[SIGNATURE ON FOLLOWING PAGE]

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 18th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

July 6, 2020
(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 Monday, July 6, 2020.

Mail the signed original to:

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

Send the electronic copy to: mtsupremecourt@mt.gov

To: [REDACTED]
From: Audrey Cromwell
ASMSU Legal Services Attorney
Date: February 12th, 2020
Issue: *Search and Seizure Issues in Dorms*

Potential MSU Liability Issue Identified: Potential liability on the part of MSU for failure to meet FERPA, statutory and constitutionally protected privacy rights of on-campus residents.

Factual Basis

As part of our representation of a student client in a criminal matter, we recently interviewed an Assistant Residence Director (ARD). In its criminal investigation, Montana State University Police Department (MSUPD) contacted the ARD and asked the ARD to provide law enforcement with information necessary to secure the identity of the resident and the specific location of his dorm room. The ARD disclosed confidential personal information about the student and conducted a "line-up" with the officer where they viewed dorm security video and tried to identify a student using student records and photos on StarRez, the Residential Life (Res Life) student housing database. The information on the StarRez system includes the resident's identifying information, photos, and a room number. After they identified the student, the ARD led the officer to the student's dorm room. The officer did not seek a search warrant from a judicial authority.

We have become aware of an "open lines of communication" policy between the Residence Life Staff and MSUPD. According to the ARD, she alone has been contacted four times this year by law enforcement for information retained by Res Life. According to the ARD, RAs always provide the requested information to law enforcement. Also, according to the ARD, RAs at Resident Life "have never been told not to provide the information." By asking RAs and Res Life staff to investigate potential criminal activity in conjunction with law enforcement, MSUPD may turn RAs and Res Life staff into "government instruments or agents" which triggers 4th Amendment protections.

Additionally, we became aware of a Res Life policy authorizing RAs and Res Life staff to visually search dorm rooms without written notice to residents. Staff members are knocking on dorm rooms, asking the residents to leave the door open and then conducting a visual search of the premises. If they find alcohol, they confiscate and discard the alcohol. If they find drugs during their visual search, they call MSUPD. We believe this search violates Montana statute Section 20-25-513 (*see below*).

Legal Authority

The Fourth Amendment of the U.S. Constitution protects people from unlawful searches and seizures. In order to search, law enforcement must obtain a warrant based on probable cause from a Judge describing the place, person or thing to be searched. In Montana, we have an additional constitutional protection in Section 10 of the Montana Constitution. The Montana

Supreme Court has held that Montana's unique constitutional language affords citizens a greater right to privacy and broader protection than the Fourth Amendment in search and seizure cases. *State v. Hardaway*, 2001 MT 252, 307 Mont. 139, 36 P.3d 900.

In addition, the Legislature has determined that the University system is obligated to respect a student's right of privacy in their residence and records. Mont. Code Ann. § 20-25-511 states:

It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities that are necessary to protect the health, safety, and *privacy of a person's residence and the privacy of the person's records* [emphasis added]. Intrusions by peace officers and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions . . .

Mont. Code Ann. § 20-25-214 reiterates that the constitutional protections apply to students living in dorm rooms: "All searches by *any* law enforcement official shall be in accordance with the laws of the city, county, state, and nation [emphasis added]." This provision includes MSU law enforcement and can include Residential Life staff if they are an "instrument or agent" of law enforcement.

The U.S. Supreme Court has set forth two critical factors in determining when a private citizen becomes a government instrument or agent. If the government knew of and acquiesced in the intrusive conduct, and if the party performed the search to assist law enforcement, then the party has become a government instrument or agent. *United States v. Miller*, 688 F.2d 652, 656 (9th Cir. 1982).

When law enforcement asks Residence Life staff to investigate criminal behavior of MSU students, the staff member may become an agent or instrument of law enforcement. When a staff member acts as an instrument or agent of law enforcement in conducting a search, 4th Amendment interests are implicated. *Id.*

The Legislature intends to protect the privacy of students in the same way that private citizens are protected in their homes. In that way, law enforcement officers and RAs or Res Life staff acting as government instruments or agents are required to get a warrant or fit within a warrantless exception in order to conduct a search of a student's dorm room and personal records.

Even if a Res Life staff member is not acting as a government instrument or agent there are limitations on when RAs and Res Life staff can enter a student's dorm room. Mont. Code Ann. § 20-25-513 delineates exactly when a Res Life staff member can enter the dorm room of a student:

An authorized official of the university or college may not enter the room of a student located at an institution unless the official has given the student a notice in writing. An emergency such as a fire or a call for help or when there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In an emergency, evidence of a crime obtained as a result of the emergency entry may not be admissible in any court of law unless due process of law has been satisfied in obtaining the evidence.

Under the application of the law, Resident Life staff have clear boundaries about when they can and cannot enter into a student's dorm room. The RA's visual search of student's dorm rooms constitute an "entry" and violate this Section of the code.

Finally, the Legislature sets forth when student records may be released in Mont. Code Ann. § 20-25-515. This section in pertinent part states: "A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction."

In addition to statutory protections, there are specific requirements mandated by the Family Educational Rights and Privacy Act (FERPA) which apply in this situation. In *Krakauer v. State of Montana*, 2016 MT 230 ¶ 24, 396 Mont. 247, 445 P.3d 201 (2019), the Montana Supreme Court interpreted FERPA, in the following way:

FERPA prohibits institutions from having a "policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of the students or their parents." *Miami Univ.*, 294 F.3d at 806 (internal brackets omitted) (citing 20 U.S.C. § 1232g(b)(1)). The regulation defines "Personally Identifiable Information" to include information such as a student's name, family names, date of birth, or "other information that, alone or in combination, is linked or linkable to a specific student *that would allow a reasonable person . . . to identify the student with reasonable certainty[.]*" [emphasis added].

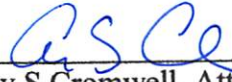
When MSU police request a Resident Life staff member to release a student's personally identifying information without a warrant, the student's reasonable expectation of privacy is violated under FERPA, the U.S. and Montana Constitutions, and Montana statutes.

Summary of Our Concerns

- 1) The Residential Life staff visual searches of dorm rooms violate Montana law.
- 2) MSUPD law enforcement requests may turn Residential Life staff into instruments or agents of law enforcement triggering 4th Amendment protections.
- 3) Res Life staff and MSUPD law enforcement individually and collectively are violating students statutory and constitutional rights.
- 4) MSU owes a duty of care to the students who reside on campus. By not protecting the students from MSUPD incursions into student life, MSU is violating that duty of care separate and apart from the actual violations.

- 5) Res Life staff and MSUPD are violating FERPA.
- 6) If it turns out that the release of FERPA information to law enforcement is systemic, MSU is at risk for losing its federal funding for violating FERPA.

If you have any questions or concerns, please do not hesitate to contact me.



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