

APPLICATION FOR

**DISTRICT COURT JUDGESHIP  
Eighteenth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: **Sheryl Wambsgans**
  - a. What name do you commonly go by? **Sheryl**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]  
  
Phone: [REDACTED]
4. Office Address: **129 W. Main Street, Suite B2, Bozeman, MT 59715**  
  
Phone: **406-404-6063**
5. Length of residence in Montana: **11 years**
6. Place of residence for the last five years: **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>
University of Nebraska-Lincoln: Independent Study High School	Bozeman, MT	2000	HS Diploma
Montana State University	Bozeman, MT	2005	B.S.: Sociology/Justice Studies
Albany Law School	Albany, NY	transferred	transferred
University of Denver-Sturm College of Law	Denver, CO	August 2008	J.D.

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

**MSU-Bozeman Honor Roll**

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

**No.**

## C. PROFESSIONAL BACKGROUND AND EXPERIENCE

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

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
<b>State of Montana</b>	<b>2012</b>

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

**Bridger Law, LLC, partnership with Margaret Sullivan Braun**

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>
<b>Office of the State Public Defender-Bozeman</b>	<b>Criminal Investigator</b>	<b>2011-2012</b>
<b>Office of the State Public Defender-Bozeman</b>	<b>Attorney</b>	<b>2012-2015</b>
<b>Brown, Uda, Dinwiddie, &amp; Mazurek</b>	<b>Associate Attorney</b>	<b>2015-2016</b>
<b>Element Law Group</b>	<b>Associate Attorney</b>	<b>2016-2017</b>
<b>Bridger Law</b>	<b>Partner/Attorney</b>	<b>2017-current</b>

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

**I have been employed continuously since completion of my formal education, however, I was employed outside of the practice of law. From 2008 through February 2009, I was employed in the service industry in Denver, Colorado. In February 2009 I moved from Denver, Colorado to Bozeman, Montana to be closer to immediate family. From February 2009 through 2010, I worked for Oversight Resources, LLC in Bozeman Montana as an Administrative Assistant and continued my work in the service industry part-time, until I received my first position with the Public Defender's Office in Bozeman in February 2011.**

**While I spent this time working outside of the field of law, I was educating myself, gaining invaluable experience working with a vast number of people and determining which area of practice would be the best fit for my skill set.**

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.

<b>Domestic Relations</b>	<b>80%</b>
<b>Estate Planning</b>	<b>5%</b>
<b>Criminal Defense</b>	<b>15%</b>

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

**While working with Margaret S. Braun at Bridger Law, we have worked collaboratively in Employment Law, Contracts, and Landlord-Tenant Law. I also work as a neutral professional in Domestic Relations matters, serving as a court appointed Parenting Coordinator or Guardian ad Litem, and I am a trained and certified family mediator.**

**Over the last 2 years, I have also served as a substitute judge for both Bozeman Municipal Court and Belgrade City Court, presiding over contempt proceedings, orders of protection, omnibus hearings, changes of plea, and arraignments.**

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

**Family Law and Criminal Defense**

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

What percentage of your appearances in the last five years were in:

Federal court	<b>0%</b>
State or local courts of record	<b>95%</b>
Administrative bodies	<b>5%</b>
Other	<b>0%</b>

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

**Following my work with the Public Defender's Office, I have continued my trial practice in my private work. I appear in Court regularly on contested Domestic Relations matters, pre-trial matters for my criminal cases, and have worked on a wrongful termination matter through the jury-trial phase.**

19. How frequently have you appeared in court?

**8 times per month on average.**

20. How frequently have you appeared at administrative hearings?

**One time per year on average.**

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

Civil	85%
Criminal	<u>10%</u>
Other	<u>≥5%</u>

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

**I have appeared before the Montana Supreme Court three times. Two of these matters were Domestic Relations matters, and one was an Employment matter.**

*Turner v. City of Dillon (Appellant)*

2020 MT 83

Opposing counsel: Cynthia L. Walker  
Poore, Roth, & Robinson PC  
1341 Harrison Ave.  
Butte, MT 59701  
(406) 497-1200

*In re the Marriage of Sager (Appellant)*

DA-19-0114

Opposing counsel: Burt N. Hurwitz  
Church, Harris, Johnson, & Williams, PC  
15 West Main Street  
White Sulphur Springs, MT 59645  
(406) 761-3000

*Hewitt v. Hewitt (Appellant)*

DA-18-0292

Opposing counsel: Mike Hewitt, *pro se litigant*

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

**Approximately twelve.**

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

**Approximately twenty. I have also presided over three trials as substitute judge for Bozeman Municipal Court.**

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.

***In Re the Marriage of Huber v. Masshardt***  
**Montana 5<sup>th</sup> Judicial District Court, Madison County, Cause No. DR-2017-38**  
**Judge Trial on Parenting: July 9, 2018**

**Opposing Counsel:** William J. Paul, Paul Law Office, PLLC  
2809 Great Northern Loop, Ste. 210  
Missoula, MT 59808  
(406) 728-0007

**Presiding Judge:** Hon. Luke Berger  
(406) 843-4235

***In re the Marriage of Newell***  
**Montana 18<sup>th</sup> Judicial District Court, Gallatin County, Cause No. DR-2018-49C**  
**Judge Trial on Relocation/Parenting: August 1, 2018**

**Opposing Counsel:** Kathryn E. Keiser  
676 Ferguson, Suite 7  
Bozeman, MT 59718  
(406) 624-6060

**Presiding Judge:** Hon. Magdalena C. Bowen, District Court Standing Master  
(406) 582-2156

***State of Montana v. Robert Patterson***  
**Montana 18<sup>th</sup> Judicial District Court, Gallatin County, Cause No. DC-18-198A**  
**Criminal Jury Trial: Scheduled for November 2019; case dismissed November 2019**

**Opposing Counsel:** Jordan Salo  
Bradley Bowen  
Gallatin County Attorney's Office  
1709 West College Street, Suite 200  
Bozeman, MT 59715  
(406) 582-3745

**Presiding Judge:** Hon. Holly Brown  
(406) 582-2160

***In re the Marriage of Killip***

**Montana 18<sup>th</sup> Judicial District Court, Gallatin County, Cause No. DR-18-522C**  
**Contested dissolution case settled prior to trial, 2019.**

**Opposing Counsel:** Lynda S. White  
Berg Lilly, PC  
1 W Main Street  
Bozeman, MT 59715

**Presiding Judge:** Hon. Magdalena C. Bowen, District Court Standing Master  
(406) 582-2156

***J.S. Turner v. City of Dillon, Montana; Mayor Michael L. Klakken***

**Montana 5<sup>th</sup> Judicial District Court, Madison County, Cause No. DR-16-13942**  
**Wrongful Termination; Jury Trial April 29<sup>th</sup>-May 2, 2019**  
**Co-Counsel with Margaret S. Braun**

**Opposing Counsel:** Cynthia L. Walker  
Poore, Roth, & Robinson PC  
1341 Harrison Ave.  
Butte, MT 59701  
(406) 497-1200

**Presiding Judge:** Hon. Kurt Krueger, District Court Judge  
(406) 497-6410

***In re the Parenting of NAS***

**Montana 6<sup>th</sup> Judicial District Court, Park County, Cause No. DR-17-20**  
**Contested parenting case settled; re-opened on an amendment and settled in 2020.**

**Opposing Counsel:** Karl Knuchel  
101 North E Street  
Livingston, MT 59047  
(406) 222-0135

**Presiding Judge:** Hon. Brenda R. Gilbert  
(406) 222-4130

***In re the Marriage of Hill***

**Montana 18<sup>th</sup> Judicial District Court, Gallatin County, Cause No. DR-20-157B**

**Contested dissolution case settled by mediation in 2020.**

**Opposing Counsel:** Angie Cavallini  
389 S. Ferguson, Suite 209  
Bozeman, MT 59719  
(406) 624-6623

**Presiding Judge:** Hon. Magdalena C. Bowen, District Court Standing Master  
(406) 582-2156

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

**I have appeared telephonically before the Administrative Law Judge in contested child support matters with the Montana Child Support Enforcement Division.**

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.

**NBI: Family Law from A-Z**  
**March 5, 2019 (Missoula) and March 8, 2019 (Billings)**  
**Topics:** *Marriage Dissolution-Process and Procedure*  
*Discovery in Divorce*

**NBI: The Rules of Evidence: A Practical Toolkit**  
**February 28, 2018 (Bozeman)**  
**Topic:** *Admission/Exclusion of Unique Evidence*

**D. PROFESSIONAL AND PUBLIC SERVICE**

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

**I have been a member of the Montana State Bar Association since 2012 and the Gallatin Valley Bar Association since 2015. I have been a member of the American Bar Association since 2017. I am also a member of the Montana Association of Criminal Defense Lawyers.**

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

**I have served on the Board of Big Brother Big Sisters of Big Sky Country (f/k/a of Gallatin County) since 2017. I have also volunteered with Gallatin Legal Assistance Clinic from 2015-2017.**

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.

**Philosophically, I believe it is important that community members commit a meaningful portion of their non-work time to community service in areas of greatest need, and/or where that individual can have the greatest positive impact. Participating in civic service brings our community together and makes Bozeman, Gallatin County and the State of Montana a better place for everyone.**

**I have implemented that philosophy in a number of ways. For example, I have provided modest means/pro bono legal services to those in my community who most need it in order to provide fair and equal access to justice. Additionally I have committed my time to organizations in my community that mean the most to me (e.g. Big Brothers Big Sisters).**

#### **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.

**In August of 2012, I was cited under Bozeman Municipal Code for failing an alcohol compliance check during an undercover sting operation while I was working in Downtown Bozeman as a**

**bartender. I pled guilty and was given a fine, as well as a deferred sentence, which was ultimately dismissed. I self-reported to the state bar admissions director and did not receive any further sanctions.**

**After this incident I became even more prudent and aware of checking identification, as well as educating and managing my employees at the bar and restaurant I was employed by. We stress how important it is to be diligent about our surroundings and the rules are required to work within. I continue to be certified regularly in alcohol compliance matters, as required by the State Liquor Licensing board.**

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

**No.**

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

**No.**

#### **F. BUSINESS AND FINANCIAL INFORMATION**

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

**I have continued to work intermittently in the service industry as a bartender and waitress. I have worked weekend days at the Cat's Paw in Bozeman since May 2016. I also worked part-time for Sante Fe Reds sporadically from 2011-2015.**

**I co-founded and run a mobile photobooth company which operates intermittently as its use is event driven.**

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 a partner in Bridger Law with Margaret S. Braun. I would resign from this entity if appointed to serve as a district court judge.**

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

**I have received income from my service industry employment, which accounts for approximately 20% of my income.**

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

**None.**

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

**Yes.**

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

**Yes.**

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

**No.**

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

**No.**

## **G. WRITING SKILLS**

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

**I predominantly do my own research and writing. My law partner and I often collaborate on larger cases and split the duties of research if necessary. I have researched and drafted pre-trial motions/briefs (both to suppress and dismiss), motions to compel, motions in limine, *ex parte* motions/briefs, motions for temporary restraining orders and applications for preliminary injunctions, various responsive pleadings, initiating petitions, jury instructions, and proposed findings of fact and conclusions of law.**

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

**I have prepared wills, power of attorneys, health care directives, quit claim deeds, promissory notes, and simple business contracts, including an employment agreement.**

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.**

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

**Approximately 60%.**

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

**Yes. My current firm uses Westlaw, and Lexis was used by the Public Defender's Office.**

#### **H. MISCELLANEOUS**

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

**Family is very important to me. As a result I love spending time exploring all that Montana has to offer in each and every season with my husband and puppies. I am fortunate to have most of my extended family in close proximity, as well as friends that have become family over the years, which allows us to get together often.**

**In the summer I enjoy hiking and swimming with my puppies. In the winter I love to get up to the mountains to ski and snowboard. Running is a priority and I do it on a year round basis. Finally, I have always had an artistic side that loves to paint, draw, color and create whenever and whatever I can.**

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

**I am very fortunate to have been raised with a passionate work ethic and entrepreneurial spirit. I began working at 16, in the service industry, as a hostess and busser. Through late high-school and college I worked in different capacities at Target, from security to cashier to management to working in the photo-booth. When I moved for law school, I jumped back into the service industry to supplement my income. Serving has helped me develop strong communication skills, people-skills, as well as a keen sense of how to work with others (i.e. good emotional intelligence) to accomplish goals and objectives. I have also developed the ability to de-escalate conflict in tense situations.**

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

**I have worked with the Gallatin Legal Assistance Clinic, providing free legal assistance to low income individuals who are representing themselves in domestic relations matters. I have also worked as a referral for Montana Legal Services for pro bono domestic relations matters. Most recently I have provided both pro bono services in misdemeanor criminal cases, as well as in a complex and contested dissolution matters. Our firm has also continuously offered modest means legal fee rates to lower income individuals.**

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

**When I was very young, I developed a distinct and molded vision of the justice system, and this is predominantly due to my father, as well as where we lived in California. I watched my single parent father work hard every day to raise me on a full-time basis, all while fighting for the ability to similarly raise my brother who was living separately with my mother. He was discouraged by the courts time and time again and spent the majority of 18 years struggling to understand why his son was legally prevented from living in a more stable and consistent household. None of this made sense to me, and as I got older, I wanted to find a better way to navigate the legal system for parents, like my father, going through similar circumstances.**

**I knew from a young age that I would enter the legal field to better understand why the justice system could be so harsh and unaware of what was in the best interests of a family and a child. The more I learned, the more I wanted to actively participate in shaping how others view the justice system, and to work for better outcomes for people like my father.**

**Once I became a lawyer and started working in Montana, I developed a deep respect for the law on a much broader basis, as well as a passion for representing and advocating for my clients in all matters. I believe that the justice system should have a hand in preserving relationships in families, supporting the best interests of children, upholding fairness and equality in all matters, protecting the fundamental rights of individuals, and guiding the citizens of all communities. I understand that the justice system is imperfect, but as a judge, I can have a significant impact in ensuring that the most fundamental principles of fairness and equality are upheld.**

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

**From what I have observed and experienced throughout my life and career as an attorney:**

**It is of the utmost importance that a judge listens and observes. A judge should be a mentor to the legal minds in his/her courtroom, modeling the respect, integrity and poise that is expected by the judge of others. A judge must be impartial, compassionate, and courageous. There must be a keen awareness and sensitivity to the diversity of needs, interests and goals that will come into the courtroom daily. A good judge will not talk *at* those in front of him/her but will talk with them to encourage dialogue and understanding. A judge must have strong legal skills and demonstrate good judgment. She/he will also demonstrate strong organizational and management skills. I believe that a judge's job is difficult, and challenging decisions need to be made regularly.**

**However, a good judge will make well-reasoned and sound decisions based on the evidence and testimony provided and distinguish her/himself by the quality of decisions that s/he makes.**

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.

**In the practice of family law, I specifically experience the tension that can be created between precedent and the necessity to be flexible in a way that I never really felt in other areas of practice. Family law has shown me the “gray area” that exists, the need to be able to pivot and bend. Every family is different, every situation is different, with varying circumstances and explanations for decisions that are made. This particular area of law requires great flexibility, both in thought and in action.**

**A court should rely on the guidance provided in the body of precedent, however, within those guidelines, a court can and should find an appropriate solution to the issue before it based on the specific facts presented. There is a delicate balance to be upheld between reliability, uniformity, and flexibility.**

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

**It has been a life-long aspiration of mine to become a judge in a community that I love and respect. My strong interest in becoming a district court judge is best evidenced by my work as a substitute judge in Bozeman and Belgrade. I have very much enjoyed this work, and believe my performance has been strong. I have a passion for the law, for justice, and for helping people. I believe I have a unique ability to relate to a diverse group of people, and see things from both sides, no matter where I stand. I am calm in crisis, even-tempered, honest and direct, kind and compassionate. I believe that my work as a neutral professional (Guardian ad Litem/Parenting Coordinator), and as a lawyer, as well as my life experiences, has underpinned my interest in the district court judge position.**

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

**First and foremost, starting Bridger Law and successfully navigating the ebbs and flows of owning a small practice with my partner for the last three years, has been one of the greatest accomplishments thus far in my career. Second, becoming a substitute judge for the Bozeman Municipal Court has given me invaluable experience, as I have learned an incredible amount about being on the bench. This was a defining event for me, as it cemented my interest in seeking a position as a judge in our community. Finally, each and every time I am thanked by a client for the work we do, I beam with pride and feel a renewed passion for advocacy and the law.**

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

**After law school, I made the strategic decision to take a few years off before sitting for the bar exam. Some saw this as a weakness because most students went straight into practice, however I saw this as an opportunity to solidify my goals and to ensure I was fully prepared to enter the legal**

profession. I used the time to explore and educate myself, as well as determine my future direction from a career standpoint. I worked, both in law and out of law, honing skills, building confidence, and meeting people. These experiences helped guide me to where I am today. I honestly believe that if I had not done this, I would not have achieved the career success I have experienced to date. I have learned more about flexibility, compassion, and decisiveness.

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

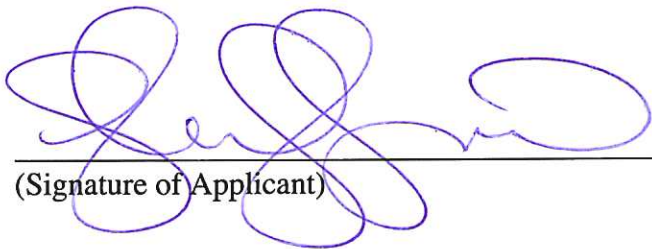
I have taken a unique path in my life that I believe is unmatched by any other. I have worked my way up in the legal field finding my place along the way, definitely following the road less traveled (beginning my legal work as an investigator, continuing in the service industry). I am constantly challenging myself and have historically set my mind to achieve stretch goals which I ultimately met, which included fighting through some trials and tribulations. I have an immense work ethic and a strong sense of integrity and honesty. I have worked in civil and criminal cases and have a vast understanding of, and respect for, the dynamics of the courtroom. I am organized and work effectively in my day to day practice to complete tasks efficiently and represent my clients effectively and with fierce advocacy. At this juncture in my career, and inclusive of my training and experience, I am well-qualified to serve as a district court judge.

#### 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.

6/11/2020

(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](mailto:mtsupremecourt@mt.gov)**

COPY

Sheryl Wambsgans  
BRIDGER LAW  
129 W Main Street, Suite B2  
Bozeman, Montana 59715  
phone: (406) 404-6063  
email: sheryl@bridgerlawmt.com

*Attorney for Petitioner*

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

IN RE THE PARENTING OF:  
N.A.S.,

A minor child,

CHENELLE AARON BADGETT,

Petitioner,

and

COLTEN JOHN SHIVELY,

Respondent.

Cause No. DR-2017-20

**RESPONSE TO RESPONDENT'S  
MOTION TO AMEND THE  
AMENDED PARENTING PLAN**

COMES NOW, Petitioner, Chenelle Badgett, ("Chenelle"), and respectfully submits the following Response to Petitioner's Motion to Amend the Amended Final Parenting Plan. This Motion is without merit and Respondent has failed to allege a factual basis sufficient to meet his heavy burden establishing a substantial change of circumstances which would warrant modifying the existing final parenting plan. Respondent also fails to include any legal argument or Memorandum of Law supporting his request to amend the current parenting plan. Accordingly, this Motion should be denied based upon the pleadings alone. Furthermore, Respondent's Motion alleges that Counsel for Chenelle was "notified and objects to the motion", when in fact, Counsel did not know about this Motion until counsel received the email Order for Mediation from the

1 Court. Counsel received the Motion by mail on September 9, 2019. Mr. Knuchel's staff contacted  
2 Counsel for Chenelle via phone *after* this Order was issued.

3  
4 On January 31, 2019, the Court approved and adopted the parties' Stipulated Final  
5 Amended Parenting Plan. This parenting plan was developed by the parties through mediation,  
6 after Chenelle notified Colten that she would be relocating to Bismarck, North Dakota. Since  
7 Chenelle has relocated and this plan was entered, the parties have followed this parenting plan and  
8 schedule. Respondent alleges no change of circumstances in support of his Motion to amend the  
9 parenting plan, and actually asks the Court to hold Chenelle in contempt for an alleged violation.  
10 The Motion is confusing, lacking in case law or a legal basis for changing the plan, and alleges no  
11 facts that support changing the parenting plan, let alone restricting Chenelle's parenting time so  
12 much so that it is supervised.  
13

14 Stability of custody arrangements, whether created judicially, by agreement or by default,  
15 is one the most crucial factors in a child's development. Recognizing this fact, "the Uniform  
16 Marriage and Divorce Act in effect creates a presumption that the best interests of the child are  
17 served by a continuation of initial custodial arrangements and allows this presumption to be  
18 overcome only in the most limited circumstances." *In re Custody of Andre*, 234 Mont. 80, 84, 761  
19 P.2d 809, 811-812 (1988) quoting Sharp, *Modification of Agreement-Based Custody Decrees:  
20 Unitary or Dual Standard?*, 68 Va.L.Rev. 1263, 1267-1268 (1982). Thus, § 40-4-219, MCA  
21 provides in relevant part:  
22  
23

24 (1) The court may in its discretion amend a prior parenting plan if it finds, upon  
25 the basis of facts that have arisen since the prior plan or that were unknown to the court at  
26 the time of entry of the prior plan, that a change has occurred in the circumstances of the  
27 child and that the amendment is necessary to serve the best interest of the child. In  
determining the child's best interest under this section, the court may, in addition to the  
criteria in 40-4-212, also consider whether:

28 (a) the parents agree to the amendment;

1 (b) the child has been integrated into the family of the petitioner with consent of the  
2 parents;

3 (c) the child is 14 years of age or older and desires the amendment;

4 (d) one parent has willfully and consistently:

5 (i) refused to allow the child to have any contact with the other parent; or

6 (ii) attempted to frustrate or deny contact with the child by the other parent; or

7 (e) one parent has changed or intends to change the child's residence in a manner  
8 that significantly affects the child's contact with the other parent.

9 § 40-4-219, MCA requires that a petitioning party establish, and the court find, the  
10 existence of changed circumstances based upon facts that were unknown to the court at the time  
11 the prior parenting plan was established. "The finding of changed circumstances is a  
12 jurisdictional prerequisite, and without such a finding, a district court may not modify an existing  
13 custody arrangement." *In re Marriage of Oehlke*, 2002 MT 79, ¶ 12, 309 Mont. 254, 46 P.3d 39,  
14 (citations omitted, emphasis added). As this language makes clear, in order to modify the  
15 parties' existing parenting plan, this Court must first find that a change has occurred in the  
16 child's circumstances based on facts that have arisen since the prior plan was entered or that  
17 were unknown to the court at the time the prior plan was entered. *Jacobsen v. Thomas*, 2006 MT  
18 212, ¶ 16, 333 Mont. 323, 14 P.3d 859. Only if and after the court determines that the  
19 [respondent] has met the combined jurisdictional requirements by establishing both "changed  
20 circumstances" and one of the other statutorily defined factors may the court go on to consider  
21 the best interests of the children. *In re Marriage of Gallagher*, 266 Mont. 358, 361, 880 P.2d  
22 1303, 1305-06 (1994).

23 A parent who seeks to amend a parenting plan must "submit, together with the moving  
24 papers, an affidavit setting forth facts supporting the requested plan or amendment." Section 40-  
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1 4-220(1), MCA. It is not enough to simply file the motion without specifying how the parenting  
2 plan should be amended; the requested amendment must be included with the moving papers.  
3 Section 40-4-219(7), MCA. Taken together, these statutes impose a burden on the parent seeking  
4 an amendment to show, through affidavits submitted with the motion to amend, facts that were  
5 unknown to the court when the parenting plan was adopted or that have since arisen and that  
6 necessitate amendment of the parenting plan. Thus, "a party seeking to modify a parenting plan  
7 pursuant to § 40-4-219, MCA, carries a heavy burden of proof." *Oehlke*, 2002 MT 79, ¶ 17. In  
8 this matter, Respondent submitted an affidavit alleging *one* incident where Petitioner didn't  
9 answer the phone. Respondent alleges that he "called pursuant to the parenting agreement...  
10 because he was concerned about where our child was" and that "Chenelle had not given him  
11 prior information that our son was going to be with her parents as provided in our agreement".  
12 He further alleges that he "was *never* able to locate Chenelle nor her parents, so he was *never*  
13 informed of where our child was" (emphasis added).

14 First, the current parenting plan provides:

15 The parties shall at all times know the child's residence and shall be able to maintain  
16 telephone access with him, during reasonable times and intervals. *Reasonable*  
17 *times shall be between 6:30 pm to 8:00 pm any evening. If the child is not available*  
18 *to speak with the parent calling, or wishes to call back later, the residential parent*  
19 *at that time will ensure the child returns the parent's call as soon as practicable.*

20 Respondent interprets this to mean that he can call *every* day, at any time that *he* is available,  
21 and if Petitioner does not answer, then she is in contempt. However, he does not find this  
22 interpretation of the rules to apply to him. When Petitioner attempts to reach the minor  
23 child during the call times allotted on *any* given evening, Respondent is regularly "out of  
24 service", unavailable, or unresponsive. Second, Petitioner notified Respondent that the  
25 minor child would be with her parents for the evening of Thursday via text message at 4:45  
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1 pm. See attached **Exhibit A**. Not only is Respondent aware that Petitioner's parents live  
2 in Wilsall, but he has been to their home. He seems to believe that because Chenelle is  
3 not available at every second that he expects her to be, that she is a danger to the child's  
4 well-being. Respondent, and Respondent's significant other at times, requires Petitioner  
5 to pull the child out of movies, activities and even wake him up when he calls in order to  
6 speak with him. If she doesn't, he threatens withholding parenting, calling the police, or  
7 Court action. Petitioner has lived in a constant state of anxiety due to Respondent's actions  
8 and demands. Furthermore, Respondent doesn't subscribe to the same rules he places on  
9 Petitioner. Over the last 30 days, Respondent has taken the minor child hunting, or has  
10 gone hunting himself, leaving no notice of where the child is, no contact information or  
11 alternative way for the Petitioner to reach the minor child. If Respondent isn't available,  
12 his significant other, Rachel, will no longer accept calls from Petitioner. It is a constant  
13 system of gamesmanship and control by Respondent.


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17 Lastly, once Respondent involved law enforcement in this incident, he was notified  
18 once again that the child was with Petitioner's parents and that he was safe. Deputy Nate  
19 Cameron spoke with Petitioner's mother Shawna, as well as the undersigned. Deputy  
20 Cameron determined that Petitioner was not in violation of the parenting plan, and  
21 completed a welfare check on the minor child, notifying the Respondent of his whereabouts.  
22 Respondent was able to speak with the child the afternoon of that Friday. Petitioner has  
23 requested the Calls for Service for this event, but at the time of this filing, has not received  
24 the reports. Respondent's assertions that he never knew where Chenelle or her parents  
25 were, and that he was never informed where the child was are blatantly and demonstrably  
26 false. Not only did Chenelle repeatedly inform Colten where the child was, he was also  
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1 informed by law enforcement. He clearly knew where the child was, as he admits to calling  
2 Chenelle's parents in his affidavit. Furthermore, within 24 hours, he was able to speak  
3 with the child by telephone. Pursuant to the parenting plan, if the child is unavailable at  
4 the time of a call, the parent is to have the child call as soon as practicable, which is what  
5 occurred in this "incident". Also, Respondent's argument that he is to know the child's  
6 residence at all times does not apply to this incident, as the child's residence did not change,  
7 he was merely staying with Shawna and Kip, his maternal grandparents, for one evening,  
8 which Colten clearly knew. Again, this is just another attempt by Respondent to extricate  
9 Petitioner from the minor child's life without due cause.  
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12 Based on the foregoing, Petitioner requests this Court dismiss Respondent's Motion.  
13 Respondent has not only failed to meet the jurisdictional requirements under the Montana  
14 law which require a change in circumstances to amending the parenting plan, but has also  
15 misapprehended the terms of the parenting plan and misrepresented the facts to this Court.  
16 There has been no change in circumstances and many of the allegations or "facts" in the  
17 Respondent's motion are demonstrably false.  
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19 RESPECTFULLY SUBMITTED this 20th day of September, 2019.

20 BRIDGER LAW

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23 Sheryl Wambsgans, Esq  
24 Attorney for Petitioner  
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