

Fourth Judicial District

1.	Full Name:	<u>Carrie Lynne Garber</u>	What name do you commonly go by?	<u>Carrie</u>
2.	Birthdate:	<u>[REDACTED]</u>	Are you a U.S. citizen?	<u>Yes</u>
3.	Home Address:	<u>[REDACTED]</u>	Phone:	<u>[REDACTED]</u>
Wills Law Firm				
4.	Office Address:	<u>323 West Pine Street, Missoula, MT 59802</u>	Phone:	<u>406-541-8560</u>
5.	Length of residence in Montana:	<u>51 years</u>		
6.	Place of residence last 5 years:	<u>Missoula, MT</u>		

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

1

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

Undergraduate

National Merit Scholarship Semifinalist (1985) & Finalist (1986)
 National Merit Scholarship recipient (1986)
 Linfield College, Communications Dep't., Academic Competition Scholarship (1986)
 Linfield College Honors Program member
 Montana State University Honors College member

Law School

UM Public Interest Law Caucus stipend award
 Honorable Myron E. Pitch scholarship
 Fran Elge Award for recognition of demonstrated commitment to human equality

Professional (See Appendix 1, attached)

Missoula Family Violence Counsel 2013 Criminal Justice Professional of the Year
 MT Board of Crime Control 2014 Innovative Community Improvement Award Nominee
 January 5, 2016 Missoula Police Dep't. Memo re: Exemplary Service

9. Were you a member of the Law Review? NO
 If so, provide the title & citation of any article published and the subject area of the article. N/A

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 Supreme Court	1994
U.S. Federal District Court, Montana District	1994

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

Attorney, Wills Law Firm (Kelly W. Wills)

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:

Employer/Address	Position(s)/Date(s)
Wills Law Firm, P.C. (Kelly M. Wills) 323 West Pine Street, Missoula, MT 59802	Attorney, June 2018 to present
Missoula Municipal Court (Honorable Kathleen Jenks) 435 Ryman Street Missoula, MT 59802	Judge <i>Pro Temp</i> , Jan. 2019 to present

Missoula City Attorney's Office 435 Ryman Street Missoula, MT 59802	Senior Deputy City Attorney, Dec. 2012 – June 2018 Deputy City Attorney, Dec. 2006 – Dec. 2012
Missoula Municipal Court 435 Ryman Street Missoula, MT 59802	Judge <i>Pro Temp</i> , May – Dec. 2006
Garlington, Lohn & Robinson Kelly M. Wills, Partner (now) 350 Ryman Street Missoula, MT 59802	Contract Attorney, May – Dec. 2006
Liberty Mutual Insurance Group Liberty Northwest Insurance Corp. (now) 2291 W. Broadway Missoula, MT 59808	In House Counsel, Dec. 2001 - May 2006 Field Attorney (part-time), Aug. – Dec. 2001
ASUM Legal Services University of Montana 32 Campus Drive, UC Suite 104 Missoula, MT 59812	Staff Attorney (part-time), May – Dec. 2001
Antonioli & Wade, P.C. (now) 700 South Ave. W, Suite F Missoula, MT 59801	Contract Attorney, May 2000 – Aug. 2001
Montana State Fund (now) 855 Front Street Helena, MT 59601	Special Assistant Attorney General Aug. 1998 – Feb. 2000
Public Defender's Office Yellowstone County 217 North 27 th Street Billings, Montana	Deputy Public Defender, Jan. 1996 – Aug. 1998
Montana Legal Services Association Miles City Office (now) 616 Helena Avenue, Suite 100 Helena, MT 59601	Managing Attorney, May – Dec. 1995
Honorable William E. Hunt, Sr. Montana Supreme Court 215 N. Sanders Street, Suite 323 Helena, MT 59604	Law Clerk, Aug. 1994 – May 1995

Agency Legal Services Bureau Montana Attorney General's Office (now) 1712 9 th Avenue Helena, Montana 59604	Legal Intern, Summer 1993
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13. If you have not been employed continuously since completion of your formal education, describe what you were doing. N/A

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

99% Insurance defense (workers' compensation, Title 39, chapter 71 MCA)
 5% Non-litigation review, legal research & advice
 10% Pre-litigation review, legal research & advice
 60% Pretrial Discovery & Motions practice
 7.5% Settlement negotiation practice
 9% Trial practice
 7.5% Appellate practice
 1% Other areas of law

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

- Montana criminal law & procedure
 - Experience from both defense & prosecution perspectives
 - Extensive experience drafting investigative subpoenas & search warrants
 - In-depth knowledge of the Montana Criminal Justice Information Act
- Montana constitutional law & history
 - Emphasis on Right of Privacy and Right to Individual Dignity as debated and enacted by the 1972 Constitutional Convention
- State and federal Rules of Evidence
- Montana Rules of Civil Procedure
- Local government creation, powers and operation
 - Emphasis on duties of city and county governments in the areas of law enforcement and detention of persons in custody
- Montana law regarding jurisdiction & powers of the judiciary & judicial officers
 - Emphasis on Canons of Judicial Conduct and proceedings before the Judicial Standards Commission
- State and federal law regarding the rights of victims of crime
 - Law & procedure related to Orders of Protection (MCA Title 40, chapter 15)
 - Uniform Interstate Enforcement of Domestic Violence Orders
 - Montana Domestic Violence Intervention Program (MCA Title 44, chapter 7, part 2)
- Montana Youth Court Act
- Child abuse and neglect & termination of parental rights law & procedure

- Montana appellate procedure & appellate legal writing
 - In-depth knowledge of writs of review, mandate and prohibition
- Missoula Municipal Ordinances (administrative, civil & criminal)
- Montana family law (dissolution of marriage, child custody & parenting plans, child support)
- Montana landlord/tenant law (residential & commercial)
- Commitment of persons with mental illness or developmental disability
- Montana Protective Services Act for Aged Persons or Disabled Adults
- Rights of persons with disabilities (MCA Title 49, chapter 4)
- Federal Health Insurance Portability and Accountability Act (HIPAA) & Montana Uniform Health Care Information Act
- Montana Medical Legal Panel Act and procedure

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

1. Criminal law & procedure, criminal trial practice
2. Montana workers' compensation law & procedure
3. Criminal & civil appellate practice

17. Do you appear in court regularly? YES

In last 5 years, what % of appearances was in:

Federal court	State/local courts of record	Administrative bodies
0 %	99 %	1 %

18. During the last five years, what percentage of your practice has been trial practice? 85 %

19. How frequently have you appeared in court? (times per month on average)

Last year:	Less than 1 time per month
Prior 4 years:	100-200 individual case appearances per month

20. How frequently have you appeared at administrative hearings? (times per month on average)

Last year:	Less than 1 time per month	Montana Dep't. of Labor & Industry, Employment Relations Division, Mediation Unit
Prior 4 years:	+/- 1 time per month	Implied Consent Refusal proceedings on behalf of Montana Dep't. of Justice, Motor Vehicle Div.

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

	Civil	Criminal
Last year:	99 %	1 %
Prior 4 years:	1 %	99 %
All 25 years as an attorney:	40 %	60 %

22. Have you appeared before the **Montana Supreme Court** within the last five years? YES
If so, state the number and types of matters handled:

I have appeared before the MSC 8 times in the last 5 years (1 civil, 7 criminal).
A complete list of my 24 MSC appearances is attached as **Appendix 2**.

Provide case caption, citation & names, addresses & phone #s of all opposing counsel for 5 most recent cases.

1. ***Neisinger (Appellee) v. New Hampshire Insurance Co. (Appellant)***

Supreme Court No.: DA 18-0400

Status: Briefs are fully submitted, pending decision by 5-member panel of Court.

Counsel for Appellee:

Thomas J. Murphy, Murphy Law Firm
P.O. Box 3226, Great Falls, MT 59403
(406) 452-2345

Counsel for Appellant:

Carrie L. Garber & Kelly M. Wills
Wills Law Office

Amicus Curiae: Montana State Fund, Montana Municipal Interlocal Authority (MMIA) & Montana Schools Group Workers' Compensation Program (MSGIA)

Subject matter: workers' compensation insurance

Procedural history: New Hampshire Insurance Co. appealed from decision/order of the Montana Workers' Compensation Court.

2. ***City of Missoula (Appellee) v. Shumway (Appellant)***

Citation to decision: 2019 MT 38

Opposing Counsel at trial & before District Court: Deputy Public Defender Carrie Gibadlo
Office of Public Defender, 610 Woody St., Missoula, MT 59802, (406) 523-5140.

Subject matter: criminal law

Procedural history: Criminal defendant appealed to District Court from judgment of Missoula Municipal Court following her conviction after bench trial *in absentia*; District Court affirmed conviction; defendant appealed to Montana Supreme Court which also affirmed.

3. ***City of Missoula (Appellee) v. Leuchtman (Appellant)***

Citation to decision: 2017 MT 303N

Opposing Counsel at trial & before District Court: Brian Lebsock (Datsopoulos, MacDonald & Lind), 201 W Main St. Suite #201, Missoula, MT 59802, (406) 728-0810.

Subject matter: criminal law

Procedural history: Criminal defendant appealed to District Court from Missoula Municipal Court's pretrial rulings and judgment & sentence following guilty verdict at jury trial; District Court affirmed pretrial rulings, judgment & sentence; defendant appealed *pro se* to Montana Supreme Court which also affirmed.

4. ***City of Missoula (Appellee) v. Wiley (Appellant)***

Citation to decision: 2015 MT 172N

Opposing Counsel at trial & before District Court: Lisa Kauffman 1234 S. 5th St. W., Missoula, MT 59801, (406) 542-2726

Subject matter: criminal law

Procedural history: Criminal defendant appealed to District Court from Missoula Municipal Court's pretrial ruling on motion to suppress; District Court affirmed; defendant appealed to Montana Supreme Court which also affirmed.

5. ***State [sic] [City of Missoula] (Appellee) v. Loberg (Appellant)***

Citation to decision: 2014 MT 185N

Opposing Counsel at trial & before District Court: n/a (*pro se* defendant)

Subject matter: criminal law

Procedural history: Criminal defendant appealed to District Court from Missoula Municipal Court's pretrial ruling; District Court affirmed; defendant appealed to Montana Supreme Court which also affirmed.

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

As a prosecutor for the City of Missoula from 2006 to 2018, I tried approximately 30 cases before juries of which approximately 26 went to verdict and approximately 4 settled during the course of trial with pleas of guilty or no contest.

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

During my 12 years as a prosecutor, I tried approximately 100-200 non-jury trials every year, for an approximate total of 1200-2400 non-jury trials (roughly 1000-1800 in the last 10 years). Shortly before departing the City Attorney's Office in 2018, a report generated by the office's *Justware* case management system (in place since 2008) showed that I was assigned more than 12,000 separate cases (each involving one or more offenses). The *Justware* report when converted to PDF format is 846 pages long and is available to the Commission in electronic format only (upon request).

Attached as **Appendix 3** is complete list of my Montana Workers' Compensation Court (WCC) trials and appearances with links to the published WCC decision(s) in each.

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.

All the cases I appeared in and tried as primary/solo counsel in the last two years were in Missoula Municipal Court before the **Honorable Kathleen Jenks** and **Assistant Judges Sam Warren and Alex Beal** (406) 552-6170. (Judge Beal was elected Missoula County Justice of Peace in Fall 2018 and now may be reached at (406) 258-3935.)

Of the hundreds of cases I prosecuted in my last two years at the City Attorney's Office, roughly half involved criminal offenses under Title 45, MCA. Of those Title 45 cases, I gave highest priority to cases of sexual assault, partner/family member assault, order of protection violations and stalking. Below are seven representative cases:

1. *City of Missoula v. Zerbst* (TK-620-2017-6636) Jury Trial December 2017, defense counsel Carrie Gibadlo, Office of Public Defender, 610 Woody St., Missoula, MT 59802, (406) 523-5140. Nature of matter: Sexual assault.
2. *City of Missoula v. Taylor* (TK-620-2017-1189), resolved by plea agreement, defense counsel Ben Williams, Office of Public Defender, 610 Woody St., Missoula, MT 59802, (406) 523-5140. Nature of matter: Sexual assault.
3. *City of Missoula v. Leuchtman* (TK-620-2016-266), Jury Trial September 8, 2016, defense counsel Brian Lebsock (Datsopoulos, MacDonald & Lind), 201 W Main St. Suite #201, Missoula, MT 59802, (406) 728-0810. Nature of matter: Violation of Order of Protection.
4. *City of Missoula v. McLaughlin* (TK-2016-7779) Bench trial February 16, 2017, defense counsel Ben Williams, Office of Public Defender, 610 Woody St., Missoula, MT 59802, (406) 523-5140. Nature of matter: Partner/family member assault.
5. *City of Missoula v. Mills* (CR-2016-1709), settled on eve of December 8, 2016, jury trial, defense counsel Dwight Schulte, 2425 Mullan Rd, Missoula, MT 59808, (406) 721-6655. Nature of matter: Indecent exposure.
6. *City of Missoula v. Stanley* (TK-620-2017-3), settled immediately before bench trial, defense counsel Pat Sandefur, conflict counsel for Office of Public Defender, 610 Woody St., Missoula, MT 59802, (406) 523-5140. Nature of matter: Partner/family member assault.
7. *City v. Bitney* (CR-2014-67), Jury Trial July 10, 2014, defense counsel Nate Holloway (Paul Ryan & Associates) 218 E Front St., Suite 210, Missoula, MT 59802, (406) 542-2233. Nature of matter: Driving under the influence.

In addition to the specific cases listed above, in large portion of cases involving Title 45 offenses, the Office of Public Defender is appointed. In addition to those listed above, the OPD attorneys with whom I worked and who can still be reached at that office (Office of Public Defender, 610 Woody St., Missoula, MT 59802, (406) 523-5140) are: Rob Henry, Scott Shefloe, Russell Lafontaine, Jeavon Ehler, Jake Coolidge, Kristina Lucero, Eli Parker, Ted Fellman, Brent Getty, Brian Yowell & Rob Greenwell.

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

Before any case can be filed in the Montana Workers' Compensation Court, the Workers' Compensation Act requires administrative mediation of all disputes in front of mediators employed by the Montana Dep't. of Labor & Industry, Employment Relations Division, Mediation Unit. The purpose of these mediation conferences and resultant recommendations by the mediators is to attempt to resolve disputes without litigation. In the past year, I have participated in three such mediation conferences

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

CLE lecturer: October 19, 2011, 5th Annual Montana Crime Prevention Conference, Track A: Community Response to Domestic Violence, panel member presentation entitled "A New Model for Accountability of PFMA Offenders"

Presenter: 2012 to 2018 City of Missoula Police Department - New Officer Training Seminars on aspects of criminal law and procedure most frequently encountered by City prosecutors.

Presenter: 2017 City of Missoula Police Department – Legislative Update Seminar following significant changes to criminal laws during 2017 Legislature.

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.

State Bar of Montana, 1994 – present
Western Montana Bar Association, 1996 – present

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. 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.

<u>Memberships:</u> (no offices held)	Missoula YWCA Missoula United Way Montana Shares	Humane Society of Western Montana Montana Public Television MONTPIRG
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30. Have you ever run for or held public office? NO If so, provide the details.

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

Because the majority of my legal career has been dedicated to direct, daily service to the community, it is difficult for me to separate my personal philosophy of public involvement from my practice of giving time to community service because, for all intents and purposes, they are one and the same. Attorneys like myself who choose to work for non-profit entities like Montana Legal Services Association (MLSA) or for governmental service entities like public defender offices and prosecutor offices do so because we believe we can improve the lives of the individuals to whom we provide legal services and advocacy, and in so doing, improve the communities to which we belong. In my short time with MLSA in eastern Montana, I was able to assist several victims of domestic violence to obtain divorces from their batterers. I also assisted several individuals with physical and mental health conditions to obtain disability benefits. (Congress that year then slashed funding for programs like MLSA, and as a result, the Miles City branch of MLSA was shuttered and the 17 counties served by that branch were again left with a toll-free number to MLSA in Helena or a minimum two-hour drive to the Billings MLSA office.) Twenty years later as a prosecutor, I recognized how the work of MLSA directly impacts communities. Specifically, when physically and mentally disabled individuals who are not able to secure employment and who are unable by themselves to wade through the morass of paperwork required to secure disability benefits, they are more likelihood than the average population to commit misdemeanor crimes. While it is fine for a community to be aware of and talk sympathetically about mental and physical illness, homelessness and addiction, those conditions will not improve unless the community commits the financial resources to actually provide services and assistance. While non-profit organizations valiantly attempt to provide outreach and services, the issues of mental illness, homelessness and addiction simply cannot be adequately addressed without government funding.

E. PROFESSIONAL CONDUCT AND ETHICS

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? NO
If so, provide the details.
33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? NO
If so, provide the details.
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? Do not include traffic violations unless they also included a jail sentence. If so, provide the details. 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? YES
If so, provide the details, including dates.

From 2006 to 2009, I provided property management services solely to my parents for their residential rental properties in Missoula. From 2009 to present, my husband and I have provided property management services for a single commercial rental property owned by my parents.

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.

Owner/Member, Cactus Properties, LLC from 2006 to 2009 (LLC dissolved 2010). I provided property management services solely to my parents. Duties: advertise & show available units; create application forms; accept & screen applications; interview applicants; negotiate, draft & execute rental contracts; receive & deposit payments for security deposits and monthly rent; conduct pre- and post- rental inspections of units; document pre- and post-rental condition of property; pay sewer & garbage service bills; arrange repair & maintenance; transfer rental income to my parent's holding companies.

From 2009 to present, I am the sole proprietor of Carrie L. Garber d/b/a Cactus Properties with the same duties as above but limited solely to a single commercial property. For estate planning purposes, my parents have been gifting the commercial property to my husband and me over time, and we anticipate the transfer of ownership of the property by the end of May 2019. If I am selected to fill the judgeship, my husband and I shall arrange for the dissolution of my sole proprietorship and will rely on the expertise of an attorney well-versed in the applicable laws to separate me from the income-producing property and rents received by placing them in a trust or other entity.

If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment. YES

39. State whether during the last 5 years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. YES
If so, identify source & approximate % of total income it constituted over last 5 years.

In the last 5 years, I have received income from Cactus Properties (as a sole proprietorship) equivalent to approximately 3-4% of my total 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. NO

41. If appointed by the Governor, are you prepared to disclose the information required under § 2-2-106, MCA, described below? YES

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.

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? If no, please explain. ☒ Yes ☐ No
43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)? If yes, please explain. ☐ Yes ☒ 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 yes, provide the details. ☐ Yes ☒ 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 last year in private practice, I have spent 80% or more of my time conducting legal research and drafting trial briefs, motions and Montana Supreme Court briefs. I have performed all my own research as well as research for other attorneys in the firm. I generally do all of my own brief writing but also have collaborated with the other attorneys in the firm. During the prior four years as a prosecutor, I performed 98% of my own legal research and writing, and the other 2% was done by law student interns as part of the UM Law School clinical internship program.

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.

Other types of legal documents that I have drafted in the last five years include: Applications for and affidavits in support of investigative subpoenas and search warrants; jury instructions and verdict forms; opening & closing statements; questions for direct and cross examination; subpoenas to appear at trial; plea offers; deferred prosecution agreements; discovery requests including interrogatories and requests for admission and production; responses to petitions for trial (work comp); quit claim deeds; bills of sale; realty transfer certificates; water right transfer certificates; Dep't. of Labor settlement petitions and documentation.

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.

Attached as Appendix 4 is 10 page excerpt from the City's Response Brief that I wrote during the District Court (Fourth Judicial District Court, cause no. DC-16-512) appeal of the *Leuchtman* case. If the commission wishes to review my most recent legal writing involving a civil case, the briefs I jointly authored with Kelly Wills in the *Neisinger* appeal listed above can be accessed online at the Supreme Court Public View Docket Search webpage: <https://supremecourtdocket.mt.gov/> under Active Docket.

48. What % of your practice in last 5 years involved research & legal writing?

Last year:	90 %
Prior 4 years:	10 – 20 %

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

Yes, I am exceptionally competent with both *Westlaw* and *Lexis*. I am equally competent with *Fastcase* (available for free to members of the Montana State Bar). I frequently utilize *leg.mt.gov/statute/* for online access to the 1995 through 2017 versions of the Montana Code Annotated and *sosmt.gov/arm/* for online access to the Administrative Rules of Montana.

Additionally, I am well-versed in and frequently use the following search engines & platforms: ABA-sponsored *Law Technology Today* search engine (free full-text law review/journal searches); Cornell University's *Legal Information Institute (LII)*; Thompson-Reuter's *Findlaw*; the Law Library of Congress' *LAW.gov*; Government Publishing Office's *govinfo.gov* site; the National Institute of Health's National Library of Medicine (*PubMed*), *legalbluebook.com* (for proper citation of legal authority), and *Google Scholar*.

In addition to online research, I am very familiar with the *Fullcourt Enterprise* software used by all Montana clerks of court and have hands-on experience utilizing *Fullcourt* during my recurring service as judge *pro temp* in Missoula Municipal Court. I am also adept with the use of the Montana Court Administrator's e-filing system and the State of Montana's e-pass system and file transfer service.

H. MISCELLANEOUS

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

I consider myself a "foodie" and an excellent cook who enjoys preparing and sharing meals with friends and family. When travelling to new places, I relish searching out and trying the best local restaurants at all ends of the culinary spectrum, from casual diners to gourmet establishments. I am a huge fan of "America's Test Kitchen," a program aired on public television and which publishes a monthly magazine and cookbooks.

I enjoy flower, perennial and vegetable gardening, and I aim to someday be certified as a Master Gardener through the MSU Extension Service. I inherited my mother's (and her mother's) affinity for sewing and crafting of all varieties. I inherited my father's (and his parents') affinity for music performance especially singing in choirs. As a youth, I played clarinet and piano. In high school, I took several years of voice lessons. In college, I belonged to a multi-denominational Christian choir at Linfield that traveled throughout Oregon and Washington to perform. I have participated in the Missoula community choir which performs Handel's *Messiah* during the holiday season.

I am an avid reader and have grown fond of listening to audiobooks especially when driving long distances. As a logophile (a person who relishes words and phrases), I have long been a fan of Montana Public Radio's program "Chrysti the Wordsmith." In law school, a good friend and I "invented" our own unique version of Scrabble by putting all the tiles from three separate Scrabble games together in an ice bucket and crafting our own extra-large playing board. We dubbed our creation "Ice Bucket Scrabble" and have shared joint custody of the bucket and board for nearly 30 years. Just this past weekend, my

husband and I played a round of “Ice Bucket Scrabble” with my stepson and his wife when they came to Missoula to visit with our first grandchild. My stepson was astounded by the official Scrabble dictionary that has resided on top of the tiles in the ice bucket and which bears the telltale signs of age and usage (and is missing the back cover and one or two pages of words that begin with the letter Z).

For the last 25 years, on an annual or more frequent basis, I gather together with three of my dearest friends generally somewhere in Montana, Idaho or Washington. Occasionally we have ventured elsewhere (i.e., Chattanooga, Nashville, Las Vegas, North Carolina). Twice we have travelled abroad on extended vacations together: the first time was a tour of Prague, Nuremberg, Salzburg, Austria & Budapest; and the second time was a glorious eighteen days split between Rome, Florence & the Tuscany area of Italy. The four of us are originally from Helena but are now spread across the country. Our gathering could take place in Two Dot, Montana, with a deck of cards and be just as entertaining, therapeutic and uplifting as any of our other gatherings.

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

My first unofficial job was on my family’s 2000-acre farm in the East Helena Valley where my parents taught my brother and I to do a wide variety of farming tasks: milking & feeding the dairy cows; planting vegetables & pulling weeds in the garden; herding cattle between fields & in the corral during branding; driving tractor to plow, seed and fertilize the fields; loading and driving grain trucks during harvest (at least until the folks at the Toston grain elevator asked my dad if he could send another driver in my place after I accidentally backed into their building during my junior year of college); helping dad survey ditches out of the canal; setting and moving irrigation pipes; and helping to build the house where my parents still reside (yes, I know how to hang drywall and solder copper plumbing).

My first official job was during my junior year of high school at the Baskins-Robbins ice cream shop in the Helena Mall. During my senior year of high school, I went to work as a group-home caregiver at Westmont, an organization that provided residential and vocational services to adults with developmental disabilities. I continued to work for Westmont during my first two years of college during summer and winter breaks as well as on nights and weekends during my legislative internships discussed below.

During the summer of 1988, my mother was diagnosed with breast cancer, and I temporarily transferred from Linfield College to MSU in Bozeman for Fall semester. (My mother is now a 30+ year survivor and vocal advocate for early breast cancer screening.) Through MSU’s internship program, I applied for and obtained a paid internship in Helena during the 1989 Montana Legislature working for the Montana Environmental Information Center (MEIC)(Director Jim Jensen), a non-profit grassroots environmental advocacy organization founded in 1973, dedicated to protecting and restoring Montana’s natural environment.

I returned to Linfield College in the fall of 1989 and finished my undergraduate degree in December 1990. I obtained another paid internship during the 1991 Montana Legislature with Montana Alliance for Progressive Policy, a non-profit Montana lobbying coalition, and its sister political action committee, the Montana Committee for an Effective Legislature (MontCEL), under the directorship of Rock Ringling and working with its numerous member-lobbyists including the late Robert “Bob” Campbell (an attorney and member of the Montana Constitutional Convention). MAPP/MontCEL was a coalition of diverse Montana citizen groups including MEIC, the Northern Plains Resource Council, the Montana Wildlife Federation, Trout Unlimited, the Montana Women’s Lobby, labor unions, the Montana Education Association, and low-income citizen advocacy groups. (An excellent history of MEIC & MAPP/MontCEL, among other organizations, can be found in the December 17, 2001 High Country News article entitled “Bad Moon Rising” ([link](#)).

52. Identify the nature & extent of any pro bono work you have personally performed during the last 5 years.

In the past five years, I have done *pro bono* legal work only for friends and family (family law related legal advice; drafting quit claim deeds, bills of sale, realty transfer certificates & water right transfer certificates). While employed at the Missoula City Attorney’s Office, I did not provide *pro bono* legal representation to anyone other than friends/family, but I did provide occasional non-legal assistance to victims of domestic violence and/or sexual assault. For example: I assisted a developmentally disabled victim of sexual assault who was homeless to find temporary housing & to arrange transportation to the courthouse during trial. I took her shopping for groceries and took her laundry home with me to wash so that she would be able to wear something clean at trial. Following trial, I helped her make arrangements to move across the country to reside with family, assisted her in booking her flight, arranged for payment of the ticket, helped pack her few belongings, and shipped her the items that did not fit in the luggage I donated to her. I assisted her in obtaining certified copies of her birth certificate and to obtain a Montana identification card so that she would be able to board the plane. On the day of her flight, I drove her to the airport, obtained clearance from TSA to accompany her into the boarding area, met with an airline representative to explain that this was her first flight and requested special assistance for her in the boarding process and during transfer to her connecting flight.

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

My view of the justice system was most influenced by the late Judy Wang who was too briefly my co-worker, mentor and friend. Judy was the Assistant Missoula City Attorney for well over two decades. Judy was at the forefront of drafting and lobbying for the enactment of Montana laws to address domestic and intimate partner violence. It was Judy who approached me about becoming a prosecutor in 2006. During the 30+ days in 2006 that I served as judge *pro temp* in Missoula Municipal Court, I had the privilege of observing Judy

in the courtroom where she gave voice to the victims of domestic violence and held batterers accountable for their actions. Having subsequently attended two separate week-long trainings on sexual and domestic violence, I can personally attest that Judy's ability to educate a jury about the cycle of violence—that hard to grasp phenomenon which draws victims back to their abusers—was extraordinary and unparalleled. I asked her once why she remained at the City Attorney's Office focusing on misdemeanor sexual assault and domestic violence when she clearly had the aptitude to move into felony prosecution. Her answer was something along the lines of, "Because most sexual and domestic violence happens at the misdemeanor level, this is where I can be of greatest service." Judy firmly believed that only the thinnest of lines separated misdemeanor incidents of domestic violence from becoming homicides. Because of that thin line, she believed that the long-term consequences of misdemeanor domestic violence were just as devastating to families and communities as domestic violence homicides, and that by holding offenders accountable for misdemeanor acts of domestic violence, the offender would be less likely to cross that thin line in the future. Her dedication to "fighting the good fight" continues to be an inspiration to me today. The sad irony of her death is that she was traveling back to Missoula from Billings where she had made her annual presentation at a domestic violence conference when a driver under the influence of marijuana, travelling at an excessive speed, struck her vehicle on the interstate causing it to flip and crash. I will never forget the phone calls that evening from City Attorney Jim Nugent to inform me of the accident and that she was being life-flighted to Missoula and the later call to inform me that she did not survive. With her death, Montana lost one of its most valuable, dedicated and unsung public servants.

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

The most important quality that a good judge must possess is the ability to be balanced and to maintain balance. As a noun, balance is synonymous with fairness, impartiality, steadiness and equipoise between contrasting, opposing or interacting elements. As a verb, balance is synonymous with weighing, evaluating and considering. Among the balances that I would bring to the position are:

- a balance of civil and criminal experience;
- a balance of criminal defense and prosecution experience;
- an in-depth understanding of the balance between the rights of the accused, the rights of victims and the interests of society;
- a commitment to the public policy requiring a balance between imposing penalties and offering assistance;
- a balance of organization and flexibility;
- a balance of compassion and objectivity;
- a balance of detail and brevity;
- a balance of meticulousness and efficiency;
- a balance of pragmatism and creativity;
- a balance of gravity and humor.

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.

The jurist Roscoe Pound once said, "The law must be stable, and yet it cannot stand still." To accomplish this balance, our judicial system operates under two closely related concepts: the doctrine of binding precedent and the principle of *stare decisis*. A legal precedent is a decision by a court that can be used as guidance by the same or other courts to help resolve future legal questions of the same nature. The doctrine of binding precedent is that lower courts are bound by, i.e., required to follow, the decisions of the courts above them. A state trial court is bound by the decisions of that state's highest court on questions of state law (provided those decisions do not violate the U.S. Constitution) and by the decisions of the U.S. Supreme Court on questions involving the U.S. Constitution and federal law. The principle of *stare decisis*, while similar to binding precedent, is not the same. Under the principle of *stare decisis*, courts tend to want to follow their own precedent even when not required. For example, once the Montana Supreme Court decides an issue of state law, it is free to change, and even reverse, its interpretation of the same state law in a subsequent case. In the recent U.S. Supreme Court decision *Franchise Tax Bd. of California v. Hyatt*, (587 U. S. ____ (2019)), Justice Thomas reiterated that "*stare decisis* is 'not an inexorable command.'" However, just because a court can change or reverse a prior ruling does not mean that it will do so, and in most instances the original ruling is gradually changed by distinguishing subsequent cases from the original, which when repeated over time, results in the abandonment or modification of the original ruling. By applying these concepts, a balance historically has been, and can continue to be, struck between stability and flexibility in the law. It is my position that district court judges are bound by the decisions of the Montana and U.S. Supreme Courts, and that they should strive for consistency in their own decisions which are not controlled by binding precedent. Where a party seeks to overturn or modify precedent, the district court serves as the forum where the parties on each side should be allowed to fully present evidence and make arguments for and against, i.e., to create a record from which the higher court can assess the request independently of the ruling of the district court.

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

My decision to become an attorney and my decision to seek a judgeship rises from my undergraduate degree in political science where I carefully read the debates between the architects of our Constitution in the Federalist Papers. From those debates, I adopted a personal, fundamental belief: In our nation of representative democracy where the citizenry freely make political decisions by majority rule, majority rule must be carefully balanced by meaningful guarantees of individual human rights to protect those in the minority from the "tyranny by the majority."¹ I believe our judicial system is the ultimate forum in which this necessary balance is created, maintained and enforced. Without a judiciary willing to

recognize and enforce fundamental human rights, examples of prior decisions made by majority rule that would have remain unchecked but for the judiciary are:

- married women are the property of their husbands;
- a person accused of a crime by the government who cannot afford to hire an attorney is left to defend himself or herself; and
- state sanctioned marriage between two persons of the same sex is prohibited.

While the Montana and U.S. Supreme Court have the ultimate power to decide such issues, the function of a district court is to allow the parties a full and fair hearing or trial during which a record of the facts and arguments can be made. Regardless of a judge's personal beliefs regarding a law created either statutorily or by legal precedent, the parties before the district court must be allowed to present their evidence and make their arguments and to do so on a level playing field.

¹ A phrase popularized by political scientist Alexis de Toqueville and the philosopher John Stuart Mill.

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

Two of my accomplishments that I am most proud of are the following items:

1. *Missoula City Attorney Office Domestic Violence Accountability Project Grant Application & Awards.* From 2011 to 2015, with input from the attorneys and assistance of staff, I researched and wrote grant applications to the Montana Board of Crime Control and successfully secured four years of funding totaling over \$150,000 allowing the Missoula City Attorney's Office. The grant funding allowed the creation a full-time Domestic Violence Legal Assistant (DVLA) position and pay for portions of other staffing related to domestic violence. Demonstrating the success and importance of the DVLA position, the Missoula City Council agreed to fully fund the position. The grant funding thereafter culminated in the creation of a fifth full-time prosecutor position to better address domestic violence as well as the crushing caseload of the prosecution team.

2. *House Bill 195 – 2015 Montana Legislative Session*

I approached Missoula Representative Nate McConnell, an attorney, and secured his agreement to sponsor legislation to amend an existing criminal procedure statute to clarify the original legislative intent to the statute and to change a portion of the statute to reflect that original intent. I drafted the language of the bill on behalf of Rep. McConnell and prepared a point brief for him to argue in support of the bill in the House and Senate Judiciary Committees. I contacted the Montana Attorney General's office and obtained the support of the AG and his staff. I drafted a letter for City Attorney Jim Nugent's signature on behalf of the Missoula City Attorney's office in support of the bill. The bill passed both the House & Senate and was signed into law by Governor Steve Bullock.

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

I do not believe there is any additional information to disclose to the Commission.

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 believe that few people possess the unique combination and balance of experience and qualities that I possess. It is important to remember that the Fourth Judicial District encompasses more than the urban area of Missoula and that the rural areas within the District would be pleased to see a candidate on the ballot who is a fifth-generation Montanan who grew up working on the family farm.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 4th 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.

5/30/2019



Date

Carrie L. Garber, applicant

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Thursday, May 30, 2019.

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

APPENDIX 1

Awards & Commendations

CARRIE GARBER

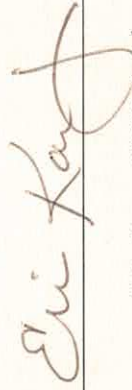
MISSOULA FAMILY VIOLENCE COUNCIL
**2013 CRIMINAL JUSTICE
PROFESSIONAL OF THE YEAR AWARD**

"A person who demonstrates a commitment to eliminating barriers and providing a compassionate and empowering experience to victims engaged in the criminal justice system and/or demonstrates dedication to ensuring accountability of partner and family member assault offenders."

CARRIE GARBER

Your hard work and dedication has made a difference in the lives of many.

On behalf of the Missoula community, we thank you for your service.



Erin Kautz, MFVC President
October 2, 2013



Montana Board of Crime Control

is pleased to honor

Carrie Garber

as an esteemed

2014 Innovative Community Improvement Award Nominee

We are honored to acknowledge you and your dedication to your profession, Montana, and its citizens, by helping to improve the quality of life, reducing the fear of crime and providing measurable, positive results within your community. You are truly a credit to your profession and an inspiration to all Montanans.

Laura Obert

Laura Obert, Chair
Montana Board of Crime Control

Don Merritt

Don Merritt, Acting Executive Director
Montana Board of Crime Control

September 16, 2014



CITY OF MISSOULA

Police Department

"Honor, Valor, Pride"

Memo

Date: January 5th, 2016

To: City Attorney Jim Nugent &
Chief Prosecuting Attorney Andrew Scott

From: Lt. Sandra A. Kosena

Subject: Exemplary Service- Sr. Deputy Attorney Carrie Garber &
Deputy City Attorney Angie Robertson-Bakken
2015-54333

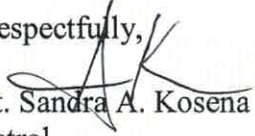
Dear Sirs,

I wanted to take a moment to recognize the professionalism and passion demonstrated by Ms. Garber and Ms. Robertson-Bakken during the initial stages of the investigation into the welfare of Ms. Charlie Wyrick on 12/24/15. As you are aware, the information gathered with their assistance culminated in the discovery of a homicide in which the suspect was apprehended and the body of the victim recovered.

Without their immediate interest and concern for the victim, officers would not have had the support and the necessary search warrant to get in the residence to complete the welfare check. Carrie and Angie were quick to act on the information provided by the complainants and on the information provided by our officers as they investigated each possible lead. I believe this timely response prevented the further destruction of evidence, the flight of the suspect and the ability to find Ms. Wyrick before further Montana weather made her discovery unlikely.

I am aware their involvement in this investigation has effected them greatly and wish to remind them while our hopes to find Ms. Wyrick in a safe location away from her batterer were dashed, they have done a great service to her and her family.

As the immediate supervisor to the line officers on duty that day, I know all of us appreciated their help and guidance.

Respectfully,

Lt. Sandra A. Kosena
Patrol
Missoula Police Department

APPENDIX 2

Montana Supreme Court Appearances

CARRIE GARBER

Montana Supreme Court (MSC) appearances of Carrie L. Garber

Electronic images of the decisions/orders listed below and associated briefing may be viewed via the Public View Docket Search platform <https://supremecourtdocket.mt.gov/>.

Direct links to third-party platforms (i.e., Findlaw, Justia, Casetext) and the Montana Workers' Compensation Court's database where electronic images of MSC decisions may be viewed are noted in parenthesis. To access a link, hover cursor over link and press Ctrl while simultaneously clicking on link.

Pending Cases

1. *Neisinger v. New Hampshire Ins. Co.*, DA 18-0400
2. *City of Missoula v. Metz*, DA 18-0360

Closed Cases

1. *City of Missoula v. Shumway*, 2019 MT 38 ([link to decision](#))
2. *City of Missoula v. Leuchtman*, 2017 MT 303N ([link to decision](#))
3. *MacPheat v. Jenks*, OP 15-0758 (Writ of Supervisory Control denied)
4. *MacPheat v. City of Missoula*, OP 15-0709 (Writ of Supervisory Control denied)
5. *State [City of Missoula] v. Wiley*, 2015 MT 172N ([link to decision](#))
6. *State v. Loberg*, 2014 MT 185N, 375 Mont. 555, 346 P.3d 1134 ([link to decision](#))
7. *City of Missoula v. Moore*, 2011 MT 613, 60 Mont. 22, 251 P.3d 679 ([link](#))
8. *City of Missoula v. Cox*, 2008 MT 364, 346 Mont. 422, 196 P.3d 452 ([link](#))
9. *Thompson v. Liberty Northwest Ins. Corp.*, 2004 MT 166N ([link to decision](#))
10. *Mathews v. Liberty Northwest Ins. Corp.*, 2003 MT 116, 315 Mont. 441, 68 P.3d 865 ([link to decision](#))
11. *Hanks v. Liberty Northwest Ins. Corp.*, 2002 MT 334, 313 Mont. 263, 62 P.3d 710 ([link to decision](#))
12. *Powell v. State Comp. Ins. Fund*, 2000 MT 321, 302 Mont. 518, 15 P.3d 877 ([link](#))
13. *Matthews v. State Comp. Ins. Fund*, 1999 MT 225, 296 Mont. 76, 985 P.2d 741 ([link to decision](#))
14. *State v. Renee*, 1999 MT 135, 294 Mont. 527, 983 P.2d 893 ([link to decision](#))
15. *Henry v. State Comp. Ins. Fund*, 1999 MT 126, 294 Mont. 449, 982 P.2d 456 ([link](#)),
**(orally argued Feb. 18, 1999)

16. *State v. Ommundson*, 1999 MT 16 (co-counsel on appellant's brief but not named in decision) ([link to decision](#))
17. *State v. Nelson*, 1998 MT 227, 291 Mont. 15, 966 P.2d 133 ([link to decision](#))
18. *State v. Ahto*, 1998 MT 200, 290 Mont. 338, 965 P.2d 240 ([link to decision](#))
19. *State v. Herrera*, 1998 MT 173, 962 P.2d 1180 ([link to decision](#))
20. *State v. Angeline*, 1998 MT 139, 961 P.2d 1251 ([link to decision](#))
21. *State v. Robison* (1997) 281 Mont. 64, 931 P.2d 706 ([link to decision](#))
22. *Gardner v. Yellowstone County*, No. 96-519 (Writ of Review granted)
23. *State v. Walker* (1996), 280 Mont. 246, 930 P.2d 60 ([link to decision](#))
24. *State v. Mora* (1996), 277 Mont. 411, 922 P.2d 516 ([link to decision](#))

APPENDIX 3

Montana Worker's Compensation Court Appearances

CARRIE GARBER

Montana Workers' Compensation Court (WCC) appearances of Carrie L. Garber

All decisions, rulings and orders of the WCC have been published online since 1993 at wcc.dli.mt.gov/cases.asp. A link to the WCC's decisions in each of the cases I tried or appeared are listed below and underlined, followed by a short case title. To access a link, hover cursor over it and press Ctrl while simultaneously clicking on link.

Representing Liberty Northwest/Liberty Mutual Insurance Group

1. [2005 MTWCC 49](#) MSF v. LNW in re: Laundry
2. [2005 MTWCC 2](#) Purkey v. AIG & LMFIC
3. [2004 MTWCC 31](#) Higgins v. LNW
4. [2004 MTWCC 24](#) LMFIC v. Warner
5. [2004 MTWCC 21](#) Lockwood v. LNW
6. [2004 MTWCC 16](#) Thompson v. LNW
7. [2003 MTWCC 42](#) Dietrich v. LMIC
8. [2002 MTWCC 56](#) Edmundson v. LM
9. [2002 MTWCC 54](#) Smith v. LMFIC

Representing Montana State Fund (State Compensation Insurance Fund)

1. [2000 MTWCC 8](#) Kapphan v. SCIF
2. [2000 MTWCC 7](#) R.J.S.T. v. SCIF
3. [2000 MTWCC 33](#) Parmer v. SCIF
4. [2000 MTWCC 15](#) Weatherwax v. SCIF
5. [1999 MTWCC 68](#) Weatherwax v. SCIF
6. [1999 MTWCC 52](#) Johnson v. SCIF
7. [1999 MTWCC 34](#) Thirsk v. SCIF
8. [1999 MTWCC 27](#) Crowell v. SCIF
9. [1999 MTWCC 13](#) Matthews v. SCIF
10. [1998 MTWCC 85](#) Pittsley v. SCIF
11. [1998 MTWCC 84](#) Pittsley v. SCIF
12. [1998 MTWCC 72](#) Flansburg v. SCIF

APPENDIX 4

WRITING SAMPLE
CARRIE GARBER

ARGUMENT

1. The Municipal Court correctly denied Defendant's motion to dismiss for lack of speedy trial.

A. While a defendant may claim speedy trial violations under both theories, the analyses of statutory speedy trial rights should be conducted separately from the analyses of constitutional speedy trial rights.

In *Heppner*, the Montana Supreme Court instructed as follows regarding the right to a speedy trial for a misdemeanor criminal offense as follows:

A criminal defendant has a fundamental constitutional right to a speedy trial under the Sixth and Fourteenth Amendments to the U.S. Constitution and Article II, Section 24 of the Montana Constitution. *State v. Ariegwe*, 2007 MT 204, ¶ 20, 338 Mont. 442. Distinct from that constitutional right, a criminal defendant also has a statutory right to be brought to trial on a misdemeanor charge within six months of arraignment. *State v. Luke*, 2014 MT 22, ¶ 12, 373 Mont. 398; § 46–13–401(2), MCA.

After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant's motion is not brought to trial within 6 months.

Section 46–13–401(2), MCA. The statute's protections are not available to a defendant when the trial was postponed upon the defendant's motion, or the State

showed good cause for delaying the trial. *Luke*, ¶ 13. In such cases, only the constitutional protection applies, and the appropriate analysis is the test set forth in *Ariegwe*. *State v. Hodge*, 2014 MT 308, ¶ 14, 377 Mont. 123.

. . . We note at the outset that analysis of the misdemeanor statutory speedy-trial right is conducted separately from a constitutional speedy-trial analysis and is an entirely different analysis. The parties' briefs confuse the two, applying standards from one to analysis of the other. **To clarify, the constitutional analysis set forth in *Ariegwe* has no application in a statutory speedy-trial claim. While a defendant may pursue claims under both the statute and *Ariegwe*, the analyses of each should be conducted separately. Therefore, we first analyze [the defendant's] statutory speedy-trial claim and then analyze his constitutional claim.**

Heppner, ¶¶ 12-13 (emphasis added).

B. Statutory speedy trial analysis.

Having entered a plea of not guilty on February 10, 2016, the statutory speedy trial deadline would expire August 10, 2016, provided Leuchtman did not postpone the trial on his own motion. Section 46–13–401(2), MCA, provides:

After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant's motion is not brought to trial within 6 months.

“The statute's protections are not available to a defendant when the trial was postponed upon the defendant's motion, or the State showed good cause for delaying the trial.” *Heppner*, ¶ 12 (citing *Luke*, ¶ 13). In the instant case, a jury trial was scheduled for May 19, 2016. **The Municipal Court record reflects that at the Final Pretrial Hearing on May 10, 2016, Leuchtman moved to vacate the jury trial date and to set a change of plea hearing on May 31, 2016.** Leuchtman thereafter moved to continue the initial change of plea hearing from May 31st to June 14th. On June 14th, he again moved to continue the change of plea hearing, which the Court granted, but because the Court had concerns that a change of plea may not occur, the Court required the parties to also set dates for a jury trial and final pretrial in the event Leuchtman chose not to change his plea on August 3rd.

In *Heppner*, which involved almost identical facts as the instant case, the Montana Supreme Court held:

The Municipal Court was correct that Heppner's District Court motion to vacate his trial date for a change of plea made the misdemeanor speedy-trial statute inapplicable. Section 46–13–401(2), MCA, provides that misdemeanor speedy-trial protections are only available to a “defendant whose trial has not been postponed upon the defendant's motion.” Heppner was arraigned on May 23, 2012, and trial was set for August 27, 2012, well within the six

month time period. Prior to dismissal of the felony charge and transfer of the DUI to Municipal Court, Heppner moved to vacate the initial trial date for a change of plea. He then moved, first individually and then jointly with the State, to continue the change-of-plea hearing. Heppner's trial, therefore, was postponed upon his own motion, which removed him from the statute's protections.

Heppner, ¶ 16. The Municipal Court in the instant case correctly concluded that Leuchtman's request to vacate the jury trial and set a change of plea constituted a postponement upon the defendant's motion, and thus constituted a waiver his statutory right to a speedy trial.

Moreover, as the City described in the Procedural History above, defendant did not move to vacate the August 3rd change of plea hearing until immediately beforehand. When the Court on June 14th asked the parties to schedule a trial date sometime after the August 3rd change of plea hearing, the City specifically informed the Court that Angela Miller, its key witness, would be undergoing heart surgery and then recovering from the surgery for several weeks during the month of August. Even if Leuchtman had demanded on August 3rd that he wanted a trial date prior to August 10th, the City had already at the time of the June 14th hearing demonstrated that there was good cause to delay the trial into early September due to Miller's scheduled heart surgery and anticipated

recovery period. The Montana Supreme Court in *City of Helena v. Roan*, 2010 MT 29, ¶¶ 12-16, similarly held that the prosecution's request to delay the trial date nearly two months past the statutory speedy trial deadline was supported by good cause. In *Roan*, in support of its request for a delayed trial date, the prosecution informed the Court that two of its witnesses, who were husband and wife, were unavailable because the wife was undergoing a difficult pregnancy and the husband was caring for his wife and their two other children. The Supreme Court agreed with the Municipal Court's conclusion that the wife's medical condition as well as its related impact on the husband constituted good cause to schedule the trial past the speedy trial deadline. However, unlike *Roan*, where the defendant in that case did nothing to postpone the trial, the defendant in the instant case did postpone the original trial date in May by asking to vacate the trial and set a change of plea.

C. Constitutional speedy trial analysis

According to the Court in *Heppner*, ¶ 19, (*citing State v. Ariegwe*, 2007 MT 204, ¶¶ 41-43), "[t]he minimum delay necessary to trigger a speedy-trial analysis is 200 days."

Both in the Municipal Court and now on appeal, Leuchtman incorrectly applies the *Ariegwe* factors to the facts in his case. With regard to the first area of inquiry under *Ariegwe*, a court is required to first determine the number of days at issue and to then determine whether any of the delay is attributable to the defendant. In his briefs, Leuchtman does not recognize the longstanding caselaw in Montana that the speedy trial clock does not begin to run in misdemeanor cases until a defendant makes an initial appearance and enters a plea. See *State v. Krenning*, 2016 MT 202 (defendant cited at time of offense on December 23, 2014, ¶ 3, arraigned on January 8, 2015, ¶ 4, jury trial finally held July 17, 2015, ¶ 4, Supreme Court defined delay as 9 days for purposes of speedy trial analysis from July 8, 2015, six months after initial appearance, ¶ 13). Secondly, Leuchtman is simply incorrect as a matter of law that the only delay that is attributable to him is from May 31 to June 14. As discussed under the statutory speedy trial analysis above, and as the Municipal Court correctly concluded, Leuchtman *at the very minimum* is solely responsible for the delay from May 10th to June 14th, a period of 31 days. (If construed in the light most favorable to the prosecution, the additional delay from June 14th to August 2nd when the defense moved to vacate the change of plea of hearing set for August 3rd would likewise be attributable to the defense,

more than doubling the amount delay attributable the defense, particularly in light of defense counsel's specific request during the June 14th hearing that another change of plea hearing be scheduled and his statement that his client was not available for a change of plea hearing during one whole week in July.)

Additionally, Leuchtman claims that the City failed to show good cause for requesting a September 8th trial date. Again, Leuchtman is incorrect as a matter of law. According to the Court in *Ariegwe*, the unavailability of a prosecution witness is a valid reason for delay when performing the constitutional analysis. *Ariegwe*, ¶ 70 (unavailability of key prosecution witness is valid reason for delay). In *Krenning*, ¶12, the Supreme Court held that the same analysis of "good cause" applies to both the statutory analysis and the constitutional analysis, explaining:

Absent evidence of foot-dragging by the prosecution, the unavailability of a prosecution witness constitutes valid reason for trial delay. *In State v. Johnson*, 2000 MT 180, ¶ 20, we characterized the unavailability of an officer on an out-of-state work assignment as "good cause" for the State's requested continuance. *See also State v. Billman*, 2008 MT 326, ¶ 27 (noting that the primary officer's unavailability because of training generally would constitute "good cause" for delay, but for the fact that the State did not move for continuance until four days after the scheduled trial date); *State v. Ariegwe*, 2007 MT 204, ¶ 70 (citing *Johnson* for principle that unavailability of key

prosecution witness is valid reason for delay). Although those cases analyzed the constitutional right to speedy trial, the same conclusion logically attaches to a determination of "good cause" for postponement of trial under § 46-13-401(2), MCA.

Krenning, ¶12 (emphasis added; string citations omitted).

* * *

The third factor under *Ariegwe* that a court considers is whether the defendant asserted his right to a speedy a trial. Leuchtman perfunctorily asserts that he met his burden by filing a motion to dismiss. What Leuchtman fails to address, however, are his repeated requests—first on May 10th, then on May 31st, and then on June 14th—to have the jury trial vacated and to have a change of plea hearing set. Leuchtman did not request that that jury trial be set during the June 14th hearing; instead, it was at the Court's insistence that the parties were required to schedule a trial date in the event that Leuchtman decided to not enter a change of plea at the August 3rd change of plea hearing that HE REQUESTED. Leuchtman did not object to the City's request on June 14th to set the jury trial for September 8th. His perfunctory conclusion that he asserted his right to a speedy trial by filing a motion to dismiss is a nothing more than a hollow assertion given his own repeated requests to change his plea throughout the course of the case.

The fourth and final factor to consider under *Ariegwe* is the prejudice to the defendant that is caused by the delay. Again, Leuchtman's assertions regarding the prejudice to him completely misses the point. Leuchtman asserts that the delay in the trial date to September 8th caused him anxiety and concern because the Municipal Court continued to impose on him new conditions of pretrial release. A full and careful review of the Municipal Court record, however, reveals that the added conditions of pretrial release were not because the trial was delayed; instead, the Municipal Court continued to impose ever more stringent conditions on Leuchtman due to: (1) concerns for Miller's safety raised by the City after it obtained information via an investigative subpoena served on Craigslist that Leuchtman potentially violated the original OOP issued by the Justice Court by posting letters on Craigslist which described personal events and places that Miller could, and did, recognize and which, despite the Justice Court OOP, could be fairly interpreted as expressions of continued romantic feelings for her and his desire to communicate with her in person; and (2) Leuchtman's disregard of the Municipal Court's subsequent conditions of release that he not have a cellular data plan on his cellphone and that he not use the internet except for several very specific, non-

recreational reasons primarily related to the parenting, education and medical care of his children.

* * *

It is the City's position that Leuchtman's stress and anxiety were due solely to own inability to abide by the conditions of original Justice Court OOP, the subsequent District Court OOP and the Municipal Court's conditions of pretrial release which were imposed following hearings at which the City proved to the Court's satisfaction that he continued to pose a threat to Miller and that he continued to ignore court orders.

Leuchtman has failed to demonstrate that his constitutional right to a speedy was violated in the instant case, and the Municipal Court reached the correct conclusion even though it did not use the precise language from *Ariegwe* in reaching its conclusion. In the same way that the Supreme Court found "good cause" for delaying trial in the *Kenniger* case 9 days beyond the statutory speedy trial date, there was "good cause" in the instant case for delaying trial for 11 days beyond the constitutional speedy trial date: the unavailability of the City's key witness due to heart surgery and her post-surgical recovery.