

APPLICATION FOR

DISTRICT COURT JUDGESHIP
Eighth Judicial District

A. PERSONAL INFORMATION

1. Full Name: SUNDAY ZOIE ROSSBERG
- a. What name do you commonly go by? Sunday
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED]
- Phone: [REDACTED]
4. Office Address: 518 2nd Street South, Great Falls, MT 59405
- Phone: (406) 454-0080
5. Length of residence in Montana: 51 years (absent law school)
6. Place of residence for the last five years:
- | <u>Dates</u> | <u>City</u> | <u>State</u> |
|----------------|-------------|--------------|
| 1995 - Present | Great Falls | MT |

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>
Charles M. Russell High School	Great Falls, MT	May 1987	High School Diploma

Carroll College	Helena, MT	May 1991	B.A. Communication Studies and Political Science
University of Idaho School of Law	Moscow, ID	December 1995	Juris Doctorate

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

C. M. Russell High School: 1983 - 1987

High School Honor Society

Voice of Democracy Scholarship

Lincoln Douglas Debate

2nd at State Debate Meet (1987)

1st at State National Forensics League (1987)

Represented Montana at Nationals

Figure Skating

Figure Skating Medals

Freestyle Competitions

Junior Freestyle Test Certification

Carroll College: 1987 - 1991

Dean's List (1987 -1991)

Debate & Academic Scholarships

CEDA Debate Nationals (1988)

5th Novice Speaker Award at Nationals

Miss Helena (1990)

Miss Great Falls (1991)

Miss Montana USA Pageant (1991)

First Runner-up

Miss Photogenic

Miss Congeniality

Post-graduate (1991 - 2000)

Miss 1992 Montana

State Bar of Montana

Neil Haight Pro Bono Award (2012)

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>
Montana State Courts	September 1996
United States District Court, Montana	February 1997

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

Rossberg Law Office, L.L.C.
Partners or Associates: N/A

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>
Rossberg Law Office, L.L.C. 518 2 nd Street South, Suite 500 Great Falls, MT 59405	Attorney/Owner	July 2000 - Present

Public Defender's Office 615 2nd Avenue North Great Falls, MT 59401	Conflict Public Defender	1998 - 2018 (As needed basis)
Park University 7499 4th Avenue North Malmstrom Air Force Base Great Falls, MT 59402	Professor Criminal Justice Program	1997 -2001
McPherson & Hutchison, L.L.C. (Law firm dissolved)	Associate	1999 - 2000 (Est.)
Lynch Law Office, P.C. (Law firm dissolved)	Associate	1998 - 1999 (Est.)
Joseph C. Engel, III 600 Central Avenue, #428 Great Falls, MT 59401	Associate	1997 - 1998 (Est.)
Knowlton, Miles, & Merica, PLLC n/k/a Knowlton & Miles, PLLC 312 17 th Street Lewiston, ID 83501	Law School Intern	1995

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.

Parenting Plan Proceedings	(50 %)
Dissolution Proceedings	(35 %)
Child Support Hearings	(5 %)
Youth In Need of Care	(3 %)
Criminal Law (primarily protective orders)	(3 %)
Personal Injury	(2 %)
Other: Employment, Discrimination, etc.	(2 %)

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

Areas of Practice:

Adoptions Constitutional Law
 Appellate Work
 Assisted Living Representation
 Collection Law
 Constitutional Law
 Criminal Law
 Deceptive Trade Practices
 Fair Credit Report Act Claims
 Guardianships
 Human Rights Bureau
 Insurance Claims

Insurance Claims
 Medicaid Appeals/Third Party
 Nursing Home Negligence
 Partnership Disputes
 Personal Injury
 Real Estate Fraud
 Survivorship Claims
 Workers' Compensation
 Wrongful Death
 Youth In Need of Care
 42 U.S.C. § 1983

Drafted Contracts
 Drafted Employee Handbooks
 Drafted Opinion Letter (Montana Clean Indoor Air Act)

Taught College Students:

Criminal Justice and the Community	1997
Criminal Law	1998
Criminal Procedure	1999
Constitutional Law	2000, 2001

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

I specialize in family law and litigate contested parenting plans, dissolutions of marriage, protective orders and contempt actions. I have maintained a solo, family law practice since 2000, and I have an emphasis on litigating high conflict divorce and custody cases (which include matters involving sexual abuse and parental alienation). Although I consider myself a trial attorney, I regularly mediate cases as well. Just this past year, I have embarked on my own self-study in the field of mediation. I am following the teachings of Chris Voss, former FBI Hostage Negotiator and author of *Don't Split the Difference*, implementing many of his techniques in my mediation practice and trial work.

17. Do you regularly appear in court? Yes.

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

Federal court	1 %
State or local courts of record	85 %
Administrative bodies	14 %
Other	0 %

18. During the last five years, what percentage of your practice has been trial practice? 40%
19. How frequently have you appeared in court? 5-8 times per month, but it can vary.
20. How frequently have you appeared at administrative hearings? 0-1 times per month on average.
21. What percentage of your practice involving litigation has been:
- | | |
|----------|--------|
| Civil | 95% |
| Criminal | 0 - 5% |
| Other | 0 - 5% |
22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.
- No.
23. State the number of jury trials that you have tried to conclusion in the last ten years.
- One (1).
24. State the number of non-jury trials that you have tried in the last ten years.
- I have tried in excess of 120 non-jury trials in the past ten (10) years. A *very conservative estimate* of trying just one non-jury trial per month would result in a *minimum* of 120 non-jury trials over the past ten (10) years. However, it is not uncommon for me to try several contested cases per month. These non-jury trials include: protective orders; contempt actions; interim parenting plan hearings; final parenting plan hearings; dissolution trials; abuse and neglect hearings; spousal maintenance hearings; family support hearings; child support hearings; and a variety of other matters.
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.
- A. **Adversary Counsel:**
 Beckie Williams
 LAW OFFICE OF BECKIE WILLIAMS
 214 W. Main Street, Suite 207
 Lewistown, MT 59457
 Email: beckie@beckiewilliams.com
 Telephone: (406) 535-5914

In Re the Marriage of Heather Lyn Altenburg v. Brock Alan Altenburg
Fergus County Cause No. DR-19-50
Presiding Judge: Hon. Jon A. Oldenburg, Telephone: (406) 535-8028
Trial Date: August 17, 2020

In Re the Parenting of: P.M.V., Minor Child
William VanHaur and Nikkita Obergfell, a.k.a. Nikkita Poser
Fergus County Cause No. DR-20-37
Presiding Judge: Hon. Jon A. Oldenburg, Telephone: (406) 535-8028
Show Cause Hearing: June 30, 2020

In Re the Marriage of Matthew Eldred v. Sharoan Eldred
Fergus County Cause No. DR-16-31
Presiding Judge: Hon. Jon A. Oldenburg, Telephone: (406) 535-8028

B. **Adversary Counsel:**

Mathew J. Johnson
LAW OFFICE OF MATHEW JOHNSON PC
1085 Helena Avenue
Helena, MT 59601
Email: mathew@mtlegalcounsel.com
Telephone: (406) 442-3625

In Re the Marriage of: Nichelle K. Harbeson and David J. Harbeson
Lewis and Clark County Cause No. BDR-2019-160
Presiding Judge: Hon. Michael F. McMahon, Telephone: (406) 447-8209/8205

C. **Adversary Counsel:**

Mark Bauer
506 1st Avenue North
P.O. Box 1423
Great Falls, MT 59403
Email: bauerlaw77@yahoo.com
Telephone: (406) 727-0800

In Re the Marriage of: Clifford Wade Mosley and Lisa Marie Mosley
Cascade County Cause No. CDR-19-0526
Presiding Judge: Hon. John A. Kutzman, Telephone: (406) 454-6897

MULTIPLE OTHER CASES SETTLED, TRIED & MEDIATED

- D. **Adversary Counsel:**
Christopher A. Hoffman
HOFFMAN LAW, PLLC
410 Central Avenue, Suite #319
P.O. Box 1113
Great Falls, MT 59403
Email: chris@hoffmanlawmt.com
Telephone: (406) 315-8555

In Re the Parenting of: A.P., Minor Child
Tonya Howarth and Austin Pierson
Cascade County Cause No. DDR-16-406
Presiding Judge: Hon. John W. Parker, Telephone: (406) 771-6566
Supplemental Evidentiary Hearing: May 5, 2020

- E. **Adversary Counsel:**
- | | |
|---|---|
| Kent Sipe, County Attorney | Christopher A. Hoffman |
| Fergus County Attorney's Office | HOFFMAN LAW, PLLC |
| 801 W. Broadway Street | 410 Central Avenue, Suite #319 |
| Lewistown, MT 59457 | P.O. Box 1113 |
| Email: ksipe@co.fergus.mt.us | Great Falls, MT 59403 |
| Telephone: (406) 535-8127 | Email: chris@hoffmanlawmt.com |
| | Telephone: (406) 315-8555 |

In the Matter of A.J.S.
Fergus County Cause No. DN-2020-3
Presiding Judge: Hon. Jon A. Oldenburg, Telephone: (406) 535-8028
(Youth in Need of Care case)

- F. **Adversary Counsel:**
Thomas J. Karem, Esq.
Karem Law Firm, P.C.
1902 W. Dickerson Street, Suite 103
P.O. Box 682
Bozeman, MT 59771-0682
Email: thomas@karemlaw.com
Telephone: (406) 586-1986

In Re the Marriage of: Felicia Schedel and Daniel Schedel
Gallatin County Cause No. DR-18-220B
Presiding Judge: Hon. Magdalena C. Bowen, Telephone: (406) 582-2156
Trial Date: November 15, 2019

G. **Adversary Counsel:**

Eric D. Mills
(Formerly SUTTON, DUBOIS & MILLS)
(Now 406 ATTORNEYS)
104 4th Street North, Suite 200
Great Falls, MT 59401
Email: eric@406attorneys.com
Telephone: (406) 315-3242

*In Re the Parenting of: J.N.E.B., Minor Child
Jennifer E. Redfern and Travis O. Bring*
Cascade County Cause No. CDR-18-0253
Presiding District Court Standing Master: Hon. Kathleen Jensen (retired),
Phone: (406) 899-2059

H. **Adversary Counsel:**

Jeffrey S. Ferguson
Attorney at Law
410 Central Avenue, Suite 515
P.O. Box 109
Great Falls, MT 59403-0109
Email: office@fergusonlawgf.com
Telephone: (406) 453-3275

In Re the Marriage of: Scott E. Rooney and Amelia R. Rooney
Pondera County Cause No. DR-20-01
Presiding District Court Standing Master: Hon. Mark E. Westveer, Telephone: (406) 217-5069
Trial Date: August 20, 2020 (settled before trial)

I. **Adversary Counsel:**

Autumn Thompson
THOMPSON & STEIGERWALT, PLLC
234 E. Pine Street
Missoula, MT 59802
Email: autumn@missoulafamilylaw.com
Telephone: (406) 532-2128

*In Re the Marriage of: Stephanie Ann Hansen f/k/a Stephanie Ann Sivertsen and
Buddy Allen Sivertsen*
Cascade County Cause No. ADR-13-047
Presiding District Court Standing Master: Hon. David J. Grubich, Telephone: (406) 454-6705
Trial Date: May 2, 2019

J. **Adversary Counsel:**

Meghan Lulf Sutton
Law Office of Meghan Lulf Sutton
410 Central Avenue, Suite 306
P.O. Box 533
Great Falls, MT 59403
Email: meghan@suttonlawmt.com
Telephone: (406) 771-7477

In Re the Marriage of: Amy Deck and Randal Deck
Cascade County Cause No. CDR-20-0038
Presiding Judge: Hon. John A. Kutzman, Telephone: (406) 454-6897

K. **Adversary Counsel:**

Gale R. Gustafson
GUSTAFSON LAW OFFICE
400 South Main, Suite 101
Conrad, MT 59425
Email: gustafsn@3rivers.net
Telephone: (406) 278-7521

In Re the Marriage of: Wyatt A. Wood and Alicia L. Wood
Pondera County Cause No. DR-16-06
Presiding Judge: Hon. Robert G. Olson, Telephone: (406) 424-8360

L. **Adversary Counsel:**

William J. Levine
MARRA, EVENSON & LEVINE, P.C.
2 Railroad Square, Suite C
P.O. Box 1525
Great Falls, MT 59403-1525
Email: wlevine@marralawfirm.com
Telephone: (406) 268-1000

In Re the Marriage of: Jeffrey L. Smith-Lyon and Corey Smith-Lyon, n/k/a Corey Martinez
Cascade County Cause No. CDR-07-393
Presiding Judge: Hon. John A. Kutzman, Telephone: (406) 454-6897
Trial Date: June 13, 2019

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

Within the last five (5) years, I have represented approximately twenty (20) litigants in contested child support hearings before the State of Montana, Department of Public Health and Human Services, 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.

Lectures and/or Demonstrations to Practicing Attorneys:

Jury Analysis and Selection - Choose the Right Audience	2019
Getting the Best Out of Witness Examination	2019
Voir Dire	2018
Conducting Focus Groups	2017
Advanced Issues in Family and Divorce Law	2016
Preparing for Voir Dire	2016
Jury Selection Strategy	2016
Ethical Considerations in Jury Selection	2016
Advanced Trial Tactics in Family Law	2016
Ethics in Family Law	2015
Show Me, Don't Tell Me: Trial Techniques with Live Action MTLA Demonstration	2015
Discovery in Parenting Plans	2009
Making Depositions Run Smoothly: A Cheat Sheet for Depositions	2009

Trial Consulting Work:

Conducted two focus groups for a Montana Law Firm (in preparation for a jury trial in a civil matter)	2017
Consulting work in San Francisco on a complex custody case (Worked with attorney, Leigh E. Johnson, jury consultant and instructor at Gerry Spence's Trial Lawyer's College)	2012

Authored Article for Legal Seminar

"Advanced Trial Tactics in Family Law"	2015
--	------

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.

Montana Bar Association (1996 to Present)

Montana Trial Lawyers Association (2000 to Present)

Cascade County Bar Association (2000 to Present)

Gerry Spence's Trial Lawyers College (2009 - 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.

Great Falls Figure Skating Club

Member of GFFSC

Figure Skating Coach: I taught new skaters in the "Learn to Skate Program." I choreographed and developed ice show routines for the skaters. I taught these routines, and assisted the other coaches with presenting the Winter Ice Show.

Victory Christian Church

My daughter and I have helped out over the holidays with the Christmas Light Show. We served hot cocoa outdoors to families and passing motorists enjoying the music and Christmas lights.

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.

Everyone possesses different gifts and talents, and we should use those to assist our community. I believe very strongly in the concept of almsgiving, where you assist the poor and those in need, privately, but do not seek recognition. It may mean giving food to the poor, helping out a single mother at Christmas time by purchasing gifts for her children, giving away extra clothing and household items rather than selling them, fundraising for a former client and minor who needs to purchase a barrel racing horse (after her horse died), leaving a gift card on a vehicle for a family with a disabled child, or countless other acts of giving. I try to help people as often as I can, one by one, behind the scenes, privately and quietly. There are many wonderful social service programs, but there are many gaps that need to be filled, and I do my best to fill those gaps.

I have assisted my community by volunteering at free legal law clinics on Saturdays, judging high school debate meets, serving holiday hot cocoa for families enjoying the church's annual holiday light show, and teaching figure skating. Over the years, I have instructed a number of new skaters, including toddlers at the "Learn to Skate" Clinic. As a parent, I volunteer at my child's school by selling tickets at basketball games, making healthy snacks for the cheer team, and fundraising for the school.

E. PROFESSIONAL CONDUCT AND ETHICS

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

No.

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

No.

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

No.

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

F. BUSINESS AND FINANCIAL INFORMATION

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

<u>Park University</u>	College Professor <u>Criminal Justice Program:</u>	<u>1997 to 2001</u>
	Criminal Justice and the Community	1997
	Criminal Law	1998
	Criminal Procedure	1999
	Constitutional Law	2000, 2001
Riverwood Rentals, L.L.C.	Maintain two (2) homes	2003 - Present

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.

N/A.

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 own and operate Riverwood Rentals, L.L.C., where I maintain and rent two (2) rental homes. I would estimate that Riverwood Rentals, L.L.C. produces less than 10 % 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 (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?
- Yes.
42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?
- Yes.
- If not, please explain.
- N/A.
43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?
- No.
- If yes, please explain.
- N/A.
44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.
- No.

G. WRITING SKILLS

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

As a solo practitioner, I am responsible for all legal research and brief writing.

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.

As a solo practitioner for over twenty (20) years, I research and write almost daily, if not multiple times each day. Unlike attorneys who work for law firms and governmental entities, I do not have another person (i.e. law clerk, associate, law student, paralegal, etc.) to perform research and author my legal briefs. I routinely draft: correspondence to opposing counsel; opinion letters to clients; motions; legal briefs; discovery questions; discovery answers; mediation brochures; and other written materials. I also prepare the following *proposed* Orders: Decree of Dissolution; Parenting Plan Orders; Findings of Fact, Conclusions of Law and Order; and various other orders.

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 is an actual brief that I filed in a Youth in Need of Care Matter in April of 2020.

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

60%

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

Yes.

H. MISCELLANEOUS

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

I am athletic by nature. I blame my grandfather, Al Rossberg, who boxed on the Dempsey-Gibbons Ticket in Shelby, Montana in 1923. From the time I was in grade school until high school, I regularly trained on the same ice as Olympic figure skater, Scott Davis. He and I regularly car pooled to the rink before school. The highlight of my career was competing against Olympic skater, Tonya Harding, in the Junior Division at our Northwest Regional Championships during my senior year. I vividly recall her jumps being half as high as the hockey boards. I was in awe. To this day, I enjoy figure skating whether watching figure skating, skating with my daughter, coaching skating, or just hitting a few jumps and spins. I was particularly pleased to land an axle after thirty years and skate with my daughter in various ice shows while she was in grade school. Other than spending time on the ice, my fondest memory was watching from the bleachers as a "skating mom," while my daughter trained with my former teammates at a Skating Camp in Whitefish, Montana.

Roller-blading is a close second favorite to figure skating. I particularly enjoy skating along River's Edge Trail. In addition to these activities, I paddleboard, fish, run, and bike. I also workout at a local

gym, and practice yoga and pilates. Staying active is important for stress-reduction and a work-life balance.

I especially love food, and enjoy the challenge of re-creating a restaurant favorite or baking a dessert from scratch. One of my specialty dishes is homemade marinara. I also enjoy baking a wide variety of cheesecakes, with my favorite being “turtle cheesecake.” My father was a baker by trade, so I have fond memories of watching him decorate a wedding cake or serving “Baked Alaska.” As a small child, I commonly visited my father at Buttrey’s Bakery.

When I want to relax, I escape to my yard and garden. I find gardening and landscaping very soothing to the soul. At my former residence, I worked with the landscaper side by side, and created a beautiful rock and flower garden along the perimeter of the fence. As for gardening, I have not yet mastered that skill, but each year, I try my luck at planting a garden.

I am also an avid reader, and have a separate room filled with books. It is not uncommon to find piles of books surrounding my bed. I have to admit that I am a bit old-fashioned in the sense that I prefer a paperback book in front of a fireplace over an e-book any day.

Finally, I have an affinity for historic hotels. At the top of the list is the Hollywood Hotel Roosevelt (est. 1927), which is reputedly haunted, but rich with Hollywood history. My daughter and I enjoyed shopping, and then staying in the Marilyn Monroe Suite, which was previously the home to Ms. Monroe when she signed her first modeling contract. That hotel was the situs of the first Academy Awards in 1929, and the place where Clark Gable and Carole Lombard routinely stayed when they carried on their illicit affair. There was even a secret entry for the couple so they could avoid public scrutiny.

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

Between high school and college, I monitored children at the local parks and pools through the Summer Park and Recreation Program and cashiered at a department store. During my college years and prior to law school, I waited tables, sold automobiles, DJ’ed at a classic rock radio station, and coached high school debate. After completing law school, I was immediately hired as a college adjunct professor by Park University in its Criminal Justice Program where I taught:

Criminal Justice and the Community (1997);
Criminal Law (1998);
Criminal Procedure (1999); and
Constitutional Law (2000, 2001).

While maintaining this professorship, I also worked as an associate attorney between 1996 and 2000 for Joseph C. Engel, III, Jeff Lynch, and later, McPherson and Hutchison, L.L.C. In July of 2000, I opened Rossberg Law Office, L.L.C., and I have maintained my law practice as a solo attorney for the past twenty (20) years.

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

My pro bono work is performed primarily in the area of family law, which has been my area of emphasis for over twenty (20) years, and includes the following: assisting the Cascade County Law Clinic on Saturdays throughout the year; assisting private pro bono clients through my office, who cannot otherwise afford my services; answering questions for friends or church members who may text or call me after hours with a legal problem; and helping out various colleagues who have a client where a family law issue transects into another area of law, and could have lasting impact on that client. I even mediated a case on New Year's Eve (day) this past year, pro bono, upon the request of a local judge.

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

Without question, Darryl Burton has most influenced my view of the criminal justice system. I met Darryl while attending a Grad Course at Gerry Spence's Trial Lawyers College in Wyoming. Darryl was sentenced to 24 years of imprisonment for a murder he did not commit. A culmination of events resulted in Darryl's wrongful conviction: perjured testimony; police withholding information; and an incomplete investigation. Darryl was assigned a public defender who spent one hour with him before his trial.

To everyone else involved in Darryl's case, it was just another day at work. To Darryl, it was his life, and affected a real person in a real way.

Darryl was convicted and sentenced to prison without parole, and assigned to the Missouri State Penitentiary, one of the most violent prisons in the U.S. Darryl was a powerful speaker with the ability to transport everyone in the room into his prison cell, experiencing his day to day horror.

Darryl's story demonstrates that a breakdown of justice will occur if everyone is not fulfilling his or her role. A judge needs to hold not only the accused accountable, but also *anyone else* who impacts the integrity of the justice system – including the system itself.

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

Good judges treat everyone with dignity and respect. A good judge will find a way to connect with each person in that Courtroom, while maintaining judicial integrity and impartiality. A good judge will not play favorites with litigants or attorneys who come before the bench and will treat everyone fairly and impartially.

The best District Court Judges in Montana have been firm, but kind, communicative, yet contemplative, while maintaining a professional courtroom decorum. These judges have issued rulings that are unpopular at times, and know how to draw the line for those who often cross it.

Communication is key in any courtroom setting, and a good judge is a clear communicator. As a practicing attorney, I know it is critical that clients clearly understand basic legal concepts and terminology. Even though I use legal language on a daily basis, I need to stop and remember that many people do not regularly hear or use legal terminology. A good judge has the skill-set to clearly and effectively communicate to a broad range of people. I have yet to meet a good judge who cannot read a room, and make the most difficult concepts easily understood.

A good judge will listen closely, collect facts, assess the information, and consider matters from each person's point of view. A good judge will easily and accurately summarize the testimony, evidence, arguments, and the law into written opinions. This requires separating the wheat from the chaff, and applying the law, while still exercising good judgment and common sense. Finally, when issuing a ruling, a good judge possesses the discipline to set aside personal biases, and reach the correct legal decision, even when that judge does not *personally* favor the legal conclusion reached.

Even though being contemplative is important, it is equally important for a judge to be a quick thinker and quick study. As Court is progressing, a judge must quickly assess information, and make decisions on a moment's notice.

Over the years, the judges that I have most admired possess a servant's heart. These judges are well-prepared, and exercise compassion, good judgment, and make decisions from a point of integrity. People who are before the Court often have underlying issues whether it is mental health, drugs, alcohol, PTSD, or a myriad of other problems. Good judges look for the underlying root of the problem, and possess insight and wisdom to issue Orders which address the root of the problem, and sometimes heal people.

Most importantly, a good judge will recognize his or her own fallibility, and that mistakes will inevitably occur. That judge must possess the moral fortitude to correct a mistake in a swift manner, fairly and justly, *whether or not anyone else knows about the mistake*. That is called integrity.

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.

Precedent is very important so people have predictability with the legal system. If people do not have predictability, it makes it very difficult for people to follow the law, because they cannot rely on what the law says or does not say, and the consequences for taking one action over another. Alternatively, when there is predictability within the justice system, it provides a guarantee that each case will be decided in a manner that is similar to past decisions. Precedent is necessary to create a level of fairness and trust, which is the goal of any justice system.

However, despite the importance of precedent, we cannot forget that we live in an ever-changing world with innovative technologies, new social norms, and different ways of living our day to day lives. If we over-rely on precedent, advancements in the law will not occur.

Blindly following precedent will result in rulings that are “out-of-touch” with the current world. The legal system cannot be so “out-of-touch” with reality that it is no longer relevant or practical, or otherwise exists in its own parallel reality. Deviation from precedent is necessary and inevitable, with the understanding that it should *rarely* occur, and only for good reason.

Deviations from precedent only should occur when there is a well-reasoned basis for an absence of precedent, or a clear showing that the precedent is “wrong” which is precisely what occurred when the Montana Supreme Court decided *In Re Marriage of Funk*, 2012 MT 2014, 363 Mont. 352, 270 P.3d 39 (which forever modified the distribution of pre-acquired, inherited, and gifted property).

In balancing the importance of precedent, with the necessary flexibility in law, a judge should always follow precedent whenever possible, to provide consistency and predictability, which equals fairness. However, this needs to be tempered with these ever-changing times, those rare, unique cases which require flexibility, and those limited occasions when the precedent is clearly “wrong.”

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

We are living in unprecedented times due to the impact of COVID-19. This virus not only affects our health, but also affects the very fabric of our American way of life. Montana families are facing unparalleled anxiety and stress due to many factors: economic hardships; loss of jobs; businesses closing; schooling children at home while working; caring for the elderly and sick; and other issues unique to each family. Domestic violence and child abuse are on the rise. Divorces and parenting plan disputes are spiking.

I have practiced law for over twenty-four (24) years, with twenty (20) years experience as a solo practitioner. Prior to building my family law practice, I litigated criminal cases as a conflict public defender. As a brand new attorney, my first jury trial involved defending a man charged with attempted deliberate homicide. I have represented people charged with the following: assault; aggravated assault; robbery; criminal endangerment; partner family member assault; assault on a police officer; assault with a weapon; custodial interference; nonsupport; endangering welfare of children; criminal child endangerment; criminal mischief; theft; issuing a bad check; deceptive practices; driving under the influence; driving without a license; possession of illegal drugs; intent to distribute illegal drugs; and operation of an unlawful clandestine laboratory (which I tried on my own, to verdict.) Over the years, the Courts have appointed me to represent both the parents and the children (as the guardian ad litem/attorney).

Recently, when my sixteen-year-old daughter heard about Judge Pinski’s resignation, she asked, “Mom, are you going to apply?” I quickly brushed her off with a number of excuses, and my all too typical “NO,” to the question, “Do you want to be a judge?”

This conversation reminded me of a scene from the movie, *Tombstone*. Wyatt Earp and his brothers had sworn off law enforcement after moving to Tombstone, Arizona to start a new life as gamblers, where they could make some “real money.”

Wyatt and his brother, Virgil, have a heated exchange about getting involved in their community.

Wyatt: "What the hell are you doing? I told you we weren't getting involved!"
Virgil: "You got us involved when you brought us here."
Wyatt: "You hold on a minute, Virg-"
Virgil: "Hold on, nothing! I walk around this town and look these people in the eye and it's just like someone slapping me in the face. These people are afraid to walk down the street, and I'm trying to make money off that like some g*ddamn vulture! If we're gonna have a future in this town, it's got to have some law and order!"

Family law is now the “boom town” of law. It is one of the few areas of law that is growing. However, rather than capitalize on this “boom town,” I could better utilize my twenty-four (24) years of legal experience, in various areas of law, by serving Cascade County as a District Court Judge.

Due to the volume of calls that I currently receive, I expect to see an unprecedented number of case filings involving dissolution of marriages, parenting plan disputes, restraining orders, contempt of court motions, and other family related disputes. Many of these callers cannot afford an attorney and require assistance filing matters *Pro Se*. Now, more than ever, Courts needs judges familiar with family law, especially considering the emergent nature of many of these filings.

As a District Court Judge, I can help more people regardless of their financial resources. In that position, I can help those who do not have the luxury to hire a private attorney. My expertise in family law will allow me to administer justice quickly, justly, and fairly in family law cases. Also, I can rely on my experience as a conflict public defender when I handled in excess of sixty (60) criminal cases over the years. My extensive legal experience mirrors the areas of law typically handled by a District Court Judge – family law, criminal law, and abuse and neglect proceedings.

Finally, I learned from my work in *Walker v. State of Montana* that sometimes the judiciary is the only check on powerful institutions. See Answer to ¶ 57. If left unchecked, powerful institutions could transgress upon all of our rights. When such rights are overtaken by the powerful, whether individuals or institutions, it results in a distrust of the “system.” A distrust of the justice system is detrimental to any well-functioning society. We need trust in our system and believe that it “works” for people to obey the law and bring their problems before the Courts, rather than into the streets, as we are witnessing today, with the many violent protests. As a judge, I could do my part to ensure our “system works.”

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

Two events in my career have distinguished me from others. First, I was honored to change the law in Montana, and handle a case of statewide constitutional importance when I represented Mark Edward Walker. Second, I was proud to affect the life of a minor child as her Guardian Ad Litem. My sense of accomplishment extends beyond the State Bar’s Pro Bono Award that I received. I witnessed the

transformation of a broken little girl into a strong young lady who is on the college path, and quite the horsewoman!

Mark Edward Walker v. State of Montana:

Walker v. State of Montana, 2003 MT 134, 316 Mont. 103, is significant for two reasons. First, it is a case of first impression which secures *the fundamental right to human dignity* throughout Montana through Article II, Section 4 of the Montana Constitution which reads: “The dignity of a human being is inviolable.” Second, this case secures the rights of inmates like Mark to be treated humanely, and especially those who are mentally ill.

Mark was subject to living in deplorable, inhumane conditions at Montana State Prison. While being punished for his behavior as an inmate, Mark was housed in filthy cells with blood, feces, and vomit, while he was being disciplined. On other occasions, he was forced to sleep naked on concrete slabs, which served as beds, in cold winter months. During that time, he was not provided with any clothing, blankets or other essentials. Also, Mark’s access to water was severely restricted, as the water to his toilet and sink were often turned on and off by the prison.

These punishments were part of a Behavior Management Plan (BMP) which are utilized when an inmate, like Mark, behaves in an unruly manner.

After a ten (10) day hearing in 2000, the District Court determined that “Walker was not subjected to cruel and unusual punishment under either the Eighth Amendment to the United States Constitution or Article II, Section 22 of the Montana Constitution.” See *Walker v. State of Montana*, 2003 MT 134, ¶ 34, 316 Mont. 103, ¶ 34. The Montana Supreme Court did not agree.

The Montana Supreme Court’s ruling in *Walker v. State of Montana* was the first case in the state’s history to decide a case based on the Human Dignity Clause. The Court secured Montana as a state where everyone would be *treated humanely*, and especially those like Mark who suffer from a mental illness.

The *en banc* Court, in a 6-1 decision, solidified that:

Our Constitution forbids correctional practices which permit prisons in the name of behavior modification to disregard the innate dignity of human beings, especially in the context where those persons suffer from serious mental illness. We cannot sanction correctional practices that ignore and exacerbate the plight of mentally ill inmates like Walker, especially when that inmate is forced to rely on the prison for his care and protection. **The plain meaning of the dignity clause commands that the intrinsic worth and the basic humanity of persons may not be violated.** Moreover, if the particular conditions of confinement cause serious mental illness to be greatly exacerbated or if it deprives inmates of their sanity, then prison officials have deprived inmates of the basic necessity for human existence and have crossed into the realm of psychological torture.

(Emphasis supplied). *Id.* at ¶ 82.

The Montana Supreme Court went on to state the plight of a prisoner:

Walker is part of a growing population of faceless, powerless, voiceless, warehoused people whose rights are paid lip service but rarely taken seriously by the institutions responsible for their custody. The only check on that indifference is the judiciary. Sometimes the system works. Sometimes it does not... When the rights of even the most disrespected among us are ignored, all of society is diminished.

(Emphasis supplied). *Id.* at ¶ 83.

To this day, prisons still must comply with the *Walker* decision. Consequently, Walker positively impacts how prisoners are treated on a daily basis, so they receive humane treatment while under the States's care, custody and control.

State Bar Pro Bono Award

In 2012, I received the Neil Haight Pro Bono Award by the State Bar of Montana. I was nominated by retired Judge Phillips in Fergus County for my work as a Guardian Ad Litem before his Court. The Court had appointed me to represent a young child, and based upon my work, it later appeared she was being subjected to sexual abuse. Because of the nature of the case, and anticipated costs, I realized the family could not afford my services, so I suggested to the Court that I handle the matter *pro bono*. Child custody cases, which may have an element of sexual abuse, are extremely costly, partly due to the extensive work required by the lawyer on many details, and partly due to the costs for child psychologists and other mental health professionals who are experienced in addressing child sexual abuse.

One of the shortcomings in our system involves “justice for a price.” Most people do not have the means to protect their children in contested parenting plan cases. Many people cannot afford a large retainer for high conflict cases, let alone pay the necessary experts to prove their case. Sadly, a parent with a minimum paying job cannot obtain the same justice as someone with means. It is sad to me that “justice for a price” and money differentiates families who are able to protect their children, and those who cannot.

My experience told me that this child would fall through the proverbial cracks of our justice system if I did not step forward and help. My work in this case was hardly heroic, but was merely the right thing to do. I would hope someone would do that for my child if she ever needed it. As a result of my help, this child was protected.

My “reward” in this case was not the State Bar Pro Bono Award, but my ability to witness the transformation of this child’s quality of life and her mother’s life. I have seen this child thrive over the years. I have watched her horse skills develop, and her barrel racing competitions. I hear about her

dream to attend college next year in Wyoming. This mother and daughter now afford a quality of life that previously did not exist for them.

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

In December of 2002, I represented a man charged with "Operation of Unlawful Clandestine Laboratory." I lost the jury trial and was devastated. I recall the client's young family crying in the Courtroom around the Christmas Holidays, as he was taken away in hand-cuffs. After the trial, I re-evaluated my performance and tried to figure out how I lost the case. I became aware of a jury instruction that I should have offered, but did not.

As a result of *my error*, my client's case had a good chance of being reversed on appeal before the Montana Supreme Court for "ineffective assistance of counsel."

I could have done nothing, and protected my professional career over his jail sentence. However, I owned up to my mistake. I picked up the phone, advised my client of my mistake, and that he would need another attorney to claim "ineffective assistance of counsel." As a result of my honesty, my client successfully appealed the case, and served a reduced sentence.

I feel that my conduct in this situation was "honorable," and as a District Court Judge, I would expect myself to act and behave in a similar manner.

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?

In addition to being a solo practitioner, I have been a solo parent. As a result, I have the ability to better understand day to day struggles of parents balancing a career, parenting, and life in general. I can extend a depth of understanding and that will allow me to understand each person's story, and render a decision that is fair and just.

Today, 1 out of 3 children are raised in single parent-households. Single parents are faced with many responsibilities that those with a spouse can share. Courts are often the receivership of people with problems related to the breakdown of the American Family: child abuse and neglect, criminal offenses, juvenile delinquency; divorces; custody disputes; and other related matters.

Personally, I have been a litigant in a child custody matter. This experience has given me tremendous insight into the vulnerability, fear, and uncertainty faced by many parents in child custody actions. As a litigant, I felt many of those same feelings. I realized how an ongoing case like that affects a person's day to day enjoyment of life. Having walked the proverbial mile in another's shoes, I can offer the sensitivity at times, tempered with tough love at other times. As a mother, I can relate to the trauma caused to children in these high conflict matters. I would like to not only act as a judge, but as a healer in these cases, providing people with hope and a mechanism to move forward. I am familiar with the many community and private services that can assist with such necessary healing.

I can also relate to crime victims. While in law school, I called 911 to report an intruder. Officers showed up with guns drawn. My landlord had entered my home in the middle of the night, claiming to have been “sleep walking.” For years, this trauma affected my ability to sleep. Sometimes I could not go to sleep, and often when I was sleeping, I would regularly awaken when I heard the slightest noise. This inability to sleep affected my day to day functioning in law school. This shows me the significance of underlying issues that crime victims often face.

These prior experiences distinguish me from other applicants. I possess a personal perspective that can only be gained through experience, and not just book knowledge.

Finally, I am a legal visionary. It is unlikely that any other candidate handled a case of statewide, nationwide, and global importance, with respect to the protection of human rights. My case of *Mark Edward Walker v. State of Montana*, 2003 MT 134, 68 P.3d 873 was written about in the book, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*. That book was published by the Human Rights Group which is “dedicated to protecting the rights of people around the world.” Attached is an excerpt from that book.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 8th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

August 19th, 2020
(Date)

Sunday Z. Rossberg
(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 Friday, August 21, 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

Sunday Z. Rossberg
ROSSBERG LAW OFFICE, L.L.C.
518 2nd Street South, Suite 500
Great Falls, MT 59405
Telephone: (406) 454-0080
Facsimile: (406) 454-1181

CLERK OF DISTRICT COURT

2020 APR [REDACTED] PM [REDACTED]

FILED

BY _____
DEPUTY

Attorney for Birth Father,
[REDACTED]

MONTANA [REDACTED] JUDICIAL DISTRICT COURT, [REDACTED]

IN THE MATTER OF:

[REDACTED]
YOUTHS IN NEED OF CARE.

CAUSE NO. [REDACTED]

OBJECTION OF BIRTH FATHER,
[REDACTED]

Question 47

2. Did the Court violate the parties' fundamental constitutional rights by waiting until March 3rd, 2020, to set a Show Cause Hearing, and failing to hold that hearing until April 2nd, 2020?

Section 41-3-301 (7) M.C.A. requires that a show cause hearing must be held within twenty (20) days of the filing of the petition unless otherwise stipulated by the parties pursuant to § 41-3-434, M.C.A. The Petition in the case at hand was filed on February 7th, 2020. Arguably, for the reasons set forth above, the actual Show Cause Hearing did not occur within the required twenty (20) days.

The actual Show Cause Hearing, although scheduled for March 3rd, 2020, did not occur. No witnesses were sworn. No evidence was submitted. Although clearly scheduled, arguably, the Show Cause Hearing did not proceed to an actual hearing on the merits.

The Show Cause hearing was again reset for April 2nd, 2020. Once again, no witnesses were sworn. No evidence was submitted. Although the hearing was clearly scheduled, the Show Cause Hearing, in reality, arguably did not occur. There was no hearing on the merits.

Rather than swear in witnesses and receive evidence, this Court concluded at the scheduled Show Cause Hearing as follows:

There is probable cause to believe the Youths are abused or neglected, or in danger of being abused or neglected, and their immediate protection. This finding is supported by the following facts: substantial risk of Physical Neglect due to concerns of domestic violence, lack of protective capacities, inappropriate caregivers, and Birth Mother's mental health problems, as more specifically set forth in the Affidavit of the Child Protection Specialist.

The Court took into account this information that was filed with the Court, but gave no opportunity for Birth Father to challenge this information because No Show Cause Hearing was ultimately held where evidence was submitted, and witnesses were examined. Birth Father was not presented with the opportunity to confront witnesses or challenge the evidence that this Court took at face value. Consequently, the Birth Father's procedural due process rights under both the State and U.S. Constitution were violated.

As set forth *In re B.H.*, 2020 MT 21-22, ¶¶ 36-37 (Mont. 2020), the Montana Supreme Court reaffirms that it will, when in doubt, support a parent's constitutional rights regarding parenting:

In addition to the presumption the custody of a natural parent is in the child's best interests, the natural parent's right to the care and custody of his or her children is a fundamental constitutional interest protected by both the United States Constitution and the Montana Constitution. See *In re A.S.A.*, 258 Mont. 194, 197, 852 P.2d 127, 129 (1993) (citing Article II, § 17, of the Montana Constitution); *In re R.B.*, 217 Mont. 99, 102-03, 703 P.2d 846, 848 (1985); *Santosky v. Kramer*, 455 U.S. 745, 753-54, 102 S. Ct. 1388, 1394-95 (1982) (citing the Due Process Clause of the Fourteenth Amendment); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212-13 (1972) (citing the Due Process Clause of the Fourteenth

Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment to the United States Constitution). The United States Supreme Court "has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights of man,' and 'rights far more precious . . . than property rights.'" *Stanley*, 405 U.S. at 651, 92 S. Ct. at 1212 (internal citations omitted). Both natural parents have the constitutional right to custody of their children. See *Stanley*, 405 U.S. at 651, 92 S. Ct. at 1212 ("The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection.").

The State undeniably also has powerful interests to "provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection." Section 41-3-101(1)(a), MCA. But when the State moves to intervene in a family for the protection of a child, the state "must provide the parents with fundamentally fair procedures." See *In re R.B.*, 217 Mont. at 103, 703 P.2d at 848 (quoting *Santosky*, 455 U.S. at 754, 102 S. Ct. at 1395); see also *Stanley*, 405 U.S. at 649, 92 S. Ct. at 1211.

In the case at hand, in addition to the above-referenced rights, a Show Cause Hearing simply did not occur as statutorily required because [REDACTED] was not permitted to challenge witnesses and present evidence at a "Show Cause Hearing." Instead of holding such a hearing, this Court accepted the stipulations of the other parties and pleadings filed before the Court instead of evidence and testimony at a hearing where Mr. [REDACTED], otherwise, would have had an opportunity to confront witnesses.

As this Court is well aware, Youth in Need of Care cases, often, are not fixed in time. Such cases are often like a river – ever-changing with facts.

Just because certain evidence may be accurate and relevant for a certain period of time, it does not mean that same evidence would be accurate at a later date in the

same case. Since events relevant to YINC cases are ever-changing, it is important for the Court to consider current circumstances as well. That did not happen.

The fact a child was possibly subject to abuse or neglect two months ago does not mean that same child is currently subject to abuse or neglect now because circumstances change. The Court's willingness to accept evidence from pleadings, at face value, as if this case were fixed in time, without real time challenges in a Courtroom, further prejudices a party, and results in an erosion of due process rights.

Mr. [REDACTED]'s procedural due process rights were violated at the hearing because he did not have an opportunity to present evidence and testimony at a Show Cause Hearing. Therefore, the Birth Father, [REDACTED] lodges an objection based on that violation, for the reasons set forth herein.

In re B.H., 2020 MT 23, ¶38 (Mont. 2020), our Montana Supreme Court goes on to reiterate that:

These constitutional rights to parent one's own children find protection in our statutes. Section 40-6-221, MCA, recognizes the mother and father of a child "are equally entitled to the parenting, services, and earnings of the child." And if one parent is "unable or refuses to exercise parenting or has abandoned the family, the other parent is entitled to the parenting, services, and earning of the child." Section 40-6-221, MCA. Title 41, chapter 3, MCA, provides procedural protections throughout the Department's intervention into a family to strike the delicate balance between ensuring the safety of children and respecting the fundamental constitutional rights of parents.

If there is not a hearing on the merits, where witnesses are sworn and testimony is received, due process rights are arguably violated.

///

Finally, the Court's Order on the Show Cause Hearing entitled "Order Granting Temporary Investigative Authority" (4/3/2020) was deficient in the following particulars.

The Child and Family Services Policy Manual: Legal Procedure Child Abuse and Neglect Petitions General Requirements/Overview found in 301-1 mandates the following findings with respect to the "Show Cause Hearing:"

b) Show cause hearing:

- whether the child should be returned home immediately if there was an emergency removal, remain in temporary out-of-home care, or be removed from the home;
- why continuation of the child in the home would be contrary to the child's best interests and welfare if removal is ordered or continuation of removal is ordered;
- whether the Department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;
- financial support of the child; and
- whether another hearing is needed, and, if so, the date and the time of the next hearing.

It was not possible for the Court to address *all of these factors* because testimony was not received and evidence was not submitted at the scheduled "Show Cause Hearing."

The Court's Order of April 3rd, 2020, on its face, speaks for itself and shows an absence of these specific findings that "shall" be part of the Court's "written findings." Even though this Court found the Stipulation of two of the three parents was sufficient for its purposes, it lacked sufficient information for the Court to issue the mandatory findings that "the court shall make." If the Court's findings resulted from pleadings and

affidavits filed by the Department, such findings would be a result of evidence received without the ability to confront witnesses. It would be improper to include those in the findings as well. In either instance, a violation of Mr. [REDACTED]'s due process rights arguably occurred.

The absence of these findings, as required by 301-1, further supports the Birth Father, [REDACTED]'s claim of a due process violation, procedurally, and as it relates to an erosion of his parental rights, and the unconstitutional taking of his child.

Likewise, if the statutes under Title 41, Chapter 3 are ignored or loosely followed, due process rights are violated. That is another basis for the Birth Father's objection.

Contrary to the State's assertion, this legal framework is consistent with our prior caselaw, and this Court's recognition of the constitutional rights of a natural parent to parent his/her child and the child's right to be placed with his/her legal/birth parents unless that parental authority has been abused. "This careful protection of parental rights is not merely a matter of legislative grace, but is constitutionally required. The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment." *In re A.R.A.*, 277 Mont. 66, 70, 919 P.2d 388, 391 (1996) (internal quotations and citations omitted).

In re B.H., 2020 MT 23, ¶ 39 (Mont. 2020).

Also, as early as 1897, Montana recognized the significance of a parent-child relationship. In *State ex re. Giroux v. Giroux*, 19 Mont. 149 (Mont. 1897), the Court reasoned: "It must be born in mind that the tie between parent and child is one of the most binding in human life, one which the law of nature itself has established. No legislation, no judicial interpretation of legislation, should lightly disregard the reciprocal

//

duties of this relationship." Having a Show Cause Hearing, without the ability to confront witnesses, disregards such duties.

The Father, [REDACTED], would go as far as to argue, that such a parent-child relationship is further supported by the human dignity clause found in Article II, Section 4 of the Montana Constitution which reads: **"The dignity of the human being is inviolable."** The Birth Father would be bold enough to further argue that the right to parent is ingrained as a basic human dignity, and when the State or Court interferes with that inviolable right, it must ensure it does so by following the rule of the law with punctilious compliance.

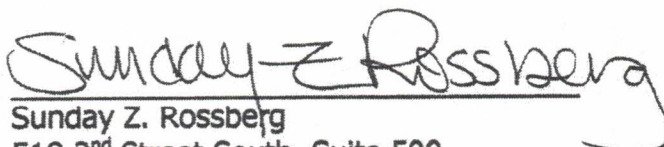
Hence, the Birth Father is also objecting under Article II, Section 4 of the Montana Constitution for a violation of his rights under that article. (This objection is further supported by the above-articulated reasons throughout this brief.)

RELIEF REQUESTED

For the reasons set forth herein, the Birth Father respectfully encourages this Court to dismiss this action. There are too many flaws and procedural shortcomings to fully cure this case short of a dismissal.

Respectfully submitted this [REDACTED] day of April, 2020.

ROSSBERG LAW OFFICE, L.L.C.


Sunday Z. Rossberg
518 2nd Street South, Suite 500
Great Falls, MT 59405
Attorney for Birth Father



Ill-Equipped

U.S. Prisons and Offenders with Mental Illness

HUMAN
RIGHTS
WATCH

Human Rights Watch is dedicated to
protecting the human rights of people around the world.

We stand with victims and activists to prevent
discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime,
and to bring offenders to justice.

We investigate and expose
human rights violations and hold abusers accountable.

We challenge governments and those who hold power to end abusive practices and respect
international human rights law.

We enlist the public and the international
community to support the cause of human rights for all.

subscribe to the HRW news listserv of your

don't take my medication when I'm
ve bad days. I cried for almost a
ouldn't accept me because I had to
me to prison and put me in the
The floor was super-dirty. I didn't
head infected. But it got infected
antibiotics. They wouldn't let me
ith me. They'd come by and kick
ead against the door. I opened my

e mental health crisis unit at Chowchilla
he first time in her prison experience, she
are mainly designed to stabilize prisoners
Y.D. was returned to Valley State, part of
within prisons between crisis units and the

u good. They just harass you. I'm
ie to a meal. I stepped out of line
me, and pulled me out of line and
o it. I started crying. When I took
d make me start over again. Then
ack to the unit.

III-Equipped

MARK EDWARD WALKER, MONTANA

Mark Edward Walker, a Montana resident, was charged in 1994 with felony forgery, arson, and criminal mischief; sentenced to probation; violated the terms of his probation and then absconded to Colorado during his probation revocation proceedings. In 1997, he was arrested in Colorado on a criminal charge, and was confined for eleven months in the Colorado prison system in 1998 and then extradited to Montana, where he was ultimately confined in the Montana State Prison (MSP) in February, 1999. While incarcerated in Colorado, he was diagnosed with hebephrenic schizophrenic disorder, a diagnosis that was later changed to bipolar disorder, for which he was prescribed lithium. While on lithium, he did not receive any major disciplinary write-ups.²⁹⁵

On February 5, 1999, on his intake at Montana State prison, Walker indicated that he had been diagnosed as bipolar and had been taking lithium. On February 10, he notified the staff psychiatrist that he was experiencing stomach pains from the lithium, and shortly thereafter stopped taking his medication. The staff psychiatrist did not evaluate Walker until March 11, 1999. That evaluation lasted thirty minutes. The psychiatrist "discontinued prescribing Lithium for Walker without reviewing Walker's medical records and without completing any psychological testing. He concluded that Walker did not have a serious mental illness, but rather an antisocial personality with narcissistic traits."

Over the next year, Walker became increasingly disruptive; whereas he averaged only two severe disciplinary infractions a month in his first six months at MSP, in the next six months he averaged eleven. In August, 1999, he was transferred into the maximum security unit after he broke a showerhead and claimed to have swallowed it. According to correctional officer, he went from being a timid quiet prisoner into an "excited, belligerent, hostile, disruptive and suicidal inmate." He yelled and screamed for hours on end, spit on officers, covered his cell with ketchup mustard and mayonnaise, refused to comply with direct orders from officers. He also made three suicide attempts on October 8, Walker tried to hang himself with a sheet. Four days later, he tried to hang himself with his prison overalls.

Rather than receiving psychiatric or psychological treatment, Walker's behavior was treated as purely a disciplinary matter. He received more than one hundred disciplinary write-ups and was placed in disciplinary detention, or "lock down" for six months. While in lock down, he was also placed on the A-block for five separate "behavioral management plans"(BMPs). According to Walker and numerous other prisoners, the A-Block cells were filthy, with blood, feces, vomit, and other debris in them. One prisoner testified he had bloodied a cell by smashing his head against the wall. Walker inhabited that cell for a while. After Walker was removed, and the original prisoner returned, the blood streaks and the words he had written in blood on the wall remained unchanged.

BMPs consisted of withholding all "privileges from an inmate, and then returning them based on conduct." They are not designed to be therapeutic, but are a tool to help manage dangerous behavior. Prisoners on BMPs are housed in a detention unit designed for disciplinary punishment; the cells are windowless, sparsely furnished and prisoners are allowed no time in the recreation yard. While on BMP, Walker was kept twenty-four hours a day in the cell. He was stripped of all his

²⁹⁵ All of the facts in this case study come from *Walker v. Montana*, 2003 MT 134 (Supreme Court of Montana, April 29, 2003).

clothing, spending his days and nights naked. He was not permitted to have bedding or a pillow, but had to simply sleep on the concrete slab that served as a bed. The water to his sink and toilet were turned off (with guards turning it on at regular intervals). He was given a "space" or "suicide" blanket. He was not given hot meals, only slices of meat and cheese served with bread. Through "good behavior" Walker would then "earn" back pieces of clothing, a mattress, hot meals, etc. Although BMPs are supposed to last twenty-four to forty-eight hours, Walker's first BMP lasted five days; his second BMP lasted eleven; his third six days (ending because he had a court date); his fourth lasted two weeks; and his fifth nearly three weeks, ending on March 1, 2000. MSP officials acknowledged that Walker did not respond well to the BMPs; indeed, his behavior grew progressively worse. While on a BMP in January 2000, Walker filed a pro se petition with the court asserting violations of the state constitution. He had to dictate it to a neighboring prisoner, because he did not have any paper or writing implements.

Throughout the year, the mental health staff at MSP continued to claim that Walker was not bipolar, although they recognized he was at chronic risk for self-harm. They also believed he was manipulating, in order to be reassigned to a less restrictive setting. At the request of Walker's court-appointed attorney, a private psychiatrist specializing in forensic and correctional psychiatry, Dr. William Stratford, evaluated Walker in February 2000 and administered several mental evaluation tests, reviewed all of Walker's medical records and interviewed Walker's family. Based on his evaluation, Stratford concluded that Walker suffered from bipolar disorder as well as a mixed personality disorder which severely hampers his social and occupational functioning. He further concluded that Walker had been properly treated his mental illness while imprisoned in Colorado, but that he was neglected while at MSP.

According to Dr. Stratford, MSP's treatment of Walker had fallen so far below the standard of care that it was negligent and scandalous. He said MSP officials were too eager to label Walker as a bad person rather than seriously mentally ill. Because he was not treated, but merely disciplined, Walker "got worse and worse." Dr. Terry Kupers also reviewed Walker's records and interviewed him. Dr. Kupers concluded it was "absolutely clear" that Walker suffered from a serious mental illness, most likely bipolar disorder, and he testified it was "inexcusable" that Walker was not on medications, particularly since they were effective in the past. Indeed, he testified that the diagnosis by MSP mental health staff that Walker did not have a mental illness was "preposterous" and fell below medical ethical standards.

A Montana state district court denied Walker's claim that he was the victim of cruel and unusual punishment in violation of the Montana constitution while incarcerated at MSP. The Supreme Court of Montana reversed this finding. On April 23, 2003, the court held that Walker's treatment constituted an affront to the inviolable state constitutional right of human dignity possessed by the prisoner; it also concluded that the BMPs and living conditions on the A-block, to the extent they exacerbated his conditions, constituted unconstitutional cruel and unusual punishment.

M.C., New Jersey, Au

My mental illness medications are depicted in prison, I can get Everything from rec care to covering my corrections officers because I am a special inmate is ok from the there are doctors on special needs inmate doctors are not on the all special needs inmate the doctors leave this attitude towards special them even until an inmate a charge even to begin with.

U.L., Nevada, June 3,

From July 2001 until psychiatrist and a me for months. I had to just to see them. The contractor, very inefficient and charge you prescriptions. On the The only one that helped Prozac made me crazy stop taking them after here? Zoloft. I almost on an emergency situation week. If I'm let out of Right now I've been offense of spilling milk up and gave me a year to mental health professionals be looked into badly. I ago and I've yet to medication and my special being in the hole on Montana anyone healthy or mental