

APPLICATION FOR  
**DISTRICT COURT JUDGESHIP**  
**4th Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: **Leta Jean Womack**
- a. What name do you commonly go by? **Leta J. Womack**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED] Phone: [REDACTED]
4. Office Address: **[Mailing] 400 West Broadway, Suite 101-523, Missoula, MT 59802**  
Phone: [REDACTED]  
Work Address: **Office of the State Public Defender, 110 Main St., Polson, MT 59860**  
Phone: **(406) 883-6080**
5. Length of residence in Montana: **I have most recently lived in Montana for the past 7 years [I also lived in Great Falls, MT in 1956-58, when I was young and where my brother was born; my father was in the U.S. Air Force]**
6. List your place of residence for the past five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
<b>2010-present</b>	<b>Missoula (Evaro)</b>	<b>Montana</b>
<b>2008-2010</b>	<b>Huson</b>	<b>Montana</b>

**B. EDUCATIONAL BACKGROUND**

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

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Bellevue HS	Bellevue (Omaha), NE	1969-1972	8 <sup>th</sup> – 11 <sup>th</sup> grade
Stuttgart American HS	Stuttgart, Germany	5/1973	HS Diploma
Rice University	Houston, Texas	5/1977	Double Major-BA History/PoliSci
South Texas College of Law	Houston, Texas	1/1981	JD

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

- AV Preeminent® rating (5.0 of 5.0) by Martindale-Hubbell (since 1999)
- 2012 Highest Achievement – Civil Advocacy, Montana Office of the Public Defender
- 2006 and 2007 - Cited in Houston’s Top Family Lawyers, as published in H Texas
- 1989 through 2008 - Board Certified in Family Law, Texas Board of Legal Specialization\*

**\*Over 70,000 attorneys are licensed to practice in Texas; currently 7,237 attorneys are Board Certified, with only 763 attorneys being certified in family law (approximately 1% of all Texas attorneys.) Certified Family Law specialists have participated in the contested trial of cases involving matters such as divorce, property division, child custody, child support, adoption, paternity or other matrimonial matters.**

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

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>
All State Courts in Texas	May, 1981
United States District Court, Southern District of Texas	1985-2000
U. S. Court of Appeals for the Fifth Circuit	1985-2000
All State Courts in Montana	January, 2010

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

**I work for the Montana Office of the Public Defender, currently out of Polson.**

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

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
<b>Montana Office of the Public Defender 110 North Main, Polson, MT 59860</b>	<b>Attorney</b>	<b>4/2013 – present</b>
<b>Montana Office of the Public Defender 1205 South Main, Kalispell, MT 59901</b>	<b>Attorney</b>	<b>12/2011-4/2013</b>
<b>Womack Law Firm 400 W. Broadway, #101-523, Missoula, MT 59802</b>	<b>Partner</b>	<b>1/2010-12/2011</b>
<b>Womack &amp; Womack, LP Houston, Texas (4 locations)</b>	<b>Partner</b>	<b>6/1993-5/2009</b>
<b>Womack &amp; Moeller, P.C. Houston, Texas</b>	<b>Partner</b>	<b>1990-5/1993</b>
<b>Law Offices of Leta J. Moeller Houston, Texas</b>	<b>Sole Proprietor</b>	<b>1982-1990</b>
<b>Law Offices of Jack R. Bailey Houston, Texas</b>	<b>Associate</b>	<b>1981-1982</b>

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

**I have been continuously employed or self-employed since I passed the Texas Bar in 5/1981.**

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.

**Currently, working as a Public Defender for the State of Montana in Polson, I handle both adult misdemeanor and felony cases (50%), juvenile matters (15%), abuse and neglect cases [these can include issues involving the Indian Child Welfare Act – ICWA] (25%), involuntary commitment cases (7%) and guardianship matters (3%).**

**While working as a Public Defender in Kalispell, I was solely responsible for the office's civil matters. These included the juvenile matters (35%), the abuse and neglect cases [these can include issues involving the Indian Child Welfare Act – ICWA] (45%), the guardianship cases (15%), and I shared responsibility for the involuntary commitment cases with other attorneys (5%).**

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

**Over the course of my 34 years as an attorney, I have handled cases in almost every area of law. My practice in Texas included –**

- **civil litigation, with an emphasis on family/domestic law;**
- **appellate work, with appeals to the U.S. 5<sup>th</sup> Circuit Court of Appeals, both the First and Fourteenth Courts of Appeals of Texas, and the Supreme Court of Texas;**
- **writs of habeas corpus, writs of mandamus, writs of prohibition, writs of error, and bills of review;**
- **acting as court appointed mediator;**
- **acting as court appointed guardian and court appointed attorney ad litem in civil, family, probate and quasi-criminal (contempt) matters;**
- **personal injury cases;**
- **worker's compensation;**
- **bankruptcy litigation;**
- **representing clients at disciplinary hearings;**
- **probate, adoptions, and guardianships;**
- **construction law, landlord/tenant law and business litigation**

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

**My specialty while practicing in Texas was in Family Law. In 1989, I became Board Certified in Family Law, Texas Board of Legal Specialization. Over 70,000 attorneys are licensed to practice in Texas; currently 7,237 attorneys are Board Certified, with only 763 attorneys being certified in family law (approximately 1% of all Texas attorneys.) Certified Family Law specialists have participated in the contested trial of cases involving matters such as divorce, property division, child custody, child support, adoption, paternity or other matrimonial matters, and must meet a rigorous protocol of having a requisite number of trials, jury trials and appeals, as well as recommendations from Judges, peers, and opposing counsel, not to mention passing a specialized exam, before becoming Board Certified.**

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

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

Federal Court	-0- %
State or local courts of record	100 %
Administrative bodies	-0- %
Other	-0- %

18. During the past five years, what percentage of your practice has been trial practice? **80 %**

19. How frequently have you appeared in court?

**In the last 3+ years, probably 20 times per month (often twice daily) on average. While practicing in Texas courts, I appeared on average 4 times a week.**

20. How frequently have you appeared at administrative hearings?

**I have not appeared at any administrative hearings in Montana; in Texas I appeared occasionally in matters representing clients at disciplinary boards and worker's compensation hearings.**

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

Since in Montana, my litigation practice has consisted of -

Civil	40%
Criminal	50%
Other	10%

When in Texas, my litigation practice was 85% civil, 10% criminal and 5% other.

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

**I have not; I have only been licensed in Montana since January 2010; as I currently work for OPD, any appeals arising out of my cases are directed to and handled by OPD's appellate division.**

23. State the number of jury trials that you have tried to conclusion in the past ten years. **5**

24. State the number of non-jury trials that you have tried in the past ten years. **60**

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

<b>Caption</b>	<b>Trial Dates</b>	<b>Judge</b>	<b>Opposing Counsel</b>	<b>Type of Case</b>
In Re C.S., A.S., A.S., YINC #DN-11-039(B)	12/2012 3 days	Hon. Kathleen Curtis-now retired, District Court (Kalispell) 406-758-5660	<ul style="list-style-type: none"> <li>• Emily vonJentzen Asst Atty General 121 Financial Dr. #C Kalispell, MT 59901</li> <li>• Leonard Smith 4 Meridian Court Kalispell, MT 59901 406-752-4481</li> <li>• Bob Allison (now District Judge-Kalispell) 406-758-5660</li> </ul>	Termination of parental rights – DPHHS (abuse and neglect) case. I represented the biological father.
In Re D.M., YINC #DN-10-070(A)	4/2012 2 days	Hon. Ted Lympus, District Court (Kalispell) 406-758-5660	<ul style="list-style-type: none"> <li>• Emily vonJentzen Flathead Dep Cty Atty 920 South Main, Ste 201 Kalispell, MT 59901 406-758-5630</li> <li>• Julianne Hinchey South Main Kalispell, MT 59901 406-756-7004</li> </ul>	Termination of parental rights – DPHHS (abuse and neglect) case. I represented the biological mother.
In the Matter of the Mental Health of J.L. #DI-11-046(B)	1/25/2012	Hon. Kathleen Curtis-now retired, District Court (Kalispell) 406-758-5660	Paul Nicol Flathead Dep Cty Atty 920 South Main, Ste 201 Kalispell, MT 59901 406-758-5630	Involuntary Commitment case
In the Matter of the Mental Health of S.R. #DI-08-037(A)	3/2-3/2012	Hon. David Ortley, District Court (Kalispell) 406-758-5660	Paul Nicol Flathead Dep Cty Atty 920 South Main, Ste 201 Kalispell, MT 59901 406-758-5630	Involuntary Commitment case
State of Montana v. L.G.H., Defendant #DC-12-121(B)	6/2012 3 days	Hon. Stewart Stadler-now retired, District Court (Kalispell) 406-758-5660	Emily vonJentzen Flathead Dep Cty Atty 920 South Main, Ste 201 Kalispell, MT 59901 406-758-5630	This was a transfer case involving a juvenile – filed in District Court; transfer granted back to Youth Court
In the Matter of the Guardianship and Conservatorship of S.A.T., an Alleged Incapacitated	7/2012	Hon. David Ortley, District Court (Kalispell) 406-758-5660	Penny Leatzow, Atty 128 North Meridian Kalispell, MT 59901 406-756-9500	This was a guardianship case (I was appointed to represent the elderly party); after

Person #DG-12-003(D)				significant motion practice, the matter was resolved short of trial by my filing a motion for sanctions, and the Petitioner dismissing her application.
In the Matter of the Guardianship and Conservatorship of C.L.M.B. #DG-13-04	6/26/2013 1 day	Hon. C.B. McNeil (now retired), District Court (Polson) 406-883-7214	Christina Larsen, Atty Ramlow & Rudbach 6438 Hwy 93 South Whitefish, MT 59937 406-862-7503	I was appointed to represent the minor child in a guardian petition brought by great grandmother.
In the Interest of K.T., Youth in Need of Care #DN-13-10	Ongoing contested hearings; dismissed 1/9/2015	Hon. James A. Manley, District Court (Polson) 406-883-7250	<ul style="list-style-type: none"> <li>• Mark Russell, Lake County Chief Deputy County Atty, 106 Fourth Avenue East, Polson, MT 59860 406-883-7245</li> <li>• Emily von Jentzen, Atty Ass't Atty General 121 Financial Dr., #C Kalispell, MT 59901 406-751-2493</li> <li>• Casey Emerson, Child's attorney, 15 Third St. East, Polson, MT 59860 406-883-4395</li> <li>• AnnMarie McNeel, CASA Director, PO Box 511, Polson, MT 59860 406-883-0158</li> </ul>	DPHHS dependent neglect case; I represented birth mother. Significant contested hearings, including discovery issues, experts, procedural matters, ultimately resulting in a dismissal of the case, rather than termination.
City of Ronan vs. Joel A. Smith #TK-14-05 <hr/> Appealed to DC: State of Montana v. Joel A. Smith #DC-14-97	6/24/2014 Jury Trial – 1 day, guilty. <hr/> Appealed to District Ct – 1/6/15 dismissed.	Hon. Justin Bartels, City Court (Ronan) 406-676-0211 <hr/> Hon. Kim Christopher, District Court (Polson) 406-883-7360	Kathleen O'Rourke-Mullins, City Attorney 63316 US Hwy 93, #803 Ronan, MT 59864 406-676-5299	Theft case; I represented the Defendant. Jury trial resulting in a guilty verdict, which was appealed to District Court. Case was dismissed 1 week before jury trial on 1/12/15.

City of Ronan vs. Joel A. Smith #TK-14-112	1/20/2015 Bench trial, ½ day	Hon. Justin Bartels, City Court (Ronan) 406-676-0211	Kathleen O'Rourke-Mullins, City Attorney 63316 US Hwy 93, #803 Ronan, MT 59864 406-676-5299	PFMA trial; I represented the Defendant. Bench trial – case dismissed after City rested.
City of Polson vs. Isaiah Thomas #TK-13-225	3/25/14 Bench trial, ½ day – Guilty.	Hon. A. Doug Olson, City Court (Polson) 406-883-8212	Rich Gebhardt, Polson City Attorney 41796 Kruse Lane, Ronan, MT 59864 406-676-3690	PFMA trial. I represented the Defendant.
Isaac Fleming	1/8/15 Ongoing contested matters; plea agreement entered 5 days prior to jury trial (1/12/15.)	Hon. Kim Christopher, District Court (Polson) 406-883-7360	Ann Harrie, Deputy Lake County Attorney 106 Fourth Avenue East, Polson, MT 59860 406-883-7245	Juvenile matter. My client was charged with 9 counts (3 felonies); this case was ready for jury trial, when a plea agreement was reached 5 days prior to jury trial.
Tyler Erickson	Still pending on a petition to revoke.	Hon. James A. Manley, District Court (Polson) 406-883-7250	James Lapotka, Deputy Lake County Attorney 106 Fourth Avenue East, Polson, MT 59860 406-883-7245	Petition to Revoke regarding serious drug charges; exploration of drug and mental health treatment significant in lieu of commitment to DOC.

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

**None.**

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

**I was one of two lecturers at a Continuing Legal Education seminar in Houston, Texas, in the mid-1990's; my presentation was regarding the procedural aspects of a divorce/custody case, and the pros and cons of taking the case to a jury (in Texas, divorces and child issues are appropriate for juries, although property issues are primarily the sole realm of the judge.)**

**D. PROFESSIONAL AND PUBLIC SERVICE**

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

- **Texas Bar Association Member since 1981**  
**I was also a member of various sections, including Family Law, Civil Litigation, Probate and Estate, throughout the years (1981-2008.) Now I hold membership solely in the Texas Bar Association, no sections.**
- **Texas Board of Legal Specialization, Board Certified in Family Law Member 1989-2008**
- **Montana Bar Association Member since 2010**

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

**In 2009-2010, I acted as a Court Appointed Special Advocate (CASA) in Missoula, Montana. Once I became employed by the Public Defender's Office in Kalispell, I no longer was able to participate in the CASA program.**

30. Have you ever run for or held public office? If so, please give the details.

**I have never held public office, but –**

**In 2013, I ran for Missoula Municipal Court Judge, one of three candidates (unsuccessful.)  
In 1998, I ran for Family Law District Court Judge, in Houston, Texas (unsuccessful.)**

**E. PROFESSIONAL CONDUCT AND ETHICS**

31. 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, give the particulars.

**No.**

32. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, please explain.

**No.**

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

No.

34. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty, or unethical conduct? If so, please give details.

No.

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

No.

#### F. BUSINESS AND FINANCIAL INFORMATION

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

**I was admitted to the Texas Bar in 1981, and worked continuously as an attorney until moving to Montana. When my family relocated from Texas to Missoula, Montana in 2008, my husband - an acupuncturist - opened Montana Acupuncture Associates in Missoula. While I was applying to the Montana State Bar, studying for and waiting to take the Bar Exam, I assisted my husband in running his acupuncture clinic. When I was sworn in to the Montana Bar in January 2010, I formed Womack Law Firm (along with my husband, who had been my law partner in Texas), and handled some legal work; however, I continued to work in the clinic until I was hired to work for OPD in December, 2011.**

37. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of such business, its nature, and the nature of your duties. State whether you intend to resign such position immediately upon your appointment as Supreme Court justice.

**I am an officer and member (along with my husband) of Montana Acupuncture Associates, LLC, a family owned acupuncture clinic in Missoula, MT. My duties were to assist in overseeing and managing the operation of the business; however, once I went to work for OPD, those duties were assumed by a new office manager. It is not my intent to resign my position in our family business, unless it conflicts with my obligations and interest as a District Court Judge.**

**I also am a partner, with my husband, in Womack Law Firm, a Montana Partnership. Minimal activity is generated from this law practice (mostly pro bono and matters handled for friends and family), but I would withdraw as an active participant from the firm, or resign, whatever appropriate action is dictated should I be appointed.**

38. During the past five years, have you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization? If so, please identify the source and approximate percentage of your total income that the fees or compensation constituted over the past five years.

**The only compensation I have received was a salary from Montana Acupuncture Associates, while working as the office manager of our family business between the time I moved to Montana in 2008 until I was hired by OPD in 2011. The salary was based on the business' income and varied over time. The compensation was 90% of my income from 2008 to 2011.**

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

**No.**

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

**Yes.**

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

**No.**

42. Have you ever been found by the IRS to have willfully failed to properly disclose your income during the past five years? If so, please give details.

**No.**

43. Please explain your philosophy of public involvement and practice of giving your time to community service.

**As a senior in high school in Stuttgart, Germany, I recognized the importance of public involvement and giving to the community. I started the school newspaper, which soon became a community newspaper "The Gadfly", and as its editor and primary contributor, tried to alert the public and the community to matters of importance affecting our school and community.**

**Throughout my career, and the raising of my family, I have recognized the importance of being involved in the community. During the period of time when my children were at home, my primary involvement with the community revolved around commitments with my children, their activities, their school and their accomplishments.**

Now, with no children left at home (my youngest started his freshman year at Montana Tech in August, 2014,) I believe it important to turn our attentions to the unaddressed needs of our combat veterans. With our two oldest sons having experienced war and its aftermath, my concerns regarding how we treat our returning veterans has grown. We, as a country, have an obligation to insure that those we have placed in harm's way should not be dismissed or ignored. Making the public aware of our vets and their needs, and providing opportunities to make them whole upon their return to a grateful nation, is not only desirable, but should be a mandate.

Another emerging focus of mine has been mental health. In my representation of clients as a public defender, I have been shocked at the lack of mental health resources available in our state, particularly where individuals are at or below the poverty level, and have little or no insurance. My experience has been that a significant number of crimes committed too often have their genesis in untreated mental health issues. Jail is not a solution for these individuals; it is simply a holding cell to remove people from the community, without addressing the underlying cause of the criminal behavior. Untreated, mental health issues result in escalating criminal behavior, with those individuals being a danger not only to others but to themselves as well. Treatment of mental health issues can break the cycle, and result in those individuals becoming contributing members of our community and society. A significant example of the positive effect of treatment can be seen in our Missoula co-occurring treatment courts – a diversion from jail that can jumpstart peoples' lives and rehabilitate them rather than flood the jails/prisons with mentally ill individuals whose potential will never be realized, and who become perpetual residents of our criminal justice system.

#### G. WRITING SKILLS

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

Research and briefing have been an integral part of my law practice, both while in private practice and currently while working as a public defender. I have always done the majority of my research and drafting of briefs. Within the last 2+ years as a public defender, I have on occasion benefitted from the prior research and briefing of my fellow public defenders, and have used that research in preparing my briefs – so as not to “re-invent the wheel.”

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

During the course of handling divorce actions and business transactions, I have drafted Deeds, Contracts, Lease Agreements, Buy-Sell Agreements, Liens, Releases, Assignments, and other related documents as transactional matters.

46. Please attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

Attached.

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

**70%**

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

**I have not used Westlaw for several years, but am competent in the use of Lexis.**

#### **H. MISCELLANEOUS**

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

**Outside of the practice of law, my primary interest has been my family. I have seven children of whom I am inordinately proud. My two oldest boys were in the military (Marine and Army) and both spent two tours in Iraq before returning to the States and obtaining their college degrees. My two older daughters have both graduated from college (UM and Colorado State) and are doing well in their chosen fields. My twin daughters are currently enrolled at the University of Montana, and my youngest son is a freshman at Montana Tech. I like to think that their successes and their ability to overcome adversity have been due, in no small part, to my husband's and my influence and how we raised them.**

**My interests have always included involving my family, which would be music-piano and guitar (I was also the lead singer in a band in high school,) horsebackriding, hunting, playing racquetball, raising chickens, and a few years ago, becoming a Certified Tree Farmer and Forest Steward – where we are able to improve our property (30 acres) in line with appropriate wildlife and conservation measures.**

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

- **In high school in Bellevue (Omaha), Nebraska, I worked one summer as a motel maid.**
- **As a senior in high school, in Stuttgart, Germany, I was a waitress at “Steak Night” for members of the military at the Army Base restaurant.**
- **During my summers home from college (Rice University in Houston, Texas), in Bellevue, Nebraska, I worked as a bank teller, and a Kelly Girl (temp service).**
- **I had a short-lived stint as a secretary for my father, who was the military (USAF) base commander of maintenance in Omaha, Nebraska; however, when a call came in that needed his immediate attention, and he was out on the flight line (he headed up “Looking Glass”), I broadcast over the air and radio “Colonel Daddy, Colonel Daddy, you have a call waiting for you in your office.” I was sent packing...**
- **After graduating from Rice University, I worked as a legal secretary while attending South Texas College of Law in Houston, and was able to put myself through law school as a result.**

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

**While in Texas, I represented clients pro bono, the most recent and rewarding being *In Re Shipman*, 2007 Tex.App. 7265 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2007), where a case involving Children’s Protective Services had removed an infant from its mother; the father, a truckdriver, living in Idaho, had a “one night” encounter with the mother in Las Vegas, and was unaware that he had a son. CPS located him, but was attempting to terminate his parental rights. The father did not have the funds to retain an attorney; I agreed to represent him pro bono. After extensive court appearances, motions, contested hearings, and a writ of mandamus filed by me and granted, the father was awarded custody of his son, and returned to Idaho.**

**Upon moving to Montana, I acted as a Court Appointed Special Advocate while waiting to become licensed by the Montana Bar.**

**Upon becoming licensed in Montana, I represented clients who were unable to pay in landlord-tenant cases, a foreclosure action seeking to foreclose on a client’s property, collection matters instituted against a client, assisting clients in obtaining retirement benefits, and reviewing employment contracts and legal obligations for clients. Currently, in representing indigent clients, I will assist those clients with matters outside the scope of my employment through OPD, as part of my pro bono contribution.**

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

**As a young lawyer freshly out of law school, I was made aware of an indigent defendant who, having been convicted of criminal trespass and sentenced to 180 days, filed notice of his intent to appeal. Neither his court appointed appellate attorney, nor the trial judge, acted on the appeal and the defendant was left to languish in jail, well over his sentence of 180 days (494 days.) I stepped in pro bono, filing a writ of mandamus seeking the release of the defendant. In granting the writ, Justice J. Cohen commented “I commend Leta J. Moeller of Houston who has performed a significant public service by representing this indigent appellant and exposing this gross abuse.” *Hicks v. Duncan*, 651 S.W.2d 871, 873 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1983).**

**Justice is not automatic. Although our system of justice is based on the belief that each individual is entitled to fair treatment and competent representation, and centuries of creating and fine tuning the law has taken us closer to the ultimate goal of “justice for all”, the system must be monitored to insure that the people don’t get lost in the system, or justice is thwarted. I believe that our duty as attorneys is not only to represent our client, but to act as a watchdog so that injustice does not go unnoticed, and the individual’s rights are not trammelled. I have taken to heart the observation, attributed to Edmund Burke (Irish philosopher and statesman), that “all that is necessary for the triumph of evil is for good men to do nothing.”**

**Thus began my love affair with the law; the recognition that I had an obligation to assist those unable to help themselves, and use my abilities to insure that justice prevails. I have continued to honor that obligation throughout my 34 years of practicing law.**

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

**I would join with many notable jurists and public figures who have acknowledged and concurred with Socrates, the Greek philosopher in 4<sup>th</sup> century B.C., wherein he said there are four qualities required in a Judge – “to hear courteously, to answer wisely, to consider soberly and to decide impartially.”**

**To that I would add the importance of experience. The history and experience of a Judge will lend an understanding of the impact her decisions will have on not only the matter before her, but as precedent.**

**An exhaustive and vigorous intellect is another necessary quality; the ability to understand, interpret and apply the law in the context of the case at hand.**

**Finally, a Judge is a role model to her community and to society. Being a Judge is not a 9 to 5 job, and the credibility, integrity and compassion of the individual who becomes a Judge must be evident not only while working, but must be reflected in her daily life and involvements.**

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

**The Judge’s primary role is to follow precedent, not create new law. However, as customs, circumstances and laws change, the Judge must not shirk from the responsibility to address matters of first impression in such a manner as to uphold the tenets of the Constitution, and insure that justice is served. Precedent is a principal which serves as guidance to the courts; there will always be variations in the facts and issues of each case. Flexibility comes where the general guidelines or principal set forth in precedent is applied to the unique facts of each case. The law evolves; the Judge, where she finds a strong reason to vary from precedent or encounter extraordinary circumstances, must be able to either distinguish the case from existing precedent or determine that the precedent is inconsistent with the development of trends or a change in the law.**

**Personal agendas and positions have no place on the bench. The premise is to follow established precedent, and there must be an impartial application of the law. However, when precedent no longer offers guidance on how to reach a decision in a matter, the Judge, must be able to return to the principles of our system of justice and our Constitution in determining the appropriate ruling; thus, flexibility in the evolution of the law.**

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

**From my high school days, when I began publishing “The Gadfly” in an effort to bring awareness of the issues impacting my school and community to the forefront; as a very young lawyer, by taking up the cause of an indigent defendant kept in jail 314 days more than his 180 day sentence because he asked to appeal his conviction, by filing a writ of mandamus against one of the more powerful judges in Houston, Texas (*Hicks v. Duncan*); by routinely demanding that the law be applied uniformly to everyone through writs of mandamus, writs of prohibition, writs of habeas corpus, and appeals; by defeating the Internal Revenue Service in federal court (*United States v. Bruce*); by excelling in my field of law becoming a Family Law Board Certified Specialist (making up 1% of the practicing attorneys in Texas); by having the highest AV Preeminent® rating (5.0 of 5.0) of Martindale-Hubbell for the last 16 years, given to me by judges and peers; by not just tilting at windmills on behalf of pro bono clients, but actually defeating those giants; and by seeking to insure that each client was well represented and that justice was served.**

**I believe my experience, education and temperament have prepared me for the rigors demanded of a District Court Judge. I have the desire and the ability to serve as a district court judge, and believe that I would be an asset to Missoula, to Montana and to its citizens in my role as a Judge.**

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

**I am proud of the praise from Justice J. Cohen, set out in the opinion of *Hicks v. Duncan*, where he stated “I commend Leta J. Moeller of Houston who has performed a significant public service by representing this indigent appellant and exposing this gross abuse.” I have worked to fulfill Justice Cohen’s confidence in me, and have tried to follow this path throughout my legal career.**

**I am extremely proud of my AV Preeminent® rating (5.0 of 5.0) of Martindale-Hubbell, which reflects how my peers and judges before whom I have practiced, view me. I have attached letters from Judges, clients and attorney peers in Texas, that were submitted at the time I applied to sit for the Montana Bar Exam, as indicative of my standing in the legal community in Texas, before moving to Montana.**

**I believe my experience in a multitude of legal arenas have provided me with a breadth of knowledge that I will be able to draw from as a district court judge, including the following appellate matters, resulting from cases/trials that I handled and briefed –**

- *Hicks v. Duncan*, 651 S.W.2d 871, 1983 Tex.App. LEXIS 5021 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1983). **Writ of Mandamus**
- *Duncan v. Evans*, 653 S.W.2d 38, 1983 TexCrim.App. LEXIS 1103 (Tex.Cr.App 1983) **Writ of Prohibition**
- *Biernat v. Powell*, 757 S.W.2d 115, 1988 Tex.App. LEXIS 2155 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1988) **Writ of Mandamus**
- *Marshall v Ryder Systems*, 928 S.W.2d 190, 1996 Tex.App. LEXIS 2708 (Tex.App.—Houston [14<sup>th</sup> Dist.] 1996) **Appeal**
- *Arrambide v. Atkinson*, 1997 Tex.App. LEXIS 3483 (Tex.App.—Houston [14<sup>th</sup> Dist.] 1997). **Appeal**
- *Casey v Casey*, 965 S.W.2d 521, 1997 Tex.App. LEXIS 4144 (Tex.App.—Houston [14<sup>th</sup> Dist.] 1997) **Appeal**
- *Hailey v Hailey*, 176 S.W.3d 374, 2004 Tex.App. LEXIS 7782 (Tex.App.—Houston [1<sup>st</sup> Dist.] 2004) **Appeal**
- *Hagerlin v. Hagerlin*, 2005 Tex.App. LEXIS 498 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2005) **Appeal**
- *In Re Castellanos*, 2006 Tex.App. LEXIS 498 (Tex.App.—Waco [10<sup>th</sup> Dist.] 2006) **Appeal**
- *In Re Shipman*, 2007 Tex.App. LEXIS 7265 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2007) **Writ of Mandamus**
- *In the Interest of K.B.F.*, 2007 Tex.App. LEXIS 7318 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2007) **Appeal**
- *Jones v. Jones*, 2008 Tex.App. LEXIS 7606 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2008) **Appeal**
- *Lewis v. Lewis*, 2010 Tex.App. LEXIS 5753 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2010) **Appeal**
- *Lewis v. Lewis*, 2011 Tex.App. LEXIS 1626 (Tex.App.—Houston [14<sup>th</sup> Dist.] 2011) **Appeal**
- *United States v. Bruce*, 642 F.Supp. 120 (S.D.Tex.—Galveston 1986) **Federal**

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

**Nothing other than set out herein.**

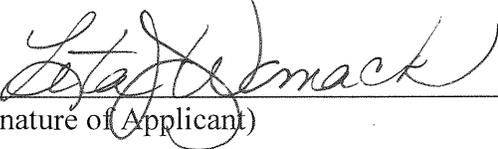
58. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge candidate?

**From the beginning of my law practice, I have tried not to turn a blind eye towards what I believed to be injustice. I too closely identify with Alexander Pope’s comment that “fools rush in where angels fear to tread.” Although not a fool, I have often stepped in to situations which were not only politically adverse to my law career, but often placed me in physical danger as well. However, my willingness to champion unpopular causes and challenge the powers that be, coupled with my experience of 34 years that taught me what the law is and how to uphold it, is a trait that makes me the best district court judge candidate.**

## I. 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 Canons of Judicial Ethics, if appointed.

10 February 2015  
(Date)

  
(Signature of Applicant)

---

A signed original **and** an electronic copy of your application and writing sample must be submitted by  
*5:00 p.m. on Thursday, February 19, 2015.*

**Mail the signed original to:**

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

**Send the electronic copy to: [MTsupremecourt@mt.gov](mailto:MTsupremecourt@mt.gov)**

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



**BONNIE CRANE HELLUMS**

JUDGE, 247TH JUDICIAL DISTRICT COURT  
FAMILY LAW CENTER  
1115 CONGRESS  
HOUSTON, TEXAS 77002  
(713) 755-6246

LETA S. PARKS  
ASSOCIATE JUDGE

RHONDA DUCOTE  
COURT REPORTER

CARLENE JOHNSON  
COORDINATOR

FRANK D. COX  
BAILIFF

May 22, 2008

State Bar of Montana  
P.O. Box 577  
Helena, MT 59624

To Whom It May Concern:

I first met Leta J. Womack when she was a student at Rice University approximately thirty years ago. She then attended Law School. She was a dedicated student and has since continued to demonstrate her commitment and dedication as a wife, mother and attorney. Leta has had numerous cases before me and has always displayed the utmost competence and professionalism. Texas is suffering the loss that Montana is gaining by Leta and her husband moving. I highly recommend the admission of Leta J. Womack to the State Bar of Montana.

Please feel free to contact me with any questions at [Bonnie\\_Hellums@Justex.net](mailto:Bonnie_Hellums@Justex.net) or 713 755-6246.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie Crane Hellums".

Bonnie Crane Hellums



**DOUG WARNE**  
JUDGE, 311TH FAMILY DISTRICT COURT  
HARRIS COUNTY FAMILY LAW CENTER  
1115 CONGRESS AVENUE HOUSTON, TEXAS 77002

(713) 755-6242

April 16, 2008

State Bar of Montana  
P.O. Box 577  
Helena, MT 59624

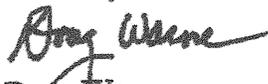
Re: Leta J. Womack

Dear Sir/Madam:

This letter is written in support of the application of the referenced attorney to take the Montana bar examination. I have known Ms. Womack for the better part of the 22 years that I have been a judge in the Family Court system here in Houston. She has handled a wide variety of cases over that time, some very complex, and has served as lead counsel in many contested hearings and trials. Ms. Womack has earned the respect of the judiciary and the bar. She is an attorney that we can depend on for the highest level of competency and professionalism. I am confident that she would bring these characteristics to her practice in Montana.

Please feel free to call on me if I can be of further assistance.

Sincerely,

  
Doug Warne



**JIM YORK**  
JUDGE, 246TH DISTRICT COURT  
FAMILY LAW CENTER BLDG.  
1115 CONGRESS AVENUE  
HOUSTON, TEXAS 77002

(713) 755-6938

BOARD CERTIFIED  
FAMILY LAW AND CIVIL TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

*March 25, 2008*

*State Bar of Montana  
P.O. Box 577  
Helena, Montana  
59624*

*Re: Leta J. Womack  
Attorney at Law*

*Ledia + Santonen:*

*This letter will attest to the competency,  
legal ability and propriety of Tefar  
attorney, Leta J. Womack.*

*I am personally acquainted with  
Ms Womack incident to her practice  
in Harri County during my 13 year on the  
Bar and can recommend her for admission  
to the Montana Bar.*

*Summary  
[Signature]*

**JACQUELINE SMITH & ASSOCIATES, P.C.**  
A Professional Corporation

Jacqueline Smith  
Attorney at Law

May 16, 2008

State Bar of Montana  
P.O. Box 677  
Helena, MT 59624

RE: Application for entry to Montana Bar of Leta J. Womack :

Dear Sir/Madame:

My name is Jacqueline Smith, and this letter is in support of the application of Leta Womack to the Montana State Bar. I have known Leta as a colleague, advisory and friend for more than twenty (20) years. As a colleague, I found her to be quite knowledgeable and competent in this field, helpful to younger colleagues and a credit to our profession.

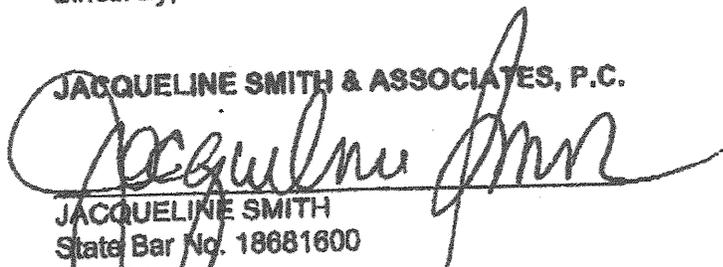
She is a tough opponent. I have opposed her on several matters. She works hard for her clients in the court room arena, as well as in settlement conferences. Her specialization in family law is vastly demonstrated in the manner in which she tackles her cases. Her sharp skills in litigation have helped to make me a better lawyer.

As a friend, she is loyal, caring and resourceful. I admire her knowledge of the law and her tenacity. I would hire her if I needed a family law attorney.

Her absence in the State of Texas will be a loss to our State Bar. The people of Montana will learn quickly what a jewel they have found in Leta as a member of your State Bar.

Sincerely,

JACQUELINE SMITH & ASSOCIATES, P.C.



JACQUELINE SMITH  
State Bar No. 18681600  
735 Yale  
Houston, Texas 77007  
(713) 863-0003  
(713) 863-9303

**State Bar of Montana  
P.O. Box 577  
Helena, MT 59624**

**April 22, 2008**

**Dear Sir/Madam:**

**I am writing this letter in reference of the professional and outstanding legal counsel offered by Leta Womack and her firm. I approached Ms. Womack in April of 2006 and she accepted my challenging divorce case. Ms. Womack represented me throughout my trying divorce proceedings until February of 2007.**

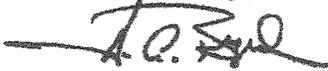
**I found Ms. Womack to be extremely knowledgeable in family law. As my ex-wife stated to her legal representation, "Ms. Womack was always two steps ahead".**

**Ms. Womack commanded respect within the family court setting. Judges, assistants and other court personnel greeted her kindly and took note of her actions. She reciprocated with a friendly, yet professional demeanor.**

**Ms. Womack kept me updated on next steps of the divorce process and offered me options whenever applicable. I could not have asked for more competent representation. She was prompt, never missed critical meetings or deadlines for submission of requests, and managed the voluminous paperwork with ease.**

**I have referred Leta Womack to several of my friends and relatives. I consider her to be a true legal professional with the utmost integrity and superb legal knowledge.**

**Sincerely,**



**Andy Byrd  
2710 Catalina Shores Drive  
Pearland, TX 77583**

April 21, 2008

State Bar of Montana  
P.O. Box 577  
Helena, MT 59624

To Whom It May Concern:

Attorney Leta J. Womack served as my legal representative from May 2006 through December 2006 in divorce Cause No. 2005-06844; *In the Matter of the Marriage of Lisa Gail Wooden Moore and Reginald Lovell Moore and In the Interest of Lauren Elizabeth Moore, A Child*; In the 247<sup>th</sup> Judicial District Court of Harris County Texas.

Attorney Womack and her staff provided, and continue to provide, exemplary service. Her professionalism, responsiveness, expert knowledge of family law, negotiation skills, and aggressive yet always composed management of my case resulted in an extremely comprehensive final decree. Whether in court, depositions, or mediation, Attorney Womack consistently commanded the respect of opposing counsel and other legal professionals.

Because of this high quality of customer service, it has been my pleasure to refer other satisfied clients to Womack and Womack, L.P.

Thank you for the opportunity to provide feedback and if further information is required, I can be reached at [moorereggie@sbcglobal.net](mailto:moorereggie@sbcglobal.net).

Sincerely,



Reginald L. Moore

COPY

CLERK OF THE  
DISTRICT COURT  
LYN FRICKER

2014 JUN 6 PM 4 42

FILED BY \_\_\_\_\_  
CLERK/DEPUTY

1 Leta J. Womack  
2 **OFFICE OF THE STATE PUBLIC DEFENDER**  
3 110 Main Street, Suite 11  
4 P.O. Box 1150  
5 Polson, MT 59860  
6 Telephone: (406) 883-6080  
7 Facsimile: (406) 883-6089

8 **Attorney for Birth Mother**  
9 [REDACTED]

10 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

11 **IN THE MATTER OF:**

Cause No.: DN-14-1

12 [REDACTED]

13 BIRTH MOTHER'S MOTION TO  
14 COMPEL PRODUCTION OF  
15 DOCUMENTS

16 *Youth In Need Of Care*

17 COMES NOW Leta J. Womack, Attorney for the Birth Mother [REDACTED] and  
18 hereby files this her Motion to Compel Production of Documents, and in support thereof would  
19 show as follows:

20 SUMMARY OF FACTS

- 21 1. This case was filed on or about January 27, 2014. At the time of the filing, the Youth the  
22 subject of these proceedings had been removed from his mother's care and custody,  
23 although the basis of the removal was not reflected in the Petition for Emergency  
24 Protective Services, Adjudication as Youth in Need of Care and Temporary Legal Custody.  
25 2. The hearing to Show Cause was held April 3, 2014, at which time Birth Mother stipulated  
to probable cause on the basis that she was homeless and unable to provide and properly  
care for the child. To date, there has been no adjudicatory hearing.

- 1 3. On March 5, 2014, Respondent, through her attorney, served 12 written Requests for  
2 Production on Petitioner, asking that a response be provided within fifteen (15) days of the  
3 request. [Exhibit "A"] Although generally discovery responses are due within thirty (30)  
4 days from the request, because of the shortened time frame in Dependent Neglect matters,  
5 your Respondent had requested production within 15 days in order to properly prepare for  
6 the show cause hearing.
- 7 4. No discovery has ever been received, although on April 1, 2014, Respondent was provided  
8 a letter [Exhibit "B"] which represented that it had an "open file policy" available for  
9 inspection upon request.
- 10 5. On Wednesday, May 28, 2014, Leta Womack (Respondent's attorney) via email, advised  
11 the Petitioner, through its attorney Chief Deputy County Attorney Mark Russell, that  
12 Respondent had received no documents, and requested production of those documents.  
13 The response was provided by referring Respondent to Exhibit "B". No discovery has been  
14 provided.

### 15 ARGUMENT AND AUTHORITIES

#### 16 Application of the Rules of Civil Procedure to Dependent Neglect Cases

- 17 1. §41-3-422(4), MCA, provides that "[A]n abuse and neglect petition is a civil action brought  
18 in the name of the state of Montana. The Montana Rules of Civil Procedure and the  
19 Montana Rules of Evidence apply except as modified in this chapter." The general  
20 provisions governing discovery, as set forth in Rule 26, Montana Rules of Civil Procedure,  
21 therefore apply to Dependent Neglect cases. See also *In the Matter of S.C.*, 2005 MT 241,  
22 1221 P.3d 552 ¶21, wherein the Court acknowledged that the Rules of Civil Procedure  
23 were applicable, and posed the question of how discovery could be carried out as  
24 efficiently and completely as necessary in youth in need of care proceedings.

1 2. The three primary discovery tools are Interrogatories, Requests for Production, and  
2 Requests for Admissions. Pertinent in the instant matter is Rule 34, Montana Rules of  
3 Civil Procedure, which governs the production of documents. Rule 34(a), MRCP, provides  
4 that "A party may serve on any other party a request within the scope of rule 26(b): (1) to  
5 produce and permit the requesting party or its representative to inspect, copy, test, or  
6 sample" designated items. Those items shall be set out in a Request which must describe  
7 each item to be inspected, and must specify a reasonable time, place and manner for the  
8 inspection. Rule 34(b)(1), MRCP. The party to whom the request is directed must respond  
9 in writing within 30 days after being served, and for each item or category, state that the  
10 inspection will be permitted or state an objection to the request, including the reasons.  
11 Rule 34(b)(2), MRCP. The response must be signed by at least one attorney of record; by  
12 signing, the attorney certifies that the disclosure is complete and correct as of the time it is  
13 made. Rule 26(g), MRCP. A party from whom discovery is sought may move for a  
14 protective order, Rule 26(c), MRCP, within the thirty (30) days provided for the time to  
15 respond, Rule 34(b)(2), MRCP.

16 3. A party who has responded to discovery must supplement or correct its response in a timely  
17 manner. Rule 26(e), MRCP.

18 **The Burden or Expense of Discovery, and the Efficiency of Responding to Requests**

19 4. There is nothing in the Rules of Civil Procedure which exempt the State from having to  
20 comply with appropriate discovery requests. The State, by simply stating that it has "an  
21 open file policy pertaining to Dependent Neglect actions" does not relieve it from  
22 complying with the Rules. This includes not only production of the requested documents,  
23 but the filing of a signed written response as dictated by Rule 34(b)(2), MRCP.

24 5. The State routinely disregards the provisions of the Rules of Civil Procedure with regard to  
25 filing written responses, which leaves the requesting party at a loss as far as what

1 documents the State has, or information the State relies upon, in arguing its case; certainly  
2 with regard to the requirement to supplement responses, the requesting party cannot know  
3 what additional information is obtained by the State except to make weekly visits to view  
4 the State's file.

5 6. It is clearly the State's position that (1) it does not need to comply with the Rules of Civil  
6 Procedure, as do all other civil parties, including the filing of written responses (or  
7 objections/protective orders if appropriate;) (2) the mere fact of having an "open file  
8 policy" satisfies all obligations it may have to provide discovery; and (3) the duty to  
9 supplement apparently falls on the requesting party to routinely check each file in each case  
10 to insure that new information is discovered, as opposed to the State having to properly  
11 supplement discovery to the requesting party.

12 7. Dependent Neglect cases are unique in that the discovery requested is primarily  
13 confidential, and should be disclosed to the parties only through certain exceptions, as set  
14 out in §41-3-205, MCA. For example, the identity of the reporter of abuse and neglect  
15 shall not be disclosed, or any other person whose safety may be endangered, §41-3-  
16 205(3)(h), MCA; a person authorized to receive records shall maintain the confidentiality  
17 of the records and may not disclose information in the records to anyone other than as  
18 exempted, §41-3-205(8), MCA; and criminal court records, records of law enforcement  
19 agencies or medical records covered by state or federal disclosure limitations should  
20 remain confidential, §41-3-205(1), MCA. The confidentiality dictated by the nature of  
21 Dependent Neglect cases, as well as state and federal regulations, is thwarted and  
22 compromised by the State's "open file policy" as information that may be allowed to one  
23 party (or parent) may not be allowed to another party. However, if any party is entitled to  
24 review the entire file, clearly the confidential nature of much of the file contents has been  
25 violated.

1 8. Information relied upon by the State in its pursuit of Dependent Neglect cases is not  
2 completely contained in its files. For instance, reports of supervised visitations, UA results,  
3 compliance with chemical dependency recommendations, school records, home studies,  
4 interactions with social workers or other state agencies, are too often not available in  
5 DPHHS' files. The State has knowledge of these various documents and access to them,  
6 and such are within the State's care, custody and control. It should be incumbent upon the  
7 State to provide access to all such requested discovery upon request, as it is better able to  
8 obtain such discovery.

9 9. Generally several parties in a Dependent Neglect matter are entitled to a significant amount  
10 of discovery which is duplicative. Specifically, there are generally at least 2 parents  
11 involved (and their attorneys,) an attorney for the child(ren), and a CASA. To insist that  
12 each party/attorney must make a specific inspection of the file and continue regular  
13 inspections in order to obtain discovery and any supplements when such information is  
14 generally the same for all parties, is burdensome and unreasonable. It is far more  
15 reasonable for discovery to be copied/scanned once and provided to all requesting parties,  
16 with the continuing obligation to supplement responses remaining with the State.

17 10. The State places complete reliance of its "open file policy" on the 2005 case of *In the*  
18 *Matter of S.C., supra*. In that case, the State had complied with the Rules of Civil  
19 Procedure and filed a Motion for Protective Order against discovery submitted by the birth  
20 mother; her discovery requests consisted of interrogatories, requests for admissions and  
21 requests for production. In ruling that the trial court did not abuse its discretion in granting  
22 the State's request for a protective order, the Supreme Court specifically noted that

23 We caution, however, that parties who are subject to parental termination proceedings  
24 have the full right to discover the case against them. We look askance at blanket denials  
25 or other discovery orders which hinder a party's effort to do so. We affirm here because,  
in light of the requests at issue, the mode of discovery approved by the District Court was  
sufficient *in this case*. As the District court correctly noted, however, other

1 circumstances may present “the need for additional or follow up discovery,” and, in such  
2 cases, further discovery, must be made available. *In Re S.C.*, ¶24, supra.

3 11. The dissents in *S.C.*, supra, by Justices Karla M. Gray and James C. Nelson, provide the  
4 best argument for your Respondent’s position:

5 Why the Department should receive special treatment in these cases implicating a  
6 parent’s fundamental constitutional rights is inconceivable to me....Placing more burden  
7 on a parent by denying reasonable written discovery strikes me as facially unfair and  
8 dangerously close to a denial of due process. Moreover, if the Department cannot  
9 adequately—but fairly—process these cases, the remedy is to seek more resources from  
10 the Legislature. The remedy is not for a trial judge to tell the parent that discovery is  
11 obtainable in a “more convenient, less burdensome and less expensive manner” when it is  
12 altogether clear that only the Department’s convenience, burden and expense are being  
13 considered. *In Re S.C.*, ¶46-48.

14 12. Even in *S.C.*, supra, @ ¶¶21-24, the Supreme Court noted that each case should be  
15 reviewed individually when discovery matters are in dispute, and in that case, the State  
16 appropriately filed its Motion for Protective Order, enabling the Court to determine the  
17 proper resolution of the discovery disputes in the case at hand.

18 13. In 2011, the Montana Supreme Court enacted revised Rules of Civil Procedure, Rule 26  
19 and 34; the rules regarding abuse and neglect cases, §41-3-422 and §41-3-205, MCA, have  
20 undergone changes as well. The obligation to provide discovery which provides the basis  
21 of its case should rest with the State.

22 14. Respondent is entitled to discovery. Although generally a response to a request for  
23 production must be made within 30 days of the request, Rule 34(b)(2)(A), M.R.Civ.P.,  
24 because a Show Cause hearing in Dependent Neglect cases must be conducted within 20  
25 days of the filing of an initial child abuse and neglect petition, §41-3-432(1)(a), MCA,  
Respondent argues that a 15 day response period is appropriate. Pursuant to Rule  
34(b)(2)(A), M.R.Civ.P., a shorter response time may be ordered by the court, and  
Respondent so requests.

1 15. Pursuant to §41-3-205(3), MCA, “[r]ecords, including case notes, correspondence,  
2 evaluations, videotapes, and interviews...may be disclosed to the following persons...(d) a  
3 parent, guardian, or person designated by a parent or guardian of the child who is the  
4 subject of a report in the records...; (h) a person about whom a report has been made and  
5 that person’s attorney, with respect to the relevant records pertaining to that person only...”

6 16. Respondent specifically requested discovery pertinent to this case, as authorized by Rules  
7 26 and 34, Montana Rules of Civil Procedure (M.R.Civ.P.). Rule 34(b)(1) provides that  
8 the Request “(A) must describe with reasonable particularity each item or category of items  
9 to be inspected; [and] (B) must specify a reasonable time, place, and manner for the  
10 inspection and for performing the related acts;” Respondent’s Request for Production  
11 described 12 separate and distinct category of items to be produced, and further specifically  
12 provided that “[s]ervice of said documents and notice of all hearings shall be delivered in  
13 accordance with the applicable Rules of Civil Procedure of the District Court. Said  
14 documents and notices shall be sent or delivered to the office of the undersigned at the  
15 above stated address.” To-wit, Respondent’s attorney, Leta Womack at the Office of the  
16 Public Defender. To date, no items have been produced.

17 17. Where the appropriateness of a discovery request is established under Rule 26, M.R.Civ.P.,  
18 the burden shifts to the party opposing discovery to justify its objection to the discovery  
19 being sought. In *Rowden v. American Evangelical Association*, 2007 Mont. Dist. LEXIS 7  
20 (2007), P22, the Court dealt with issues regarding the production of discovery. The  
21 Plaintiff had made voluminous requests for production. In an effort to comply, Defendants  
22 had produced most of the documents requested on CD-ROMs. However, because of the  
23 allegedly voluminous documents additionally requested, Defendants objected to producing  
24 the balance of the documents and offered to make those documents available for inspection  
25 and copying at their principal place of business. The Court, finding that Defendants had

1 made a good faith effort in producing documents on CD-ROMs responsive to the  
2 voluminous Request for Production, denied Plaintiff's request to compel the balance of the  
3 documents other than to make them available.

4 18. Respondent has properly requested documents, and Petitioner has not made a good faith  
5 effort to produce those documents requested.

6 19. Petitioner must produce "[c]opies of records, evaluations, reports, or other evidence  
7 obtained or generated pursuant to this section that are provided to the parent, the guardian,  
8 or the parent or guardian's attorney must be provided without cost." §41-3-205(10), MCA.

9 **PRIOR ORDER PERSUASIVE**

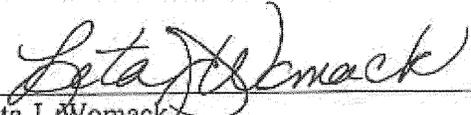
10 This issue has been recently addressed in Lake County involving a Dependent Neglect  
11 matter. The District Court found that in lieu of the "open file policy" of the State, discovery  
12 should be conducted as provided in the Rules of Civil Procedure. A copy of the Order  
13 Granting Motion to Compel Discovery is attached hereto as Exhibit "C" for the Court's easy  
14 reference.

15 **RELIEF REQUESTED**

16 WHEREFORE, your Respondent prays that the State be required to comply with the  
17 Rules of Civil Procedure, as does any other civil party, that the State be required to provide  
18 discovery as requested in Respondent's discovery requests, that the State file an appropriate  
19 response to the discovery requests, and should the State dispute the efficacy of the requests,  
20 then either objections or a motion for protection should be filed, and for such other and further  
21 relief to which she may show herself to be justly entitled.

22 DATED this 6<sup>th</sup> day of June, 2014.

23 *Office of the State Public Defender*

24   
25 Leta J. Womack  
Attorney for Birth Mother 