

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Brian Matthew Morris

2. **Position**: State the position for which you have been nominated.

United States District Judge for the District of Montana

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Montana Supreme Court
Justice Building, Room 414
215 North Sanders Street
P.O. Box 2003001
Helena, Montana 59620

4. **Birthplace**: State year and place of birth.

1963; Butte, Montana

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1989 – 1992, Stanford Law School; J.D. (with distinction), 1992
1986 – 1987, Stanford University; M.A., 1987
1982 – 1987, Stanford University; B.A., 1987

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2005 – present
Montana Supreme Court
Justice Building, Room 414

215 North Sanders Street
P.O. Box 2003001
Helena, Montana 59620
Justice

2006
Treasure State Television Network
(network no longer exists)
Butte, Montana
College Football Color Commentator

2003 – 2005
Omega Broadcasting
(broadcaster no longer exists)
Helena, Montana
College Football Color Commentator

2001 – 2005
Montana Department of Justice
215 North Sanders Street
P.O. Box 201401
Helena, Montana 59620
Solicitor

Spring 2002
Carroll College
1601 North Benton Avenue
Helena, Montana 59625
Adjunct Professor

2000 – 2001
United Nations Compensation Commission
Palais des Nations
Geneva, Switzerland CH121
Senior Legal Officer

1995 – 2000
Goetz, Madden & Dunn
35 North Grand Avenue
Bozeman, Montana 59715
Partner (1997 – 2000)
Associate (1995 – 1997)

1994 – 1995
Iran-United States Claims Tribunal
Parkweg 13

2585 JH
The Hague, Netherlands
Legal Assistant

1993 – 1994
Honorable William H. Rehnquist
United States Supreme Court
One First Street, NE
Washington, DC 20543
Law Clerk

1992 – 1993
Honorable John T. Noonan, Jr.
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94119
Law Clerk

1990 – 1992
Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, California 94305
Research Assistant for Professor Gerald Gunther

Summer 1991
Preston, Gates & Ellis
(currently K&L Gates LLP)
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104
Summer Associate

Summer 1991
Morrison & Foerster
425 Market Street
San Francisco, California 94105
Summer Associate

Summer 1990
United States Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
Summer Intern

1988 – 1989
EIP Associates

353 Sacramento Street
San Francisco, California 94111
Economic Analyst

1987 – 1988
California Tomorrow
(organization no longer exists)
P.O. Box 99664
Emeryville, California 94662
Public Service Fellow

Other Affiliations (uncompensated):

2006 – present
The William H. Rehnquist Center on the Constitutional Structures of Government
University of Arizona James E. Rogers College of Law
P.O. Box 210176
Tucson, Arizona 85721-0176
Board Member

2008 – 2012
Helena Youth Soccer Association
P.O. Box 6972
Helena, Montana 59604-6972
President (2009 – 2012)
Vice-President (July 2008 – January 2009)

1998 – 1999
American Civil Liberties Union of Montana
P.O. Box 1317
Helena Montana 59624
Board Member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have never served in the U.S. Military. I registered for selective service upon turning 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional:

Elected to the American Law Institute (2009)

The Advanced Science and Technology Adjudication Resource Center, Science and Technology Fellow (2009)

The Frank I. Haswell Award for Outstanding Article Presented to the Montana Lawyer (2002)

Other:

Montana High School Association Athletes Hall of Fame (2011)

Butte Sports Hall of Fame (2003)

National Collegiate Athletic Association Post-Graduate Scholarship Award (1987)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Montana Judicial Branch Commission on Technology (2012 – present)
Chairperson

Montana Supreme Court Working Group to Develop Performance Measures (2008)

Montana Supreme Court Working Group to Develop Standards for Public Access to Electronic Court Records (2009)

Montana Supreme Court Working Group to Revise Standards to Release Records on Attorney Discipline (2009)

Montana Trial Lawyers Association (1998 – 1999)

State Bar of Montana Access to Justice Commission (2005 – 2012)

State Bar of Montana Judicial Relations Commission (2010 – present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Montana, 1993

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2001

United States Court of Appeals for the Ninth Circuit, 2001

United States District Court for the District of Montana, 1996

Montana Supreme Court, 1993

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Civil Liberties Union of Montana (1998 – 1999)

Board Member

Cap City Traveling Basketball (2011 – present)

Coach

Helena Small Fry Football (2010 – present)

Coach

Helena Youth Soccer Association (2007 – present)

President (2009 – 2012)

Board Member (2008 – 2012)

Arsenal Coach (2007 – present)

The William H. Rehnquist Center on the Constitutional Structures of Government
(2006 – present)

Board Member

Stanford Alumni Association (1995 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national

origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Symposium: Looking Backward, Looking Forward: The Legacy of Chief Justice Rehnquist and Justice O'Connor: In Memory of William H. Rehnquist: For the Chief, 58 STAN. L. REV. 1683 (2006). Copy supplied.

Free Speech in Judicial Elections, Vol. 27, No. 11 MONT. LAW. 5 (2002). Copy supplied.

The UN Compensation Commission: Practical Justice, Not Retribution, co-authored with David D. Caron, 13 EUR. J. INT'L L. 183 (2002). Copy supplied.

Something upon Which We Can All Agree: Requiring a Unanimous Jury Verdict in Criminal Cases, 62 MONT. L. REV. 1 (2001). Copy supplied.

Unanswered Prayers: The Upper Missouri River Basin States Take on the U.S. Army Corps of Engineers, 68 N.D. L. REV. 897 (1992). Copy supplied.

When Rivers Run Dry Under a Big Sky: Balancing Agricultural and Recreational Claims to Scarce Water Resources in Montana and the American West, 11 STAN. ENVTL. L.J. 259 (1992). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have not prepared any reports, memoranda or policy statements on behalf of any bar association, committee, conference, or organization of which I am a member.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or supplied or that others presented on your behalf to public bodies or public officials.

I have not issued or supplied any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

June 10, 2013: Speaker, Address to 2013 American Legion of Montana Boys State, Helena, Montana. Remarks supplied.

April 12, 2013: Panelist, Lessons from the Bench, New Lawyers Section, State Bar of Montana, Missoula, Montana. I have no notes, transcript, or recording. The address of the State Bar of Montana is P.O. Box 577, Helena, Montana 59624.

January 2012 – November 2012: I participated in several forums with other candidates running for the Montana Supreme Court between the time that I filed my candidacy for re-election in January 2012 and the election in November 2012. The State Bar of Montana, local bar associations, business groups, labor groups, and conservation groups generally sponsored these forums. I have no notes, transcripts or recordings of these events, and I was not able to locate press coverage for any of these events.

September 13, 2012: Presenter, “The Role of Expert Witness Credibility in Assessing the Outcome of Cases on Appeal,” National Conference of State Tax Judges, San Francisco, California. Outline supplied.

August 2, 2012: Panelist, Judicial Panel Discussion on Class Action Litigation in Montana, Montana Trial Lawyers Association Annual Convention, Big Sky, Montana. The panel addressed the potential application of federal class action rules to Montana, a review of recent Montana Supreme Court decisions on class

certification, and the changing nature of class action claims in Montana. I have no notes, transcript, or recording. The address of the Montana Trial Lawyers Association is 32 South Ewing, Suite 312, Helena, Montana 59601.

April 25, 2012: Speaker, Mariah's Challenge Scholarship Banquet, Butte, Montana. I discussed the problems of alcohol in our culture and the dangers of underage drinking at a banquet for an organization that works to reduce underage drinking and eliminate drinking and driving. I have no notes, transcripts, or recording, but press coverage is supplied. The address of Mariah's Challenge is P.O. Box 66, Butte, Montana 59703.

February 13, 2012: Keynote Speaker, 2012 Annual Banquet of the Butte Exchange Club, Butte, Montana. Copy supplied.

May 16, 2011: Presenter, "Ethics: Representing Multiple Parties in Water Cases," Law Seminars International, Helena, Montana. Outline supplied.

April 29, 2011: Moderator, Access to Justice Panel at the 12th Annual Conference of the Montana Mediation Association, Helena, Montana. The panel discussed methods to expand mediation services to lower income litigants, the challenges involved in conducting mediation with non-represented litigants, and the appropriate role of the mediator when working with non-represented litigants. I have no notes, transcript, or recording. The address of the Montana Mediation Association is P.O. Box 1984, Great Falls, Montana 59403..

March 25, 2011: Presenter, "The Role of Appellate Courts," Montana Judicial Institute, Missoula, Montana. Outline supplied.

February 25, 2011: Presenter, "How to Raise Constitutional Issues," State Bar of Montana Continuing Legal Education (CLE) Institute, Bozeman, Montana. Outline supplied.

February 19, 2010: Panelist, "Best Practices before the Montana Supreme Court," State Bar of Montana Continuing Legal Education (CLE) Institute, Missoula, Montana. Outline supplied.

September 19, 2008: Panelist, "Montana Case Law Update: Montana Supreme Court Orders and Decisions July 1, 2007—August 12, 2008," State Bar of Montana Continuing Legal Education (CLE) Institute, Butte, Montana. Outline supplied.

September 18, 2008: Presenter, Community Pro Bono Award at State Bar of Montana Annual Banquet in Butte, Montana. I presented the award to the coordinator of the pro bono program for Butte-Silver Bow County, which has the highest rate of lawyer participation in the state of Montana. I have no notes,

transcript, or recording, but press coverage is supplied. The address of the State Bar of Montana is P.O. Box 577, Helena, Montana 59624.

September 9, 2008: Panelist, New Media and the Courts, The William H. Rehnquist Center on the Constitutional Structures of Government, University of Arizona James E. Rogers College of Law, Tucson, Arizona. I have no notes, transcript, or recording. The address of the William H. Rehnquist Center is P.O. Box 210176, Tucson, Arizona 85721.

August 21, 2008: Speaker, Introductory Remarks, Convocation Ceremony for First Year Law Students, University of Montana School of Law. I offered advice to incoming law students on how to survive law school based on my own experiences. I have no notes, transcript, or recording, but press coverage is supplied. The address of the University of Montana School of Law is School of Law, The University of Montana, 32 Campus Drive, Missoula, Montana 59812.

March 17, 2008: Master of Ceremonies, Friendly Sons and Daughters of St. Patrick Annual Banquet. I have no notes, transcript, or recording. The address of the organization is c/o Brendan McDonough, 1911 Argyle Street, Butte, Montana 59701.

March 7, 2008: Speaker, Welcoming Remarks, CLE seminar, "Changing the Paradigm: Recognizing Human Needs in Legal Needs & Developing Awareness & Skills for Cross-Cultural Lawyering," The University Center, University of Montana, Missoula, Montana. This seminar was sponsored by the State Bar of Montana, University of Montana Student Bar Association, Montana Justice Foundation, Supreme Court Equal Justice Task Force, Disability Rights Montana, ACLU Montana (University of Montana Chapter), and the Montana Public Interest Law Coalition. I welcomed conference participants and highlighted challenges in Montana based upon statistical evidence regarding the number of non-represented litigants in the Montana court system. I have no notes, transcript, or recording, but press coverage is supplied. The address for the State Bar of Montana is P.O. Box 577, Helena, Montana 59624.

February 1, 2008: Presenter, "Background and Overview of the 10th Amendment: Federal-State Powers and Jurisprudence," Helena Education Foundation, Helena, Montana. Outline supplied.

June 20, 2007: Speaker, Welcoming Remarks, Montana Justice Foundation, Helena, Montana. Copy supplied.

September 29, 2006: Presenter, "Alternative Dispute Resolution in Montana and Some Thoughts Concerning Regulatory Takings," State Bar of Montana Continuing Legal Education (CLE) Institute, Bozeman, Montana. Outline supplied.

August 15, 2006: Presenter, “Perspectives on Judicial Ethics,” American College of Trial Lawyers, Whitefish, Montana. Notes supplied.

April 29, 2006: Keynote Speaker, 2006 Annual Banquet of National Football Foundation Hall of Fame, Montana Chapter, Helena, Montana. Copy supplied.

February 9, 2006: Keynote Speaker, 2006 Annual Banquet of the Butte Exchange Club, Butte, Montana. Copy supplied.

January 14, 2006: Panelist, “Montana Supreme Court Decisions July 1, 2004—December 28, 2005,” State Bar of Montana Continuing Legal Education (CLE) Institute, Missoula, Montana. Outline supplied.

December 5, 2005: Speaker, “Thoughts on the Montana Supreme Court,” Association of Executive Directors, Helena, Montana. Copy supplied.

November 2005: Luncheon Speaker, Gallatin County Bar Association, Bozeman, Montana. Notes supplied.

September 9, 2005: Presenter, “Resolution of Discovery Disputes at the Montana Supreme Court,” State Bar of Montana Continuing Legal Education (CLE) Institute, Helena, Montana. Outline supplied.

August 4, 2005: Presenter, “Judicial Ethics and the Appearance of Propriety,” Montana Trial Lawyers Association Annual Convention, Polson, Montana. Copy supplied.

June 23, 2005: Panelist, The Court’s Expectations of Counsel for the State, National Association of Attorneys General Solicitor’s Conference, Big Sky, Montana. The panel addressed ethical issues for state lawyers, strategy for state lawyers in appellate cases, and the dangers of misrepresenting the record. I have no notes, transcript, or recording. The address of the National Association of Attorneys General is 2030 M Street, NW, Eighth Floor, Washington, DC 20036.

May 19, 2005: Keynote Speaker, 2005 Annual Dinner & 98th Meeting of the Butte Family YMCA, Butte, Montana. Copy supplied.

March 18, 2005: Presenter, “Preserving the Record for Appeal,” State Bar of Montana Continuing Legal Education (CLE) Institute, Butte, Montana. Copy supplied.

July 2003 – November 2004: I participated in numerous forums with other candidates running for the Montana Supreme Court between the time that I announced my candidacy in July 2003 and the election in November 2004. The State Bar of Montana, local bar associations, business groups, labor groups, and conservation groups generally sponsored these forums. I also made brief

presentations as a candidate at breakfasts, lunches, and dinners sponsored by the Montana Republican Party and the Montana Democratic Party. I have no notes, transcripts or recordings of these events, and I was not able to locate press coverage for any of these events.

May 6, 2004: Presenter, "The Fort Peck Draw Down by the Army Corps of Engineers: What has Montana Done and What Can Montana Do," Great Falls Conservation Council, Great Falls, Montana. I discussed efforts undertaken by Montana to address concerns that arose from the management of Fort Peck Reservoir by the U.S. Army Corps of Engineers and potential legal options available to Montana. I have no notes, transcript, or recording. The address of the Great Falls Conservation Council is 287 McIver Road, Great Falls, Montana 59404.

December 2003: Faculty Member, Appellate Advocacy Seminar, National District Attorney's Association, Columbia, South Carolina. I have no notes, transcript, or recording. I served as a judge in mock oral arguments, critiqued the performances of seminar participants, and provided practical demonstrations to participants during week-long program. The address of the National District Attorney's Association is 99 Canal Center Plaza, Suite 330, Alexandria, Virginia 22314.

November 1, 2002: Presenter, "United States Supreme Court: Recent Trends and Predictions for the Future," State Bar of Montana Continuing Legal Education (CLE) Institute, Helena, Montana. Outline supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Eddie Gregg, *Grant Gives Students Access to iPads*, HELENA INDEP. REC., Mar. 6, 2013. Copy supplied.

Dan Testa, *Local Attorneys, Judges Say Federal Nominee Up to the Job*, FLATHEAD BEACON, May 16, 2011. Copy supplied.

Bruce Sayler, *Morris a State Hall of Famer*, THE MONT. STANDARD, Jan. 21, 2011. Copy supplied.

Gerard O'Brien, *Brian Morris, Class of '82: From Star Athlete to Supreme Court Justice*, THE MONT. STANDARD, June 6, 2009. Copy supplied.

Mandy Erickson, *Brian Morris '92 Scores Seat on Montana High Court*, STAN. LAW., Winter 2005. Copy supplied.

Mary Ann Zehr, *Court Overturns Montana Funding System*, EDUC. WK., Nov. 17, 2004. Copy supplied.

Chelsea DeWeese, *McLean vs. Morris*, SILVER ST. POST, Oct. 27, 2004. Copy supplied.

Jim Gransbery, *Court Candidates Won't Discuss Specific Cases*, BILLINGS GAZETTE, Oct. 25, 2004. Copy supplied.

Sarah R. Craig, *Morris, McLean Say Backgrounds Do the Talking*, ASSOCIATED PRESS, Oct. 22, 2004. Copy supplied.

Jennifer McKee, *Morris Touts Broad Legal Experience in Court Race*, THE MISSOULIAN, Oct. 7, 2004. Copy supplied.

Bob Anez, *Patrol Officers Endorse McLean, Younkin in Court Races*, ASSOCIATED PRESS, Sept. 16, 2004. Copy supplied.

Mike Dennison, *Campaign Cash Reveals Contrast*, GREAT FALLS TRIB., Aug. 8, 2004. Copy supplied.

Mike Dennison, *Stealthy Supreme Court Race Pits Nice Guy Against Nice Guy*, GREAT FALLS TRIB., Aug. 8, 2004. Copy supplied.

'Speaking Out: ' *Still a Thorny Issue for Montana's Judicial Candidates*, MONT. LAW., Apr. 2004. Copy supplied.

Mike Dennison, *State School-Funding Trial Looms*, GREAT FALLS TRIB., Jan. 18, 2004. Copy supplied.

Mike Dennison, *State Judge Forcefully Upholds McDonald Gold-Mining Ban*, GREAT FALLS TRIB., Dec. 11, 2002. Copy supplied.

Jennifer McKee, *Mining Company Can't Sue*, THE MISSOULIAN, Dec. 11, 2002. Copy supplied.

Kathleen McLaughlin, *Cyanide Challenge Stripped*, THE MISSOULIAN, Nov. 2, 2001. Copy supplied.

Associated Press, *High Court Refuses to Hear First Amendment Appeals*, FREEDOMFORUM.ORG, Oct. 2, 2001. Copy supplied.

Michael Babcock, *Judge Rules Rancher Cannot Block Access on Powell County Road*, GREAT FALLS TRIB., Oct. 27, 1999. Copy supplied.

Associated Press, *Judge to Say Who Gets Kuralt Items – Widow or Friend*, THE CHARLOTTE OBSERVER, July 22, 1998. Copy supplied.

Associated Press, *Judge Will Decide; Both Sides Forgo Trial over Kuralt's Items*, STAR-NEWS (WILMINGTON, NC), July 22, 1998. Copy supplied.

Danny Martin, *Palmer Grad Fights NCAA in Montana – College Corner*, ANCHORAGE DAILY NEWS, Jan. 9, 1998. Copy supplied.

Tom Lutey, *NCAA Says MSU at Fault in Basketball Suit*, BOZEMAN DAILY CHRON., Dec. 18, 1997. Copy supplied.

Joan Haines, *Sportsmen Appealing Turner Land Deal*, BOZEMAN DAILY CHRON., Nov. 18, 1996. Copy supplied.

Chris Baker, *Stanford's Paye Pays Price With His Shoulder*, L.A. TIMES, Oct. 20, 1985. Copy supplied.

I was interviewed numerous times by newspapers, magazines, radio stations, and television stations while I played football for Stanford University between 1982 and 1986. These interviews generally involved questions related to my performance or the performance of the Stanford football team. I do not have copies of these interviews, and I was not readily able to obtain copies through the electronic search engines to which I had access.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have served as a justice on the Montana Supreme Court since January 2, 2005. I was elected to the court in November 2004 in a non-partisan contested election. I was re-elected to the court in November 2012 for a second eight-year term. The Montana Supreme Court possesses general jurisdiction over civil, criminal, and administrative appeals from district court, limited jurisdiction courts, and administrative agencies.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

As an appellate court judge, I have not presided over any trials.

- i. Of these, approximately what percent were:

jury trials: _____ %
bench trials: _____ %

civil proceedings: _____ %
criminal proceedings: _____ %

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Boyne USA, Inc. v. Spanish Peaks*, No. 12-0094, 2013 MT 1, 368 Mont. 143; 292 P.3d 432 (Mont. 2013)

The Court affirmed the jury's award of \$600,000 to Boyne as a result of deceit and abuse of the legal process committed by Spanish Peaks. The deceit resulted from Spanish Peaks' repeated refusal over a ten-year period to complete a land sale contract for the purchase of 15 acres of property on top of Lone Peak in Madison County, Montana. Spanish Peaks abused the legal process through its filing of related litigation in different jurisdictions in which it took contradictory legal positions on similar issues. The Court also affirmed the District Court's award of specific performance of the land sale contract.

Counsel for Spanish Peaks: Stephen R. Brown
Charles E. McNeil
Elena J. Zlatnik
Garlington, Lohn & Robinson, PLLP
350 Ryman Street
Missoula, Montana 59807
(406) 523-2500

Counsel for Boyne: David M. Wagner
Crowley Fleck PLLP
45 Discovery Drive, Suite 200
Bozeman, Montana 59719
(406) 556-1430

2. *Burlington Resources Oil & Gas Co. v. Lang & Sons, Inc.*, No. 10-0406, 2011 MT 199, 361 Mont. 407, 259 P.3d 766 (Mont. 2011)

The surface owner appealed the District Court's determination that the leasee/operator of natural gas wells had no obligation to compensate the surface owner separately for injecting wastewater into pore space beneath an abandoned oil well. The operator of natural gas wells injected drilling wastewater into pore space beneath an abandoned well. The surface owner sought separate payment

from operator for use of surface owner's pore space. The Court recognized that the pore space belonged to the surface owner in the same manner that any non-mineral materials beneath the physical boundaries of the surface owner's property belong to the surface owner's surface estate. In this case, however, the surface owner failed to offer evidence of damage to the surface estate compensable under Montana law.

Counsel for Lang & Sons: Albert R. Batterman
 Batterman Law Offices, P.C.
 P.O. Box 985
 Baker, Montana 59313
 (406) 778-3006

Richard W. Heineman
100 South Wibaux
Wibaux, Montana 59353
(406) 796-2427

Counsel for Burlington: Jeffery J. Oven and Matthew S. Brahana
 Crowley Fleck, PLLP
 490 North 31st Street, Suite 500
 Billings, Montana 59103
 (406) 252-3441

3. *Puget Sound v. MDOR*, No. 10-0394, 2011 MT 141, 361 Mont. 39, 255 P.3d 171 (Mont. 2011)

The Montana Department of Revenue (MDOR) appealed the District Court's determination that the State Tax Appeal Board could not assess Puget Sound's market value in an amount that exceeded the MDOR's original assessment. The Court determined that the State Tax Appeal Board possessed the constitutional and statutory duty to hear Puget Sound's appeal and make an independent determination of Puget Sound's market value even if the State Tax Appeal Board's assessment exceeded the Department's original assessment. The Court further rejected Puget Sound's argument that it lacked notice or an opportunity to respond to the State Tax Appeal Board's determination that Puget Sound's market value exceeded MDOR's original assessment.

Counsel for MDOR: C.A. Daw, Derek Bell, and Courtney Jenkins
 Montana Department of Revenue
 125 North Roberts Street, Room 476
 Helena, Montana 59604
 (406) 444-1763

Counsel for Puget Sound: Michael Green
 Crowley Fleck, PLLP

100 North Park Avenue, Suite 300
Helena, Montana 59624
(406) 449-4185

4. *Hohenlohe v. DNRC*, No. 09-0429, 2010 MT 203, 357 Mont. 438, 240 P.3d 628 (Mont. 2010)

Landowner sought to lease accompanying water rights to a conservation group to augment instream flow. The interpretation of Montana's instream flow statute by the Department of Natural Resources and Conservation (DNRC) imposed an unattainable burden on the landowner of having to establish no adverse effect to existing right holders from the proposed lease. The Court interpreted the instream flow statute in a manner that recognized that the ultimate purpose of the instream flow statute was to restore water to streams for the benefit of the fishery resource. This interpretation potentially would allow a water rights holder to lease up to the full historically diverted amount. The Court rejected DNRC's concerns regarding a potential windfall to instream flow lessors if allowed to lease the entire amount historically diverted as being mitigated by the fact that the lessor's water rights remain subject to ultimate adjudication by the Water Court.

Counsel for DNRC: Anne W. Yates and Kevin R. Peterson
Department of Natural Resources and Conservation
1625 11th Avenue
Helena, Montana 59620
(406) 444-0503

Counsel for Hohenlohe: Abigail J. St. Lawrence and John E. Bloomquist
Doney, Crowley, Bloomquist, Payne, Uda, P.C.,
44 West Sixth Avenue, Suite 200
Helena, Montana 59624
(406) 443-2211

5. *Textana v. Klabzuba*, No. 08-0243, 2009 MT 401, 353 Mont. 442, 222 P.3d 580 (Mont. 2009)

The Court determined that professional services contract between oil developer and landman imposed a fiduciary duty on the landman to disclose all opportunities for oil and gas development in the area. This trust relationship imposed on the landman an affirmative duty to disclose his interests in oil and gas properties that could have been of interest to the oil developer. These factors, along with evidence of fraudulent concealment by the landman, supported the District Court's conclusion that the jury should resolve any disputes regarding the tolling of the statute of limitations on claims related to oil and gas opportunities that the landman allegedly had failed to disclose to the oil developer.

Counsel for Textana:

James H. Goetz
Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

John D. Stephenson
Jardine, Stephenson, Blewett & Weaver, P.C.
300 Central Avenue, 7th Floor
Great Falls, Montana 59403
(406) 727-5000

Counsel for Klabzuba:

Matthew Hutchison
Kaufman, Vidal, Hileman & Ramlow, P.C.
22 Second Avenue West, Suite 4000
Kalispell, Montana 59903
(406) 755-5700

6. *Malcom v. Evenflo Co.*, No. 08-0085, 2009 MT 285, 352 Mont. 325, 217 P.3d 514 (Mont. 2009)

Evenflo appealed from a jury verdict in favor of Malcolm. The Court affirmed the District Court's evidentiary ruling that excluded Evenflo's evidence that its child safety seat complied with federal regulations for the purposes of establishing compensatory damages in a product liability case. The district court properly determined that evidence of compliance with federal regulations likely would confuse the jury as it would result in the commingling of negligence principles and product liability principles. The Court also affirmed the District Court's evidentiary ruling to admit evidence of product recalls of Evenflo's child safety seats in light of the substantial similarity between the recalled models and the model at issue.

Counsel for Evenflo Co.:

James H. Goetz
Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

Randy J. Cox
Boone Karlburg
201 West Main Street, Suite 300
Missoula, Montana 59807
(406) 543-6646

Allan H. Baris
Moore, O'Connell & Refling

601 Haggerty Lane, Suite Ten
Bozeman, Montana 59771
(406) 587-5511

Counsel for Malcolm: L. Randall Bishop
Jarussi & Bishop
3970 Avenue D, Suite A
Billings, Montana 59102
(406) 839-9091

7. *State v. Giddings*, No. 07-0333, 2009 MT 61, 349 Mont. 347, 208 P.3d 363 (Mont. 2009)

The Court affirmed Giddings's conviction for deliberate homicide, felony tampering with or fabricating physical evidence, and felony criminal possession of dangerous drugs. The Court held that the District Court properly had denied Giddings's motion to dismiss based on the State's alleged intentional destruction of exculpatory evidence because Giddings had supplied no evidence to establish that the detective's handwritten notes from an interview contained information favorable to the defense or that the detective's conduct constituted bad faith, as he destroyed his notes only after transcribing all relevant information into a formal report. The District Court also did not abuse its discretion by denying Giddings's motion for a mistrial based on the State's alleged violation of an order in limine that excluded any testimony or other evidence concerning whether the victim disliked or was afraid of Giddings. A detective's testimony regarding an alternative suspect having been afraid of defendant did not violate the order or Mont. R. Evid. 404(b), as it did not implicate the victim's dislike of Giddings and was not evidence of other crimes, wrongs, or acts.

Counsel for Giddings: Jim Wheelis and Joslyn M. Hunt
Office of Appellate Defender
139 North Last Chance Gulch
Helena, Montana 59620
(406) 444-9505

Counsel for State: Tammy Plubell
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

8. *State v. Barnaby*, No. 05-013, 2006 MT 203, 333 Mont. 220, 142 P.3d 809 (Mont. 2006)

The Court affirmed Barnaby's conviction of operating a clandestine methamphetamine laboratory. The justice court issued a search warrant based on

citizen complaints and other information known about a person staying at Barnaby's residence. The Court applied the totality of the circumstances test to evaluate whether probable cause supported the issuance of a warrant. These circumstances included the fact that the person staying at Barnaby's house had been involved in methamphetamine use and suspicious activity at the residence. The Court rejected as a matter of law the proposition that independent police work represented the only method of corroboration under the totality of the circumstances test. The Court further determined that the District Court properly had denied Barnaby's *Batson* challenge in light of the race neutral explanations supplied by the prosecutor: one potential juror was related to Barnaby, and the other one considered Barnaby's trial counsel a good friend.

Counsel for Barnaby: William F. Hooks
Office of the Public Defender
44 West Park
Butte, Montana 59701
(406) 496-6080

Counsel for State: Joslyn M. Hunt
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

9. *Montanans for the Responsible Use of Trust Lands v. Darkenwald*, No. 04-027, 2005 MT 190, 328 Mont. 105, 119 P.3d 27 (Mont. 2005)

The Court rejected a challenge that the State Land Board had violated the Montana Constitution and breached its duty of trust. The challengers contended that the State Land Board's approval of plan to sell a future stream of mineral royalties from school trust land in exchange for an immediate cash infusion constituted improper commingling of trust assets into the general fund. The Court determined that the commingling of interest income did not necessarily mean that any duty had been violated. The State Land Board accounted for the exact amount of interest and bonuses deposited into the general fund. The Court further determined that the plan did not abrogate the State Land Board's requirement to obtain full market value for school trust lands. The State Land Board properly had balanced the interests of the present and future beneficiaries when it had conducted the sale of the future mineral royalties.

Counsel for Montanans: Roy H. Andes
Andes Law Office
P.O. Box 991
Helena, Montana 59624
(406) 431-0869

Counsel for Darkenwald: Tommy H. Butler
Montana Department of Natural Resources and
Conservation
1625 11th Avenue
Helena, Montana 59620
(406) 444-3776

10. *Travelers Cas. & Sur. Co. v. Ribl Immunochem Research*, No. 04-0228, 2005
MT 50, 326 Mont. 174, 108 P.3d 469 (Mont. 2005)

A biotechnology company routinely deposited hazardous waste in a landfill. The company assumed that the waste would deteriorate before it leached into the groundwater. In fact, the waste leached into the groundwater soon after it had been deposited. The insured's comprehensive general liability (CGL) policy did not provide coverage for the insured's disposal of hazardous waste that had contaminated groundwater. The CGL's pollution exclusion barred coverage. The Court determined that the damage caused by the insured's intentional disposal of hazardous waste constituted an "occurrence" as defined under the CGL policy. Acts that had taken place over a significant period of time, but caused unexpected damage, could fall within the definition of "occurrence" and thereby trigger coverage. The CGL nevertheless barred coverage under the "sudden and accidental" exception in the pollution exclusion. The insured intentionally had disposed of the waste over a long period of time. The fact that the insured had not intended for the waste to migrate into groundwater did not render contamination "sudden and accidental" as contemplated by the exception in the pollution exclusion.

Counsel for Ribl: J. Daniel Hoven
Browning, Kaleczyc, Berry and Hoven, P.C.
800 North Last Chance Gulch, Suite 101
Helena, Montana 59624
(406) 683-6820

Counsel for Travelers: Ronald A. Bender
Worden Thane, P.C.
111 North Higgins Avenue, Suite 600
Missoula, Montana 59806
(406) 721-3400

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Boyne USA, Inc. v. Spanish Peaks*, No. 12-0094, 2013 MT 1, 368 Mont. 143; 292 P.3d 432 (Mont. 2013)

Counsel for Spanish Peaks: Stephen R. Brown
Charles E. McNeil
Elena J. Zlatnik
Garlington, Lohn & Robinson, PLLP,
350 Ryman Street
Missoula, Montana 59807
(406) 523-2500

Counsel for Boyne: David M. Wagner
Crowley Fleck PLLP
45 Discovery Drive, Suite 200
Bozeman, Montana 59719
(406) 556-1430

2. *Burlington Resources Oil & Gas Co. v. Lang & Sons, Inc.*, No. 10-0406, 2011 MT 199, 361 Mont. 407, 259 P.3d 766 (Mont. 2011)

Counsel for Lang & Sons: Albert R. Batterman
Batterman Law Offices, P.C.
P.O. Box 985
Baker, Montana 59313
(406) 778-3006

Richard W. Heineman
100 South Wibaux
Wibaux, Montana 59353
(406) 796-2427

Counsel for Burlington: Jeffery J. Oven and Matthew S. Brahana
Crowley Fleck, PLLP
490 North 31st Street, Suite 500
Billings, Montana 59103
(406) 252-3441

3. *Puget Sound v. MDOR*, No. 10-0394, 2011 MT 141, 361 Mont. 39, 255 P.3d 171 (Mont. 2011)

Counsel for MDOR: C.A. Daw, Derek Bell, and Courtney Jenkins
Montana Department of Revenue
125 North Roberts Street, Room 476
Helena, Montana 59604
(406) 444-1763

Counsel for Puget Sound: Michael Green
Crowley Fleck, PLLP
100 North Park Avenue, Suite 300
Helena, Montana 59624
(406) 449-4185

4. *Hohenlohe v. DNRC*, No. 09-0429, 2010 MT 203, 357 Mont. 438, 240 P.3d 628 (Mont. 2010)

Counsel for DNRC: Anne W. Yates and Kevin R. Peterson
Department of Natural Resources and Conservation
1625 11th Avenue
Helena, Montana 59620
(406) 444-0503

Counsel for Hohenlohe: Abigail J. St. Lawrence and John E. Bloomquist
Doney, Crowley, Bloomquist, Payne, Uda, P.C.,
44 West Sixth Avenue, Suite 200
Helena, Montana 59624
(406) 443-2211

5. *Textana v. Klabzuba*, No. 08-0243, 2009 MT 401, 353 Mont. 442, 222 P.3d 580 (Mont. 2009)

Counsel for Textana: James H. Goetz
Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

John D. Stephenson
Jardine, Stephenson, Blewett & Weaver, P.C.
300 Central Avenue, 7th Floor
Great Falls, Montana 59403
(406) 727-5000

Counsel for Klabzuba: Matthew Hutchison
Kaufman, Vidal, Hileman & Ramlow, P.C.
22 Second Avenue West, Suite 4000
Kalispell, Montana 59903
(406) 755-5700

6. *Malcom v. Evenflo Co.*, No. 08-0085, 2009 MT 285, 352 Mont. 325, 217 P.3d 514 (Mont. 2009)

Counsel for Evenflo Co.: James H. Goetz

Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

Randy J. Cox
Boone Karlburg
201 West Main Street, Suite 300
Missoula, Montana 59807
(406) 543-6646

Allan H. Baris
Moore, O'Connell & Refling
601 Haggerty Lane, Suite Ten
Bozeman, Montana 59771
(406) 587-5511

Counsel for Malcolm: L. Randall Bishop
Jarussi & Bishop
3970 Avenue D, Suite A
Billings, Montana 59102
(406) 839-9091

7. *State v. Giddings*, No. 07-0333, 2009 MT 61, 349 Mont. 347, 208 P.3d 363
(Mont. 2009)

Counsel for Giddings: Jim Wheelis and Joslyn M. Hunt
Office of Appellate Defender
139 North Last Chance Gulch
Helena, Montana 59620
(406) 444-9505

Counsel for State: Tammy Plubell
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

8. *State v. Barnaby*, No. 05-013, 2006 MT 203, 333 Mont. 220, 142 P.3d 809
(Mont. 2006)

Counsel for Barnaby: William F. Hooks
Office of the Public Defender
44 West Park
Butte, Montana 59701
(406) 496-6080

Counsel for State: Joslyn M. Hunt
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

9. *Montanans for the Responsible Use of Trust Lands v. Darkenwald*, No. 04-027, 2005 MT 190, 328 Mont. 105, 119 P.3d 27 (Mont. 2005)

Counsel for Montanans: Roy H. Andes
P.O. Box 991
Helena, Montana 59624
(406) 431-0869

Counsel for Darkenwald: Tommy H. Butler
Montana Department of Natural Resources and
Conservation
1625 11th Avenue
Helena, Montana 59620
(406) 444-3776

10. *Travelers Cas. & Sur. Co. v. Ribi Immunochem Research*, No. 04-0228, 2005 MT 50, 326 Mont. 174, 108 P.3d 469 (Mont. 2005)

Counsel for Ribi: J. Daniel Hoven
Browning, Kaleczyc, Berry and Hoven, P.C.
800 North Last Chance Gulch, Suite 101
Helena, Montana 59624
(406) 683-6820

Counsel for Travelers: Ronald A. Bender
Worden Thane, P.C.
111 North Higgins Avenue, Suite 600
Missoula, Montana 59806
(406) 721-3400

e. Provide a list of all cases in which certiorari was requested or granted.

Certiorari Granted:

Western Tradition P'ship v. Attorney General, 2011 MT 328, 2011 MT 328; 363 Mont. 220; 271 P.3d 1 (Mont. 2011), *cert. granted, rev'd, Am. Tradition P'ship v. Bullock*, 132 S. Ct. 2490, 2491 (2012) (joined majority opinion)

Certiorari Pending:

Kelker v. Geneva-Roth, 2013 MT 62, 369 Mont. 254, ___ P.3d ___, extension of time granted until July 10, 2013 in which to file cert petition

Big Sky Colony, Inc. v. Mont. Dep't of Labor & Indus., 2012 MT 320, 368 Mont. 66, 291 P.3d 123 (Mont. 2012), petition for certiorari filed, 12-1191 (April 1, 2013)

Certiorari Denied:

Butler v. Montana, 2012 MT 278N; 368 Mont. 413 (Mont. 2012), *cert. denied*, 2013 U.S. LEXIS 4116 (May 28, 2013) (joined majority opinion)

Helena Sand & Gravel, Inc. v. Lewis & Clark Planning & Zoning Comm'n, 2012 MT 272; 367 Mont. 130; 290 P.3d 691 (Mont. 2012), *cert. denied*, 2013 U.S. LEXIS 4244 (June 3, 2013) (joined majority opinion)

Ballard v. Levens, 2012 MT 178N (Mont. 2012), *cert. denied*, 133 S. Ct. 946 (2013) (joined majority opinion)

Spear v. State, Montana Highway Patrol, 366 Mont. 543 (Mont. 2012), *cert. denied*, *Spear v. Montana*, 133 S. Ct. 584 (2012)

Stock v. Montana, 2011 MT 131; 361 Mont. 1; 256 P.3d 899 (Mont. 2011), *cert. denied*, 132 S. Ct. 850 (2011) (joined majority opinion)

Stevens v. Novartis Pharms. Corp., 2010 MT 282; 358 Mont. 474; 247 P.3d 244 (Mont. 2010), *cert. denied*, 131 S. Ct. 2938 (2011) (joined majority opinion)

Tacke v. Energy West, Inc., 2010 MT 39, 355 Mont. 243; 227 P.3d 601 (Mont. 2010), *cert. denied*, 131 S. Ct. 131 (2010) (joined majority opinion)

In re David, 2009 MT 422; 354 Mont. 44; 221 P.3d 1209 (Mont. 2009), *cert. denied*, *David v. David*, 130 S. Ct. 2384 (2010) (joined majority opinion)

State ex rel. Bullock v. Philip Morris, Inc., 2009 MT 261 (Mont. 2009), *cert. denied*, *R.J. Reynolds Tobacco Co. v. Montana ex rel. Bullock*, 130 S. Ct. 3354 (2010) (joined majority opinion)

Eklund v. Wheatland County, 2009 MT 231 (Mont. 2009), *cert. denied*, 559 U.S. 936 (2010)

State v. Giddings, 349 Mont. 347, 208 P.3d 363 (Mont. 2009), *cert. denied*, *Giddings v. Montana*, 130 S. Ct. 227 (2009)

Clement v. Mont. Dep't of Labor & Indus., 348 Mont. 370 (Mont. 2008), *cert. denied*, 129 S. Ct. 1998 (2009)

Fenno v. Mt. W. Bank, 345 Mont. 161, 192 P.3d 224 (Mont. 2008), *cert. denied*, *Mt. W. Bank, N.A. v. Fenno*, 555 U.S. 1219, 130 S. Ct. 458 (2009)

In re Engel, 344 Mont. 219, 194 P.3d 613 (Mont. 2008), *cert. denied*, *Engel v. Mont. Supreme Court Comm'n on Practice*, 555 U.S. 1031, 129 S. Ct. 619 (2008)

In the Matter of Joseph F. Nascimento, No. 02-778, *cert. denied*, *Nascimento v. Montana Supreme Court*, 550 U.S. 919 (2007) (joined majority opinion)

Jones v. Mont. Univ. Sys., 337 Mont. 1, 155 P.3d 1247 (Mont. 2007), *cert. denied*, 552 U.S. 951, 128 S. Ct. 401 (2007)

Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil, 2006 MT 284 (Mont. 2006), *cert. denied*, *O'Neil v. Mont. Supreme Court Comm'n on Unauthorized Practice of Law*, 549 U.S. 1282 (2007) (joined majority opinion)

Piper Jaffray & Co. v. Kaufman, 2005 MT 191N; 2005 Mont. LEXIS 350 (Mont. 2005), *cert. denied*, 546 U.S. 1173 (2006) (joined majority opinion)

Piper Jaffray Co. v. Shea, 2005 MT 63N; 2005 Mont. LEXIS 70 (Mont. 2005), *cert. denied*, 546 U.S. 976 (2005); 546 U.S. 1173 (joined majority opinion)

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

To the best of my knowledge, none of my opinions have been reversed or affirmed with significant criticism of my substantive or procedural rulings.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have authored approximately 475 opinions. Approximately 170 of those opinions, or 36 percent, are unpublished. These unpublished opinions appear in electronic databases, such as Lexis and Westlaw, with an "N" designation after the citation. For example, my opinion in *State v. Stone*, appears under the citation 2013 MT 18N.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Big Sky Colony, Inc. v. Mont. Dep't of Labor & Indus., 368 Mont. 66, 291 P.3d 123 (Mont. 2012)

State v. Price, 350 Mont. 272, 207 P.3d 298 (Mont. 2009)

Disability Rights Mont. v. State, 350 Mont. 101, 207 P.3d 1092 (Mont. 2009)

Davis v. State, 344 Mont. 300, 187 P.3d 654 (Mont. 2008)

State v. PPL Mont., LLC, 340 Mont. 124, 172 P.3d 1241 (Mont. 2007)

Cassady v. Yellowstone County Mont. Sheriff Dep't, 333 Mont. 371, 143 P.3d 148 (Mont. 2006)

State v. Barnaby, 333 Mont. 220, 142 P.3d 809 (Mont. 2006)

Germann v. Stephens, 332 Mont. 303, 137 P.3d 545 (Mont. 2006)

Farrier v. Teacher's Ret. Bd., 328 Mont. 375, 120 P.3d 390 (Mont. 2005)

Montanans for the Responsible Use of the School Trust v. Darkenwald, No. 04-027, 328 Mont. 105, 119 P.3d 27 (Mont. 2005)

State v. Parrish, 327 Mont. 88, 111 P.3d 671 (Mont. 2005)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have never sat by designation on any federal court.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The Montana Supreme Court follows the rules dictated by Section 3-1-803, Montana Code Annotated, regarding recusal, as well as the guidelines set forth in the Montana Canons of Judicial Ethics, and the ABA Model Rules of Judicial Conduct. These authorities set forth specific instances that require automatic recusal, as well as circumstances in which a justice's impartiality reasonably may be called into question, and thereby necessitate recusal.

Upon my election to the Montana Supreme Court in November 2004, Chris Tweeten, the Chief Civil Counsel in the office of the Montana Department of Justice, crafted a policy to govern the transition from my former position as solicitor with the Montana Department of Justice to my new position on the Montana Supreme Court. The policy recognized the distinction between a lawyer in a government agency and a lawyer in private practice. This distinction has led me to recuse myself from those cases that involve the office of the Montana Attorney General, as a matter of course, only from those cases in which I served as counsel, on which I supplied background research, consulted with counsel in the case, or otherwise had direct involvement with the case. I have followed this practice during my tenure with the Montana Supreme Court.

I have recused myself in the following cases:

Public Lands Access, Inc. v. Board of County Commissioners, DA 12-0312. Counsel for one of the parties sent me a letter in which she requested that I recuse myself due to the fact that I had been involved in a related challenge to the application of Montana's Stream Access Law to the same party during my work as solicitor with the Montana Department of Justice. I recused myself in response to the letter. The current litigation involves application of an amended version of Montana's Stream Access Law to the same party in the case in which I had been involved in 2004. I determined that the unusual similarity of the two cases made it appropriate to recuse myself consistent with my practice of avoiding sitting in cases in which I had involvement during work as solicitor with the Montana Department of Justice.

Reichert v. State, DA 12-0187, 2012 MT 111.

I recused myself sua sponte in an appeal that involved a challenge to a legislative referendum that would have modified by statute the scheme to elect justices to the Montana Supreme Court from a statewide election to election by districts. I was a candidate for re-election in 2012 at the time that the appeal came before the Court and potentially would have been affected directly by the outcome.

State v. Goodenough, DA 09-0201, 2010 MT 247.

I recused myself sua sponte due to the fact that my father-in-law had served as the trial court judge in the case.

State Farm Fire & Cas. Co. v. Bush Hog, LLC, OP 08-0430, 2009 MT 349.

I recused myself sua sponte due to the fact my wife's law firm had filed an amicus brief in the case.

Ammondson v. Northwestern Corp., DA 07-0243, 2009 MT 331.

I recused myself sua sponte due to the fact that my wife's law firm represented Northwestern Corp.

In re Mental Health of C.R.C., DA 08-0325, 2009 MT 125.

I recused myself sua sponte due to the fact that my father-in-law had served as the trial court judge in the case.

State v. Rose, 05-129, 2009 MT 4.

I recused myself sua sponte due to the fact that I had been involved with related litigation in which Rose had been a party during my work as solicitor with the Montana Department of Justice.

Kafka v. Mont. Dep't of Fish, Wildlife & Parks, 05-146, 2008 MT 460.

I recused myself sua sponte due to the fact that I had been involved in the case during my work as solicitor with the Montana Department of Justice.

Buhmann v. State, 05-473, 2008 MT 465.

I recused myself sua sponte due to the fact that I had been involved in the case during my work as solicitor with the Montana Department of Justice.

Omimex Can., Ltd. v. State, DA 07-0356, 2008 MT 403.

I recused myself sua sponte due to the fact that my wife's law firm represented Omimex Can., Ltd.

Libby Placer Mining Co. v. Noranda Minerals Corp., DA 07-0166, 2008 MT 367.

I recused myself sua sponte due to the fact that my father-in-law had served as the trial court judge in the case.

Thompson v. State, DA 06-0365, 2007 MT 185.

Counsel for Thompson sent me a letter asking that I recuse myself due to the fact that I had served briefly as counsel of record in the case during my work as solicitor with the Montana Department of Justice. I would have recused myself, even without the request from counsel for Thompson, consistent with my longstanding practice not to sit on appeals in cases in which I had been involved during my work as solicitor with the Montana Department of Justice.

Elliott v. State Dep't of Revenue, No. 05-336, 2006 MT 267.

I recused myself sua sponte due to the fact that my wife's law firm represented Elliott.

Haynes v. Shodair Children's Hosp., No. 05-065, 2006 MT 128.

I recused myself sua sponte due to the fact that I had been involved in the case during my work as solicitor with the Montana Department of Justice.

Hofer v. Mont. Dep't of Pub. HHS (In re Hofer), No. 04-395, 2005 MT 302.

I recused myself sua sponte due to the fact that I had been involved in the case during my work as solicitor with the Montana Department of Justice.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than judicial office. I have not had any unsuccessful candidacies for elective office or nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office in or rendered any services to any political party or election committee. I have never held a position or played a role in any political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From July 1993 through July 1994, I served as a law clerk to the Honorable William H. Rehnquist, Chief Justice of the United States Supreme Court.

From August 1992 through July 1993, I served as a law clerk to the Honorable John T. Noonan, Jr., Circuit Judge of the United States Court of Appeals for the Ninth Circuit.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 – 1995
Iran-United States Claims Tribunal
Parkweg 13
The Hague, Netherlands
Legal Assistant

1995 – 2000
Goetz, Madden & Dunn
35 North Grand Avenue
Bozeman, Montana 59715
Associate (1995 – 1997)
Partner (1997 – 2000)

2000 – 2001
United Nations Compensation Commission
Palais des Nations
Geneva, Switzerland
Senior Legal Officer

2001 – 2005
Montana Department of Justice
215 North Sanders Street
P.O. Box 201401
Helena, Montana 59620
Solicitor

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From September 1994 through September 1995, I served as a legal assistant to a group of American arbitrators at the Iran-U.S. Claims Tribunal. I researched and drafted legal memorandum relating to takings issues, valuation issues, including the availability of lost profits, and issues relating to dual nationality for claims filed by American citizens and corporations that sought compensation for takings of private property after the Iranian Revolution.

From 1995 through the beginning of 2000, I engaged in general litigation practice in state and federal courts with the law firm of Goetz, Madden & Dunn in Bozeman, Montana. I initially worked as an associate in conjunction with several senior partners. Besides doing work for the senior partners, I also accepted appointments in criminal cases during that period. I became a partner in 1997 and began to represent my own clients. My practice included both trial and appellate work and issues ranging from commercial litigation to criminal law.

For the year of 2000, I served as a senior legal officer at the United Nations Compensation Commission in Geneva, Switzerland. In that capacity, I prepared and presented claims to panels of arbitrators filed by corporations injured by Iraq's invasion and occupation of Kuwait. I researched legal issues and drafted proposed awards for the arbitrators.

From the beginning of 2001 through the end of 2004, I served as solicitor with the Montana Department of Justice. I often defended the State in trial and appellate courts against federal and state constitutional challenges to a statute or citizen-approved initiative or to the adequacy of State programs and institutions. I evaluated whether the State should intervene in cases in which a party challenged the constitutionality of a statute, but in which the State was not a party in the initial proceeding. I also drafted several briefs in criminal appeals to the Montana Supreme Court.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my legal career before becoming a judge, I did not focus on any one specialty. Rather, I participated in a broad range of trial and appellate litigation in a variety of areas of the law. While at Goetz, Madden & Dunn, I represented property owners in boundary and easement disputes and land use disputes, small business owners in commercial disputes, a county government in a dispute with court reporters over salary and hours

of work, and individual criminal defendants in court-appointed cases. My work at the Iran-U.S. Claims Tribunal and UNCC focused on valuation methods and takings claims. As the solicitor for the Montana Department of Justice, I represented the State of Montana in civil litigation at the trial and appellate levels in state and federal courts.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Most of my practice was in litigation, both in private practice with Goetz, Madden & Dunn and with the Montana Department of Justice. While in private practice, I appeared in court at least once each month. I appeared in court approximately two times per month while working for the Montana Department of Justice.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 10% |
| 2. state courts of record: | 80% |
| 3. other courts: | 5% |
| 4. administrative agencies: | 5% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 90% |
| 2. criminal proceedings: | 10% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried to verdict, judgment, or final decision approximately 12 cases during my career. I served as sole counsel in four of these cases, lead counsel in six cases, and supporting counsel in two others.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 20% |
| 2. non-jury: | 80% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Mont. Right to Life Ass'n v. Eddleman, cert. denied, 543 U.S. 812, 125 S. Ct. 47, 160 L. Ed. 2d 16 (2004) (opposition to a petition for a writ of certiorari on behalf of the State of Montana, 2004 WL 1283792).

Madison v. Graham, cert. denied, 538 U.S. 1058, 123 S. Ct. 2221, 155 L. Ed. 2d 1107 (2003) (opposition to a petition for a writ of certiorari on behalf of the State of Montana). Copy supplied.

Golightly v. Montoya, cert. denied, 537 U.S. 1112, 123 S. Ct. 902, 154 L. Ed. 2d 786 (2003) (amicus brief in support of a petition for a writ of certiorari on behalf of the State of Montana and 21 other states, 2002 WL 32133715).

California v. Schulman, cert. denied, 534 U.S. 992, 122 S. Ct. 458, 151 L. Ed. 2d 377 (2001) (amicus brief in support of a petition for a writ of certiorari on behalf of the State of Montana and other states and territories, 2001 WL 34116110).

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189 (9th Cir. 2005).

I served as counsel on appeal for the State of Montana. I drafted the brief and argued the case before a three-judge panel of the Ninth Circuit. The Ninth Circuit reversed the decisions of the Bankruptcy Court and the District Court that had denied Montana's motion to dismiss. The Ninth Circuit agreed that the 11th Amendment supplied Montana with immunity from suit in federal court against claims by debtor in a bankruptcy proceeding. The debtor instead had to pursue the claims in state court.

Co-counsel:

John Sullivan
Hughes, Sullivan, Kellner, and Alke
40 North Lawrence
Helena, Montana 59601
(406) 442-3690

Counsel for Goldin:

Michael P. Richman
Mayer Brown LLP
1675 Broadway

New York, New York 10019
(212) 506-2500

2. *Seven Up Pete Venture v. Montana*, 114 P.3d 1009 (Mont. 2005).

I served as counsel for the State of Montana before the district court and on appeal before the Montana Supreme Court. A mining company that held a lease on state trust land filed a challenge in state court to Montana's voter approved initiative that banned the cyanide heap leach method of extracting gold at open pit mines.

Judge Jeffrey Sherlock presided in the district court. The parties engaged in extensive discovery, conducted numerous depositions over a two-year period, and filed and argued pre-trial motions. The district court granted summary judgment to the State on the basis that the ban did not raise to the level of a taking of the mining company's property interest in the lease. The Montana Supreme Court affirmed after oral argument.

Counsel for Intervenor:	Karl Englund Englund Law Offices 401 North Washington Missoula, Montana 59807 (406) 721-2729
-------------------------	--

Counsel for Seven Up Pete:	Ron Waterman and Alan Joscelyn Gough, Shanahan, Johnson, and Waterman 33 South Last Chance Gulch Helena, Montana 59624 (406) 442-8560
----------------------------	---

3. *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2005).

I served as lead counsel for the State of Montana before the district court and on appeal before the Montana Supreme Court. A group of school districts challenged the adequacy of Montana's school funding system in light of the provision in the Montana Constitution that requires the State to provide "a basic system of free quality public elementary and secondary schools." The school districts also alleged that the school funding system violated the provision of the Montana Constitution that guarantees to each person "[e]quality of educational opportunity."

Judge Jeffrey Sherlock presided in the district court. The parties engaged in extensive discovery, conducted numerous depositions over a three-year period, and filed and argued pre-trial motions. The district court conducted a four-week trial. The court rejected the school district's equal protection claim regarding equality of educational opportunity. The court determined, however, that Montana's school funding system failed to meet the constitutional requirement of a basic system of free quality public elementary and secondary schools. The Montana Supreme Court affirmed after oral argument.

Co-counsel: Ali Bovington
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

Counsel for Columbia Falls: Jim Molloy
Office of the Governor
State Capitol, Room 204
Helena, Montana 59620
(406) 949-0430

Brian Gallik
Goetz, Gallik and Baldwin
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

4. *White v. Martz*, No. CDV-2002-133, First Judicial District Court, Lewis & Clark County.

I served as lead counsel for the State of Montana in defending against a class action brought by a group of indigent defendants that challenged the adequacy of Montana's public defender system. Judge Thomas Honzel presided in the district court. The parties engaged in extensive discovery, conducted hundreds of depositions over a three-year period, and filed and argued pre-trial motions.

The parties eventually entered into a stipulation in which they agreed to hold the case in abeyance pending action by the Montana legislature to establish a state-wide public defender system. The 2005 Montana legislature established the state-wide system and the district court dismissed the case upon motion of the parties.

Co-counsel for Defendant: Pam Bucy
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

Counsel for Intervenor: Norman H. Grosfield
Grosfield Law Firm
P.O. Box 5015
Helena, Montana 59604
(406) 443-7295

Counsel for White, et al.

Ron Waterman
Gough, Shanahan, Johnson, and Waterman
33 South Last Chance Gulch
Helena, Montana 59624
(406) 442-8560

E. Vincent Warren
ACLU Legal Department
125 Broad Street
New York, New York 10004
(212) 549-2651

5. *Berta v. Clark Recreation Lot Owners Assoc.*, No. DV-97-96, Twenty-second Judicial District, Carbon County.

I served as counsel for the Bertas who challenged the existence of a public road or easement across their property. Another group of landowners proposed to use the existing primitive road across the Bertas' property to reach their own property. All parties agreed that a public road that arose from a petition for public road filed in the late 1880s extended at least to the boundary of the Bertas' property. The parties engaged in discovery, conducted depositions, and filed and argued pre-trial motions.

Judge Diane Barz presided in the district court. The district court conducted a three-day trial. The district court agreed with Bertas that the public, including the neighboring landowners, did not have a right to use the existing primitive road across the Bertas' property. The court determined, however, that a public easement existed along the boundary of the Bertas' property based on the road petition filed in the late 1880s.

Counsel for the Lot Owners:

Ken Tolliver
10 North 27th Street, Suite 310
Billings, Montana 59103-1913
(406) 256-9600

Counsel for Carbon County:

Tony Kendall
P.O. Box 129
Red Lodge, Montana 59068
(406) 446-9130

6. *Madison v. Graham*, 316 F.3d 867 (9th Cir. 2002), *cert. denied*, 538 U.S. 1058, 123 S. Ct. 2221, 155 L. Ed. 2d 1107 (2003).

I served as counsel on appeal for the State of Montana. The Montana Legislature had enacted the Stream Access Law in 1985. The law codified the common law doctrine of the public trust related to navigable rivers and streams in Montana. The law protected public use of rivers and streams in Montana for recreational purposes below the historical

high water mark. The Montana Supreme Court earlier had rejected a takings challenge to the Stream Access Law in *Galt v. State*, 225 Mont. 142, 731 P.2d 912 (Mont. 1987).

A group of property owners filed an action in federal court that attacked the Stream Access Law on the basis that it violated their substantive due process rights under the Fourteenth Amendment and that it was void for vagueness. I drafted the brief and argued the case before a three-judge panel of the Ninth Circuit. The Ninth Circuit agreed that the District Court properly had dismissed the property owners' substantive due process claims due to the availability of more specific takings remedies. I drafted a brief in opposition for a petition for a writ of certiorari.

Counsel for Intervenor: James H. Goetz
Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

Counsel for Madison: Dale R. Cockrell
Christiansen, Moore, Cockrell
145 Commons Loop, Suite 200
Kalispell, Montana 59904
(406) 751-6000

William Perry Pendley and S. Amanda Koehler
Mountain States Legal Foundation
2596 South Lewis Way
Lakewood, Colorado 80227
(303) 292-2021

7. *Cole v. State ex rel. Brown*, 42 P.3d 760 (Mont. 2002).

I served as counsel for the State of Montana in an original proceeding filed before the Montana Supreme Court. I drafted the brief and argued the case before the Montana Supreme Court. A group of legislators and voters alleged that Montana's 1994 voter approved term limits initiative for executive and legislative offices violated a provision of the Montana Constitution that limits voter initiatives to a single subject. The court adopted the State's argument that the doctrine of laches barred the challenge on the basis that the legislators and voters had waited too long to challenge the method by which the voters had adopted the term limits.

Counsel for Cole: Stan Kaleczyc and Kim Beatty
Browning, Kaleczyc, Berry and Hoven
800 North Last Chance Gulch, Suite 101
Helena, Montana 59624
(406) 443-6820

8. *Davison v. State ex rel. Brown*, Cause No. BDV-2002-458, First Judicial District Court, Lewis & Clark County.

I served as counsel for the State of Montana in a pre-election challenge to a proposed voter initiative that would have authorized the State to initiate condemnation proceedings against various hydroelectric dams in Montana. The dam owners alleged that the proposed initiative involved more than a single subject in violation of Art. V, § 11(3) of the Montana Constitution, constituted impermissible special legislation, and exceeded the scope of the State's eminent domain power.

Judge Jeffrey Sherlock presided in the district court. I filed pre-motions and supporting briefs. The court conducted an all day hearing. The district court rejected all of the challenges to the proposed initiative. The proposed initiative appeared on the November 2002 general election ballot. The voters rejected the proposed initiative.

Counsel for Davison:

Joseph P. Mazurek and Alice Henshaw
Crowley Fleck, PLLP
100 North Park Avenue, Suite 300
Helena, Montana 59624
(406) 449-4185

Robert M. Murdo
Jackson, Murdo, Grant & McFarland
203 North Ewing Street
Helena, Montana 59601
(406) 442-1300

9. *Greater Yellowstone Coalition, Inc. v. Bd. of County Comm'rs*, 25 P.3d 168 (Mont. 2001).

I served as counsel for the Greater Yellowstone Coalition in the district court. The Coalition alleged that a decision by the Gallatin County Board of Commissioners to approve a request to rezone land from residential with a density of one unit per ten acres to a planned unit development that would have facilitated the development of hundreds of houses and a golf course on border of Yellowstone National Park constituted impermissible spot zoning.

Judge Thomas Olson presided in the district court. The parties engaged in discovery, conducted depositions, and filed and argued pre-trial motions. The district court conducted a five-day trial. The district court determined that the Coalition had presented sufficient evidence to satisfy all of the elements of spot zoning. The Montana Supreme Court affirmed.

Co-counsel:

Richard J. Dolan
Goetz, Madden & Dunn
35 North Grand Avenue

Bozeman, Montana 59715
(406) 587-0618

Counsel for Gallatin County: Susan Swimley
1807 West Dickerson, # B
Bozeman, Montana 59715
(406) 586-5544

Counsel for Intervenor: Mike Lily
Berg Law Firm
1 West Main Street
Bozeman, Montana 59715
(406) 587-3181

10. *In re Estate of Prescott*, 8 P.3d 88 (Mont. 2000).

I served as counsel for the Montana State University (MSU) Foundation and the Museum of the Rockies in the district court and before the Montana Supreme Court. A formerly unknown heir challenged the probating of his mother's will that excluded him from any inheritance. The disinherited heir turned out to be the testatrix's biological son. The heir alleged that his mother lacked testamentary capacity at the time that she had executed the will as evidenced by the fact that she claimed in the will to have no children. The will made bequests to the MSU Foundation and the Museum of the Rockies.

Judge Mike Salvagni presided in the district court. The parties engaged in discovery, conducted depositions, and filed and argued pre-trial motions. The district court granted summary judgment to the MSU Foundation and the Museum of the Rockies after a hearing. The Montana Supreme Court affirmed.

Counsel for the Heir: Thomas White
3100 Sentinel Drive
Bozeman, Montana 59771
(406) 243-4311

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have been involved with various commissions of the Montana Supreme Court. Most recently, I assumed the position of chair of the Montana Judicial Branch Commission on Technology. The commission evaluates the needs of the judicial branch in Montana, including the district courts and the courts of limited jurisdiction, considers available

options and possible sources of funding, and makes recommendations to the Office of the Court Administrator and the Montana Supreme Court regarding priorities.

I also currently serve on the State Bar of Montana Judicial Relations Commission. The commission seeks to foster communication and improve relations between members of the practicing bar and the judiciary. The commission also sponsors and presents an annual program of continuing legal education.

From 2005 through 2012, I served on the Montana Supreme Court's Access to Justice Commission. The commission sought to remove barriers to courts for pro se litigants and to encourage pro bono participation by lawyers in Montana.

In 2009, I served as a member of a Montana Supreme Court working group to develop standards for public access to electronic court records at the Montana Supreme Court and at state district courts throughout Montana. The standards sought to maximize public access while protecting sensitive personal information, such as social security numbers, that could be used for improper purposes.

I served as a member of a Montana Supreme Court working group in 2009 to revise standards used by the Commission on Practice to release records on attorney discipline. The new standards require that the public have access to all records of a proceeding in which the attorney received some form of public discipline. The revised standards allow the Commission on Practice to continue to resolve minor infractions through private admonitions in which the records remain confidential.

I served as a member of a Montana Supreme Court working group in 2008 to develop performance measures in conjunction with the National Center for State Courts. The Montana Supreme Court now issues quarterly performance measures that depict the Court's timeliness. The working group also developed an annual survey distributed to members of the State Bar of Montana, state district court judges, and faculty members at the University of Montana Law School. The Court posts on its website both the quarterly performance measures and the annual survey results as part of the Court's efforts to promote public access and transparency.

I also have presented at numerous programs of continuing legal education mostly related to practice before the Montana Supreme Court, including appellate advocacy, preserving issues and developing the record for appeal, and constitutional issues.

I have not performed any lobbying activities or registered as a lobbyist during my career.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I co-taught an undergraduate seminar entitled "Introduction to Constitutional Law" at Carroll College in Helena, Montana during the fall of 2003. The course supplied an overview of our system of government that included discussion of separation of powers and the role of the courts in our society. My co-teacher and I modeled the course based upon the textbook entitled "American Constitutional Law, Introductory Essays and Selected Cases," (Thirteenth Ed.) by Alpheus Thomas Mason and Donald Grier Stephenson, Jr. I could not locate a copy of the course syllabus.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife and my brother both work as lawyers in Montana. I would not sit on any cases in which they or their law firms represented any party. Neither one of them

has a significant practice in federal court, so I would not anticipate many conflicts.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My position as a justice on the Montana Supreme Court prohibits me from performing directly pro bono litigation services. From 2005 through 2012, however I served on the Montana Supreme Court's Access to Justice Commission. The commission sought to remove barriers to courts for pro se litigants and to encourage pro bono participation by lawyers in Montana. In this capacity, I also made remarks to, or participated as a panel member in, continuing legal education seminars that focused on methods to expand pro bono programs and remove barriers to court access.

I participated in a pro bono program sponsored by the First Judicial District Court in Helena, Montana while I worked for the Montana Department of Justice. I represented several clients in child custody proceedings.

While in private practice, I participated in a pro bono program sponsored by the Eighteenth Judicial District in Bozeman, Montana. I represented three separate clients there, including a spouse in marriage dissolution proceeding and two separate parties in parental termination proceedings. I also took on a number of court-appointed criminal cases, which paid significantly less than my usual fees.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 7, 2013, I applied to the committee established by Senator Max Baucus to consider applicants for these judicial vacancies. In late January, I spoke with Senator Baucus by phone, and I interviewed with him in Three Forks, Montana, on February 18, 2013. On March 11, 2013, Senator Baucus announced that he would recommend me to the White House. Since March 13, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 18, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 23, 2013, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Brian, Morris M.	2. Court or Organization United States District Court, District of Montana	3. Date of Report 05/23/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Active Service	5a. Report Type (check appropriate type) ☒ Nomination Date 05/23/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2012 to 05/15/2013
7. Chambers or Office Address Montana Supreme Court Justice Building, Room 414 215 North Sanders Helena, Montana 59620		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.</i>		

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Director	The William H. Rehnquist Center on the Constitutional Structures of Government University of Arizona James E. Rogers Co
2. Executor	Estate #1
3.	
4.	
5.	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☒ NONE *(No reportable agreements.)*

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT

Page 2 of 7

Name of Person Reporting

Brian, Morris M.

Date of Report

05/23/2013

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2013	Montana Supreme Court -- salary	\$49,000.00
2. 2012	Montana Supreme Court -- salary	\$119,000.00
3. 2011	Montana Supreme -- salary	\$113,000.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2013	Hughes, Kellner, Sullivan & Alke -- salary
2. 2012	Hughes, Kellner, Sullivan & Alke -- salary
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT

Page 3 of 7

Name of Person Reporting

Brian, Morris M.

Date of Report

05/23/2013

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*☐ NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	AES	Education loan	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Page 4 of 7

Name of Person Reporting

Brian, Morris M.

Date of Report

05/23/2013

VII. INVESTMENTS and TRUSTS — income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. New York Life Variable Annuity									
2. -MainStay ICAP Select Equity Fund	A	Int./Div.	J	T	Exempt				
3. -MainStay VP Common Stock Portfolio	A	Int./Div.	J	T					
4. -MainStay VP Convertible Portfolio	A	Int./Div.	J	T					
5. -MainStay VP Janus Balanced Portfolio	A	Int./Div.	J	T					
6. -MainStay VP Large Cap Growth Portfolio	A	Int./Div.	J	T					
7. -MainStay VP S&P 500 Index Portfolio	A	Int./Div.	J	T					
8. -MainStay VP T. Rowe Price Equity Income Portfolio	A	Int./Div.	J	T					
9. RBC Prime Money Market Fund	A	Interest	K	T					
10. Yahoo Common Stock		None	J	T					
11. HKSA 401(k) Profit Sharing Plan									
12. -American Funds AMCAP Fund	B	Int./Div.	K	T					
13. -American Funds New Perspective Fund	A	Int./Div.	K	T					
14. -Franklin Templeton Mutual Global Discovery Fund	B	Int./Div.	K	T					
15. -JP Morgan Mid-Cap Value Fund	B	Int./Div.	J	T					
16. -Neuberger Berman Socially Responsive Fund	B	Int./Div.	K	T					
17. -Oppenheimer Main Street Small & Mid-Cap Fund	A	Int./Div.	J	T					

1. Income Gain Codes:
(See Columns B1 and D4)

A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
P3 = \$25,000,001 - \$50,000,000

B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)
V = Other

C = \$2,501 - \$5,000
H1 = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000

S = Assessment
W = Estimated

D = \$5,001 - \$15,000
H2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

3. Value Method Codes
(See Column C2)

Q = Appraisal
U = Book Value

FINANCIAL DISCLOSURE REPORT

Page 5 of 7

Name of Person Reporting	Date of Report
Brian, Morris M.	05/23/2013

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Carbon Energy Holdings Common Stock		None	J	W					
19. Capital Housing Partners Share	B	Distribution	J	W					
20. Parrot Ditch Company Stock		None	J	W					
21. Mountain West Bank (Cash account)	A	Interest	J	T					
22. Estate #1									
23. -Agricultural property Madison County, Montana		None	M	W					
24. -American Federal Savings (Cash account)	A	Interest	J	T					

1. Income Gain Codes:
(See Columns B1 and D4)
2. Value Codes
(See Columns C1 and D3)

A = \$1,000 or less
F = \$50,001 - \$100,000
J = \$15,000 or less
N = \$250,001 - \$500,000
P3 = \$25,000,001 - \$50,000,000
Q = Appraisal
U = Book Value

B = \$1,001 - \$2,500
G = \$100,001 - \$1,000,000
K = \$15,001 - \$50,000
O = \$500,001 - \$1,000,000
R = Cost (Real Estate Only)
V = Other

C = \$2,501 - \$5,000
H1 = \$1,000,001 - \$5,000,000
L = \$50,001 - \$100,000
P1 = \$1,000,001 - \$5,000,000
P4 = More than \$50,000,000
S = Assessment
W = Estimated

D = \$5,001 - \$15,000
H2 = More than \$5,000,000
M = \$100,001 - \$250,000
P2 = \$5,000,001 - \$25,000,000
T = Cash Market

E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT

Page 6 of 7

Name of Person Reporting

Brian, Morris M.

Date of Report

05/23/2013

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

Page 7 of 7

Name of Person Reporting	Date of Report
Brian, Morris M.	05/23/2013

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ **Morris M. Brian**

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		5	000	Notes payable to banks-secured (auto)		10	613
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities – see schedule		159	756	Notes payable to relatives			
Unlisted securities – see schedule		3	500	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	217
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		382	568
Real estate owned – see schedule		550	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		45	000	Education loans		13	125
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		414	523
				Net Worth		348	733
Total Assets		763	256	Total liabilities and net worth		763	256
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

American Funds AMCAP Fund	\$ 18,575
American Funds New Perspective Fund	17,851
Franklin Templeton Mutual Global Discovery Fund	17,445
JPMorgan Mid-Cap Value Fund	9,978
MainStay ICAP Select Equity Fund	8,686
MainStay VP Common Stock Portfolio	4,794
MainStay VP Convertible Portfolio	5,777
MainStay VP Janus Balanced Portfolio	9,597
MainStay VP Large Cap Growth Portfolio	3,643
MainStay VP S&P 500 Index Portfolio	5,436
MainStay VP T. Rowe Price Equity Income Portfolio	7,040
Neuberger Berman Socially Responsive Fund	18,315
Oppenheimer Main Street Small- & Mid-Cap Fund	9,372
RBC Prime Money Market Fund	21,340
Yahoo stock	1,907
Total Listed Securities	<u>\$ 159,756</u>

Unlisted Securities

Carbon Energy Holdings, Inc.	\$ 0
Capital Housing Partners	2,500
Parrot Ditch Company	1,000
Total Unlisted Securities	<u>\$ 3,500</u>

Real Estate Owned

Personal residence	\$ 500,000
Vacation property (25% interest)	50,000
Total Real Estate Owned	<u>\$ 550,000</u>

AFFIDAVIT

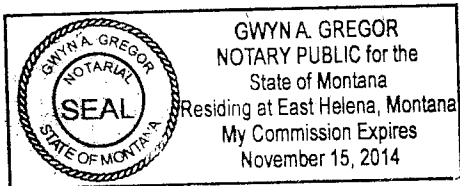
I, Brian Morris, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

5/24/13

(DATE)

Brian Morris

(NAME)



Gwyn A. Gregor

(NOTARY)