

**APPLICATION FOR
DISTRICT COURT JUDGESHIP**

A. PERSONAL INFORMATION

1. Full name. Lacey Lorene Lincoln
2. Birthdate. [REDACTED]
3. Current home address. [REDACTED]
4. Email address. [REDACTED]
5. Preferred phone number. [REDACTED]
6. Judicial position you are applying for. Twentieth Judicial District, Department 2
7. Date you became a U.S. citizen, if different than birthdate.
8. Date you become a Montana resident. October 26, 2017

B. EDUCATIONAL BACKGROUND

9. List the names and location (city, state) of schools attended beginning with high school, and the date and type of degree you received.

Wenatchee High School, Wenatchee, WA, High School Diploma, 1999
University of Washington, Seattle, WA, Bachelor of Arts, 2003
University of St. Thomas, Houston, TX, Education Workshops, 2004
Northwestern University School of Law/ Queen Mary University of London, London, England, Certificate in International Taxation, 2006
Gonzaga University, Spokane, WA, Juris Doctorate, 2008
10. List any significant academic and extracurricular activities, scholarships, awards, or other recognition you received from each college and law school you attended.

University of Washington Dean's List Spring 2000, Autumn 2001, Spring 2003
Harvard Model United Nations Delegate, University of Washington 2002
Washington State Model United Nations Committee Secretary, Chairman 2002, 2003
University of Washington Freshmen Interest Group Leader Fall, 2002
Gonzaga University Academic Scholarship 2005

C. LEGAL AND PROFESSIONAL EXPERIENCE

11. In chronological order (beginning with most recent), state each position you have held since your graduation from law school. Include the dates, names and addresses of law firms, businesses, or governmental agencies with which you have been affiliated, and your position. Include the dates of any periods of self-employment and the name and address of your office.

County Attorney, December 2021 – present, Hill County, 315 4th Street, Havre, MT 59501

Deputy County Attorney, May 2017 – December 2021, Missoula County, 200 West Broadway, Missoula, MT 59802

Deputy Prosecuting Attorney, October 2009 – April, 2017, Cowlitz County, 312 1st Avenue, Kelso, WA 98626

Judicial Law Clerk, September 2008 – August, 2009, Chelan County, 401 Washington Street, Wenatchee, WA 98801

12. In chronological order (beginning with most recent), list your admissions to state and federal courts, state bar associations, and administrative bodies having special admission requirements and the date of admission. If any of your admissions have terminated, indicate the date and reason for termination.

United States District Court, District of Montana, admitted June 1, 2017

State Bar of Montana, admitted September 27, 2016

Washington State Bar Association, admitted May 18, 2009

*Currently on Inactive status as I'm not currently practicing law in that state

13. Describe your typical legal areas of concentration during the past ten years and the approximate percentage each constitutes of your total practice (i.e., real estate, water rights, civil litigation, criminal litigation, family law, trusts and estates, contract drafting, corporate law, employment law, alternative dispute resolution, etc).

During the past ten years, the large majority of my area of legal concentration has been criminal litigation or other types of litigation stemming from criminal cases. During my tenure in Hill County, the breakdown of my total practice is as follows: 70% Criminal Litigation 30% Civil legal issues, including contract creation and review, human resource/employment law guidance, and involuntary commitments.

As a deputy county attorney in Missoula County, my work was almost entirely focused on criminal litigation, except for minimal amounts of civil litigation associated with post-conviction relief cases, expungements of criminal cases, or coverage for involuntary commitments, consisting of the following split: 98% Criminal Litigation, 2% Civil Litigation.

While serving as a deputy prosecuting attorney in Cowlitz County, I was mainly focused on criminal prosecution with approximately 80% of my time dedicated to that area of law. I spent about 15% of my time on appellate litigation stemming from criminal cases, and around 5% of my work load consisted of civil litigation associated with involuntary treatment cases.

14. Describe any unique aspects of your law practice, such as teaching, lobbying, serving as a mediator or arbitrator, etc. (exclude bar activities or public office).

While I have not submitted briefs, nor appeared in front of the Montana Supreme Court, I have written numerous appellate briefs for the Washington State Court of Appeals, Division II as well as a brief for the Washington State Supreme Court and argued in front of the Washington State Court of Appeals, Division II. Additionally, in both Washington and Montana I supervised law student interns in the prosecutors' offices.

15. Describe the extent that your legal practice during the past ten years has included participation and appearances in state and federal court proceedings, administrative proceedings, and arbitration proceedings.

My legal practice has included weekly appearances in state courts, whether it is handling a criminal docket, an evidentiary hearing, or trial. I have handled all of these things in front of numerous judges. I have not appeared in federal court or arbitration proceedings. I have had minimal involvement with administrative proceedings.

16. If you have appeared before the Montana Supreme Court within the last ten years (including submission of amicus briefs), state the citation for a reported case and the case number and caption for any unreported cases.

I have not specifically appeared before the Montana Supreme Court within the last ten years, however, I am associated with the following cases because of my role as a county attorney or deputy county attorney. Any briefs or argument were handled by the Montana Attorney General's Office:

Main v. State, 2024 MT 215
State v. Hill, 2024 MT 290N
State v. Johnson, 2024 MT 152
Norquay v. State, 2023 MT 165N
In Re: J.J.S., 2022 MT 199N
State v. Dion, 2022 MT 118N
In Re: D.H., 2022 MT 37
State v. Wright, 2020 MT 229N

17. Describe three of the most important, challenging, or complex legal issues you have dealt with or legal proceedings in which you have participated during your practice.

1. During a trial of an adult defendant, a juvenile witness for the State confessed to committing the crimes the adult defendant was charged with while testifying at the jury trial

during cross-examination. The juvenile was in-custody on his own matter and had an attorney appointed. The court decided to take a break after the confession was made and allow the juvenile to meet with his attorney to discuss his 5th amendment right. The court decided not to allow further testimony from the witness. The court also ruled neither the State nor defense counsel could conduct questioning nor cross-examination of other witnesses about the juvenile's confession or other statements the juvenile had made. Prior to trial, the detective in the case had met with the juvenile and recorded an interview of the juvenile that specifically went through his involvement with the crime where he had denied his involvement. The confession was significant as both the juvenile and adult defendant were involved in a gang and had both been involved with the juvenile court system to know the juvenile faced significantly less consequences if he were to be convicted of the offenses rather than the adult male.

2. An individual was charged with multiple counts sexual abuse of children for possession of multiple videos of child pornography as well as sexual intercourse without consent. Defense counsel challenged the joinder of the offenses as well as the prejudicial affect of showing child pornography in a rape case. Ultimately, the case resolved through a plea agreement, but the court ruled to sever the sexual abuse of children counts from the sexual intercourse without consent counts, but allowed the State to present only those child pornography videos that were similar to the victim of the sexual intercourse charge as the defendant said the reason he raped the victim was the videos he had watched based on Evidentiary Rule 404(b).
3. A resident of the county wanted to place his land in a trust with the Montana Land Reliance, but also wanted to grant an easement for access to a hiking trail through a portion of the land, so approached the county about being the easement holder. We had to work through various issues such as making sure the easement did not overburden the county financially through easement maintenance requirements, which was eventually resolved with allowing a local non-profit to provide these services, nor violate county standards for noxious weed control.

18. If you have authored and published any legal books or articles, provide the name of the article or book, and a citation or publication information.

Missoula Countywide Strangulation Protocol, Contributor, adopted March, 2022
<https://static1.squarespace.com/static/5b6b5b8d9f877084e5fc42b4/t/6259ac65f6e7a91b44756ef5/1650044006790/2022+Missoula+Countywide+Strangulation+Protocol.pdf>

19. If you have taught on legal issues at postsecondary educational institutions or continuing legal education seminars during the past ten years, provide the title of the presentation, date, and group to which you spoke.

Courtroom Testimony Scenario, August 2024, Montana Department of Corrections Probation & Parole Basic Academy

Probation, Parole, & Prosecutors, August 2024, July 2023, July 2022, July 2021, January 2021, Montana Department of Corrections Probation & Parole Basic Academy

Trial Practice Class, Alexander Blewett III School of Law – University of Montana

Opening Statement, January 2019, January 2020, January 2021

Evening Instructor, January 2020-March 2020, January 2021 – March 2021, January 2022 – March 2022

Judge, April 2022

Testifying in Court, Summer 2021, Missoula Police Department

Insurance, and Contracts, and Negotiations, oh my!, July 2019, Alpha Xi Delta National Convention

20. Describe your pro bono services and the number of pro bono hours of service you have reported to the Montana Bar Association for each of the past five years.

None.

21. Describe dates and titles of any offices, committee membership, or other positions of responsibility you have had in the Montana State Bar, other state bars, or other legal professional societies of which you have been a member and the dates of your involvement. These activities are limited to matters related to the legal profession.

None.

22. Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, and type of discharge received.

None.

23. If you have had prior judicial or quasi-judicial experience, describe the position, dates, and approximate number and nature of cases you have handled.

None.

24. Describe any additional business, agricultural, occupational, or professional experience (other than legal) that could assist you in serving as a judge.

My brief stint as a high school English and English as a Second-Language teacher at a Title I school in Houston, Texas broaden my perspective on challenges various communities face and the multitude of ways the judicial system intersects with the community at large. It increased my awareness around how and when people access the justice system as well as the challenges and fears they face.

D. COMMUNITY AND PUBLIC SERVICE

25. List any civic, charitable, or professional organizations, other than bar associations and legal professional societies, of which you have been a member, officer, or director during the last ten years. State the title and date of any office that you have held in each organization and briefly describe your activities in the organization and include any honors, awards or recognition you have received.

Alpha Xi Delta Fraternity, Contract Specialist 2018-2020. I reviewed contracts for the local chapters and ensured they complied with national fraternity policies and insurance coverage.

26. List chronologically (beginning with the most recent) any public offices you have held, including the terms of service and whether such positions were elected or appointed. Also state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Hill County Attorney, elected January 2023
Hill County Attorney, appointed December 2021

E. PROFESSIONAL CONDUCT AND ETHICS

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

No.

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

No.

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

No.

30. Have you ever been found liable in any civil proceedings for damages or other legal or equitable relief, other than marriage dissolution proceedings? If so, provide the citation of a reported case or court and case number for any unreported case and the year the proceeding was initiated (if not included in the case number).

No.

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

No.

F. BUSINESS AND FINANCIAL INFORMATION

32. Are you currently an owner, officer, director, or otherwise engaged in the management of any business other than a law practice? If so, please provide the name and locations of the business and the nature of your affiliation, and state whether you intend to continue the affiliation if you are appointed as a judge.

No.

33. Have you timely filed appropriate tax returns and paid taxes reported thereon as required by federal, state, local and other government authorities? If not, please explain.

Yes.

34. Have you, your spouse, or any corporation or business entity of which you owned more than 25% ever filed under title 11 of the U.S. Bankruptcy Code? If so, give details.

No.

G. JUDICIAL PHILOSOPHY

35. State the reasons why you are seeking office as a district court judge.

I am committed to upholding justice and fairness in society. As a judge I would respect the judicial system and preserve its integrity. I have a strong sense of duty to serve the community as demonstrated by my chosen career path in public service. Judges play a critical role in resolving disputes, ensuring legal rights are protected, and make decisions that affect both individuals and society as a whole. The dynamic nature of the role also excites me as it ensures that my work is intellectually stimulating and rewarding. I admire many of the judges I have worked for and presented cases in front of because of the discipline and thoughtfulness they demonstrated when making fair decisions and I desire to contribute to that legacy.

36. What three qualities do you believe to be most important in a good district court judge?

Impartial. A judge must be fair and unbiased, treating all parties equally regardless of their background, status, or personal opinions. Impartiality ensures that justice is served based on facts and law, not passion and prejudice. This attribute is fundamental to maintaining public trust in the judicial system.

Thoughtful. A judge must possess the ability to provide well-reasoned decisions based on weighing the evidence presented carefully and applying the law in a manner that is fair and just, while being mindful of the consequences for all involved.

Integrity. Judges need to uphold the highest ethical standards and act with transparency. A judge's decisions should be based on the laws and facts, without allowing personal interests, corruption, or political factors to influence their judgments.

37. What is your philosophy regarding the interpretation and application of statutes and the Constitution?

Statutes and the Constitution provide the framework for all judicial decisions. The Constitution is clear with its intent and purpose. Statutes guide the work of the district court and a district court judge should apply existing law to the facts of the case. However, should a statute not be clear, it is not within the purview of a judge to interject what the judge believes the law ought to be. A judge should not legislate from the bench. A judge should interpret the law based on *stare decisis*.

H. MISCELLANEOUS

38. Attach a writing sample authored entirely by you, **not to exceed 20 pages**. Acceptable samples include briefs, legal memoranda, legal opinions, and journal articles addressing legal topics.
39. Please provide the names and contact information for three attorneys and/or judges (or a combination thereof) who are in a position to comment upon your abilities.

Honorable Kaydee Snipes-Ruiz, 12th Judicial District Court Judge
315 4th Street, Havre, MT 59501
(406)265-5481, ext. 2348

Audrey Barger, Justice of the Peace
315 4th Street, Havre, MT 59501
(406)265-5481 ext. 2417
abarger@mt.gov

L. Jason Bryan
723 5th Avenue East, Suite 100, Kalispell, MT 59901
(406)751-6080
Jason.bryan@mt.gov

CERTIFICATE OF APPLICANT

I hereby state that to the best of my knowledge the answers to all questions contained in my application are true. By submitting this application I am consenting to investigation and verification of any information listed in my application and I authorize a state bar association or any of its committees, any professional disciplinary office or committee, educational institutions I have attended, any references furnished by me, employers, business and professional associates, law enforcement agencies, all governmental agencies and instrumentalities and all other public or private agencies or persons maintaining records pertaining to my citizenship, residency, age, credit, taxes, education, employment, civil litigation, criminal litigation, law enforcement investigation, admission to the practice of law, service in the U. S. Armed Forces, or disciplinary history to release to the Office of the Governor of Montana or its agent(s) any information, files, records, or reports requested in connection with any consideration of me as a possible nominee for appointment to judicial office.

I further understand that the submission of this application expresses my willingness to accept appointment as District Court Judge if tendered by the Governor, and my willingness to abide by the Montana Code of Judicial Conduct and other applicable Montana laws (including the financial disclosure requirements of MCA § 2-2-106).

January 13, 2025

(Date)



(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by **5:00 p.m. on Monday, January 13, 2025.**

Mail the signed original to:

Hannah Slusser
Governor's Office
P.O. Box 200801
Helena, MT 59620-0801

Send the electronic copy to: hannah.slusser@mt.gov

1 Hill County Attorney's Office
Hill County Courthouse
2 315 4th Street
Havre, MT 59501
3 (406) 265-5481, ext. 2423

4 ATTORNEY FOR PLAINTIFF

5
6
7 MONTANA TWELFTH JUDICIAL DISTRICT COURT, HILL COUNTY

8 STATE OF MONTANA,

Plaintiff,

9 -vs-

10 JOHN M. DAMSON,

11 Defendant.

Cause No. DC-21-2021-0078

**STATE'S RESPONSE TO PROPER NUMBER
OF PREDICATE DUIS FOR SENTENCING
PURPOSES**

12
13 **INTRODUCTION**

14 Comes Now, Lacey Lincoln, County Attorney of Hill County, and files this response to
15 defendant's challenge to the number of prior convictions he has for Driving Under the Influence.

16 **BACKGROUND**

17 On October 26, 2022, the defendant pled guilty to a charge of Driving Under the Influence
18 stemming from an investigation by the Havre Police Department conducted on August 1, 2021. At
19 the time of his change of plea Defendant's counsel indicated the defendant would be challenging the
20 number of prior Driving Under the Influence convictions the defendant amassed. Since the filing of
21 Defendant's brief, the State has provided copies of 3 separate court records concerning Defendant's
22 prior Driving Under the Influence convictions, Case No. T92-1026, Case No. 3353, and Case No.
23 7673 in Havre City Court. See Exhibits 1, 2, and 3. The State also disseminated a copy of the Havre
24 Police Department investigation from September 18, 1992 to defense counsel. See Exhibit 4.

1 ARGUMENT

2 A conviction is a “judgment, conviction, or sentence on a valid guilty plea or verdict.” *See*
3 §§ 61-8-734 and 45-2-101(16), MCA (2019). A conviction for a fourth or subsequent offense of a
4 Driving Under the Influence offense is a felony. *See* § 61-8-731, MCA (2019). Upon the State's
5 threshold proof of the fact of a prior DUI, a rebuttable presumption arises that the conviction was
6 valid in compliance with the law in every regard. *State v. Maine*, 2011 MT 90, ¶ 33, 360 Mont
7 182, 255 P.3d 64.

8 The State disclosed Havre City Court documents detailing the three prior convictions of
9 Mr. Damson, the defendant. See Exhibits 1, 2, and 3. Each set of court documents shows the
10 charge of Driving Under the Influence and that the defendant pled guilty to each of those charges.
11 See Exhibits 1, 2, and 3. This is sufficient evidence and “competent proof” of the defendant’s prior
12 convictions. Therefore, it is the State’s position we have met our burden of proving the required
13 number of convictions exist.

14 In his brief, the defendant attacks existence of one of the prior convictions at issue,
15 specifically the Driving Under the Influence conviction in T92-1026. As the State’s evidence has
16 created a rebuttable presumption, the burden is now shifted to the defendant to rebut that
17 presumption by presenting evidence affirmatively showing by a preponderance of the evidence that
18 the prior judgment “was obtained in violation of” federal or state constitutional rights, as
19 applicable. *Maine*, ¶ 34. Evidence merely establishing that the record in the prior proceeding is
20 silent or ambiguous is insufficient. *Maine*, ¶ 34. Self-serving or conclusory statements or
21 inferences of constitutional infirmity are similarly insufficient. *State v. Chaussee*, 2011 MT 203, ¶
22 18, 361 Mont. 433, 259 P.3d 783; *Maine*, ¶ 34. In this context:

23 Affirmative evidence is evidence which demonstrates that certain
24 facts actually exist or . . . that certain facts *actually existed* at some
point in the past—for example, that the trial court actually did not

1 advise the accused of her right to counsel, or that an indigent
2 defendant actually requested the appointment of counsel but
3 counsel was actually refused. An affidavit from the defendant, a
4 witness, or court personnel attesting this sort of affirmative
evidence will figure more persuasively . . . than will, for example,
references to unclear court minutes, judge's notes, or preprinted
forms.

5 *Chaussee*, ¶ 18 (emphasis in original). If the defendant affirmatively satisfies that responsive
6 burden, the burden then shifts back to the State to present evidence affirmatively rebutting the
7 defense showing and proving that the conviction was not constitutionally infirm. *State v. Okland*,
8 283 Mont. 10, 18, 941 P.2d 431, 436 (1997).

9 Defense counsel argues that the T92-1026 conviction should be treated as infirm because
10 the defendant would have been convicted of a charge different than that of Driving Under the
11 Influence in 1992, if the "Minor DUI" statute existed in 1992.

12 For a person to be convicted of Operation of a Vehicle by Person Under Twenty-one with
13 Alcohol Concentration of 0.02 or more , or what is commonly referred to as a "Minor DUI," the
14 State must prove beyond a reasonable doubt the person drove or was in actual physical control of a
15 vehicle upon ways of the State of Montana when the person was under 21 years of age at the time
16 of the offense while the person's alcohol concentration is 0.02 or more. Mont. Code Ann. § 61-8-
17 410 (1995).

18 Defense counsel argues Mr. Damson's 1992 conviction should be treated as a "Minor
19 DUI" as he was under the age of 21 at the time of the offense. However, that is only one element
20 of the offense. The State must also prove an alcohol concentration of 0.02. Mont. Code Ann. § 61-
21 8-410 (1995). The defendant refused to provide a breath sample when he was arrested in 1992.
22 See Exhibit 4. Therefore, even if the "Minor DUI" statute existed in 1992, the defendant could not
23 have been prosecuted under that statute as the elements of the crime could not be met as compared
24 to the Driving Under the Influence statute where the elements of the crime could be met because

1 the State could show the defendant drove or was in actual physical control of a vehicle upon the
2 ways of Montana open to the public while under the influence of alcohol, any drug, or a
3 combination of alcohol and any drug. Mont. Code Ann. § 61-8-401 (1991). Specifically, the
4 defendant crashed his vehicle into a residence in the 800 block of 6th Street in Havre, Montana
5 around 1:45am and had a strong odor of alcohol emanating from him. See Exhibit 4. The officers
6 observed he was swaying from side to side, he would start a sentence about one topic, then shift to
7 another topic. See Exhibit 4. He admitted to driving at a high rate of speed. See Exhibit 4. The
8 defendant struggled to recite the alphabet properly, counted forward correctly, but it was slurred,
9 and stated he could not count backwards. See Exhibit 4. The defendant failed to produce a
10 sufficient quantity of breath to be analyzed. See Exhibit 4. These behaviors of the defendant are
11 consistent with an individual who drove a vehicle on a way of the state while under the influence
12 of alcohol.

13 Defense counsel argues that the defendant could have been charged with the lesser offense
14 of a “Minor DUI,” however, when the facts of a case support the all the elements of more than a
15 single crime, the crime to be charged is a matter of prosecutorial discretion. *State v. Brooke*, 178
16 Mont. 225, 230, 583 P.2d 405, 408. Prosecutors have wide discretion to determine when a person
17 should be charged with a crime. *State v. Mahoney*, 264 Mont. 89, 96, 870 P.2d 65, 70 (1994).
18 Factors, such as “the strength of the case, the prosecution’s general deterrence value, the
19 Government’s enforcement priorities, and the case’s relationship to the Government’s overall
20 enforcement plan are not readily susceptible to the kind of analysis the courts are competent to
21 undertake.” *Wayte v. United States*, 470 U.S. 598, 607, 105 S.Ct. 1524, 1530, 84 L.Ed.2d 547
22 (1985).

23 Courts have found prosecutorial vindictiveness in some cases when the state subjects a
24 defendant to a more serious charge arising from the same facts, in retaliation for the defendant’s

1 exercise of statutory or constitutional rights. *State v. Ridge*, 2014 MT 288, P12. However, a
2 presumption of vindictiveness is not appropriate in all cases where prosecutorial discretion is
3 analyzed, and it is not appropriate where the prosecutor has no personal stake in the defendant's
4 decision. *Ridge*, 2014 MT 288, P.14.

5 Here, prosecutorial discretion does not need to be analyzed as the elements of the "Minor
6 DUP" statute could not be proven, thus the crime that fit these facts from 1992 was Driving Under
7 the Influence.

8 **CONCLUSION**

9 The State provided sufficient information to prove the defendant meets the required number
10 of prior convictions to elevate this current conviction from a misdemeanor Driving Under the
11 Influence offense to a felony level offense.

12 DATED this 2nd day of December, 2022

13 /s/ Lacey Lincoln
14 Lacey Lincoln
15 County Attorney
16
17
18
19
20
21
22
23
24