

# APPLICATION FOR DISTRICT COURT JUDGESHIP

## A. PERSONAL INFORMATION

1. Full name. **Bradley Harlow Kneeland**
2. Birthdate. [REDACTED]
3. Current home address. [REDACTED]
4. Email address [REDACTED]
5. Preferred phone number [REDACTED]
6. Judicial position you are applying for. **District Court Judge, 13<sup>th</sup> Judicial District Court**
7. Date you became a U.S. citizen, if different than birthdate. **Same as birthdate.**
8. Date you become a Montana resident. **Same as birthdate.**

## 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.

Name	Location	Date of Degree	Degree
<b>Custer County District High School</b>	<b>Miles City, MT</b>	<b>May 2009</b>	<b>H.S. Diploma</b>
<b>The University of Montana</b>	<b>Missoula, MT</b>	<b>May 2013</b>	<b>B.A. in Political Science</b>
<b>Western New England University School of Law</b>	<b>Springfield, MA</b>	<b>May 2016</b>	<b>Juris Doctorate</b>

10. List any significant academic and extracurricular activities, scholarships, awards, or other recognition you received from each college and law school you attended.
  - **2010 Deans List, The University of Montana**
  - **2015 CALI Excellence for the Future Award as the top-ranking student in Trial Methods**
  - **2016 CALI Excellence for the Future Award, as the top-ranking student in Representing Children**
  - **2022 Recognized by the Billings Gazette in their “40 Under 40” section.**

### 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.

Position	Date	Name	Address
<b>Standing Master</b>	<b>February 2022-Present</b>	<b>Montana Judicial Branch, 13<sup>th</sup> Judicial District</b>	<b>217 N. 27<sup>th</sup> Street, Billings, MT 59101</b>
<b>Deputy City Attorney</b>	<b>September 2020-February 2022</b>	<b>Billings City Attorney's Office</b>	<b>210 N. 27<sup>th</sup> Street, Billings, MT 59101</b>
<b>Law Clerk</b>	<b>March 2019-September 2020</b>	<b>Montana Judicial Branch, 13<sup>th</sup> Judicial District</b>	<b>217 N. 27<sup>th</sup> Street, Billings, MT 59101</b>
<b>Assistant Public Defender</b>	<b>April 2018-March 2019</b>	<b>Office of the State Public Defender, Region 9</b>	<b>207 N. Broadway, Ste. 201, Billings, MT 59101</b>
<b>Assistant Public Defender</b>	<b>January 2017-April 2018</b>	<b>Office of the State Public Defender, Region 11</b>	<b>11 S. 7<sup>th</sup> Street, Ste. 100, Miles City, MT 59301</b>

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.

State/Court	Date of Admission
<b>Washington State Courts</b>	<b>September 2017-Present</b>
<b>United States District Court for the District of Montana</b>	<b>September 2016-Present</b>
<b>Montana State Courts</b>	<b>September 2016-Present</b>

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).

**In my capacity as a Standing Master, the majority of the cases that I preside over pertain to family law/domestic relations matters, such as dissolutions of marriage and parenting plan cases. As a Standing Master, I mediate family law matters, criminal, civil and dependency and neglect cases for the other Standing Master and District Court Judges in the 13<sup>th</sup> Judicial District.**

**Prior to my work as a Standing Master, I served as a criminal prosecutor for the Billings City Attorney's Office where I predominantly prosecuted misdemeanor domestic violence cases. As a Law Clerk, I gained valuable experience researching and drafting orders for civil and criminal matters before the Court. As an Assistant Public Defender working for the Office of the State Public Defender, I represented defendants in misdemeanor and felony criminal proceedings and juvenile cases. I also represented individuals subject guardianships and civil commitment proceedings, as well as represented parents and children in dependency and neglect proceedings.**

**As a Standing Master, my approximate caseload percentage is:**

**Family law and other civil matters: 70%**

**Criminal Law: 5%**

**Alternative Dispute Resolution (Mediation): 25%**

**While working as a prosecutor, my approximate caseload percentage was:**

**Criminal Law: 100%**

**While working as a defense attorney, my approximate caseload percentage was:**

**Criminal Law: 70%**

**Civil Law (Dependency and Neglect, Guardianship, Civil Commitment): 30%**

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).

**In my capacity as a Standing Master, in addition to presiding over a caseload of family law cases, I also serve as a mediator for the District Court for parties in family law, dependency and neglect, civil litigation and criminal cases in the 13<sup>th</sup> Judicial District Court and occasionally provide mediation services for the 22<sup>nd</sup> Judicial District, as well.**

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.

**Prior to becoming a Standing Master for the 13<sup>th</sup> Judicial District Court, my legal practice as a defense attorney for the Office of the State Public Defender, prosecutor for the Billings**

**City Attorney's Office and my work providing pro bono representation in family law cases included appearances in both the District Courts of the 13<sup>th</sup> and 16<sup>th</sup> Judicial Districts, as well as appearances in the courts of limited jurisdiction in these respective districts. My participation in District Court proceedings included representing individuals in felony criminal matters, representing parents and children in dependency and neglect proceedings, representing children in criminal juvenile matters, representing individuals subject to civil commitment proceedings, as well as serving as attorney for individuals subject to guardianship matters.**

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 appeared before the Montana Supreme Court.**
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 my time as a defense attorney for the Office of the State Public Defender, I was co-counsel on a case where my office represented an individual who was charged with two counts of felony sexual intercourse without consent in Rosebud County. Aside from the obvious severity of the charges against this individual, the stakes of the case were heightened given that there were two separate victims. I was responsible for representing this individual on Count I and my supervisor was responsible for representing this individual for Count II. During the course of investigating and preparing for trial of this matter, we were able to discover many mistakes the investigating officer made while investigating Count I; the investigating officer essentially failed to obtain corroborating evidence to support the allegations of Count I. During my cross-examination of the investigating officer, I was able to get the officer to admit that he had failed to interview corroborating witnesses who had been available, failed to collect corroborating evidence and that he had waited several days before following up with the victim. While this individual was subsequently convicted of Count II, I was able to secure an acquittal from the jury in Count I. This experience reinforced for me the importance of -in criminal defense- holding the State responsible for meeting their burden of proof beyond a reasonable doubt, particularly when an individual's liberties and livelihoods are at stake.**
  2. **During my time as a prosecutor for the Billings City Attorney's Office, I prosecuted a case where an individual was charged with two counts of misdemeanor sexual assault against two separate victims. I was assigned this case from another prosecutor after I joined the Domestic Violence Unit of the City Attorney's Office and at the time I received the case, the matter was getting ready to go to a bench trial, which had been requested by the defense. This individual was represented by two very competent and well-respected defense attorneys and despite extensive negotiation, after taking into consideration the evidence, the allegations and the wishes of the victims, I concluded that the City could not agree to anything that did not include a conviction of the Defendant for the charges against him. At the bench trial, the Defendant was convicted on one charge of misdemeanor sexual assault and acquitted on the second count. This experience showed me that, as with any position where you are assuming a docket of work, you must move swiftly and diligently to get up to**

speed on the cases, familiarize yourself with the issues, and prepare extensively so that you can pick up the case seamlessly and continue working on the matter so that there are no delays.

3. While working for the Public Defender's Office, I was assigned to represent an elderly woman in a guardianship matter in Fallon County. My client's daughter, with the support of my client's other children, was seeking to be appointed guardian of her mother due to concerns that a young acquaintance of my client was exerting undue influence of her by convincing my client to buy him gifts and to give him money. My client had recently been placed in assisted living by her children and I met with her at the facility. In speaking with my client, I went over the Petition for Guardianship, explained her rights and explained why, according to the Petition, her children were wanting to place her in a Guardianship. As I was speaking with my client, I couldn't help but be reminded of my own grandmother how I would want to protect her if she was being financially exploited. I was somewhat taken aback when my client informed me that she did not want to be subject to a Guardianship and wanted to contest the Petition. Putting my personal feelings aside, we prepared for the hearing and proceeded with a contested guardianship hearing. The testimony and evidence presented in support of the Petition were substantial and frankly heartbreaking. There was no doubt that my client's children loved her very much and were concerned for her safety. In spite of my personal feelings about what was being presented, I put on a case for my client and fought for her wishes and feelings to be heard by the Court. Ultimately, the guardianship was granted. At the conclusion of the hearing, I met with my client again to explain again what the guardianship would entail. This case taught me that no matter what our own feelings and trepidation might be of a case such as this one, our jobs as attorneys are to vigorously advocate for the rights of our clients and represent their wishes and interests to the best of our abilities.
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. **I have not authored any legal publications.**
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. **Not applicable.**
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.

During my time in Yellowstone County, I have had the privilege of representing two separate individuals in their respective dissolution of marriage and parenting plan matters in the 13<sup>th</sup> Judicial District Court. I took these cases as part of the Family Law Project, in conjunction with Montana Legal Services Association. In reviewing my transcripts with the State Bar, I have been unable to confirm my *pro bono* time. The first case I took was in late 2019 and concluded in early 2020, in which I estimate that I provided roughly 40 hours of pro bono services. The most recent case I took was in late 2021 and concluded in early 2022, in which I estimate that I provided roughly 6 hours of pro bono services. I did not provide pro bono services from 2017-2018 while I was employed by the Office of the State

**Public Defender, and since becoming a Standing Master in February of 2022, I have been unable to represent clients because of my position.**

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.

**Member of the Montana State Bar, September 2016-Present**

**Member of the Washington State Bar, September 2017-Present**

**Member of the Yellowstone Area Bar Association April 2018-Present**

22. Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, and type of discharge received. **Not applicable.**
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.

**I became a Standing Master for the 13th Judicial District Court in February of 2022 and continue in that role today. In this capacity, my responsibilities include conducting preliminary proceedings in criminal matters including arraignments, initial appearances on warrants, probation revocations and bail hearings, setting and revoking bail and determining release conditions. In domestic relations matters, I am responsible for conducting temporary and final hearings in matters as well as modification hearings in parenting plans, property distribution, maintenance and family support. I am responsible for mediating and conducting settlement conferences in civil and criminal matters, conducting discovery conferences and ruling on discovery motions, as well as conducting non-jury civil trials and rendering judgements. I am also responsible for conducting preliminary and detention hearings in civil commitment proceedings and covering EPS hearings in dependency and neglect proceedings when requested by the presiding Judge. I also preform legal research on the cases referred to me by the District Court Judges and write findings of fact and conclusions of law.**

**The majority of the cases referred to me and my department by the District Court Judges to handle are domestic relations cases, such as dissolutions of marriage and parenting plan matters. In these proceedings, I conduct non-jury trials, issue findings of fact and conclusions of law and issue final orders. To the best of my knowledge, in the thirteen months that I have been in this position, I have been referred approximately 151 domestic relations cases, as well as assumed the docket of cases previously referred to my predecessors. Additionally, I also mediate family law, criminal matters, dependency and neglect matters and other civil cases for the 13th Judicial District.**

24. Describe any additional business, agricultural, occupational, or professional experience (other than legal) that could assist you in serving as a judge. **Not applicable.**

#### **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. **Not applicable.**
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. **Not applicable.**

#### **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.

**The foundation of my legal career has been one rooted in a deep and abiding commitment to public service and to the idea of giving back to my community. I believe that one has an obligation to give back to one's community and to be of service to others when possible and I believe that my background as a defense attorney, prosecutor and now Standing Master, gives me a unique and versatile skillset to be of service to the citizens of Yellowstone County, to help address many of the issues that our community faces on a daily basis and to successfully and efficiently handle the incredibly wide variety of cases that come before the Court in our district.**

**Through my work in criminal law, working for the Court as a law clerk and now as Standing Master presiding over a large and diverse family law caseload, I am aware of the many challenges facing our community. I am aware of the crime, the violence and the addiction that affects so many in this region. I am also aware of the opportunity that this position affords; opportunity to place children in safe and loving homes, opportunity to give victims a chance to be heard, opportunity to give people struggling with addiction or mental illness the tools and resources for recovery and to set them up for success, opportunity to put juvenile defendants back on the right track and opportunity to ensure that defendants are afforded respect and the protections and safeguards set forth in our Constitution. With that opportunity comes responsibility; the responsibility of deciding whether a defendant can be rehabilitated in the community or whether circumstances compel incarceration, responsibility to decide parenting time for children subject to the dissolution of their parents' marriage, the responsibility to ensure that litigants get their day in Court and that they receive fair and impartial resolution of the matters that they are litigating before the Court. Our justice system and our Courts provide opportunity to so many and I seek office as a District Court Judge- knowing full well the heavy responsibility that accompanies the office- to help dispense that opportunity to the people who come before the Court, to be of service to my community and to help ensure that the justice system is one that works for everyone.**



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

**I believe that it is important for a District Court Judge to continue to learn and to stay abreast of changes to our laws and judicial precedents, be it through laws passed by the Legislature or decisions rendered by the Supreme Court. The variety of cases that Judges must hear are many- especially in Yellowstone County- and this often requires extensive legal research in order to apply the appropriate laws and standards, as well as to ensure that long set legal precedents of our State are respected. I believe that a District Court Judge must stay curious and be willing to put in the time and research that each case deserves to ensure that the proper decision is rendered. As a Standing Master, I spend many hours a week in the office and oftentimes after hours at home reading over the latest opinions of the Supreme Court to stay apprised of rulings that might be applicable to the cases I preside over.**

**Secondly, I believe that a District Court Judge needs to be prompt in their rulings and to have an appreciation for the real-life implications that their rulings have on the litigants who appear before the Court. Yellowstone County has an incredibly high volume of both criminal and civil cases (including dependency and neglect, family law and general civil law cases). As a defense attorney, it never weighed lightly on me that people I represented were placing their livelihoods in my hands while I helped them navigate the justice system. As a prosecutor, I was always cognizant that my decision to charge or not charge a case could have huge implications for a defendant's livelihood as well as a victim's ability to receive justice. Now as a Standing Master, litigants again place their livelihoods before me to plead their cases and to seek resolution for their parenting plan or dissolution of marriage. While litigants await ruling, their lives exist in a state of limbo until a ruling is reached and they are oftentimes unable to move on with their lives until they receive a ruling. It is important for a District Court Judge to recognize that the litigants who come before the Court are real people with hopes, aspirations, fears and concerns and, as such, the Court must strive to work diligently to get orders out that are supported by the facts of the case, the record made in court and the applicable laws so that people may receive resolution and move on with their lives.**

**Finally, the third quality I believe to be most important in a good District Court Judge is patience. As a Standing Master, many of the litigants that come before me are representing themselves *pro se*, equipped only with whatever forms they were able to obtain from the Self Help Law Center and whatever information they were able to research online. Understandably so, many of these individuals are nervous to appear in Court by themselves and are under a great deal of stress as they seek resolution of their matters that are pending before the Court. As public servants, I believe part of the responsibility of our justice system is to provide a service to our citizens and I believe that it is crucial as a District Court Judge to have grace and patience with all litigants, but especially to those who are unable to secure legal representation and attempt to navigate a complex and dizzying legal system themselves.**

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

**My philosophy regarding the interpretation and application of statutes and the Constitution is that the Court must give every possible deference to the plain language of the Constitution and to the statute in question. The District Court is not the appropriate venue for new law to be created; rather, our separation of powers vests that responsibility in the legislature or, in what should be exceedingly rare occasions, the Supreme Court. The District Court's responsibility is to apply the plain language of the Constitution and the statute in question to the specific facts of the case before the Court. If the language in question is clear and unambiguous, the Court need not look any further than to apply the statute in question to the facts of the case. In the event that the plain language of the statute is vague or unclear, the Court should attempt to interpret the legislative intent behind the statute at issue and any interpretation of the intent of the statute in question should be done through the narrowest means possible. It is not the role of the Court to legislate from the bench, but rather, it is the responsibility of the Court to interpret and apply the laws passed by our legislature, as elected by the citizens of this state, to the facts of the case before the Court and any interpretation other than the plain language should be done as minimally as possible.**

#### **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.

**Please see attached.**

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.

- **Hon. Jessica T. Fehr**
  - **District Court Judge, Montana's 13<sup>th</sup> Judicial District Court**
  - **217 N. 27<sup>th</sup> Street, Billings, MT 59101**
  - **406-256-2916**
- **Hon. Mary Jane Knisely**
  - **District Court Judge, Montana's 13<sup>th</sup> Judicial District Court**
  - **217 N. 27<sup>th</sup> Street, Billings, MT 59101**
  - **406-867-2500**
- **Hon. Rod Souza**
  - **District Court Judge, Montana's 13<sup>th</sup> Judicial District Court**
  - **217 N. 27<sup>th</sup> Street, Billings, MT 59101**
  - **406-256-2922**

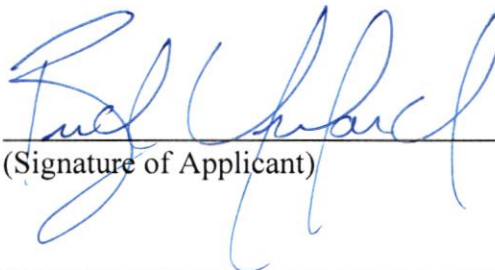
## CERTIFICATE OF APPLICANT

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).

3/21/23

(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 Wednesday, April, 2023**

### 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](mailto:hannah.slusser@mt.gov)

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2  
3  
4 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY  
5

6 IN RE THE PARENTING OF:

7 [REDACTED],

8 Minor Child,

9  
10 [REDACTED],

11 Petitioner,

12 and

13 [REDACTED],

14 Respondent.  
15

) Cause No.: [REDACTED] [REDACTED]

) Judge: Michael G. Moses

) Standing Master: Brad Kneeland  
)  
)  
)

**MASTER'S REPORT**

**ORDER DENYING RESPONDENT'S  
MOTION TO SET ASIDE PARENTING PLAN  
AND ORDER DENYING MOTION TO  
MODIFY PARENTING PLAN**

16 On June 2, 2022, Respondent [REDACTED] ("Respondent") filed *Respondent's Verified*  
17 *Motion and Brief to Set Aside Order Adopting Stipulated Parenting Plan or Alternatively to Modify*  
18 *Parenting Plan*. In his Motion, the Respondent asserts that the Petitioner [REDACTED] ("Petitioner")  
19 deceived and defrauded the Respondent into entering the *Stipulated Final Parenting Plan* by promising to  
20 allow contact between the Respondent and the minor child despite having no intention of doing so.  
21 Alternatively, the Respondent asserts that even if there is insufficient basis to set aside the *Stipulated Final*  
22 *Parenting Plan*, that the Petitioner's purported denial of contact between the Respondent and the minor  
23 child constitutes an unexpected change of circumstances that justifies amending the *Stipulated Final*  
24 *Parenting Plan*.<sup>1</sup> On June 13, 2022, the Petitioner filed her *Response to Respondent's Motion to Set Aside*  
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27 <sup>1</sup> At the September 16, 2022, hearing on the motion, testimony and evidence  
28 focused primarily on the issue of fraud as it was agreed that whether or not  
there was a change in circumstances warranting amendment of the Parenting

1 or *Modify Parenting Plan in the Alternative*, objecting to the Respondent's Motion on the grounds that no  
2 fraud as asserted by the Respondent to justify setting aside the *Stipulated Final Parenting Plan* and,  
3 alternatively, that there has been no change in circumstances to warrant modification to the parenting plan.

4 On September 16, 2022, the Court held a hearing on the Respondent's Motion. The Respondent  
5 appeared with his attorney of record [REDACTED]. The Petitioner appeared with her attorney of record  
6 [REDACTED]. The Court heard testimony from both parties and arguments from counsel. Based on the  
7 testimony and evidence presented, the Court deems this matter ripe for decision. **IT IS HEREBY**  
8 **ORDERED** that the Respondent's *Motion and Brief to Set Aside Order Adopting Stipulated Parenting*  
9 *Plan or Alternatively to Modify Parenting Plan* is **DENIED**.

#### 10 **BACKGROUND**

11 The Petitioner and the Respondent are parents to one (1) child, [REDACTED], born in 2020. On  
12 December 31, 2020, the Petitioner filed a *Petition for Parenting Plan*. Prior to filing her *Petition for*  
13 *Parenting Plan*, the Petitioner filed for an Order of Protection against the Respondent in Billings  
14 Municipal Court. Upon filing the *Petition for Parenting Plan* in District Court, the Order of Protection  
15 from Billings Municipal Court was removed to District Court and a hearing was held on March 8, 2021,  
16 before the Honorable Michael G. Moses. At the hearing on March 8, 2021, the Petitioner moved to  
17 dismiss the Order of Protection and the matter was dismissed. The Respondent filed his Answer to the  
18 *Petition for Parenting Plan* on November 8, 2021, and filed a *Motion to Set Interim Parenting Plan*  
19 *Hearing* on November 24, 2021. On December 13-14, 2021, the Court held a hearing on the *Motion to Set*  
20 *Interim Parenting Plan*. At the conclusion of the hearing, the Court implemented an Interim Parenting  
21 Plan which indicated that the minor child would reside with the Petitioner at all times except for when the  
22 minor child was with the Respondent and required the Respondent to complete a Risk Assessment with  
23 Mike Sullivan (and to follow any/all recommendations) as well as take a parenting class focused on  
24  
25  
26  
27

28 \_\_\_\_\_  
Plan would hinge on whether or not the *Stipulated Final Parenting Plan* was a  
product of fraud.

1 parenting toddlers. The Court<sup>2</sup> expressed concern regarding the Respondent's anger and violence  
2 demonstrated from the testimony, stating that "you [REDACTED] are a danger to just about (every)(sic)  
3 female in your life. [REDACTED] is one of those people." See *Transcript of Proceedings December 14, 2021*  
4 at Page 7, lines 2-3.

5 On day two of the hearing on the Interim Parenting Plan, the parties reached an agreement for the  
6 Interim Parenting Plan, which provided the Respondent with supervised parenting time of [REDACTED] The  
7 Respondent was ordered to follow the recommendations made by Mr. Sullivan in the Risk Assessment.  
8 The Respondent was precluded from removing [REDACTED] from Yellowstone County, Montana. The  
9 Respondent was afforded supervised parenting time on Saturdays from 3:00 P.M. to 6:00 P.M. as well as  
10 supervised parenting time on Wednesdays from 6:00 P.M. to 7:00 P.M. The Respondent was precluded  
11 from having contact with the Petitioner except through the Our Family Wizard App and any  
12 communication between the parties was to be limited to parenting matters.

14 On February 4, 2022, the Petitioner filed a *Petition for an Order of Protection* alleging that the  
15 Respondent had previously abused her, assaulted her, punched her and that he had plead guilty to Partner  
16 Family Member Assault. The Petitioner's Petition further alleged that the Respondent was violating  
17 restrictions on the Petitioner, that he was asking for physical contact with her, making comments about  
18 her body at child exchanges and sending her messages and letters. The Court issued a Temporary Order of  
19 Protection and the Court held a hearing on the Permanent Order of Protection February 24-25, 2022. At  
20 the conclusion of the hearing on the Permanent Order of Protection, the Court continued the Order of  
21 Protection as to the Petitioner for one year.<sup>3</sup> The Court further issued an *Order Modifying Interim*  
22 *Parenting Plan*, further limiting the Respondent's contact with [REDACTED] by suspending his video calls with  
23 [REDACTED] after finding that they caused concern for the Petitioner's safety. The Court further suspended the  
24 parties' communication based on the Respondent's demonstrated failure to adhere to the Court's Order  
25

27 <sup>2</sup> This matter was then presided over by former Standing Master Fehringer.

28 <sup>3</sup> The Court removed the minor child from the Permanent Order of Protection,  
but made modifications to the *Interim Parenting Plan* as outlined above.

1 restricting his communication with the Petitioner. The Court ordered that a third-party would be  
2 responsible for transporting the minor child to the Respondent for his supervised visits and that the  
3 Respondent would meet the third-party outside of his residence for exchanges of the minor child.

4 On March 18, 2022, the parties presented the Court with a *Stipulated Final Parenting Plan* and a  
5 *Stipulation to Vacate Protection Order After Hearing*. In the *Stipulation to Vacate Protection Order After*  
6 *Hearing*, the parties indicated that the parties had signed a *Stipulated Final Parenting Plan* which  
7 resolved the issues in this case and, as such, the parties agreed that the *Protection Order After Hearing*  
8 should be vacated/dissolved. On March 21, 2022, the Court adopted the parties' *Stipulated Final*  
9 *Parenting Plan* and granted the *Stipulation to Vacate Protection Order After Hearing*. The parties'  
10 *Stipulated Final Parenting Plan* provided that the Petitioner shall be the primary and sole residential  
11 parent of the minor child and that the minor child shall reside with the Petitioner at all times. The  
12 parenting plan specifically denotes that the Respondent shall have no parenting time with the minor child  
13 unless parenting time for the Respondent is specifically agreed upon by the Petitioner and that the  
14 Respondent knowingly waives parenting time with the minor child and knowingly waives contact with  
15 the minor child. The *Stipulated Parenting Plan* was signed off by both the Petitioner and Respondent, as  
16 well as their respective attorneys.

17  
18 On June 2, 2022, the Respondent filed his *Verified Motion and Brief to Set Aside Order Adopting*  
19 *Stipulated Parenting Plan or, Alternatively, to Modify Parenting Plan*. On June 13, 2022, the Petitioner  
20 filed her Response. The Court held a hearing on the Respondent's Motion on September 16, 2022. From  
21 the testimony presented at the September 16, 2022, hearing, the Court makes the following:

22  
23 **FINDINGS OF FACT**

- 24 • The parties entered into a *Stipulated Final Parenting Plan* on March 18, 2022. This  
25 *Stipulated Final Parenting Time* was signed by both parties and their respective attorneys and  
26 was notarized. On March 21, 2022, the Court issued its *Order Adopting Stipulated Final*  
27 *Parenting Plan*.  
28



- 1 • Contemporaneous with the filing of the *Stipulated Final Parenting Plan*, the parties entered  
2 into *Stipulation to Vacate Protection Order After Hearing*. This *Stipulation to Vacate*  
3 *Protection Order After Hearing* was signed by both parties and their respective attorneys and  
4 was notarized. On March 21, 2022, the Court issued its *Order Dismissing Order of*  
5 *Protection*.
- 6 • The Respondent testified that on February 26, 2022, - one day after the Court issued the  
7 *Order of Protection After Hearing* and *Order Modifying Interim Parenting Plan*- the  
8 Petitioner contacted him through a friend. The Respondent testified that on that date, the  
9 Petitioner came over to his residence and the parties proceeded to engage in sexual relations  
10 together.
- 11 • The Respondent testified that the following night, the Petitioner allowed the Respondent to  
12 have contact with the minor child and that he and the Petitioner hung out a few times after.
- 13 • Shortly after, the parties communicated to their respective attorneys that they'd reached a  
14 settlement in this matter. The settlement documents were subsequently drafted, signed by the  
15 parties and their respective attorneys, notarized and submitted to the Court.
- 16 • The Respondent testified that the Petitioner proceeded to withhold the minor child from him  
17 almost immediately after the Court adopted the *Stipulated Parenting Plan*
- 18 • The Respondent testified that he and the Petitioner had conversations regarding settlement of  
19 the parenting plan in this matter. The Respondent asserts that the Petitioner made promises of  
20 she, the Respondent and the minor child being a family again after the conclusion of these  
21 court proceedings if the Respondent would agree to give the Petitioner sole custody of the  
22 minor child. The Respondent testified that prior to the parties executing the *Stipulated Final*  
23 *Parenting Plan*, the Petitioner was having frequent contact with the Respondent; that she  
24 would call him in the morning and spend time with him on numerous occasions. The  
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1 Respondent testified that this conduct of the Petitioner induced him to believe that the parties  
2 had moved past their issues.

- 3 • The Respondent testified that he has not seen the minor child since the parties executed their  
4 *Stipulated Final Parenting Plan* and that the Petitioner has made no effort to allow the  
5 Respondent contact with the minor child, despite his requests to see the minor child and to  
6 have phone calls and facetime chats with the minor child.
- 7 • The Respondent testified that the Petitioner and him began spending time again together  
8 around the second week in August 2022, shortly after the Respondent filed the pending  
9 Motion before the Court. The Respondent testified that he has requested to see the minor  
10 child numerous times, but that the Petitioner has declined to allow such contact.
- 11 • The Respondent testified that he and the Petitioner had hung out together as recently as two  
12 weeks before the September 16, 2022, hearing in this matter. The Respondent testified that he  
13 believed that Petitioner initiated contact with him again in August because she was upset that  
14 the parties were going back to court.
- 15 • The Respondent acknowledged that a *Notice of No Contact Letter* was sent to him through his  
16 attorney by the Petitioner and was filed with the Court. The Respondent testified that he and  
17 the Petitioner had been engaged in regular contact through text messages and phone calls.
- 18 • The Respondent testified regarding an incident that occurred at a bowling alley between him  
19 and the Petitioner<sup>4</sup>. The Respondent testified that he had seen the Petitioner at the bowling  
20 alley which was the first time had physically seen the Petitioner since the parties entered into  
21 their *Stipulated Final Parenting Plan*. The Respondent testified that he confronted the  
22 Petitioner about her not letting him see the minor child, to which the Petitioner purportedly  
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25

26 <sup>4</sup> On testimony, the parties were unable to establish a precise date for the  
27 "bowling alley incident" but established that the incident took place  
28 sometime between from when the Court adopted the parties' *Stipulated Final Parenting Plan* on March 21, 2022, and from when counsel for the Petitioner filed the *Notice of Filing Notice Demanding No Contact* on April 18, 2022.

1 stated she did not want to discuss the matter. The Respondent testified that he eventually  
2 terminated the encounter and denied that there was any yelling or screaming or that he  
3 opened the Petitioner's car door. The Respondent testified that he returned to his friends and  
4 eventually left with his friends. The Respondent testified that the police were not called as a  
5 result of this encounter and the Respondent stated that he had been at the bowling alley first  
6 and that he had no idea that the Petitioner would be there with her then-boyfriend.

- 7 • The Respondent acknowledged that the *Stipulated Final Parenting Plan* was a departure from  
8 the terms of the *Interim Parenting Plan* previously issued by the Court on March 1, 2022.<sup>5</sup>  
9
- 10 • The Respondent testified that had the Petitioner not slept with him and hung out with him  
11 prior to the parties entering into the *Stipulated Final Parenting Plan*, he never would have  
12 agreed to such an arrangement.
- 13 • The Respondent testified that the Petitioner's actions induced him into entering in the  
14 *Stipulated Final Parenting Plan* and that he relied on the Petitioner's promises that they  
15 would get back together and that he would be able to see the minor child. The Respondent  
16 testified that since the parties entered into the *Stipulated Final Parenting Plan*, he has not had  
17 any access to the minor child. The Respondent testified that his access to the minor child was  
18 cut off prior to the incident at the bowling alley and that his access to the minor child was still  
19 cut off after the bowling alley incident. The Respondent testified that the only thing that has  
20 changed since the bowling alley incident is that the Petitioner has initiated contact with the  
21 Respondent.  
22

23  
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25 <sup>5</sup> On March 1, 2022, the Court issued its *Order Modifying Interim Parenting*  
26 *Plan* following the two-day hearing on the *Petition for Order of Protection*.  
27 The *Order Modifying Interim Parenting Plan* provided that that Respondent  
28 would have supervised parenting time with the minor child Saturdays from 3:00  
p.m. to 6:00 p.m. and Wednesdays from 6:00 p.m. to 7:00 p.m. but otherwise  
suspended sections 4 & 6(d) of the of the December 2021 *Interim Parenting*  
*Plan* which provided communication between the parties through the Our Family  
Wizard App and facetime chats between the Respondent and the minor child.

- 1 • On cross-examination, the Respondent acknowledged that he ignored and violated the Order
- 2 of Protection issued by the Court and that he had contact with the Petitioner.
- 3 • The Respondent testified that he did not believe the Order of Protection was “fair” in that it
- 4 gave the Petitioner leverage over him. The Respondent stated he did not believe the Petitioner
- 5 was afraid of him and that the only point of the Order of Protection was for the Petitioner to
- 6 have leverage over the Respondent. The Respondent testified that he “broke the law on [his]
- 7 own doing<sup>6</sup>”, but that did not think it was fair what the Petitioner was doing regarding
- 8 withholding the minor child from the Respondent.
- 9 • The Respondent testified that he did not have parenting time with the minor child on the
- 10 Respondent’s birthday, though acknowledged that he had seen the minor child two days prior.
- 11 • The Respondent testified that he wanted to have the minor child on his birthday, but that he
- 12 was not allowed to see the minor child. The Respondent acknowledged that this was prior to
- 13 the execution of the *Stipulated Final Parenting Plan*.
- 14 • The Respondent testified that he is a high school graduate and that he understood what was
- 15 provided for in the *Stipulated Final Parenting Plan*. The Respondent further acknowledged
- 16 that he was represented by an attorney and that he willingly agreed to sign the *Stipulated*
- 17 *Final Parenting Plan*.
- 18 • The Respondent acknowledged that the *Stipulated Final Parenting Plan* does not provide him
- 19 with any parenting time with the minor child.
- 20 • The Respondent acknowledged that the *Stipulated Final Parenting Plan* does not promise
- 21 that he will have parenting time with the minor child.<sup>7</sup>
- 22
- 23
- 24

25 <sup>6</sup> Referencing the Respondent violating the Order of Protection.

26 <sup>7</sup> While acknowledging that the *Stipulated Final Parenting Plan* does not  
27 promise that he will have parenting time with the minor child, the Respondent  
28 contends that text messages between him and the Petitioner provide assurances  
that he will have parenting time with the minor child. The Court was not  
presented with any copies of the text messages at the September 2022 hearing  
and no text messages were entered into evidence by either party.

- 1 • The Respondent testified that he reviewed the *Stipulated Final Parenting Plan* before  
2 entering into it and acknowledged that it provides that the Petitioner would be the sole  
3 residential parent for the minor child. The Respondent stated that he reviewed the *Stipulated*  
4 *Final Parenting Plan* and that he knew what it meant; that he understood that by entering into  
5 the *Stipulated Final Parenting Plan*, he would have no parenting time unless the parenting  
6 time was specifically agreed upon by the Petitioner and that he was knowingly waiving his  
7 parenting time with the minor child.
- 8 • The Respondent testified that he reviewed the document, knew it would be filed with the  
9 Court and that he knew that the document was a legal document to be sent to the Court.
- 10 • The Respondent testified that he knew that in turn, the Order of Protection would be dropped  
11 between he and the Petitioner. The Respondent acknowledged that this was of benefit to him  
12 as demonstrated by his previously acknowledged violations of the Order of Protection.
- 13 • The Respondent conceded that he was not forced to sign the Stipulation but contends that he  
14 was promised that he would have contact with the minor child by the Petitioner and told by  
15 the Petitioner numerous times that the court proceedings needed to go away so that the  
16 Respondent could see the minor child.
- 17 • The Respondent acknowledged that discussions between himself and the Petitioner were  
18 outside the four corners of the *Stipulated Final Parenting Plan* and that they do not reflect  
19 what was contained in the *Stipulated Final Parenting Plan*.
- 20 • On redirect, the Respondent further reiterated that he believed the sex and promises made by  
21 the Petitioner were used as leverage to induce him into entering into the *Stipulated Final*  
22 *Parenting Plan*.
- 23  
24  
25 ///
- 26 • The Petitioner testified on direct that she recalled the Order of Protection hearing and  
27 acknowledged that her friend had reached out to the Respondent on her behalf after the Order  
28

1 of Protection hearing. The Petitioner acknowledged that she engaged in sexual relations with  
2 the Respondent after the Order of Protection hearing and that she hung out with the  
3 Respondent a few times after the Order of Protection hearing. The Petitioner stated that she  
4 was persuaded by her friend to see the Respondent.

- 5 • The Petitioner testified that she and the Respondent had multiple conversations regarding a  
6 terms and conditions for a potential stipulated final parenting plan in this matter as a means to  
7 make the court proceedings “go away”.
- 8 • The Petitioner testified that the *Stipulated Final Parenting Plan* entered into by the parties  
9 was a deal between the parties to address the Petitioner’s safety concerns about the  
10 Respondent by restricting his parenting time with the minor child in exchange for the  
11 Petitioner agreeing to drop the Order of Protection against the Respondent.
- 12 • The Petitioner denied engaging in sexual relations with the Respondent to induce him into  
13 agreeing to her proposed parenting plan, stating that engaging in sexual relations with the  
14 Respondent was done in a weak moment.
- 15 • The Petitioner testified that after she and the Respondent began contacting each other after  
16 the Order of Protection hearing, she brought the minor child to the Respondent’s residence to  
17 see the Respondent and that the parties and the minor child met up at a dog park on one  
18 occasion.
- 19 • The Petitioner testified that both she and the Respondent had communication regarding their  
20 agreed upon stipulation for the final parenting plan and that they were in mutual  
21 understanding as to what the terms and conditions of the agreement were.
- 22 • The Petitioner acknowledged on direct examination that both parties received benefits from  
23 the *Stipulated Final Parenting Plan*; the Respondent benefited from the Order of Protection  
24 going away and the Petitioner benefited from the language of the *Stipulated Final Parenting*  
25 *Plan*. The Petitioner further acknowledged that what was agreed to by the parties in the  
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1        *Stipulated Final Parenting Plan* was a departure from what had been previously ordered by  
2        the Court in regard to the Respondent's parenting time with the minor child.

- 3        • The Petitioner testified that during communication with the Respondent, she told the  
4        Respondent that she would "consider" a family with him, but that she never promised him  
5        that they would get back together. The Petitioner testified that she was considering a family  
6        with the Respondent based on whether or not she would see a change in his behavior and the  
7        Petitioner stated that she communicated this to the Respondent. When asked on direct  
8        whether or not she believed the Respondent relied on those communications from the  
9        Petitioner that there was a chance the parties would reconcile, the Petitioner testified that the  
10       Respondent was aware that there was a chance that reconciliation would not happen.
- 11       • The Petitioner testified that communication between her and the Respondent continued for a  
12       few weeks after the Court adopted the *Stipulated Final Parenting Plan*.
- 13       • The Petitioner testified that during this time, she attempted to facilitate phone calls between  
14       the Respondent and the minor child but stated that the phone calls ended up being the  
15       Respondent speaking to the Petitioner and not the minor child.
- 16       • The Petitioner testified on direct examination that she recalled the incident between the  
17       parties at the bowling alley. The Petitioner testified that on the date in question, she had gone  
18       to the bowling alley with her now ex-boyfriend [REDACTED] [REDACTED]. The Petitioner  
19       testified that she had seen the Respondent at the bowling alley and attempted to leave. The  
20       Petitioner testified that after she had gotten in the car, the Respondent "ripped open" her car  
21       door while her vehicle was parked and running. The Petitioner testified that the Respondent  
22       stated he wanted to see the minor child. The Petitioner stated she told the Respondent that she  
23       did not want to give him parenting time- that she "didn't see the need [for the Respondent to  
24       see the minor child]." The Petitioner testified that during this incident, the Respondent  
25       threatened to fight [REDACTED] and that the Respondent eventually left after the Petitioner asked  
26       [REDACTED]  
27       [REDACTED]  
28       [REDACTED]

1 him six or seven times to do so. The Petitioner testified that no cops were called and that  
2 there were no additional witnesses to the incident at the bowling alley.<sup>8</sup>

- 3 • The Petitioner testified that she and the Respondent proceeded to have mutual contact with  
4 each other since she ended her relationship with [REDACTED] but that she has made no  
5 accommodations for the Respondent to see the minor child.
- 6 • The Petitioner testified that during this time-period – prior to the filing of the pending motion  
7 before the Court- the Respondent's contact with the Petitioner was largely the Respondent  
8 advising the Petitioner that he was the "right one" for the Petitioner.
- 9 • The Petitioner stated that she does not feel comfortable speaking to the Respondent but  
10 acknowledged that she hung out with him approximately two or three times since the incident  
11 at the bowling alley with the parties going to the dog park or on a hill climb.
- 12 • The Petitioner testified that she did not bring the minor child along on these occasions  
13 because she did not wish to give the Respondent "false hope", but rather that she wanted to  
14 see whether or not the Respondent had changed his prior conduct and actions that were of  
15 concern to the Petitioner.
- 16 • On cross-examination, the Petitioner acknowledged that communication between herself and  
17 the Respondent has been sporadic and has been regarding multiple different things such as  
18 the parties hanging out and the Respondent occasionally asking to speak with the minor child.  
19 The Petitioner stated most of the communication between the Respondent and herself during  
20 this time period was related to discussions regarding [REDACTED] and the Petitioner. The Petitioner  
21 stated that she considered some of these communications to be offensive and that she was  
22 "hurt" by what she perceived to be the Respondent attempting to break up her relationship  
23 with [REDACTED].  
24  
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28 <sup>8</sup> [REDACTED] was not present or called to testify regarding the incident at the bowling alley.



- The Petitioner testified that she considered these communications between her and the Respondent as being “intimidating”, with the Respondent purportedly telling the Petitioner how he was going to “drown [her] in court” and how the Petitioner was “evil”.
- The Petitioner testified that her communication with the Respondent impacts her decision-making regarding the Respondent’s communication with the minor child. The Petitioner elaborated on cross-examination that she still has safety concerns regarding the Respondent having parenting time with the minor child.
- The Petitioner testified that she did not force, threaten, or trick the Respondent into entering the *Stipulated Final Parenting Plan*, but did acknowledge that she and the Respondent had had conversations about the agreement.
- The Petitioner testified that she never threatened to turn the Respondent in for his violations of the Order of Protection and that she considered this agreement to be a compromise; she gave up the safety of an Order of Protection in exchange for the Respondent giving the Petitioner sole discretion regarding what his parenting time with the minor child would entail.
- The Petitioner testified that the Respondent expressed to her his understanding that by entering into this *Stipulated Final Parenting Plan*, the Petitioner would get the sole discretion regarding the scope of the Respondent’s parenting time with the minor child and that the Respondent’s parenting time would be at the sole discretion of the Petitioner. The Petitioner testified that the Respondent expressed that he was willing to agree to these terms so that the Order of Protection would go away.

///

The Court takes judicial notice of the previous findings of fact from previous court hearings as well as the entirety of the casefile in this matter and incorporates them into this Order.

///



1 From the Findings of Fact, the Court now makes the following:

2  
3 **CONCLUSIONS OF LAW**

4 **I. FRAUD**

5 The Respondent asserts that the Petitioner had promised to allow contact between him and the  
6 minor child as a means of inducing him into entering into the *Stipulated Parenting Plan* before  
7 purportedly acting arbitrarily in declining to allow the Respondent to have contact with the minor child.

8 The Respondent asserts that such conduct rises to the level of fraud and subsequently justifies setting  
9 aside the *Stipulated Parenting Plan* pursuant to Mont. R. Civ. P. 60(b)(3). Mont. R. Civ. P. 60(b)(3)  
10 provides that a Court “may relieve a party... of a final judgement, order or proceeding for... fraud  
11 (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.  
12

13 “Actual fraud consists of ‘acts committed by a party to the contract or with [her] connivance with intent to  
14 deceive another party thereto or to induce him to enter into the contract including ‘a promise made  
15 without any intention of performing it.’” *Richards v. JTL Group, Inc.*, 2009 MT 173, ¶ 40, 350 Mont.  
16 516, 212 P.3d 264 (quoting M.C.A. 28-2-405). *See also In re Potts*, 2007 MT 81, ¶ 43, 336 Mont. 517,  
17 518, P.3d 418 (“Settlement agreements are contracts and subject to the provisions of contract law... Under  
18 contract principles, a party’s conduct rises to the level of actual fraud when he acts with the intent to  
19 deceive another to induce him to enter into the contract.”).

20  
21 Evidence of the circumstances under which an instrument was made may not be considered  
22 where the language of the instrument is clear and certain in its terms. *Mary J. Baker Revocable Trust v.*  
23 *Cenex Harvest States, Coops., Inc.* 2007 MT 159, ¶ 47, 338 Mont. 41, 164 P.3d 851. The Montana  
24 Supreme Court has, however, long recognized that the general rule prohibiting the application of extrinsic  
25 evidence to an unambiguous writing does not preclude *all* reference to the circumstances of the  
26 agreement. The Montana Supreme Court has previously concluded that “this Court will look past mere  
27 labels to the substance of the parties’ agreement” to determine the intended nature of particular  
28

1 obligations. *Hopper v. Hopper*, 183 Mont. 543, 550, 601 P.2d 29 (1979). The Montana Supreme Court  
2 has further recognized that “meaning can almost never be plain except in context,” *Mary J. Baker*  
3 *Revocable Trust*, ¶ 48 (quoting Restatement (Second) of Contracts, section 212 cmt. B (1981). While the  
4 parties to a contract may be fairly presumed to have understood the matter about which they were  
5 contracting, the same cannot be said for every factfinder called upon to interpret the contract at issue. To  
6 enable the Court to be as wise as the parties regarding the application to the language used, the law  
7 permits the factfinder to hear a full description, from evidence, of the subject matter of the contract and of  
8 all the circumstances that surrounded the parties at the time it was made and to learn what were the  
9 motives and inducements that led to the contract and the object to be attained by it. *Mary J. Baker*  
10 *Revocable Trust*, ¶¶49 (quoting *Hilderbrand v. Fogel*, 20 Ohio 147, 157 (1851)). The judge may consider  
11 circumstances surrounding the execution of a writing, including the situation of the subject of the  
12 instrument and of the parties, to place themselves in a position to interpret the language. *In re Estate of*  
13 *Stukey*, 2004 MT 279, P73, 323 Mont. 241, 100 P.3d 144 (quoting *Martin v. Laurel Cable TV*, 215 Mont.  
14 229, 233, 696 P.2d 454, 457 (1985)); *Newell v. Nicholson*, 17 Mont. 389, 393, 43 P. 180 (1869).

16 The non-conflicting testimony presented at the September 16, 2022, hearing shows that the  
17 parties were in contact with each other immediately after the Court issued the Permanent Order of  
18 Protection; that the parties engaged in sexual relations on one occasion after the Court issued the  
19 Permanent Order of Protection; that the Petitioner brought the minor child to see the Respondent twice  
20 prior to the parties entering into the *Stipulated Final Parenting Plan*; that contact between the Petitioner  
21 and the Respondent continued for a short time after the entry of the *Stipulated Final Parenting Plan*; that  
22 there was an incident between the parties at a bowling alley shortly after the entry of the *Stipulated Final*  
23 *Parenting Plan*; that there has been some communication between the parties since the bowling alley  
24 incident and since the filing of the pending motion before the Court, but that the Petitioner has not  
25 provided the Respondent with parenting time since the entry of the *Stipulated Final Parenting Plan*. The  
26 Court has not been presented with any credible evidence to show that the Petitioner fraudulently induced  
27  
28

1 the Respondent into entering the *Stipulated Final Parenting Plan* at issue. The testimony shows that the  
2 parties engaged in settlement talks without their attorneys almost immediately after the Court issued the  
3 Permanent Order of Protection back in February 2022. The testimony after shows conflicting accounts of  
4 what those conversations entailed and how those conversations were interpreted by the parties. The  
5 Respondent asserts that the Petitioner made assurances that he would have contact with the minor child  
6 and that the two of them would reconcile and become a family again. The Petitioner asserts that she never  
7 promised reconciliation, but rather her communication and time spent with the Respondent was to  
8 ascertain whether or not he had changed his behavior towards the Petitioner and the minor child so as to  
9 address the safety concerns that she had with him. The Court finds the Petitioner's testimony regarding  
10 wanting to see if the Respondent's behavior changed to be credible, particularly given the safety concerns  
11 regarding the Respondent that she testified to at the September 2022 hearing as well as previously  
12 testified to at the Order of Protection hearing in February 2022. The Court is not persuaded that the  
13 alleged conduct of the Petitioner was done to deceive the Respondent or induce him into entering the  
14 *Stipulated Final Parenting Plan* by making promises without any intention of performing them; rather,  
15 the Court finds that the *Stipulated Final Parenting Plan* entered into by the parties was a compromise  
16 reached by both parties- that in exchange for the Petitioner giving up the safety afforded by the Order of  
17 Protection, the Respondent agreed to allow the Petitioner sole decision making authority regarding the  
18 scope and nature of the Respondent's contact with the minor child, which in turn benefited the  
19 Respondent by freeing him from the constraints and legal consequences of an Order of Protection which  
20 he testified under oath that failed to abide by on multiple occasions.

21  
22  
23 When looking at the context of the settlement agreement filed by the parties in support of their  
24 *Stipulated Parenting Plan*, it is clear that the provisions of the *Stipulated Parenting Plan* were reached by  
25 the parties in consideration of the Petitioner agreeing to have the *Order of Protection* dismissed; that by  
26 the Respondent agreeing to allow the Petitioner to serve as the primary and sole residential parent of the  
27 minor child and by explicitly agreeing that his parenting time- if any- will be at the Petitioner's discretion,  
28

1 the Petitioner would agree to the dismissal of the *Order of Protection* against the Respondent. The  
2 testimony of the parties at the at the September 16, 2022 hearing, as well as the language of the *Stipulated*  
3 *Final Parenting Plan* and *Stipulation to Vacate Protection Order After Hearing and Order Adopting*,  
4 show that this arrangement was made to address the safety concerns of the Petitioner while also relieving  
5 the Respondent from being subject to the constraints of the *Order of Protection*- a deal of immense  
6 benefit to the Respondent given his demonstrated habitual inability to abide by the *Order of Protection*.  
7 The non-conflicting testimony shows that the parties had contact immediately after the Order of  
8 Protection hearing and for a short time after the Court adopted the *Stipulated Final Parenting Plan* and  
9 that the Petitioner and the Respondent spent time together a handful of times. The Court finds that this  
10 insufficient to show that the Petitioner fraudulently induced the Respondent into agreeing to enter into the  
11 *Stipulated Final Parenting Plan*.  
12

13 The Respondent posits that, by the Petitioner declining to allow the Respondent to engage in  
14 parenting time, that such conduct (conduct outlined in the *Stipulated Final Parenting Plan* that the parties  
15 entered into and signed off on alongside their respective attorneys) amounts to an infringement on the  
16 Respondent's fundamental right to parent. While the Respondent correctly points out that the statutory  
17 requirements for voluntary relinquishment have not been satisfied in this matter, the Respondent's  
18 assertion that his parental rights have been relinquished or terminated are incorrect. The Respondent's  
19 parental rights to the minor child have neither been relinquished nor have they been terminated, nor is the  
20 Petitioner exercising her rights under the terms of the *Stipulated Final Parenting Plan* an arbitrary act.  
21 The Respondent's parental rights remain intact. Rather, the conduct of the Petitioner is wholly in line with  
22 what was agreed to by the parties and signed off on by both parties *and* their respective attorneys  
23 (emphasis added). The language of the *Stipulated Final Parenting Plan* specifically provides that "Mother  
24 shall be the primary and sole residential parent of the child. The child shall reside with Mother at all  
25 times. Father shall have no parenting time with [the child] unless parenting time for Father is specifically  
26 agreed upon by Mother. Father knowingly waives parenting time with [the child] and Father knowingly  
27  
28

1 waives contact with [the child]”.<sup>9</sup> The conduct of the Petitioner is nothing more than what the parties  
2 mutually agreed to in the *Stipulated Final Parenting Plan*.

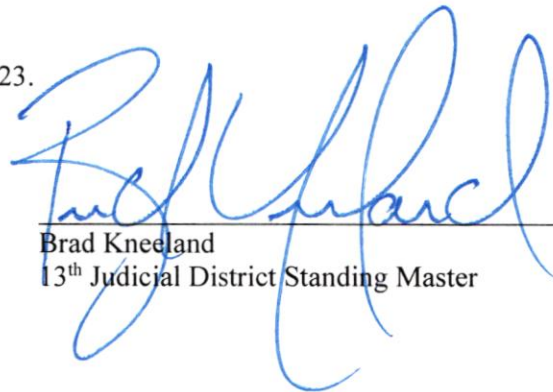
3 Just as the Court finds insufficient evidence to show that the *Stipulated Final Parenting Plan*  
4 entered into by the parties is a product of fraud, the Court further finds that the Petitioner’s compliance  
5 with the *Stipulated Final Parenting Plan* is not fraud. The Respondent knowingly entered into the  
6 *Stipulated Final Parenting Plan* which effectively- and literally- placed his contact with the minor child  
7 in the discretion of the Petitioner. The testimony shows that this was done for multiple reasons; namely to  
8 give the Respondent the benefit of having the Order of Protection dismissed and, conversely, to address  
9 the Petitioner’s safety concerns with the Order of Protection going away. The Respondent, through his  
10 own testimony, acknowledged that he read the terms of the *Stipulated Final Parenting Plan*, was  
11 represented by counsel and that he understood what the terms of *Stipulated Final Parenting Plan* entailed.  
12 The Respondent has a constitutional right to parent and his rights to parent have not been terminated.  
13 Rather, his parenting time with the minor child is to be at the sole discretion of the Petitioner in  
14 compliance with the terms and provisions of the *Stipulated Final Parenting Plan*.

16 The purported assurances of parenting time alleged to have been promised to the Respondent by  
17 the Petitioner could have been included in the plain language of the *Stipulated Final Parenting Plan*.  
18 Rather, the parties- both of whom were represented by competent counsel- settled on the established  
19 language contained in the *Stipulated Final Parenting Plan*, reviewed the language with their attorneys  
20 and signed the agreement alongside their respective counsel. Under *Troxel v. Washington*, 530 U.S. 57  
21 (2000), fit parents are assumed to act in their children’s best interests. Therefore, the Court once again  
22 finds that the *Stipulated Final Parenting Plan* entered into by the parties continues to be in the best  
23 interests of the minor child. As the Court finds that that the *Stipulated Final Parenting Plan* is not a  
24 product of fraud, the Court does not find that there has been a change in circumstances to warrant  
25 amendment of the *Stipulated Final Parenting Plan*. Respondent’s Motion is **DENIED**.

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28 <sup>9</sup> *Stipulated Final Parenting Plan*, pg. 3, ROA 41.

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2 DATED this 9<sup>th</sup> day of January, 2023.

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Brad Kneeland  
13<sup>th</sup> Judicial District Standing Master

8 The above stamped date indicates the date the Master's Report was filed. As of this date, the Order is  
9 immediately effective and enforceable as an Order of the Court. *Charter Order in Re Dist. Standing*  
10 *Master Establishment & Procedure* (Mont. 13<sup>th</sup> Jud. Dist. August 28, 2015). This judgment is final  
11 without a specific, written, timely objection. Mont. Code Ann. § 3-5-126(2).  
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