

# APPLICATION FOR DISTRICT COURT JUDGESHIP

## A. PERSONAL INFORMATION

1. **Full Name:** Audrey Schultz Cromwell
2. **Birthdate:** [REDACTED]
3. **Current Home Address:** [REDACTED]
4. **Email Address:** [REDACTED]
5. **Preferred Phone Number:** [REDACTED]
6. **Judicial position you are applying for:** Eighteenth Judicial District Court Judge, Gallatin County
7. **Date you became a U.S. citizen, if different than birthdate:** At birth
8. **Date you became a Montana resident:** August 1991

## 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.**

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Billings West High School	Billings, MT	2000	<i>High School Diploma, high honors</i>
Carleton College	Northfield, MN	2005	<i>Bachelor of Arts (American Studies) Minor (Spanish), cum laude</i>
Alexander Blewett III School of Law University of Montana	Missoula, MT	2009	<i>Juris Doctor</i>

**10. List any significant academic and extracurricular activities, scholarships, awards, or other recognition you received from each college and law school you attended.**

ABIII University of Montana School of Law:

- Co-Editor in Chief, *Montana Law Review* (2008 – 2009)
- Merit Scholarship for Academic Excellence (2007 – 2009)
- Women’s Law Caucus (2007 – 2009)
- Ralph Wright Memorial Scholarship (2008)
- Russell & Mary Ruth Smith Scholarship (2008)
- NITA Trial Preparatory Course Certificate (2008)
- Drafted and proposed legislation revising DUI refusal statutes for 2009 State Legislature (2008)
- Contributor to legal blog analyzing *United States v. W.R. Grace* case in Federal District Court

Carleton College:

- Carleton College, graduated *cum laude* (2005)
- Carleton College Division I Women’s Ultimate Frisbee (2001 – 2005), National Championship Runner-Up (2004)
- Certificate of Advanced Study in Foreign Language in Spanish (2005)
- Comprehensive Exercise on Criminal Justice within Indian Reservations (2005)
- Program Director of Project Friendship (volunteer mentor program) (2002 – 2005)
- Club Sports Executive Safety Officer, Carleton Club Sports (2004 – 2005)
- New Student Week Leader (2004)
- Carleton Choir, Vocal Ensemble (2003 – 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.**

<u>Employer</u>	<u>Position</u>	<u>Dates</u>
Cromwell Law, PLLC 1871 S 22 <sup>nd</sup> Ave, Suite 2 Bozeman, MT 59718 <a href="http://www.cromwellpllc.com">www.cromwellpllc.com</a>	Managing Partner	2011 – present
Bozeman Municipal Court 615 S 16 <sup>th</sup> Ave, Room 123 Bozeman MT 59715	Judge <i>Pro Tempore</i>	2021 – present

Gallatin County Justice Court 615 S 16 <sup>th</sup> Ave., Room 168 Bozeman, MT 59715	Judge <i>Pro Tempore</i>	2014 – present
Associated Students of Montana State University (ASMSU) Student Legal Services Program 221 Strand Union Building Bozeman, MT 59717 <a href="http://www.asmsulegalservices.org">www.asmsulegalservices.org</a>	Co-Director & Clinical Supervisor	2014 – present
13 <sup>th</sup> Judicial District Drug Court 2722 3 <sup>rd</sup> Ave N, Suite 121 Billings, MT 59101	Defense Attorney	2010 – 2011
Office of the State Public Defender 207 N. Broadway # 201 Billings, MT 59101	Attorney	2010 – 2011
The United States Senate Committee on Finance 219 Dirksen Senate Office Building Washington, D.C. 20510	Law Clerk	2009 – 2010

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.**

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
U.S. District Courts, District of Montana	2011
State Bar of Montana	2010
Montana State Bar Association	2010

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 late 2011, I founded Cromwell Law PLLC, a general practice law firm focused on providing Montanans with access to quality, affordable legal care. From 2012 through 2014, I represented misdemeanor and felony defendants and parents in dependency and neglect cases as OPD conflict counsel in multiple judicial districts around Montana. I briefed issues, filed motions, and advocated for

my clients in meetings with CFS officials and county attorneys, mediations, show-cause hearings, adjudication hearings, disposition hearings, and permanency and termination proceedings.

In 2014, after undergoing a competitive vetting process, Montana State University (MSU) selected Cromwell Law's comprehensive proposal to provide full and limited scope legal services to MSU students. As Co-Director of the Associated Students of Montana State University (ASMSU) Student Legal Services Program, I supervise our administrative staff, attorneys, and 3<sup>rd</sup> year UM clinical law student. Our program provides legal services to between 400-500 MSU students per academic year. Students pay \$10 for legal services and the MSU student government compensates my firm at significantly reduced rates. Our ASMSU Legal Services program has twice been selected as ASMSU's Program of the Year (2017 & 2018). I personally advise and assist approximately 120 student clients per year on legal issues related to misdemeanor and felony criminal charges, family law, consumer protection, and immigration.

In addition to managing the program, I also advise the ASMSU student government and organize annual legal outreach events such as:

- The MSU Legal Career Education Event. This is an annual event held in partnership with the ABIII School of Law and ASMSU to introduce students to the practice of law by hosting a panel discussion and allowing students to meet with practicing attorneys, judges, law professors, military lawyers, and a Supreme Court Justice (typically Justice Rice).
- The MSU DUI Wet Lab. This is an annual event held in partnership with the MSU Police Department, Montana Highway Patrol, the Montana State Crime Lab, and the Bozeman City Attorney's office focused on DUI education and prevention.

Since 2014, I have served as Judge *Pro Tempore* in Gallatin County Justice Court and in 2021, I began serving as Judge *Pro Tempore* in Bozeman Municipal Court. I set bond and bail conditions for defendants facing felony and misdemeanor criminal charges; arraign, hear, and sentence defendants during open court and scheduled hearings; handle omnibus hearings and changes of plea; rule on motions and orders of protection; and actively participate in other corollary judicial and administrative matters.

My current practice consists of family law litigation, family law mediation and collaborative divorce, student legal services, and *pro tem* judging. Collaborative family law is a complex alternative dispute resolution process that bypasses traditional litigation and rather focuses on interest-based problem solving to reach amicable and lasting divorce settlements. In my capacity as managing partner of Cromwell Law, I oversee my firm's civil litigation cases and assist attorneys with litigation strategy, case management, and discovery issue and disputes.

My current practice, not including law firm management, is comprised of the following percentages:

Family Law Litigation – 30%

Alternative Dispute Resolution – 30%

Student Legal Services (Criminal Litigation, Immigration, Consumer Protection) – 30%  
Judge *Pro Tempore* – 10%

I have received the following honors related to my private practice at Cromwell Law and our partnership with ASMSU Legal Services.

- Top Lawyer in Gallatin County – 2021 (Bozeman Daily Chronicle – Gallatin’s Greatest)  
See [https://issuu.com/bozchron/docs/gallatin\\_s\\_greatest\\_2021/27](https://issuu.com/bozchron/docs/gallatin_s_greatest_2021/27)
- Top Law Firm in Gallatin County – 2021 (Bozeman Daily Chronicle – Gallatin’s Greatest)  
See [https://issuu.com/bozchron/docs/gallatin\\_s\\_greatest\\_2021/25](https://issuu.com/bozchron/docs/gallatin_s_greatest_2021/25)
- Top 20 Under 40 – 2017 (Bozeman Daily Chronicle)  
See [https://issuu.com/bozchron/docs/businessjournal\\_jan17/4](https://issuu.com/bozchron/docs/businessjournal_jan17/4)
- MSU Program of the Year – Student Legal Services (2017 & 2018)

**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).**

Montana district court judges are among the last legal generalists in an era of specialization – and they have to be. A district court judge has jurisdiction to hear not only civil, criminal, abuse and neglect, family, juvenile, and probate cases, but also to serve as the appellate court for our courts of limited jurisdiction. A district court judge must remain neutral and be prepared to address nearly every type of dispute that can arise in our great state.

I have always been drawn to generalism as a discipline and the ability for generalists to divine inspiration from seemingly disconnected fields in order to analyze and answer difficult questions. As an American Studies major at Carleton, I integrated several subjects, methods, and materials from numerous academic disciplines in order to study and better understand the United States and its place in the world. I found many of the most powerful and efficient ideas for resolving complex societal problems came from cross-disciplinary thinkers.

When I worked for the Public Defender’s Office in Billings, I was selected to serve as the defense attorney on the 13<sup>th</sup> Judicial District Drug Court. The Drug Court employs an interdisciplinary model that unites attorneys, judges, probation officers, and treatment providers to reduce recidivism and support felony drug offenders’ recovery from drug and alcohol addiction. Watching my clients’ transformation over the course of their time in Drug Court gave me optimism and hope that similar interdisciplinary models can be effective tools to solve some of our most vexatious societal issues.

My work in collaborative law also shows the value in interdisciplinary models and neutrality. In collaborative divorce, each client hires a collaboratively trained attorney and the parties hire a mutually agreed-upon neutral mental health professional and neutral financial planner. The outcomes we see in our collaborative cases leave clients on good co-parenting terms, satisfied that their underlying interests were met and their fears assuaged. Furthermore, instead of seeking relief from a court in future disputes,

clients return to the collaborative process for parenting plan modifications or to resolve potential contempt issues before filing, thus reducing the District Court's contested family law docket.

Additionally, I have worked as a family law mediator since 2014. In my practice, I hold both settlement conference-style mediations with counsel and their clients, and facilitative mediations with *pro se* litigants. Mediation is both an art form and a science and I take my role as mediator very seriously. In my typical mediations, I help parties resolve parenting time, complex financial division, spousal support, and child support. A good mediator embodies many of the same attributes of a good judge and both positions necessarily operate in the neutral space. As a mediator, I must first listen carefully and appreciate the emotion, interests, and needs of each party. During mediation, I work to provide a clear understanding of options by analyzing the issues and identifying risk for each party. This allows the parties to problem solve and identify solutions that will allow them to largely meet their interests.

I have always been intellectually curious about analyzing and understanding the different perspectives and interests held by individuals and groups in disputes. I am a general practitioner and I enjoy operating in the neutral space and as a member of an interdisciplinary team. These unique areas of my legal practice provide me with a solid, neutral foundation to handle the work of a district court judge.

**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.**

In the past ten years, I have tried 7 jury trials and 15 bench trials. Since 2009, I have tried 11 jury trials and 21 bench trials. Currently, I attend court at least 2-3 times per month in an advocacy role. As a *pro tem* judge, I typically preside over Justice and Municipal Courts 4-5 weeks per year. Since I began working as a Judge *pro tem*, I have completed approximately 6 months of aggregate in-courtroom judicial time. My trial experience has been approximately 34% civil litigation and 66% criminal litigation.

I have appeared and practiced in the following Montana Judicial Districts and jurisdictions:

- 18<sup>th</sup> Judicial District Court, Gallatin County
- Gallatin County Justice Court
- Bozeman Municipal Court
- Belgrade City Court
- 1<sup>st</sup> Judicial District Court, Lewis and Clark County
- Lewis and Clark County Justice Court
- 1<sup>st</sup> Judicial District Court, Broadwater County
- Broadwater County Justice Court
- 2<sup>nd</sup> Judicial District Court, Butte-Silver Bow County
- 4<sup>th</sup> Judicial District Court, Missoula County
- Missoula County Justice Court
- 5<sup>th</sup> Judicial District Court, Madison County

- 5<sup>th</sup> Judicial District Court, Jefferson County
- 6<sup>th</sup> Judicial District Court, Park County
- 8<sup>th</sup> Judicial District Court, Cascade County
- 13<sup>th</sup> Judicial District Court, Yellowstone County
- Yellowstone County Justice Court
- Billings Municipal Court
- Laurel City Court
- 22<sup>nd</sup> Judicial District Court, Carbon County
- 22<sup>nd</sup> Judicial District Court, Stillwater County

In addition to frequently appearing in numerous courtrooms across the state, I advocate on behalf of clients for the determination of appropriate child support in Department of Public Health and Human Services (DPHHS) administrative hearings for the Child Support Services Division (CSSD) about 1-2 times per year on average.

- 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.**

I. As a criminal trial lawyer, I defended many clients struggling with, and impacted by, mental health. I once tried a felony criminal case in Broadwater County in which my client could not assist in his own defense due to his significantly deteriorated mental state. I would frequently travel to the Broadwater County jail to meet with him, but he did not have the capacity to comprehend why he was in jail let alone possess the ability to tell me anything about the incident. I had my client clinically evaluated and was surprised when the psychologist deemed him fit to proceed. Unconvinced, I hired another psychologist to evaluate him for a diagnosis of a Mental Disease or Disorder (MDD). In the second clinician's forensic mental health report, she determined that my client indeed had a mental disease or disorder at the time of the commission of the offense, and that that presence of MDD prevented him from acting purposefully or knowingly, as required by the statute. At trial, I intended to rely on the Mental Disease or Disorder affirmative defense. The trial was scheduled and proceeded accordingly. However, in the middle of trial, a somewhat frazzled and disheveled friend of my client burst into the courtroom with a crumpled stack of papers and plopped them down on defense counsel's table. Upon request, an equally surprised Judge Reynolds allowed a short recess for me to review the stack of papers. In doing so I discovered both exculpatory and *Brady* evidence. I disclosed the evidence to the prosecutor who promptly moved to dismiss the case with prejudice mid-trial.

In this case, my client could not assist in his own defense due to his mental health condition. He never shared any evidence with me that would have been exceedingly helpful for an acquittal – he could not

even describe the underlying incident. It was very difficult to diligently represent such a client. Over the past 11 years practicing criminal law, it is clear to me that many criminal defendants' lives have been plagued by abuse or childhood neglect, which manifests as a mental health condition and often co-occurring disorders. I am sensitive to the part mental health plays in the occurrence of criminal behavior. While not always appropriate based on the underlying facts of the case, I believe proper referrals to health care professionals for those with mental health conditions can help prevent recidivism. At the same time, appropriate accountability cannot be omitted for those who committed crimes while suffering from a disorder. It is possible for judges to provide proportional and constructive punishment and rehabilitation in this regard.

II. As a family law litigator, I once represented a client in a complex dissolution matter that resulted in contemporaneous family law, criminal law, constitutional law, and mental health proceedings. At the beginning of the attorney-client relationship and given the family dynamic, I had advised my client to consider choosing the collaborative divorce process rather than traditional litigation. Unfortunately, the parties did not agree to use the collaborative process, so traditional and highly contentious litigation ensued. Things devolved quickly. The litigation caused an already strained relationship between the parties to turn volatile. One day, the parties met to discuss the dissolution, but the conversation turned into an altercation. The husband called the police and my client was arrested, charged with a crime, and booked into the detention facility. She was held without bond on the criminal charge. While incarcerated, my client had a mental health emergency. The sheriff rushed her to the emergency room and then Hope House (a crisis stabilization facility in Bozeman). The County Attorney then filed an involuntary commitment petition against my client. While my client remained incarcerated at Hope House, she was not arraigned before a judge on her criminal charge, even though Hope House has two-way audio/video capabilities. This only added to my client's distressed state. I filed a writ of habeas corpus and a motion to dismiss the underlying criminal charge based on the failure of the state to bring her immediately before a judge, which is statutorily mandated in criminal proceedings. A judge granted the writ and dismissed the underlying charges.

In my client's case, she was thankful that I had prior experience in family law, criminal law, and mental health proceedings. During family law litigation, different and parallel proceedings can often occur. This can be incredibly confusing for a client. Instead of my client requiring separate counsel for each legal proceeding, I was able to assist her in reaching resolution in every proceeding.

III. As noted in the preceding example, parties in family law cases are often fearful they will lose everything and the adversarial litigation system often exacerbates that fear. I recognized this issue very early in my family law litigation practice and wanted to effectuate change to help families suffering as a result of divorce or separation. Of course, affecting positive change on a complex legal process can be difficult. To begin, I sought out and was trained and certified in Collaborative Law in 2013. Then, in 2015, my collaborative law colleagues and I pushed for passage of the Uniform Collaborative Law Act, which protects professionals and the collaborative process. The law passed with bipartisan support and is now codified at Mont. Code Ann. §§ 25-40-101 *et seq.* (2019). Collaborative Law is a complex alternative dispute resolution process that bypasses adversarial litigation to instead focus on productive, interest-based problem solving in divorce settlements. The traditional collaborative model includes two collaboratively trained attorneys, one neutral mental health professional, and one neutral financial



planner. By relying on the expertise of each professional, practitioners work together with clients to find creative, interest-based solutions to resolve parenting and financial disputes.

According to the prominent Adverse Childhood Experiences (ACEs) Study, adversarial divorce is categorized as a form of childhood trauma. The ACEs study examined the association of traumatic childhood experiences with future violence victimization and perpetration as well as lifelong health. When children experience four or more ACE-defined traumas in their youth, it can have severe impacts on the developing body and brain and their future outcomes as adults. However, these traumas are preventable. As an attorney guiding clients through the divorce process, and as a parent myself, I wanted to be part of the solution and not exacerbate the baseline trauma of divorce. Our collaborative process provides incredible co-parenting education and ongoing support to separated and divorced parents. I have seen most of my collaborative families lean into the process and come out the other side with strong co-parenting relationships and future-focused divorce settlements. This process is by no means easy, but by its very nature serves to protect children from divorce trauma and results in enduring agreements that set families up for future success. I am proud of the work I have done to bring collaborative divorce to Montana and am assured of its continued success for Montana families and the courts that serve them.

**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.**

As *Montana Law Review's* Co-Editor in Chief from 2008-2009, I managed the editing and production of UM Law School's prominent state-wide legal journal. I also coordinated the Law Review's biennial Browning Symposium in 2009 focused on Montana's unique issues surrounding rural law and public lands, which featured panels, presentations, and discussions from academic leaders in the field, the Governor, State Legislators, Congressional staffers, lawyers, ranchers, sport fisherman, and the USDA.

*Citation:* 70 Mont. L. Rev. Issue 1 (Winter 2009) and Issue 2 (Summer 2009).

**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.**

*Lecture, International Student Orientation (Sponsored by ASIA), Montana State University*  
November 10<sup>th</sup>, 2021

Topic: *Federal and Montana Law Overview*. As part of international student orientation, I will lecture on federal and Montana laws related to criminal justice, landlord-tenant, consumer protection, and immigration as well as resources available to students.

*Presentation, Montana State University and ABIII Montana School of Law Panel*  
Montana State University  
October 22<sup>nd</sup>, 2020

Topic: As a panel participant with Justice Rice, Dean Kirgis, and a third-year Montana law student, I discussed and answered questions regarding law school, careers in the law, career progression, scholarship, and managing academic and professional pursuits.

*Presentation, Family Justice Coordinating Council, 18<sup>th</sup> Judicial District (FJCC)*

May 27<sup>th</sup>, 2020

Topic: *Collaborative Law Option*. Along with my collaborative law colleagues, I presented on the benefits of collaborative divorce as a means to reduce the 18<sup>th</sup> Judicial District Court contested family law docket.

*Lecture, MSU Course BMGT 420: Leadership and Influence*

November 11<sup>th</sup>, 2018

Topic: *Dispute Resolution*. I presented to MSU undergraduate students on the basics of dispute resolution, the types of conflict resolution we learn from our family of origin, the steps necessary to have difficult conversations, and the attorney's role in dispute resolution.

*Mediation Instruction, Montana State University*

August 20<sup>th</sup>-21<sup>st</sup>, 2018

Topic: *Basic Mediation Training*. Over two days, I presented and helped train MSU Resident Advisors (RAs) on mediation fundamentals in partnership with the Community Mediation Center.

*Lecture, International Student Orientation, Montana State University*

January 9<sup>th</sup>, 2018

Topic: *Federal and Montana Law Overview*. As part of MSU's international student orientation, I lectured on federal and Montana laws related to criminal justice, landlord-tenant, consumer protection, and immigration as well as the resources available to students.

*Presentation, Gallatin County Bar Association Pro Bono CLE*

March 23<sup>rd</sup>, 2017

Topic: *Limited Scope Representation as a Pro Bono Option*. I presented on the fundamentals of limited scope representation at the Gallatin County Bar Association's Pro Bono Panel CLE. The presentation was designed to give local attorneys additional options to fulfill annual pro bono requirements.

*Presentation, Family Justice Coordinating Council, 18<sup>th</sup> Judicial District (FJCC)*

September 28<sup>th</sup>, 2016

Topic: *"Uniform Collaborative Law Act," Mont. Code Ann. §§ 25-40-101 et seq. (2015)*. I presented on the Uniform Collaborative Law Act and discussed why my collaborative colleagues and I advocated for the Act's introduction, sponsorship, and passage in the 2015 Montana Legislature.

*Presentation, MT Supreme Court Access to Justice Panel*

May 18<sup>th</sup>, 2016

Topic: *Limited Scope Representation*. I presented to Members of the Montana Supreme Court Access to Justice Commission regarding limited scope representation fundamentals and its positive impacts on access to justice.

*Presentation, Family Law Section Toolkit CLE, MT State Bar*

April 22<sup>nd</sup>, 2016

Topic: *Collaborative Family Law: A Different Approach*. During this Toolkit CLE, I introduced collaborative family law to the Montana family law bar as an alternative to litigation in qualifying cases.

*Presentation and Discussion, Montana State University Law Day Panel*

April 21<sup>st</sup>, 2016

Topic: *Constitutional Issues in Krakauer v. State*. In preparation for the MT Supreme Court's annual Law Day oral argument at MSU, I presented and discussed the legal issues in *Jon Krakauer v. State of Montana* as part of multi-disciplinary panel at Montana State University.

*Presentation and Testimony, Law and Justice Interim Committee, Montana State Legislature*

June 27<sup>th</sup>, 2014

Topic: Along with several colleagues, I introduced the concept of Collaborative Law practice to legislators and interested parties. This included proposing confidentiality protections that required statutory codification to protect the Collaborative Law process and practitioners. We encouraged passage of the Uniform Collaborative Law Act which passed with bipartisan support and is now codified at Mont. Code Ann. §§ 25-40-101 *et seq.* (2019).

**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.**

I believe pro bono practice is not only essential to the well-being of our profession, it is critical to the public's access to justice. During the past five years, I have earned pro bono credit by volunteering as a family law mediator, taking on several pro bono family law cases in a full representation and limited scope capacity, representing indigent clients charged with misdemeanors on a modest means or pro bono basis, assisting JAG attorneys and military clients with Montana specific legal questions, and organizing trainings for Montana attorneys and professionals in mediation and collaborative family law.

Here is an accounting of my pro bono hours from the past five years:

2017 – 172 pro bono hours

2018 – 62 pro bono hours

2019 – 105 pro bono hours

2020 – 42 pro bono hours

2021 – 86.6 pro bono hours to date

This year, I agreed to represent a woman in a highly contentious pro bono family law case referred to me by Montana Legal Services Association (MTLSA). This case went to trial in Lewis and Clark County District Court in front of Judge Menahan on July 15<sup>th</sup>, 2021. I spent 77.8 hours of pro bono time through conclusion of the case. Additionally, I have taken on two other pro bono cases this year: one criminal case that resolved for a total of 3.2 hours and one pending family law case in a limited scope capacity which totals 5.6 hours thus far.

Furthermore, through our ASMSU Legal Services Program, I advocate for student clients at significantly reduced hourly rates. Student legal services are incredibly affordable for MSU students, with our clients paying only \$10 for their limited scope or full representation legal services. I spend approximately 315 hours per year on ASMSU Legal Services limited scope and reduced fee client matters.

Additionally, I am part of the Military Pro Bono Project through the American Bar Association. As part of Operation Stand-By, I share attorney-to-attorney advice regarding Montana law with active duty and reserve JAG attorneys so they can better assist their servicemember clients. For many years I have advised JAG attorneys in this regard before formally joining the Military Pro Bono Project. My work in this capacity typically involves issues related to family law, immigration law, and consumer protection for an average of about 5-10 hours per year.

- 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.**

[ABA Military Pro Bono Project](#), ABA Standing Committee on Legal Assistance for Military Personnel (LAMP) and Operation Stand-By; *Member*; 2021 – present

[National Legal Aid & Defender Association – Student Legal Services](#) (NLADA); *Member*; 2019 – present

[Dispute Resolution Committee](#); Montana State Bar; *Member*; 2017 – 2020

[Montana Collaborative Professionals](#) (MCP); *Founder, Member, & Officer*; 2015 – present

[International Academy of Collaborative Professionals](#) (IACP); *Member*; 2013 – present

[Military Spouse J.D. Network](#); *Member*; 2012 – present

[Gallatin County Bar Association](#); *Member*; 2011 – present

[Yellowstone Area Bar Association](#); *Member*; 2010 – 2011

[Montana Bar Association](#); *Member*; 2010 – 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.**

While not a servicemember myself, I am “married to the military” as we say among military spouses. My husband Charlie is an Iraq War combat veteran and spent 4 years on active duty as a short-range air defense artillery officer. He is currently a Lieutenant Colonel in the Army Reserve JAG Corps. In addition to his monthly drilling obligations, Charlie is often on active duty and has been mobilized several times during our marriage including recently in 2020 to support DOD and FEMA as part of the Federal government’s COVID-19 response.

Quickly recognizing how often my husband can be called up in service of our country, I have worked hard to create a network that supports our family while Charlie is on active duty or mobilized. I have a strong foundational support network and truly enjoy my role as a military spouse, which has helped me cultivate deeper connections with my family, friends, and community and has exposed opportunities to directly support servicemembers.

From 2012 to 2015 I directly supported the military in my role as the Soldier and Family Readiness Group (SFRG) Leader for the 6<sup>th</sup> Legal Operations Detachment of the U.S. Army Reserve Legal Command – my husband’s assigned unit at the time. Every unit in the Army has a Soldier and Family Readiness Group. These organizations are critical for helping maintain unit readiness and family resilience during deployments, mobilizations, and training. As a prerequisite for assuming this role, the Army required that I fly to DC with unit leadership for a week-long training on SFRG operations and responsibilities. In my capacity as the SFRG Leader I was responsible for bringing-in speakers from Military OneSource to discuss financial resources and support available for servicemembers and their families, educating families on the military’s support of spousal employment, helping the command with bettering family members’ morale and welfare, and ensuring family members had mental health resources and support during difficult times.

Additionally, since 2012, I have been part of and supported the Military Spouse J.D. Network, which advocates for interstate licensing reciprocity to allow military spouse-attorneys to continue practicing law in new jurisdictions after military-required moves without having to take another bar exam.

I am proud to be a military spouse and am thankful for the opportunity to continue supporting our servicemembers however I can.

**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 have served as Judge *pro tempore* in Gallatin County Justice Court since 2015 and in Bozeman Municipal Court since 2021.

As a Judge *pro tem*, I set bond and bail conditions for defendants facing felony and misdemeanor criminal charges; arraign, hear, and sentence defendants during open court and scheduled hearings; handle omnibus hearings and changes of plea; rule on motions and orders of protection; issue warrants; handle order of protection hearings; and, actively participate in other corollary judicial and administrative matters.

Typically, I preside over Justice and Municipal Courts 4-5 weeks per year. Since I began working as a Judge *pro tem*, I have completed approximately 6 months of aggregate in-courtroom judicial time. I have presided over approximately 2,800 cases in a judicial capacity.

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

In January 2017, the Community Mediation Center (CMC) Board of Directors, a Bozeman-based nonprofit, asked if I would be willing to serve as part-time, interim Executive Director (ED) after the prior ED left unexpectedly. I accepted the offer until the CMC could raise funds sufficient to hire a fulltime ED. As part-time ED, my duties included running the nonprofit, managing over 80 volunteers and staff, overseeing the CMC's Project Settle Mediation program which served Gallatin County Justice Court, and supervising the CMC's Family Mediation program which served *pro se* litigants in the 18<sup>th</sup> Judicial District Court. During my time as interim ED, I wrote four grant proposals for the CMC, all of which were approved, totaling \$57,500 for operational and program sustainment and development.

To ensure the CMC's grant writing efforts were successful, I pursued training in grant writing. As part of my training, I learned the most effective ways to write grants and request funding for pilot projects. A district court judge with grant writing experience could request grant funding for project grants, technical assistance grants, strategic initiative grants, and education support to benefit the judiciary and the public it serves.

In 2011, I founded Cromwell Law, PLLC a general practice law firm which, at the time, was one of the first firms in the state to provide limited scope representation as an affordable option for low and middle-income Montanans. I designed Cromwell Law to be a flexible, agile law firm operating entirely in the cloud while diligently conforming to the rules of professional conduct and client confidentiality. Since 2011, Cromwell Law has grown from just one employee (me) to five attorneys plus support staff. I have also been intentional about making Cromwell Law fundamentally collaborative in nature. Not only do we ensure our employees collaborate with each other, but we also value and support the partnership our attorneys cultivate with each client. Furthermore, I ensure we conduct weekly office-wide meetings focused on resiliency, the social and cultural changes impacting our legal practice, and case conceptualization. I am proud of the firm model and culture I have worked so hard to create over the past decade. The business acumen that I have gained over the past ten years would serve the judiciary well.

When COVID-19 first swept through the United States, Cromwell Law acted swiftly and without hesitation. We were able to seamlessly transition firm operations and our ASMSU Legal Services program completely online within a matter of hours and to maintain continuity of client care through virtual legal services. During the pandemic shut-down and mandatory quarantine periods, our employees were able to work from home armed with the latest technology and software platform subscriptions. Clients were able to schedule virtual meetings online and we held all client meetings and my mediations via Zoom without complaint or hesitation from existing or new clients. I am also one of the few notaries in the state trained and certified to provide remote online notary services, which proved invaluable during the shut-down and employee/client quarantines. Our understanding and training on

the use of technology allowed us to respond quickly and efficiently to COVID-19 shut-downs and restrictions. I am well-versed in modern technology platforms and software and would like to work on updating the judiciary's procedures and programs so the court can operate as efficiently as possible.

#### **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.**

*Guidelines Review and Oversight Committee (GROC), Montana's Child Support Services Division (CSSD) of the Department of Health & Human Services (DPHHS); 2021 – present*

Activities: As an at-large member, I participate in quarterly meetings and provide input to ensure the state's child support guidelines meet the needs of Gallatin County's low-income families and children.

*Board of Visitors, Alexander Blewett III School of Law, University of Montana; 2019 – present*

Activities: As a member of the Law School Board of Visitors, I assist the Dean and law school staff with fundraising, recruitment, alumni connection and events, and long-term planning. The Law School recently highlighted my work in an alumni spotlight found here: <https://www.umt.edu/law/alumni/spotlight/default.php>.

*Board of Directors, Community Mediation Center; 2018 – 2020*

Activities: As a Board Member for the nonprofit, I helped develop a strategic plan, held discussion meetings with volunteers, resolved HR issues, assisted with compensation package negotiations, presented at Greater Gallatin United Way for grant requests, and brainstormed options for continued 18<sup>th</sup> Judicial District Court support.

*Member, Prospera Business Network; 2018 – 2020*

Activities: As a member of Prospera Business Network, I met with members of our community to support community-centered economic development in our area.

*Board of Pilgrim Connect, Youth and Family Ministries, Pilgrim Congregational Church; 2017 – 2019*

Activities: I helped the Director develop the Youth and Family program, set program goals, set benchmarks for progress, met with church stakeholders to discuss programs and progress, worked with the Director on professional development, and supported church families.

*Board of Directors, Bozeman Symphony Orchestra; Secretary; 2012 – 2015*

Activities: As Secretary of the Board of Directors, I drafted meeting minutes, assisted with long-term strategic planning, researched and developed a plan for reaching younger music-loving audiences, assisted with fundraising efforts, and promoted the Symphony in Bozeman.

*Soldier and Family Readiness Group Leader* for the 6<sup>th</sup> Legal Operations Detachment, U.S. Army Reserve Legal Command; 2012 – 2015

Activities: I supported the command by bringing-in speakers from Military OneSource to discuss financial resources and support available for servicemembers and their families, educating families on the military's support of spousal employment, helping the command with bettering family members' morale and welfare, and ensuring family members had mental health resources and support during difficult times.

- 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.**

In 2020, I applied for the Eighteenth Judicial District Court's vacant judicial seat. I was one of two applicants to be unanimously nominated by the Judicial Nomination Commission and my name was submitted to then-Governor Steve Bullock for interviewing and consideration. Governor Bullock appointed another nominee.

#### **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.**

I am not currently an owner, officer, director or otherwise engaged in the management of any business other than a law practice. I am, however, the managing partner and hold a majority membership interest in my law practice, Cromwell Law, PLLC. If appointed as district court judge, I would resign my position and divest my interest in Cromwell Law, PLLC immediately upon appointment.

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 believe the role of district court judge is critically important to help ensure a functioning, stable community. Not only can a judge be instrumental in improving an individual's life trajectory, a judge also protects children and the community from harm, resolves disputes between community members in a fair and just way, and represents and upholds the legal framework our society is based on. I care deeply about protecting our community's children and vulnerable populations, ensuring disputes are resolved in a healthy and efficient manner, and, to the degree its possible, ensuring the administration of our system of justice affords community members the best life experience possible.

I see a variety of ways a judge can positively change the course of an individual's life, which conforms with my beneficent philosophy. In civil cases, a judge must ensure that individuals have the opportunity for their viewpoint to be heard and acknowledged, which alone can provide some relief for litigants. When the law is properly applied to the facts and the judge rules, finality replaces the uncertainty litigants shouldered throughout litigation. In criminal cases, a judge's sentence can offer both peace to

victims and their families and an opportunity for defendants to correct their life course through appropriate punishment, treatment, and rehabilitation.

Judges also positively impact a community through decisions that protect society's most vulnerable populations. In dependency and neglect cases, a judge has the unique role of protecting children and ensuring they are placed in a safe environment where they will have the best chance at a healthy, happy life. A judge, through ordering guardianships and conservatorships, ensures our growing elderly population and other vulnerable members of society are cared for and protected. In involuntary commitment proceedings, a judge seeks to ensure an individual is given the opportunity for treatment and assistance to meet their mental health needs. It resonates with me that judges have immediate, positive, and lasting impacts on our most vulnerable populations.

In addition to helping vulnerable populations, protection of the community cannot be overstated in importance. The behavioral choice an individual makes to injure another human can leave deep and lasting scars – literally and figuratively – on victims, their families, and our community. As a judge, I would take on the responsibility to ensure that particular individual never has the opportunity to injure another person in the same manner. Instead, and whenever possible, I would seek to empower the offender to change his or her life's course and repair the harm they have caused. It is important to me for us all to feel safe in our community, and I recognize the role a judge has in ensuring a safe environment.

Another judicial role that interests me is the ability to resolve the disputes of everyday life in a fair and just way. As a collaborative attorney and mediator, I have seen the magic and lasting relief among parties when we thoughtfully resolved their disputes in ways that satisfy or address their underlying interests. The judge sees community members in conflict and is tasked with bringing about social peace through justice.

In sum, I am seeking the district court judgeship because the diverse and impactful roles a judge fulfills are important to me as an attorney, a parent, and a member of our community.

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

A judge's most recognized role is externally focused and adjudicative. While in Court, a judge must carefully listen to opposing parties, maintain courtroom decorum, determine facts, and appropriately apply the law. I believe a good judge ensures procedures are followed, successfully manages their courtroom during hearings and trials, and seeks to instill public confidence in our judicial system. However, I believe the most important quality a judge can possess in this role is *legal courage*. A judge must be willing to do what the law requires even though the decision may be unpopular. Regardless of popularity, a judge is charged with the responsibility to follow the constitution and the laws promulgated by our legislature and by judicial precedent.

Second, a judge has an internally focused and contemplative role: to soberly analyze and consider a matter before rendering a decision. In this role, I believe the most important quality is *integrity*. Judicial integrity necessarily includes a commitment to impartiality and the rejection of personal

positions, opinions, and outside influences. To that end, judges must not allow identity, race, gender, sexual orientation, political status, wealth, or relationships with counsel to interfere. I also believe judicial integrity requires judges to think critically about potential biases they may hold and ensure they are not expressed in their decision-making.

Third, a judge's role is that of a manager. Judges must effectively manage their courtroom, caseload, staff, and their own time. The quality most important in this role is *efficiency*. As I've experienced in my own practice, an efficiently run process resulting in an expeditious decision – even when adverse to a client – is preferable to a drawn-out process or delayed decision. Delays result in additional litigation costs and unnecessary suffering while parties languish in emotional uncertainty.

I also believe that it is imperative for a judge to serve as a steward of the Montana and Federal constitutions and our modern legal system – all of which form the bedrock upon which our society stands. In carrying out this great responsibility, I believe judges must maintain a connection to community. Judges have a civic and professional responsibility to educate the public about their role in governance, to seek feedback on how the judicial system can improve to better serve its community, and to ensure public confidence in the judiciary.

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

The Federal and Montana State Constitutions operate as the foundation for our state's laws. The hierarchy of law mandates that Montana statutory and common law adhere to Federal and State Constitutional provisions. Under the Constitution, it is the Legislature's responsibility to create statutory law and ensure it does not conflict with the Constitution. It is the Judiciary's responsibility to interpret the law made by the Legislature only when litigants' issues presented to a court necessitate statutory and/or constitutional interpretation. The Constitution gives the Legislative branch, not the Judiciary, the power to make law. Early in our country's history, Chief Justice John Marshall stated, "It is emphatically the province and the duty of the judicial department to *say what the law is . . .*" – it is not the province and duty of the Judiciary to create law. *Marbury v. Madison*, 5 U.S. 137 (1803) (emphasis added).

When interpreting the constitutionality of statutes, I think a district court judge should first consider Article III, Section 3 of the Montana Constitution, which mandates that all public officers in each branch of government subscribe to the same oath of office. At its core, Montana's public officers – regardless of branch – have all sworn to do the same thing: protect and defend our Constitution. A judge's power vested by the Constitution only allows the court to pronounce the law as the Legislature enacted it. When a district court judge is called on to interpret a statute, I believe a judge should undertake such an exercise with mutual respect for its co-equal branch of government, which by oath must likewise carry out its duties in protection and defense of our Constitution when creating law.

In my litigation practice, I periodically see issues arise before the court which require statutory interpretation in the absence of binding precedent. In such situations, as a judge, I would take the following steps. First, I would require the litigants to fully brief the issue so I could review counsels' arguments and any persuasive authorities presented. If there was no question regarding the

constitutionality of a statute, I would consider a plain reading of the word or phrase and the sentence construction within the statute. Then, if the issue remains unresolved, I would look to the broader statutory context. Usually, statutes are not enacted in isolation and often must be interpreted together to discern meaning and legislative intent.

After this analysis, if ambiguity persists, I would then look to express legislative history to guide my decision-making as Courts are appropriately restrained from substituting their own policy view for those of the Legislature. What did the Legislature intend when enacting this statute? What problem was the Legislature attempting to address? What records of legislative hearings and deliberations exist? I would review all relevant legislative history to illuminate the meaning of the statute's text.

Then, I would be decisive and make a ruling. The effect of my interpretive process would be to ascertain the intent of the law as promulgated by the Legislature and to do so with mutual respect between co-equal branches of government.

## **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 enclosed writing sample.

- 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 Magdalena Bowen  
18<sup>th</sup> Judicial District Court Standing Master  
615 S. 16<sup>th</sup> Ave, Room 200  
Bozeman, Montana 59715  
Ph: (406) 582-2156  
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Honorable Bryan Adams  
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Gallatin County Justice Court  
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Angie Cavallini  
Cavallini Law Office, PLLC  
Family Law Attorney  
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Email: [REDACTED]

## 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).

October 4<sup>th</sup>, 2021  
Date

  
Audrey S. Cromwell

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A signed original **and** an electronic copy of your application and writing sample must be submitted by  
***5:00 p.m. on Wednesday, October 13, 2021***

**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

To: [REDACTED]  
From: Audrey Cromwell  
ASMSU Legal Services Attorney  
Date: February 12<sup>th</sup>, 2020  
Issue: *Search and Seizures Issues in Dorms*

**Potential MSU Liability Issue Identified:** Potential liability on the part of MSU for failure to meet FERPA, statutory and constitutionally protected privacy rights of on-campus residents.

### **Factual Basis**

As part of our representation of a student client in a criminal matter, we recently interviewed an Assistant Residence Director (ARD). In its criminal investigation, Montana State University Police Department (MSUPD) contacted the ARD and asked the ARD to provide law enforcement with information necessary to secure the identity of the resident and the specific location of his dorm room. The ARD disclosed confidential personal information about the student and conducted a "line-up" with the officer where they viewed dorm security video and tried to identify a student using student records and photos on StarRez, the Residential Life (Res Life) student housing database. The information on the StarRez system includes the resident's identifying information, photos, and a room number. After they identified the student, the ARD led the officer to the student's dorm room. The officer did not seek a search warrant from a judicial authority.

We have become aware of an "open lines of communication" policy between the Residence Life Staff and MSUPD. According to the ARD, she alone has been contacted four times this year by law enforcement for information retained by Res Life. According to the ARD, RAs always provide the requested information to law enforcement. Also, according to the ARD, RAs at Resident Life "have never been told not to provide the information." By asking RAs and Res Life staff to investigate potential criminal activity in conjunction with law enforcement, MSUPD may turn RAs and Res Life staff into "government instruments or agents" which triggers 4<sup>th</sup> Amendment protections.

Additionally, we became aware of a Res Life policy authorizing RAs and Res Life staff to visually search dorm rooms without written notice to residents. Staff members are knocking on dorm rooms, asking the residents to leave the door open and then conducting a visual search of the premises. If they find alcohol, they confiscate and discard the alcohol. If they find drugs during their visual search, they call MSUPD. We believe this search violates Montana statute Section 20-25-513 (*see below*).

### **Legal Authority**

The Fourth Amendment of the US Constitution protects people from unlawful searches and seizures. In order to search, law enforcement must obtain a warrant based on probable cause from a Judge describing the place, person or thing to be searched. In Montana, we have an additional constitutional protection in Section 10 of the Montana Constitution. The Montana

Supreme Court has held that Montana's unique constitutional language affords citizens a greater right to privacy and broader protection than the Fourth Amendment in search and seizure cases. *State v. Hardaway*, 2001 MT 252, 307 Mont. 139, 36 P.3d 900.

In addition, the Legislature has determined that the University system is obligated to respect a student's right of privacy in their residence and records. Mont. Code Ann. § 20-25-511 states:

It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities that are necessary to protect the health, safety, and *privacy of a person's residence and the privacy of the person's records* [emphasis added]. Intrusions by peace officers and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions . . .

Mont. Code Ann. § 20-25-214 reiterates that the constitutional protections apply to students living in dorm rooms: "All searches by *any* law enforcement official shall be in accordance with the laws of the city, county, state, and nation [emphasis added]." This provision includes MSU law enforcement and can include Residential Life staff if they are an "instrument or agent" of law enforcement.

The US Supreme Court has set forth two critical factors in determining when a private citizen becomes a government instrument or agent. If the government knew of and acquiesced in the intrusive conduct, and if the party performed the search to assist law enforcement, then the party has become a government instrument or agent. *United States v. Miller*, 688 F.2d 652, 656 (9<sup>th</sup> Cir. 1982).

When law enforcement asks Residence Life staff to investigate criminal behavior of MSU students, the staff member may become an agent or instrument of law enforcement. When a staff member acts as an instrument or agent of law enforcement in conducting a search, 4<sup>th</sup> Amendment interests are implicated. *Id.*

The Legislature intends to protect the privacy of students in the same way that private citizens are protected in their homes. In that way, law enforcement officers and RAs or Res Life staff acting as government instruments or agents are required to get a warrant or fit within a warrantless exception in order to conduct a search of a student's dorm room and personal records.

Even if a Res Life staff member is not acting as a government instrument or agent there are limitations on when RAs and Res Life staff can enter a student's dorm room. Mont. Code Ann. § 20-25-513 delineates exactly when a Res Life staff member can enter the dorm room of a student:



An authorized official of the university or college may not enter the room of a student located at an institution unless the official has given the student a notice in writing. An emergency such as a fire or a call for help or when there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In an emergency, evidence of a crime obtained as a result of the emergency entry may not be admissible in any court of law unless due process of law has been satisfied in obtaining the evidence.

Under the application of the law, Resident Life staff have clear boundaries about when they can and cannot enter into a student's dorm room. The RA's visual search of student's dorm rooms constitute an "entry" and violate this Section of the code.

Finally, the Legislature sets forth when student records may be released in Mont. Code Ann. § 20-25-515. This section in pertinent part states: "A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction."

In addition to statutory protections, there are specific requirements mandated by the Family Educational Rights and Privacy Act (FERPA) which apply in this situation. In *Krakauer v. State of Montana*, 2016 MT 230 ¶ 24, 396 Mont. 247, 445 P.3d 201 (2019), the Montana Supreme Court interpreted FERPA, in the following way:

FERPA prohibits institutions from having a "policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of the students or their parents." *Miami Univ.*, 294 F.3d at 806 (internal brackets omitted) (citing 20 U.S.C. § 1232g(b)(1)). The regulation defines "Personally Identifiable Information" to include information such as a student's name, family names, date of birth, or "other information that, alone or in combination, is linked or linkable to a specific student *that would allow a reasonable person . . . to identify the student with reasonable certainty*["]." [emphasis added].

When MSU police request a Resident Life staff member to release a student's personally identifying information without a warrant, the student's reasonable expectation of privacy is violated under FERPA, the U.S. and Montana Constitutions, and Montana statutes.

### **Summary of Our Concerns**

- 1) The Residential Life staff visual searches of dorm rooms violate Montana law.
- 2) MSU law enforcement requests may turn Residential Life staff into instruments or agents of law enforcement triggering 4<sup>th</sup> Amendment protections.
- 3) Res Life staff and MSU law enforcement individually and collectively are violating students statutory and constitutional rights.
- 4) MSU owes a duty of care to the students who reside on campus. By not protecting the students from MSUPD incursions into student life, MSU is violating that duty of care separate and apart from the actual violations.



- 5) Res Life staff and MSUPD are violating FERPA.
- 6) If it turns out that the release of FERPA information to law enforcement is systemic, MSU is at risk for losing its federal funding for violating FERPA.

If you have any questions or concerns, please do not hesitate to contact me.

  
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Audrey S Cromwell, Attorney  
Co-Director ASMSU Legal Services  
Email: [REDACTED]  
Tel. (406) 570-7652