

**APPLICATION FOR
DISTRICT COURT JUDGESHIP**

A. PERSONAL INFORMATION

1. Full name.

Scott William Herring

2. Birthdate.

[REDACTED]

3. Current home address.

[REDACTED]

4. Email address.

[REDACTED]

5. Preferred phone number.

[REDACTED]

6. Judicial position you are applying for.

Seventh Judicial District Judgeship
(Dawson, Prairie, McCone, Richland & Wibaux Counties)

7. Date you became a U.S. citizen, if different than birthdate.

Same as birthdate.

8. Date you become a Montana resident.

June 1969

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 of School</u>	<u>City, State</u>	<u>Date and Type of Degree</u>
Dawson County High School	Glendive, Montana	1980 High School Diploma
University of Montana	Missoula, Montana	1983-1986 Bachelor of Arts
University of Montana Law School	Missoula, Montana	1986 – 1990 Juris Doctorate

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

None.

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.

1991 – Present	Herring law Office, P.C. (Numerous Partners added and subtracted over the years) Self Employed Private Practice
1991 – 2010	Dawson County Attorney's Office (Part-Time)
1991 – 1996	Deputy County Attorney (Part-Time)
1996 – 2001	Chief Deputy (Part-Time)
2002 – 2010	County Attorney (Part-Time)
2007 – 2023	Glendive City Attorney (Contracted) - (Part-Time)
2021 – Present	Fairview City Attorney (Contracted) - (Part-Time)

All located at 215 S. Kendrick, Glendive, MT 59330

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.

October 1990 – Present Montana State Bar Association
March 1991 – November 1, 2024 United State Federal Court
(Terminated because I don't appear in U.S. Federal Court System any longer.)

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).

Criminal Litigation	25%
Real Estate	20%
Trust and Estates	25%
Miscellaneous General Practice	15%
Corporations	10%
Oil & Gas	5%

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).

I have attempted to reach out and be available to assist younger attorneys with help or just to be a sounding board. In rural Montana there is not a lot of support for the younger attorneys. I benefitted greatly when I was younger by having many older attorney's willing to mentor.

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.

I appear frequently in lower court criminal matters including trials.

I appear in District Courts in Quiet Title Actions, Guardianships, Probates and miscellaneous Civil Litigation 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 recently.

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 successfully prosecuted and was involved in what at the time was the largest homicide investigation in the Department of Criminal Investigations history. Eight defendants were convicted. I sought and received permission to seek the death penalty for one defendant from Montana Attorney General's office. The defendant plead guilty to life in prison prior to trial. The investigation and criminal matters took over 2 years to complete.

Conducting a death inquiry that involved the majority of law enforcement officers and Dawson County. An officer was wounded by gunfire and multiple officers returned fire. Fortunately, cameras showed in slow frame by frame analysis that the suspect began firing on officers before they returned fire. The investigation by DCI was exhaustive and all evidence was presented to the jury.

Recently, I was lead counsel and worked with a Denver based firm representing an oil company in multi-party dispute with mineral owners over misallocation of interests and distributions. Multiple oil companies were named as defendants. In determining interests and history of production, we were able to successfully get the action dismissed for my client through summary judgement.

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.

None.

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.

None.

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 provide many hours of free advice to low income and elderly citizens in my area. As a rural attorney this is routine part of my practice. I do not routinely track my hours for these services.

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.

2005 – 2010 Montana County Attorney Board of Directors

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

None.

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

None.

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

1980- 1985 I worked in various jobs in the oilfield. I learned various areas of drilling and production. In Eastern Montana this provides background and experience in many cases as well as an understanding of the rigorous nature of the work.

1986 – 1990 I worked as a ranch-farm hand in Southwest Kansas to supplement my continued education. I routinely worked cattle in a feeder operation. I also ran tractors, combines and various farm equipment.

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.

Cottonwood Country Club Foundation	2007- Present	Board of Directors
Cottonwood Country Club Foundation	2013 – Present	President
Elks Member	1993 – Present	

Our Foundation is tasked with supporting the long-term future of golf in Dawson County. To that end I was able to secure a sizeable donation which has helped support general improvements to the facility. I wrote the By-Laws and was a funding member.

I am a current member of the Eastern Montana Bar Association.

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.

1991-1996	Dawson County Deputy County Attorney	Appointed
1996 – 2001	Dawson County Chief Deputy County Attorney	Appointed
2002 – 2010	Dawson County Attorney	Elected
2010	Dawson County Attorney	Lost 2010 Election

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.

Yes, I am part owner of Wil-Mar Properties, LLC. My wife and I own commercial property at 309 2nd St NW and 202 3rd Ave NW, Sidney, Montana 59270.

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 I bring a vast amount of experience to the bench. I have years as a prosecutor in criminal matters from misdemeanors to the most serious felony cases. I have practiced in multiple areas of civil cases from Family Law, Real Estate, Contracts, some administrative matters, Oil & Gas and Civil Litigation.

I have benefited from practicing before many experienced and talented Judges. I have learned and benefited from their wisdom. I would like to pass the same experience, wisdom and professionalism to other legal professionals.

From my experiences I have learned that for our system to work properly, those of us who have benefited by our predecessors should be willing to give back to our communities by seeking to ensure justice for all citizens.

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

I believe a District Court Judge should have legal consistency. Attorneys and the public should have confidence that a Judge will apply the law in a fair and impartial manner in all circumstances. Consistency in a Judges decisions assist attorneys in advising their clients which in turn helps with judicial expediency. The citizens in turn have more confidence in the judiciary and the legal system. A lack of consistency creates more appeals, matters going to trial and the lack of confidence that a fair outcome is possible. We must have the publics trust. That trust must start with Judiciary.

I believe a District court Judge should have a well-rounded legal background. District Court Judges hear many different areas of the law and should have a fundamental understanding and experience in handling multiple areas of the law. Having handled different areas of the law provides a judge the understanding of not only the law but the position of the parties and the attorneys. Reading case law and statutes can only provide one facet of the case. In family law for instance, it is important to understand the stresses of parties and dynamics of a family structure that has collapsed. This not only allows a judge to administer decisions in an empathetic manner but hopefully avoiding conflicts in the future. Having multiple legal experience provides confidence in the bench.

Dignity is not often discussed in the consideration of a judge's qualities. When I first started, the judges all had an air of quiet dignity that commanded the courtroom. To often now, I see a casual attitude by judges. As a result, I feel it has led to a lack of professionalism by the attorneys. This in turn has diminished the respect the public has for the legal profession. Having dignity doesn't mean being a tyrant but commanding respect in the court and the community. I would follow in footsteps of my predecessors. In turn I would want the attorneys appearing before the court not only be competent, but I would require a professional manner.

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

My judicial philosophy is "judicial conservatism". The Montana and U.S. Constitutions are to be understood by the plain language as stated. The same holds true with statutes and case law. Case precedent must be followed for Judicial consistency. Judges should not use their agendas or preferences in interpreting the law or wielding their authority. Judges are not legislators or activists.

H. MISCELLANEOUS

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

John R. Velk
523 S. Orange Street
Missoula, MT 59801
(406) 543-0909
Velklaw@outlook.com

Thomas R. Halvorson
Richland County Courthouse
201 W. Main St.
Sidney, MT 59270
(406) 433-6800


Glendive City Court Judge
Honorable Kerry L. Burman
312 S. Merrill Avenue
Glendive, MT 59330
(406) 939-1392
GlendiveCityCourt@mt.gov

CERTIFICATE OF APPLICANT

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

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

12-11-2024
(Date)


(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Monday, December 16, 2024

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

FILED

APR 11 2011

TAMMERA HELMUTH
CLERK OF DISTRICT COURT
TROD

1 Scott W. Herring
2 Herring Law Office, P.C.
3 Attorney at Law
4 P.O. Box 1307, 215 S. Kendrick
5 Glendive, MT 59330
6 Phone (406) 377-5273
7 Fax (406) 377-6401
8 Attorney for Petitioner

9 MONTANA SEVENTH JUDICIAL DISTRICT COURT, DAWSON COUNTY

10 NANCY HARDTLA AND BEVERLY SWANSON,)
11 HEIRS OF PAUL B. WORTHINGTON)

NO. DV 17-028

12 Plaintiffs,)

13 vs.)

COMPLAINT IN ACTION

14 All Persons, Unknown Claiming, or)
15 Who Might Claim any Right, Title,)
16 Estate or Interest in or Lien or)
17 Encumbrance Upon Real Property)
18 Described in the Complaint Adverse)
19 to Plaintiff's Ownership or Any)
20 Cloud Upon Plaintiff's Title)
21 Thereto, Whether Such Claim or)
22 Possible Claim be Present or)
23 Contingent, Including any Right of)
24 Dower, Inchoate or Accrued)

25 Defendant(s).)

26 -----
27 COME NOW, the Plaintiffs, by and through their Counsel
28 of Record, Scott W. Herring, of the Herring Law Firm, P.C.,
and hereby state and maintain their Complaint as follows:

1. This is an action to Quiet Title in real property
located in Dawson County, Montana, and described as follows:

A TRIANGULAR SHAPED PIECE OF LAND BOUNDED BY WEST AMES WYE, CLAY STREET AND NORTH KENDRICK AVENUE, KNOWN AS NEWPORT SQUARE, PROSPECT HEIGHTS ADDITION TO THE CITY OF GLENDIVE, DAWSON COUNTY, MONTANA, ACCORDING TO THE OFFICIAL REVISED PLAT THEREOF NOW ON

1 **FILE AND OF RECORD IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN**
2 **AND FOR DAWSON COUNTY, MONTANA. ACCORDING TO BOOK A-65 OF DEEDS,**
3 **PAGE 137.**

4 2. Plaintiffs are the last legally known heirs of the
5 current owner of record, Paul B. Worthington, of the real
6 property described in Paragraph 1 hereof, by reasons of a
7 conveyance. Mr. Worthington received his ownership of the
8 property by a deed dated January 12th, 1926 between W.R.
9 Worthington and Winnie I. Worthington, Exhibit 1, who deeded
10 the property to Paul B. Worthington.

11 3. On June 22nd, 1973, Paul B. Worthington passed away
12 in Wichita Falls, Texas. Exhibit 2, by virtue of a certified
13 copy of order admitting will to probate, Mr. Worthington's
14 estate was passed to his wife, Marion E. Worthington, in fee
15 simple. Exhibit 3.

16 4. On January 31, 1987, Marion E. Worthington passed
17 away in Olney, Texas. Exhibit 4, and by virute of a
18 certified copy of a will admitted to probate, Mrs.
19 Worthington passed all of her assets to, with the exception
20 of the specific devise of sums of cash, to her sister,
21 Dorothy Swanson and her daughter, Nancy Hardtla, and to
22 Dorothy Swanson and her daughter, Beverly Swanson. See
23 Exhibit 5. Said transfer was to be done via trust by
24 Interstate Bank of Wichita Falls, Texas, which no longer
25 exists. This did not occur.
26

27 5. At this time, Plaintiffs Beverly Swanson and Nancy
28

1 Hardtla are the last known living heirs of the titled owner
2 by virtue of Dorothy Swanson passing. Exhibit 6.

3 6. This action is an action to Quiet and claim to title
4 in the said property on the part of all persons, unknown
5 claiming, or who might claim any right, title, estate, or
6 interest in or lien or encumbrance upon real property
7 described in the complaint adverse to Plaintiff's ownership
8 or any cloud upon Plaintiff's title thereto, whether such
9 claim or possible claim be present or contingent, including
10 any right of dower, inchoate or accrued.

12 WHEREFORE, Plaintiffs pray for Judgement against all
13 persons unknown who might claim any right, title estate or
14 interest in or lien or incumbrance upon the real property
15 described in the complaint adverse to Plaintiff's ownership
16 or any cloud upon Plaintiffs' title thereto, whether such
17 claim or possible claim be present or contingent,
18 extinguishing all claims of the said persons, known and
19 unknown, in and to the
20

21 **A TRIANGULAR SHAPED PIECE OF LAND BOUNDED BY WEST AMES WYE, CLAY**
22 **STREET AND NORTH KENDRICK AVENUE, KNOWN AS NEWPORT SQUARE,**
23 **PROSPECT HEIGHTS ADDITION TO THE CITY OF GLENDIVE, DAWSON COUNTY,**
24 **MONTANA, ACCORDING TO THE OFFICIAL REVISED PLAT THEREOF NOW ON**
25 **FILE AND OF RECORD IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN**
26 **AND FOR DAWSON COUNTY, MONTANA. ACCORDING TO BOOK A-65 OF DEEDS,**
27 **PAGE 137.**

25 in the County of Dawson, State of Montana, and Quieting
26 the Title in and to the same said premises in the names of
27 the Plaintiffs as well as such further and additional relief
28

1 to which the Plaintiffs may be entitled by this action.

2
3 Dated this 27th Day of March, 2017

4
5
6 Scott W. Herring
7 Attorney for Plaintiffs

8
9
10 Nancy Hardtla
11 Nancy Hardtla

12 STATE OF Oregon)
13) ss.
14 COUNTY OF Washington

15 On this 27th day of March, 2017, before me, the
16 undersigned, a Notary Public for the State of Montana,
17 personally appeared **NANCY HARDTLA** whose name is subscribed to
18 the within instrument, and acknowledged to me that she
19 executed the same.

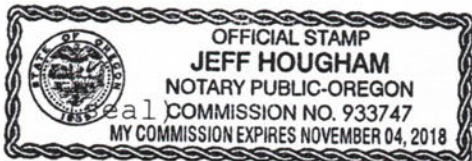


Jeff Hougham
Notary Public for State of Oregon
Printed Name: Jeff Hougham
Residing at: Beaverton, OR 97007
My commission expires: 11/04/2018

Beverly Swanson
Beverly Swanson

1
2
3
4 STATE OF Oregon)
5 COUNTY OF Washington) ss.

6 On this 27th day of March, 2017, before me, the
7 undersigned, a Notary Public for the State of Montana,
8 personally appeared **BEVERLY SWANSON** whose name is subscribed
9 to the within instrument, and acknowledged to me that she
10 executed the same.



Jeff Hougham
Notary Public for State of Oregon
Printed Name: Jeff Hougham
Residing at: Beaverton, OR 97007
My commission expires: 11/04/2018

1 Scott W. Herring
2 DAWSON COUNTY ATTORNEY'S OFFICE
3 215 South Kendrick Avenue
4 Post Office Box 1307
5 Glendive, Montana 59330
6 (406) 365-2532
7 Attorneys for Plaintiff

FILED
NOV 6 7 1995
ARDELLE ADAMS
CLERK OF DISTRICT COURT
M.A. Herring

8 MONTANA SEVENTH JUDICIAL DISTRICT COURT, DAWSON COUNTY

9 STATE OF MONTANA,)
10 Plaintiff,)
11 vs.) No. DC-95-018
12 JAMES A. NELSON,) RESPONSE TO DEFENDANT'S
13 Defendant.) MOTION TO QUASH OR
14) SUPPRESS EVIDENCE

15 On October 30, 1995, the Defendant, through his attorney, filed
16 a Motion to Quash Investigative Subpoena and, in the alternative,
17 Motion to Suppress Evidence. The Defendant requests that the
18 Investigative Subpoena Duces Tecum used to discover information
19 concerning his blood alcohol level be quashed. In the alternative,
20 the Defendant requests that evidence of his blood alcohol be
21 suppressed because it is an infringement of his Constitutional
22 right to privacy. The State responds by stating that the
23 Investigative Subpoena was issued on December 16, 1994, by this
24 Court and the results were transmitted to the State by January 3,
25 1995. Thus, the Defendant's Motion to Quash is dismally late since
26 the information has been discovered several months ago. The State
27 responds to the Defendant's Motion to Suppress by stating that an
28 Investigative Subpoena was used to obtain the information after
showing a compelling interest in gaining the information that
outweighs the Defendant's right to privacy.

Ⓟ

FACTS

1
2 On December 7, 1994, the Defendant, JAMES NELSON, was involved
3 in an unreported motor vehicle accident on Interstate 94. The
4 Defendant was transported to the Glendive Medical Center by Ron
5 Stroh. The Defendant was treated by Dr. Fink at the emergency
6 room. The Montana Highway Patrol investigated the accident and
7 charged the Defendant with Driving a Motor Vehicle While Under the
8 Influence of Alcohol, pursuant to Section 61-8-401, M.C.A.

9 On December 14, 1994, the State filed a Motion for
10 Investigative Subpoena Duces Tecum with the Seventh Judicial Court.
11 (Exhibit A). The Motion was made pursuant to Section 46-4-301,
12 M.C.A. On December 16, 1994, the District Court granted the
13 State's Motion after finding sufficient cause for the Subpoena.
14 (Exhibit B). On the same date, an Investigative Subpoena Duces
15 Tecum was issued by the District Court. (Exhibit C). The Subpoena
16 was directed to the Keeper of Records at the Glendive Medical
17 Center. As a result of the Subpoena, the State received the blood
18 alcohol results on the Defendant.

19 LEGAL ARGUMENT

20 **1. Should the Court quash the Investigative Subpoena Duces**
21 **Tecum?**

22 No, the Defendant has failed to make a timely motion requesting
23 the subpoena to be quashed. The Investigative Subpoena Duces Tecum
24 was issued on December 16, 1994. The Glendive Medical Center
25 produced the requested information on January 3, 1995. The court
26 may quash or modify a subpoena if compliance would be unreasonable
27

1 or oppressive upon a timely motion. Mont. Code Ann. Section
2 46-15-106, (1995). In order to quash the subpoena, the Defendant
3 would have had to file their motion prior to the production of the
4 evidence. The State has been in possession of the evidence for
5 eleven months. Therefore, the Defendant's Motion to Quash is moot
6 since the subpoena has already effectuated its desired result.

7 The Defendant fails to directly argue that the subpoena was
8 improperly issued or overly broad in scope. However, the Defendant
9 does argue that the State failed to apprise the Court of the
10 Defendant's privacy rights. The Defendant fails to cite any
11 affirmative duty of the State to anticipate a defendant's potential
12 arguments when requesting a subpoena. The only threshold, which
13 was met, is whether the administration of justice requires the
14 subpoena to be issued. Mont. Code Ann. Section 46-4-301, (1995).
15 The State will not address the scope of the subpoena since the
16 Defendant has failed to raise it as an issue.

17 **2. Should the Court suppress evidence gathered through the**
18 **Investigative Subpoena Duces Tecum?**

19 No, the Investigative Subpoena Duces Tecum was issued pursuant
20 to Section 46-4-301, M.C.A. Prior to issuing the Subpoena, the
21 State filed a motion with the court, which was attested, stating
22 the facts and reasons for the subpoena. (Exhibit A). The Court
23 found that the administration of justice required the issuance of
24 the subpoena and granted the State's Motion. (Exhibit B). An
25 Investigative Subpoena Duces Tecum was then issued to the Keeper of
26 Records at the Glendive Medical Center. (Exhibit C). The State
27

1 had a compelling interest in determining if alcohol was involved
2 the Defendant's unreported injury accident. The State does admit
3 the Defendant's allegation that this information was to determine
4 whether or not alcohol was a factor in a car wreck and determine if
5 charges should be lodged against the Defendant.

6 The Defendant asserts that the State failed to properly comply
7 with statutes concerning the production of health care information.
8 Specifically, the Defendant says that the State failed to provide
9 him or his attorney notice of the discovery process, pursuant to
10 Section 50-16-536, M.C.A. The Defendant fails to tell the court
11 that health care information may be disclosed when requested
12 pursuant to an investigative subpoena issued under 46-4-301. Mont.
13 Code Ann. Section 50-16-535(j), (1995). Furthermore, the Defendant
14 neglects the fact that Section 50-16-536, M.C.A., does not apply to
15 Section 50-16-535(j), M.C.A. Therefore, the Defendant and or his
16 attorney are not entitled to notice of the release of health care
17 information made pursuant to an investigative subpoena.

18 Next, the Defendant argues that the information gathered under
19 the subpoena should be suppressed because the Defendant did not
20 consent to the taking of a blood test. It has never been asserted
21 by the State that the blood alcohol test on the Defendant was made
22 under the implied consent law, pursuant to Section 61-8-402, M.C.A.
23 The Defendant sought medical attention for his injuries and availed
24 himself to the Glendive Medical Center. In doing so, the Defendant
25 apparently requested treatment and did sign a form consenting to
26 medical treatment. If the Glendive Medical Center solicited the
27


1 Defendant and subjected him to unwanted medical treatment, he
2 should have a cause of action against them. It is the State's
3 position to believe that when the Defendant requested medical
4 treatment, he thus consented to the blood alcohol test. However,
5 the State refuses to enter into a discussion of potential medical
6 malpractice against the Glendive Medical Center or Dr. Fink.

7 Evidence of the taking, analysis and results of a blood sample
8 taken from a defendant is admissible evidence. State v. Henning,
9 853 P.2d 1223, at 1225, (1993). The Defendant attempts to say this
10 case supports his position that the blood alcohol results should be
11 suppressed. Clearly, a review of this case and especially the
12 concurring opinion support the State's case in this matter. Id.

13 CONCLUSION

14 The Defendant's Motion to Quash Investigative Subpoena and, in
15 the Alternative, Motion to Suppress Evidence should be summarily
16 denied. The State followed the statutory guidelines in obtaining
17 the medical information of the Defendant. The Defendant has failed
18 to state any legitimate reason to suppress the evidence and the
19 Motion to Quash is moot. The Defendant's most compelling arguments
20 are based on misrepresentation of the law and the facts.
21 Therefore, the Defendant's Motions should be denied and this case
22 should proceed to trial.

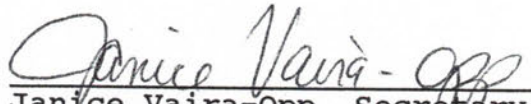
23 DATED this 7th day of November, 1995.

24
25
26 
27 SCOTT W. HERRING
28 Deputy Dawson County Attorney

CERTIFICATE OF SERVICE

1
2 I hereby certify that I mailed a true and correct copy of the
3 RESPONSE TO DEFENDANT'S MOTION TO QUASH OR SUPPRESS EVIDENCE on the
4 7th day of November, 1995, to the following:

5 Marvin L. Howe
6 Simonton, Howe & Schneider, P.C.
7 P.O. Box 1250
8 Glendive, MT 59330

9 
10 _____
11 Janice Vaira-Opp, Secretary
12
13
14
15
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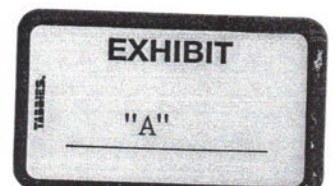
1 Scott W. Herring
2 DAWSON COUNTY ATTORNEY'S OFFICE
3 215 South Kendrick Avenue
4 Post Office Box 1307
5 Glendive, Montana 59330
6 (406) 365-2532
7 Attorneys for Plaintiff

8 MONTANA SEVENTH JUDICIAL DISTRICT COURT, DAWSON COUNTY

9 STATE OF MONTANA,)
10)
11 plaintiff,) No.
12 v.) MOTION FOR INVESTIGATIVE
13) SUBPOENA
14 JAMES ALAN NELSON,)
15)
16 defendant.)

17 COMES NOW the State of Montana, by and through Scott W.
18 Herring, Deputy Dawson County Attorney, and hereby requests the
19 issuance of an investigative subpoena. The investigative subpoena
20 is to direct the Keeper of Records at the Glendive Medical Center
21 to provide all medical reports pertaining to the blood alcohol of
22 JAMES ALAN NELSON on December 7, 1994.

23 On December 12, 1994, I received a report prepared by Sergeant
24 J. L. Mahlum of the Montana Highway Patrol, alleging that JAMES
25 ALAN NELSON was involved in an unreported injury automobile
26 accident, and the Defendant was transported to the Ron Stroh
27 residence, whereby Mr. Stroh then transported the Defendant to the
28 Glendive Medical Center. At the Glendive Medical Center, the




1 Defendant received emergency room treatment from Dr. Fink.

2 On December 10, 1994, Sergeant Mahlum visited the Defendant at
3 the Ron Stroh residence and the Defendant informed Sergeant Mahlum
4 that he had a couple of drinks at the Beer Jug prior to the
5 accident. The Defendant also indicated that he did not remember
6 the accident, but remembers going to a trailer house and the Ron
7 Stroh residence.

8 On December 12, 1994, Sergeant Mahlum visited with Dr. Fink at
9 the Glendive Medical Center. Dr. Fink informed Sergeant Mahlum
10 that the Defendant received injuries to his lower jaw, and was
11 concerned about the lack of pain in association with the injuries.
12 Dr. Fink ordered a blood test for the purpose of determining a BAC
13 level of the Defendant, but declined to inform Sergeant Mahlum of
14 the BAC results. Dr. Fink did state that the results would partly
15 explain the lack of pain for the Defendant. While in the emergency
16 room, the Defendant was unable to recall where his vehicle was or
17 if he was in fact involved in an accident.

18 Because of the above, it appears that I have a duty and the
19 administration of justice requires further investigation into the
20 unreported accident and whether the Defendant was in fact under the
21 influence of alcohol during the accident. Information obtained
22 from the Glendive Medical Center may assist the State in further
23 investigation.

24 DATED this 14TH day of December, 1994.

25
26 
27 SCOTT W. HERRING
28 Deputy Dawson County Attorney

1 Signed and sworn to before me on the 14th day of December,
2 1994, by Scott W. Herring.
3

4 (SEAL)

5 Janice Vaira - [Signature]
6 Notary Public for the State of MT
7 My Commission expires: July 12, 1996
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