

APPLICATION FOR DISTRICT COURT JUDGESHIP

A. PERSONAL INFORMATION

1. **Full name:** David Joseph Grubich
2. **Birthdate:** August 29, 1970
3. **Current home address:** [REDACTED]
4. **Email address:** [REDACTED]
5. **Preferred phone number:** [REDACTED]
6. **Judicial position you are applying for:** Eighth Judicial District Court Judge
7. **Date you became a U.S. citizen, if different than birthdate:** At birth.
8. **Date you become a Montana resident:** May 4, 2004.

I also resided in Montana while serving in the United States Air Force stationed at Malmstrom AFB in Great Falls between January 1989 through October 1992.

B. EDUCATIONAL BACKGROUND

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

Name	Location	Date of Degree	Type of Degree
LaSalle-Peru Township High School	LaSalle, Illinois	N/A-moved	N/A-moved
Antioch Community High School	Antioch, Illinois	June 1988	H.S. Diploma
Oakton Community College	Des Plains, Illinois	N/A Part-time studies	None
Illinois State Police Academy	Springfield, Illinois	May 1995	IL Law Enforcement Certification

Rock Valley Community College	Rockford, Illinois	N/A Part-time studies	None
University of Montana	Missoula, Montana	May 2007	Bachelor of Arts Philosophy
Alexander Blewett III School of Law	Missoula, Montana	May 2010	Juris Doctor

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

Honors:

- University of Montana Bachelor of Arts Degree, with high honors
- Alexander Blewett III School of Law, Juris Doctor, with honors
- University of Montana, Scholar of the College of Arts and Sciences, 2004, 2005, 2006
- University of Montana, Dean's List 2004, 2005, 2006

Scholarships:

- Bonhomme Scholarship, University of Montana, 2005
- UM Foundation Scholarship, University of Montana, 2006
- Merit Scholarship, Alexander Blewett III School of Law
- Robert D. Corette Scholarship, Alexander Blewett III School of Law
- Jack J. and Nancy Burke Family Foundation Scholarship, Alexander Blewett III School of Law
- Newell Gough Law Scholarship, Alexander Blewett III School of Law

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>
State of Montana Montana Eighth Judicial District Court 415 2 nd Avenue North, Rm. 302 Great Falls, MT 59401	District Standing Master	August 6, 2018 – Present
Ugrin Alexander Zadick, P.C. 2 Railroad Square, Suite B Great Falls, Montana 59403	Associate Attorney	August 23, 2010 – August 6, 2018

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>
Courts of the State of Montana	October 18, 2010
United States District Court, State of Montana	October 18, 2010
State Bar of Montana	October 18, 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).**

As standing master in the Eighth Judicial District, I preside over dissolution and parenting proceedings and other domestic relations matters including parenting plans, property distribution, maintenance, adoptions, protective orders, and all other family law proceedings. I mediate family law and other civil matters at the request of judges in my district and others.

I preside over criminal proceedings including arraignments and initial appearances for warrants, new charges, probation revocations, bail violations and bail hearings. I conduct hearings in juvenile proceedings including juvenile detention and review hearings and show cause and adjudicatory hearings in Youth in Need of Care matters.

My approximate caseload percentages as standing master:
Family law and other civil matters 90%
Criminal law 10%

While working with the Ugrin firm between 2010 and 2018, my practice areas included the following:

- Insurance law including bad faith litigation, Unfair Trade Practices Act litigation and insurance coverage actions;
- Employment law litigation in the government and private sector, including Montana Wrongful Discharge from Employment Act, wages and wage protection, Montana Human Rights Act including discrimination, retaliation, and blacklisting claims in employment;
- Construction law including construction defects, construction agreement disputes, and construction accidents;
- Environmental contamination litigation;
- Property law litigation including property damage, trespass, boundary and easement disputes, and access to private property;

- Municipality and governmental defense including litigation relating to civil rights, discrimination, and various other claims faced by cities and counties in Montana;
- Personal injury litigation including negligence, products liability, survival and wrongful death actions;
- Licensing litigation representing persons or entities facing complaints and sanctions in actions by various licensing boards in the State of Montana;
- Contract law litigation including contract disputes, contract interpretation and review, which comes up often in insurance law, employment law, construction law, consumer protection law, and many other areas of law in which I practiced;
- Consumer protection law litigation including Montana Consumer Protection Act and other unfair and/or deceptive trade practices matters;
- Family law litigation in numerous cases I accepted pro bono through the Cascade County Law Clinic over the years including dissolution of marriage, parenting plan proceedings, amendments to parenting plans, child support actions, adoptions and termination of guardianships;
- Guardianships and conservatorships established for minors and incapacitated persons;
- Wills and trusts including assisting several clients with drafting or updating wills and trusts.

As a civil litigator, my approximate practice percentages were as follows:

Personal injury litigation	20%
Employment litigation	20%
Consumer protection litigation	15%
Construction litigation	15%
Insurance litigation	10%
Municipal and Government litigation	5%
All other areas of law	15%

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).**

The standing master position is unique as compared to that of most legal practitioners. It removes me from the normal legal practitioner's role of client advocacy and places me instead in a judicial role determining a final and just outcome. Thereby, as opposed to arguing a position, the standing master hears the argument and makes a final decision.

My position has also given me a unique judicial perspective and an insider's view on how attorneys, the law, and the court system works. I have developed a good understanding of the Montana Code of Judicial Conduct and the Judicial Canons which regulate a judge's conduct.

I mediate matters before the judges in my district and others. My judicial experience gives me insight that helps parties reach agreement and avoid the risk, expense, and burden of a trial. I have a strong track record of successful outcomes. I usually mediate family law proceedings but have mediated other civil matters as well.

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

As standing master, I hold court several days each week with multiple hearings usually occurring each day. I hold non-jury bench trials several times each week and issue findings and conclusions, orders, judgments, and decrees. I hold conferences and hearings on a wide range of matters in family law proceedings, criminal proceedings, juvenile proceedings, and other civil matters requested by the judges.

In the years preceding my appointment as standing master, I was a civil litigator. Therefore, I appeared and participated in state and federal court proceedings covering a wide variety of practice areas, which are listed herein. I practiced primarily in state court. I argued matters in courts across Montana appearing several times each month for conferences, motions, and/or bench trials. I also participated in arbitrations involving insurance defense, employment law, and consumer protection law.

While in private practice I also appeared before administrative law judges and bodies. My administrative law practice included employment and municipal law matters before the Montana Human Rights Commission. I represented clients in investigations, bench trials before an administrative law judge, and appeals before the Human Rights Commission. I participated in multiple proceedings before the Montana Department of Labor and Industry Employment Relations Division on wage and hour law matters. I also represented clients in matters before the Montana Board of Nursing and appeared before that board on multiple occasions.

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.

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 defended a client involved in a terrible automobile accident which killed one person and resulted in severe life-altering injuries to another. Many issues arose in the case, but the issue of the relevance and admissibility of my client's mental health records was particularly important. My client had mental health issues, but no evidence demonstrated it had any bearing on the accident. Not surprisingly, the stresses of life, the accident, and litigation combined to affect my client deeply. Upon later learning of my client's mental health, the opposing party requested all of her mental health records from before and after the accident, which we opposed. After a hard fight over the records, my client prevailed and the demand for most of the records requested in discovery was denied by the Court.

My client's mental health condition necessitated substantial involvement in this case and several complications arose because of it. My experience taught me a valuable lesson in the importance

of developing a wholistic understanding of who my client is. Litigation represents one aspect of a person's life. Life's everyday challenges and hardships do not disappear while litigation is pending. Adding the high stress of litigation to them can have a profound effect on a client and a case's outcome.

Early in my legal career I accepted a pro bono marriage dissolution case from the Cascade County Law Clinic. It was my first family law case. I took time to develop a competency in family law so that I could represent my client properly and ethically. The case was extremely complex involving allegations of mental, physical, and sexual abuse of both my client and her children. It required expert testimony from numerous counselors and physicians who treated the children. The years of abuse and control my client endured took its toll on her, which led others to question her ability to parent and further complicated the case. In the end my client prevailed, and her family was protected.

I am proud of my work on that case and the work of those who assisted me. My client's personal improvement was palpable, and it created a healthier home for the children. It would have been different if the Cascade County Law Clinic had not connected her with a pro bono attorney. She would have been forced to deal with the abuser in and out of court had she represented herself. This case demonstrates the importance of organizations whose purpose it is to improve access to justice by providing low-income individuals legal representation. The case involved hundreds of hours of pro bono legal work. The Cascade County Bar Association awarded me the Judge Robert T. Goff Pro Bono Award in 2017 for my work on it. It was an honor to be recognized by my peers.

As standing master, I make final decisions in family law proceedings. My decisions have a lasting effect on parents, children, and their extended families. Every case is important, complex, and challenging because each one impacts all involved. Every family has diverse beliefs, circumstances, personalities, and idiosyncrasies which bring new and different challenges to each case. The Court must consider a parent's constitutional right to parent while focusing on what is in the best interest of each child applying many factors to make its determination.

Parenting proceedings are further complicated by the fact that most of them involve pro se (unrepresented) litigants unfamiliar with their rights, the applicable law, the rules of evidence, and the rules of civil procedure. The Court must allow pro se parties latitude and flexibility while ensuring the Court gets the information it needs to make an informed decision in the best interest of the child. This often requires the Court to become more involved and hands-on asking questions of parties and witnesses at trial. This is because many pro se litigants do not generally know what to ask or what to present to the Court. Because such cases are no less important to the Court, it presents an added challenge in an already important and complex matter.

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

I have not authored any legal books or articles.

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.**

Presentation, law update on the use of tasers, Montana Municipal Interlocal Authority Defense Counsel Summit

September 6, 2012

Topic: I presented a review of recent decisions relating to police use of tasers to attorneys at the seminar.

Presentation, mock trial and training on trial issues, Montana Association of Road Supervisors
March 27, 2013

Topic: I demonstrated a mock trial and answered questions relating to trial issues to attendees at the 2013 Spring Convention attended by county road supervisors from across Montana.

Presentation, Family Law for Non-Family Law Lawyers, Cascade County Bar Association
September 18, 2014

Topic: In an effort to expand the number of pro bono attorneys willing to take on family law matters for the Cascade County Law Clinic, I presented training to increase attorneys' competency in the area of family law and to make them comfortable with the process.

Presentation, Veterans Court Overview, 2020 St. Paddy's Day CLE, State Bar of Montana
March 14, 2020

Topic: I presented an overview of the Cascade County Veteran's Treatment Court and discussed my experiences as judge in the VTC to attorneys attending the CLE.

Presentation, Annual Judges Forum, Cascade County Bar Association
January 29, 2021

Topic: A panel of judges and the standing master from the Eighth Judicial District Court addressed questions and topics from local attorneys seeking the judges' perspectives.

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.**

Since starting as standing master in 2018, I have been unable to represent clients because of my position and my pro bono reporting requirement ceased. Before that, I always exceeded my pro bono requirements while in private practice. The Cascade County Bar Association honored me with the Judge Robert T. Goff Pro Bono Award in 2017 for my pro bono work.

I still encourage attorneys to volunteer pro bono service through either the Cascade County Law Clinic in Great Falls or in any way that provides access to justice for those who cannot otherwise afford it. I am currently assisting the Cascade County Law clinic to develop new programs to help low-income parties. I also regularly ask attorneys to serve either pro bono or at a reduced rate as a guardian ad litem in cases involving children. I have had great cooperation from attorneys, and their work has aided me tremendously.

Before becoming standing master, the scope of my pro bono services included volunteering for family law cases through the Cascade County Law Clinic, serving on the board of the CCLC, providing pro bono legal services to Eagle Mount – Great Falls, assisting a family in need of a conservatorship/guardianship, and drafting end of life documents for a veteran with a terminal illness. In the two years prior to 2018 my pro bono hours are as follows:

- 2017 – 204 hours of pro bono services;
- 2016 – 114 hours of pro bono 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.**

Cascade County Bar Association.

- Executive Committee (2011 – 2015)
- President, Cascade County Bar Association (2015)
- Treasurer, Cascade County Bar Association, (2014)
- Secretary, Cascade County Bar Association, (2011 – 2013)

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

Status: Veteran
Branch: United States Air Force
Dates of service: September 13, 1988 through September 12, 1992
Rank: Senior Airman (E-4)
Type of discharge: Honorable

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 been the standing master almost three years. I preside primarily over marriage dissolution and parenting proceedings but handle a variety of other civil and criminal matters in the district.

The judges in my district issued a Charter Order outlining the standing master's authority and duties citing Montana's standing master statutes. The Charter Order gives me the following powers, authority, and duties:

- To assume jurisdiction over and adjudicate all procedural and substantive aspects of proceedings referred to me by the district court judges;
- To schedule, compel attendance at, and conduct all evidentiary hearings, bench trials, oral arguments, or other proceedings;
- To administer oaths and issue subpoenas on behalf of the court and as provided by law;
- To compel and take evidence and rule on its admissibility;
- To issue preliminary orders including, but not limited to, scheduling and discovery orders in the same manner as otherwise provided by law for district courts;

- To control and regulate all proceedings before the standing master; and,
- To perform any other lawful acts or measures necessary or proper within the scope of the Charter Order in the same manner as the district court within the lawful scope and authority of the law.

I conduct non-jury trials and mediate family law and other civil matters. I make final decisions on cases and issue findings of fact and conclusions of law, decrees, and various other orders. I issue rulings on discovery and the admissibility of evidence. I interpret and apply statutes, case law, and regulations applicable to each case by using judicial discretion and judgment within the framework of Montana law, procedural rules, rules of evidence and district court rules. I have handled hundreds of matters as standing master.

I preside as judge pro tempore over criminal proceedings including arraignments and initial appearances for warrants, new charges, probation revocations, bail violations and bail hearings. I hear juvenile matters including juvenile detention and review hearings and show cause and adjudicatory hearings in Youth in Need of Care matters. I often preside over the district's uncontested matters covering multiple areas of civil law. I have handled hundreds of matters as judge pro tempore.

Between September 2018 through October 2020, I regularly assisted with the Veterans Treatment Court and Drug Treatment Court by serving as judge. The treatment court judge actively participates in staff meetings held immediately prior to the treatment court proceeding. The judge leads the discussions at the meeting touching on each participant and makes determinations, with input from the treatment court team. The judge then spends time with each participant in court discussing progress, hinderances, incentives, and sanctions when necessary. I have attended multiple intensive training programs and seminars relating to treatment courts.

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

In addition to my legal experience, I have a work background which is broad and started early. I will bring real world experience and insight with me to the bench.

Before High School (1980 – 1985)

When I was nine years old, I started delivering newspapers for the Chicago Tribune. I delivered newspapers every single morning on my bicycle rain or shine until I was fifteen. In the summers of my thirteenth and fourteenth years, I bean-walked for local farmers, which involved walking the rows in bean fields picking weeds.

High School (1985 – 1988)

While in high school I worked several jobs. I was a busboy, dishwasher, and pizza-maker at a small pizzeria. I worked at Hardees as a cook and at the front register. I then worked at the Piggly Wiggly grocery store as a bagger, checker, and night stocker of groceries.

United States Air Force (1988 – 1992)

I served in the United States Air Force from September 1988 through September 1992. My occupational specialty was Security Specialist. After basic training and technical school, I was stationed at Malmstrom Air Force Base, Montana where I remained throughout my service. I was trained in arrest, search and seizure, weapons, defensive tactics, air base ground defense, and enforcement of the Uniform Code of Military Justice. I provided alarm response, security patrols and investigations in the nuclear missile fields in Montana.

After my discharge in 1992, I returned to Illinois with my wife and worked in loss prevention for a video duplication company. I provided in-house security, safeguarded employees, and product, supervised other security officers, and enforced OSHA compliance. It was also during this time that I began applying and testing for police officer positions.

Law Enforcement (1995 – 2004)

I was a patrol officer and investigator with the Harvard, Illinois Police Department. I enforced the law and investigated crime. I prepared detailed reports, complaints, and arrest and search warrants. I worked closely with the McHenry County Attorney's Office during the prosecution phase including continuing investigations, executing search warrants, and testifying at bench trials, jury trials, and before grand juries. I interviewed suspects, witnesses, and victims, supervised patrol shifts and assisted in training officers. I was trained and qualified as an investigator, evidence technician, and juvenile officer and specialized in DUI enforcement. I served as president of my Fraternal Order of Police union chapter.

Small Business Owner (1995 – 2000)

My wife and I opened a small coffeehouse, Planet Java, in Rockford, Illinois. We opened a second location at Rock Valley College. I planned, developed, and implemented business concepts and procured supplies for daily operations. I hired, trained, and motivated employees. I developed marketing strategies, kept the books, and created financial reports. We successfully sold Planet Java in 2000.

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.**

Cascade County Law Clinic. The CCLC is a non-profit organization providing pro bono family law representation to low-income Cascade County residents. I served on the CCLC board of directors (2012 – 2018) and served as secretary (2015), treasurer (2014 – 2015) and president (2016). My duties included leading board meetings, fundraising, advocating for the CCLC, educating attorneys on family law to expand our pro bono attorney base, reviewing and drafting grants and policies, cooperation, and collaboration with other access to justice organizations in

Montana, and continuing to work with the district court judges and clerk of court for guidance on CCLC procedures and obtaining assistance procuring pro bono attorneys for CCLC clients.

Eagle Mount – Great Falls. Eagle Mount is a non-profit organization that provides recreation and therapeutic activities for children, adults, and veterans with disabilities. It provides numerous services to community members with special needs such as equine-assisted activities, sled hockey using adapted sleds, the tippy toes program which helps children develop physical and emotional skills, and many other amazing programs. I have served on the board of directors for Eagle Mount since 2017.

The Fortnightly. The Fortnightly is a social club in Great Falls which holds dinner and dance events for its members several times per year. My wife and I have been members since 2012. I served on the board of directors (2012 – 2016) and as president (2015 – 2016). As an officer, I guided the direction of Fortnightly, developed fresh concepts for events, and worked to increase membership.

Leadership Great Falls/Great Falls Area Chamber of Commerce. Leadership Great Falls is a community program offered through the Great Falls Area Chamber of Commerce. LGF is open to people from all professions to involve potential community leaders in understanding and improving the Great Falls community. I graduated Leadership Great Falls in 2013, served on the LGF task force in 2014, and served on the LGF steering committee in 2015.

American Legion. I very recently joined the American Legion. I hope to soon connect with the local American Legion Post 341.

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.**

I currently serve as standing master in the Eighth Judicial District Court. The judges in my district appointed me to the position in August 2018.

I applied for the vacant judicial seat in the Eighth Judicial District Court in 2020. I was nominated unanimously by the Judicial Nomination Commission and my name was submitted to Governor Steve Bullock in October 2020 for consideration for appointment. 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.**

In the past six years, my wife and I have invested in purchasing and renovating real properties, including rental properties. They are family investments made with my family's own financial resources and improved using our own blood, sweat, and tears. No business entities were formed relating to them and we have no business locations or affiliations regarding them.

I assist my wife with managing our family investments including our rental properties. Because this is a family investment, we do not intend to completely divest it. However, if I am appointed as a district court judge, I will limit direct involvement in managing the properties to only that which is necessary. I have not allowed my investments to interfere with the proper performance of my duties as standing master and no conflicts have arisen since I have been standing master. I will not allow it to interfere in any way as a district court judge.

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 was drawn to service at an early age. I participated in the early enlistment program at seventeen and served honorably in the United States Air Force. After the Air Force, my focus turned to serving my community in law enforcement. I did what was necessary to become a police officer and I served with dedication to my community in a manner which brought honor and dignity to the profession. I look fondly on my time in the military and as a police officer and with great pride in the men and women who worked with me.

After nearly a decade in law enforcement, I decided to seek a law degree. I began my legal career practicing civil law, which I found challenging and interesting. I learned a great deal working in a wide variety of civil law areas, but my attraction to public service remained. When an opportunity to serve as standing master came, I applied. I chose the right path. I am thankful the judges in my district gave me the opportunity to continue to serve my community as I believe being a judge is my calling.

The standing master position has given me valuable judicial experience and has allowed me the opportunity for self-reflection which guides me to seek a district court judgeship. I have developed the skills and knowledge of a judge and have a great working relationship with the people in the Cascade County Courthouse. I have gained the respect of those who practice before me in court and have demonstrated a judicial temperament that instills confidence in and respect for the bench while maintaining appropriate control over the courtroom. I have produced timely decisions and strive to keep cases before me moving forward to allow the parties involved to get closure and move on. I believe my life-long work ethic and broad experience including military, law enforcement, small business entrepreneur, attorney, and standing master have led me to take the natural next step of becoming a district court judge.

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

Independent/impartial thought, integrity, and an ability to manage time are three important qualities in a good district court judge.

A judge must be guided by a desire to be correct within the law. Each matter before a judge brings different facts and circumstances. Some matters involve high drama and publicity while others are repetitive or unstimulating in the eyes of many. No matter the issue before the court, each must be given the same regard and attention to detail. The application of facts to the law must determine the outcome and not public fervor, a desire to obtain a specific result, politics, personal bias, or self-preservation. A judge must consistently apply this in practice to remain

truly independent and impartial. A demonstrably independent and impartial judge reinforces the public's perception that the courts are fair, which is essential to maintain public trust in our system of justice.

Integrity is difficult to define for most. It encapsulates qualities such as honesty, uprightness, dignity, and respect for others. I think integrity is demonstrated best by what a person does when no one is watching. Actions, not only words, best demonstrate an individual's integrity. Therefore, a person's professional peers will recognize over time if he or she has integrity. Integrity is a necessary quality because it holds a judge to the promise to perform his or her duties independently and impartially.

A judge must possess practical qualities as well, including the ability to manage his or her time efficiently. Judges have heavy dockets which must be addressed in a timely manner. An individual's Sixth Amendment right to a speedy trial already places important time restraints on criminal matters. However, people before the court with non-criminal matters also demand and deserve a judge's prompt attention. Managing a large docket in a timely fashion requires a judge to work hard and smart to ensure our system of justice is not only fair but gets things done. This aspect becomes even more important given the trial backlog created by the COVID-19 pandemic and Cascade County's already burgeoning caseload.

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

Our Constitution establishes three separate branches of government. It makes clear that one branch of government cannot exercise any power properly belonging to the other two. Therefore, a judge must take great care to interpret and apply statutes and the Constitution properly and strictly in accordance with the power a judge is given to do so.

I respect and appreciate the work of the many people who have served our country and state, including those who drafted our Constitution, those legislators who drafted our laws, and those judges and justices who have carefully interpreted them. As a judge, I would be tasked with ensuring our system of law is protected and lawfully implemented. I do not believe it is either proper or within my power as a judge to interpret or apply the law in a manner which was not intended when the law was written. Montana law establishes rules for a judge to follow when determining statutory construction/interpretation. Those rules provide a judge solid guidance. Most important is that a judge must simply determine what the law says and not "insert what has been omitted" or "omit what was inserted." The judge's job is to ascertain the law's meaning as written and apply it as the Legislature intended. It is the Legislature's job to change or revise law if deemed necessary or if it is determined that a particular statute does not pass Constitutional muster.

History informs us that the Legislature cannot, as much as it tries, anticipate all circumstances which may arise in the application of certain legislation. Some laws lead to unanticipated results. When that occurs, it is not the judge's role to apply the law as he or she sees fit or to use it as an opportunity to seek a result the judge desires. Instead, the judge must hold to his or her role and apply the law, as it stands, to the facts and circumstances in that case. In that instance, I would

ensure my basis for reaching a particular decision is clearly laid out in my order so that it can be closely reviewed. When a statute's application leads to unintended or unforeseen results, the Legislature may decide to revise it in the next legislative session, as has occurred in the past. My decisions will be driven by a steadfast desire to be correct within the law and a duty to reach a decision by applying existing law to the facts presented to the Court.

A judge must respect our system of government and not exceed the judge's power in interpreting and applying our laws and our Constitution. As a judge, I will know my place and constantly check myself to ensure I stay within it. I will strive to apply our laws in a fair, equal, and just manner. In doing so, I will endeavor to preserve the dignity and integrity of the bench and the public trust in the judiciary.

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.**

I have attached a writing sample for your review.

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.**

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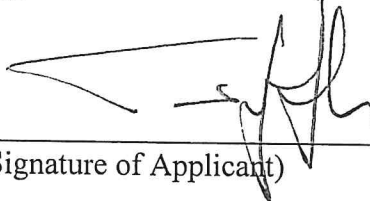
CERTIFICATE OF APPLICANT

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).

05/17/2021

(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 Tuesday, June 1, 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

CLERK OF DISTRICT COURT
CASCADIA COUNTY

2021 APR -2 PM 4:11

FILED
BY *K. Morris*
CLERK

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

IN RE THE MATTER OF:

██████████ CARPENTER,
Plaintiff,

v.

██████████ NICHOLS,
Defendant.

Cause No.: CDV-21-██████████

ORDER ON APPEAL

Before the Court is the appeal of ██████████ Nichols ("Nichols") from the decision of the Justice Court of Cascade County, Small Claims Division issued on February 18, 2021. The small claims court entered a Judgment in favor of Plaintiff, ██████████ Carpenter ("Carpenter") and against Nichols. The small claims court ordered Nichols to return to Carpenter the Ford F350 with a snowplow which was the subject of the parties' dispute. Nichols filed a timely Notice of Appeal on February 26, 2021 and served it upon Carpenter. The small claims court record was timely transmitted to the Eighth Judicial District Court where it was assigned to the Hon. John A. Kutzman. On March 8, 2021, Judge Kutzman referred this matter to the District Standing Master, David J. Grubich pursuant to the Charter Order Establishing District Standing Master.

BACKGROUND

Nichols advertised a 2004 Ford one-ton F350 extended cab with a tow package ("Ford") and an eight-foot Boss snowplow for sale, to which Carpenter replied. Nichols represented the Ford was in good working order, mechanically sound, with an operational snowplow. Prior to the sale, the Ford sat for at least one year.

1 On October 26, 2020, Nichols delivered the Ford, which he transported on a trailer. The
2 snowplow was not attached. At that point, Carpenter paid Nichols \$7,500.00 for the Ford and
3 snowplow. The parties unloaded the Ford and, after much effort, were able to start it. The engine ran
4 poorly, and the brakes did not work. The parties did not verify snowplow's operation that day. Based
5 on the Ford's problems apparent to both parties, they agreed Nichols would return \$1,000.00 to
6 Carpenter, which Nichols did, and that Nichols would fix the Ford's mechanical issues.
7

8 Between October 7, 2020 and October 24, 2020, the parties communicated regularly on
9 Nichols' progress repairing the Ford. On October 24, 2020, the Ford still had engine trouble,
10 inoperable brakes, and indicator lights, including the "check engine" light, were illuminated.
11 Carpenter requested his money back, but Nichols did not want to return it. Nichols told Carpenter he
12 would fix the Ford. The parties had still not verified the snowplow worked, so they checked its
13 operation. The snowplow did not work. Under the circumstances, Carpenter and Nichols agreed
14 Nichols would return another \$2,000.00 to Carpenter and Carpenter would give Nichols back the
15 \$3,000.00 that was refunded if Nichols fixed all the problems with the Ford.
16

17 Between October 25, 2020 and December 12, 2020, the parties maintained regular contact
18 about Nichols' progress repairing the Ford and snowplow. The Ford's problems included repairs
19 needed on the ABS brake system, hub assembly, snowplow system, exhaust manifold, air filter
20 system, engine operation, and battery. Nichols expended money and time trying to repair the Ford.
21 Nichols' responses to Carpenter's attempts to communicate began to wane around December 12,
22 2020, so Carpenter tried to locate Nichols at his home on December 19, 2020. Nichols subsequently
23 told Carpenter to not contact him or stop by his residence again. Carpenter demanded Nichols either
24 return the \$4,500.00 or give him the Ford and snowplow in their current condition. Nichols agreed to
25 return the \$4,500.00, but he did not have the money and could not repay it promptly. Nichols told
26 Carpenter to hold onto the Ford's title until Nichols could repay Carpenter the \$4,500.00. Carpenter
27
28

1 asked Nichols for the key to the Ford, and Nichols refused. Carpenter did not hear back from Nichols
2 again and was forced to file this action. The Ford was still not operational as of the trial date—the
3 hub assembly and brake system still needed repair.

4 At trial, both parties testified and were given an opportunity to cross-examine the other party.
5 The court allowed each party to provide his position, requested remedy, and a closing argument.
6 Neither party objected to any matter at trial. The court asked each party if he had exhibits to admit as
7 evidence. Each party brought his own notes. Carpenter's notes were purported to detail chronological
8 events and text messages between the parties. The court offered to allow Carpenter to enter the
9 evidence, but informed Carpenter he already provided the same information in his testimony.
10 Carpenter chose not to enter any exhibits. Nichols' notes were purported to detail repairs made to the
11 Ford and the cost and time he expended trying to repair it. The court offered to allow Nichols to
12 admit his notes, but informed Nichols he could provide the same information through testimony,
13 which he did. Nichols did not request to enter any exhibits. The court communicated with each party
14 directly and efficiently allowing each party an opportunity to respond and present his case.

15 After both parties presented their case, the small claims court issued its findings. The court
16 found the parties agreed initially that Carpenter would pay \$7,500.00 for an operational Ford with an
17 operational snowplow. However, neither the Ford nor the snowplow worked on delivery. The court
18 found Nichols did not give Carpenter what the parties bargained for and that Nichols refunded
19 Carpenter \$3,000.00 because of the Ford's condition. The court found Nichols then undertook to
20 repair the Ford and snowplow to the working condition Nichols represented them to be in when the
21 parties agreed on the \$7,500.00 price. Nichols did not bring the Ford to an operational condition. The
22 court found Carpenter did not agree to pay Nichols for his services or time repairing the Ford.
23 Because Nichols did not have the \$4,500.00 to pay Carpenter, the court awarded Carpenter the Ford
24 and snowplow in their current condition and ordered Nichols to turn them over to Carpenter.

1 Nichols told the court the Ford and its key were at a friend's home in Great Falls and the
2 address was unknown. After some back and forth between the court and Nichols about Nichol's
3 ability to obtain his friend's address, the court ordered Nichols to provide Carpenter the location of
4 the Ford and the keys to the Ford within twenty-four hours. The court warned Nichols that failure to
5 do so could result in Nichols being held in contempt of court.
6

7 STANDARD

8 An appeal from a decision of the small claims court is controlled by Mont. Code Ann § 25-
9 35-803, MCA, which provides:

- 10 (1) If either party is dissatisfied with the judgment of the small claims court, the party may
11 appeal to the district court of the county where the judgment was rendered. An appeal shall
12 be commenced by giving written notice to the small claims court and serving a copy of the
13 notice of appeal on the adverse party within 10 days after entry of judgment.
14 (2) There may not be a trial de novo in the district court. The appeal must be limited to
15 questions of law.

16 Small claims hearings shall be informal. §25-35-701, MCA. The purpose of small claims
17 court is to provide a speedy remedy for small claims and to promote a forum in which such claims
18 may be heard and disposed of without the necessity of a formal hearing. §25-35-501, MCA.

19 Mont. Code Ann. §25-35-502, states in pertinent part:

20 **Jurisdiction.** (1) The small claims court has jurisdiction over all actions for the recovery of
21 money or specific personal property when the amount claimed does not exceed \$7,000,
22 exclusive of costs, and the defendant can be served within the county where the action is
23 commenced.

24 Mont. Code Ann. §25-35-702, MCA, states:

25 The plaintiff and the defendant may offer evidence on their behalf by witnesses appearing at
26 the hearing in the same manner as in other cases arising in justice's court or by written
27 evidence, and the judge may direct the production of evidence as the judge considers
28 appropriate. The small claims court has the subpoena power granted to justices' courts in all
civil cases.

The small claims court judge is granted broad discretion in controlling the admissibility of
testimony and exhibits at trial. *Johnson v. Capital Ford Garage*, 250 Mont. 430, 436, 820 P.2d 1275,

1 1278 (1991). A defendant may remove a small claims action to justice court pursuant to §25-35-605,
2 MCA, but must do so within ten days of being served the Complaint.

3 DISCUSSION

4 Nichols identifies two issues on appeal. First, Nichols argues the small claims court was
5 without jurisdiction because the value of the Ford and snowplow is over \$7,000.00. Secondly,
6 Nichols argues his right to due process was violated by the trial court's conduct during the hearing.
7

8 **Issue 1: Was the claim value more than the \$7,000.00?**

9 A small claims court is without jurisdiction for actions seeking the return of money or
10 personal property valued at more than \$7,000.00. §25-35-502, MCA. Carpenter sought either the
11 \$4,500.00 he paid to Nichols or the return of the Ford and snowplow in their current condition.

12 The question of whether the small claims court findings of fact are clearly erroneous is a
13 question of law. *Spence v. Ortloff*, 271 Mont. 533, 535, 898 P.2d 1232, 1233 (1995). A court's
14 findings of fact are clearly erroneous if they are not supported by substantial credible evidence, the
15 court misapprehended the effect of the evidence, or a review of the record leaves the reviewing court
16 with the definite and firm conviction that a mistake was made. *Id.* A reviewing court must give "due
17 regard . . . to the opportunity of the trial court to judge of the credibility of the witnesses." *Koeppen v.*
18 *Bolich*, 2003 MT 313, ¶ 26, 318 Mont. 240, 79 P.3d 1100.
19

20 It is undisputed the parties initially agreed to \$7,500.00 for a working Ford and snowplow. It
21 is undisputed Nichols returned \$3,000.00 to Carpenter because the Ford and plow did not work and
22 that the parties agreed Carpenter would return the \$3,000.00 if all the repairs were made. It is
23 undisputed that all repairs were not made because as of the date of trial the Ford was still inoperable.
24 The small claims court found Nichols was not entitled to the \$3,000.00 because the parties did not
25 agree he would be paid for his time and because he failed to bring the Ford to an operating condition.
26
27
28

1 Having reviewed the record and having listened to the recording of the trial in small claims
2 court, this Court finds the substantial credible evidence supports the small claims court's finding that
3 Nichols was entitled to \$4,500.00 or the return of the Ford and snowplow. Inherent in the small
4 claims court's determination is that the Ford and snowplow in their condition on the day of trial were
5 worth no more than the \$4,500.00 Carpenter paid to Nichols for them. The Ford was plagued with
6 numerous problems which led to the parties' agreement to reduce the initial \$7,500.00 price by
7 \$3,000.00. Nichols never fully repaired the Ford as agreed. Giving due regard to the small claim
8 court's opportunity to judge the credibility of the witnesses, substantial credible evidence supports its
9 findings. For the same reasons, the small claims court did not misapprehend the effect of the
10 evidence as to the Ford's value and condition. Finally, the record fails to leave a definite and firm
11 conviction the small claims court was mistaken as to the Ford's value and condition. The small
12 claims court's findings of fact as to the Ford and snowplow's value and condition are not clearly
13 erroneous. Because the small claims court valued the Ford and snowplow at less than \$7,000.00, it
14 had jurisdiction over this matter pursuant to §25-35-502, MCA.

15
16
17 **Issue 2: Did the small claims court violate Nichols' due process rights?**

18 Nichols alleges numerous acts and/or omissions by the small claims court in support of his
19 claim that his due process rights were violated. Nichols argues he was not allowed to enter physical
20 evidence, the judge interfered with his ability to give testimony, cross-examine Carpenter, and
21 provide his closing statement. Nichols further argues the court failed to acknowledge the market
22 value of the Ford and snowplow, and was intimidating, biased and unfair. The issue of the Ford's
23 value is addressed above. Nichols' disagreement with the small claims court's findings on the Ford's
24 value and condition does not constitute a due process violation.

25
26 The Due Process Clause of the Fifth and Fourteenth Amendments of the United States
27 Constitution and Article II, Section 17 of the Montana Constitution protect the substantive and
28

1 procedural due process rights of persons faced with deprivation of life, liberty, and property by the
2 government. A small claims court case implicates a property right. A court's violation of an
3 individual's constitutional right of due process involves a question of law and review is plenary.
4 *State v. Finley*, 2003 MT 239, ¶ 10, 317 Mont. 268, 77 P.3d 193. The court looks to strict adherence
5 to the statutes by courts, including small claims courts, to ensure due process was followed at trial.
6 See *In re M.K.S.*, 2015 MT 146, ¶ 16, 379 Mont. 293, 350 P.3d 27 (wherein the Montana Supreme
7 Court reviewed whether due process was met at an involuntary commitment hearing by reviewing
8 whether the court strictly applied the statutes which set forth the commitment procedure). A trial
9 judge must remain impartial. *State v. Stafford*, 208 Mont. 324, 331, 678 P.2d 644, 648 (1984).
10 However, a trial court is given sufficient latitude to conduct trials in an orderly and expeditious
11 fashion. *Id.* To that end, the judge may involve himself or herself in the trial, but not to an extent
12 which denies fundamental fairness and the due process of law, which are intertwined. *Id.* (holding the
13 trial court's conduct of interrupting witnesses and even making objections for the county attorney in
14 a criminal jury trial did not deny the criminal defendant fundamental fairness and due process).

17 A small claims court trial is informal. The trial procedure is set forth in §25-35-702, MCA,
18 which is cited herein. The small claims court is granted "broad discretion in controlling the
19 admissibility of testimony and exhibits" at trial. *Johnson*, at 436, 820 P.2d at 1278. This Court further
20 reviews this matter bearing in mind the statutory purpose of a small claims court which is to provide
21 a speedy remedy where small claims can be heard and disposed of without the need for a formal
22 hearing. Most litigants in small claims court are pro se. Although pro se litigants may be given a
23 certain amount of latitude, they cannot be given so much as to prejudice the other party, and it is
24 reasonable to expect pro se litigants to adhere to procedural rules. *Neil Consultants, Inc. v. Lindeman*,
25 2006 MT 80, ¶ 8, 331 Mont. 514, 134 P.3d 43. Therefore, it follows that it is reasonable to expect pro
26 se litigants to know and adhere to the process set forth in the small claims court statutes.

1 Having reviewed the record and listened to the small claims court trial recording, this Court
2 finds Nichols' right to due process was not violated. The trial was relatively informal as intended
3 under the statute. Each party had an opportunity to state his legal position at the beginning of the
4 trial, offer evidence on his behalf, provide testimony in support of his position, cross-exam the other
5 party, introduce witnesses, and provide a closing argument. Carpenter chose not to cross exam
6 Nichols. Nichols' cross examination of Carpenter was short, and he decided instead to give his own
7 testimony. Neither party called witnesses. Each party took the opportunity to provide a closing
8 statement to the court. Each party had ample opportunity to meet his burden at trial.
9

10 Both parties came to trial with written notes. When the issue of admission of the notes arose
11 with each party, the small claims court explained that if the notes reflected the party's testimony,
12 they did not need to be admitted. Despite this instruction, the court still allowed each party the
13 opportunity to admit the notes, and other exhibits, if desired. Neither party asked that his notes, or
14 any other exhibit, be admitted. The small claims court interrupted each party occasionally and asked
15 each party questions, but it did not impede either party's ability to provide testimony or introduce
16 evidence. Each party was allowed a sufficient opportunity to do so. The court's interruptions and
17 questions were a means of narrowing the testimony and avoiding repetition and to keep the parties
18 focused on the introduction of evidence relevant to the matter being decided. Though the small
19 claims court's tone was direct, it did not denote disrespect, nastiness, or bias as alleged by Nichols.
20

21 The trial record demonstrates the court did not exceed its latitude necessary to conduct the
22 trial in an expeditious, orderly manner and did not abuse its discretion in controlling the admissibility
23 of testimony and exhibits. Pro se litigants are often unfamiliar with a courtroom setting and the
24 proper methods of admitting evidence. It is under such circumstances when a court must direct the
25 production of evidence (including testimony) as deemed appropriate to ensure it receives facts
26 necessary to render a just and informed decision. This often involves the court interjecting,
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1 interrupting, and asking questions of each party. Montana law allows such involvement by the court
2 so long as the judge does not advocate for one party to the detriment or prejudice of the other. A
3 review of the record shows no bias by the small claims court at the trial and demonstrates each party
4 was treated fairly in the process. Disagreement to the judge's decision or taking offense to a judge
5 asserting control of the trial does not equate to evidence of prejudice or unfairness. The small claims
6 court conducted the trial appropriately and lawfully.

8 Nichols takes issue on appeal with the judge's involvement in the trial and the general
9 informality of the small claims court forum. However, the small claims court statutes provide litigants
10 new to the experience an idea of what to expect and a roadmap for the process to follow at trial. If
11 Nichols desired more formalities, such as are found in justice court, he had a right to remove the
12 matter from small claims court pursuant to §25-35-605, MCA. He did not remove it. Therefore, he
13 must accept the small claims court process. Nichols, as a pro se litigant, still has a duty to inform
14 himself of his rights and the small claims court process. *Lindeman*, ¶ 8. Inherent in such a duty is
15 Nichols' corresponding responsibility to learn how a small claims court operates and to be prepared
16 for it when he walks through the courtroom door.

18 Nichols further alleges the small claims court's order to return the Ford and snowplow
19 equated to requiring him to do the impossible. Nichols' claim is unsupported by the record. The court
20 ordered Nichols to provide Carpenter the location of the Ford and snowplow within twenty-four
21 hours, and for Nichols to turn over the key to the Ford. The court's order was neither impossible nor
22 unreasonable under the circumstances. All Nichols had to do to comply with the court's order was go
23 to his friend's house where the Ford and snowplow were purported to be located, write down the
24 address, and provide it to Carpenter. The court's warning that Nichols could be held in contempt if
25 the Ford was not returned was within its authority. Contempt is a remedy for a court's enforcement
26 of its own orders pursuant to Montana law. This Court gives due regard to the trial court's ability to
27

1 read Nichols' credibility and demeanor at trial and determine if circumstances called for such a
2 warning. A review of the trial record leads this Court to conclude the small claims court's contempt
3 warning was reasonable under the circumstances and did not violate Nichols' due process rights.

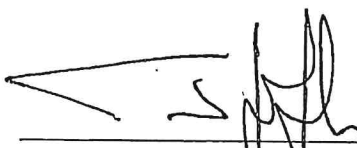
4 The Court finds no evidence of improper intimidation, coercion, inequity, bias, ill-treatment,
5 or gross abuse of power as alleged by Nichols in his appeal request. This Court further finds that the
6 small claims court did not violate Nichols' right to due process at trial.

7 Having reviewed the record and having listened to the recording of the proceedings in small
8 claims court, this Court concludes the small claims court had jurisdiction over this matter pursuant to
9 §25-35-502, MCA because the amount of the claim did not exceed \$7,000.00. This Court further
10 concludes Nichols' right to due process was not violated at the small claims court trial. Therefore, the
11 decision of the small claims court should be affirmed.
12

13 **ORDER**

14 Based on the Findings of Fact and Conclusions of Law herein, **IT IS HEREBY ORDERED**
15 that the decision of the small claims court entered in this matter on February 18, 2021 is
16 **AFFIRMED.**
17

18 DATED this 2nd day of April 2021.

19 
20
21 DAVID J. GRUBICH
22 DISTRICT STANDING MASTER

23 cc: 
24
25

26 This judgment is not final until
27 the 10 day objection period
28 expires without objection or
court ruling on a timely objection.
MCA 3-5-126(2) and Rule 6(a)(1).

CERTIFICATE OF MAILING
This is to certify that the foregoing was
duly served by mail upon counsel of
record at their address this 2
day of April, 2021
TINA HENRY, CLERK OF COURT
By E. Morris DEPUTY