

FILED

APR 09 2021

PR 21-0001

Bowen Greenwood
Clerk of Supreme Court
State of Montana

CLERK OF DISTRICT COURT
2021 APR -7 AM 11:00
FILED
BY [Signature]
CLERK OF DISTRICT COURT

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>STATE OF MONTANA, Plaintiff, vs. AMANDA LYNN GILBREATH, Defendant.</p>	<p>Cause No. ADC-19-923(b) ORDER REFERRING TO MONTANA SUPREME COURT</p>
---	---

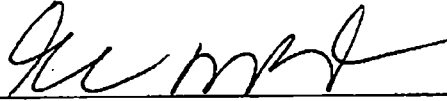
Defendant Amanda Gilbreath (Gilbreath), on April 5, 2021, emailed a Motion to Disqualify Pursuant to Montana Rule 2.12 of the Montana Code of Judicial Conduct. (attached). Although the Motion represents that it was “hand delivered or put in the U.S. Mail addressed to the Clerk of Court-Cascade County,” it has not yet been filed. The Motion does not comply with §3-1-805, MCA because it is not supported by an affidavit. However, the Court has determined, out of an abundance of caution, to refer it now to the Montana Supreme Court because trial is set for May 11, 2021.

IT IS HEREBY ORDERED that:

This Motion is referred to the Montana Supreme Court for further proceedings in accordance with §3-1-805, MCA.

///

DATED this 7th day of April, 2021.



Elizabeth A. Best
District Court Judge

cc: Kory Larsen
Zachary Kitchin/Cayle Halberg
Montana Supreme Court

CERTIFICATE OF MAILING
This is to certify that the foregoing was
duly served by mail upon counsel of
record at their address this 7
day of April, 2021
TINA HENRY, CLERK OF COURT
By [Signature] DEPUTY

The Practice of Law, P.L.L.C.
Zachary D. Kitchin
Cayle M. Halberg
P.O. Box 2827
Great Falls, MT 59403
Phone: (406)-531-8499
zach@thepacticemt.com
cayle@thepacticemt.com
Attorneys for Defendant

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>STATE OF MONTANA, Plaintiff, v. AMANDA LYNN GILBREATH, Defendant.</p>	<p>Cause No. ADC-19-923(b)</p> <p>DEFENDANT'S MOTION TO DISQUALIFY PURSUANT TO MONTANA RULE 2.12 OF THE MONTANA CODE OF JUDICIAL CONDUCT</p>
--	---

COMES NOW, the Defendant, Amanda Lynn Gilbreath, by and through her attorneys of record, The Practice of Law, P.L.L.C., and respectfully moves the Court for an Order of Disqualification pursuant to MT R CJC Rule 2.12. A brief in support of this Motion is filed simultaneous to this Motion.

03/05/21
Date


Attorney for Defendant

The Practice of Law, P.L.L.C.
Zachary D. Kitchin
Cayle M. Halberg
P.O. Box 2827
Great Falls, MT 59403
Phone: (406)-531-8499
zach@thepacticemt.com
cayle@thepacticemt.com
Attorneys for Defendant

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

STATE OF MONTANA,
Plaintiff,

v.

AMANDA LYNN GILBREATH,
Defendant.

Cause No. ADC-19-923(b)

**DEFENDANT'S BRIEF IN SUPPORT OF
MOTION TO DISQUALIFY PURSUANT
TO MONTANA RULE 2.12 OF THE
MONTANA CODE OF JUDICIAL
CONDUCT**

COMES NOW, the Defendant, Amanda Lynn Gilbreath, by and through her attorneys of record, The Practice of Law, P.L.L.C., and having moved the Court for an Order of Disqualification under MT R CJC Rule 2.12, submits the following brief in support:

FACTUAL BACKGROUND

On March 30, 2021, a hearing was held on the record in the above-referenced matter. At such hearing, the Honorable District Court Judge Elizabeth Best ("Best") demonstrated that her impartiality can reasonably be questioned in this matter due to her overt demonstration of personal bias against Defense Counsel and personal bias in favor of Counsel for the State, Kory Larsen ("Larsen").

A review of the oral record of the March 30, 2021, will demonstrate with overwhelming clarity that the hearing was little more than an uninformed, misguided, hostile attempted dressing down of Defense Counsel, initiated entirely by Best over her own perceptions of trial advocacy, preparation, and strategy. This attempted dressing down of Defense Counsel was done over Zoom with court staff and the Defendant, Amanda Gilbreath, present and within earshot of each and every statement made by Best. Shortly after the verbal tirade, Best filed a written Order Continuing Trial on March 30, 2021.

The March 30, 2021 Order reflects that Best's accusatory, impartial, biased tone, originally contained only on the oral record, was memorialized in writing, and filed. In the March 30, 2021 Order, Best impugned Defense Counsel with false statements that tend directly to injure Defense Counsel in respect to Defense Counsel's office, profession, trade, or business, by imputing to Defense Counsel general disqualification in those respects that the office of a criminal defense attorney peculiarly requires, and by imputing a "woeful lack of preparation", a "relative lack of experience", a lack of resources¹, a lack of factual foundation for discovery and Brady violations², and a lack of candor with reference to Defense Counsel's office, profession, trade, and business that has a natural tendency to lessen its profit or otherwise damage its reputation.

ANALYSIS

Pursuant to MT Code of Jud. Conduct Rule 2.12:

(A) A judge shall disqualify himself or herself in any proceeding in which the

¹ Best's statements in the context of "lack of resources," which are attributed to Defense Counsel, demonstrates a gross misunderstanding of Defense Counsel's prior arguments that the Court's COVID-19 scheduling system, which forced criminal defense attorneys to repeatedly subpoena necessary witnesses for dates that the Court, or the State, or both, knew would not proceed due to the Court's established priority rank. Defense Counsel notes that in spite of this practice throughout COVID-19, no other cases were set behind this matter on March 30, 2021.

² As the day unfolded on March 30, 2021, the Court became aware that such factual foundation existed for the discovery violations, and became aware that there was a legitimate basis for potential violations of Brady.

judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding

MT Code of Jud. Conduct Rule 2.12.

Reading the March 30, 2021 Order together with the oral record of the March 30, 2021, hearing, it is abundantly clear that Best relied almost exclusively upon factual statements made by Larsen. Apparently, the March 30, 2021 Order was filed and sent to Defense Counsel prior to Larsen's filing of his Notice of Correction, which detailed that Larsen's statements, and that Best relied upon in her oral statements and in the March 30, 2021 Order, were materially false. Accordingly, based upon Best's unreasonable reliance on materially false statements made by Larsen, coupled with her failure to demonstrate impartiality, demonstrates that Best has a personal bias to believe statements made by Larsen, Counsel for the State, and a personal bias to disbelieve statements made by Defense Counsel.

CONCLUSION

Relying on materially false statements from the State, as Best did in this matter, demonstrates without a doubt that her impartiality might reasonably be questioned, and that disqualification is necessary and proper.

3/5/21

Date


Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Motion to Continue to the following:

Clerk of Court: clerkofcourt.cascade@mt.gov

Judge Elizabeth Best: ebest@mt.gov

Judicial Assistant: Sheena.JendroCobb@mt.gov

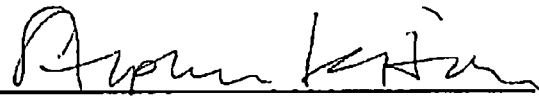
CA: klarsen@cascadecountymt.gov

Defendant c/o Counsel

The original was hand-delivered and/or put in the U.S. Mail addressed to the Clerk of Court-Cascade County.

March 5, 2021

Date



The Practice of Law, P.L.L.C.