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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. DA 22-0182

BROADWATER COUNTY,
MONTANA,

Plaintiff and Appellee,

v.

PERSONS WITH AN INTEREST IN
THE RELEASE OF CONFIDENTIAL
CRIMINAL JUSTICE INFORM-
ATION PERTAINING TO THE
INVESTIGATION AND PROSE-
CUTION OF JASON ELLSWORTH
(JASON ELLSWORTH, HELENA
INDEPENDENT RECORD), ET AL.,

Defendants and Appellants.

**MOTION FOR LEAVE TO
PARTICIPATE AND TO
REALIGN PARTIES**

Due to some procedural anomalies in the underlying case, the Helena Independent Record (the “IR”) respectfully moves the Court for leave to participate as an appellee and submit a response brief in defense of the district court’s *Order Following In Camera Review* (Dkt. 6), from which this appeal was taken. The grounds for this motion are as follows:

- (1) The IR made a request to Broadwater County for the release of Confidential Criminal Justice Information (“CCJI”).
- (2) In response, Broadwater County initiated a declaratory judgement action under § 44-5-303(5), MCA, requesting *in camera* review of the responsive records to determine whether they are eligible for release, but stating that the County is “disinterested” in the outcome. Dkt. 1.
- (3) In such cases, persons with a potential privacy interest in the CCJI are entitled to notice and opportunity to object. § 44-5-303(5)(a)(iii), MCA.¹ However, “anyone...who has requested the confidential criminal justice information” is required to be joined as a defendant. § 44-5-303(5)(a)(ii), MCA.
- (4) Notwithstanding the statute’s distinction between parties and

¹ This provision, added in 2021, plainly contemplates that suspects, victims, and witnesses—of which there could be many—should not be routinely sued when a records request is made so they can choose to abstain or participate informally.

interested persons, the County named all “persons with an interest” in the CCJI as defendants, parenthetically identifying and grouping together both the IR (the requesting party) and Mr. Ellsworth (the subject of the records). *See* Dkt. 1.

- (5) Neither the IR nor the County has any record that the IR was served with a summons or a copy of the complaint. The District Court’s docket does not indicate that a summons was issued, and no proof of Rule 4 service was filed. The only notice the IR received was Rule 5 service (by mail) of the County’s motion to deposit the CCJI records with the Court. *See* Dkt. 2. A default was never sought or entered. Notwithstanding, the IR was not served with any subsequent motions, briefs, or orders. *See* Rule 5(a), M.R.Civ.P. (all such papers must be served on every party unless they are in default). Accordingly, the IR did not retain counsel or make an appearance and only just learned of the District Court’s order and the disposition of the CCJI case.
- (6) Mr. Ellsworth did not answer the complaint either, despite being named as a defendant as well as an interested person. He filed a “brief in opposition” to the release of the CCJI in response to the County’s complaint, akin to the informal privacy “objection” contemplated by

§ 44-5-303(5), MCA, although he did not actually articulate a privacy objection. See Dkt. 4.

(7) The District Court then decided the dispute under the summary procedure set forth in § 44-5-303, MCA, and ordered disclosure of the requested CCJI records with a few exceptions. *See* Dkt. 6.

(8) Mr. Ellsworth appealed the District Court's order.

For the above reasons, the District Court's decision was made and this appeal was initiated before the IR was served, appeared, or offered any argument.

The special procedural requirements of § 44-5-303(5), MCA, authorizing the County to bring this action as an interpleader, together with the County's decision to lump together the requesting and objecting parties and its failure to serve the requesting party, have led to an anomalous circumstance—there is no adversity in this appeal and there is no one to defend the District Court's decision. The IR has been functionally excluded and designated as an *appellant* in Mr. Ellsworth's appeal from an order granting the IR's record request. The interests of the two nominal appellants are diametrically opposed. Meanwhile, the nominal appellee, Broadwater County, has no dog in the fight. It is "disinterested."

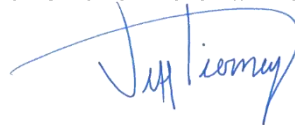
Despite these procedural snafus, the IR does not seek to disturb the District Court's ruling or waste judicial resources with dismissal and remand, which would

inevitably lead back to the same place while further delaying the disclosure of the requested records. The IR simply asks this Court for the opportunity to participate in this appeal by filing a response brief, in defense of the District Court's decision and based upon the grounds stated therein, as an appellee and as the real party in interest to the CCJI dispute. *See State ex rel. Greely v. Water Ct.*, 214 Mont. 143, 156, 691 P.2d 833, 840 (1984) ("We recognize the need for a realignment of parties so that opposing views on the substantive issues may be properly presented.").

Pursuant to M.R.App.P. 16(1), the undersigned certifies that the other parties have been contacted about this motion. Broadwater County does not oppose. Ellsworth opposes. Pursuant to the same rule, a proposed order is submitted herewith.

DATED this 5th day of May, 2022.

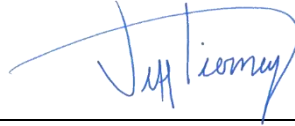
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CERTIFICATE OF COMPLIANCE

Pursuant to M.R.App.P. 16(3), the undersigned certifies that this motion is set in a proportionally-spaced font and contains fewer than 1,250 words.



Kyle W. Nelson
Jeffrey J. Tierney

CERTIFICATE OF SERVICE

I, Jeffrey J. Tierney, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 05-05-2022:

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Electronically signed by Kaila Pelzer on behalf of Jeffrey J. Tierney
Dated: 05-05-2022