

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**No. DA 23-0475**

---

PAMELA JO POLEJEWSKI,

Plaintiff/Appellant,

v.

STATE OF MONTANA and TYLER FRIES,

Defendants/Appellees

On Appeal from the Eighth Judicial District Court,  
Cascade County, Cause No. BDV-23-0225  
Hon. Elizabeth Best

---

**APPELLEE'S ANSWER BRIEF**

---

APPEARANCES:

*Pro Se Plaintiff/Appellant:*

Pamela Jo Polejewski  
77 Wexford Lane  
Great Falls, MT 59404  
ppolejewski@yahoo.com

*Attorneys for Defendant/Appellee:*

Sarah Mazanec  
Risk Management Tort Defense  
Division  
PO Box 200124  
Helena, MT 59620-0124  
Phone: (406) 444-3562  
sarah.mazanec@mt.gov

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**No. DA 23-0475**

---

PAMELA JO POLEJEWSKI,

Plaintiff/Appellant,

v.

STATE OF MONTANA and TYLER FRIES,

Defendants/Appellees

On Appeal from the Eighth Judicial District Court,  
Cascade County, Cause No. BDV-23-0225  
Hon. Elizabeth Best

---

**APPELLEE'S ANSWER BRIEF**

---

**APPEARANCES:**

*Pro Se Plaintiff/Appellant:*

Pamela Jo Polejewski  
77 Wexford Lane  
Great Falls, MT 59404  
ppolejewski@yahoo.com

*Attorneys for Defendant/Appellee:*

Sarah Mazanec  
Risk Management Tort Defense  
Division  
PO Box 200124  
Helena, MT 59620-0124  
Phone: (406) 444-3562  
sarah.mazanec@mt.gov

## Table Of Contents

TABLE OF AUTHORITIES .....	iii
STATEMENT OF ISSUES .....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS .....	3
STANDARD OF REVIEW .....	6
SUMMARY OF THE ARGUMENT .....	7
ARGUMENT .....	8
A.    The District Court Correctly Determined It Could Not Grant Post-Conviction Relief. ....	8
B.    The District Court Correctly Determined Polejewski’s Injunctive Request Was Moot.....	10
C.    The District Court Properly Denied Polejewski’s Motion for a Stay Given It Lacked Subject Matter Jurisdiction Over Her Claims. ....	12
D.    Polejewski Failed to Properly Seek Recusal of the District Court Judge...	14
CONCLUSION .....	17
CERTIFICATE OF COMPLIANCE.....	19

## **TABLE OF AUTHORITIES**

### **MONTANA SUPREME COURT CASES**

<i>Adkins v. City of Livingston</i> , 121 Mont. 528, 194 P.2d 238 (1948) .....	11
<i>Advocates for Sch. Trust Lands v. State</i> , 2022 MT 46, 408 Mont. 39, 505 P.3d 825 .....	10
<i>Billings Assoc. Plumbing, Etc. v. State Bd.</i> , 184 Mont. 249, 602 P.2d 597 (1979).....	11
<i>Bouma v. Bynum Irrigation District</i> , 139 Mont. 360, 364 P.2d 47 (1961) .....	11
<i>Cottonwood Hills v. Dep't of Labor &amp; Indus.</i> , 238 Mont. 404, 777 P.2d 1301 (1989).....	13
<i>Gateway Opencut Mining Action Grp. v. Bd. of Cty. Comm'rs</i> , 2011 MT 198, 361 Mont. 398, 260 P.3d 133.....	10
<i>Greater Missoula Area Fed'n of Early Childhood Educators v. Child Start, Inc.</i> , 2009 MT 362, 353 Mont. 201, 219 P.3d 881 .....	10
<i>Gottlob v. DesRosier</i> , 2020 MT 210, 401 Mont. 50, 470 P.3d 188.....	7
<i>In re Estate of Boland</i> , 2019 MT 236, 397 Mont. 319, 450 P.3d 849 .....	15, 16
<i>In re Guardianship &amp; Conservatorship of A.M.M.</i> , 2016 MT 213, 384 Mont. 413, 380 P.3d 736 .....	15
<i>Iverson v. Dilno</i> , 44 Mont. 270, 119 P. 719 (1911).....	11
<i>Lockhead v. Lockhead</i> , 2013 MT 368, 373 Mont. 120, 314 P.3d 915 .....	16
<i>Mustang Holdings, LLC v. Zaveta</i> , 2006 MT 234, 333 Mont. 471, 143 P.3d 456..	11
<i>Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.</i> , 2010 MT 26, 355 Mont. 142, 226 P.3d 567 .....	11
<i>Reier Broad. Co. v. Mont. State Univ.-Bozeman</i> , 2005 MT 240, 328 Mont. 471, 121 P.3d 549 .....	14

<i>State ex rel. Tillman v. District Court</i> , 101 Mont. 176, 53 P.2d 107 (1935).....	11
<i>State v. Normandy</i> , 2008 MT 437, 347 Mont. 505, 198 P.3d 834.....	13
<i>State v. Polejewski</i> , 2020 MT 287N, 402 Mont. 427, 474 P.3d .....	5
<i>State v. Polejewski</i> , 2021 MT 283N, 407 Mont. 440, 497 P.3d 1184 .....	6, 11
<i>State v. Strang</i> , 2017 MT 217, 388 Mont. 428, 401 P.3d 690 .....	16
<i>Stowe v. Big Sky Vacation Rentals, Inc.</i> , 2019 MT 288, 398 Mont. 91, 454 P.3d 655.....	6
<i>Wyo- Ben, Inc. v. Bixby</i> , 2014 MT 334, 377 Mont. 318, 339 P.3d 1255.....	11

#### MONTANA STATUTES

§ 2-9-301(1), MCA .....	13
§ 25-2-201, MCA.....	2, 17
§ 27-1-434(6)(e), MCA.....	4
§ 27-1-434(6), MCA .....	9
§ 27-1-434, MCA.....	2, 4, 5, 9
§ 3-1-804, MCA .....	14, 15
§ 3-1-805, MCA .....	14, 15
§ 45-8-211, MCA.....	3
§ 45-8-217, MCA.....	3
§ 46-1-202(15), MCA .....	9
§ 46-1-202(26), MCA .....	9
§ 46-21-101(1), MCA .....	8
§ 46-21-102, MCA.....	10

MONTANA RULES

Mont. R. Civ. P. 12(b)(1) .....	6
Mont. R. Civ. P. 15(a)(1) .....	3

U.S. DISTRICT COURT CASES

<i>Kortlander v. Heritage Auctions</i> , 2008 U.S. Dist. LEXIS 135870 .....	12
<i>Mills v. Scottrade, Inc.</i> , 2009 U.S. Dist. LEXIS 151525, 2009 WL 10701740 .....	12

U.S. SUPREME COURT CASES

<i>Laird v. Tatum</i> , 409 U.S. 824, 837, 93 S. Ct. 7, 15, 34 L. Ed. 2d 50 (1972).....	16
<i>Polejewski v. Montana</i> , 142 S. Ct. 2719, 212 L. Ed. 2d 784 (2022) .....	6

## **STATEMENT OF ISSUES**

1. Whether the District Court correctly concluded that it lacked subject matter jurisdiction over a Complaint seeking post-conviction relief in a concluded civil matter and a pending criminal matter in which there has been no conviction.
2. Whether the District Court correctly concluded that it lacked subject matter jurisdiction over a Complaint seeking the Court's interference with a separate, concluded civil forfeiture matter.
3. Whether the District Court correctly denied a request to stay a case in which it did not have subject matter jurisdiction.
4. Whether the District Court judge failed to recuse herself for cause when Appellant failed to file a motion for disqualification.

## **STATEMENT OF THE CASE**

Polejewski filed this lawsuit as an improper collateral attack on a pending criminal case against her for animal cruelty and a completed civil forfeiture hearing. The District Court correctly determined it did not have subject matter jurisdiction to interfere in these proceedings.

On May 24, 2023, Polejewski filed a "Misrepresentation Complaint" against the State of Montana claiming her Public Defenders, Tyler Fries and Jay Reno,

inadequately represented her in her criminal proceedings and a civil forfeiture hearing. Dckt. 7. Polejewski claimed that Fries was negligent when he failed to argue the constitutionality of § 27-1-434, MCA at a “cost of care” hearing in which she was ordered to post bond to care for her animals seized by Cascade County. Dckt. 7, Ex. A, p.2. When Polejewski failed to post the required bond, the animals were forfeited to Cascade County. Dckt. 26, Ex. 7, p. 10. In addition, Polejewski alleged Fries negligently represented her in the criminal proceedings because he did not make an illegal search and seizure argument. Dckt. 7, Ex. A, p. 2. Polejewski claimed that Reno failed to adequately communicate with her. Dckt. 7, Ex. B.

Polejewski sought an order requiring the civil forfeiture proceeding to be retried or dismissed and requiring her pending criminal case to be immediately appealed. Dckt. 7, p. 3. Before she served the Complaint, she filed a motion for a change of venue under § 25-2-201, MCA asserting that she could not have an impartial trial in Cascade County. Dckt. 8. The District Court denied her motion. Dckt. 9.



The State filed a motion to dismiss Polejewski's complaint because she failed to properly serve it and because the Court did not have the jurisdiction to grant the relief requested. Dckts. 13-17.

On June 29, 2023, Polejewski requested to amend her complaint under Mont. R. Civ. P. 15(a)(1). Dckt. 18, p. 2. Polejewski amended the relief requested, seeking postconviction relief in the "cost of care" hearing to "correct a factually erroneous sentence or judgment." *Id.*, pp. 11-12. Polejewski also requested the Court stay the proceeding until the conclusion of the criminal proceeding in lieu of dismissing her complaint. *Id.*

The State again filed a motion to dismiss Polejewski's Amended Complaint arguing that the District Court did not have jurisdiction to grant post-conviction relief or order the return of already-forfeited animals. Dckts. 25-29. The District Court granted the State's motion to dismiss with prejudice reasoning it did not have subject matter jurisdiction over Polejewski's claims. Dckt. 33. Polejewski appealed.

### **STATEMENT OF FACTS**

In the spring of 2020, Cascade County charged Polejewski with multiple felony counts of animal cruelty in violation of § 45-8-211 and § 45-8-217, MCA.

Dckt. 27, Ex. 1. During the execution of the search warrant, Cascade County deputies seized 172 animals from Polejewski's property, including dogs, cats, horses, ponies, chickens, rabbits, and pigs. *Id.*, Ex. 2. Polejewski pled not guilty to the charges and is awaiting trial.

After the seizure of Polejewski's animals, the Cascade County Attorney filed a civil action requesting a hearing under § 27-1-434, MCA, which allows a district court to determine whether a defendant charged with animal cruelty must post a bond for the estimated costs of caring for the seized animals. *Id.*, Ex. 6. Ownership of the animals is forfeited to the county if the court orders a bond and the defendant fails to post it. Section 27-1-434(6)(e), MCA.

The cost of care hearing was held on May 26, 2020, and Public Defender Tyler Fries represented Polejewski. Dckt. 27., Ex. 7. The district court determined that Polejewski's animals were subject to cruelty based on the preponderance of the evidence. *Id.* The district court ordered Polejewski to deposit a monthly bond of \$31,019.60 to care for the animals. *Id.* Following the hearing, Fries withdrew from his representation in the forfeiture matter, but continued to represent her in the criminal matter. *Id.*, Ex. 9.

On June 9, 2020, the Cascade County Attorney notified the district court that Polejewski had failed to deposit the required bond and requested that the animals be forfeited. Dckt. 27., Ex. 10. The district court ordered the forfeiture. *Id.* Polejewski appealed the district court's forfeiture order. *Id.*, Ex. 12(a). The Court affirmed the district court's forfeiture order. *State v. Polejewski*, 2020 MT 287N, 402 Mont. 427, 474 P.3d.

While awaiting the Court's decision, Polejewski, appearing *pro se*, filed a Petition for Writ of Supervisory Control, requesting that the Court intervene in the care of the animals that were seized. Dckt. 27., Ex. 16. The Court rejected Polejewski's petition. Dckt. 28., Ex. 17.

On December 4, 2020, Polejewski filed a "motion for reconsideration" in the district court regarding the forfeiture order. *Id.*, Ex. 18. In addition, Polejewski filed a motion requesting that the district court restrain the enforcement of the forfeiture order. *Id.*, Ex. 19. Polejewski also filed a motion requesting a hearing on the constitutionality of § 27-1-434, MCA. *Id.*, Ex. 20.

The district court held a hearing on Polejewski's motions and was presented with evidence and argument regarding the constitutionality of § 27-1-434, MCA. Dckt. 29, Ex. 21. The district court issued an order holding that § 27-1-434, MCA,

was constitutional. *Id.*, Ex. 22. The district court also held that the State legally exercised its authority to dispose of the animals under the forfeiture order, rendering moot Polejewski's injunction request. *Id.*

Polejewski again appealed the district court's decision to this Court. *Id.*, Ex. 23. Polejewski argued the district court erred when it denied her injunction request. The Court held that Polejewski's constitutional arguments were barred by claim preclusions. *State v. Polejewski*, 2021 MT 283N, ¶ 11, 407 Mont. 440, 497 P.3d 1184. The Court also held that the district court properly determined Polejewski's request for injunctive relief was moot because the State had the statutory authority to dispose of the animals. *Id.*, ¶ 12. Polejewski appealed to the United States Supreme Court, filing a Petition for Writ of Certiorari. Dckt. 29, Ex. 26. The United States Supreme Court denied Polejewski's petition. *Polejewski v. Montana*, 142 S. Ct. 2719, 212 L. Ed. 2d 784 (2022).

### **STANDARD OF REVIEW**

A ruling under Mont. R. Civ. P. 12(b)(1) is a conclusion of law reviewed de novo for correctness. *Stowe v. Big Sky Vacation Rentals, Inc.*, 2019 MT 288, ¶ 12, 398 Mont. 91, 454 P.3d 655. Under Rule 12(b)(1), the court must take all well-pled factual assertions as true in the light most favorable to the claimant and dismiss if

the claim “is not of a type or within a class of claims the court has threshold authority to consider and adjudicate.” *Gottlob v. DesRosier*, 2020 MT 210, ¶ 7, 401 Mont. 50, 470 P.3d 188.

### **SUMMARY OF THE ARGUMENT**

Though Polejewski claims she brought a professional negligence claim, the substance of her Amended Complaint, and her briefing on appeal, establish that her claim is a collateral attack on the judgment in the “cost of care” hearing and on the pending criminal charges against her. She seeks to have the judgment in the “cost of care” hearing overturned, and to have the criminal charges against her dismissed.

The District Court properly determined it did not have subject matter jurisdiction to grant “post-conviction relief” or to order the return of the animals that were forfeited to Cascade County. The District Court also properly determined that a stay was futile, as it could not grant the requested relief, no matter how the criminal matter unfolded. In addition, it was proper for the District Court judge not to recuse herself as Polejewski failed to file a motion to disqualify and because Polejewski has made no showing that the district judge is personally biased or prejudiced against Polejewski. Finally, the District Court’s order denying a change

of venue should also be affirmed as Polejewski made no showing that the venue was inappropriate in Cascade County. The District Court's order dismissing the matter with prejudice should be affirmed.

### **ARGUMENT**

#### **A. The District Court Correctly Determined It Could Not Grant Post-Conviction Relief.**

The District Court correctly determined that it did not have subject matter jurisdiction to grant "post-conviction relief" from the judgment in the "cost of care" hearing. Polejewski asserts the "cost of care" hearing was "in reality a criminal trial" and seeks "post-conviction relief" from the judgment in the claim. However, the "cost of care" proceeding was a civil proceeding, and Polejewski is not entitled to seek a change in the outcome of the proceeding. Post-conviction relief can only be sought in criminal proceedings. Section 46-21-101(1), MCA, provides:

A person adjudged guilty of an *offense* in a court of record who has no adequate remedy of appeal and who claims that a *sentence* was imposed in violation of the constitution or the laws of the state or the constitution of the United States. . . may petition the court that imposed the sentence to vacate, set aside or correct the sentence or revocation order.

(Emphasis added). An “offense” is defined as “a violation of any penal statute of this state or any ordinance of its political subdivisions.” Section 46-1-202(15), MCA. A “sentence” is defined as the “judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty.” Section 46-1-202(26), MCA.

The “cost of care” hearing was a civil proceeding. Section 27-1-434, MCA. Polejewski was not adjudged guilty of an “offense,” and she was not given a “sentence.” Instead, the district court overseeing the “cost of care” hearing determined that the preponderance of the evidence established that Polejewski’s animals were subjected to cruelty or forced fighting and set a bond to cover the “reasonable expenses expected to be incurred in caring for the animals for a period of 30 days.” Section 27-1-434(6), MCA; *See also*, Dckt. 27, Ex. 7. Polejewski failed to post the requisite bond, and the animals were properly forfeited to Cascade County. The District Court correctly determined that it did not have jurisdiction to grant “post-conviction relief” from a civil proceeding.

The District Court also properly determined that it did not have jurisdiction to grant post-conviction relief in the ongoing criminal proceeding.<sup>1</sup> Post-conviction

---

<sup>1</sup> Though Polejewski claims she is not requesting judicial interference in her

relief is only available after a conviction becomes final. Section 46-21-102, MCA. Given that Polejewski's criminal case is still pending, she cannot seek post-conviction relief as a remedy for alleged professional negligence.

**B. The District Court Correctly Determined Polejewski's Injunctive Request Was Moot.**

The District Court properly determined it did not have jurisdiction to grant relief from the judgment in the "cost of care" hearing. A court lacks jurisdiction to decide a case if it does not present a justiciable controversy, meaning "a controversy that can be disposed of and resolved in the courts." *Gateway Opencut Mining Action Grp. v. Bd. of Cty. Comm'rs*, 2011 MT 198, ¶ 16, 361 Mont. 398, 260 P.3d 133. "Justiciability therefore is a threshold requirement that must be met before a court may grant relief." *Advocates for Sch. Trust Lands v. State*, 2022 MT 46, ¶ 18, 408 Mont. 39, 505 P.3d 825.

Mootness is a central concept of justiciability. *Advocates*, ¶ 19 (citation and quotation omitted). "[C]ourts lack jurisdiction to decide moot issues insofar as an actual 'case or controversy' no longer exists[.]" *Greater Missoula Area Fed'n of*

---

criminal proceeding, she argues on appeal that she is entitled to a new trial in the criminal matter because of Fries' alleged negligence. *See*, Opening Br. Leg. Misrepresentation, pp. 4, 8, 26.



*Early Childhood Educators v. Child Start, Inc.*, 2009 MT 362, ¶ 23, 353 Mont. 201, 219 P.3d 881. An issue is moot if a court is unable to grant effective relief or to restore the parties to their original positions due to an intervening event or change in circumstances. *Wyo- Ben, Inc. v. Bixby*, 2014 MT 334, ¶ 22, 377 Mont. 318, 339 P.3d 1255; *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 10, 355 Mont. 142, 226 P.3d 567.

An injunctive request is moot if it seeks to prevent an act that has already been committed. *Mustang Holdings, LLC v. Zaveta*, 2006 MT 234, ¶ 15, 333 Mont. 471, 143 P.3d 456 citing *Bouma v. Bynum Irrigation District*, 139 Mont. 360, 364 P.2d 47 (1961). See also, *State ex rel. Tillman v. District Court*, 101 Mont. 176, 53 P.2d 107 (1935); *Iverson v. Dilno*, 44 Mont. 270, 119 P. 719 (1911); *Adkins v. City of Livingston*, 121 Mont. 528, 194 P.2d 238 (1948). An injunction cannot issue if the “entire injury is in the past.” *Mustang*, ¶ 15. citing *Billings Assoc. Plumbing, Etc. v. State Bd.*, 184 Mont. 249, 255, 602 P.2d 597, 601 (1979).

Here, as this Court has already recognized, Polejewski’s animals have already been forfeited and there is nothing to enjoin: “The District Court was correct that, because the animals had already been legally disposed of, Polejewski’s injunction request was moot.” *State. v. Polejewski*, 2021 MT 283N at ¶ 12.

Polejewski's animals were legally forfeited to the County and Polejewski is not entitled to relief from judgment of a civil proceeding that has concluded. Given that Polejewski's injunctive request is moot, the District Court correctly concluded it lacked jurisdiction to interfere in a concluded forfeiture proceeding.

C. **The District Court Properly Denied Polejewski's Motion for a Stay Given It Lacked Subject Matter Jurisdiction Over Her Claims.**

The District Court properly denied Polejewski's motion to stay the proceedings because it did not have subject matter jurisdiction over Polejewski's claims. Polejewski argues the District Court erred when it did not issue a stay to allow time for the judge overseeing her criminal proceedings to issue an order on various constitutional arguments she believes Fries should have asserted in the "cost of care hearing" that her current criminal defense attorney has asserted in the criminal proceedings. Opening Br. Leg. Misrepresentation, pp. 2, 27. A stay would have been futile given that the District Court does not have jurisdiction over Polejewski's claims. *See, Mills v. Scottrade, Inc.*, 2009 U.S. Dist. LEXIS 151525, \*28, 2009 WL 10701740 (recognizing a stay should not be granted in circumstances in which it would serve no purpose); *See also, Kortlander v. Heritage Auctions*, 2008 U.S. Dist. LEXIS 135870, \*19.

Similarly, for the first time on appeal, Polejewski argues that she should have been allowed to amend her complaint to add a claim for monetary relief. Polejewski never sought leave to amend her complaint to add a claim for monetary damages. In fact, she specifically disclaimed she was seeking monetary damages, and instead sought solely injunctive relief. Opening Br. Leg. Misrepresentation, p. 30. Given that Polejewski never sought leave to amend her complaint in the underlying action to add a claim for monetary damages, this Court should not consider this argument on appeal. *State v. Normandy*, 2008 MT 437, ¶ 18, 347 Mont. 505, 198 P.3d 834.

In addition, allowing Polejewski to amend her complaint to seek monetary damages would be futile. Polejewski failed to present any tort claims to the Department of Administration as required by the Montana Tort Claims Act, § 2-9-301(1), MCA. Affidavit of Mardi Slocum, Ex. A. Given Polejewski's failure to present the claims to the State, the District Court does not have jurisdiction over such claims. *Cottonwood Hills v. Dep't of Labor & Indus.*, 238 Mont. 404, 407, 777 P.2d 1301, 1303 (1989) (Holding district court does not have jurisdiction over tort claims that were not first presented to the State in accordance with § 2-9-301(1), MCA). As the District Court does not have jurisdiction to review any tort

claim, allowing Polejewski to amend to bring a tort claim for monetary damages would be futile. *See, Reier Broad. Co. v. Mont. State Univ.-Bozeman*, 2005 MT 240, ¶ 13, 328 Mont. 471, 121 P.3d 549. The District Court's dismissal with prejudice should be affirmed given it would be useless to stay the proceedings or allow Polejewski to amend.

**D. Polejewski Failed to Properly Seek Recusal of the District Court Judge.**

Polejewski argues the District Court judge should have recused herself for cause because she issued the search warrant that Polejewski claims is invalid in her criminal proceeding. Opening Br. Leg. Misrepresentation, pp. 17-18. However, Polejewski failed to file a motion for substitution pursuant to § 3-1-804, MCA or a motion for disqualification for cause under § 3-1-805, MCA, and voluntarily waived her rights to substitute or disqualify the judge. In addition, Polejewski has not made any showing that the District Court judge had any personal bias or prejudice.

Each party is entitled to one substitution of a district judge in civil actions under § 3-1-804, MCA, if the party seeking substitution files a motion for substitution within thirty calendar days "after the first summons is served or an adverse party has appeared." Section 3-1-805, MCA sets forth the procedure that

must be followed to disqualify a judge for cause. The party seeking disqualification must move for disqualification and file an affidavit “alleging facts showing personal bias or prejudice of the presiding judge.” Section 3-1-805, MCA. A party must comply with § 3-1-805, MCA if challenging a judge for cause. See, *In re Guardianship & Conservatorship of A.M.M.*, 2016 MT 213, ¶ 23, 384 Mont. 413, 380 P.3d 736; *In re Estate of Boland*, 2019 MT 236, ¶ 37, 397 Mont. 319, 450 P.3d 849.

Polejewski did not comply with § 3-1-804, MCA or § 3-1-805, MCA. She never moved to substitute Judge Best, nor did she move to disqualify her for cause. Instead, Polejewski filed a motion to change venue that suggested she believed Judge Best was biased. Though Polejewski had multiple statutory remedies that would allow her to substitute or attempt to disqualify the District Court judge, Polejewski did not avail herself of any of these remedies and has waived her ability to seek disqualification. See, *Boland*, ¶ 37.

In addition, Polejewski cannot make the requisite showing that the District Court judge was biased or not impartial. Judges are presumptively considered fair and impartial. *In re A.M.M.*, ¶ 23. A judge has a duty to hear a case “where not disqualified, which is equally as strong as the duty to not sit where disqualified.”

*Boland*, ¶ 36, citing *Laird v. Tatum*, 409 U.S. 824, 837, 93 S. Ct. 7, 15, 34 L. Ed. 2d 50 (1972).

Polejewski’s unsupported assertion that the District Court judge was biased because she issued the search warrant that led to criminal proceedings does not establish bias or partiality. The fact that a judge made an adverse ruling to Polejewski does not establish the judge should be disqualified. *Boland*, ¶ 40 (“Allowing an attorney to make baseless inquiries into a judge’s impartiality because that judge has made adverse rulings would result in chaos in the courts, impugn the integrity of the judge, render meaningless a judge’s commitment to impartially decide cases, and completely undermine public confidence in the judiciary.”); *State v. Strang*, 2017 MT 217, ¶ 25, 388 Mont. 428, 401 P.3d 690 (“[A] judge’s previous adverse rulings against a party do not constitute sufficient evidence to demonstrate a judge’s personal bias or prejudice against that party.”) Therefore, Polejewski cannot present any evidence that the District Court judge was biased, and the Court should deny consideration of this issue on appeal.

Polejewski failed to appeal the order denying her motion to change venue, and the issue is not properly before the Court. *Lockhead v. Lockhead*, 2013 MT 368, ¶ 15, 373 Mont. 120, 314 P.3d 915. In addition, Polejewski has made no

factual showing that she could not have an impartial trial in Cascade County. *See*, § 25-2-201, MCA (Place of trial must be changed “when there is reason to believe that an impartial trial cannot be had therein”). Polejewski claimed she would not have an impartial trial because Fries regularly practices in Judge Best’s court. As discussed above, Polejewski failed to move to disqualify or substitute Judge Best and is precluded from doing so on appeal. In addition, Polejewski has made no factual showing that she could not receive a fair and impartial trial in the current venue. The judicial system would be unable to function if district court judges were disqualified from proceeding in cases in which the involved attorneys regularly appeared in front of them. The District Court properly denied Polejewski’s motion for a change of venue.

### **CONCLUSION**

Polejewski’s professional malpractice claim is nothing more than a collateral attack on her criminal proceedings and the forfeiture proceeding. As relief, Polejewski sought only court interference in these proceedings. The District Court correctly determined it did not have subject matter jurisdiction to grant Polejewski the requested relief, and its order should be affirmed.

In addition, Polejewski's attack on the District Court judge is improper as she never moved for the disqualification of the judge and has set forth only baseless attacks on the District Court. Polejewski's motion for a change of venue was properly denied.

The Court should affirm the District Court in full.

SUBMITTED this 11th day of January, 2024.

By       /s/ Sarah Mazanec        
SARAH MAZANEC  
RISK MANAGEMENT &  
TORT DEFENSE DIVISION



## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 points, is double spaced (except footnotes and quoted and indented material are single spaced); with left, right, top and bottom margins of one inch; and that the word count calculated by Microsoft Word does not exceed 10,000 words, excluding the Table of Contents, Table of Authorities, and Certificate of Compliance.

DATED this 11th day of January, 2024.

By       /s/ Sarah Mazanec        
SARAH MAZANEC  
RISK MANAGEMENT &  
TORT DEFENSE DIVISION

## **CERTIFICATE OF SERVICE**

I, Sarah Marie Mazanec, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 01-11-2024:

Pamela Jo Polejewski (Appellant)  
77 Wexford Lane  
Great Falls MT 59404-6324  
Service Method: Conventional

Electronically Signed By: Sarah Marie Mazanec  
Dated: 01-11-2024