

1 Kerry Burman
2 Glendive City Judge
3 312 S Merrill Ave
4 Glendive, MT 59330
5 (406) 939-1392 Cell
6 (406) 377-3131 Court
7 kburman@mt.gov
8 *Appearing Pro Se*

9
10 IN THE SUPREME COURT FOR THE STATE OF MONTANA

11 **KERRY L. BURMAN Glendive City**
12 **Judge,**

13 Applicant,

14 v.

15 **CITY OF GLENDIVE, and DEB DION,**
16 **Mayor,**

17 Respondents.

Cause No.

**APPLICATION FOR WRIT OF
MANDAMUS AND REQUEST
FOR IMMEDIATE STAY**

18 **COMES NOW,** Kerry L. Burman, Glendive City Judge, appearing Pro Se, and hereby
19 respectfully applies to this Court for an immediate Writ of Mandamus and Request for Immediate
20 Stay against the City of Glendive, and Glendive Mayor Deb Dion. The basis for this application
21 and request for extraordinary Writ of Mandamus is the City's termination of the Clerk of Glendive
22 City Court without any prior notification to Glendive City Judge Kerry L. Burman, failing to
23 provide justification for leaving the Court without appropriate clerical and judicial assistance,
24 interfering with the operations of the Court, and severely limiting the public's access to justice,
25 as well as the continuing overstepping into the judicial branch of government.
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30 **PARTIES AND JURISDICTIONAL STATEMENT**

31 1. Applicant is Kerry L. Burman ("Burman"), who was duly elected by the City of
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1 Glendive as its judge in November of 2005 and has continued to be re-elected and serve the City
2 of Glendive in that capacity to the present day.
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4 2. Respondents are the City of Glendive ("the City"), and its Mayor, Deb Dion ("Dion").
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6 3. The Montana Supreme Court has original jurisdiction over this matter pursuant to
7 Mont. Code Ann. § 27-26-102 (2023)
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9 **FACTUAL ALLEGATIONS**

10 4. Applicant realleges and incorporates ¶¶ 1 through 3, above.

11 5. Mont. Code Ann. § 3-1-101(6) (2023) states "The following are courts of justice of
12 this state; the city courts and such other courts of limited jurisdiction..." The City Court is
13 established as stated in Mont. Code Ann. § 3-11-101(1) (2023). The City Court's powers and
14 duties are set forth in Mont. Code Ann. § 3-11-109 (2023). The City Court constitutes one of three
15 co-equal branches of the city government, and is not subordinate to either the executive or
16 legislative branches.
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18 6. Mont. Code Ann. § 3-11-206(1)(a)(i) (2023) states, "The governing body of the city
19 in which the judge has been elected or appointed shall provide for the city court the office space,
20 courtroom and clerical assistance necessary to enable the judge and the clerk of city court, if any,
21 to conduct business in dignified surroundings."
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23 7. Mont. Code Ann. § 3-1-111(5) (2023) states "Every court has power to control, in
24 furtherance of justice, the conduct of its ministerial officers..."
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26 8. On February 28, 2024, at approximately 12:09 p.m., Dion, through email to Burman,
27 stated that she had questions regarding the claim form to send the court clerk to court clerk's
28 training conference. In the email, Dion stated that she did not think the training was justified.
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1 Burman replied on February 29, 2024, at approximately 10:16 a.m., that this training was vital
2 for her clerk, and a scholarship had been received for all expenses other than the registration fee
3 which was budgeted for in the court's budget. (Exhibit A.) At approximately 4:50 p.m., the clerk
4 called Burman stated she had just been terminated by Dion and escorted out of the City Court by
5 Dion and the Assistant Chief of Police. Burman was not present at the time or even made aware
6 when Dion and the Assistant Chief of Police removed the court clerk from Glendive City Court
7 leaving unfinished court duties.
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11 9. On March 4, 2024, at approximately 1:00 p.m., Dion advised Burman of the
12 termination due to "probationary employment." However, the court clerk was not in a
13 probationary period as she was a direct transfer from another city department after having already
14 fulfilled her probationary period. When questioned about the reason for the termination, Dion
15 claimed that on the registration form for the court clerk's conference, the court clerk had stated
16 she had been a court clerk for eight (8) months when in fact she had only been a court clerk for
17 approximately six (6) months, a simple clerical error that could be contributed to a variety of
18 circumstances. Dion stated there were other complaints she had received but refused to tell
19 Burman what they were. Burman explained as the supervisor of the court clerk, the complaints
20 should have been forwarded directly to the judge to deal with. Dion stated the court clerk is a
21 city employee and does not need to state the complaints to Burman. Burman reiterated that
22 although the court clerk is a city employee, she is directly controlled by the judge under the
23 judicial branch of government, and all supervisory control held by Burman.
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29 10. This Court has held, in Carlson v. City of Bozeman (2001), that the city ordinance
30 BMO § 2.06.030 was in conflict with Mont. Code Ann. § 3-1-111 that gave the court the authority
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1 to control the conduct of its ministerial officers. In Carlson, it was argued that “placing the
2 municipal clerk under the supervision of the executive branch would have the executive branch
3 controlling judicial functions, in violation of the separation of powers’ clause of the Montana
4 Constitution.
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7 11. Sprinkle v. Burton (1996), 280 Mont. 358, 367, 935 P.2d 1094,1099 stated “a
8 ministerial officer is one who performs ministerial acts.” “A ministerial act is one performed in
9 obedience to authority without the exercise of judgment.” Sprinkle, 280 Mont. At 367, 935 P.2d
10 at 1099. A municipal court clerk must follow statutory directives regarding the filing and storage
11 of records, follow the judge’s orders regarding scheduling, and the operation of the court. State
12 v. District Court (1990), 246 Mont. 225, 229, 805 P2d 1272, 1275: “While some of these acts
13 may call for the occasional exercise of independent judgment, this does not mean the clerk’s
14 position is other than ministerial.” Mont. Code Ann. § 3-1-111(5) (2023) states “Every court has
15 power to control, in furtherance of justice, the conduct of its ministerial officers...” Without
16 knowledge of any alleged wrongdoings, this Court was unable to rectify any asserted issues and
17 is now faced with extreme emergent undue hardship with lack of ministerial assistance in the day
18 to day running of the Court and providing access to justice and ensuring the rights of citizens.
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23 12. Glendive City Court has always operated as a full-time court with a part-time judge.
24 Burman is paid for eighty-five (85) hours per month to perform the judicial duties of the office.
25 The court clerk works forty (40) hours per week assisting in the myriad of tasks associated with
26 running the court and ensuring availability of the court for the citizens of Glendive. With the
27 removal of the court clerk, the citizens do not have full access to their City Court due to the actions
28 of the executive branch of government. Additionally, judicial duties are falling behind due to the
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1 judge now having to perform not only judicial duties, but also court clerk duties. This has caused
2 emergency orders to be delayed possibly causing drastic outcomes to victims.
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4 13. Dion continued to assert her attempts at controlling the court when she contacted a
5 former court clerk, per her email on March 7, 2024, to both City Attorney John Hrubes and
6 Burman, to see if she would be interested in assisting in the court. This was done without
7 knowledge or authority of Burman who is the City Court Judge and has full control over the court
8 and all functions within the court. (Exhibit B.)
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11 14. Even prior to the recent termination of the Clerk of Glendive City Court, Dion sought
12 to control the court by asserting claim, through email on December 14, 2023, that Burman was
13 not following Glendive City Ordinance by failing to provide reports to the City Council and
14 failing to hold court every day. Burman pointed out that the claim was false and provided both
15 Montana State Statutes and Montana Constitution segments to point out a separation of powers
16 issue was occurring. (Exhibit C.)
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18 CLAIMS

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21 15. Applicant realleges and incorporates ¶¶ 1 through 14, above.

22 16. Dion and the City have failed to abide by the Separation of Powers as stated in the
23 Montana Constitution, 1884: Art III, § 1, "The powers of the government of this State are divided
24 into three distinct departments: The Legislative, Executive, and Judicial; and no person, or
25 collection of persons, charged with the exercise of powers properly belonging to one of these
26 departments, shall exercise any powers properly belonging to either of the others, except as in
27 this Constitution expressly directed or permitted." Dion, acting as head of the executive branch
28 of the City Government, intruded on the power of the Judiciary to act in a dignified manner by
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1 terminating a city employee working in the judicial branch of the City Government.

2 17. Without the judge's knowledge, the executive branch, through Dion and the Assistant
3 Chief of Police, received unfettered access to protected criminal justice information when they
4 handed a box to the court clerk and told her to pack her belongings, leaving confidential
5 information and unfinished court work unattended. Dion took the keys and did not return to
6 Burman until early afternoon on March 4, 2024.
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9 **RELIEF SOUGHT**
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11 18. Applicant realleges and incorporates ¶¶ 1 through 17, above.

12 19. Applicant hereby requests an emergency Writ of Mandamus and Immediate Stay in
13 accordance with Title 27, Chapter 26 of the Montana Code Annotated, to order the named
14 Respondents to perform their duties required by law, including but not limited to immediate
15 reinstatement of Clerk of Glendive City Court.
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18 20. Applicant further requests and emergency Writ of Mandamus to prohibit named
19 Respondents from attempting to run the court from the executive branch of the city government.
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21 21. Applicant further requests that pursuant to Mont. Code Ann., the writ should be issued
22 in peremptory form pursuant to Mont. Code Ann. § 27-26-204 (2023) because both named
23 Respondents are represented by the same counsel, City Attorney John Hrubes, who will be served
24 with this application and thus have actual due notice immediately upon filing via Montana Courts
25 E-Filing.
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28 22. Applicant respectfully requests that the Montana Supreme Court act with haste in
29 order to prevent the Glendive City Court from continuing in its current defunct state, which will
30 undoubtedly prejudice parties before the City Court and delay the administration of justice.
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23. For such and other relief the Court may deem appropriate and just.

DATED this 25th day of March, 2024.

By:

Kerry L. Burman
KERRY L. BURMAN, Glendive City Judge
Pro Se

STATE OF MONTANA)

) :ss

COUNTY OF DAWSON)

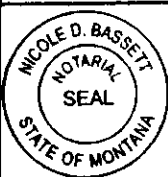
I, KERRY L. BURMAN, being first duly sworn, upon oath, depose and state that the facts and matters contained therein are true, accurate, and complete to the best of my knowledge and belief.

DATED this 25th day of March, 2024.

By:

Kerry L. Burman
KERRY L. BURMAN, Glendive City Judge
Applicant

SUBSCRIBED and SWORN to before me this 25th day of March, 2024.



NICOLE D. BASSETT
NOTARY PUBLIC for the
State of Montana
Residing at Glendive, MT
My Commission Expires
September 19, 2027

By:

[Signature]
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Kerry Burman, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 03-26-2024:

John T. Hrubes (Govt Attorney)
218 W. Bell Street
#209
#209
Glendive MT 59330
Representing: Deb Dion, City of Glendive
Service Method: eService

Kerry L Burman (Petitioner)
312 S Merrill Ave
Glendive MT 59330
Representing: Self-Represented
Service Method: E-mail Delivery

Electronically Signed By: Kerry Burman
Dated: 03-26-2024