

03/26/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 24-0188

Kerry Burman  
Glendive City Judge  
312 S Merrill Ave  
Glendive, MT 59330  
(406) 939-1392 Cell  
(406) 377-3131 Court  
kburman@mt.gov  
*Appearing Pro Se*

## IN THE SUPREME COURT FOR THE STATE OF MONTANA

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

Applicant,

v.

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

Respondents.

Cause No.

**AFFIDAVIT OF KERRY L.  
BURMAN**

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 within the attached *APPLICATION FOR WRIT OF MANDAMUS* are true, accurate, and complete to the best of my knowledge and belief. Furthermore, I hereby swear, upon oath, and depose and state under penalty of perjury and the laws of the State of Montana the following:

1. Attached hereto as Exhibit A is a true and correct copy of emails exchanged between Dion and Burman on the dates indicated.

1           2. Attached hereto as Exhibit B is a true and correct copy of emails exchanged between  
2 Dion, Hrubes and Burman on the dates indicated.  
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4           3. Attached hereto as Exhibit C is a true and correct copy of emails exchanged between  
5 Dion and Burman on the dates indicated.  
6

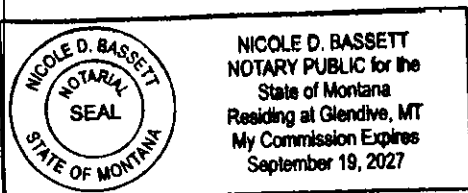
7  
8 **FURTHER YOUR AFFIANT SAYETH NAUGHT.**

9           **DATED** this 25<sup>th</sup> day of march, 2024.  
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11  
12 By:

Kerry L. Burman  
**KERRY L. BURMAN, Glendive City Judge**  
Applicant/Affiant

13  
14 **SUBSCRIBED** and **SWORN** to before me this 25<sup>th</sup> day of march, 2024.  
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By:

[Signature]  
**NOTARY PUBLIC**

**From:** Mayor <Mayor@glendivemt.gov>  
**Sent:** Thursday, February 29, 2024 11:30 AM  
**To:** Burman, Kerry  
**Subject:** [EXTERNAL] RE: claims

Thanks for providing your insight on this.  
Deb Dion

**From:** Burman, Kerry <KBurman@mt.gov>  
**Sent:** Thursday, February 29, 2024 10:16 AM  
**To:** Mayor <Mayor@glendivemt.gov>  
**Subject:** RE: claims

It was unfortunate timing of clerk conferences in the past, and my clerks have been unable to attend due to scheduled vacations or other unforeseen circumstances. Additionally, there were a few of the conferences that I didn't feel would be beneficial for the clerks to attend and I didn't want to waste their time or public funds for that. This training is vital to the job that Mary Alice is performing. Fortunately, she has been given a scholarship to cover all other costs other than the registration of this conference. It is in my budget for the year for her to attend training.

The court has always been set up as a full time court with a part time judge. Unfortunately, we had a time when one of the part time positions was not filled, but we were actively searching through job service. The time when the clerk wasn't in was covered by me as much as possible so the court was still open full time most days.

The MCA codes are REQUIRED for courts. There has been a standing order for years to receive the printed version, and it has already been received. There is no way that I would be able to get by with just the online version as they are used multiple times a day, every single day, both in my office and in the courtroom. Attorneys utilize them in court at times as well.

My final thought on all of this is that there appears to be an attempt to run the court and determine what is and is not appropriate for the court. There is a clear separation of powers issue that seems to be taking place. The judicial branch cannot tell the executive or legislative branch of the city what training may or may not be justified. The court cannot tell another branch what budgeted money can be spent on. While I understand you feel you are doing what is appropriate, there is a separation of powers issue that is occurring, and all three branches must stay in their own lanes.

**From:** Mayor <Mayor@glendivemt.gov>  
**Sent:** Wednesday, February 28, 2024 12:09 PM  
**To:** Burman, Kerry <KBurman@mt.gov>  
**Subject:** [EXTERNAL] claims

Hi Kerry,

I have a couple of claims that I have questions about. I can't find that any clerks have gone to trainings in the past six years or since 2018. With city court closing at the end of next year I do not think this training is justified. In addition council members are questioning the need for a full-time clerk with court numbers continuing to decline. I will need to research what the numbers were in the past when there was only a part-time clerk and if the hours could return to part-time as they had been in the past. Finally with court closing at the end of next year could the court use the online version of the MCA which is on-line?

Thanks for your input on these matters.  
Deb Dion  
Mayor

**From:** Mayor <Mayor@glendivemt.gov>  
**Sent:** Thursday, March 7, 2024 5:36 PM  
**To:** jthrubes@gmail.com; Burman, Kerry  
**Subject:** [EXTERNAL] RE: Mediation

Sorry for the delay in my response, it's been nutz today. John, I appreciate you offering to mediate. I think Kerry and I can talk about moving forward, getting someone hired and keep the court functioning, until it closes at the end of next year. Under normal circumstances, I think we could meet without mediation. However, I am not sure if we should meet at all when there is something filed against me or maybe the city, with the Supreme Court? I do not understand exactly what that means, but I have always been told that when legal action is pending, it is best to make no comment, and to refrain from meeting with the person who has filed against you. This morning, I did contact the former clerk, Wendy, and she is very open to helping out, she just can't do it tomorrow as she is out of town. Perhaps Jess or Darci or Vickie could help? We need to look at what our options are and the sooner the better!

Thanks again!  
Deb Dion

**From:** John Hrubes <jthrubes@gmail.com>  
**Sent:** Thursday, March 7, 2024 1:53 PM  
**To:** Burman, Kerry <KBurman@mt.gov>; Mayor <Mayor@glendivemt.gov>  
**Subject:** Mediation

Judge Burman and Mayor Dion,

I have spoken with both of you individually on the issues currently surrounding City Court. I believe all parties would benefit from being able to discuss the matters, so that everyone knows where the other is coming from. I would be willing to facilitate any discussions between the two of you sometime next week, if you are both amenable. Please let me know. Thank you.

- John

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John T. Hrubes	John T. Hrubes
Glendive City Attorney	McCone County Attorney
218 W. Bell Street, #209	PO Box 58
Glendive, MT 59330	Circle, MT 59215
Phone: (406) 377-4226	Phone: (406) 485-3530

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**Burman, Kerry**

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**From:** Mayor <Mayor@glendivemt.gov>  
**Sent:** Friday, December 15, 2023 2:24 PM  
**To:** Burman, Kerry  
**Subject:** [EXTERNAL] RE: cameras and other issues

Hi Kerry,

Thank you for the info. I believe you are saying the sound cameras could be used by the council which only meets in the evenings when the court is not in session. Since I was planning to take this to the council on Tuesday, I want to be sure that is correct. I do understand why the sound cameras would not be used in court.

Thanks for the clarification of the other issues too. I think it will help that Mary Alice is there everyday but we have had people come to city hall asking when the judge will be there and we have sent them to look at the schedule posted. To my knowledge this has not happened for awhile unless you were both sick at the same time.

I will ask Darci about the reports since I have not seen them. I continue to be scrutinized with complaints that I am not following the codes and ordinances. I will make sure these documents make it to the council packets and that should end one gripe.

Finally, I do understand you get called in and you work above the hours set for your position! I am not trying to supervise you I just need the correct answers and you are the one who has them!

Thank you for all you do for the city of Glendive.

Deb Dion

**From:** Burman, Kerry <KBurman@mt.gov>  
**Sent:** Friday, December 15, 2023 2:01 PM  
**To:** Mayor <Mayor@glendivemt.gov>  
**Subject:** cameras and other issues

I have been unable to respond earlier to your request regarding cameras as we have been extremely busy this week with Court hearings.

There is no problem with having sound for use of council ONLY. It CANNOT be utilized during the day at all. There are several reasons. As I previously stated, this is not a Court of Record which means we cannot record sound of any hearing. Defense counsel and defendants must have the ability to speak privately, and obviously cannot be recorded. Some testimony cannot be recorded as well. I have also spoken with our City Attorney who agrees that sound cannot be recorded during court. He stated he would speak to you about it as well. See below:

**3-1-313. Sitings of court -- when private.** (1) In an action for dissolution of marriage, criminal conversation, or seduction, the court may direct the trial of any issue of fact joined therein to be private and exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

(2) During the examination of a witness in any cause, the court may, in its discretion, exclude some or all of the other witnesses in the cause.

**46-11-701. Pretrial proceedings -- exclusion of public and sealing of records.** (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of

potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a hearing on a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect either party's right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

(6) (a) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

(b) When a sworn affidavit in support of a search warrant is presented by a peace officer to a judge and the peace officer's request includes a request to seal the documents related to the search warrant, the judge may consider the evidence presented and, if the judge makes a finding from the evidence that the demand of individual privacy clearly exceeds the merits of public disclosure, the judge may order the documents related to the search warrant sealed until:

(i) a date certain;

(ii) the occurrence of a specific event;

(iii) the filing of a charge arising from or related to the execution of the search warrant; or

(iv) such other time as the judge deems appropriate.

Regarding your attached documents:

Motel Receipt – I did not check into the motel at 3:08 p.m. as stated on the receipt. That is approximately when the reservation was made before I left Helena. I did not reach Billings until between 6:30-6:45 p.m. that evening. You are correct in that the City is responsible to pay for the mandatory two conferences per year that I must attend. It does not, however, prohibit me from attending additional training that I have selected or as requested. There has always been additional funds in my training budget for me to attend additional trainings/meetings that benefit my judicial position in providing the best representation for the citizens.

#### Court Sessions

I am unsure why you feel that there is not one session of court per day and am curious to know why you think that. I have a feeling I know where that may be coming from, and MCA states the following:

TITLE 25. CIVIL PROCEDURE

CHAPTER 24. MONTANA UNIFORM RULES FOR THE JUSTICE AND CITY COURTS

Part 1. Rules

# Office Hours

## Rule 15. Office hours.

(a) On judicial days, regular office hours shall be designated by the court for the transaction of business. Notice of the hours shall be posted in the court's office.

(b) The court shall establish a regular time for initial appearances and arraignments on traffic and criminal actions. Notice of the time set shall be posted in the court's office.

Citation appearances are scheduled for two days per week. This is appropriate as per the Montana Uniform Rules for the Justice and City Courts. (See above rule). This is typically called Law and Motion day in courts.

**3-1-301. Days on which courts may be held.** Courts of justice may be held and judicial business transacted on any day, except as provided in **3-1-302**.

Additionally, Court is open five days a week and open for sessions. Furthermore, sessions are held at many times of day/night to include weekends, 2 am search warrants, Sunday morning complaint filings, etc. These are considered court sessions. There is also a clear separation of power issue that seems to be arising. City Court hours can be established but the hours that a judge must be physically in the office cannot be set by another branch of government. I have been told by the council and confirmed by the treasurer that my salary is based on 85 hours per month. The average has been closer to 120 per month since I have taken office. While this is needed to ensure my work is completed, I may or may not be working in the office every weekday as work is often completed out of the office, I am on vacation or sick, or am unavailable due to conferences and/or meetings.

THE CONSTITUTION OF THE STATE OF MONTANA

ARTICLE III. GENERAL GOVERNMENT

Part III. GENERAL GOVERNMENT

## Separation Of Powers

**Section 1. Separation of powers.** The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Bank statements – When I took office 18 years ago, I was advised that it wasn't necessary to provide them even though City Ordinance stated so. I am more than happy to provide them to you on a monthly basis and will provide you copies next week. The bank account is bond and restitution trust only. It is not interest bearing nor is it any income. All funds in the bank belong to a Defendant or a Victim.

Monthly reports:



- D. The judge of the city court shall present to the city council a report monthly, in writing, giving a statement of cases tried for offenses against this code or any other ordinances of the city, and fines and costs collected during the preceding calendar month, which report shall be accompanied by a receipt from the finance clerk-treasurer for the amount of such fines and costs. (1983 Revised Code § 2.18.005; amd. 2004 Code)

City Ordinance states the report must be provided in writing. Every month I provide two reports with the check to the Treasurer. This has been done for 18 years. I have only seen one of the two reports actually included in the council packet each month. As I do not report to the council because we are two separate branches of government, I do not appear at council meetings. These reports provide all the information that is required for me to provide as per City Ordinance. I am unsure why only one report is ever given to the council when both, utilized together, provide this requested information. I would be happy to explain to the council what the reports show, if needed; however, I am not an employee and am not required to attend the meetings as a department head.

I hope this answers your questions. Please let me know if there is any additional information you may need.

Kerry

***Kerry L. Burman***

Glendive City Court Judge  
312 S Merrill Ave  
Glendive, MT 59330  
(406) 377-3131  
(406) 377-1336 (fax)  
[KBurman@mt.gov](mailto:KBurman@mt.gov)

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**From:** Mayor <[Mayor@glendivemt.gov](mailto:Mayor@glendivemt.gov)>  
**Sent:** Thursday, December 14, 2023 4:37 PM  
**To:** Burman, Kerry <[KBurman@mt.gov](mailto:KBurman@mt.gov)>  
**Subject:** [EXTERNAL] FW: cameras and other issues

Sorry I think I am sending info to the wrong email address.  
Deb Dion

**From:** Mayor  
**Sent:** Thursday, December 14, 2023 3:40 PM  
**To:** Kerry Burman <[kerry@middrivers.com](mailto:kerry@middrivers.com)>  
**Subject:** cameras and other issues

Hi Kerry,

I am asking for the information about cameras that I had requested earlier, to take to the council this coming Tuesday. The attachments above are in reference to the following questions. I am trying to follow the codes and I am questioning why you submitted a motel receipt for Friday when you checked in at 3 p.m. ? The city does pay for two trainings per year, but it looks to me like this might be an additional training. Also, in the MCA and in the city codes it says there must be one session of court per day except weekends and holidays and it seems that we are not doing this. It also says you must submit a monthly bank statement to the Mayor, and I have not seen one so far. Finally, it says you are to give a report monthly to the council. Let me know if you want to be on the agenda for the first or third Tuesday of the month. Thank you for your attention to these matters!

Deb Dion

**From:** Mayor

**Sent:** Tuesday, December 12, 2023 4:30 PM

**To:** Kerry Burman <[kerry@midrivers.com](mailto:kerry@midrivers.com)>

**Subject:** cameras

Hi Kerry,

There are a couple of council members who think moving the meetings to the ambulance building is the best idea. Could you send me the info on why the council could not have sound cameras in the courtroom to be used for council meetings only? I did try to look this up when I was asked about it, but I find nothing in the MCA, at the Montana Law Library or in the Montana Judges Handbook. If this is not a viable option then the council needs to move on.

Thanks for any info on this!

Deb Dion