

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Cause No. DA 23-0619

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SUSAN JOHNSON, DAVE JOHNSON, KATHY RICH, SUSAN HINKINS,  
RICHARD GILLETTE, LINDA FULLER, LARRY JENT, JULIE JENT,  
RICHARD J. CHARRON, KRISTIN CHARRON,

Plaintiffs and Appellees,

v.

CITY OF BOZEMAN,

Defendant and Appellant.

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On Appeal from Montana Eighteenth Judicial District Court,  
Gallatin County Cause No. DV-22-1006C,  
Hon. Andrew Breuner, District Court Judge

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**APPELLEES' SURREPLY**

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[Appearances on next page.]

## APPEARANCES

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Attorney for Defendant and Appellant

Montana’s Rules of Professional Conduct, Rule 3.3 “**Candor towards the tribunal**” provides:

(a) A lawyer shall not knowingly:

1. Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact previously made to the tribunal by the lawyer;

There is no question that several false statements of fact appear in Appellant’s Reply Brief. The Appellant City of Bozeman (“City”) has confessed as much, although attempting to downplay.

There are two misstatements in that brief:

1. “The Court awarded Plaintiffs their attorney’s fees and costs”;
2. “Accordingly, the City therefore respectfully requests this Court to reverse the District Court’s determination with respect to these issues...”.

Reply Brief, p. 20. Of course, there is nothing to “reverse” because the District Court never made such order.

The Lund email of April 9, 2024, states, “I have to believe that every attorney in Montana has made a mistake at one point in time, even you...”. Email attached as Exhibit A. That is undoubtedly true. Had the City made a **prompt** and straightforward confession of mistake, Appellees would not be here. That is not what happened here.

As noted above, Rule 3.3, Montana Rules of Professional Conduct provides

that a lawyer may not knowingly “**fail to correct**” a false statement of material fact, previously made to the tribunal by the lawyer. (emphasis added). Most lawyers who practice before this Court would be horrified if a mistake of this magnitude were brought to their attention—and would **immediately** move to correct. Not here. It was only after repeated requests by the Appellees that attorney Lund filed the “Notice of Errata”, and then varnished the truth by soft pedaling her mistake.

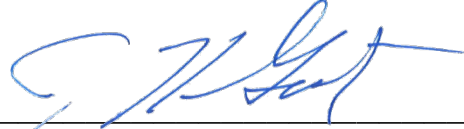
This has caused all parties and the Court time and resources—for no reason, other than the lack of care on the part of the City. This lack of care is relevant to Appellees’ request to this Court that they be awarded their attorney’s fees in defending the present appeal.

It is a privilege and an honor to practice appellate law in front of the Montana Supreme Court. With that privilege comes serious responsibilities.

Appellees respectfully submit that this Court should take account of this serious lack of care in its deliberations in this case.

DATED this 10th day of April, 2024.

**GOETZ, GEDDES & GARDNER, P.C.**



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James H. Goetz  
Henry J.K. Tesar

**GALLIK & BREMER, P.C.**

Brian K. Gallik

Attorneys for Plaintiffs and Appellees

**CERTIFICATE OF COMPLIANCE**

Pursuant to this Court's Order Granting Leave To File Surreply, the undersigned certifies that this brief is set in a proportionally spaced font and contains fewer than 500 words (410).



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James H. Goetz

**From:** [Jim Goetz](#)  
**To:** [Myriam Quinto](#)  
**Subject:** FW: Johnson et al v. City of Bozeman  
**Date:** Tuesday, April 9, 2024 2:50:38 PM

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**From:** Lilla Lund <lund@berglawfirm.com>  
**Sent:** Tuesday, April 9, 2024 8:04 AM  
**To:** Jim Goetz <jim@Goetzlawfirm.com>; Henry Tesar <htesar@goetzlawfirm.com>; 'brian@galliklawfirm.com' <brian@galliklawfirm.com>  
**Subject:** Johnson et al v. City of Bozeman

Jim:

In order to respond to your request, it would be helpful if you could either provide a draft of what you intend to file or provide more context for what you intend to draft, so that the City can take an informed position on the unusual request. The City will respond within one business day to that request.

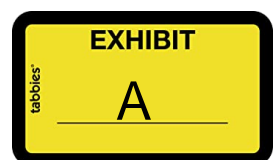
I have to believe that every attorney in Montana has made a mistake at one point in time, even you, and my understanding is that the preamble of the Rules of Professional Conduct requires a professional, courteous and civil response in such situations. It is disappointing that you seek to instead threaten me and use it as an attempt to gain a strategic advantage.

The City and I desire to have the case addressed on the substantive merits and are hopeful that this will soon occur. While I hope you would reconsider your threat, I will maintain my confidence in the Montana Supreme Court to look beyond any attempts to distract from the substantive issues with unwarranted personal attacks.

Sincerely,

*Lilla*

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**From:** Jim Goetz <[jim@Goetzlawfirm.com](mailto:jim@Goetzlawfirm.com)>

**Sent:** Monday, April 8, 2024 3:57 PM

**To:** Lilla Lund <[lund@berglawfirm.com](mailto:lund@berglawfirm.com)>

**Cc:** Brian Gallik <[brian@galliklawfirm.com](mailto:brian@galliklawfirm.com)>; Henry Tesar <[htesar@goetzlawfirm.com](mailto:htesar@goetzlawfirm.com)>

**Subject:** errata

When I demanded a correction I didn't license you to make argument trying to sugarcoat your sloppiness. I intend to move the Court for leave to file a surreply. Does the City oppose this motion. I expect an answer before 8am tomorrow.

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## **CERTIFICATE OF SERVICE**

I, James H. Goetz, hereby certify that I have served true and accurate copies of the foregoing Brief - Other to the following on 04-10-2024:

Henry Tesar (Attorney)

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Service Method: eService

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Representing: City of Bozeman

Service Method: eService

Electronically signed by Myriam Quinto on behalf of James H. Goetz

Dated: 04-10-2024