



ORIGINAL

FILED

04/10/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: OP 24-0236

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. _____

IN RE:)
)
 JEREMY HAND,) PETITION FOR WRIT OF
 Petitioner,) MANDAMUS
)
 HONORABLE MIKE) EXPEDITED CONSIDERATION
 MENAHAN,) REQUESTED
 Respondent.)

APPEARANCES:

Jeremy Hand
Lewis & Clark County Detention Center
221 Breckenridge Street
Helena, MT 59601

FILED

APR 10 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Mr. Hand is represented by:
Steven Scott (*abstained*)
Office of the Public Defender
203 N. Ewing Street
Helena, MT 59601
Ph: 406-442-1300
sscott@mt.gov

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Supreme Court No. _____

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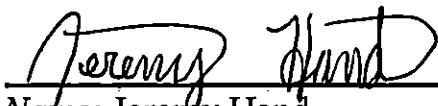
Comes now, Jeremy T. Hand, Petitioner, and moves this court to grant him leave to file his petition for a writ of mandamus, submitted with this motion, the petition being referred to and made a part of this motion for all purposes.

Petitioner requests that the petition for a writ of mandamus be filed and that it be set for hearing.

Petitioner further requests that on the filing of the petition, this court order and direct respondent, Mike Menahan, as District Court Judge, to cease and desist from taking any further action or holding any further hearings in Case No. ADC-2023-13, styled *State of Montana vs. Jeremy Hand*, which is now pending in Montana First Judicial District Court, Lewis & Clark County, pending the hearing and action by this court on the petition.

Petitioner further requests any other relief, general and special, to which he may be entitled.

Dated this 9th day of Dated this 10th day of April 2024.



Name: Jeremy Hand
Address: LCCDC, 221 Breckenridge St.
City, State, Zip Code: Helena, MT 59601
Phone: 406-437-8822

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Leave to File Petition for Writ of Mandamus and Petition for a Writ of Mandamus was served upon the following by personal service of a true and correct copy thereof on this 10th day of April 2024, addressed as follows:

Honorable Mike Menahan
228 Broadway, 2nd Floor
Helena, MT 59601



Kevin C. Hand
On behalf of Jeremy Hand

Table of Contents

| | |
|---|-----|
| TABLE OF AUTHORITIES | ii |
| INDEX OF EXHIBITS | iii |
| I. PETITION..... | 1 |
| II. PARTIES..... | 2 |
| III. FACTS SUPPORTING ORIGINAL JURISDICTION..... | 2 |
| ABUSE OF DISCRETION..... | 2 |
| i. <i>Violation of Rule 2.4, Montana Code of Judicial Conduct</i> | 3 |
| ii. <i>Bail Modification Hearing</i> | 5 |
| iii. <i>First Violation of Rule 2.8, Montana Code of Judicial Conduct.....</i> | 6 |
| iv. <i>Second Violation of Rule 2.8, Montana Code of Judicial Conduct</i> | 11 |
| v. <i>Order Granting State's Motion with Unqualified Testimony.....</i> | 12 |
| vi. <i>Violation of Rule 2.12, Montana Judicial Code of Conduct</i> | 12 |
| IV. ARGUMENTS AND AUTHORITY SUPPORTING ISSUANCE OF WRIT OF MANDATE | 14 |
| V. LEGAL QUESTIONS AND ISSUES ANTICIPATED TO BE RAISED | 16 |
| i. <i>Legal Question(s).....</i> | 16 |
| ii. <i>Issue: Code of Conduct Violations</i> | 16 |
| iii. <i>Issue: Conflict of Interest</i> | 17 |
| VI. CONCLUSION | 18 |
| CERTIFICATE OF COMPLIANCE..... | 19 |

TABLE OF AUTHORITIES

Cases

| | |
|---|----|
| <i>Smith v. County of Missoula</i> , 1999 MT 330, 297 Mont. 368, 992 P.2d 834..... | 15 |
|---|----|

Statutes

| | |
|------------------------------------|------------|
| Mont. Code Ann. § 25-2-201(2)..... | 17, 19 |
| Mont. Code Ann. § 27-26-102..... | 2 |
| Mont. Code Ann. § 46-16-228..... | 12, 13, 14 |
| Mont. Code Ann. § 46-9-301..... | 5, 10 |

Other Authorities

| | |
|--|---|
| Mont. Const. Art. VII, §§ 1 and 2..... | 2 |
|--|---|

Rules

| | |
|-----------------------------|---|
| Mont. R. App. P. 14(2)..... | 1 |
|-----------------------------|---|

INDEX OF EXHIBITS

Exhibit 1

Transcript of Final Pretrial Conference, Nov. 15, 2023 3

Exhibit 2

Montana Code of Judicial Conduct 4, 11, 15

Exhibit 3

Transcript of Status and Bail Modification Hearing, Dec. 6, 2023 7

Exhibit 4

General Request via LCCDC Ticket System, Nov. 12, 2023 10

Exhibit 5

Email from MBarry to BBragg, June 16, 2023 10

Exhibit 6

Examples of Lower Bonds Across Montana 11

Exhibit 7

Transcript of Proceedings, Motions Hearing, Mar. 26, 2024 14

I. PETITION

Comes now, Petitioner Jeremy Hand (hereinafter “Hand”), pursuant to Mont. R. App. P. 14(2), seeking a Writ of Mandate disqualifying Respondent Honorable Mike Menahan (hereinafter “Menahan”) as the Judge assigned to Case No. ADC-2023-13, styled *State of Montana vs. Jeremy Hand*, for implied bias, abuse of discretion, and ongoing conflict of interest, and for this Court to reassign the case to another appropriate jurisdiction within the State of Montana.

Petitioner is urgently seeking immediate relief from this Court through a writ of mandate, prompted by an upcoming trial for allegations of a capital crime scheduled to commence on April 22, 2024. Respondent's biased rulings in multiple pre-trial decisions against Petitioner are undermining Hand's right to a fair trial in Menahan's court.

Respondent has also failed to recuse himself upon discovery of a conflict of interest related to his court scheduling clerk and bailiff, Cindi Colbert. Mrs. Colbert has been assigned to Respondent's court for over 11 years and is the spouse of a defendant in an ongoing civil matter filed by Petitioner.

Without this Court's intervention, Petitioner will suffer irreparable harm as his right to a fair trial will continue to be violated by Respondent's bias against him and the clear conflict of interest due to Respondent's long-term working relationship with his scheduling clerk and bailiff.

II. PARTIES

Petitioner is an incarcerated individual at the Lewis and Clark County Detention Center (“LCCDC”) in Helena, MT, awaiting trial in Respondent’s court on allegations of a capital crime.

Respondent is a resident of Lewis and Clark County, MT, and a Judge in the Montana First Judicial District Court.

III. FACTS SUPPORTING ORIGINAL JURISDICTION

This Court has jurisdiction over original proceedings relating to writs as may be necessary and proper to exercise its jurisdiction. Mont. Const. Art. VII, §§ 1 and 2. When there is no “plain, speedy, and adequate remedy in the ordinary course of law,” a writ of mandate may be issued “to compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station...” Mont. Code Ann. § 27-26-102.

ABUSE OF DISCRETION

On November 13, 2023, a mere 35 days before the trial, Respondent approved Petitioner’s attorneys of record motion to withdraw due to a conflict of interest. This decision came without a hearing and left no other counsel scheduled to appear on behalf of the Petitioner.

Shortly after, a final pre-trial conference took place, compelling Hand to represent himself as his counsel had been released from the case. Suddenly finding

himself without representation, Hand requested that the trial be postponed so that he could seek new legal assistance. The motion was granted without objection.

During the hearing, Respondent confirmed that Petitioner would act *pro se* until the next scheduled status and bail modification hearing on November 29th, 2023. Hand then sought all documents and discovery materials held by his former attorneys. Additionally, he requested help in obtaining appropriate access to the courts at LCCDC.

Respondent was “reluctant” to address these requests “in the event” Hand secured counsel; he suggested it might be unnecessary if Hand obtained an attorney in the interim. Ex. 1, pages 11-12.

Respondent's decision to grant the previous motion to withdraw by Hand's counsel did not adequately safeguard his interests, leaving him at a distinct disadvantage in preparing for the upcoming status hearing scheduled in two weeks. Furthermore, Menahan's neglect to address Hand's request for civil right of access to the courts further hindered his ability to prepare for the aforementioned status hearing.

i. *Violation of Rule 2.4, Montana Code of Judicial Conduct*

On November 20, 2023, Hand filed a civil suit under 42 U.S.C. § 1983 to protect his right of access to the courts, as Respondent failed to act on his behalf during the November 15th hearing in the underlying criminal case. Hand's civil suit

names members of the Lewis & Clark County Sheriff's Office and multiple LCCDC officers (*Hand v. Leo C. Dutton, et al.*), including Undersheriff Brent Colbert, spouse of Cindi Colbert, the long-standing scheduling clerk and court bailiff for Respondent.

Mrs. Colbert has been employed by the Respondent's court for over 11 years, during which time a close working relationship has no doubt developed. As Mrs. Colbert works side-by-side with Menahan, it is unrealistic to assume she has not discussed the civil case with her colleagues, including Respondent.

As Mrs. Colbert reports directly to Menahan, who is overseeing a criminal case where the Petitioner is the defendant, there isn't sufficient separation between these two cases under Menahan's influence for him to maintain impartiality in his actions and decisions concerning the criminal issue.

Per Rule 2.4 of the Montana Code of Judicial Conduct (Ex. 2):

“(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.”

In this instance, there is a conflict stemming from Menahan's extensive professional relationship with Mrs. Colbert, spouse of Undersheriff Brent Colbert, named in an ongoing non-frivolous civil suit being adjudicated by the Honorable Kathleen L. DeSoto.

Menahan's conduct towards Hand during two subsequent hearings on

December 6, 2023 (Bail Modification Hearing) and March 26, 2024 (hearing on Motion to Allow Testimony of Child Witness Outside Presence of Defendant), reveals his personal bias or prejudice against the Petitioner, indicating an inability to maintain impartiality.

ii. *Bail Modification Hearing*

On November 30, 2023, the Court rescheduled the combined status and bond hearing date to December 6, 2023, to address a "clerical error", despite its documentation in the transcript of the November 15, 2023 hearing. This should have been duly noted on the Court's calendar as part of the minute entry from that hearing, which was entered on November 17, 2023.

At issue was the \$250,000 bond set on January 12, 2023, which violated Mont. Code Ann. § 46-9-301 in that it "must be reasonable in amount and the amount must be:

- (4) not oppressive;
- (5) commensurate with the nature of the offense charged;
- (6) considerate of the financial ability of the accused;
- (7) considerate of the defendant's prior record;
- (8) considerate of the length of time the defendant has resided in the community and of the defendant's ties to the community;"

The documents setting the conditions of the bond were originally mailed to the Petitioner's home address – not to the LCCDC where he's been since December 2022. He wasn't aware he was eligible to post bond, believing he was

still under hold by the Department of Corrections per his Conditional Release status, so did not dispute the amount.

Hand eventually became aware of his eligibility, leading him to request a bond hearing from the Court. Despite his counsel withdrawing just two weeks before the scheduled hearing, Hand attempted to represent himself without reasonable access to prepare, appealing to Menahan's sense of justice for a reduction in the excessively high bond amount as per statutory requirements. There are no prior acts related to the alleged crime, and despite testifying about his successful recovery from drug addiction with over 5 years of sobriety, three years of probation monitoring since 2019, outstanding academic performance at Colorado Technical University with a then-current 4.0 GPA, and a stable home environment. He also raised concerns regarding violations of due process stemming from his previous counsel's misconduct during a prior bond hearing and issues with the State's handling of the criminal case.

iii. *First Violation of Rule 2.8, Montana Code of Judicial Conduct*

At that time, Menahan asserted that Hand's prolonged detention resulted first from rescheduling the trial during a previous hearing in July 2023 by his former attorneys. Despite Hand's claim of non-consent, Menahan proceeded to highlight the trial was further postponed in November at Hand's request. This overlooks the fact it was not due to the Petitioner but rather stemmed from the Respondent's

decision to grant Hand's then counsel's motion to withdraw, necessitating a continuance through no fault of the Petitioner. Subsequently, Menahan harshly admonished Hand, stating, "So all of your arguments here that the State of Montana is responsible for denying your liberty is **complete and total bullshit.**"

Ex. 3. (Emphasis added)

Respondent's conduct directly violates Rule 2.8(B) of the Montana Code of Judicial Conduct:

"(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control."

"[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate." ~ *Commentary on Rule 2.8(B)*.

After the Petitioner endured Menahan's undignified and disrespectful outburst, the State presented arguments against a reduction. During this presentation, they put forward several false or misleading allegations in support of their case. Menahan accepted these allegations without evidence and disregarded the Petitioner's refutation of some of the claims:

1. A "recent history of failing to appear", with incidents cited in 2018 and 2021.

- a. Hand had been under active monitoring since 2019, as indicated in his argument for bond reduction. There have been no cases or charges against Hand since early 2019, so there would have been no opportunity for him to fail to appear in 2021.
2. A “significant concern about tampering” that was allegedly under investigation.
 - a. The concern stemmed from communication the alleged victim was having with the children’s paternal grandfather, Kevin Hand. Mr. Hand has continued fostering his relationship with the children, at the request of their mother and without interference from her across months of regular in-person visits, telephone calls, and Snapchat conversations.
 - b. An investigation has already been conducted, and no evidence of tampering was found. The devices of the alleged victim were seized as part of the investigation and then returned to her without any further action or admonishment from the State, the Court, or the child's mother in this case.
3. A “felony intimidation in 2021 which gives the State great concern”.
 - a. This charge was in early 2019 (noted in #1, above), not 2021, and related to Hand behaving recklessly while under the influence. He

was defending himself from a physical attack by an off-duty security officer when police arrived and, feeling targeted and cornered, proceeded to indicate he would fight them as well if he had to.

- b. As part of a plea agreement, the State included this felony charge. While no direct intimidation was intended, Hand accepted the plea agreement to receive a reduced sentence on other charges.

- 4. Violation of a no-contact order as part of his “condition” of release
 - a. Hand was having contact with his eldest daughter, with the knowledge and permission of the child’s mother, Brittni O’Leary, who allowed both phone calls and onsite visitation up until this bond reduction hearing when the child was suddenly no longer allowed visitation or contact. Hand had also confirmed the approved right of visitation with the LCCDC, most recently requesting the list of his approved visitors on November 12, 2023. Senior Officer Delouis Ball responded with the approved list, which included Hand’s eldest daughter. Ex. 4.
 - b. The State’s previous efforts to “stop these visits” were conveyed in an email from Mary Barry to Captain Bradley Bragg at the LCCDC. Ex. 5. Mr. Bragg’s failure to act on the State’s request

does not suggest a deliberate attempt by the Petitioner to bypass any known orders or mandates. Instead, Hand has consistently endeavored to adhere to prescribed boundaries, even refusing all contact requests made by his youngest daughter, who is the alleged victim in the underlying criminal case, through her sister and paternal grandfather.

The Respondent again failed to consider the requirements of Mont. Code Ann. § 46-9-301(4), (5), (6), (7), and (8), as well as the information presented by Petitioner that refuted the erroneous and misleading claims of the State, ruling to keep the bond as set. Respondent also did not consider similar cases within his and other districts in the State of Montana during recent history, as other bonds set for defendants *with* prior acts of the alleged crimes in their cases were being set to 40% or more below Petitioner's bond in this matter. Ex. 6.

During the same hearing, Hand requested to continue proceeding *pro se*, but Menahan declined to discuss it at that time. Instead, he instructed the Office of Public Defenders to represent Hand and scheduled a later hearing to address Hand's desire to proceed *pro se*.

Hand then reiterated his difficulties in obtaining proper access to the courts and sought assistance from Respondent in asserting his civil rights as a *pro se* litigant in the ongoing criminal matter pending assignment of a Public Defender.

Hand provided Menahan with the cause number for the civil complaint filed under 42 U.S.C. § 1983.

iv. *Second Violation of Rule 2.8, Montana Code of Judicial Conduct*

Menahan again directly violated sections of Rule 2.8 of the Montana Code of Judicial Conduct (Ex. 2), by stating “Again, all of the discovery has been provided to your attorney. So when you hold yourself out as a victim here, it's **complete and total nonsense**. It's not true --” (Emphasis added). Following this, Menahan asserted that his role is to decide questions of law and not questions of fact – however, in berating Hand, Menahan clearly decided a question of fact regarding Hand's challenges to have his civil rights respected as a *pro se* defendant. Menahan advised Hand that he is now represented by the Office of Public Defender and should “talk to them”. Despite contacting the OPD, Hand was informed they had no information indicating he was to receive representation from them; they denied him access to the *pro se* forms he was seeking and recommended he contact private counsel. Hand continued as a *pro se* defendant pending the assignment of a public defender to his case, which the court docket reflects occurred that day but Mr. Scott did not appear until the January 3, 2024 status hearing – one month later.

Respondent's conduct lacked dignity and respect towards Petitioner, constituted harassment, demonstrated a lack of objectivity, and failed to meet the

standards of the Code of Conduct for United States Judges.

v. *Order Granting State's Motion with Unqualified Testimony*

Prior to the hearing on March 26, 2024, initially scheduled as the final pre-trial hearing, the State filed a Motion to Allow Testimony of Child Witness Outside Presence of Defendant. Bethany Dicken, a witness presented by the State, identified herself as a Licensed Clinical Social Worker serving as a therapist at Shodair Hospital.

During her testimony, Ms. Dicken presented hearsay evidence concerning the alleged victim in this criminal case. Her statement formed the basis for the Respondent's ruling to approve the State's Motion to Permit Testimony of Child Witness Outside Presence of Defendant.

However, per the plain language found in Mont. Code Ann. § 46-16-228:

“(4) The court may consider hearsay evidence of reports or testimony by psychologists who have examined or treated the child witness.”

(Emphasis added.) Ms. Dicken, holding a Master's Degree as a Licensed Clinical Social Worker, is not a psychologist and thus does not fulfill the necessary criteria to provide hearsay testimony.

vi. *Violation of Rule 2.12, Montana Judicial Code of Conduct*

Respondent, in his decision to grant the State's motion, mentioned that during his time as a District Court Judge, he hadn't encountered such a request in

his court before. Furthermore, no alleged victim had ever testified via two-way video during his years of judicial service. In addition, Ms. Dicken affirmed that she had never testified for a motion of this nature previously.

The Respondent also failed to follow the considerations under Mont. Code Ann. § 46-16-228, which provides for two-way testimony, including:

- “3(a) the age and maturity of the child witness;
- 3(c) the extent of the trauma that the child witness has already suffered”

In the hearing transcript on page 8, line 9, Ms. Dicken described the alleged victim as "a very bright, smart, capable student and person". Ex. 7. The witness acknowledged the child's age and maturity, indicating that the child is capable of testifying in court due to being "very bright, smart, capable."

Ms. Dicken further mentioned, "I do think just the intensity of the trauma she's experienced..." She also noted the child suffers from PTSD resulting from abuse inflicted by her mother's former partner several years ago, for which he was later convicted. It's crucial to stress that the pre-existing PTSD should not be exploited to infringe upon Petitioner's Sixth Amendment right to confront witnesses in this case.

The decision by the Respondent to allow testimony via two-way video, as per the State's motion, appears biased and lacking impartiality. The Respondent openly admitted to lacking precedent within his own court and relied on hearsay from an unqualified witness. Additionally, the decision was based on a pre-existing

condition of the alleged victim to establish potential trauma the child could experience in testifying here. These decisions lack merit and underscore the Respondent's inability to proceed without bias or prejudice in this case.

Menahan's ruling in favor of the State's motion was purportedly based on his "experience" that "the state is generally reluctant," despite Menahan himself acknowledging having no experience with this type of motion. His decision-making in this matter was not rooted in experience or factual support for the motion.

Therefore, Respondent's decision to dismiss the basic requirements of the law necessary to meet the standard of Mont. Code Ann. § 46-16-228, and grant the State's motion based on the above, meets the requirement for disqualification under Rule 2.12(A)(1) of the Montana Judicial Code of Conduct (Ex. 2) for bias or prejudice, *to wit*:

“(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.”

IV. ARGUMENTS AND AUTHORITY SUPPORTING ISSUANCE OF WRIT OF MANDATE

In *Smith v. County of Missoula*, 1999 MT 330, 297 Mont. 368, 992 P.2d 834, this Court articulated the standard applicable to grant a writ of mandate

pursuant to Mont. Code Ann. § 27-26-102:

The writ is available where the party who applies for it is entitled to the performance of a clear legal duty by the party against whom the writ is sought. If there is a clear legal duty, the district court must grant a writ of mandate if there is not speedy and adequate remedy available in the ordinary course of law. For a court to grant a writ of mandate, the clear legal duty must involve a ministerial act, not a discretionary act.

Smith, ¶ 28.

The issues raised in this petition are of significant judicial importance, particularly concerning the impartiality of the judiciary. Granting the writ would serve to bolster public confidence in the fairness and integrity of the Respondent's actions within the Montana First Judicial District Court. The urgency and emergency criteria specified by Mont. R. App. P. 14(3) exists here because the Petitioner's rights are infringed due to bias and prejudice on the part of the Respondent.

With Hand's trial scheduled for April 22, 2024, and the other court proceeding under a mistake of law gravely impacting Petitioner's rights under the Montana and United States Constitutions, there is an evident need for immediate action.

Furthermore, it is imperative to note that should these circumstances persist during trial proceedings, they have potential to significantly influence legal decisions due to existing bias and prejudice on part of the Respondent.

V. LEGAL QUESTIONS AND ISSUES ANTICIPATED TO BE RAISED

i. *Legal Question(s)*

The legal issues in this case center around whether the Respondent granted the State's Motion to Allow Testimony of Child Witness Outside Presence of Defendant based on unqualified testimony, without considering the standard outlined in Mont. Code Ann. § 46-16-228, which is necessary for such a motion to be granted.

Furthermore, this Court must decide whether the alleged victim should testify in person at the trial, in the presence of the Petitioner, allowing him to confront the complaining witness, as provided by his Sixth Amendment rights under the United States Constitution.

Finally, this Court must determine whether the underlying criminal case of *State of Montana v. Jeremy Hand* qualifies for a change of venue under Mont. Code Ann. § 25-2-201(2):

“When change of venue required. The court or judge must, on motion, change the place of trial in the following cases:

(2) when there is reason to believe that an impartial trial cannot be had therein;”

ii. *Issue: Code of Conduct Violations*

At the heart of this case lies the question of whether the Honorable Mike Menahan, has violated the Montana Judicial Code of Conduct, particularly under

Canon 2: A Judge Shall Perform the Duties Of Judicial Office Impartially, Competently, and Diligently.

Respondent has behaved in a manner inconsistent with that Code of Conduct, specifically:

“(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.”

This court must determine whether Respondent, Judge Mike Menahan, can effectively continue presiding over *State of Montana v. Jeremy Hand*, Case No. ADC-2023-13, maintaining impartiality, adjudicating without bias, and upholding a demeanor characterized by dignity, courtesy, and respect for all litigants, including Petitioner, in a manner that instills public confidence in his ability to be fair and just in his dealings with the parties and rulings he makes during the judicial process.

iii. *Issue: Conflict of Interest*

Also at issue is whether or not Judge Menahan has a conflict of interest disqualifying him from proceeding in this matter, due to his long-term working relationship with Cindi Colbert, the spouse of Undersheriff Brent Colbert, a named defendant in Hand’s non-frivolous civil complaint under 42 U.S.C § 1983 currently proceeding with Honorable Kathleen L. DeSoto presiding.

Menahan's conflict does not stem from extrajudicial activities; rather, it is created due to the working relationship spanning more than a decade with Mrs. Colbert where there is a strong likelihood Respondent and Mrs. Colbert have formed a personal albeit professional relationship, contributing greatly to a bias towards Hand as a result.

VI. CONCLUSION

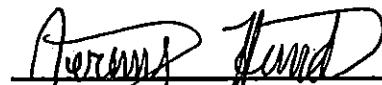
Despite the clear rules under the Montana Code Annotated as they relate to the criminal case in this matter, and the Code of Conduct of United States Judges, Menahan has allowed his prejudice and bias against the Petitioner to color his behavior and pre-trial decisions related to the criminal case against Hand.

Petitioner is beneficially interested in the performance of Respondent's duty in that continued bias and prejudice would irreparably harm Petitioner's right to receive a fair trial in defense of the charges of a capital crime against him by the State of Montana.

Petitioner has no plain, speedy, and adequate remedy in the ordinary course of the law other than the issuance by this court of a writ of mandamus.

For the foregoing reasons, Petitioner respectfully requests this Court issue a writ of mandate requiring Respondent to withdraw from *State of Montana v. Jeremy Hand* and for this matter to be reassigned to a separate yet qualified district court within the State of Montana under Mont. Code Ann. § 25-2-201(2).

Dated this 10th day of April 2024.



Name: Jeremy Hand

Address: LCCDC, 221 Breckenridge St.

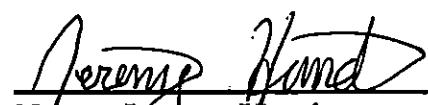
City, State, Zip Code: Helena, MT 59601

Phone: 406-437-8822

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11 and 14, I hereby certify that the foregoing petition is printed with a proportionately-spaced Times New Roman typeface of 14 points; is double-spaced except for lengthy quotations or footnotes; and the word count excluding caption, tables, certificates, and signature blocks is 3,937 as calculated by Microsoft Word.

Dated this 10th day of April 2024.



Name: Jeremy Hand

Address: LCCDC, 221 Breckenridge St.

City, State, Zip Code: Helena, MT 59601

Phone: 406-437-8822

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for a Writ of Mandamus was served upon the following by personal service of a true and correct copy thereof on this 10th day of April 2024, addressed as follows:

Honorable Mike Menahan
228 Broadway, 2nd Floor
Helena, MT 59601



Kevin C. Hand
On behalf of Jeremy Hand