

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. OP 25-0248

IN RE ESTATE OF RICHARD BRUCE NEAL SR., a/k/a RICHARD B.
NEAL, SR., RICHARD NEAL SR., RICHARD B. NEAL, and/or RICHARD
NEAL;

DONALD NEAL,

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY, STANDING
MASTER CHARLOTTE BEATTY, Presiding,

Respondent.

**Judge Kutzman's Summary Response to
Petition for Supervisory Control**

Estate of Richard Bruce Neal, Sr., Cause No. CDP-23-281
Montana Eighth Judicial District Court, Cascade County
Standing Master Beatty, Presiding

Petitioner

Adrian A. Miller
Michelle M. Sullivan
Sullivan Miller Law PLLC
2812 1st Ave. N., Suite 225
Billings, MT 59101
Adrian.miller@sullivanmiller.com
Michelle.sullivan@sullivanmiller.com

Respondent

Hon. Charlotte Beatty
District Standing Master
415 2nd Ave. N.
Great Falls, MT, 59401
charlotte.beatty@mt.gov

Referring District Judge

Hon. John A. Kutzman
District Court Judge
415 2nd Ave N.
Great Falls MT 59401
jkutzman@mt.gov

Contents

I. The January 31, 2024 Uncontested Calendar Hearing Was Not the “First Meeting” for § 3-5-124 Purposes.....	1
II. The Case Turned Out to Be Inappropriate for the Uncontested Calendar.	5
III. Judge Beatty Did Not Acquire Ongoing Jurisdiction Until the Referral on February 20, 2024.	6
IV. Mr. Neal’s Request to Have the Referring Judge Conduct the Hearing Was Not a Valid Objection to the Referral.....	7
V. Permitting Interlocutory Objections Like This One Would Undermine All of the Standing Masters Statewide.....	10
VI. Conclusion	12
Certificate of Compliance.....	13
Certificate of Service	14

Table of Authorities

Statutes

Mont. Code Ann. § 3-5-124	passim
Mont. Code Ann. § 3-5-125	7
Mont. Code Ann. § 3-5-126	1, 7

Cases

<i>Farmers Union Mutual Ins. Co. v. Bodell</i> , 2008 MT 63, 346 Mont. 414, 197 P.3d 913	12
---	----

Other Authorities

<i>2017 Amended Charter Order re: Standing Master</i>	6
H.B. 322 (2023)	8
Local Rule 6	1, 2, 5, 6

The Supreme Court’s April 14, 2025 *Order* directs “the Honorable John Kutzman and Standing Master Charlotte Beatty, or both” to respond to the writ application within 30 days. Judge Beatty is separately filing a detailed response to Mr. Neal’s substantive complaints about her orders. The following response deals with the suggestion on page 16 of the writ application that I improperly denied a timely request to terminate my referral of this case to Judge Beatty.

The Clerk randomly assigned the underlying case to me. It bears my department’s cause number. I referred it to Standing Master Beatty after she saw it on the January 31, 2024 uncontested calendar. It will return to me at the end of the referral pursuant to Mont. Code Ann. § 3-5-126 for rulings on any objections to Judge Beatty’s final order.

I. The January 31, 2024 Uncontested Calendar Hearing Was Not the “First Meeting” for § 3-5-124 Purposes.

The January 31, 2024 hearing was part of that week’s Local Rule 6 uncontested calendar. CR6 & 12. Judge Beatty dealt with this case that day only because she was standing in for Judge Best on that week’s uncontested calendar. At that point this entire case probate case had not yet been referred to her pursuant to Mont. Code Ann. § 3-5-124.

Local Rule 6 establishes the weekly district uncontested calendar. It provides:

A. Uncontested Calendar Day. The judges shall rotate responsibility to preside over the uncontested calendar on an agreed upon basis. The uncontested calendar shall be heard at 9:00 A.M. each Wednesday except as provided by District Court order to accommodate holidays or other events.

B. What Matters May Be Heard on the Uncontested Calendar. All uncontested matters, judgments by default, probate proceedings, uncontested *ex parte* matters, and other matters designated by the presiding judge shall be heard on the uncontested calendar, except as otherwise ordered by the Court.

...

Local Rule 6.

The uncontested calendar typically includes adoptions, probate matters, divorces with and without children, and name changes. In any given week it includes hearings on matters that have been assigned to and remain pending in each of the four departments of the District. Each of the four departments of the District can place a particular hearing on the uncontested calendar.

Since before I became a judge, the Local Rule 6(A) rotation agreement among the district judges has been for each judge to take a quarter of the year. In 2023 and 2024, Judge Best had the first three months. I had the second three months. Judge Parker had the third three months. And Judge Grubich had the last three months.

Having a judge other than the judge of record preside over the uncontested calendar expedites those matters and inflicts no legally cognizable injury because the hearings on that calendar are (or are supposed to be) uncontested.

The Clerk's Office initially set this case for hearing at 9:00 on Tuesday, December 5, 2023. CR4. Tuesdays are the regular established day for my department's juvenile calendar (8 to 9), the dependent neglect calendar (9 to noon), and the criminal calendar (1 to 5). Judge Grubich does his juvenile calendar on Wednesdays from 8 to 9 and his dependent neglect calendar on Wednesdays from 9 to noon. To accommodate this, when it is his turn to preside over the uncontested calendar, he holds it on *Tuesdays* at 9:00. December 5 was in Judge Grubich's rotation.

Though the order setting the Tuesday, December 5 hearing at 9:00 did not specifically say "uncontested," that was what was happening. My weekly commitment to the dependent neglect calendar at that time made me unavailable. By setting the hearing for Tuesday at 9:00, the Clerk was setting it on the uncontested calendar. When the petitioner needed a continuance to publish hearing notice, my staff re-set the hearing to Wednesday, January 31, 2024 at 9:00 (the standard uncontested day and time during Judge Best's rotation) and this time wrote the word "uncontested" onto the order. CR6.

Since before I became a judge, it has been routine for the district judge who has the rotation for that quarter to ask the Standing Master to stand in occasionally on the uncontested calendar. Because this appearance by the Standing Master is a one-time-only assignment on what is supposed to be an uncontested hearing, the practice has been simply to ask the Standing Master to step in and handle all hearings on that week's uncontested calendar. This happens without any referral order pursuant to Mont. Code Ann. § 3-5-124 because the originating judge is merely placing one particular purportedly uncontested hearing on the uncontested docket, not referring the entire case to the Standing Master for all ensuing hearings.

The referral objection statute enacted in the 2023 Legislature requires the objection to be made within 20 days of the referral order but “before the first meeting with the standing master.” Mont. Code Ann. § 3-5-124(2). The suggestion on page 16 of the writ application that Mr. Neal's objection period started running on January 31, 2024 is simply incorrect. There was no referral to commence it. None was required because Judge Beatty was simply standing in for Judge Best on what was supposed to be one uncontested hearing. I had not (yet) referred the whole case to Judge Beatty. So that was not the “first meeting” within the meaning of § 3-5-124(2).

II. The Case Turned Out to Be Inappropriate for the Uncontested Calendar.

The Local Rules provide:

Any matter set for the uncontested calendar which involves contested issues shall be postponed and set on the assigned department's contested calendar.

Local Rule 6(D).

During the January 31, 2024 uncontested calendar hearing, Judge Beatty learned this case was probably inappropriate for disposition on the uncontested calendar. Mr. Neal¹ was trying to use the uncontested calendar to invalidate someone else's testamentary disposition. The 2018 will he was trying to invalidate on the uncontested calendar had been prepared by a reputable, experienced local estate planning firm and executed in the presence of the statutorily required witnesses without anyone raising concerns about testamentary capacity or undue influence. The newer 2018 will that Mr. Neal was trying to invalidate specifically *revoked* the older 2015 will Mr. Neal was trying to probate on the uncontested calendar. It nominated a different personal representative. It left a significant portion of the estate to her. The newer personal representative/beneficiary turned out to be deceased under mysterious circumstances.

¹At that time Mr. Neal was represented by different counsel than the attorneys who have filed the present supervisory control application.

Judge Beatty considered the foregoing, determined the case was inappropriate for the uncontested calendar, and notified Mr. Neal and his counsel. Significantly, Judge Beatty did *not* tell Mr. Neal or his counsel that she was unqualified to preside over the case. She said only that it could not be disposed of on the uncontested docket. The transcript Judge Beatty is providing in connection with her separate response confirms this. I quote and deal with this transcript in more detail below.

III. Judge Beatty Did Not Acquire Ongoing Jurisdiction Until the Referral on February 20, 2024.

Consistent with Local Rule 6(D), Judge Beatty briefed me on the January 31 uncontested hearing and her reasons for deciding she could not proceed with that hearing.

The local standing Standing Master order provides for referral of the following types of matters:

- (A) family law and protective proceedings under Title 40, MCA;
- (B) child abuse and neglect proceedings under Title 41, Chapter 3, MCA, except for proceedings to terminate parental rights;
- (C) guardianship and conservatorship proceedings under Title 72, Chapter 5, MCA; and
- (D) *other types of proceedings in the discretion of the referring court.*

2017 Amended Charter Order re: Standing Master, p.3.

(emphasis added). Nothing in Mont. Code Ann. § 3-5-124, 3-5-125, or 3-5-126 provides otherwise.

I accordingly referred the entire case to Judge Beatty for disposition by order filed February 20, 2024. CR13. This referral order authorized Judge Beatty to “consider[] and dispos[e] of all outstanding issues.” *Id.*

This order, unlike Judge Best’s informal oral request to have Judge Beatty preside over the January 31 uncontested calendar, constituted an actual referral of the entire case to the Standing Master within the meaning of Mont. Code Ann. § 3-5-124(2). This was the first and only standing master referral in this case within the meaning of § 3-5-124.

IV. Mr. Neal’s Request to Have the Referring Judge Conduct the Hearing Was Not a Valid Objection to the Referral.

On March 18, 2024, Mr. Neal moved to have *me* set a contested hearing. CR14. He said Judge Beatty had ruled during the January 31 uncontested hearing “that due to the nature of the matter, it would have to be heard by a District Court Judge.” *Id.*, p.1. He recognized that I had *subsequently* referred the case to the Standing Master. *Id.* Then he said, “pursuant to the Petition and the prior determination of Standing Master Beatty, this matter is of a nature that requires consideration by a District Court Judge.” *Id.*, p.2. He accordingly asked me to set a hearing which he obviously intended for me to preside over. *Id.* Significantly, he did not cite Mont. Code Ann. § 3-5-124(2).

The 2023 Legislature modified the standing master referral statute to provide:

A party may *object* to a reference to a standing master within 20 days after the date the matter was referred to the standing master but before the first meeting with the standing master. On *objection*, the district court shall refer the matter to another standing master in the judicial district or return the matter to the active docket of the district court.

H.B. 322 (2023), now codified at Mont. Code Ann. § 3-5-124(2) (emphasis added).

As noted, Mr. Neal did not cite this statute in his March 18 motion. CR14. He did not use the words “object,” “reference,” or “referred.” Instead, he said he wanted me to set a hearing and preside over it because Judge Beatty had supposedly admitted that only a district judge could hear the case. *Id.*

I doubted Judge Beatty had said any such thing, so I obtained and reviewed the recording of the January 31 uncontested hearing. Judge Beatty has had that same recording transcribed and is submitting it in connection with her response to this writ application. It reveals that she actually said:

Judge Kutzman is my boss and I want to do everything right and make sure we’ve taken the proper steps. So, I think we’re going to need to set it up for a hearing. ... I’ve got to make sure I take the right steps for Judge Kutzman because it’s his case. I mean, I don’t think he really knew - ... I’ll talk to Judge Kutzman, and what we’ll do is get an order out, and I’m sure he’s going to set it for a hearing either in front of himself, *or he’ll make me keep it*. But we want to just make sure we cover all our bases.

1/31/2024 Uncontested Hearing Transcript (emphasis added).

Mr. Neal's February 20 filing did not invoke the new objection procedure. He simply declared, incorrectly, that Judge Beatty had supposedly admitted she was unqualified to preside over the case. CR14. He additionally insinuated that this supposed admission she never made somehow bound *me* in my role as the referring judge, stripped *me* of my discretion to refer this case to the Standing Master, and suggested I had unthinkingly referred the case to someone who was legally disqualified from presiding over it. *See id.* A proper § 3-5-124(2) objection would have recognized that the referral was valid but subject to the new statutory veto. Because Mr. Neal did not invoke the new statutory procedure and instead relied on a supposed admission Judge Beatty did not actually make, I notified all involved that the referral remained in effect. CR15.

The foregoing was my complete basis *in 2024* for not treating Mr. Neal's March 18 filing as a § 3-5-124(2) objection. But while preparing this response I have now realized that Mr. Neal's March 18 filing, if intended to be an objection, was *also untimely*. I referred the case to Judge Beatty on February 20. CR13. Twenty days after February 20 was March 11 (2024 was a leap year). Mr. Neal did not ask me to set a hearing and preside over it myself until March 18. CR14. This was seven days too late under the plain language of § 3-5-124(2).

I missed the untimeliness of Mr. Neal's filing last year, probably because I was focused on refuting what I saw as unfair denigration of Judge Beatty's competence. While the timeliness of that filing was not part of my reason for rejecting it last year, it remains relevant to the *current* suggestion in Mr. Neal's writ application that I illegally overruled his attempt to get Judge Beatty off the case. It turns out that his representations about what she supposedly said at the January 31 hearing were *moot* because the document was *untimely in any event*.

V. Permitting Interlocutory Objections Like This One Would Undermine All of the Standing Masters Statewide.

Judicial branch workload studies have repeatedly shown that the Eighth Judicial District needs *multiple* additional judges. Unfortunately, there is no local political consensus in favor of spending the necessary money on the infrastructure enhancements that would be required to accommodate even one additional judge and courtroom. That in turn makes the local standing master absolutely critical not only to the litigants before her, but also to parties, attorneys, and judges in *non-standing* master cases who are depending on the viability of referrals to Judge Beatty to ease the district judges' workloads.

The Supreme Court's reluctance to interfere with interlocutory trial court rulings is well established. *See, e.g., Farmers Union Mutual Ins. Co. v. Bodell*, 2008 MT 63, ¶ 26, 346 Mont. 414, 197 P.3d 913. All of the policy reasons that support that reluctance similarly support not interfering with interlocutory Standing Master rulings. The shared assumption in this district before the 2023 legislation had always been that any objections prior to the Standing Master's final order disposing of the whole case would be premature and denied on that basis. Though the 2023 legislation did make available for the first time the referral objection procedure analyzed above, nothing else in those enactments authorized interlocutory objections to interlocutory Standing Master rulings.

As the Supreme Court knows, every decision a trial court makes irritates at least one of the parties and incentivizes that party to seek immediate appellate relief. Similarly, every interlocutory decision a standing master makes irritates at least one of the parties and incentivizes that party to seek immediate relief from a district judge who the disgruntled party hopes will be more sympathetic.

The problem with this is that the referring district court judge is already busy with other litigants and other problems. Time, space, and personnel are all finite. The only way to accommodate interlocutory objections would be at the expense of other litigants who have their own court-access rights and who have been waiting weeks or even months to get into court to exercise those rights. A procedure that requires the referring judge to deal with unending interlocutory objections to every order the Standing Master issues would thus threaten the rights of other litigants whose cases have *not* been referred to the Standing Master, thereby undermining the viability of standing masters not only in this district but also in the other districts that have them.

VI. Conclusion

Obviously the Supreme Court can choose to intervene in this case just as it can, on a case-by-case basis, exercise supervisory control over interlocutory district judge rulings. I therefore respectfully ask only that this Court carefully limit its eventual decision so as not to create any global entitlement to interlocutory objections to other standing master rulings in other cases and other districts.



Digitally signed by Judge John Kutzman
DN: cn=Judge John Kutzman, o=Montana Judicial Branch,
ou=Eighth Judicial District, email=jkutzman@mt.gov, c=US
Date: 2025.05.12 14:34:04 -06'00'

Hon. John A. Kutzman
District Court Judge

Certificate of Compliance

Pursuant to M.R.App.P. 11(4)(e), I certify that this *Response* is printed in Georgia 14-point font; that Georgia is a proportionately spaced font; that the line spacing is exactly 28 points, except for the cover, tables, and quoted and indented material; and the word count (exclusive of the cover, table of contents, table of authorities, certificate of compliance, and certificate of service) as calculated by Microsoft Word is **3124 words**.



Digitally signed by Judge John Kutzman
DN: cn=Judge John Kutzman, o=Montana Judicial Branch,
ou=Eighth Judicial District, email=jkutzman@mt.gov, c=US
Date: 2025.05.12 14:34:27 -06'00'

Hon. John A. Kutzman
District Court Judge

Certificate of Service

I hereby certify that on May 12, 2025, I served true and accurate copies of the foregoing **Judge Kutzman's Summary Response to Petition for Writ of Supervisory Control** by copying the following on my transmission email to the Clerk of the Supreme Court:

Adrian A. Miller
Michelle M. Sullivan
Sullivan Miller Law PLLC
2812 1st Ave. N., Suite 225
Billings, MT 59101
Adrian.miller@sullivanmiller.com
Michelle.sullivan@sullivanmiller.com

Hon. Charlotte Beatty
District Standing Master
415 2nd Ave. N.
Great Falls, MT, 59401
charlotte.beatty@mt.gov



Digitally signed by Judge John Kutzman
DN: cn=Judge John Kutzman, o=Montana Judicial Branch,
ou=Eighth Judicial District, email=jkutzman@mt.gov, c=US
Date: 2025.05.12 14:34:48 -06'00'

Hon. John A. Kutzman
District Court Judge