

FILED

12/12/2025

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: pr 25-0001

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

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No. PR 25-0001

FILED

DEC 12 2025

CANDICE JOHNSTON,

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

*Plaintiff,*

v.

STATE OF MONTANA,

*Defendant.*

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On referral from Montana Twenty-First Judicial District  
Court, Ravalli County Cause No. DV-41-2021-352-CR,  
the Honorable Howard F. Recht, Presiding

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**MOTION TO CORRECT  
CLERICAL ERROR and TO  
VACATE DECEMBER 9, 2025  
ACCORDING TO MRCP 60(a) and  
60(b)(6)**

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Appearance:

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## INTRODUCTION

Petitioner Candice Johnston respectfully moves this Court to correct a clerical error in the record and to vacate the December 9, 2025 Order for denial of due process.

First, under Rule 60(a) and this Court's inherent authority, Petitioner seeks correction of a clerical error: The November 12, 2025 Order states that Petitioner argued Rule 2.12 of the Montana Code of Judicial Conduct. This is factually incorrect. Petitioner argued Rule 2.11(A). The record should be corrected.

Second, under Rule 60(b)(6), Petitioner seeks to vacate the December 9, 2025 Order because it was entered while the Clerk's Office actively prevented Petitioner's responsive pleading from reaching the Court—a violation of procedural due process.

## ARGUMENT

### **I. The Record Contains a Clerical Error Requiring Correction.**

The Court's November 12, 2025 Order states: "Johnston asserts that this Court... should have applied M. C. Jud. Cond. 2.12 instead." This is factually incorrect. Petitioner's Motion for Reconsideration, filed October 29, 2025, explicitly stated: "*The controlling Rule,*

*2.11(A) is found in the Code of Judicial Conduct... Rule 2.11(A)... is unambiguous: a judge 'shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.'"* Petitioner never cited, quoted, or relied upon Rule 2.12.

Contrary to the record, Counsel for the State asserted in his December 4, 2025 Response: "*Plaintiff cited Mont. R. Jud. Cond. 2.11 as the basis for her prior petition for rehearing, but actually quoted Mont. R. Jud. Cond. 2.12 when offering her arguments about the rule; Rule 2.11 is inapplicable on its face, so failure to expressly address an inapplicable rule could not be decisive.*"

**This is demonstrably false.** The language Petitioner quoted—"a judge 'shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned'"—is the **verbatim text of Rule 2.11(A)**, not Rule 2.12. Rule 2.12 does not contain this language. Rule 2.12 addresses circumstances where a judge "served as a lawyer in the matter in controversy." Petitioner never quoted or cited Rule 2.12.

Mr. Black's assertion that Petitioner "actually quoted" Rule 2.12 is a misrepresentation of the record that this Court apparently relied upon in denying Petitioner's Motion for Clarification.

Montana courts have inherent authority to correct such errors. *"Every court has the inherent right to correct clerical errors."* *State v. Lane*, 1998 MT 76. This authority is codified in M.R.Civ.P. 60(a). Clerical errors are *"those errors which misrepresent the court's original intention."* *State v. Zielie*, 2025 MT 90. A court *"may correct a clerical mistake at any time."* *In re N.K.O.*, 277 Mont. 122.

## **II. The December 9 Order Should Be Vacated for Denial of Due Process.**

On December 9, 2025—the same day this Court issued its Order—the Clerk's Office prevented Petitioner's responsive pleading from reaching the Court:

**10:51 AM:** Deputy Clerk Diane Anderson emailed Petitioner stating she was returning Petitioner's responsive pleading via USPS.

**10:56 AM:** Petitioner replied: "Please keep it and file it. It's a resistance to his objection."

**11:03 AM:** Deputy Clerk Anderson responded: "Sorry, unable to file it as is. **Your motion and the response are up at the Court for ruling.**"

**11:05 AM:** Petitioner responded: "You have no right to circumvent my resistance to the objection. Please have the clerk and a justice review the resistance now."

**11:08 AM:** Petitioner stated: "You are also violating my due process under the color of law."

**11:13 AM:** Petitioner requested: "Please review this with the clerk of court and at least one justice."

**1:00 PM:** Clerk Bowen Greenwood formally rejected the filing, stating: "*The rules do not contemplate consulting with Justices about whether a document should be filed.*"

**1:21 PM:** Petitioner requested the document be retitled as a "Motion for Sanctions."

**3:30 PM:** Petitioner emailed the signed Motion for Sanctions directly to the Clerk's Office.

**Same Day:** This Court issued its Order denying the Motion for Clarification.

The Clerk *knew* a ruling was imminent—she admitted the matter was "up at the Court for ruling." Yet when Petitioner demanded her response be presented to "at least one justice," the Clerk refused, stating clerks do not "consult with Justices." The Clerk unilaterally decided what the Justices would see.

The Fourteenth Amendment requires a *meaningful opportunity to be heard*. *Mathews v. Eldridge*, 424 U.S. 319 (1976). The State's Response contained material misrepresentations—including the demonstrably false claim that Petitioner "actually quoted" Rule 2.12. Petitioner had the right to correct those misrepresentations before the Court ruled. The Clerk's Office denied her that right.

Under Rule 60(b)(6), a court may relieve a party from an order for "any other reason that justifies relief." An order entered while court staff actively prevents a party's response from reaching the Court—and based on an unchallenged misrepresentation by opposing counsel—should be vacated.

### CONCLUSION

Petitioner respectfully requests this Court: (1) correct the clerical error in the record to reflect that Petitioner cited and quoted Rule 2.11(A), not Rule 2.12; (2) vacate the December 9, 2025 Order; (3) accept and consider Petitioner's Motion for Sanctions; and (4) rule on Petitioner's actual arguments under Rule 2.11(A) and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) and *Williams v. Pennsylvania*, 579 U.S. 1 (2016).

Dated: December 10, 2025.

Respectfully submitted,

Candice Johnston

Candice Johnston

Pro Se Petitioner

### **CERTIFICATE OF COMPLIANCE**

This is to certify that the foregoing Motion to Correct Clerical Error Pursuant to Rule 60(a) and to Vacate December 9, 2025 Order for Denial of Due Process is in proportionately spaced Times New Roman 14-pt font in compliance with Mont. R. App. P. 11(2) and contains approximately 1099 words, excluding the case caption and signature block, in compliance with the word count requirement of Mont. R. App. P. 16(3).

Candice Johnston

Candice Johnston

### **CERTIFICATE OF SERVICE**

I, Candice Johnston, hereby certify that I have served true and accurate copies of the foregoing to the following on December 10, 2025, as specified below:

Michael G. Black  
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**Candice Johnston**

**Dated: December 10, 2025**