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Attorney for Respondent

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

<p>IN RE THE MARRIAGE OF:</p> <p>MARCIE TRUCKEY,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">and,</p> <p>BRIAN TRUCKEY,</p> <p style="text-align: right;">Respondent.</p>	<p>Cause No.: DR-15-2025-343 Dept.: B</p> <p>MOTION FOR DISQUALIFICATION FOR CAUSE</p>
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COMES NOW Respondent, Brian Truckey, through his attorney of record, Nicholas Shapiro of S. DeBoer, Attorney at Law, PLLC, and hereby files the following *Motion for Disqualification for Cause*, moving this Court for disqualification of the presiding Judge for good cause pursuant to MCA § 3-1-805, and in support thereof states as follows.

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1 **I. LEGAL STANDARD**

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3 Under MCA § 3-1-805 Disqualification for cause. Whenever a party to any
4 proceeding in any court shall file an affidavit alleging facts showing personal bias or
5 prejudice of the presiding judge, such judge shall proceed no further in the cause. If the
6 affidavit is filed against a district judge, the matter shall be referred to the Montana
7 Supreme Court. If the affidavit is in compliance with subsections (a), (b), and (c) below,
8 the Chief Justice shall assign a district judge to hear the matter. If the affidavit is filed
9 against a judge of a municipal court, justice court, or city court, any district judge
10 presiding in the district of the court involved may appoint either a justice of the peace, a
11 municipal judge or a city court judge, to hear any such proceeding.
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14 (a) The affidavit for disqualification must be filed more than thirty (30) days
15 before the date set for hearing or trial.
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17 (b) The affidavit shall be accompanied by a certificate of counsel of record that
18 the affidavit has been made in good faith. An affidavit will be deemed not to have been
19 made in good faith if it is based solely on rulings in the case which can be addressed in
20 an appeal from the final judgment.
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22 (c) Any affidavit which is not in proper form and which does not allege facts
23 showing personal bias or prejudice may be set aside as void.
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1 (d) The judge appointed to preside at a disqualification proceeding may assess
2 attorneys fees, costs and damages against any party or his attorney who files such
3 disqualification without reasonable cause and thereby hinders, delays or takes
4 unconscionable advantage of any other party, or the court.
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6 **II. ARGUMENT**
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8 Here, Respondent Brian Truckey is presently in the midst of a separate cause of
9 action, a property dispute. In that matter, the spouse of Honorable Judge Paul Sullivan
10 represents the opposing party. Based upon these facts, Respondent reasonably believes
11 that a conflict of interest exists, which at a minimum creates the appearance of personal
12 bias against the Respondent. Given the close familial relationship between the presiding
13 Judge and the counsel for an adverse party in Respondent's separate litigation,
14 Respondent cannot be assured that his case will be heard impartially. This includes the
15 related cause of action also in front of Judge Sullivan DR-15-2925-0000733-OR.
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18 Under Montana law, courts are not only required to act impartially, but they are
19 also to avoid circumstances that give rise to a reasonable question as to a judge's
20 neutrality. The facts and circumstances described herein meet that standard and warrant
21 a disqualification for cause.
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23 Respondent acknowledges that MCA § 3-1-805(a) requires that this motion and
24 affidavit be filed thirty (30) days before the date set for hearing or trial. Although this
25 motion is being filed approximately a week prior to the next scheduled hearing, the

1 information that gives rise to the basis for disqualification only became apparent to
2 Respondent recently. Accordingly, Respondent has filed this motion as soon as
3 reasonably practicable after discovering the facts supporting disqualification. Moreover,
4 pursuant to the Court's scheduling order issued on August 29, 2025, the final non-jury
5 trial on this matter is not scheduled until April 20, 2026, well beyond the thirty (30) day
6 requirement under MCA § 3-1-805(a).
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8 WHEREFORE, Respondent respectfully requests that the presiding Judge be
9 disqualified for cause pursuant to MCA § 3-1-805 in both cases currently before him:
10 DR-15-2025-0000343-DU and DR-15-2925-0000733-OR, and asks the Chief Justice of
11 this district to assign another qualified judge to preside over this matter as is required by
12 Montana law.
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14 Undersigned counsel has contacted Petitioner's counsel regarding this motion, and
15 determined that they do object to this motion.
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17 **RESPECTFULLY SUBMITTED** this 2nd day of January, 2026.
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19 /s/ Nicholas Shapiro
20 Nicholas D. Shapiro
21 Attorney for Respondent
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CERTIFICATE OF SERVICE

I, Nicholas Donnelly Shapiro, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to Disqualify to the following on 01-02-2026:

Kiersten Miguelle Molcak (Attorney)
6336 Highway 93 South
Whitefish MT 59937
Representing: Marci Lynn Truckey
Service Method: eService

Electronically Signed By: Nicholas Donnelly Shapiro
Dated: 01-02-2026