

IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 26-0001

IN RE THE PARENTING OF:

B.C. and B.C.,

JOHN WESLEY COLTON,

Petitioner,

O R D E R

and

SABRINA COLTON,

Respondent.

Petitioner John Wesley Colton, via counsel, has moved to disqualify the Honorable Andrew Breuner from presiding in Cause No. DR-2022-80 in the Eighteenth Judicial District Court, Flathead County, pursuant to § 3-1-805, MCA.

Section 3-1-805, MCA, provides that an affidavit for disqualification for cause must be filed more than 30 days before the date set for hearing or trial. Colton admits he has filed this motion approximately one week prior to the next hearing but asserts he only recently learned Judge Breuner has a conflict in this case. Colton explains he recently learned, based upon comments Judge Breuner made from the bench in a related case, that the opposing party provided nursing services to a member of Judge Breuner's family for a significant length of time.

Section 3-1-805, MCA, does not provide any exceptions to the bar on disqualification requests filed less than 30 days from the date set for hearing and Colton's motion must be denied on that basis. However, in examining Colton's filing, the undersigned found no indication counsel has made Judge Breuner aware of the alleged conflict. As a point of practice, counsel may be better served by respectfully bringing the

issue to Judge Breuner's attention instead of filing a motion that is void and will be inevitably unsuccessful.

IT IS THEREFORE ORDERED the motion to disqualify District Judge Andrew Breuner from Gallatin County Cause No. DR-2022-80 is VOID and thereby DENIED.

The Clerk is directed to provide copies of this Order to the Clerk of the District Court of Gallatin County for notification to all parties in Cause No. DR-2022-80, and to the Honorable Andrew Breuner.