

John W. Larson, District Judge Dept. 3
200 West Broadway
Missoula, MT 59802
(406) 258-4773

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN RE THE MATTER OF	Dept. 3 - Cause No.
a Youth Under the Age of 18.	RESPONSE REGARDING MOTION TO DISQUALIFY

John W. Larson, District Judge, Montana Fourth Judicial District,
makes this response to the Motion to Disqualify Judge Larson filed in this
matter on October 30, 2024 (the "Motion").

1. I recused myself from the above-captioned case on October 31,
2024, shortly after reading the Motion which alleges that Chief Juvenile
Probation Officer Christine Kowalski ("Kowalski") is the "direct victim" in this
action, and immediately before a court proceeding involving this case.
Recusal is my usual practice when a court officer or employee is alleged to
be personally involved in a matter before my court.

2. The Motion filed by Deputy County Attorney Justin Ekwall
("Ekwall") details observations, statements, allegations and conclusions
about Kowalski and me in numerous court cases and proceedings; contains
Ekwall's affidavit setting forth his personal observations about many matters;

1 and attaches copies of two of Kowalski's emails to other District Judges,
2 staff, and me complaining about various matters.

3 3. I recused myself from the captioned matter so there is no need
4 to explore any possible bases for "disqualification" pursuant to MCA
5 Sections 3-1-805 and 41-5-1405.

6
7 4. Because of the press of time between my review of the Motion
8 and the scheduled court proceeding involving this case, I recused myself but
9 was not able to file a response to the Motion until this date.

10
11 5. In my opinion, this proceeding is not the appropriate place for
12 Ekwall to set forth his allegations, observations, contentions, and
13 conclusions about matters not directly involved in this case. The attached
14 copies of two of Kowalski's emails to the five District Court judges and other
15 personnel evidence show the broad nature of the Motion and Affidavit's
16 allegations and, in part, lack of compliance with applicable Treatment Court
17 procedures. I gather from the Affidavit that Kowalski has sent additional
18 emails to the District Judges and others without copying me.

19
20
21 6. It is likewise not appropriate for me to respond to the unknown
22 contents of mysterious emails or to each of the Motion's and Affidavit's
23 allegations, observations, contentions and conclusions in this proceeding, so
24 I do not do so. The fact that I choose not to reply shall not be used as
25
26

1 evidence of my assent, agreement, disagreement or dispute with any of the
2 allegations, observations, contentions, conclusions or other matters
3 contained in the Motion and Affidavit.

4 7. To the extent the Motion and Affidavit contain statements about
5 or relating to the Treatment Court, I make the following observations:
6

7 a. I began the Drug Court, now called Youth Treatment Court
8 ("Treatment Court") for Missoula County in 1994. Our court was one of the
9 first three treatment courts in the nation. We have assembled a team to
10 review cases. The participants in the team vary from year to year.
11 Representatives of the County Attorney's Office, Public Defender's Office,
12 and Probation Offices have been members of the team periodically until
13 early October 2024 when each of those three offices notified me that it
14 would not participate in the Treatment Court. The trio's almost simultaneous
15 notices of their withdrawal from the Treatment Court were apparently
16 coordinated among themselves, and I infer that the trio thought (or hoped)
17 the Treatment Court would be terminated if they did not participate. National
18 and Missoula guidelines, however, do not require participation of
19 representatives from any of these offices in any of the Treatment Court
20 matters.
21
22
23
24
25
26

1 Since 1994 this and other Drug Treatment Courts have dealt with
2 resistance and opposition from County Attorneys, Public Defenders,
3 Probation and Social Service Agencies. This lack of participation or
4 cooperation from those entities does not distance the destiny of these
5 programs.

6
7 b. The Treatment Court operates under National Guidelines, which
8 have been tailored to Missoula County by adoption of its Guidelines dated
9 2016, with updates. The Motion and Affidavit do not provide factual support
10 for the allegation that "Kowalski, along with multiple members of the local
11 bar, began to push back against Youth Drug [sic] Treatment Court Practices
12 that did not conform to nationally accepted evidence-based standards."
13 Ekwall Affidavit, paragraph 6. As far as I know, the court has always
14 complied with the guidelines. One major suggestion we followed was to add
15 a licensed addiction counselor to our team. We will address any other
16 factually supported allegation of non-compliance.

17
18 c. Kowalski notified me that despite her withdrawal from the
19 Treatment Court, her office would supervise all youth participants in the
20 Treatment Court. This is not consistent with best practices. We have a
21 Case Manager as part of the Treatment Court, and best practices provide
22 that the Case Manager is the best person to coordinate admission and other
23
24
25
26

1 matters in the Treatment Court independent of the Probation Office. In any
2 event, because Probation, the Public Defender's Office, and the County
3 Attorney's Office have withdrawn their offices from the Treatment Court and
4 its Team, those offices are no longer participating in the Treatment Court
5 and, of course, have no input into the Team or its routine activities, including
6 selection and termination of participants in the Treatment Court. We
7 continue to operate with a full team, complete with a volunteer attorney as
8 part of the Team, all in compliance with the applicable guidelines. Any
9 implication that the Team does not operate, such as references in the Motion
10 or Affidavit to "former team" proceedings are not accurate. References by
11 the withdrawn offices to Court proceedings which the staff did not attend can
12 only be taken as "second hand." The record and, if necessary, recollection
13 of those who attended and participated in the matter, control.
14
15
16

17 d. In order to continue to comply with the applicable guidelines for
18 the Treatment Court, I will continue to address attempts by any offices and
19 staff to influence, interfere with, or erode the Treatment Court's operation,
20 including admission to or discharge of participants from the Treatment Court,
21 such as the following actions which occurred recently: (1) having an
22 uninformed youth execute forms not approved by the Treatment Court
23 purporting to waive the youth's participation in Treatment Court, without
24
25
26

1 regard to the youth's separate (and controlling) agreement with the
2 Treatment Court; and (2) leading a youth to believe the youth does not need
3 to attend Court despite court orders and practices.

4 e. The most recent training for the Treatment Court reminded us
5 that specific factors are to be identified and evaluated for each participant,
6 and the youth who meets specific requirements is to be admitted to and
7 remain in the Treatment Court whether "we like him or not." These
8 requirements inform the team's and my constant pursuit of documented,
9 current, and relevant information about the youth.
10
11

12 f. Kowalski and others have indicated that once a youth attains the
13 age of 18, their offices need not have further input and need not tend to any
14 matters involving the youth. This assertion ignores: (1) the consensus of
15 federal and state court opinions recognizing late brain development in
16 individuals who are prospects for treatment court; (2) express Montana
17 statutes permitting the court in certain cases to retain jurisdiction over a
18 youth who is 18 or older; (3) independent agreements that a youth has
19 entered into with the Treatment Court; (4) the benefits a youth might gain
20 from post age 18 proceedings in Treatment Court; (5) the possibility the
21 youth's maturing and developing brain will permit the youth to prosper
22 through Treatment Court; and (6) the possibility of better outcomes for the
23
24
25
26

1 youth (and community) if only the youth's legitimate needs are identified and
2 addressed.

3 This Court recognizes that the Probation, the Public Defender's Office,
4 and the County Attorneys' offices may determine the clock excuses them
5 from dealing with post-18-year-old youth regardless of their circumstances.
6 However, I am not required to adopt this obsolete approach which is not
7 factually based and is detrimental to participants, the public and others
8 served by the court. The determinations of the Probation, Defenders and
9 County Attorneys' offices that a youth who turns 18 is automatically no
10 longer worthy of or qualified for their efforts does not affect or control our
11 Treatment Court with its decades of experience in dealing with youth both
12 before and after they reach age 18, all efforts in compliance with operational
13 guidelines that encourage decisions about participants to be fact driven, not
14 determined by the clock without reference to applicable circumstances.
15

16
17 g. Unlike the Probation Office, the Treatment Court proceedings are
18 guided by a multi-disciplinary team; are transparent with due process and
19 contract rights of the participants observed; and are subject to guidelines
20 created by experts and known to all.
21

22
23 h. It is only through the Treatment Court that youth may have ALL
24 records of misdemeanor or felony activity completely **expunged**. This is not
25
26

an outcome that the Probation Office, Defender's Office, or County Attorney's Office can legally accomplish—at best, these offices can make express or implied promises to **seal** records. Sealing is not equivalent to **expungement** of records. Sealed documents can be unsealed by action of the court or, in some instances, other authorities. The clock doesn't run in the accused's favor on sealed documents—questions about them may arise at any time in the future. In contrast, expunged documents are removed entirely from the court records and cannot be reconstructed by the court or other authorities. Expungement is provided for in Treatment Court because we know that even misdemeanor convictions and charges follow people all of their lives and seriously affect their housing, rental deposits, employment, licensure, ability to obtain credit, purchase consumer goods, etc. There is no "meaningless" or inconsequential case for the affected youth.

i. Expungement of records is therefore the optimal outcome for a Treatment Court participant—an outcome the Probation Office and others should explain is not available outside of Treatment Court. Each person who is or might be eligible for Treatment Court, and his/her parents or advisors, should be encouraged to understand that this outcome is available only through the Treatment Court (not the Probation Office or elsewhere) under applicable circumstances, and should waive eligibility for Treatment Court by executing the Treatment Court's approved form only after knowing the entire package of outcomes that are available in Treatment Court. Merely submitting an unapproved form to a possible participant without

1 supplying the participant comprehensive information about possible
2 expungement of records through Treatment Court cannot meet the
3 requirement for an informed ~~waiver~~ of rights of the participant.

4 DATED this 6th day of November, 2024.

5 
6 JOHN W. LARSON, District Judge

7 Cc: County Attorney Justin Ekwall- jekwall@missoulacounty.us

8 Public Defender Justin Redeen- justn.redeen2@mt.gov

9 Youth Court Christine Kowalski - ckowalski@mt.gov

10 Youth Court – missoulayouthcourt@mt.gov
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26