

## **Attachment A**

Justice Beth Baker has violated the Montana Code of Judicial Conduct by failing to recuse herself and participating in the case of B. McLaughlin V. MT Legislature, case number OP 21-0173.

Certain members of the Commission have clear and obvious conflicts that arise from this complaint, and I would respectfully request they recuse themselves considering this complaint. Judges Menahan and Spaulding were involved in the underlying judicial branch activities and email communications that caused the legislature to issue the subpoenas involved in this case. Ms. Gerdrum was appointed to the Commission by the Supreme Court.

### **Facts**

1. Beth McLaughlin is the Court Administrator for the Montana Judicial branch.
2. In accordance with MCA 3-1-701, Ms. McLaughlin is appointed by and holds her position at the pleasure of the court.
3. In accordance with MCA 3-1-702, Ms. McLaughlin is statutorily obligated to perform her duties under the direction of the Supreme Court.
4. In April 2021, Beth McLaughlin filed an original action in the Montana Supreme Court to block legislative subpoenas of Judicial branch records. The subpoenas included email communications produced by members of the Supreme Court.
5. In July 2021, the Montana Supreme Court ruled in favor of Ms. McLaughlin and quashed the legislative subpoenas.

### **Violations of Montana Code of Judicial Conduct**

- Rule 1.1 – By refusing to recuse herself from the case in question, and therein committing violations of the Code of Judicial conduct, Justice Baker has violated Rule 1.1 which states, “A judge shall comply with the law, including the Code of Judicial Conduct.”
- Rule 1.2 – By refusing to recuse herself from the case in question, Justice Baker has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that, at the absolute minimum, an appearance of impropriety existed in this case. Ms. McLaughlin is an employee of the Supreme Court, who is statutorily obligated to act under the direction of the Court, who brought this case to hide unflattering emails by members of the Court and other Judicial branch employees.
- Rule 1.2 – By refusing to recuse herself from the case in question, Justice Baker has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes

public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that at the absolute minimum, an appearance of impropriety existed in this case, because the very documents being subpoenaed include communications produced by Justice Baker.

- Rule 1.3 – By refusing to recuse herself from the case in question, Justice Baker has violated Rule 1.3 which states, “a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 1 notes that, “It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.” Yet, this is exactly what Justice Baker has done. She has used her position on the Court to hide potentially embarrassing and unflattering communications from the view of the Legislature and the public.
- Rule 2.2. – By refusing to recuse herself from the case in question, Justice Baker has violated Rule 2.2 which states “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Any reasonable observer would hold that it is simply impossible to hold Justice Baker’s actions as fair or impartial when considering the case in question was brought by her own employee with the explicit purpose of keeping potential unflattering and embarrassing email communications from being made public.
- Rule 2.12.A.4 – By refusing to recuse herself from the case in question, Justice Baker has violated Rule 2.12 which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Any reasonable observer would hold that a clear conflict exists in a case brought by a Judge’s employee. Additionally, any reasonable observer would conclude that a clear conflict exists in a case that specifically involves the Judge. Despite these exact circumstances existing, Justice Baker refused to recuse herself.

## **Discussion**

This case is a coverup, plain and simple. Members of the Supreme Court and judicial branch employees were engaged in a pattern of inappropriate conduct. When that conduct was about to be publicized, the Court swung into swift action. Ms. McLaughlin filed suit to block the information from becoming public and exposing their misconduct, the Court took the extremely unusually action to come in on a Sunday afternoon to issue its first order in this matter and then Court ignored its ethical responsibilities and ruled in its own favor to ensure no one would know what they had been up to.

The actions of Justice Baker and other members of the Supreme Court in this case have done significant damage to public confidence in our judicial system. Throughout this case,

Justice Baker had the opportunity to do the right thing and uphold her ethical obligations, but she refused. It should be recognized that Justice Rice saw the clear ethical obligations in this case and recused himself from the matter and sought an independent review by the District Court.

If Justice Baker refuses to recuse herself from a case with such an obvious conflict of interest that involves her own employee attempting to hide the Justice's own communications from public view, how can the public have any faith in the impartiality and fairness of any proceeding?

In their orders and public comments, the members of the Court have sought to make this case about establishing the boundaries of legislative subpoena power and have self-determined the obvious conflict of interest does not matter. Because the question at hand is a matter of law only, and they alone can decide. Their argument is beyond absurd, as demonstrated by the fact that Justice Rice chose the appropriate path to resolve this dispute.

This Commission has the authority and duty to find that Justice Baker has violated her ethical obligations in this case. Given, the egregious nature of these violations, the Commission should sanction Justice Baker to the fullest extent possible.



# JUDICIAL STANDARDS COMMISSION STATE OF MONTANA

301 S. PARK, SUITE 328  
P.O. BOX 203005  
HELENA, MONTANA 59620-3005  
TELEPHONE (406) 841-2976  
FAX (406) 841-2955

## PERSONAL AND CONFIDENTIAL

October 3, 2022

Jake Eaton  
P.O. Box 81724  
Billings, MT 59108

RE: File No. 22-031

Dear Mr. Eaton:

The Judicial Standards Commission has reviewed and considered your complaint against Supreme Court Justice, Beth Baker.

Matters relating to the ethical conduct of judicial officers are governed by the Code of Judicial Conduct adopted by the Montana Supreme Court. The Commission members consist of two district court judges, a lawyer, and two lay persons. The Commission has the responsibility to determine if the judicial conduct in a given case is contrary to the requirements of the Code of Judicial Conduct. The Commission does not have jurisdiction over matters that are appealable to a higher court or other conduct or disputes that do not involve violations of the Code of Judicial Conduct.

On September 19, 2022, your complaint was fully reviewed, discussed, and evaluated by the members of the Commission present at the meeting. The majority of the Commission determined that there is no ethical violation or judicial misconduct in violation of the Code of Judicial Conduct that warrants further action by the Commission.

A motion was made and adopted by a majority vote to dismiss the complaint. Accordingly, you are notified that the complaint has been dismissed.

As the dismissal of this complaint concludes formal action by the Commission, the provisions requiring confidentiality are no longer in effect.

Very truly yours,

JUDICIAL STANDARDS COMMISSION

A handwritten signature in blue ink, appearing to read "Michael Menahan".

Hon. Michael Menahan, Chair

MM/ss



# Judicial Standards Commission

## State of Montana

### COMPLAINT

The undersigned being first duly sworn, upon oath, states the following facts showing misconduct on the part of the following named judge, to-wit:

NAME OF JUDGE: Justice Ingrid Gustafson

ADDRESS: 215 N Sanders

Helena, MT 59601

Based on the attached Code of Judicial Conduct, please cite which Canon(s) you feel the judge has violated and why. If you cannot clearly identify which canon the judge has violated, then your complaint is not within the purview of this Commission to review.

The facts of the above Judge's misconduct or unethical conduct are as follows: (Please state in your own words the misconduct or unethical conduct of the judge. Provide information as to when and where the misconduct occurred, and the names of any other people involved.)

See Attached

(If more space is needed, you may attach additional sheets to this complaint and mark them a, b, c, etc.)

The names and addresses of other persons who are witnesses to or have information as to the misconduct of the above judge are:

See Attached

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

PHONE NO: \_\_\_\_\_

PHONE NO: \_\_\_\_\_

(Names of additional witnesses may be listed on a separate sheet and attached.)

I (have \_\_\_\_\_ / have not \_\_\_\_\_) contacted the judge in regard to my complaint.

I will furnish additional information to your Commission if requested. If the complaint is investigated, I will cooperate with your Commission and furnish the evidence I may have and I will testify at any hearing on this complaint.

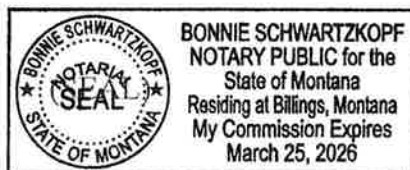
My full name, address and telephone number is:

NAME: Jake Eaton  
ADDRESS: PO Box 81724  
Billings, MT 59108  
PHONE #: 406-233-9121

DATED this 14 day of Oct, 2022

  
SIGNATURE

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of Oct, 2022



Bonnie Schwartzkopf  
Notary Public for the State of Montana  
Residing at Billings  
My Commission expires March 25, 2026

**RETURN TO:**

SHELLY SMITH, EXECUTIVE SECRETARY  
JUDICIAL STANDARDS COMMISSION  
PO BOX 203005  
301 S. PARK, SUITE 328  
HELENA, MT 59620-3005

08/25/2015

## **Attachment A**

Justice Ingrid Gustafson has violated the Montana Code of Judicial Conduct by failing to recuse herself and participating in the case of McDonald et al V. Jacobsen, case number DA 22-0229, when at least two of the attorneys in the case had endorsed her campaign and her campaign actively promoted the endorsements.

### **Facts**

1. James Goetz is as listed counsel for Plaintiff in case number DA 22-0229.
2. Cliff Edwards is as listed counsel for Plaintiff in case number DA 22-0229.
3. Justice Gustafson ruled in favor of the Plaintiffs in case number DA 22-0029.
4. On her campaign website, Justice Gustafson lists the endorsement of Jim Goetz (Exhibit 1) and Cliff Edwards (Exhibit 2).
5. Cliff Edwards, along with his wife and adult children, hosted a "special fundraising event" for Justice Gustafson's re-election campaign at the Edwards family home on Swan Lake just 4 weeks prior to Justice Gustafson's ruling in case number DA 22-0229 (Exhibit 3).
6. Publicly available campaign finance reports indicate the "special fundraising event" at the Edwards' home raised up to \$27,400 for Justice Gustafson's campaign.
7. During the litigation, Justice Gustafson did not disclose that she had received and was actively promoting the endorsement of James Goetz and/or Cliff Edwards as part of her re-election campaign.
8. During the litigation, Justice Gustafson did not disclose that she had financial relationship Cliff Edwards.

### **Violations of Montana Code of Judicial Conduct**

- Rule 1.1 – By failing to recuse herself from the case in question, and therein committing violations of the Code of Judicial conduct, Justice Gustafson has violated Rule 1.1 which states, "A judge shall comply with the law, including the Code of Judicial Conduct."
- Rule 1.2 – By failing to recuse herself from this case or even disclose that she had received and was actively using the endorsement of attorneys on a case on which she sat to benefit her campaign, Justice Gustafson has violated Rule 1.2 which states, "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety." It is simply undeniable that, at the absolute

minimum, an appearance of impropriety existed in this case. Justice Gustafson was actively promoting the endorsement of these individuals to enhance her political prospects while simultaneously ruling in their favor on a case in front of her.

- Rule 1.3 – By refusing to recuse herself from this case or even disclose that she had received and was actively using the endorsement of attorneys on a case on which she sat to benefit her campaign, Justice Gustafson has violated Rule 1.3 which states, “a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 1 notes that, “It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.” Yet, this is exactly what Justice Gustafson has done. She has used her position on the Court to produce an outcome desired by individuals that had endorsed her campaign for re-election. She then is promoting the endorsements of these individuals to give credibility to her campaign.
- Rule 2.2. – By refusing to recuse herself from this case or even disclose that she had received and was actively using the endorsement of attorneys on a case on which she sat to benefit her campaign, Justice Gustafson has violated Rule 2.2 which states “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Any reasonable observer would surmise that it is simply impossible to hold Justice Gustafson’s actions as fair or impartial when considering the case in question was brought by individuals that had not only endorsed her campaign but that she was actively promoting the endorsement for her own political benefit.
- Rule 2.12.A.4 – By refusing to recuse herself from this case or even disclose that she had received and was actively using the endorsement of attorneys on a case on which she sat to benefit her campaign, Justice Gustafson has violated Rule 2.12 which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Clearly, Justice Gustafson’s impartiality in ruling in a case in which individuals who had endorsed her campaign could reasonably be questioned. Any reasonable observer would hold that a clear conflict exists in a case brought by individuals whose endorsement the Judge is using to benefit their own political prospects. Despite these exact circumstances existing, Justice Gustafson refused to recuse herself or even disclose the nature of this relationship.
- Rule 2.12.A.4 – By refusing to recuse herself from this case or even disclose that she had conducted a campaign fundraising event at the family home of one of the attorney’s in the case Justice Gustafson has violated Rule 2.12 which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Clearly, Justice Gustafson’s impartiality in ruling in



a case in which one of the attorneys had held a "special fundraising event" in their family home could reasonably be questioned. Any reasonable observer would hold that a clear conflict exists in a case brought by individuals whose financial largesse the Judge is using to benefit their own political prospects. Despite these exact circumstances existing, Justice Gustafson refused to recuse herself or even disclose the nature of this relationship.

### **Discussion**

This case is simply outrageous; Justice Gustafson blatantly disregarded her ethical obligations in hopes of achieving a desired outcome for her political supporters and bettering her own political prospects. If the people of Montana cannot count on a member of the Supreme Court to recuse themselves in a case with such a clear and obvious conflict of interest, then they can have no confidence in the integrity and independence of the judiciary in any case.

Justice Gustafson's brazenly unethical conduct in this case is exactly why these rules were put in place, to avoid not only actual impropriety, but even the appearance of impropriety, so that the public can have faith in the integrity and independence of the judiciary. Here, Justice Gustafson is simultaneously ruling in favor of these individuals and promoting their endorsement of her to boost her own political prospects.

Additionally, Justice Gustafson's willingness to disregard the impropriety created by using Mr. Edwards' family home to solicit campaign contributions, then just weeks later ruling in his favor in a high-profile politically charged case, is unconscionable.

It is completely legitimate for Justice Gustafson to seek and utilize political endorsements that she believes will enhance her chances for re-election, so long as they comport with the restrictions laid out in the Code of Judicial Conduct. However, it is completely unacceptable for Justice Gustafson to sit on cases brought by those who not only endorse her campaign but whose endorsement she is actively promoting to enhance her own political prospects, all while using the family home of one of these individuals to fill her campaign coffers.

Justice Gustafson had the opportunity to do the right thing, but she refused. She could have avoided this conflict by simply recusing herself from this case and continuing to utilize these endorsements to benefit her campaign. The situation created by her refusal to follow her ethical obligations is deeply troubling and raises many questions. Were these endorsements and fundraiser part of a quid pro quo for her ruling? Did she coordinate any activities in this case with these individuals? Did she have any prohibited ex parte communications with these parties?

Previously released public documents have shown that both Mr. Edwards and Mr. Goetz had attempted to have prohibited ex parte communications with Chief Justice McGrath during the case surrounding Senate Bill 140. While the documents do not show if Messrs.

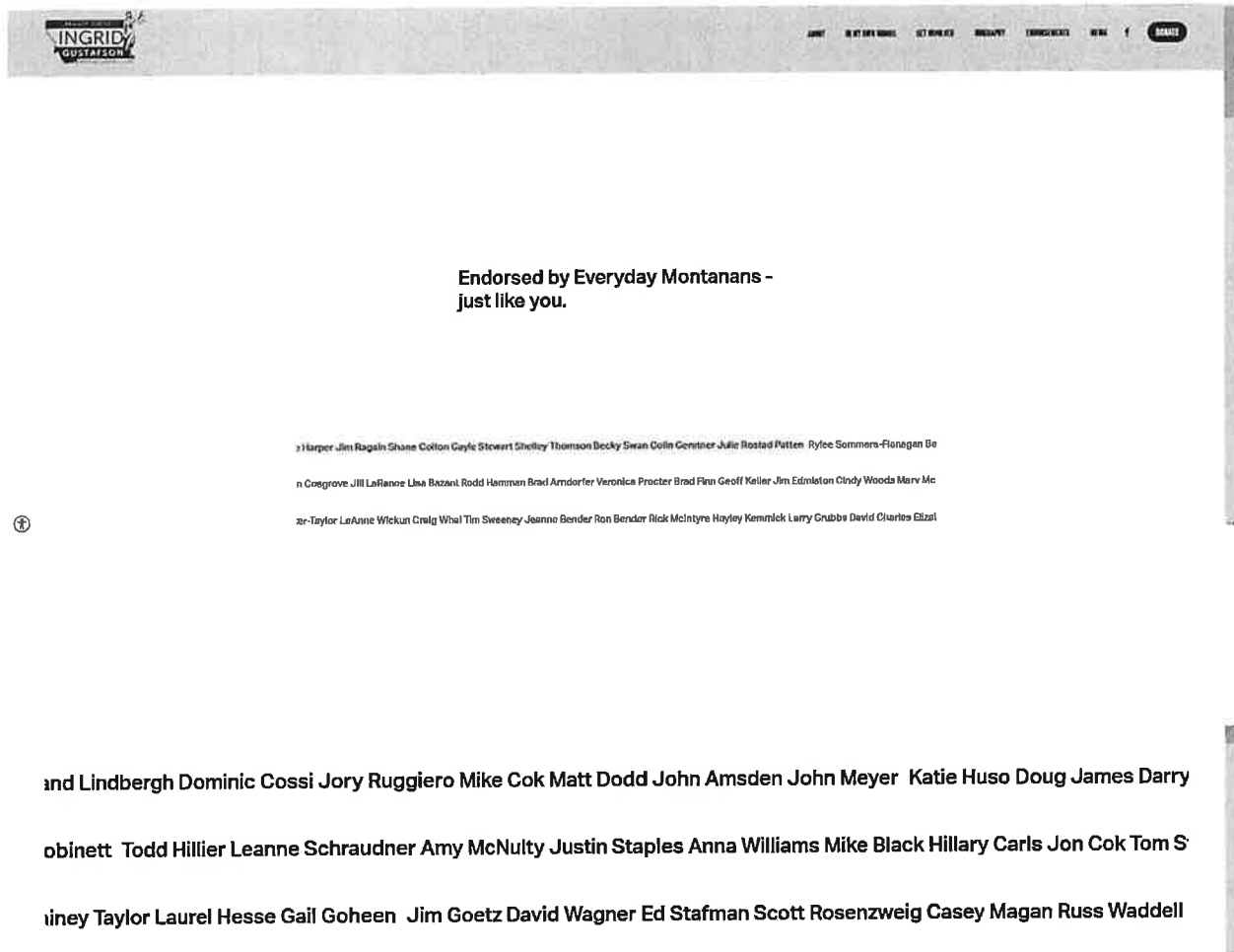
Edwards and Goetz attempts were successful in the SB 140 case, they do raise serious concerns as to what might have gone on in this case with Justice Gustafson attending an event at Mr. Edwards' private home just weeks before ruling in this case.

This Commission has the authority and duty to find that Justice Gustafson has violated her ethical obligations in this case. Given, the egregious nature of these violations, the Commission should sanction Justice Gustafson to the fullest extent possible.

## Exhibit 1

Screen capture Justice Gustafson website promoting the Endorsement James "Jim" Goetz

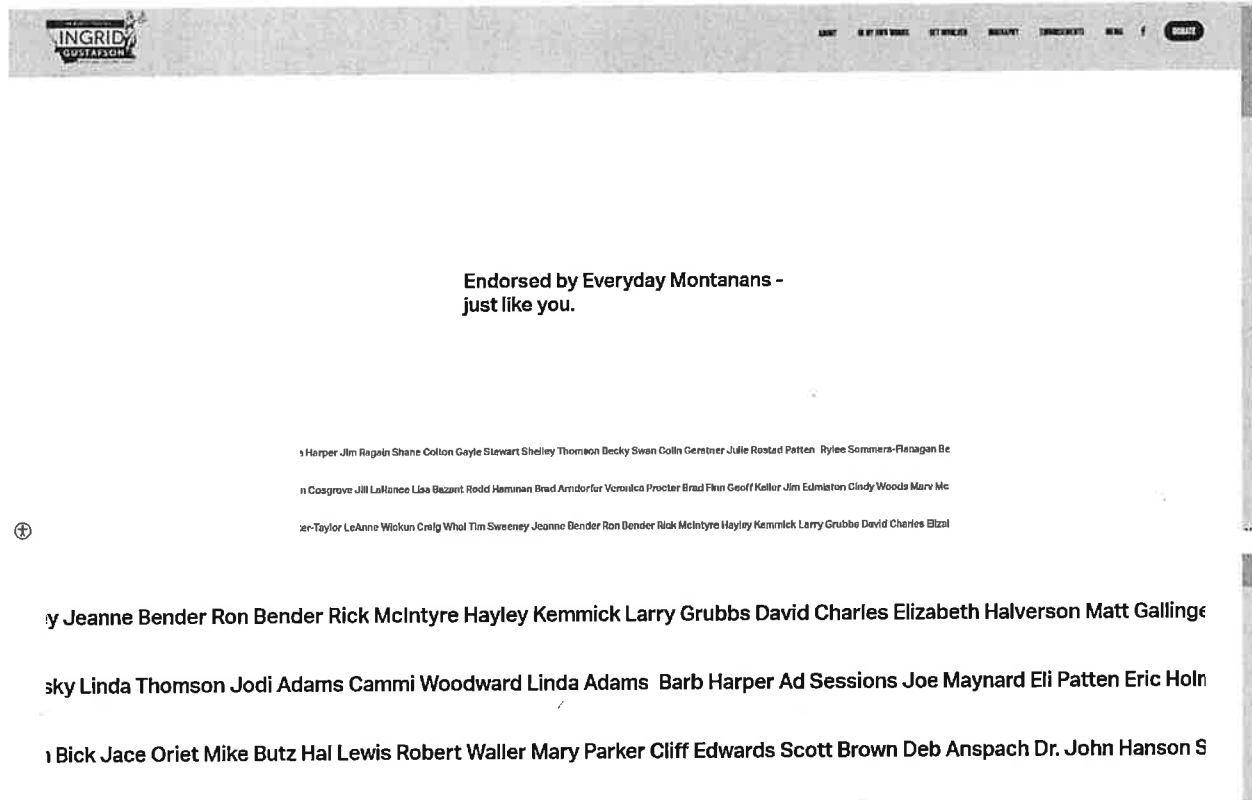
<https://www.gustafsonformontana.com/endorsements>



## Exhibit 2

Screen capture Justice Gustafson website promoting the Endorsement Cliff Edwards

<https://www.gustafsonformontana.com/endorsements>





**Cliff and Susan Edwards, Denny and Kitty Kellogg,  
Chris and Kelly Edwards, and John and Hollis Edwards** invite you to join  
for a special fundraising event at the Edwards family home on Swan Lake in  
support of the campaign to re-elect  
Justice Ingrid Gustafson to the Montana Supreme Court

**Friday, July 15, 2022, 6-8 pm**  
Cedar Bay Lodge  
28775 Sky Lodge Lane  
Bigfork, MT 59911

Please RSVP to [grassroots@gustafsonformontana.com](mailto:grassroots@gustafsonformontana.com) to receive specific directions to the location of the home and instructions regarding parking.

You have a very clear choice in the 2022 Montana Supreme Court race, the most important vote you will cast in the general election on November 8, 2022.

Justice Ingrid Gustafson is seeking re-election to Montana's highest court. In her nearly 20 years of judicial experience, the last five on the Montana Supreme Court, she has handled 1000s of cases and earned a reputation for being impartial and fair. She is non-partisan as required by Montana law and works hard to keep politics out of the courtroom.

Justice Gustafson has engaged in bettering our Montana community—starting and operating a drug court; piloting a child welfare court; serving on Yellowstone County's Park Board, as President of the Amend Park Development Board, and as Big Sky State Games Soccer Commissioner; and decades-long coaching and mentoring youth soccer players and serving as a high school and collegiate soccer referee. She cares deeply about Montana and Montanans.

**Among the people from the Flathead area who have endorsed Justice Gustafson to be re-elected are: Montana Supreme Court Justice Mike Wheat (retired), Montana Supreme Court Justice Jim Regnier (retired), Montana Supreme Court Justice Jim Nelson (retired), Montana Supreme Court Justice John Warner (retired), Judge Jim Manley (Ret.), Judge Amy Eddy – Kalispell, Judge Kitty Curtis (Ret.), Judge Stu Stadler (Ret.), Former Montana State Senator, Dan Weinberg, Paula & Frank Sweeney, Carole & Bart Erickson, Roger Sullivan, Commander John B. Herrington, Randy Bishop – Kalispell, Scott Wurster – Kalispell, Samuel White - Bigfork, Gail Gohee – Corvallis, Ann Moderie – Polson, Sherri Gerek – Polson, Lilly White - Bigfork, Sue Brown – Whitefish, and Land Lindbergh - Blackfoot Valley.**

Her opponent, Jim Brown, is a career lobbyist and a partisan politician who advocates for and benefits from out-of-state, large corporate money to promote his candidacy. In the recent primary, over \$300,000 of dark money was spent by out-of-state corporations to buy Brown a place on the general ballot. Although Montana law forbids judicial candidates from seeking partisan endorsements, Brown flouts these laws by participating in partisan events and accepting partisan endorsements.

Please donate \$700.00, the legal limit, or whatever amount your family can afford by donating on-line at [www.gustafsonformontana.com](http://www.gustafsonformontana.com)... If you prefer, please send a check written to Gustafson for Montana, 626 Lavender Street, Billings, MT 59106.

## Attachment B

The names and addresses of other persons who are witnesses to or have information as to the misconduct of the above judge are:

|   |   |
|---|---|
| Chief Justice Mike McGrath<br>215 N Sanders<br>Helena, MT 59601 | Cliff Edwards<br>1648 Poly Dr #206<br>Billings, MT 59102<br>406-215-4735        |
| Justice Jim Rice<br>215 N Sanders<br>Helena, MT 59601           | James Goetz<br>35 N Grand Ave<br>Bozeman, MT 579715                             |
| Justice Jim Shea<br>215 N Sanders<br>Helena, MT 59601           | Mae Nan Ellingson<br>10055 Grant Creek Rd<br>Missoula, MT 59808<br>406-240-0322 |
| Justice Dirk Sandefur<br>215 N Sanders<br>Helena, MT 59601      | Bob Brown<br>333 cougar Trail<br>Whitefish, MT 59937<br>406-862-6656            |
| Justice Laurie McKinnon<br>215 N Sanders<br>Helena, MT 59601    | Karen Moses<br>903 Delphinium Dr<br>Billings, MT 59102<br>406-252-2617          |
| Justice Beth Baker<br>215 N Sanders<br>Helena, MT 59601         |   |
| Justice Jim Rice<br>215 N Sanders<br>Helena, MT 59601           |   |



# Judicial Standards Commission State of Montana

## COMPLAINT

The undersigned being first duly sworn, upon oath, states the following facts showing misconduct on the part of the following named judge, to-wit:

NAME OF JUDGE: Justice Ingrid Gustafson

ADDRESS: 215 N Sanders

Helena, MT 59601

Based on the attached Code of Judicial Conduct, please cite which Canon(s) you feel the judge has violated and why. If you cannot clearly identify which canon the judge has violated, then your complaint is not within the purview of this Commission to review.

The facts of the above Judge's misconduct or unethical conduct are as follows: (Please state in your own words the misconduct or unethical conduct of the judge. Provide information as to when and where the misconduct occurred, and the names of any other people involved.)

See Attached

(If more space is needed, you may attach additional sheets to this complaint and mark them a, b, c, etc.)

The names and addresses of other persons who are witnesses to or have information as to the misconduct of the above judge are:

See Attached

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

PHONE NO: \_\_\_\_\_

PHONE NO: \_\_\_\_\_

(Names of additional witnesses may be listed on a separate sheet and attached.)

I (have \_\_\_\_\_ / have not \_\_\_\_\_) contacted the judge in regard to my complaint.

I will furnish additional information to your Commission if requested. If the complaint is investigated, I will cooperate with your Commission and furnish the evidence I may have and I will testify at any hearing on this complaint.

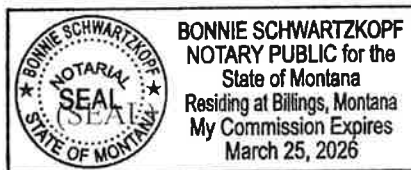
My full name, address and telephone number is:

NAME: Jake Eaton  
ADDRESS: PO Box 81724  
Billings, MT 59108  
PHONE #: 406-233-9121

DATED this 14 day of October, 2022

[Signature]  
SIGNATURE

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of Oct, 2022



Bonnie Schwartzkopf  
Notary Public for the State of Montana  
Residing at Billings  
My Commission expires March 25, 2026

**RETURN TO:**

SHELLY SMITH, EXECUTIVE SECRETARY  
JUDICIAL STANDARDS COMMISSION  
PO BOX 203005  
301 S. PARK, SUITE 328  
HELENA, MT 59620-3005



## **Attachment A**

Justice Ingrid Gustafson has violated the Montana Code of Judicial Conduct by failing to recuse herself and participating in the case of McDonald et al V. Jacobsen, case number DA 22-0229, when at least two of the Plaintiffs in the case had endorsed her campaign, and her campaign actively promoted the endorsements.

### **Facts**

1. Mae Nan Ellingson is a listed Plaintiff in case number DA 22-0229.
2. Bob Brown is a listed Plaintiff in case number DA 22-0229.
3. Justice Gustafson ruled in favor of the Plaintiffs in case number DA 22-0029.
4. On her campaign website, Justice Gustafson lists the endorsement of Mae Nan Ellingson (Exhibit 1) and Bob Brown (Exhibit 2).
5. During the litigation, Justice Gustafson did not disclose that she had received and was actively promoting the endorsement of Mae Nan Ellingson and/or Bob Brown as part of her re-election campaign.

### **Violations of Montana Code of Judicial Conduct**

- Rule 1.1 – By failing to recuse herself from the case in question, and therein committing violations of the Code of Judicial conduct, Justice Gustafson has violated Rule 1.1 which states, “A judge shall comply with the law, including the Code of Judicial Conduct.”
- Rule 1.2 – By failing to recuse herself from this case or even disclose that she had received and was actively using the endorsement of parties to a case on which she sat to benefit her campaign, Justice Gustafson has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that, at the absolute minimum, an appearance of impropriety existed in this case. Justice Gustafson was actively promoting the endorsement of these individuals to enhance her political prospects while simultaneously ruling in their favor on a case in front of her.
- Rule 1.3 – By refusing to recuse herself from this case or even disclose that she had received and was actively using the endorsement of parties to a case on which she sat to benefit her campaign, Justice Gustafson has violated Rule 1.3 which states, “a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 1 notes

that, "It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind." Yet, this is exactly what Justice Gustafson has done. She has used her position on the Court to produce an outcome desired by individuals that had endorsed her campaign for re-election, she then is promoting the endorsements of these individuals to give credibility to her campaign.

- Rule 2.2. – By refusing to recuse herself from this case or even disclose that she had received and was actively using the endorsement of parties to a case on which she sat to benefit her campaign, Justice Gustafson has violated Rule 2.2 which states "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Any reasonable observer would surmise that it is simply impossible to hold Justice Gustafson's actions as fair or impartial when considering the case in question was brought by individuals that had not only endorsed her campaign, but that she was actively promoting the endorsement for her own political benefit.
- Rule 2.12.A.4 – By refusing to recuse herself from this case or even disclose that she had received and was actively using the endorsement of parties to a case on which she sat to benefit her campaign, Justice Gustafson has violated Rule 2.12 which states, "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Clearly, Justice Gustafson's impartiality in ruling in a case in which individuals who had endorsed her campaign could reasonably be questioned. Any reasonable observer would hold that a clear conflict exists in a case brought by individuals whose endorsement the Judge is using to benefit their own political prospects. Despite these exact circumstances existing, Justice Gustafson refused to recuse herself or even disclose the nature of this relationship.

### **Discussion**

This case is simply outrageous; Justice Gustafson blatantly disregarded her ethical obligations in hopes of achieving a desired outcome for her political supporters and bettering her own political prospects. If the people of Montana cannot count on a member of the Supreme Court to recuse themselves in a case with such a clear and obvious conflict of interest, then they can have no confidence in the integrity and independence of the judiciary in any case.

Justice Gustafson's brazenly unethical conduct in this case is exactly why these rules were put in place, to avoid not only actual impropriety, but even the appearance of impropriety, so that the public can have faith in the integrity and independence of the judiciary. Here, Justice Gustafson is simultaneously ruling in favor of these individuals and promoting their endorsement of her to boost her own political prospects.

Throughout her re-election campaign, Justice Gustafson has been closely aligned with the Democrat Party, holding campaign events with many prominent Democrats, including Steve Bullock and Max Baucus. Justice Gustafson likely believes that having the endorsement of a former elected Republican official like Bob Brown would benefit her campaign and help blunt the negative impact of being so closely associated with high-profile Democrats.

Additionally, Justice Gustafson has come under fire in her re-election campaign for her activist judicial philosophy and failure to uphold the Montana Constitution. Justice Gustafson likely believes that having the endorsement of a Constitutional Conventional Delegate like Mae Nan Ellingson would benefit her campaign and help blunt these criticisms of her time on the bench.

It is completely legitimate for Justice Gustafson to seek and utilize political endorsements that she believes will enhance her chances for re-election, so long as they comport with the restrictions laid out in the Code of Judicial Conduct. However, it is completely unacceptable for Justice Gustafson to sit on cases brought by those who not only endorse her campaign, but whose endorsement she is actively promoting to enhance her own political prospects.

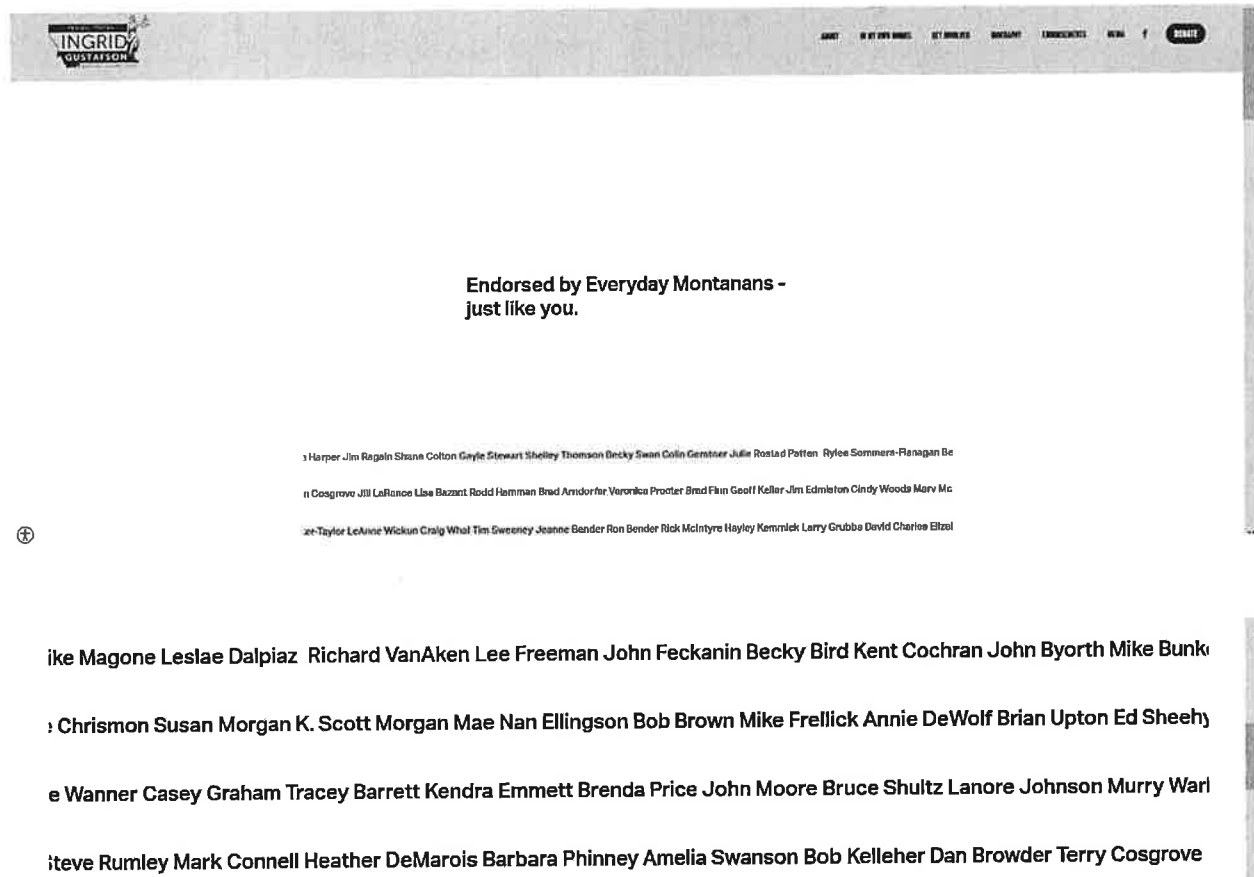
Justice Gustafson had the opportunity to do the right thing, but she refused. She could have avoided this conflict by simply recusing herself from this case and continuing to utilize these endorsements to benefit her campaign. The situation created by her refusal to follow her ethical obligations is deeply troubling and raises many questions. Were these endorsements part of a quid pro quo for her ruling? Did she coordinate any activities in this case with these individuals? Did she have any prohibited ex parte communications with these parties?

This Commission has the authority and duty to find that Justice Gustafson has violated her ethical obligations in this case. Given, the egregious nature of these violations, the Commission should sanction Justice Gustafson to the fullest extent possible.

## Exhibit 1

Screen capture Justice Gustafson website promoting the Endorsement Mae Nan Ellingson

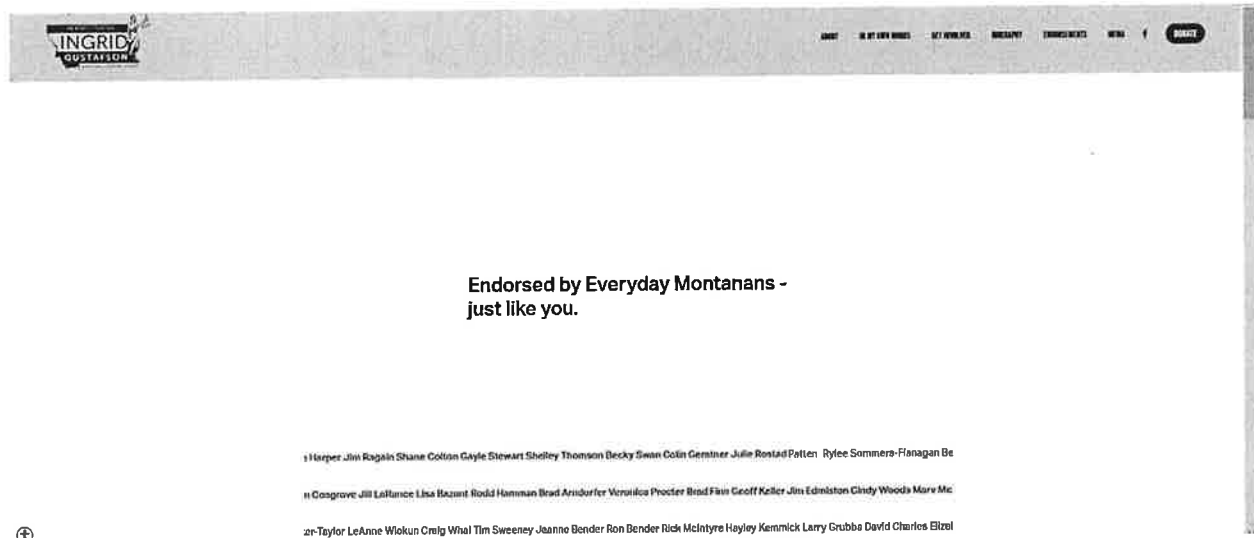
<https://www.gustafsonformontana.com/endorsements>



## Exhibit 2

Screen capture Justice Gustafson website promoting the Endorsement Bob Brown

<https://www.gustafsonformontana.com/endorsements>



ike Magone Leslae Dalpiaz Richard VanAken Lee Freeman John Feckanin Becky Bird Kent Cochran John Byorth Mike Bunk  
: Chrismon Susan Morgan K. Scott Morgan Mae Nan Ellingson Bob Brown Mike Frellick Annie DeWolf Brian Upton Ed Sheehy  
e Wanner Casey Graham Tracey Barrett Kendra Emmett Brenda Price John Moore Bruce Shultz Lanore Johnson Murry Warl  
iteve Rumley Mark Connell Heather DeMarois Barbara Phinney Amelia Swanson Bob Kelleher Dan Browder Terry Cosgrove

## Attachment B

The names and addresses of other persons who are witnesses to or have information as to the misconduct of the above judge are:

Chief Justice Mike McGrath  
215 N Sanders  
Helena, MT 59601

Cliff Edwards  
1648 Poly Dr #206  
Billings, MT 59102  
406-215-4735

Justice Jim Rice  
215 N Sanders  
Helena, MT 59601

James Goetz  
35 N Grand Ave  
Bozeman, MT 579715

Justice Jim Shea  
215 N Sanders  
Helena, MT 59601

Mae Nan Ellingson  
10055 Grant Creek Rd  
Missoula, MT 59808  
406-240-0322

Justice Dirk Sandefur  
215 N Sanders  
Helena, MT 59601

Bob Brown  
333 cougar Trail  
Whitefish, MT 59937  
406-862-6656

Justice Laurie McKinnon  
215 N Sanders  
Helena, MT 59601

Karen Moses  
903 Delphinium Dr  
Billings, MT 59102  
406-252-2617

Justice Jim Rice  
215 N Sanders  
Helena, MT 59601

## Attachment A

Justice Ingrid Gustafson has violated the Montana Code of Judicial Conduct by failing to recuse herself and participating in the case of B. McLaughlin V. MT Legislature, case number OP 21-0173.

Certain members of the Commission have clear and obvious conflicts that arise from this complaint, and I would respectfully request they recuse them considering this complaint. Judges Menahan and Spaulding were involved in the underlying judicial branch activities and email communications that caused the legislature to issue the subpoenas involved in this case. Ms. Gerdrum was appointed to the Commission by the Supreme Court.

### Facts

1. Beth McLaughlin is the Court Administrator for the Montana Judicial branch.
2. In accordance with MCA 3-1-701, Ms. McLaughlin is appointed by and holds her position at the pleasure of the court.
3. In accordance with MCA 3-1-702, Ms. McLaughlin is statutorily obligated to perform her duties under the direction of the Supreme Court.
4. In April 2021, Beth McLaughlin filed an original action in the Montana Supreme Court to block legislative subpoenas of Judicial branch records. The subpoenas included email communications produced by members of the Supreme Court.
5. In July 2021, the Montana Supreme Court ruled in favor of Ms. McLaughlin and quashed the legislative subpoenas.

### Violations of Montana Code of Judicial Conduct

- Rule 1.1 – By refusing to recuse herself from the case in question, and therein committing violations of the Code of Judicial conduct, Justice Gustafson has violated Rule 1.1 which states, “A judge shall comply with the law, including the Code of Judicial Conduct.”
- Rule 1.2 – By refusing to recuse herself from the case in question, Justice Gustafson has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that, at the absolute minimum, an appearance of impropriety existed in this case. Ms. McLaughlin is an employee of the Supreme Court, who is statutorily obligated to act under the direction of the Court, who brought this case to hide unflattering emails by members of the Court and other Judicial branch employees.

- Rule 1.2 – By refusing to recuse herself from the case in question, Justice Gustafson has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that at the absolute minimum, an appearance of impropriety existed in this case, because the very documents being subpoenaed include communications produced by Justice Gustafson.
- Rule 1.3 – By refusing to recuse herself from the case in question, Justice Gustafson has violated Rule 1.3 which states, “a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 1 notes that, “It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.” Yet, this is exactly what Justice Gustafson has done. She has used her position on the Court to hide potentially embarrassing and unflattering communications from the view of the Legislature and the public.
- Rule 2.2. – By refusing to recuse herself from the case in question, Justice Gustafson has violated Rule 2.2 which states “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Any reasonable observer would hold that it is simply impossible to hold Justice Gustafson’s actions as fair or impartial when considering the case in question was brought by her own employee with the explicit purpose of keeping potential unflattering and embarrassing email communications from being made public.
- Rule 2.12.A.4 – By refusing to recuse herself from the case in question, Justice Gustafson has violated Rule 2.12 which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Any reasonable observer would hold that a clear conflict exists in a case brought by a Judge’s employee. Additionally, any reasonable observer would conclude that a clear conflict exists in a case that specifically involves the Judge. Despite these exact circumstances existing, Justice Gustafson refused to recuse herself.

## **Discussion**

This case is a coverup, plain and simple. Members of the Supreme Court and judicial branch employees were engaged in a pattern of inappropriate conduct. When that conduct was about to be publicized, the Court swung into swift action. Ms. McLaughlin filed suit to block the information from becoming public and exposing their misconduct, the Court took the extremely unusual action to come in on a Sunday afternoon to issue



its first order in this matter and then Court ignored its ethical responsibilities and ruled in its own favor to ensure no one would know what they had been up to.

The actions of Justice Gustafson and other members of the Supreme Court in this case have done significant damage to public confidence in our judicial system. Throughout this case, Justice Gustafson had the opportunity to do the right thing and uphold her ethical obligations, but she refused. It should be recognized that Justice Rice saw the clear ethical obligations in this case and recused himself from the matter and sought an independent review by the District Court.

If Justice Gustafson refuses to recuse herself from a case with such an obvious conflict of interest that involves her own employee attempting to hide the Justice's own communications from public view, how can the public have any faith in the impartiality and fairness of any proceeding?

In their orders and public comments, the members of the Court have sought to make this case about establishing the boundaries of legislative subpoena power and have self-determined the obvious conflict of interest does not matter. Because the question at hand is a matter of law only, and they alone can decide. Their argument is beyond absurd, as demonstrated by the fact that Justice Rice chose the appropriate path to resolve this dispute.

This Commission has the authority and duty to find that Justice Gustafson has violated her ethical obligations in this case. Given, the egregious nature of these violations, the Commission should sanction Justice Gustafson to the fullest extent possible.



# JUDICIAL STANDARDS COMMISSION

## STATE OF MONTANA

301 S. PARK, SUITE 328  
P.O. BOX 203005  
HELENA, MONTANA 59620-3005  
TELEPHONE (406) 841-2976  
FAX (406) 841-2955

### PERSONAL AND CONFIDENTIAL

October 3, 2022

Jake Eaton  
P.O. Box 81724  
Billings, MT 59108

RE: File No. 22-035

Dear Mr. Eaton:

The Judicial Standards Commission has reviewed and considered your complaint against Supreme Court Justice, Ingrid Gustafson.

Matters relating to the ethical conduct of judicial officers are governed by the Code of Judicial Conduct adopted by the Montana Supreme Court. The Commission members consist of two district court judges, a lawyer, and two lay persons. The Commission has the responsibility to determine if the judicial conduct in a given case is contrary to the requirements of the Code of Judicial Conduct. The Commission does not have jurisdiction over matters that are appealable to a higher court or other conduct or disputes that do not involve violations of the Code of Judicial Conduct.

On September 19, 2022, your complaint was fully reviewed, discussed, and evaluated by the members of the Commission present at the meeting. The majority of the Commission determined that there is no ethical violation or judicial misconduct in violation of the Code of Judicial Conduct that warrants further action by the Commission.

A motion was made and adopted by a majority vote to dismiss the complaint. Accordingly, you are notified that the complaint has been dismissed.

As the dismissal of this complaint concludes formal action by the Commission, the provisions requiring confidentiality are no longer in effect.

Very truly yours,

JUDICIAL STANDARDS COMMISSION

A handwritten signature in blue ink, appearing to read "Michael Menahan".

Hon. Michael Menahan, Chair

MM/ss



# JUDICIAL STANDARDS COMMISSION STATE OF MONTANA

301 S. PARK, SUITE 328  
P.O. BOX 203005  
HELENA, MONTANA 59620-3005  
TELEPHONE (406) 841-2976  
FAX (406) 841-2955

## PERSONAL AND CONFIDENTIAL

October 3, 2022

Jake Eaton  
P.O. Box 81724  
Billings, MT 59108

RE: File No. 22-055

Dear Mr. Eaton:

The Judicial Standards Commission has reviewed and considered your complaint against Supreme Court Justice, Ingrid Gustafson.

Matters relating to the ethical conduct of judicial officers are governed by the Code of Judicial Conduct adopted by the Montana Supreme Court. The Commission members consist of two district court judges, a lawyer, and two lay persons. The Commission has the responsibility to determine if the judicial conduct in a given case is contrary to the requirements of the Code of Judicial Conduct. The Commission does not have jurisdiction over matters that are appealable to a higher court or other conduct or disputes that do not involve violations of the Code of Judicial Conduct.

On September 19, 2022, your complaint was fully reviewed, discussed, and evaluated by the members of the Commission present at the meeting. The Commission determined that there is no ethical violation or judicial misconduct in violation of the Code of Judicial Conduct that warrants further action by the Commission.

A motion was made and adopted to dismiss the complaint. Accordingly, you are notified that the complaint has been dismissed.

As the dismissal of this complaint concludes formal action by the Commission, the provisions requiring confidentiality are no longer in effect.

Very truly yours,

JUDICIAL STANDARDS COMMISSION

A handwritten signature in blue ink, appearing to read "Michael Menahan".

Hon. Michael Menahan, Chair

MM/ss

## **Attachment A**

Chief Justice Mike McGrath has violated the Montana Code of Judicial Conduct by failing to recuse himself and participating in the case of B. McLaughlin V. MT Legislature, case number OP 21-0173.

Certain members of the Commission have clear and obvious conflicts that arise from this complaint, and I would respectfully request they recuse themselves considering this complaint. Judges Menahan and Spaulding were involved in the underlying judicial branch activities and email communications that caused the legislature to issue the subpoenas involved in this case. Ms. Gerdrum was appointed to the Commission by the Supreme Court.

### **Facts**

1. Beth McLaughlin is the Court Administrator for the Montana Judicial branch.
2. In accordance with MCA 3-1-701, Ms. McLaughlin is appointed by and holds her position at the pleasure of the court.
3. In accordance with MCA 3-1-702, Ms. McLaughlin is statutorily obligated to perform her duties under the direction of the Supreme Court.
4. In April 2021, Beth McLaughlin filed an original action in the Montana Supreme Court to block legislative subpoenas of Judicial branch records. The subpoenas included email communications produced by members of the Supreme Court.
5. In July 2021, the Montana Supreme Court ruled in favor of Ms. McLaughlin and quashed the legislative subpoenas.

### **Violations of Montana Code of Judicial Conduct**

- Rule 1.1 – By refusing to recuse himself from the case in question, and therein committing violations of the Code of Judicial conduct, Chief Justice McGrath has violated Rule 1.1 which states, “A judge shall comply with the law, including the Code of Judicial Conduct.”
- Rule 1.2 – By refusing to recuse himself from the case in question, Chief Justice McGrath has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that, at the absolute minimum, an appearance of impropriety existed in this case. Ms. McLaughlin is an employee of the Supreme Court, who is statutorily obligated to act under the direction of the Court, who brought this case to hide unflattering emails by members of the Court and other Judicial branch employees.

- Rule 1.2 – By refusing to recuse himself from the case in question, Chief Justice McGrath has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that at the absolute minimum, an appearance of impropriety existed in this case, because the very documents being subpoenaed include communications produced by Chief Justice McGrath.
- Rule 1.3 – By refusing to recuse himself from the case in question, Chief Justice McGrath has violated Rule 1.3 which states, “a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 1 notes that, “It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.” Yet, this is exactly what Chief Justice McGrath has done. He has used his position on the Court to hide potentially embarrassing and unflattering communications from the view of the Legislature and the public.
- Rule 2.2. – By refusing to recuse himself from the case in question, Chief Justice McGrath has violated Rule 2.2 which states “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Any reasonable observer would hold that it is simply impossible to hold Chief Justice McGrath’s actions as fair or impartial when considering the case in question was brought by his own employee with the explicit purpose of keeping potential unflattering and embarrassing email communications from being made public.
- Rule 2.12.A.4 – By refusing to recuse himself from the case in question, Chief Justice McGrath has violated Rule 2.12 which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Any reasonable observer would hold that a clear conflict exists in a case brought by a Judge’s employee. Additionally, any reasonable observer would conclude that a clear conflict exists in a case that specifically involves the Judge. Despite these exact circumstances existing, Chief Justice McGrath refused to recuse himself.

## **Discussion**

This case is a coverup, plain and simple. Members of the Supreme Court and judicial branch employees were engaged in a pattern of inappropriate conduct. When that conduct was about to be publicized, the Court swung into swift action. Ms. McLaughlin filed suit to block the information from becoming public and exposing their misconduct, the Court took the extremely unusually action to come in on a Sunday afternoon to issue

its first order in this matter and then Court ignored its ethical responsibilities and ruled in its own favor to ensure no one would know what they had been up to.

The actions of Chief Justice McGrath and other members of the Supreme Court in this case have done significant damage to public confidence in our judicial system. Throughout this case, Chief Justice McGrath had the opportunity to do the right thing and uphold his ethical obligations, but he refused. It should be recognized that Justice Rice saw the clear ethical obligations in this case and recused himself from the matter and sought an independent review by the District Court.

If Chief Justice McGrath refuses to recuse himself from a case with such an obvious conflict of interest that involves his own employee attempting to hide the Justice's own communications from public view, how can the public have any faith in the impartiality and fairness of any proceeding?

In their orders and public comments, the members of the Court have sought to make this case about establishing the boundaries of legislative subpoena power and have self-determined the obvious conflict of interest does not matter. Because the question at hand is a matter of law only, and they alone can decide. Their argument is beyond absurd, as demonstrated by the fact that Justice Rice chose the appropriate path to resolve this dispute.

This Commission has the authority and duty to find that Chief Justice McGrath has violated his ethical obligations in this case. Given, the egregious nature of these violations, the Commission should sanction Chief Justice McGrath to the fullest extent possible.

## **Attachment A**

Chief Justice Mike McGrath has violated the Montana Code of Judicial Conduct by failing to take appropriate action against a Judge who he personally knew was acting in violation of the Code of Judicial Conduct.

### **Facts**

- On or about March 26, 2021, Judge Menahan sent an email (Exhibit 1) to Judge Greg Todd, Judge Randy Spaulding, Chief Justice Mike McGrath and Beth McLaughlin stating that he is “not getting much work accomplished because I’m spending so much time at the legislature.” These comments were made in response to Beth McLaughlin asking Judge Menahan to appear in front of a legislative committee on behalf of the Montana Judges Association for the purpose of defeating proposed legislation.
- By prioritizing his efforts to defeat legislation he and other judicial branch employees opposed, Judge Menahan violated Rule 3.11, which prohibits Judges from engaging in extrajudicial activities that interfere with the proper performance of his judicial duties. Here, Judge Menahan admits that his involvement MJA activities has led him to “not getting much work accomplished.” A clear confirmation that his is violation of Rule 3.11
- Chief Justice McGrath has an affirmative obligation to report violations of the Code of Judicial Conduct to the appropriate disciplinary authority, the Judicial Standards Commission.
- There is no public record of Chief Justice McGrath reporting this activity to the Judicial Standards Commission.

### **Violations of Montana Code of Judicial Conduct**

Rule 2.16 – By failing to report a known violation of the Code of Judicial Conduct, Chief Justice McGrath is in violation of this rule, which states that “A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.” As mentioned in Comment 1 of this rule “A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.”

Rule 1.1 – By committing the aforementioned violation of the Code of Judicial Conduct Chief Justice McGrath has violated this rule, which requires “A judge shall comply with the law, including the Code of Judicial Conduct.”

### **Discussion**

Chief Justice McGrath’s conduct in this matter is a severe disservice to the people of Montana, as noted in the comments of Rule 2.16, “Ignoring or denying known misconduct among one’s judicial colleagues ... undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system.” This situation is especially

egregious considering Mr. McGrath's position as Chief Justice of the Montana Supreme Court.

If the people of Montana cannot count on the Chief Justice of the Montana Supreme Court to uphold the ethical obligations of the Code of Judicial Conduct, how can they have any confidence that any other member of the judiciary will do so?

The fact that Judge Menahan was willing to admit his dereliction of his duties to the Chief Justice of the Montana Supreme Court and fellow district judges is astonishing and demonstrates that he knows the ethical obligations of the judiciary are not taken seriously by the Chief Justice.

The Code of Judicial Conduct, rightfully, sets a high ethical bar for our Judges, and when Judges violate those rules, they ought to be held accountable. Chief Justice McGrath's actions cast doubts on not only his own integrity but the integrity of the entire judicial system. Given all the facts at hand, Chief Justice McGrath should be sanctioned to the fullest extent possible.





# JUDICIAL STANDARDS COMMISSION

## STATE OF MONTANA

301 S. PARK, SUITE 328  
P.O. BOX 203005  
HELENA, MONTANA 59620-3005  
TELEPHONE (406) 841-2976  
FAX (406) 841-2955

### PERSONAL AND CONFIDENTIAL

September 30, 2022

Jake Eaton  
P.O. Box 81724  
Billings, MT 59108

RE: File No. 22-040

Dear Mr. Eaton:

The Judicial Standards Commission has reviewed and considered your complaint against Supreme Court Justice, Mike McGrath.

Matters relating to the ethical conduct of judicial officers are governed by the Code of Judicial Conduct adopted by the Montana Supreme Court. The Commission members consist of two district court judges, a lawyer, and two lay persons. The Commission has the responsibility to determine if the judicial conduct in a given case is contrary to the requirements of the Code of Judicial Conduct. The Commission does not have jurisdiction over matters that are appealable to a higher court or other conduct or disputes that do not involve violations of the Code of Judicial Conduct.

On September 19, 2022, Your complaint was fully reviewed, discussed, and evaluated by the members of the Commission present at the meeting. Chairman, Hon. Mike Menahan, recused himself from all participation in this matter. The Commission determined that there is no ethical violation or judicial misconduct in violation of the Code of Judicial Conduct that warrants further action by the Commission.

A motion was made and adopted to dismiss the complaint. Accordingly, you are notified that the complaint has been dismissed.

As the dismissal of this complaint concludes formal action by the Commission, the provisions requiring confidentiality are no longer in effect.

Very truly yours,

JUDICIAL STANDARDS COMMISSION

A handwritten signature in blue ink, appearing to read "Randal L. Spaulding".

Hon. Randal L. Spaulding, Vice-Chair

## **Attachment A**

Justice Laurie McKinnon has violated the Montana Code of Judicial Conduct by failing to recuse herself and participating in the case of B. McLaughlin V. MT Legislature, case number OP 21-0173.

Certain members of the Commission have clear and obvious conflicts that arise from this complaint, and I would respectfully request they recuse them considering this complaint. Judges Menahan and Spaulding were involved in the underlying judicial branch activities and email communications that caused the legislature to issue the subpoenas involved in this case. Ms. Gerdrum was appointed to the Commission by the Supreme Court.

### **Facts**

1. Beth McLaughlin is the Court Administrator for the Montana Judicial branch.
2. In accordance with MCA 3-1-701, Ms. McLaughlin is appointed by and holds her position at the pleasure of the court.
3. In accordance with MCA 3-1-702, Ms. McLaughlin is statutorily obligated to perform her duties under the direction of the Supreme Court.
4. In April 2021, Beth McLaughlin filed an original action in the Montana Supreme Court to block legislative subpoenas of Judicial branch records. The subpoenas included email communications produced by members of the Supreme Court.
5. In July 2021, the Montana Supreme Court ruled in favor of Ms. McLaughlin and quashed the legislative subpoenas.

### **Violations of Montana Code of Judicial Conduct**

- Rule 1.1 – By refusing to recuse herself from the case in question, and therein committing violations of the Code of Judicial conduct, Justice McKinnon has violated Rule 1.1 which states, “A judge shall comply with the law, including the Code of Judicial Conduct.”
- Rule 1.2 – By refusing to recuse herself from the case in question, Justice McKinnon has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that, at the absolute minimum, an appearance of impropriety existed in this case. Ms. McLaughlin is an employee of the Supreme Court, who is statutorily obligated to act under the direction of the Court, who brought this case to hide unflattering emails by members of the Court and other Judicial branch employees.

- Rule 1.2 – By refusing to recuse herself from the case in question, Justice McKinnon has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that at the absolute minimum, an appearance of impropriety existed in this case, because the very documents being subpoenaed include communications produced by Justice McKinnon.
- Rule 1.3 – By refusing to recuse herself from the case in question, Justice McKinnon has violated Rule 1.3 which states, “a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 1 notes that, “It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.” Yet, this is exactly what Justice McKinnon has done. She has used her position on the Court to hide potentially embarrassing and unflattering communications from the view of the Legislature and the public.
- Rule 2.2. – By refusing to recuse herself from the case in question, Justice McKinnon has violated Rule 2.2 which states “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Any reasonable observer would hold that it is simply impossible to hold Justice McKinnon’s actions as fair or impartial when considering the case in question was brought by her own employee with the explicit purpose of keeping potential unflattering and embarrassing email communications from being made public.
- Rule 2.12.A.4 – By refusing to recuse herself from the case in question, Justice McKinnon has violated Rule 2.12 which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Any reasonable observer would hold that a clear conflict exists in a case brought by a Judge’s employee. Additionally, any reasonable observer would conclude that a clear conflict exists in a case that specifically involves the Judge. Despite these exact circumstances existing, Justice McKinnon refused to recuse herself.

## **Discussion**

This case is a coverup, plain and simple. Members of the Supreme Court and judicial branch employees were engaged in a pattern of inappropriate conduct. When that conduct was about to be publicized, the Court swung into swift action. Ms. McLaughlin filed suit to block the information from becoming public and exposing their misconduct, the Court took the extremely unusual action to come in on a Sunday afternoon to issue

its first order in this matter and then Court ignored its ethical responsibilities and ruled in its own favor to ensure no one would know what they had been up to.

The actions of Justice McKinnon and other members of the Supreme Court in this case have done significant damage to public confidence in our judicial system. Throughout this case, Justice McKinnon had the opportunity to do the right thing and uphold her ethical obligations, but she refused. It should be recognized that Justice Rice saw the clear ethical obligations in this case and recused himself from the matter and sought an independent review by the District Court.

If Justice McKinnon refuses to recuse herself from a case with such an obvious conflict of interest that involves her own employee attempting to hide the Justice's own communications from public view, how can the public have any faith in the impartiality and fairness of any proceeding?

In their orders and public comments, the members of the Court have sought to make this case about establishing the boundaries of legislative subpoena power and have self-determined the obvious conflict of interest does not matter. Because the question at hand is a matter of law only, and they alone can decide. Their argument is beyond absurd, as demonstrated by the fact that Justice Rice chose the appropriate path to resolve this dispute.

This Commission has the authority and duty to find that Justice McKinnon has violated her ethical obligations in this case. Given, the egregious nature of these violations, the Commission should sanction Justice McKinnon to the fullest extent possible.



# JUDICIAL STANDARDS COMMISSION STATE OF MONTANA

301 S. PARK, SUITE 328  
P.O. BOX 203005  
HELENA, MONTANA 59620-3005  
TELEPHONE (406) 841-2976  
FAX (406) 841-2955

## PERSONAL AND CONFIDENTIAL

October 3, 2022

Jake Eaton  
P.O. Box 81724  
Billings, MT 59108

RE: File No. 22-032

Dear Mr. Eaton:

The Judicial Standards Commission has reviewed and considered your complaint against Supreme Court Justice, Laurie McKinnon.

Matters relating to the ethical conduct of judicial officers are governed by the Code of Judicial Conduct adopted by the Montana Supreme Court. The Commission members consist of two district court judges, a lawyer, and two lay persons. The Commission has the responsibility to determine if the judicial conduct in a given case is contrary to the requirements of the Code of Judicial Conduct. The Commission does not have jurisdiction over matters that are appealable to a higher court or other conduct or disputes that do not involve violations of the Code of Judicial Conduct.

On September 19, 2022, your complaint was fully reviewed, discussed, and evaluated by the members of the Commission present at the meeting. The majority of the Commission determined that there is no ethical violation or judicial misconduct in violation of the Code of Judicial Conduct that warrants further action by the Commission.

A motion was made and adopted by a majority vote to dismiss the complaint. Accordingly, you are notified that the complaint has been dismissed.

As the dismissal of this complaint concludes formal action by the Commission, the provisions requiring confidentiality are no longer in effect.

Very truly yours,

JUDICIAL STANDARDS COMMISSION

A handwritten signature in blue ink, appearing to read "Michael Menahan".

Hon. Michael Menahan, Chair

MM/ss

## **Attachment A**

Judge Michael Menahan has violated the Montana Code of Judicial Conduct by engaging in extrajudicial activities that are in direct contradiction to the ethical obligations imposed by the Code of Judicial Conduct.

### **Facts**

- On or about March 26, 2021, Judge Menahan sent an email (Exhibit 1) to Judge Greg Todd, Judge Randy Spaulding, Chief Justice Mike McGrath and Beth McLaughlin stating that he is “not getting much work accomplished because I’m spending so much time at the legislature”. These comments were made in response to Beth McLaughlin asking Judge Menahan to appear in front of a legislative committee on behalf of the Montana Judges Association for the purpose of defeating proposed legislation.
- By prioritizing his efforts to defeat legislation he and other judicial branch employees opposed, Judge Menahan is taking time away from his judicial duties. Judge Menahan admits, in writing, that his involvement MJA activities has led him to “not getting much work accomplished.”

### **Violations of Montana Code of Judicial Conduct**

- Rule 3.11 – By placing a priority on his extrajudicial activities in a manner that interferes with the proper performance of his judicial duties, he has violated this rule which states “when engaging in extrajudicial activities, a judge shall not: (A) participate in activities that will interfere with the proper performance of the judge’s judicial duties.”
- Rule 1.1 – By committing the aforementioned violation of the Code of Judicial Conduct Judge Menahan has violated this rule which requires “A judge shall comply with the law, including the Code of Judicial Conduct.”

### **Discussion**

Judge Menahan’s statements and conduct demonstrates that he is more interested in achieving personal political outcomes than performing the duties he was elected to do. The fact that he was willing to admit his dereliction of his duties to the Chief Justice of the Montana Supreme Court and fellow district judges is astonishing.

The Code of Judicial Conduct, rightfully, sets a high ethical bar for our Judges and when Judges violate those rules, they ought to be held accountable, Judge Menahan’s actions and comments cast doubt on not only his own integrity but the integrity of the entire judicial system. Given all the facts at hand, Judge Menahan should be sanctioned to the fullest extent possible.



# JUDICIAL STANDARDS COMMISSION STATE OF MONTANA

301 S. PARK, SUITE 328  
P.O. BOX 203005  
HELENA, MONTANA 59620-3005  
TELEPHONE (406) 841-2976  
FAX (406) 841-2955

## PERSONAL AND CONFIDENTIAL

September 30, 2022

Jake Eaton  
P.O. Box 81724  
Billings, MT 59108

RE: File No. 22-041

Dear Mr. Eaton:

The Judicial Standards Commission has reviewed and considered your complaint against District Court Judge, Mike Menahan.

Matters relating to the ethical conduct of judicial officers are governed by the Code of Judicial Conduct adopted by the Montana Supreme Court. The Commission members consist of two district court judges, a lawyer, and two lay persons. The Commission has the responsibility to determine if the judicial conduct in a given case is contrary to the requirements of the Code of Judicial Conduct. The Commission does not have jurisdiction over matters that are appealable to a higher court or other conduct or disputes that do not involve violations of the Code of Judicial Conduct.

On September 19, 2022, your complaint was fully reviewed, discussed, and evaluated by the members of the Commission present at the meeting. Chairman, Hon. Mike Menahan, recused himself from all participation in this matter. The Commission determined that there is no ethical violation or judicial misconduct in violation of the Code of Judicial Conduct that warrants further action by the Commission.

A motion was made and adopted to dismiss the complaint. Accordingly, you are notified that the complaint has been dismissed.

As the dismissal of this complaint concludes formal action by the Commission, the provisions requiring confidentiality are no longer in effect.

Very truly yours,

JUDICIAL STANDARDS COMMISSION

  
Hon. Randal L. Spaulding, Vice-Chair

## **Attachment A**

Justice Dirk Sandefur has violated the Montana Code of Judicial Conduct by failing to recuse himself and participating in the case of B. McLaughlin V. MT Legislature, case number OP 21-0173.

Certain members of the Commission have clear and obvious conflicts that arise from this complaint, and I would respectfully request they recuse them considering this complaint. Judges Menahan and Spaulding were involved in the underlying judicial branch activities and email communications that caused the legislature to issue the subpoenas involved in this case. Ms. Gerdrum was appointed to the Commission by the Supreme Court.

### **Facts**

1. Beth McLaughlin is the Court Administrator for the Montana Judicial branch.
2. In accordance with MCA 3-1-701, Ms. McLaughlin is appointed by and holds her position at the pleasure of the court.
3. In accordance with MCA 3-1-702, Ms. McLaughlin is statutorily obligated to perform her duties under the direction of the Supreme Court.
4. In April 2021, Beth McLaughlin filed an original action in the Montana Supreme Court to block legislative subpoenas of Judicial branch records. The subpoenas included email communications produced by members of the Supreme Court.
5. In July 2021, the Montana Supreme Court ruled in favor of Ms. McLaughlin and quashed the legislative subpoenas.

### **Violations of Montana Code of Judicial Conduct**

- Rule 1.1 – By refusing to recuse himself from the case in question, and therein committing violations of the Code of Judicial conduct, Justice Sandefur has violated Rule 1.1 which states, “A judge shall comply with the law, including the Code of Judicial Conduct.”
- Rule 1.2 – By refusing to recuse himself from the case in question, Justice Sandefur has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that, at the absolute minimum, an appearance of impropriety existed in this case. Ms. McLaughlin is an employee of the Supreme Court, who is statutorily obligated to act under the direction of the Court, who brought this case to hide unflattering emails by members of the Court and other Judicial branch employees.



- Rule 1.2 – By refusing to recuse himself from the case in question, Justice Sandefur has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that at the absolute minimum, an appearance of impropriety existed in this case, because the very documents being subpoenaed include communications produced by Justice Sandefur.
- Rule 1.3 – By refusing to recuse himself from the case in question, Justice Sandefur has violated Rule 1.3 which states, “a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 1 notes that, “It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.” Yet, this is exactly what Justice Sandefur has done. He has used his position on the Court to hide potentially embarrassing and unflattering communications from the view of the Legislature and the public.
- Rule 2.2. – By refusing to recuse himself from the case in question, Justice Sandefur has violated Rule 2.2 which states “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Any reasonable observer would hold that it is simply impossible to hold Justice Sandefur’s actions as fair or impartial when considering the case in question was brought by his own employee with the explicit purpose of keeping potential unflattering and embarrassing email communications from being made public.
- Rule 2.12.A.4 – By refusing to recuse himself from the case in question, Justice Sandefur has violated Rule 2.12 which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Any reasonable observer would hold that a clear conflict exists in a case brought by a Judge’s employee. Additionally, any reasonable observer would conclude that a clear conflict exists in a case that specifically involves the Judge. Despite these exact circumstances existing, Justice Sandefur refused to recuse himself.

## **Discussion**

This case is a coverup, plain and simple. Members of the Supreme Court and judicial branch employees were engaged in a pattern of inappropriate conduct. When that conduct was about to be publicized, the Court swung into swift action. Ms. McLaughlin filed suit to block the information from becoming public and exposing their misconduct, the Court took the extremely unusually action to come in on a Sunday afternoon to issue

its first order in this matter and then Court ignored its ethical responsibilities and ruled in its own favor to ensure no one would know what they had been up to.

The actions of Justice Sandefur and other members of the Supreme Court in this case have done significant damage to public confidence in our judicial system. Throughout this case, Justice Sandefur had the opportunity to do the right thing and uphold his ethical obligations, but he refused. It should be recognized that Justice Rice saw the clear ethical obligations in this case and recused himself from the matter and sought an independent review by the District Court.

If Justice Sandefur refuses to recuse himself from a case with such an obvious conflict of interest that involves his own employee attempting to hide the Justice's own communications from public view, how can the public have any faith in the impartiality and fairness of any proceeding?

In their orders and public comments, the members of the Court have sought to make this case about establishing the boundaries of legislative subpoena power and have self-determined the obvious conflict of interest does not matter. Because the question at hand is a matter of law only, and they alone can decide. Their argument is beyond absurd, as demonstrated by the fact that Justice Rice chose the appropriate path to resolve this dispute.

This Commission has the authority and duty to find that Justice Sandefur has violated his ethical obligations in this case. Given, the egregious nature of these violations, the Commission should sanction Justice Sandefur to the fullest extent possible.



# JUDICIAL STANDARDS COMMISSION STATE OF MONTANA

301 S. PARK, SUITE 328  
P.O. BOX 203005  
HELENA, MONTANA 59620-3005  
TELEPHONE (406) 841-2976  
FAX (406)841-2955

## PERSONAL AND CONFIDENTIAL

October 3, 2022

Jake Eaton  
P.O. Box 81724  
Billings, MT 59108

RE: File No. 22-033

Dear Mr. Eaton:

The Judicial Standards Commission has reviewed and considered your complaint against Supreme Court Justice, Dirk Sandefur.

Matters relating to the ethical conduct of judicial officers are governed by the Code of Judicial Conduct adopted by the Montana Supreme Court. The Commission members consist of two district court judges, a lawyer, and two lay persons. The Commission has the responsibility to determine if the judicial conduct in a given case is contrary to the requirements of the Code of Judicial Conduct. The Commission does not have jurisdiction over matters that are appealable to a higher court or other conduct or disputes that do not involve violations of the Code of Judicial Conduct.

On September 19, 2022, your complaint was fully reviewed, discussed, and evaluated by the members of the Commission present at the meeting. The majority of the Commission determined that there is no ethical violation or judicial misconduct in violation of the Code of Judicial Conduct that warrants further action by the Commission.

A motion was made and adopted by a majority vote to dismiss the complaint. Accordingly, you are notified that the complaint has been dismissed.

As the dismissal of this complaint concludes formal action by the Commission, the provisions requiring confidentiality are no longer in effect.

Very truly yours,

JUDICIAL STANDARDS COMMISSION

A handwritten signature in blue ink, appearing to read "Michael Menahan".

Hon. Michael Menahan, Chair

MM/ss

## **Attachment A**

Justice James Shea has violated the Montana Code of Judicial Conduct by failing to recuse himself and participating in the case of B. McLaughlin V. MT Legislature, case number OP 21-0173.

Certain members of the Commission have clear and obvious conflicts that arise from this complaint, and I would respectfully request they recuse themselves considering this complaint. Judges Menahan and Spaulding were involved in the underlying judicial branch activities and email communications that caused the legislature to issue the subpoenas involved in this case. Ms. Gerdrum was appointed to the Commission by the Supreme Court.

### **Facts**

1. Beth McLaughlin is the Court Administrator for the Montana Judicial branch.
2. In accordance with MCA 3-1-701, Ms. McLaughlin is appointed by and holds her position at the pleasure of the court.
3. In accordance with MCA 3-1-702, Ms. McLaughlin is statutorily obligated to perform her duties under the direction of the Supreme Court.
4. In April 2021, Beth McLaughlin filed an original action in the Montana Supreme Court to block legislative subpoenas of Judicial branch records. The subpoenas included email communications produced by members of the Supreme Court.
5. In July 2021, the Montana Supreme Court ruled in favor of Ms. McLaughlin and quashed the legislative subpoenas.

### **Violations of Montana Code of Judicial Conduct**

- Rule 1.1 – By refusing to recuse himself from the case in question, and therein committing violations of the Code of Judicial conduct, Justice Shea has violated Rule 1.1 which states, “A judge shall comply with the law, including the Code of Judicial Conduct.”
- Rule 1.2 – By refusing to recuse himself from the case in question, Justice Shea has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that, at the absolute minimum, an appearance of impropriety existed in this case. Ms. McLaughlin is an employee of the Supreme Court, who is statutorily obligated to act under the direction of the Court, who brought this case to hide unflattering emails by members of the Court and other Judicial branch employees.

- Rule 1.2 – By refusing to recuse himself from the case in question, Justice Shea has violated Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.” It is simply undeniable that at the absolute minimum, an appearance of impropriety existed in this case, because the very documents being subpoenaed include communications produced by Justice Shea.
- Rule 1.3 – By refusing to recuse himself from the case in question, Justice Shea has violated Rule 1.3 which states, “a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 1 notes that, “It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.” Yet, this is exactly what Justice Shea has done. He has used his position on the Court to hide potentially embarrassing and unflattering communications from the view of the Legislature and the public.
- Rule 2.2. – By refusing to recuse himself from the case in question, Justice Shea has violated Rule 2.2 which states “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Any reasonable observer would hold that it is simply impossible to hold Justice Shea’s actions as fair or impartial when considering the case in question was brought by his own employee with the explicit purpose of keeping potential unflattering and embarrassing email communications from being made public.
- Rule 2.12.A.4 – By refusing to recuse himself from the case in question, Justice Shea has violated Rule 2.12 which states, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Any reasonable observer would hold that a clear conflict exists in a case brought by a Judge’s employee. Additionally, any reasonable observer would conclude that a clear conflict exists in a case that specifically involves the Judge. Despite these exact circumstances existing, Justice Shea refused to recuse himself.

## **Discussion**

This case is a coverup, plain and simple. Members of the Supreme Court and judicial branch employees were engaged in a pattern of inappropriate conduct. When that conduct was about to be publicized, the Court swung into swift action. Ms. McLaughlin filed suit to block the information from becoming public and exposing their misconduct, the Court took the extremely unusually action to come in on a Sunday afternoon to issue its first order in this matter and then Court ignored its ethical responsibilities and ruled in its own favor to ensure no one would know what they had been up to.

The actions of Justice Shea and other members of the Supreme Court in this case have done significant damage to public confidence in our judicial system. Throughout this case, Justice Shea had the opportunity to do the right thing and uphold his ethical obligations, but he refused. It should be recognized that Justice Rice saw the clear ethical obligations in this case and recused himself from the matter and sought an independent review by the District Court.

If Justice Shea refuses to recuse himself from a case with such an obvious conflict of interest that involves his own employee attempting to hide the Justice's own communications from public view, how can the public have any faith in the impartiality and fairness of any proceeding?

In their orders and public comments, the members of the Court have sought to make this case about establishing the boundaries of legislative subpoena power and have self-determined the obvious conflict of interest does not matter. Because the question at hand is a matter of law only, and they alone can decide. Their argument is beyond absurd, as demonstrated by the fact that Justice Rice chose the appropriate path to resolve this dispute.

This Commission has the authority and duty to find that Justice Shea has violated his ethical obligations in this case. Given, the egregious nature of these violations, the Commission should sanction Justice Shea to the fullest extent possible.



# JUDICIAL STANDARDS COMMISSION

## STATE OF MONTANA

301 S. PARK, SUITE 328  
P.O. BOX 203005  
HELENA, MONTANA 59620-3005  
TELEPHONE (406) 841-2976  
FAX (406)841-2955

### PERSONAL AND CONFIDENTIAL

October 3, 2022

Jake Eaton  
P.O. Box 81724  
Billings, MT 59108

RE: File No. 22-034

Dear Mr. Eaton:

The Judicial Standards Commission has reviewed and considered your complaint against Supreme Court Justice, James Shea.

Matters relating to the ethical conduct of judicial officers are governed by the Code of Judicial Conduct adopted by the Montana Supreme Court. The Commission members consist of two district court judges, a lawyer, and two lay persons. The Commission has the responsibility to determine if the judicial conduct in a given case is contrary to the requirements of the Code of Judicial Conduct. The Commission does not have jurisdiction over matters that are appealable to a higher court or other conduct or disputes that do not involve violations of the Code of Judicial Conduct.

On September 19, 2022, your complaint was fully reviewed, discussed, and evaluated by the members of the Commission present at the meeting. The majority of the Commission determined that there is no ethical violation or judicial misconduct in violation of the Code of Judicial Conduct that warrants further action by the Commission.

A motion was made and adopted by a majority vote to dismiss the complaint. Accordingly, you are notified that the complaint has been dismissed.

As the dismissal of this complaint concludes formal action by the Commission, the provisions requiring confidentiality are no longer in effect.

Very truly yours,

JUDICIAL STANDARDS COMMISSION

A handwritten signature in blue ink, appearing to read "Michael Menahan".

Hon. Michael Menahan, Chair

MM/ss