

APPLICATION FOR DISTRICT COURT JUDGESHIP

A. PERSONAL INFORMATION

1. Full name. Travis Russell Ahner
2. Birthdate. [REDACTED]
3. Current home address. [REDACTED]
4. Email address. [REDACTED] or [REDACTED]
5. Preferred phone number. [REDACTED]
6. Judicial position you are applying for: 11th Judicial District
7. Date you became a U.S. citizen, if different than birthdate. Birthdate
8. Date you become a Montana resident. [REDACTED]

B. EDUCATIONAL BACKGROUND

9. List the names and location (city, state) of schools attended beginning with high school, and the date and type of degree you received.

<u>Name</u>	<u>Location</u>	<u>Date</u>	<u>Degree</u>
Capital High School	Helena, MT	1997	Diploma
U.S. Military Academy	West Point, NY	1997-98	N/A
Carroll College	Helena, MT	2002	B.A. (Sociology, English)
Univ. of OR School of Law	Eugene, OR	2007	J.D.

10. List any significant academic and extracurricular activities, scholarships, awards, or other recognition you received from each college and law school you attended.

- Dean's Scholarship of Excellence (Univ. of OR School of Law)
- Graduated Maxima Cum Laude (Carroll)
- Three-time Academic All-American (Carroll - Football)
- All-American, Two-time First Team All-Frontier Conf. (Carroll - Football)
- Rhodes Scholar Applicant Finalist (Carroll)

- National Football Foundation National Scholar Athlete (Carroll - Football)
- International Honors Society, English (Carroll)
- International Honors Society, Sociology (Carroll)

C. LEGAL AND PROFESSIONAL EXPERIENCE

11. In chronological order (beginning with most recent), state each position you have held since your graduation from law school. Include the dates, names and addresses of law firms, businesses, or governmental agencies with which you have been affiliated, and your position. Include the dates of any periods of self-employment and the name and address of your office.

<u>Position</u>	<u>Agency & Address</u>	<u>Date</u>
County Attorney	Flathead County Attorney's Office 820 S. Main Street Kalispell, MT 59901	2018 – Present
Special Assistant U.S. Atty.	Worked at Flathead Co. Atty. Office Appt. by U.S. Attorney in Billings, MT 2601 2 nd Avenue North, Suite 3200 Billings, MT 59101	2009 – 2018
Deputy County Attorney	Flathead County Attorney's Office 820 S. Main Street Kalispell, MT 59901	2008 – 2018
Adjunct Professor	Carroll College 1601 N. Benton Avenue Helena, MT 59625	Spring 2008
Law Clerk	Montana Supreme Court 215 N. Sanders Helena, MT 59620	2007 – 2008

12. In chronological order (beginning with most recent), list your admissions to state and federal courts, state bar associations, and administrative bodies having special admission requirements and the date of admission. If any of your admissions have terminated, indicate the date and reason for termination.

State Bar of Montana – October 2007

13. Describe your typical legal areas of concentration during the past ten years and the approximate percentage each constitutes of your total practice (i.e., real estate, water rights, civil litigation, criminal litigation, family law, trusts and estates, contract drafting, corporate law, employment law, alternative dispute resolution, etc).

For the past ten years I have served in Flathead County as either a deputy county attorney or as the county attorney. As a deputy, the vast majority of my work was in criminal prosecution, though part of my job consisted of handling civil proceedings for mental health commitments or dependent and neglect cases. As the county attorney with a criminal caseload, the bulk of my work still centers on criminal prosecution, but I work regularly with my civil staff to address and sometimes handle the civil obligations of the office.

- Criminal Litigation – 85%
- Government Administration – 7%
- Dependent and Neglect Matters – 2%
- Employment Law – 2%
- Land Use – 2%
- Healthcare – 2%

14. Describe any unique aspects of your law practice, such as teaching, lobbying, serving as a mediator or arbitrator, etc. (exclude bar activities or public office).

In Flathead County, our office takes an active role in training law enforcement and educating the public regarding the work that we perform for the community. I regularly train law enforcement officers regarding investigative practices, legal updates, criminal justice procedure, and practical tips for getting through the process.

I teach roughly 10 hours every spring at the local community college and I regularly present to public groups (e.g. Rotary, Pachyderm, Chamber of Commerce) and high school classes. I am on the Board of the Montana County Attorney's Association, through which I speak with legislators and testify at legislative hearings regarding bills that affect county attorneys and the criminal justice system in Montana.

15. Describe the extent that your legal practice during the past ten years has included participation and appearances in state and federal court proceedings, administrative proceedings, and arbitration proceedings.

I appear in court on behalf of the State on an average of five to fifteen criminal court cases each week. Throughout the year I regularly conduct criminal jury trials that span anywhere from two to ten days. When I performed work as a Special Assistant U.S. Attorney, I would appear in federal court twice a year to prosecute select crimes that occurred within Glacier National Park.

In addition to my criminal caseload, as the county attorney I address the Flathead County Commissioners regularly regarding budget issues for my department, legal issues involving other county departments, and commissioner decisions that may result in litigation involving the county.

16. If you have appeared before the Montana Supreme Court within the last ten years (including submission of amicus briefs), state the citation for a reported case and the case number and caption for any unreported cases.

OP 12-0517 Franks v. 11th Jud. District

OP 21-0450 Khmelev v. Fouts, 2021 Mont. LEXIS 785, 407 Mont. 438, 500 P.3d 577.

17. Describe three of the most important, challenging, or complex legal issues you have dealt with or legal proceedings in which you have participated during your practice.

Early in my career as a prosecutor I tried a case that involved multiple victims of child sex abuse. The case previously had proceeded to trial on two occasions. The first trial ended in a hung jury and the conviction from the second trial was reversed on appeal. As a result, the testimony of the victims in the third trial had to be compared and cross-referenced against prior statements from initial interviews, defense interviews, and the two prior trials. Keeping track of all of the statements and evidence was a difficult task but in the end my co-counsel and I provided clarity to the jury. The defendant was again convicted and we provided the victims a firm and final resolution of the ordeal.

I had been the County Attorney for just over a year when the COVID-19 pandemic broke out. Suddenly I had to provide guidance to departments and health boards regarding serious and significant decisions, and I faced a great deal of political pressure from those who disagreed with my stance on the issues. I had to constantly remind department heads and health board members that they could not make their decisions based on political expediency or even out of well-intentioned concern. Rather, they had to make their decisions consistent with the limits of their legal authority and they had to ensure that their decisions were not arbitrary but instead were grounded in science and fact. The COVID-19 pandemic helped highlight both the contours and gaps in the law surrounding the authority of officials to preserve the public health and to restrict the rights of citizens. I was proud of both the decisions that I made and, possibly more important, the actions that I did not take to restrict citizens' constitutional rights in the face of significant political pressure.

One of the more challenging endeavors I've taken on was a strangulation homicide trial that involved numerous witnesses and an extensive amount of discovery. The medical records consisted of reams of medical documents. The evidence collected from multiple search warrants included over a thousand law enforcement photos. Evidence from five different cell phones

included over 30,000 text messages, over 54,000 images, and hundreds of audio and video files. Social media records constituted over 20,000 pages. It took months of late nights and weekends for me to go through the discovery to find the critical pieces of evidence. The trial took two weeks and included testimony from young children, a number of medical and crime lab professionals, EMTs and law enforcement officers, and multiple expert witnesses. Organizing and presenting the evidence was a monumental task. Ultimately, the effort that I put into the case paid off and we were able to secure a conviction and justice for the victim and her family.

18. If you have authored and published any legal books or articles, provide the name of the article or book, and a citation or publication information.

I have not authored or published any legal books or articles. I did illustrate a coloring book for the Flathead Children's Advocacy Center to familiarize child witnesses with the court, court personnel, and the court process.

19. If you have taught on legal issues at postsecondary educational institutions or continuing legal education seminars during the past ten years, provide the title of the presentation, date, and group to which you spoke.

<u>Title</u>	<u>Date</u>	<u>Audience</u>
Sexual Assault Prosecution Roundtable	2026 (x 3)	MT Prosecutors
Criminal Law, Search & Seizure, Arrests	2016 – 2026	Flathead Valley Comm. College
Criminal Procedure	2020 – 2023	FVCC Honor's Program
Criminal Law Panel	2019, 2022	NW MT Bar Assoc.

20. Describe your pro bono services and the number of pro bono hours of service you have reported to the Montana Bar Association for each of the past five years.

Each year I provide and have reported approximately 12-15 hours of pro bono service. This service consists of approximately 12 hours of educational presentations to high school and community college students regarding criminal law and procedure. The balance of the service stems from the presentations I give to community groups covering a range of topics, including criminal justice concepts, mental health issues, and the authority and limits of local government. Given the demands of my office and the potential conflicts that could arise from my provision of legal advice, I have not provided legal assistance to individuals. The following constitute examples of the types of presentations I have put on for the community:

Sex Assault & the Crim. Justice System	2018	Sexual Assault Awareness Conference
Civil and Criminal Mental Health Issues	2019	Nat. Alliance on Mental Illness (NAMI)
Mental Commitments & Considerations	2023	Crisis Intervention Team
Public Safety Panel	2025	Leadership Flathead
Sex Assault Nurse Exam Testimony	2025	Logan Health SANE Nurses

21. Describe dates and titles of any offices, committee membership, or other positions of responsibility you have had in the Montana State Bar, other state bars, or other legal professional societies of which you have been a member and the dates of your involvement. These activities are limited to matters related to the legal profession.

- MT Co. Attorney's Association (Board / 2022 – Present)
- Flathead County Children's Advocacy Center (Board / Approx. 2012 – Present)
- Fetal, Infant, Child, Maternal Mortality Review Team (Member / 2025 – Present)
- Northwest Montana Drug Task Force Executive Board (Board / 2018 – Present)
- Flathead County Compensation Board (Board / 2018 – Present)

22. Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, and type of discharge received.

Cadet at U.S. Military Academy	1997-98	Army	Cadet	Honorable
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23. If you have had prior judicial or quasi-judicial experience, describe the position, dates, and approximate number and nature of cases you have handled.

I served as a substitute judge for the Kalispell Municipal Court from April of 2013 through February of 2018. I handled initial appearances, criminal hearings, and hearings on petitions for orders of protection. I was on the bench approximately 60-70 times, hearing approximately 3-5 cases per appearance.

24. Describe any additional business, agricultural, occupational, or professional experience (other than legal) that could assist you in serving as a judge.

I have worked in restaurants and retail and I've served outdoor tourists at a fly shop in Craig, Montana. I've been a lobbyist, substitute teacher, security guard, warehouse laborer, pizza delivery driver, an adjunct college professor, and a radio color commentator. I've been in

professional theater productions, have worked in construction and landscaping, and I have operated a hobby farm. I have been blessed to work in a wide range of occupations and believe that all of this experience helps me relate to the variety of both people and issues that come before district court judges.

D. COMMUNITY AND PUBLIC SERVICE

25. List any civic, charitable, or professional organizations, other than bar associations and legal professional societies, of which you have been a member, officer, or director during the last ten years. State the title and date of any office that you have held in each organization and briefly describe your activities in the organization and include any honors, awards or recognition you have received.
- Braveheart Chaplain Ministry (Active & Emeritus Board / 2016 – Present)
 - Flathead Community Drug Task Force (Member / 2017 – 2022)
 - Flathead Valley Comm. College Crim. Justice Advisory Board (Board / 2023 – Present)
26. List chronologically (beginning with the most recent) any public offices you have held, including the terms of service and whether such positions were elected or appointed. Also state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

<u>Office</u>	<u>Date</u>	<u>Manner of Attainment</u>
Flathead County Attorney	2023	Re-Elected
Flathead County Attorney	2019-2023	Elected
Flathead County Attorney	2018	Appointed

- No Unsuccessful Candidacies or Nominations for Appointment

E. PROFESSIONAL CONDUCT AND ETHICS

27. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details.

No.

28. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No.

29. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No.

30. Have you ever been found liable in any civil proceedings for damages or other legal or equitable relief, other than marriage dissolution proceedings? If so, provide the citation of a reported case or court and case number for any unreported case and the year the proceeding was initiated (if not included in the case number).

No.

31. Is there any circumstance or event in your personal or professional life that, if brought to the attention of the Governor or Montana Supreme Court, would affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No.

F. BUSINESS AND FINANCIAL INFORMATION

32. Are you currently an owner, officer, director, or otherwise engaged in the management of any business other than a law practice? If so, please provide the name and locations of the business and the nature of your affiliation, and state whether you intend to continue the affiliation if you are appointed as a judge.

No.

33. Have you timely filed appropriate tax returns and paid taxes reported thereon as required by federal, state, local and other government authorities? If not, please explain.

Yes.

34. Have you, your spouse, or any corporation or business entity of which you owned more than 25% ever filed under title 11 of the U.S. Bankruptcy Code? If so, give details.

No.

G. JUDICIAL PHILOSOPHY

35. State the reasons why you are seeking office as a district court judge.

I am seeking office as a district court judge both out of a sense of duty and the desire to preserve my community and the Montana values that make the Flathead such a wonderful place in which to live. I grew up with parents who served the public through state employment, the legislature, and military service. Given that upbringing, it made sense for me after graduating high school to attend the United States Military Academy at West Point. After my first year I determined, however, that my love for Montana and family roots was not compatible with an active military lifestyle. I left the Academy but still felt the obligation to serve the public.

Engaging in a career as a prosecutor and then county attorney allowed me to fulfill that obligation of service. I have worked hard to keep the Flathead, and Montana in general, a great place to live. I've tried to do this by seeking to hold criminal offenders accountable and striving to fulfill my duties as the county's legal adviser with diligence and restraint. I seek always to respect and preserve the rights of the individuals I serve – the victims, the criminals, and the citizens of Flathead County. I believe that serving as a district court judge would allow me to continue in that service.

I was born in Kalispell, I grew up in Miles City and Helena, and I've lived in Great Falls and Polson. Montana is special to me, and I hope to preserve it for my children and future generations by continuing to hold wrongdoers accountable and by maintaining the common sense and Montana values that make this state the Last Best Place.

36. What three qualities do you believe to be most important in a good district court judge?

Knowledgeable – I believe a judge should strive to render sound and well-reasoned decisions. A judge needs either to have a thorough understanding of the laws and legal principles that pertain to the questions at hand or work to attain as strong of an understanding as time and circumstances permit. The judge needs then to apply that understanding to the facts provided by the parties to reach a quality decision.

Objective – A judge's decisions should be governed by the facts of the case and the applicable law, not by agenda or a desired outcome. As a prosecutor, there have been many instances where I have wanted to charge a case due to the fact that the suspect was a serious concern for law enforcement and the community. I often had to refrain from seeking charges from a particular incident, however, because the facts did not support a prosecution. As the County Attorney and legal counsel for Flathead County, I have had to refrain from issuing decisions or providing guidance based on what I or a community group wanted to see happen and instead have stayed always within the bounds of the authority of my office. I believe that a judge's restraint is even more important. A district court judge should never be an advocate or interested participant but instead should serve always as an objective arbiter of the legal dispute before the court.

Practical - District court judges need to handle their duties in a manner that maintains the integrity of the court system and protects parties' rights while at the same time allowing cases to reach a resolution in a practical fashion whenever possible. At times this might entail affording the lawyers and litigants the time and opportunity to explore resolutions outside of the courtroom. It might mean working with counsel to streamline cases or to distill the parties' disputes. It may involve holding a hearing on short notice at the request of the attorneys so that they can obtain a ruling from the court in order to save the parties time or future resources. A courthouse should be a place of decorum but still should function in a practical manner where attorneys and the court can coordinate in order to get work done, decisions made, and issues resolved.

37. What is your philosophy regarding the interpretation and application of statutes and the Constitution?

Textualism, seasoned with an appreciation of stare decisis and the separation of powers.

H. MISCELLANEOUS

38. Attach a writing sample authored entirely by you, **not to exceed 20 pages**. Acceptable samples include briefs, legal memoranda, legal opinions, and journal articles addressing legal topics.

See Attached.

39. Please provide the names and contact information for three attorneys and/or judges (or a combination thereof) who are in a position to comment upon your abilities.

Honorable Dan Wilson
District Judge, Eleventh Judicial District
920 South Main Street, Suite 310
Kalispell, MT 59901
(406) 758-6242

Thane Johnson
Assistant Attorney General
P.O. Box 201401
Helena, MT 59620-1401
(406) 444-5676

Scott Twito
Yellowstone County Attorney
217 N 27th St., Rm. 701
Billings, MT 59101
(406) 256-2870

CERTIFICATE OF APPLICANT

I hereby state that to the best of my knowledge the answers to all questions contained in my application are true. By submitting this application I am consenting to investigation and verification of any information listed in my application and I authorize a state bar association or any of its committees, any professional disciplinary office or committee, educational institutions I have attended, any references furnished by me, employers, business and professional associates, law enforcement agencies, all governmental agencies and instrumentalities and all other public or private agencies or persons maintaining records pertaining to my citizenship, residency, age, credit, taxes, education, employment, civil litigation, criminal litigation, law enforcement investigation, admission to the practice of law, service in the U. S. Armed Forces, or disciplinary history to release to the Office of the Governor of Montana or its agent(s) any information, files, records, or reports requested in connection with any consideration of me as a possible nominee for appointment to judicial office.

I further understand that the submission of this application expresses my willingness to accept appointment as District Court Judge if tendered by the Governor, and my willingness to abide by the Montana Code of Judicial Conduct and other applicable Montana laws (including the financial disclosure requirements of MCA § 2-2-106).

SEPTEMBER 4, 2026

(Date)



(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by
5:00 p.m. on Tuesday, September 29, 2026

Mail the signed original to:

Caitlin Wagoner
Governor's Office
P.O. Box 200801
Helena, MT 59620-0801

Send the electronic copy to: caitlin.wagoner@mt.gov

Travis R. Ahner
OFFICE OF THE COUNTY ATTORNEY
Flathead County, Montana
820 South Main Street
Kalispell, MT 59901
Telephone: (406) 758-5630
Attorney for the State of Montana

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

STATE OF MONTANA,

Plaintiff,

vs.

BRADLEY HILLIOUS,

Defendant.

) Case No.: DC-20-459(B)

) STATE'S RESPONSE
) TO MOTION FOR A NEW TRIAL
) (AFTER REMAND)

COMES NOW the State of Montana, by and through Travis R. Ahner, Flathead County
Attorney, and responds in opposition to the Defendant's motion for a new trial.

FACTS

On December 3, 2021, the Clerk of Court filed with the Court a list of 200 potential jurors and their questionnaires for the trial in this matter. That list was provided to the parties on the same day. On January 3, 2022, the first day of trial, this Court held an attorney's conference. Hillious was present with his counsel. At no time during the attorney's conference did Hillious or his defense counsel raise an issue regarding the jury panel or the Flathead County Clerk's Office's formation of the jury panel.

After the attorney's conference, the parties conducted *voir dire*. At the conclusion of Hillious' *voir dire*, Hillious' counsel passed the jury for cause. Each party exercised their challenges and selected a trial jury. The minute entry for the first day of trial documents that Hillious objected to the manner in which the State exercised its preemptory challenges. The minute entry further documents that, aside from that alleged error, each party represented to the court that the jury selection process was proper.

1 On January 14, 2022, the jury convicted Hillious of Deliberate Homicide. Hillious filed a
2 motion for a new trial on February 14, 2022 – 31 days after the verdict. In his motion Hillious asserted
3 improper comments by the prosecutors as well as unsupported arguments alleging insufficient evidence
4 and improper venue. The State filed a response and a hearing was held. The Court denied the motion
5 for a new trial in an order issued on March 7, 2022. The Court sentenced Hillious on March 8, 2022.
6 Hillious filed a notice of appeal on May 4, 2022. Hillious filed a second motion for a new trial on
7 October 6, 2023, raising for the first time an objection to the manner in which his jury was selected or
8 drawn. Hillious filed this motion for a new trial 630 days after the jury rendered its guilty verdict.

9 Department D in this jurisdiction held a hearing regarding the Flathead County Clerk of Court's
10 practices in the formation and selection of juries on October 25, 2023, in *State v. Jonathan Shaw*, Cause
11 No. DC-15-2021-378(D). *See Order Denying Defendant's Motion for New Trial* (attached as State's
12 Exhibit 1). The Clerk of Court and the Flathead County Undersheriff testified at the hearing. While the
13 facts testified to are not specific to this case, the general practices of the Clerk of Court and the
14 knowledge of the Undersheriff are of great relevance to the issues raised by Hillious. The State asks this
15 Court to reference that Order for background and context on the jury formation issues in this case.

17 AUTHORITY AND ARGUMENT

18 Section 46-16-702, MCA, governs a motion for a new trial after a verdict or finding of guilt. A
19 Defendant must file a motion for a new trial within 30 days of the verdict or finding of guilty. Section
20 46-16-702(2), MCA. Section 46-16-112, MCA, governs objections to the manner in which a jury panel
21 is selected or drawn. "Except for good cause shown, the motion must be made at least five days prior to
22 the term for which the jury is drawn." Section 46-16-112(1), MCA.

23 Montana's jury selection statutes promote the goals of "random selection of prospective jurors
24 and determining juror competency and excuses on the basis of objective criteria." *State v. LaMere*, 2000
25 MT 45, ¶ 57, 298 Mont. 358, 2 P.3d 204. Not every violation of Montana's jury selection statutes
26 justifies a reversal. *LaMere*, ¶ 55. "Technical departures from the jury selection process and violations
27 which do not threaten the goals of random selection and objective disqualification do not constitute a
28 substantial failure to comply." *State v. Bearchild*, 2004 MT 355, ¶ 15, 324 Mont. 435, 103 P.3d 1006.
"If the district court substantially complies with the Montana statutes regarding jury procurement, then

1 the error is not structural.” *Bearchild*, ¶ 24. If the error is not structural, the error is subject to harmless
2 error review. Under that review, a defendant bears the burden of showing prejudice to their substantial
3 rights because of the error. *Bearchild*, ¶ 24. The Court in *Bearchild* reaffirmed that “[a]ny error, defect,
4 irregularity, or variance that does not affect substantial rights must be disregarded.” *Bearchild*, ¶ 24
5 (citing § 46-20-701(2), MCA).

6 Section 1-3-223, MCA, provides: “The law neither does nor requires idle acts.”
7

8 **I. Hillious failed to timely raise his motion for a new trial.**

9 Hillious has failed to raise his motion for a new trial within the statutory time limit set by § 46-
10 16-702, MCA. Section 46-16-702, MCA, requires a defendant to file for a new trial within 30 days of
11 the verdict or finding of guilty. A jury convicted Hillious of Deliberate Homicide on January 14, 2022.
12 Hillious filed an untimely motion for a new trial 31 days later. The timing makes clear that Hillious
13 knew he was required to file his motion for a new trial shortly after the jury’s verdict.

14 Hillious’ first motion for a new trial did not assert any claim or argument regarding the manner
15 in which the jury was selected or drawn. Hillious now has filed a second motion for a new trial. This
16 motion, filed on October 6, 2023, comes 630 days after the jury’s verdict of guilty. Hillious’ motion is
17 outside of the 30-day time limit established by § 46-16-702, MCA, by over a year and a half. Due to
18 Hillious’ filing this motion for a new trial 20 months after the statutory time limit set forth in § 46-16-
19 702, MCA, this Court should deny his motion for a new trial.

20 The Supreme Court has noted that § 46-16-702(1), MCA, authorizes a trial court to grant a new
21 trial in the interests of justice, notwithstanding the passage of the 30-day deadline. *State v. Morse*, 2015
22 MT 51, ¶¶ 25-29, 378 Mont. 249, 343 P.3d 1196. In *Morse*, the district court learned that the victim had
23 made statements after the trial that contradicted her trial testimony. *Morse*, ¶ 16. The Supreme Court
24 held that the interests of justice under those circumstances allowed the district court to consider the
25 otherwise untimely motion for a new trial. The Supreme Court distinguished between two types of
26 motions for new trial: one that arises in the “interests of justice” under the first subsection (1) of the
27 statute, and one that remains subject to the 30-day deadline under the second subsection (2). *Morse*, ¶¶
28 22-29. The Supreme Court noted “[t]here are instances, such as what occurred here, where the facts

1 warranting the new trial did not arise from the trial itself, but rather came from post-trial statements of
2 the victim made after expiration of the 30-day time limitation” *Morse*, ¶ 29.

3 In stark contrast to the situation in *Morse*, the violation asserted by Hillious did not come from
4 post-trial statements, evidence, or occurrences. Rather, Hillious asserts that the Clerk of Court failed to
5 follow a statutory procedure in the formation of his jury panel – a fact that, if established, existed before
6 the trial. The flaw of which Hillious complains existed before the formation of his jury panel, and his
7 claim is subject to the 30-day deadline set forth in § 46-16-702(2), MCA. Hillious’ motion, filed 600
8 days after this deadline, is untimely. The Court should deny his motion.

9 10 **II. Hillious waived his right to object to the formation of the jury panel.**

11 Hillious did not object to the formation of the jury panel in advance of trial as required by § 46-
12 16-112, MCA. The statute governs a challenge to the manner in which a jury panel has been selected or
13 drawn. If either party believes that a jury panel has been improperly selected or drawn, that party must
14 file a motion in writing at least five days prior to the jury term. Section 46-16-112, MCA. Hillious filed
15 his objection to the manner in which his jury was selected 635 days after this deadline.

16 Hillious filed a host of pre-trial motions, including multiple motions to dismiss, multiple
17 motions to suppress and exclude evidence, and a motion to change venue. In all of his challenges,
18 however, Hillious did not challenge the manner in which his jury was selected and drawn. Hillious was
19 provided the list of potential jurors on December 3, 2021, 30 days before trial. The minute entry for the
20 first day of the trial documents that Hillious objected to the manner in which the State exercised its
21 preemptory challenges. The minute entry further documents that, aside from that assertion of error, the
22 “parties stipulate that the selection of jurors and alternates was proper.” Hillious stipulated that his jury
23 was properly selected. Hillious cannot now, 635 days after the statutory deadline set forth in § 46-16-
24 112(1), MCA, object to the formation of the jury panel.

25 Hillious’ argument that he lacked the “means of knowledge” of the alleged error is without merit,
26 as evidenced by the very manner in which this issue arose. Hillious asserts that he may now assert an
27 error 630 days past the deadline because he did not and could not have knowledge of errors in the jury
28 selection process, citing both *Dvorak v. Huntley Project Irrigation Dist.*, 196 Mont. 167, 639 P.2d 62
(1981) and *Solberg v. County of Yellowstone*, 203 Mont. 79, 659 P.2d 290 (1983). In both cases, the

1 Supreme Court sanctioned an untimely motion regarding the formation of a jury because counsel did not
2 have “the knowledge, or means of knowledge, of the irregularity in the drawing of the jury or the panel
3 from which it is selected until after the verdict” *Solberg*, 203 Mont. at 83, 659 P.2d at 292 (citing
4 *Dvorak*, 196 Mont. at 171-72, 639 P.2d at 64). Hillious points to an order from Department A in this
5 District (State v. McCarty, DC-23-152(A) – Order Striking Jury list – attached to Hillious’ brief) as the
6 basis for his now raising this issue.

7 The Order from Department A that Hillious references came after that Department “became
8 aware that Cascade County had vacated all criminal and jury civil trials in that jurisdiction from August
9 22-September 25, 2023, due to irregularities in the jury selection process required by Mont. Code Ann. §
10 3-15-405.” *Defendant’s Exhibit A*, p. 1. The District Court in Cascade County vacated those trials in an
11 order issued in State v. Hinkle, Cause No. BDC-22-242. *See Order Vacating Trial and All Trials in the*
12 *Eighth Judicial District Through September 25, 2023* (attached as State’s Exhibit 2). The Court in State
13 v. Hinkle held a pre-trial hearing because defense counsel in another case in that jurisdiction – State v.
14 Brown, Cascade County Cause No. ADC-22-302(C) – “raised issues concerning how the Clerk was
15 calling the jury . . .” and the trial in that case was delayed. State’s Exhibit 2, p. 2. Thus, in two Cascade
16 County cases defense counsel raised objections to the formation of the jury panel before the trial took
17 place.

18 Hillious fails to account for the fact that defense counsel in two other cases in Montana had
19 “knowledge, or means of knowledge . . .” of the very irregularity he claims he did not know about and
20 could not discover in advance of trial. The fact that other counsel in this State brought this issue to the
21 consideration of district courts before trial demonstrates that Hillious also had that ability, and therefore
22 subjects him to the pre-trial deadline in § 46-16-112, MCA. Given that Hillious stipulated to the proper
23 formation of the jury and raised no pre-trial objection to the formation of his jury, Hillious’ motion is
24 untimely under § 46-16-112, MCA. On that second basis, this Court should deny his motion for a new
25 trial.

26 27 **III. The Flathead County Clerk substantially complied with § 3-15-405, MCA.**

28 Even taking as true the assertions of Hillious, the Flathead County Clerk substantially complied
with § 3-15-405, MCA. The goals of the jury selection statutes are to “ensure the random selection of

1 prospective jurors and determining juror competency and excuses on the basis of objective criteria.”
2 *LaMere*, ¶ 57. Although the Flathead County Clerk’s office may have committed a technical violation
3 by failing to certify to the Sheriff a list of the individuals who did not respond to the jury notice by mail,
4 the Flathead County Clerk’s Office substantially complied with the statute and achieved the goals of the
5 jury selection statutes. This Court should determine that the statutes do not require the Clerk and the
6 Sheriff to engage in futile acts that do not implicate the random nature or objectivity of the jury’s
7 formation, just as the Court in Department D of this District determined in *State v. Shaw*. State’s
8 Exhibit 1, pp. 28-32.

9 Each year the Montana Supreme Court Administrator’s Office provides the Flathead County
10 Clerk of Court with names of persons qualified to potentially serve as jurors. From that list of
11 approximately 142,000, the Flathead County Clerk’s Office randomly selects 14,000 individuals. The
12 Flathead County Clerk sends notices by mail to 7,000 individuals to potentially serve as jurors for a
13 Spring Term and a Fall Term. From the individuals who return their jury notices, the Flathead County
14 Clerk’s Office randomly selects individuals to serve for a particular trial.

15 In this case, the Clerk of Court selected 200 individuals to form the jury panel for Hillious’ trial.
16 Even if Hillious’ assertions are taken as true, the Flathead County Clerk’s Office substantially complied
17 with § 3-15-405, MCA, by randomly mailing jury notices to a massive number of individuals to
18 potentially serve as jurors. From the jurors who responded, the Flathead County Clerk’s Office
19 randomly selected 200 individuals to appear on January 3, 2022, to form the jury panel.

20 The Flathead County Clerk’s Office’s alleged violation would at most constitute a technical
21 violation and it would be similar to the violation in *Bearchild*. In *Bearchild*, the prosecutor moved to
22 challenge a juror for cause prior to *voir dire*. *Bearchild*, ¶ 3. The district court, without conducting an
23 in-court examination, granted the motion to remove the potential juror from the jury panel. *Bearchild*,
24 ¶¶ 3-4. The defendant appealed the district court decision to remove the potential juror from the jury
25 panel without an in-court examination as violative of § 46-16-115, MCA. *Bearchild*, ¶¶ 9-11. The
26 Supreme Court held that although the district committed a technical violation in failing to abide by § 46-
27 16-115, MCA, the “district court’s error was not a material failure to substantially comply with
28 Montana’s statutes governing the procurement of a trial jury.” *Bearchild*, ¶ 19.

1 At most, the Flathead County Clerk committed a technical violation of § 3-15-405, MCA, by not
2 certifying to the Sheriff a list of the individuals who failed to respond to their juror notices. The
3 Flathead County Clerk substantially complied with Montana's statutes governing the procurement of a
4 trial jury, however, by randomly mailing jury notice to 7,000 individuals out of a potential list of
5 approximately 142,000. The Flathead County Clerk further substantially complied by randomly
6 selecting 200 individuals who responded to their jury notices to serve on the jury panel for the present
7 case.

8
9 **IV. The Defendant has failed to show prejudice as a result of the technical violation.**

10 Since the Flathead County Clerk's Office's general practices constitute substantial compliance
11 with the jury formation statutes, Hillious must establish prejudice to his substantial rights. *Bearchild*, ¶
12 24. Hillious cannot show prejudice from the Flathead County Clerk's failure to strictly follow § 3-15-
13 405, MCA. Hillious examined the potential jurors on January 3, 2022. Hillious, through his counsel,
14 exercised challenges for cause and peremptory challenges. At the conclusion of the jury selection
15 process, Hillious passed the jury for cause and informed the court that the jury selection process, aside
16 from an alleged violation by the State in its use of peremptory challenges, was proper.

17 Hillious cannot establish that any group was excluded because of the Flathead County Clerk's
18 actions. In *LaMere*, the defendant filed a motion to strike the jury panel due to the jury clerk's decision
19 to summon potential jurors telephonically as opposed to service by mail or the sheriff. *LaMere*, ¶ 5.
20 The defendant in *LaMere* argued that his constitutional right to a fair and impartial jury had been
21 violated due to the telephonic method by which the juror panel had been summoned. *LaMere*, ¶ 5. The
22 defendant pointed out a significant difference in access to telephones between Anglo Americans and
23 Native Americans in Cascade County. *LaMere*, ¶ 7.

24 Unlike the defendant in *LaMere*, Hillious cannot point to a similar violation of his right to a fair
25 and impartial jury in this case. The Flathead County Clerk sent jury notices by mail as required by § 3-
26 15-405, MCA. The Flathead County Clerk's Office randomly selected from those individuals who
27 responded 200 individuals to form the jury panel in the instant case. Hillious does not, and cannot, point
28 to a group of people who were excluded as a result of the Flathead County Clerk's actions. The
Flathead County Clerk's actions did not affect the essential fairness of a jury trial. The Clerk's actions

1 did not affect the random selection of potential jurors and excusal by objective measures. The Flathead
2 County Clerk sent juror notices by mail to approximately 7,000 people for the trial term, ensuring that a
3 wide cross section of the Flathead County residents were included in a jury panel. The goals of the jury
4 selection statutes were preserved by the Clerk's actions and practices. Accordingly, Hillious' failure to
5 establish prejudice renders his motion without merit, and this Court should deny the motion.
6

7 CONCLUSION

8 This Court must deny Hillious' motion for a new trial. Pursuant to § 46-16-702, MCA, Hillious'
9 motion for a new trial is passed the thirty-day time limit for such a motion. Hillious' motion for a new
10 trial is untimely by 600 days, and Hillious has failed to establish that the interests of justice warrant a
11 new trial. The Court should deny his motion as untimely under § 46-16-702, MCA. Second, Hillious
12 waived the basis that he now asserts in his motion for a new trial. Section 46-16-112, MCA, requires a
13 defendant to make an objection to the formation of a jury panel five days prior to the jury term. Hillious
14 raises his objection 635 days after that deadline, having the same knowledge or means of knowledge of
15 any alleged irregularities as other counsel in Montana who timely raised an objection. The Court should
16 deny his motion as untimely under § 46-16-112, MCA. Lastly, the Flathead County Clerk's Office
17 substantially complied with Montana's statutes governing the procurement of a trial jury. Since the only
18 violation Hillious alleges constitutes a technical violation, Hillious must show prejudice to his
19 substantial rights. Hillious cannot establish prejudice to his substantial rights to an impartial jury.
20 Hillious participated in the selection of the jury, examined the jury, passed the jury for cause, and
21 informed the court of no error in the jury formation process. For all of the reasons stated above, this
22 Court should deny Hillious' motion for a new trial.
23

24 **ELECTRONICALLY SIGNED AND DATED BELOW.**

25 **RESPECTFULLY SUBMITTED** this 14th day of November, 2023.

26 **OFFICE OF THE COUNTY ATTORNEY**
27 **Flathead County, Montana**

28 /s/ Travis R. Ahner
County Attorney