

**APPLICATION FOR
DISTRICT COURT JUDGESHIP**

A. PERSONAL INFORMATION

1. Full name. Alexander Joshua Roth
2. Birthdate. [REDACTED]
3. Current home address. [REDACTED]
4. Email address. [REDACTED]
5. Preferred phone number. [REDACTED]
6. Judicial position you are applying for. 13th Judicial District Court Judge
7. Date you became a U.S. citizen, if different than birthdate.
8. Date you become a Montana resident. I was born in Billings. Montana has been my place of permanent residence since spring of 1999.

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.

Bonneville High School: GED 1999

Montana State University- Bozeman: 1999-2002, no degree I enlisted in the Marine Corps.

Montana State University-Billings: 2006-2007. Bachelor of Science in Liberal Studies.

University of Miami- School of Law- 2010-2013. Juris Doctor

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

Member of the Bar & Gavel Society, the School of Law's highest honor society. 2012-2013.

President of the Military Law Society 2012-2013.

Chief Notes and Comments Editor of the National Security and Armed Conflict Law Review 2012-2013.

SBA- 3L Senator 2012-2013.

Book Award for Property Law 2010 and International Economic Law 2012.

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.

Roth Law Office- October 2013- present
Owner/Attorney
2722 3rd Ave. N #400
Billings, MT 59101

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.

United States District Court District of Montana: November 26th, 2019

State of Montana: October 1st, 2013

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).

Criminal Law: 95%

Employment Law: 2%

Personal Injury Plaintiff: 2%

Family Law: <1%

Trust and Estates: <1%

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).

I have assisted local legislators with drafts of their proposed bills, to ensure that the text has a clear legal meaning and that it would conform with the Constitution.

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.

As my primary practice has been Criminal Law, I have appeared in courtrooms all over the State. I have had several jury trials, on all of which I was the sole attorney, on the early trials I did not even have support staff. I have had numerous bench trials, hearings on motions to dismiss or suppress, revocation hearings, and have appeared in Court to make an argument more times than I can count.

I have participated in two arbitrations proceedings for Civil matters and one in a Criminal matter.

I have had several interactions with administrative hearings involving employment and social security.

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.

I have not appeared in front of the Montana Supreme Court.

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.

1. Montana case law currently requires a defendant, prior to raising a claim of self-defense, to waive their 5th Amendment right against self-incrimination. *See State v. Hardman*, 276 P. 3d 839 - Mont: Supreme Court 2012. The proper standard should be the establishment of a *prima facie* case. The facts in *Hardman* required the titular defendant to testify to establish a *prima facie* case. However, in a case where video, witness testimony, or other evidence exists in an amount to establish a *prima facie* case the defendant should not have to trade one constitutional right for another. I have had a very good test case on this issue that I took to trial and won, so we had no opportunity to appeal to change the law. An interesting aside, the *Hardman* case was one of the last cases that I was involved in while in law enforcement, just prior to leaving for Law School.
2. I have encountered places where the law is in conflict with itself. I represented an indigent client, who required a translator, whose only source of income was a small social security payment and food stamps. She was arrested for transporting drugs, there was a large amount of drugs in the car with her. I had filed motions to dismiss for several causes in this

case. Judge Simonton denied them all. My client chose to accept a plea, in the plea we were allowed to argue against the statutory fine of 35% of the market value of the drug. I argued that she would not have the ability to pay this large fine. *See MCA 46-18-231(3)*, I argued in the alternative for an alternate valuation of the drugs. Judge Simonton allowed the lower valuation in his sentence but did impose the substantial fine. Upon appeal the Supreme Court ruled along the lines of the argument I made on her inability to pay. Though the Supreme Court states that this issue wasn't raised, in their facts statement of the ruling it quotes me where I informed the Court that I would be asking for no fine to be imposed, though it did not quote my argument. *State v. Yang*, 452 P. 3d 897 - Mont: Supreme Court 2019. I have encountered other places in Montana law where the case law does not match the legislative law, or the law is in conflict with itself. The *Yang* case is one where I played a small role in correcting one of these issues.

3. *Brady* issues. I have encountered problems with this several times in my career. *Brady v. Maryland*, 373 U.S. 83 (1963), and the following case law, commonly referred to as *Brady*, is the rule that the State must disclose any exculpatory evidence in its possession. As the rules are written it is the prosecuting attorney's obligation to provide this to the defense. In practice, in nearly every jurisdiction in the United States, the defense files a comprehensive discovery demand and the counsel for the State provides all reports, videos, recordings, and any other evidence to the defense. In Yellowstone County, after the defense files a comprehensive discovery demand, the defense then must hunt down and request evidence from the various investigative bodies. In *Chavis*, this resulted in a conviction being overturned. After the trial it was discovered that the State had in its possession a photograph of Mr. Chavis with a black eye after the incident. Because Mr. Chavis was relying on a claim of justifiable use of force self-defense, this evidence could have made a major difference at the trial. I filed a motion dismiss or in the alternative for a new trial prior to sentencing. Judge Knisely denied my motion. I handed the appeal to the Office of the Public Defender Appellate Division and the motion they submitted to the Supreme Court was largely the same as my motion in District Court. *State v. Chavis*, 440 P. 3d 640 - Mont: Supreme Court 2019. As of the date of this filing Yellowstone County Attorney's Office still requires defense attorneys to track down evidence in the possession of the investigating bodies.

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 was Chief Notes and Comments Editor on the University of Miami School of Law National Security and Armed Conflict Law Review. Available at <https://nsac.law.miami.edu/publications/summer-2012-publication/>

I was also a research assistant for Professor Markus Wagner, and my name may be noted in some of his articles regarding the use of AI and drones in war, World Trade Organization case law, and international dispute resolution.

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.

I have taught 2 semesters of Firearms classes at Montana State University- Billings, while some legal issues may have been briefly discussed in the classes they were primarily focused on safe use and operation of handguns, rifles, and shotguns.

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.

I have always taken on a number of public defender contract cases at a lower pay rate, and while I often have done work for previous indigent clients at no cost to them, I have not logged these hours consistently. Presently, I have taken on a self-defense with a firearm case, *pro bono*, and have spent over 20 hours on this case this year.

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.

I have not had any positions with the State Bar or other legal organizations.

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

I enlisted in the United States Marine Corps shortly after 9/11. I began boot camp on 1/13/2003. I was on active duty for the majority of the time between then until I returned from a deployment in Iraq in late 2005. I continued in the reserves until 1/12/2009, whereupon I was honorably discharged as a Corporal.

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 have not previously been a judge.

24. Describe any additional business, agricultural, occupational, or professional experience (other than legal) that could assist you in serving as a judge.
I have been a student, a Marine, and a Law Enforcement Officer. I've waited tables, bartended, and worked odd jobs for a little extra money. I've been a research assistant, a business owner, and worked in offices. I've been so broke that I had to decide whether to buy gas or food. I've been well off and had disposable income. The path I've taken up to this point has given me so much more life experience than if I would have gone from high school to college to law school to working as an attorney. By having all these divergent experiences, I bring not only legal knowledge, but also have seen many situations from many sides.

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.

Dog Tag Buddies: Board of Directors; 2018 to present- I help set policy and oversee operations and budget. During this time Dog Tag Buddies has grown from a few dozen veterans in the Billings area to a statewide organization helping hundreds of veterans. The work DeDe Baker and Katie Grove (as well as others) do is something that is helping veterans at risk and has real world results in reducing veteran suicides.

Warrior Wishes of Montana: Board of Directors; 2019 to present- I help set policy and assist in determining the allocation of funds to veterans in need. This organization helps veterans who have urgent immediate needs, that can't be met by larger organizations. Miguel Gonzales and Becky Watson are out in the community finding and helping vets in need, I view my role as a director is to do whatever I can to help them and make it easier for them to do the work they do.

2022 Montana Governor's Veteran Commendation

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.

Stillwater County Justice Court: 2022, filed initial paperwork but did not run.

Yellowstone County District Court Judge: applied for appointment in 2021; ran for an open position in 2018.

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.

Yes, in 2009, I was arrested after attempting to break up a fight. I plead *nolo contendere* to obstruction of justice for leaving the scene of the incident prior to officer's arriving. I received a fine and the judgement was deferred for 90 days.

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.

Yes. Stillwater Tactical; Owner/Instructor; We teach security, firearms safety, and skill development. Our facility is in Molt. If appointed I would sell my stake in the company, to avoid any potential conflicts of interest.

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 have appeared in front of around 50 different judges across the state. I have seen good and bad judges. In making the decision to seek this appointment, I asked myself, would I want a judge like me if I were a defendant, if I were a defense attorney, if I were a prosecutor, or if I were a

victim. I believe in the law, in fairness, in the separation of powers, in the role of the judge being that of a neutral and fair arbiter. Fundamentally, I believe I would be a good judge, and that I could do more good for the community in the role of judge than as an attorney.

36. What three qualities do you believe to be most important in a good district court judge?
1. Fairness. Our justice system is designed to be fair and just. The Judge plays such an important role in that. Fair treatment of all parties, unbiased decisions based on the law as the legislature has written, a strong understanding of our constitutional rights. Not favoring plaintiffs over defendants, or the State over criminal defendants but applying the law to them all equally and fairly.
 2. Knowledge. A judge is required to have a strong basis of knowledge in all areas of practice. This includes not only the area of law that the judge had previously practiced as an attorney, but all areas under his jurisdiction. To effectively do this they judge must be able quickly and efficiently research these areas to be able to make the correct ruling on motions. The judge also must be proficient with areas of law that require quick decisions, for example at trial the rules of evidence or hearsay issues may arise and an incorrect ruling on these matters could result in a mistrial.
 3. Temperament. For the parties other than the attorneys and court staff, the people in the courtroom are normally having one of the worst days of their life. The defendant, the victim, and the witnesses were normally involved in something traumatic. Then they must re-live it in the court room. Many times this causes a strong emotional reaction in them, whether it is breaking down in tears, or getting frustrated and angry, the courtroom can be a very emotional place. If the judge becomes emotional and gets into a yelling match with an angry participant, it gives the judge an appearance of unfairness. Same if the judge becomes emotional when a victim is testifying and crying, though being human the judge is going to feel sympathy and may wish to shed a tear, doing so would make the judge look biased.

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

Originalism. I am a student of our founding fathers, and the form of government they created. I believe, as they did, that many of our rights are natural rights, and the Constitution and bill of rights enshrine these rights. I believe the role of the Judiciary to be a check and balance upon the other branches but to stay within its role. The Judiciary should not create laws, or rule in cases bending or ignoring laws to determine the outcome they want. *See Justice Scalia's dissent in Lawrence v. Texas, 539 U.S. 558 (2003).*

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.

Motion to Dismiss and Brief in Support from City of Billings v. Lawrence Howard Kahle, 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.

David Arthur, ESQ: (702) 287-4877

Liza Bazant: (406) 696-2197

David Knobel: (406) 539-8761

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).

3/28/23

(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 Wednesday, April, 2023

Mail the signed original to:

Hannah Slusser
Governor's Office
P.O. Box 200801
Helena, MT 59620-0801

Send the electronic copy to: hannah.slusser@mt.gov

Alexander J. Roth
ROTH LAW OFFICE
2722 3rd Ave. N., Suite 400
Billings, Montana 59101
Telephone: (406) 850-3436

Attorney for the Defendant

**IN THE MUNICIPAL COURT OF THE CITY OF BILLINGS, COUNTY OF
YELLOWSTONE, STATE OF MONTANA**

CITY OF BILLINGS,

Plaintiff,

VS.

LAWRENCE HOWARD KAHLE,
Defendant,

Cause No CR-20-621

Judge: Hon. Sheila Kolar

**MOTION TO DISMISS AND
BRIEF IN SUPPORT**

Introduction

The underlying motion to dismiss for violation, by the State, of Mr. Lawrance's speedy trial rights is based on its blatant violation of his rights under the 6th and 9th Amendments of the United States Constitution as well as Article II, Section 24 of the Montana Constitution, as well as Montana Code Annotated 46-13-401(2).

Facts

On December 17th, 2020 Larry Kahle was arrested on the underlying docket, he appeared on this charge on the 18th. Mr. Kahle had signed a waiver of speedy trial requesting a brief continuance on March 1st, 2021 continuing the calendar call until March 29, 2021. Though no waiver had been filed or is accessible by efile. On March 29th, the City moved to continue the matter and the calendar call was further moved until June 21st, 2021. At this point in time all parties were aware that Mr. Kahle had been taken into Federal Custody, the Court continued the

Calendar Call until August 16th. At this hearing the City stated on the record that Mr. Kahle was in Federal Custody. On August 17th a Bench Warrant was issued. On September 24th, 2021, the bench warrant was served and Mr. Kahle was returned from federal custody to YCDF. On September 28th 2021 Mr. Kahle had a hearing where he appeared without his attorney, at this hearing he signed a waiver of speedy trial to allow the trial date to be reset. Calendar Call is currently set for October 12th, 2021.

Argument

There are two separate evaluations that take place with a misdemeanor speedy trial claim, Statutory and Constitutional.

Statutory Speedy Trial

Montana Code Annotated 46-13-401(2) states “After the entry of a plea upon a misdemeanor charge, the court, unless good cause is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant’s motion is not brought to trial within 6 months.”

Here Mr. Kahle entered a plea against the charges Assault . § 45-5-201(1)(c), on December 18th, 2020. Six calendar months from December 18th is June 18th, 180 days from December 18th, is June 16th. Because Mr. Kahle did waive a period of 28 days, this time should be added to the 6 month limit, all other time is attributable to the city. This means the jurisdiction on this case will have ran on either July 7th, 2020 or July 9th, 2020 (depending on the counting method used for months). As of July 7th and 9th My Kahle did not have any bench warrants, arrest warrants, and though he may have been in federal custody no writ, or any other effort was made by the city to pursue the prosecution of this case.

Constitutional Analysis

The Court has laid out a four-factor balancing test in deciding speedy trial violations. See *State v. Ariegwe*, 2007 MT 204, *State v. Couture*, 2010 MT 201 and *Zimmerman*. The test takes into consideration (1) the length of the delay, (2) the reasons for the delay, (3) the accused's response to the delay, and (4) prejudice to the accused as a result of the delay. *Zimmerman* ¶ 12.

The Court went on to state that “[e]ach factor’s significance will vary from case to case.” *Id.*

FOUR FACTOR TEST

FACTOR ONE-THE LENGTH OF THE DELAY

In the instant case Mr. Kahle was detained for an Assault, Misdemeanor on December 17th. He has been in custody since that date. The City made no effort to collect Mr. Kahle, though they were aware that he was in custody, until he was released from federal custody on or about September 24th, 2021. A hearing was held on September 28th, where Mr. Kahle signed a second waiver of speedy trial.

Given the 298 days since Mr. Kahle entered a plea, less the 28 days for his original waiver of speedy trial and the (presently) 14 days since his second waiver of speedy trial the city is responsible for 256 days. Even if the Court excludes the time on the bench warrant, which it should not, August 18th to September 24th removes only 37 days still leaving 219 days.

If the instant case proceeds to trial the speedy trial clock would be no less than 219 and more correctly 256 days. This is an analogous fact pattern to that in *Zimmerman*, where the State could have moved for leave to file an information in district court at any time after his initial appearance in Justice Court. In *Zimmerman*, where there was a 289 day delay, the

Supreme Court filed an order denying defendant's motion to dismiss reversed; judgment vacated and case remanded with instructions to dismiss the charges with prejudice. The length of delay in the instant case is far beyond the 200 days set forth by the court in *Ariegwe*, which is the trigger date for conducting the four-factor test and well beyond that in *Zimmerman*. Id at ¶ 13.

Therefore, Factor One should weigh heavily against the City.

FACTOR TWO-REASONS FOR THE DELAY

The State has caused the entire delay in the instant cases by the timing of the charging and dismissal of the dockets which are based upon the exact same transaction. The delay in this case was caused in part by the City, in part by the Defendant and in part due to the Defendant being taken into Federal Custody. It is of note that at no point during his federal incarceration was a writ filed to have Mr. Kahle returned for trial. The dates of delay are as followed: Total time 298 days; Defendant has waived 42 days; Bench Warrant, while Mr. Kahle was in Federal custody 37 days; The City and its continuances are responsible for 219 days.

For the reasons stated *supra*, Factor Two should weigh heavily against the State.

FACTOR THREE-THE ACCUSED'S RESPONSE TO THE DELAY

"The totality of the accused's responses to the delay is indicative of whether he actually wanted a speedy trial and provides guidance in balancing the other factors." Id. at ¶ 22. Mr. Kahle has been incarcerated since the date of the incident and currently is being held on instant charge. The second waiver of speedy trial was signed without his attorney present, therefore should not count against him. Mr. Kahle after his initial continuance has been prepared and is prepared to take the instant matter to trial.

Factor Three weighs heavily in favor of Mr. Kahle.

FACTOR FOUR -PREJUDICE TO THE ACCUSED

i. Prevent Oppressive Pretrial Incarceration

Mr. Buckman will have been incarcerated since December 18th, 2020 and will remain until trial.

ii. Availability of Witnesses

Mr. Kahle's codefendant, who is was an eyewitness to the entire event and would support Mr. Kahles testimony has disappeared, the Defense has had an investigator attempting to find her but as of yet are not successful.

It is clear that Factor Four weighs heavily against the State.

CONCLUSION

Mr. Kahle's speedy trial time ran on July 7th, 2021 while Mr. Kahle was sitting in YDCF prepared to take this matter to trial. The language of the statute is clear that cases in this situation **SHALL** be dismissed. In addition to the statutory speedy trial rights, this case also fails a constitutional analysis as discussed *supra*.

For these reasons the defense respectfully requests that the instant matter be dismissed with prejudice, as required by MCA 46-13-401(2).

RESPECTFULLY SUBMITTED this 12th day October, 2021.

/s/ Alexander J. Roth

Alexander J. Roth
Attorney for Defendant

