

AUSTIN KNUDSEN



STATE OF MONTANA

May 19, 2021

Chief Justice Mike McGrath  
Justice Beth Baker  
Justice Ingrid Gustafson  
Justice Laurie McKinnon  
Justice Dirk Sandefur  
Justice James Shea  
Montana Supreme Court  
215 N Sanders  
Helena, MT 59601

District Judge Donald Harris  
13th Judicial District  
Yellowstone County District Court  
217 N. 27th Street, Rm. 507  
P.O. Box 35029  
Billings, MT 59107

*Delivered via E-mail and to the  
Clerk of the Supreme Court*

Dear Mr. Chief Justice, Associate Justices, and Judge Harris:

I write personally today regarding your May 15, 2021 Order Denying the Legislature's Motion to Disqualify in OP 21-0173. My understanding is that the Legislature will be responding formally to that Order.

My purpose here is not to respond to the substance of your Order but to object to some of the Court's statements, which appear to me nothing more than thinly veiled threats and attacks on the professional integrity of attorneys in my office.

Page 4 of your Order recites statements made by Lieutenant General Kris Hansen and Derek Oestreicher, both from my office, who together represent the Legislature. In the course of that representation, they have delivered strong statements from the Legislature regarding the Court's lack of jurisdiction, the invalidity of resultant orders, and the impropriety of this Court presuming to "settle" its dispute with a coordinate branch of government. The Court obviously takes exception to those statements, and stated as follows:

These representations from counsel that the Court's orders would not be followed were disruptive to the Court's functioning as a tribunal and the administration of justice, particularly because the Court was dealing with the unrestrained and ongoing dissemination of thousands of Judicial Branch e-mails.

DEPARTMENT OF JUSTICE

215 North Sanders  
PO Box 201401  
Helena, MT 59620-1401

(406) 444-2026  
Contactdoj@mt.gov  
mtdoj.gov

Underlying the Court's cool remark is a menacing warning—that Lieutenant General Hansen and Mr. Oestreicher stating the unvarnished position of a coordinate branch of government, their client, in an unprecedented and contentious separation of powers dispute, may constitute professional misconduct. *See* Rule of Professional Conduct 8.4(d). Much can be said about the impropriety of the Court, the State's highest disciplinary authority, bandying such warnings under circumstances like this.

But I will limit my comments to what follows. Lawyers obviously must not engage in behavior prejudicial to the administration of justice. But lawyers also have affirmative obligations to report judicial misconduct, *see* Rule 8.3(b), to always pursue the truth, *see* Preamble § 1, and to safeguard “the integrity of the of the [legal] system and those who operate it as a basic necessity of the rule of law.” Preamble § 14. *That* is what Lieutenant General Hansen and Mr. Oestreicher have done and will continue to do. They must zealously represent their client with integrity and honesty. I demand the same from every attorney in my office, regardless of whether doing so vaults them into a political thicket like this or even exposes them to a tribunal's misplaced admonitions.<sup>1</sup>

There is also some irony in accusing these fine attorneys of disrupting the administration of justice when their client's argument is that it is constitutionally, legally, and ethically improper for this Court to attempt to administer justice *in this matter*.

All this to say, while this dispute is extraordinary and troubling, please refrain from threatening or maligning the integrity of my attorneys who are assiduously living up to their ethical obligations under unusual circumstances. If you wish to vent any further frustrations about the conduct of attorneys in my office, I invite you to contact me directly.

Respectfully,



Austin Knudsen  
Attorney General

---

<sup>1</sup> On Page 10 of the Order, you remark: “The Legislature's blanket request to disqualify all members of this Court appears directed to disrupt the normal process of a tribunal whose function is to adjudicate the underlying dispute consistent with the law, the constitution, and due process.” That statement is inaccurate almost to a word. It assumes facts and ascribes malintent so brazenly, it betrays a self-admission that the Court's posture in this matter is adversarial—not adjudicatory. But for purposes of this letter, to the extent you are again attributing allegedly unethical behavior to my attorneys, that is incorrect and inappropriate.