

In true Montana spirit, the Chuckwagon . . . the newsletter to fill your fair housing appetite.



Montana Fair Housing is a private, non-profit, civil rights organization providing education, outreach, and enforcement activities throughout the state of Montana and elsewhere. MFH does not have an attorney on staff. Information contained in this newsletter should not be construed as legal advice and does not provide a legal opinion.

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### Tales Roun' the Campfire

*A synopsis and/or update of cases filed with the Montana Human Rights Bureau (HRB), the Department of Housing and Urban Development (HUD), and/or federal or district court. This summary is not all inclusive . . .*

#### **Charge of Discrimination Issued by US Department of HUD Resolved**

Montana Fair Housing vs. Jim and Julie Betty

On February 11, 2013, MFH filed a Complaint with HUD alleging that Jim and Julie Betty discriminated against a household based on disability, in violation of the Fair Housing Act. In June, 2015, this complaint was settled and resolved amicably by the parties with no admission of liability by Jim and Julie Betty.

Parties agreed the terms of settlement will not be publicized.

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#### **Requests for Reasonable Accommodations for Assistance Animals . . . Continued . . .**

Following several inquiries, Montana Fair Housing provides the following guidance in regards to local ordinances and insurance coverage exemptions.

*Can I require assistance animals to be vaccinated, licensed, and spayed or neutered if local laws require it?*

Generally, local animal control officers have the

responsibility to enforce local licensing and animal safety ordinances. If an individual has a concern about an animal, whether it be a pet, service animal, or assistance animal, the person may contact the local office responsible for animal control. It is the responsibility of that office to follow up as needed. Housing providers may not require documentation related to compliance with local ordinances as a condition for approval of a Request for an Accommodation. However, a housing provider can include language in his/her Assistance Animal Policy such as:

I affirm that my animal is in compliance with all state and local laws concerning animals, including laws regarding vaccinations, licensing, and/or spaying or neutering.

Local ordinances imposing breed restrictions have been successfully challenged. The Cities of Denver and Aurora in Colorado have revised their local ordinances ([http://www.denverpost.com/ci\\_16006881](http://www.denverpost.com/ci_16006881)):

"As far as the ADA, it's now pretty black and white, according to what the U.S. Department of Justice has prepared," said Nancy Severson, Denver's manager of environmental health services, the agency in charge of enforcing the pit-bull ban.

"If it's a service dog, and they claim it's a service dog, and the dog is providing the support for a disability, we will have to honor that," she said.

The effectiveness of breed restrictions is not supported by available data, (see KC Dog Blog at <http://btoellner.typepad.com/kcdogblog/2014/10/aurora-co-voters-to-determine-fate-of-citys-breed-ban-facts-you-need-to-know.html>). A list of agencies and organizations who oppose breed-specific legislation, according to the blog, includes:

. . . the Center for Disease Control (CDC), the National Animal Control Association (NACA), American Veterinary Society of Animal Behavior (AVSAB), American Veterinary Medical Association (AVMA), Association of Pet Dog Trainers (APDT), the American Society for the Protection of Cruelty to Animals (ASPCA), Humane Society of the United States (HSUS), and the American Bar Association . . .

These organizations "agree that laws targeting breeds are ineffective and should be replaced with laws targeting aggressive dogs based on their behavior, not their breed."

*What if my insurance company imposes breed-specific requirements and/or compliance with state and local ordinances as a condition of coverage?*

The Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD) understand that housing providers need insurance coverage.

Montana Fair Housing encourages housing providers in this situation to contact other insurance companies and seek commensurate coverage at a commensurate cost. Have those companies provide written quotes for coverage. If alternative coverage is available without the coverage exemptions, secure that company's policy.

Contact Montana Fair Housing. We want to resolve conflicts in local law and insurance coverage so housing providers do not face unnecessary barriers in order to comply with federal, state, and local nondiscrimination laws.

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### **Montana Fair Housing and Pam Bean vs. Richard Montz**

On September 30, 2013, Montana Fair Housing filed a complaint with the Department of Labor and Industry's Human Rights Bureau. The complaint alleged Richard Montz had retaliated against MFH by filing a "factually and /or legally baseless civil action" against the organization and its executive director, Pam Bean, in retaliation for their actions representing a disabled person living at a property that Montz managed.

On January 22, 2014, the Charging Parties filed a fourth amended complaint alleging additional acts of

retaliation including email communications that were laden with "expletives, containing vile and derogatory and malicious statements, that included threats of possible violence."

On July 18, 2014, the Human Rights Commission remanded the matter to the Office of Administrative Hearings. On August 1, 2014, Montz was served with the Notice requiring him to file a preliminary prehearing statement.

On August 4, 2014, Montz sent an *ex parte* email that included an incomplete preliminary prehearing statement; requested an accommodation for the disabilities identified in a Social Security Administration (SSA) Decision he included with this email; asserted that the hearing officer should be disqualified; and demanded an attorney be appointed to defend him. His incomplete preliminary prehearing statement said he was unable to comply "due to the continued abuses by Timothy Kelly, the State of Montana, Pam Bean and Montana Fair Housing."

On August 6, 2014, the Hearing Officer issued an order requiring Montz to submit more detailed information about his "motion" to disqualify the hearing officer; requiring Montz to decide whether he would disclose the SSA Determination to Kelly; requiring Montz to provide more detail about the accommodation he was requesting; and requiring the parties to serve each other with all pleadings or other substantive matters. Montz failed to properly serve Charging Parties with his response to this order or any other order issued by the Hearing Officer during these proceedings.

On August 13, 2014, the Hearing Officer issued a scheduling order setting dates for the completion of discovery, filing of motions and setting a hearing date. The order also required the parties to file a preliminary prehearing statement if they had not already done so and warned that failure to comply with an Order or to participate in a prehearing conference could result in sanctions including default or dismissal. The order required the parties to serve each other copies of any filings. Montz did not comply with this order.

On August 25, 2014, the Hearing Officer stayed the proceedings while determining the proper course of action upon reviewing the SSA decision regarding Montz' disabilities.

On September 8, 2014, the hearing officer, issued an order to Show Cause why Montz should be allowed to continue as a self-represented litigant. The Hearing Officer appointed a guardian ad litem to aid him in making the determination.

On December 9, 2014, and after the show cause hearing regarding Montz' competency and the filing of some additional motions, the Hearing Officer issued an Order denying Montz' motion to disqualify the Hearing Officer; denying Montz' request for accommodation; finding Montz competent to represent himself; lifting the stay of the proceedings; and reminding the parties of the procedures that must be followed. Montz did not comply with this order.

On December 9, 2014, the Hearing Officer issued a new scheduling order setting a March 25, 2015, hearing date. This scheduling order set a February 19, 2015, deadline for completion of discovery and a February 26, 2015, deadline for filing motions. The Order informed the parties that failure to comply with an order of the Hearing Officer may result in sanctions including Montz' default.

On December 31, 2014, the Hearing Officer issued an order once again requiring Montz to file his preliminary prehearing statement and set a deadline of January 16, 2015. Montz did not comply with this order.

On January 29, 2015, in response to a motion filed and served by Charging Parties, the Hearing Officer issued an order informing Mrs. Montz that she was prohibited from practicing law but could assist her husband in other ways defending the claims filed against him. The Order changed the hearing date by one day in an effort to ensure that the hearing would not be disrupted by any other activities taking place at the location. The Hearing Officer chose the location of the hearing because, as was evident from the communications from the parties, they were not going to agree to a location. The Hearing Officer selected the location, in large part, because it satisfied the majority of the accommodations Montz demanded. Montz was still not satisfied with the location. The Hearing Officer drove to Anaconda to personally inspect the facilities and found them to be more accommodating than he had been told in his conversation with the facility's manager.

On February 27, 2015, the Hearing Officer issued a Notice and Order informing the parties that the

Order of Protection issued by Judge Pahut did not prevent Montz from responding to any discovery request or motion filed in this matter. The Order also informed Montz that threats of violence against Mr. Kelly, counsel for the Charging Parties, would not be allowed. In addition, the Order sought to prevent Montz from contacting the Hearing Officer at his home in any way. Montz violated this provision of the order within hours of receipt.

On this same date, an employee for the OAH received a phone call from Montz asking what would happen to the hearing in this matter if he was in jail, because he was going to violate his restraining order. In this conversation, Montz stated that he was going to violate his restraining order.

On or about March 6, 2015, Mrs. Montz contacted OAH seeking copies of the default and summary judgment motions Charging Parties filed and served. OAH staff forwarded the message to Charging Parties' counsel, who sent another copy of the motions to Mrs. Montz on that same date.

A summary of the Hearing Officer's 30-page decision dated March 17, 2015, follows. For a complete copy of the decision, please contact our office.

Motion 1 requested Default based on Richard Montz' failure to file a preliminary prehearing statement. Court's Conclusion: The continued and repeated failures of Richard Montz to file his preliminary prehearing statement violate prior orders of this tribunal, prejudice the Charging parties and justify entering Respondent, Richard Montz' default.

Motion 2 requested Default against Respondent as a sanction for failure to attend his deposition. Court's Conclusion: Montz's failure to appear at the scheduled deposition caused Charging Parties to incur additional costs, loss of time and loss of a final opportunity to obtain discoverable information from him. For these reasons, Richard Montz' default is entered.

Motion 3 requested entry of judgment against Respondent for willfully failing to respond to Charging Parties' First Set of Interrogatories and Document Requests and for Bad Faith Failure to comply with the applicable Rules of Civil Procedure. Court's Conclusion: Based on the facts and law the Hearing Officer grants, in part, Charging Parties' motion and enters Montz' default on the issue of

liability for his repeated, ongoing and willful refusals to answer the Charging Parties' requests for answers to interrogatories and their requests for documents.

Motion 4 requested an order requiring Respondent to show cause why default judgment or other sanctions should not be entered against him for repeated violations of the Hearing Officer's December 9, 2014, order by continuing to send *ex parte* communications to the Hearing Officer. Court's Conclusion: "Throughout these proceedings Montz has failed to comply with any of the orders issued by the hearing officer and has blatantly stated he would not comply with the rules of civil procedure; would not accept mail or emails from Charging Parties' attorney, Mr. Kelly. He would not send emails or mail to Mr. Kelly. He has sent countless emails berating the hearing officer, the state, Mr. Kelly and the Charging Parties. He has sworn at administrative staff. He has cursed the Hearing Officer and attempted to intimidate him by calling him at his home. He has threatened to kill Mr. Kelly. He has threatened to sue or cause harm to everyone associated with this case. Montz has flagrantly refused to comply with any discovery requests and the orders of this tribunal. Because Montz' has repeatedly disobeyed the Orders of the Hearing Officer his default is entered."

Motion 5 requested Summary Judgment Against Respondent on Claim He Retaliated Against them in Violation of Mont. Code Ann. § 49-3-201.

The administrative rule regarding Retaliation and Coercion Prohibited, "provides: (I) It is unlawful to retaliate against or otherwise discriminate against a person because the person engages in protected activity."

The Court concluded that "there is no genuine issue of fact or law that Montz retaliated against the Charging Parties."

"Montz admits he took significant adverse actions against Charging Parties because they filed a human rights complaint, including filing factually and legally baseless complaints against them and acting to intimidate, harass and threaten them through repeated emails. Three judges have found he engaged in intimidating, harassing and threatening behaviors toward Charging Parties after they filed their complaint with the Human Rights Bureau. Judge Dayton also found that Montz' civil action,

No. 13-79, resulted from Charging Parties' filing of a human rights complaint and that the Respondent's claims were factually and/or legally baseless, warranting an order of dismissal."

"The disputed facts and the applicable law establish there is no question of fact or law regarding whether Montz has illegally retaliated against Charging Parties. Summary judgment is granted regarding the issue of whether Montz violated the rights of Montana Fair Housing and Pam Bean under 49-2-301 and is liable for the harm caused."

"There is no longer any dispute that Richard Montz committed the acts of which Charging Parties complain. Under the Human Rights Act there are consequences for such conduct. Montz asserted that his mental disabilities have played a role in his conduct. However, Montz is liable for his conduct even though Montz has some disabilities."

"There is evidence that Montz suffers from mental disabilities and he relies on the Social Security Administration's Notice Of Decision (NOD) to remind people that he has been found to suffer from several disabilities. That same report also found him to be "intelligent, with intact memory and concentration and was not delusional." It was also determined that he retains "the ability to understand, remember and carry out simple to complex instructions. At the SSA hearing he offered "articulate and detailed testimony."

"The hearing officer does not doubt that Montz has the disabilities described in the SSA Decision, however, . . . , his mental disabilities do not relieve him of liability for his acts. As his liability has been established he must now account for his retaliatory conduct . . ."

Respondent Richard Montz is enjoined from discriminating or retaliating against the Charging Parties, Montana Fair Housing and Pam Bean, including but not limited to filing any complaints against them with the Human Rights Bureau related in any way to the facts and circumstances that are part of, or led to, the filing of Charging Parties' complaint.

Respondent Richard Montz is enjoined from contacting the Charging Parties for any reason and must comply with any orders issued by any court regarding his contact with Charging Parties.