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ANGIE SPARKS, Clerk of District Court  
By *[Signature]* Deputy Clerk

*Attorneys for Petitioner*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

JUSTICE JIM RICE,

Petitioner,

vs.

THE MONTANA STATE LEGISLATURE,  
by Senator Mark Blasdel, President of the  
Senate and Representative Wylie Galt,  
Speaker of the House of Representatives,

Respondents.

Cause No. BDV-2021-451

**REPLY BRIEF OF PETITIONER IN  
SUPPORT OF PETITION FOR  
DECLARATORY JUDGMENT**

The Legislature has declined to respond substantively to Justice Rice's Brief in Support of Petition for Declaratory Judgment, instead ignoring this Court's denial of its motion to dismiss and continuing to argue that the present dispute has been mooted by the Legislature's withdrawal of its subpoena to Justice Rice. This Court has already held that the dispute regarding the issuance of the subpoena is not moot. July 26, 2021

Dismissal Motion Order.<sup>1</sup> In that Order, the Court also set forth circumstances that *would* render the dispute moot, which the Legislature also ignores in its response:

The Legislature could simply have expressly represented to Justice Rice and this Court that it will not issue another subpoena to him because it will proceed with its complaints against Justice Rice before the constitutionally created Montana Judicial Standards Commission. Such a representation, in this Court's view, would have satisfied the *Havre Daily News* Court's 'absolutely clear' mootness requirement.

Dismissal Motion Order at 20. The Legislature has still made no such representation. It is apparent—based on this omission, as well as multiple public statements cited in Justice Rice's initial brief—that the present controversy is not moot precisely because the Legislature does intend to issue further subpoenas.

It is appropriate that this Court exercise its jurisdiction under the Declaratory Judgments Act to “declare rights, status, and other legal relations” as to the scope of the Legislature's authority to subpoena documents, including personal communications, from a Supreme Court Justice. See § 27-8-201, MCA. Contrary to the Legislature's assertion that Justice Rice “seeks additional relief,” Justice Rice continues to seek a declaration that the subpoena issued to him—and any subpoena that may be reissued, as the Legislature plainly intends—is invalid. The reasons for that invalidity are those set forth in Justice Rice's initial brief:

- That the Legislature's statutory subpoena power does not include the power to compel production of documents via subpoena duces tecum;

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<sup>1</sup> Proving the foresight of this Court when it stated that “Certainly, this Court expects the Legislature and its counsel to socially broadcast this decision as ‘judicial activism,’” July 26, 2021 Dismissal Motion Order at 20 n.7, the Legislature declines to argue the merits of the petition, instead lamenting, “It is clear to the Legislature that this Court has already made up its mind on this case.” Resp. Br. at 3. The Legislature appears to further signal its intent to disregard this Court's authority by declaring that “Any opinion by this Court constitutes an advisory opinion.” *Id.* at 4. The disregard for the judiciary as a co-equal branch of government exhibited by the Legislature and Attorney General is deeply concerning.


- That the Legislature, pursuant to *McLaughlin II*, may not issue a subpoena seeking the communications of a Supreme Court Justice for the stated purpose of “investigation into whether members of the Judiciary or employees of the Judicial Branch deleted public records and information in violation of state law and policy;”
- That the Legislature, pursuant to *McLaughlin II*, may not issue a subpoena seeking the communications of a Supreme Court Justice for the stated purpose of investigating “whether the current policies and processes of the Judicial Standards Commission are sufficient to address the serious nature of polling members of the Judiciary to prejudge legislation and issues which have come and will come before the courts for decision;”
- That the Legislature may not issue a subpoena for personal communications without demonstrating that production is necessitated by a legitimate legislative interest, and not for purposes of political exposure or to serve an investigative interest that is the purview of the executive branch; and
- That the Legislature may not issue a subpoena for the purpose identified in its Brief in Support of Motion to Dismiss of investigating alleged judicial misconduct.

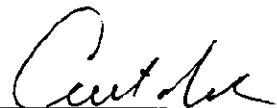
Pet. Br. at 6. A petitioner requesting declaratory relief should set forth the basis for the relief requested, and further, this Court should set forth adequate reasoning to apprise the parties of their rights and the reviewing court of the grounds for the judgment. See, e.g., M. R. Civ. P. 52(3) (requiring court to specify grounds for judgment under Rule 12 or 56 “with sufficient particularity as to apprise the parties and any appellate court of the rationale underlying the ruling.”); *Beebe v. Bd. of Dirs. of the Bridger Creek Subdivision Cmty. Ass’n*, 2015 MT 183, ¶ 12, 379 Mont. 484, 488-89, 352 P.3d 1094, 1097 (citing standard of review for declaratory judgment action); *In re Seizure of \$ 23,691.00 in United States Currency*, 273 Mont. 474, 483, 905 P.2d 148, 154 (1995); *Jones v. Jones*, 190 Mont. 221, 224, 620 P.2d 850, 851-52 (1980). Justice Rice is not requesting additional relief, but rather setting forth the legal reasoning supporting his request for relief.

The subpoena previously issued to Justice Rice was legally flawed in the respects noted. It purported to compel the production of documents; it sought personal communications without adequate justification; its plain aims were political exposure and to improperly serve an investigative interest within the purview of the executive branch; and it was expressly issued for invalid purposes including investigation of “whether members of the Judiciary or employees of the Judicial Branch deleted public records and information,” “whether the current policies and processes of the Judicial Standards Commission are sufficient,” and alleged judicial misconduct. Accordingly, Justice Rice seeks a declaration that the subpoena—and any future subpoena sharing those characteristics—is an invalid exercise of the Legislative subpoena power.

DATED this 1 day of October, 2021.

DRAKE LAW FIRM, P.C.


BY:   
Patricia Klanke

BY:   
Curt Drake

**CERTIFICATE OF SERVICE**

I, Curt Drake, attorney for the Petitioner, above-named, hereby certify that I mailed a true and correct copy of the **PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR DECLARATORY RELIEF**, on the 13<sup>th</sup> day of October, 2021, postage fully prepaid by U. S. Mail and email, to the following:

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