

ORIGINAL

March 30, 2009

The Montana Supreme Court  
215 North Sanders  
P.O. Box 203003  
Helena, MT 59620-3003

FILED

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*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

In re: Proposed Amendments to Rules of Appellate Procedure

Chief Justice McGrath and Justices of the Supreme Court:

As an Official Court Reporter for the 1<sup>st</sup> Judicial District, I would like to offer comment on the proposed amendments to the Rules of Appellate Procedure.

I respectfully oppose the proposed amendment to Rule 9(3)(b).

Appellants are required by rule to file a simultaneous Notice of Appeal and Request for Transcripts. The Montana Appellate Defender Office is currently the only entity that routinely does this. The 40-day period begins to run upon filing a Notice of Appeal, cutting into transcript preparation time if the transcript request is not made pursuant to the rule. Many times a Request for Transcript will come only days before the 40-day deadline. Sometimes the court record is transmitted with no transcript ordered. Once the briefing schedule has begun, someone realizes that a transcript is needed, discovers that it was never ordered, and the request is made at that time. Many times the Notice of Appeal states all transcripts have been ordered, when in fact they have not.

3-5-604 provides for payment before a court reporter is required to prepare a transcript. Many pro se appellants are unaware there will be a charge for a transcript. Lack of funds is a common problem and can result in 40 days, or longer, for payment to be arranged. Although 3-5-604 recognizes that payment must be made before the transcript is prepared, the Rules of Appellate Procedure do not.

A verbatim transcript takes a prescribed amount of time to prepare. A reporter's first responsibility is to report cases in court. The second responsibility is to prepare transcripts. In a busy district, transcript preparation time includes time during an 8-hour day not spent in court, early in the morning, lunch hour, late at night and weekends. As Montana's District Court caseloads have increased, transcript requests have increased as well. If one were to look closely at the realities of the transcript preparation process, a strong argument could be made for the increase of transcript preparation time.

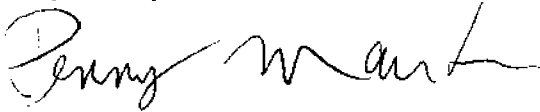
When an extension becomes necessary, that determination is made near the 40-day deadline and the extension is prepared one or two days before the deadline. The district judge is accessible and available for signature, the extension is granted and filed with the Clerk of Court's Office on or before the deadline, and the parties are immediately notified.

When an extension becomes necessary from the Supreme Court, that determination is made near the 90-day deadline when the additional time needed can best be assessed. Typically, if a Supreme Court extension is necessary, the transcript(s) is from a lengthy trial that could not possibly be completed in 90 days and the reporter is extremely busy in court. The reporter must first notify the appellant that an extension is necessary, the appellant is then required to prepare a motion and order, the reporter must prepare an affidavit, get it to the appellant, who then must file the motion, order and affidavit with the Supreme Court Clerk's Office. It may take 7 to 10 days for notification that the extension has been granted. While waiting to find out, technically the transcript may be considered late.

Under the Proposed Rule Change, for a Supreme Court extension to be obtained by the 20-day deadline, a reporter would essentially be required to obtain a 20-day extension from the district judge and at the same time make application to the Supreme Court for an additional extension, not knowing at that point how much additional time would be needed, if any at all.

In summary, the Proposed Rule Change will result in a court reporter spending more time maneuvering through a cumbersome extension process, which will then result in further delay of the transcript. This Proposed Rule Change will not speed up the process.

Thank you for your time and consideration.

A handwritten signature in cursive script, appearing to read "Penny Doig-Martin".

Penny Doig-Martin, RPR  
Official Court Reporter  
First Judicial District  
Helena, Montana