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FILED

08/20/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 07-0016

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 07-0016

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AUG 20 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE MATTER OF THE RULES OF
APPELLATE PROCEDURE

ORDER

The Clerk of the Montana Supreme Court has submitted proposed amendments to Rule 26 of the Montana Rules of Appellate Procedure to the Court for its consideration. After consideration of the proposed amendments, the Court has determined that the bench and bar of the State of Montana should be provided an opportunity to comment thereon.

The Clerk proposes to revise M. R. App. P. 26 as follows. Language proposed to be stricken from the Rules is interlineated, and language proposed to be added is underlined.

Rule 26. Extension of time.

(1) Extension of time - generally. Except as provided in section (2) of this rule, the sSupreme eCourt for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances. Within the text of each motion requesting an extension of time submitted to the sSupreme eCourt for its consideration, except for those involving the Attorney General and an incarcerated pro-se litigant, counsel shall note that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. Failure to include this statement may constitute grounds for denial of the motion. All motions and orders for extension of time shall comply with rule 16 and shall include a date certain on or before which date the act for which an extension of time is requested must be performed. In all cases except those addressed in section (2) of this rule, a party may move for and be granted one 30-day extension of time in

which to file a brief required or allowed to be filed under these rules. The Clerk of the Supreme Court is authorized to act on any such motions for 30-day extension of time which are unopposed, and also on any such motions involving the Attorney General and an incarcerated pro-se litigant. Any second or subsequent motion for extension of time to file a brief shall meet the requirements of section (2) of this rule.

(2) Extensions of time - filing briefs in appeals of proceedings regarding abused or neglected children, parenting plans, and motions for second or subsequent extensions. There shall be a presumption against granting motions for extension of time to file briefs. Any motion for extension of time to file a brief in the referenced cases may be granted only upon written motion supported by a showing of diligence and substantial need. Such a motion shall be filed at least 7 days before the expiration of the time prescribed for filing the brief, shall comply with rule 16, and shall be accompanied by an affidavit stating:

- (a) When the brief is due;
- (b) When the brief was first due;
- (c) The length of the requested extension;
- (d) The reason an extension is necessary;
- (e) An explanation establishing that movant has exercised diligence and has substantial need for the extension, and that the brief will be filed within the time requested. An affidavit setting forth a conclusory statement as to the press of business will not constitute a showing of diligence and substantial need and will subject the motion to summary denial; and
- (f) Whether any other party objects to the request.

IT IS THEREFORE ORDERED that all members of the bench and bar of Montana and any other interested persons are granted 60 days from the date of this Order in which to file with the Clerk of this Court appropriate comments and/or suggestions to the Proposed Amendments to Rule 26 of the Montana Rules of Appellate Procedure.

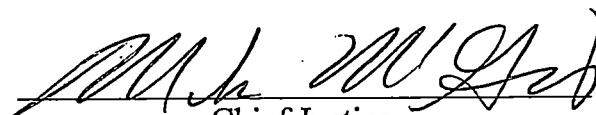
IT IS FURTHER ORDERED that this Order shall be posted on the websites of the Montana State Law Library and the State Bar of Montana. The State Bar of Montana is further requested to give notice of this Order and of its website posting of the Proposed Revisions in the next available issue of *The Montana Lawyer*.

IT IS FURTHER ORDERED that the Clerk of this Court shall post this Order on the Court's website and shall provide copies of such to the State Bar of Montana, and

shall provide to each District Court Judge and each Clerk of the District Court a copy of this Order with a request that each Clerk of the District Court make the Order available for public review in the Office of the Clerk of the District Court.

DATED this 20th day of August, 2019.

For the Court,


Chief Justice