

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0547

STATE OF MONTANA,

Plaintiff and Appellee,

v.

BEAU HERMAN MILLER,

Defendant and Appellant.

AFFIDAVIT IN SUPPORT OF MOTION FOR EXTENSION OF TIME

STATE OF MONTANA)
 : ss.
County of Gallatin)

I, Jennifer Dwyer, pursuant to Montana Code Annotated § 1-1-203 and M.
R. App. P. 26(2), declare:

1. I am a licensed, practicing attorney in the State of Montana, and I am
currently employed with Avignone, Banick & Williams, PLLC.

2. In my private practice, I contract with the Office of the Appellate
Defender. In my capacity as a contract and conflict public defender, I have been
assigned to represent Appellant in this case.

3. Appellant's opening brief is due May 4, 2020. Appellant requests an
extension of approximately 30 days, until June 4, 2020, to file the opening brief.

4. This is the seventh request for an extension filed on behalf of the Appellant. However, an entry of appearance was filed on my behalf on March 18, 2020. This is the second request for an extension of time that I have made regarding the opening brief deadline in this case.

5. I have had insufficient time to draft and file the opening brief. Since filing a Notice of Appearance, I have been without the entire District Court file. On March 26, 2020, I received a file from the Appellate Defender's Office which included 6 DVDs of exhibits containing video depositions, recorded interviews, and 911 telephone call recordings; on March 31, 2020, I was able to download the transcripts from the hearings and jury trial in the District Court.

6. In addition to not having the complete file at the time of the March 18, 2020 entry of appearance, certain work obligations in addition to my regular case load affected my ability to devote sufficient time to complete the opening brief. The request is necessary for the following reasons:

- Between March 31, 2020 (the date the deadline to file the Opening Brief was reset) and May 4, 2020 (the current due date), in addition to the demands of counsel's existing workload, counsel was required to prepare an appellate reply brief to the Montana Supreme Court; reply briefs to the Montana District Court in an Incest case set for trial at the end of May, 2020; a sentencing

memorandum for a matter pending in the United States District Court for the District of Montana; and all pretrial motions and reply briefs in a misdemeanor case pending in the Gallatin County Justice Court. Moreover, counsel is preparing all pretrial motions for a matter set for trial before the United States District Court for the District of Montana, which are due on May 4, 2020.

- The recent global health pandemic caused by COVID-19 has also impeded counsel's ability to complete the opening brief due to the adjustment to the shelter in place Order and to working remotely. Additionally, this Honorable Court issued a memorandum outlining court practices to implement after May 4, 2020. The memorandum permits district court judges to plan locally for returning to necessary jury trials, which requires the parties to assist in planning for voir dire to occur in a safe manner. In anticipation thereof, counsel's preparation for a district court jury trial scheduled in the end of May was demanding

For these reasons, I was unable to prepare and file the opening brief within the time frame set by this Honorable Court. Additional time is needed to review the materials from the District Court, research the applicable legal issues, edit and

finalize the opening brief. The extension of time will ensure effective representation of the Appellant.

7. I will continue to work diligently to complete the brief within the timeframe set by the Court.

8. Opposing counsel has been contacted and does not object to the request to extend the time to file the opening brief.

9. I declare under penalty of perjury that the above is true and correct.

/s/ Jennifer Dwyer
JENNIFER DWYER
Attorney for Appellant

April 28, 2020
Date

CERTIFICATE OF SERVICE

I, Jennifer Dwyer, hereby certify that I have served a true and accurate copy of the foregoing Affidavit in Support of Motion for Extension of Time to the following, on April 28, 2020:

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DATED: April 28, 2020 BY: /s/ Jennifer Dwyer