

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. DA 22-0054

Shandor S. Badaruddin,

Appellant,

-vs-

The State of Montana &
The Nineteenth Judicial District,Appellees.

Appellant's Fifth Motion for Extension of Time

Come now, Colin M. Stephens and Peter F. Lacny, *pro bono* counsel for the Appellant, and respectfully request an approximate three-week extension of time until approximately September 23, in which to prepare, file and serve the Appellant's Opening Brief in this matter.

This is Appellant's fifth request for extension. The Opening Brief was originally due on April 28, 2022. The current due date is August 26.

Opposing counsel has been contacted and **does not object**.

Further reasoning in support of this motion is set forth in the

following Declaration.

Respectfully submitted this 18th day of August, 2022.

/s/ Peter F. Lacny
Peter F. Lacny
DATSOPOULOS, MacDONALD & LIND, P.C.

/s/ Colin M. Stephens
Colin M. Stephens
SMITH & STEPHENS, P.C.

Declaration

State of Montana)
 :
County of Missoula)

I, Peter F. Lacny, pursuant to *Mont. Code Ann. § 1-1-203*, declare:

1. I am a licensed, practicing attorney in the State of Montana, and I am currently employed at Datsopoulos, MacDonald & Lind, P.C.
2. I am one of two attorneys for the Appellant in this matter.
3. Both myself and my co-counsel are representing the Appellant in this matter *pro bono* and in our capacities as members of the Montana Association of Criminal Defense Lawyers. My co-counsel Mr. Stephens is the current President of that Association. I am the immediate past President.
4. Although the facts and procedural history of the underlying criminal case upon which this matter is based are familiar to the Court, the issue raised in this appeal is both a matter of first impression and one of state-wide importance, especially to attorneys practicing criminal defense in the State of Montana.

Despite working diligently to complete the Appellant's Opening Brief in a timely fashion, Mr. Stephens and I have been unable to complete it under the current schedule.

5. Significant portions of the opening brief are complete, but additional time is requested to finalize the brief.
6. Additionally, last week, on August 12, the United States District Court for the District of Montana ruled that the double jeopardy provisions of the Fifth Amendment preclude re-trying the

Defendant in the case underlying this appeal. That Order creates other potential arguments that counsel needs to research and further address in the opening brief. Specifically, the Order of the United States District Court makes findings that directly contradict the state district court's conclusion that the Appellant's performance during the underlying criminal trial warrant sanctions. Further, the decision by the United States District Court potentially precludes the State of Montana from prosecuting the Appellant's client in a further criminal proceeding. The new issues created by the recent Order require more time to research and potentially brief in this appeal.

7. Counsel would request an additional approximate 30 days to complete the brief in light of that decision, and request an extension until September 23, 2022.
8. Both of us will continue to work diligently to complete the Appellant's Opening Brief in the time allotted from this requested continuance.

Respectfully submitted this 18th day of August, 2022.

DATSOPOULOS, MacDONALD & LIND, P.C.

/s/ Peter F. Lacny

Peter F. Lacny

CERTIFICATE OF SERVICE

I, Peter Francis Lacny, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 08-18-2022:

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Electronically signed by Hannah Ellison on behalf of Peter Francis Lacny
Dated: 08-18-2022