

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 22-0054

SHANDOR S. BADARUDDIN,

Appellant,

v.

THE STATE OF MONTANA &

THE NINETEENTH JUDICIAL DISTRICT,

Appellees.

UNOPPOSED SECOND MOTION FOR
EXTENSION OF TIME (90-DAYS)

On Appeal from the Montana Nineteenth Judicial District Court,
Lincoln County, The Honorable Matthew J. Cuffe, Presiding


Kirsten K. Madsen, counsel for appellee, the State of Montana respectfully requests a 90-day extension of the time to file the Answering Brief of Appellee State of Montana **until Wednesday, February 22, 2023**. This is Appellee's second request for extension. Appellee's response brief was first due October 24, 2022. The brief is currently due on November 24, 2022 (Thanksgiving Day).

As set forth in the accompanying Supporting Declaration of Counsel, this request is sought primarily due to preplanned travel both before and after the current deadline and an appeal of a separate case

before the United States Court of Appeals for the Ninth Circuit which has almost an identical briefing schedule, as well as two previously-pending but now-resolved criminal matters.

Opposing counsel has been contacted and does not oppose this motion.

Respectfully submitted this 17th day of November, 2022.

By: 
KIRSTEN MADSEN
Special Deputy Lincoln County Attorney
Commissioner of Securities & Insurance,
Office of the Montana State Auditor
840 Helena Avenue
Helena, MT 59601

SUPPORTING DECLARATION OF COUNSEL FOR APPELLEE

STATE OF MONTANA)
 : ss.
County of Lewis and Clark)

I, KIRSTEN MADSEN, in compliance with Mont. R. App. P. 26(2), declare under penalty of perjury that the following is true and correct:

1. I am a competent adult citizen of the State of Montana. I am an attorney licensed to practice law in Montana. I was admitted to practice before the Montana Supreme Court in 2009. I have personal knowledge of the matters declared herein.

2. I am currently employed by the State of Montana in two attorney positions: (1) my primary, full-time employment is as Legal Counsel for the Montana Commissioner of Securities & Insurance, Office of the State Auditor (CSI); (2) I am also employed as a temporary attorney with the Department of Administration, Risk Management and Tort Defense (RMTD) Division for the sole purpose of representing defendant Sergeant Larry Pasha in a § 1983 lawsuit, *Dewayne Bearchild v. Larry Pasha* (*infra*, at ¶8).

3. I appear in the above-captioned appeal before this Court as counsel of record for Appellee the State of Montana. A variety of

attorneys have appeared on behalf of the State in the associated criminal matter of *State of Montana v. Kip Hartman*; I am the lead attorney on this related civil matter concerning the sanctions imposed upon Mr. Shandor Badaruddin and his appeal thereof. Pursuant to Rule 26(2), Mont. R. App. P., I submit this declaration in support of my written motion for a 90-day extension of the time to file the Answering Brief on behalf of Appellee the State of Montana in the above-captioned case.

4. The Answering Brief is currently due next Thursday, November 24, 2022. Mont. R. App. P. 26(2)(a).

5. The Answering Brief was first due on October 24, 2022. *Id.*, at (b).

6. I am requesting an extension of 90 days until Wednesday, February 22, 2023. *Id.*, at (c).

7. As explained more fully below, this extension is necessitated primarily by the concurrent briefing schedule in the *Bearchild* appeal before the Ninth Circuit and preplanned international travel throughout and beyond the initial (un-extended) deadline and upcoming travel (personal and professional) during the holiday season. Relatedly, this request is impacted by two previously pending but now-resolved criminal

matters that had been set for trial in early November and two other cases with possibly conflicting deadlines or demands. *Id.*, at (d).

8. Regarding the concurrent appellate case, since 2014, I have been the lead (and primarily solo) attorney assigned to defending the *Bearchild* case, filed in the Federal District Court for the District of Montana as Cause No. CV-14-12-H-DLC. While the case was appealed in September 2021 (Cause No. 21-35768), it took until mid-2022 for counsel to be appointed to represent Mr. Bearchild. With the assistance of three pro bono attorneys, his Opening Brief was filed September 21, 2022 (two days before the opening brief in this case), thus making the Appellee's Answering Brief due October 21, 2022 (three days before the brief in this case). As I did in this case, in early October I requested and was granted an automatic 30-day extension moving the due date to next Monday, November 21.¹ On Monday of this week, I filed an unopposed motion for a 60-day extension to move the due date to January 20, 2023. The Ninth Circuit has not yet ruled on my motion.

¹ As noted in the first extension request here, I was travelling abroad from October 12-27, 2022 (and off work on Friday, Oct. 28, returning to the office on Monday, Oct. 31). *See* Appellee's [1st] Mot. 30-Day Ext. (Oct. 11, 2022), at 1.

9. Viewed another way, both the initial period (from Sept. 24 to Oct. 24), and the extended period (from Oct. 25 to Nov. 24) have been affected by the matters in ¶¶7-8. *First*, during the initial and unextended period (from Sept. 24 to Oct. 24), I was in the office only 10 days and away from work for travel, training, or holidays the remainder;² during that time, I prioritized preparation for two criminal jury trials set to occur almost immediately up on my return in November.³ *Second*, during the period of the automatic extension (Oct. 25 through Nov. 24, inclusive of today), I will have been in the office just 13 days.⁴ During that time, I have prioritized the briefing in both *Bearchild* and this appeal as secondary to a sentencing hearing in a criminal case with an incarcerated defendant, but ahead of all other matters; I opted to work on a holiday and have cancelled some work-related travel and training to focus on the *Bearchild* matter. *Additionally*, during the upcoming period

² I was off from September 21-26 [out-of-state training + sick day], October 10* [Indigenous People's Day holiday] (*though I worked most of the day to finalize a response brief to a pending motion in the *Bearchild* appeal), and October 12-24*, 2022 [international travel; *the remainder of this travel (*supra*, n.1) is reflected at n.4].

³ I learned on my return on October 31, 2022, that both cases were resolved with guilty pleas.

⁴ I was out of the office for travel or holidays from October 25 through 30 [international travel], November 8* and 11, 2022 [Election Day and Veterans Day holidays] (*though I chose to work most of the day on Nov. 8 to try to catch up on the *Bearchild* appeal).

of this requested extension (Nov. 25, 2022 through Feb. 22, 2023) I will be out of the office 20 days for training, out-of-state travel, or holidays.⁵

10. I have worked diligently to address my appellate cases based on the order they were filed and prioritized them over deadlines and demands of other non-criminal matters assigned to me. I have worked to address any higher priority matters as efficiently as possible and sought assistance from co-workers where appropriate. While I've been able to turn my attention almost entirely to the *Bearchild* briefing in the last week, it remains the case that these appeals are on the same briefing schedule and the first extension was almost entirely consumed by three weeks away from work for preplanned international travel. I submit that the forgoing paragraphs demonstrate both the exercise of diligence and the substantial need for additional time under Rule 26(2)(e), Mont. R. App. P.

11. In recognition of the need to represent “that the brief will be filed within the time requested,” *id.*, I am requesting at least an

⁵ I will be off or away from work November 24-25 [the Thanksgiving holiday], November 30 through December 2 [out-of-town training], December 8-11 [out-of-state travel], and December 22-29, 2022 [the Christmas holiday and in-state travel], as well as January 2, 16 and February 20, 2023 [the New Years, Martin Luther King and President's Day holidays].

additional 90 days. It is my aim to address the *Bearchild* brief with due haste and file it well within the recently-requested 60-day extension. However, travel or holidays are scattered about over the next four weeks which leaves little time each week for the deep focus required by appellate briefing and so I do not expect to be able to turn my full attention to this case before 2023. While I briefed and argued the sanctions issue before the district court here, familiarity with a case is not a substitute for proper legal research and drafting. Rather than request an extension that is too short and begets another, last-minute request, it is my reasonable assessment that 90 days is the amount of time needed to complete and file the Answering Brief of Appellee State of Montana in this case. I will continue to work diligently so that this brief can be completed and filed within the time requested.

12. In early October when I emailed counsel for Mr. Badaruddin to ascertain their position on the first (automatic) extension request, I also alerted them to the above travel and briefing conflicts in an effort to communicate as early as possible that a further extension would likely be necessary. Mr. Stephens and Mr. Lacny have been both gracious and generous about the issues.

13. Yesterday, I again contacted counsel for Appellant about this specific request and confirmed that they do not oppose this lengthy extension.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Helena, Montana on this 17th day of November, 2022.


KIRSTEN MADSEN

CERTIFICATE OF SERVICE

I, Kirsten Madsen, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 11-17-2022:

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Electronically signed by Brandy Morrison on behalf of Kirsten Madsen
Dated: 11-17-2022