

FILED

JUL 16 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Scott Wayne Ellison, #3027301
700 Conley Lake Road
Deer Lodge, MT 59722

In the
SUPREME COURT FOR THE STATE OF MONTANA

SCOTT WAYNE ELLISON,
Appellant-Petitioner,

-v-

THE STATE OF MONTANA,
Appellee-Respondent.

Cause No.: DA 25-0172
APPELLANT'S
OPPOSITION OF
FURTHER TIME EXTENTION
AS PREJUDICIAL
VIOLATION
OF
DUE PROCESS LAW

Comes now, Scott Wayne Ellison, the Appellant to firmly oppose the Court's granting the Appellee's additional time to file a Response Brief; in answer to the Appellant's Opening Brief.

Ellison cites the Montana Rules of Appellate Procedure at Rule 26(2) and Rule 16 as controlling, in reference to the Appellee's failure to serve the Appellant at any time in the proper manner.

Rule 26(2) is found in Montana Codes Annotated under Title 25 Civil Procedure; Chapter 21, Rules of Appellate Procedure.

These rules have been ratified by the Montana State Legislature. Section 2, Cha. 1, L 1979, provided:

"(1) The legislature recognizes the supreme court's authority pursuant to Article VII, section 2, of the Montana Constitution to make rules governing procedure and practice before the courts."

Rule 26 Extension of Time. §(2) holds:

"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 motion for extension of time to file briefs. Any motion 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.

The Appellant, Ellison, has NOT been served the required affidavit required of the Montana Attorney General filings cited on the one ruling that Ellison has seen or access to on Lexis, Ellison v State, 2025 Mont. Lexis 682, filed by Judge Bidegary on June 27, 2025, for cause 25-0172.

Judge Bidegary rejected the States Response to Brief, filed electronically on June 27, 2025 as rejected. Judge Bidegary further ordered that within (10) days the Appellee shall electronically file the revised brief containing the revisions necessary to comply with the Rules, and the State shall serve copies of the revised brief on all parties of record.

The State has NOT done so, and the Appellant has learned from family members contacting the Court, that the Court has granted another extension for the State until 9-4-25.

The State has violated the Rule of Law, and has Not served the Appellant with any filings, at the Montana State Prison, where all filings must be signed for as received by the Prison, and a copy given to the recipient party. — No service has been perfected by the State.

This is an undeniable violation of Due Process, which prejudices the Appellant.
 Rule 16. Motions. holds at §(1):

"...The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that the opposing counsel has been contacted concerning the motion and whether opposing counsel object to the motions. Failure to include this statement may result in denial of the motion."

§(2) Response. Any party may file a response in opposition within 11 days after service of the motion, or within such time as the supreme court may direct.

In reference to §(1), as cited above; the State has Not contacted Ellison or whether he, as the Appellant, objects to this extension of time. **Not** at any point, on neither the first Motion Nor the second Motion.

Thus procedural due process requirement has been violated, based on the law and that "shall" is used in this Rule itself, and the State has failed to comply with the law, prior to moving for the extension of time.

No such affidavit was submitted, and if so, the the State has committed perjury, and 'Fraud on the Court'.

Where the State has failed to include the statement, that thusly means that the Court has the right to deny the motion, with clear justification, for the States unlawful delay of Due Process.

At this time the Rule 26(2) is applicable at §§(a)--(f), where at §(e) the States affidavit cannot claim a "conclusory statement as to the press of business" as grounds for extension.

The State has done so and violated §(e), and as such the States unserved motion is now subject to summary denial.

Ellison has already filed a Notice to the Clerk of Court, and mailed to the Attorney General, that the State is in Default.

This Default by Montana is now greatly enhanced by the above violations to this courts rules, per Rule 16 and 26(2), respectfully.

Supporting Case Law

See Sentry Elec. Grp., Inc. v Grizzly Transp. LLC, 2025 Mont. Lexis 398, at 1 "M.R. App. P. 26(2) applies to the second or subsequent extensions. It requires, in relevent part, that the motion may be granted only upon written motion supported by a showing of diligence and substantial need. The motion further must be filed at least seven days before the expiration of the time prescribed for filing the brief, shall comply with M.R. App. P. 16, and shall be accompanied by an affidavit that contains certain information, as enumerated in the Rule."

The Motion was motion for an extension of time, should have been lawfully denied, as the State failed to abide by the laws of this court, and the State of Montana, to file a timely response brief.

Failure to Serve

The States failure to properly serve Ellison, is also a very serious violation of procedural due process, and thus grounds to support Ellison's Default Notice to the Clerk, and the facts of this case, and the further rejection and dismissal of the States response. Ellison, as the agrieved Party should be granted relief.

Thus this Appeal and the relief in the Opening Brief should rightfully be granted, as a matter of law and equity, without delay, due to the failures of

the Appellee's, the State of Montana.

See Griffith v Montana Wheat Growers' Ass'n, 75 Mont. 466 HNote (MT. S.Ct 1926)
Aggrieved Party — Default judgment applies, through Nonservice of Amended
complaint.

See In re Parenting of B.K., 2021 Mont. Lexis 866, at 3 n.1

"failure to serve the opposing party would be grounds for dismissal."

See Shields v Pirkle Refrig. Freight, 181 Mont. 37 (1979 Lexis 792) at 43.

Ellison request the court notice this opposition to extensions of time,
and violations of Due Process, and thus grant Ellison relief in his Opening
Brief.

Dated this 8th day of July.

Scott Wayne Ellison

Scott Wayne Ellison

Pro Se Appellant

[with inmate assistance]

For 80 (pp)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 8th day of July, 2025

I served a true and correct copy of the foregoing:

Appellant's Opposition of Further Time Extension

As Prejudicial Violation of Due Process Law

upon:

Recipient 1: Austin Knudsen

Recipient 2: _____

Montana Attorney General

P.O. Box 201401, 215 North Saunders

Helena, MT 59620-1401

Recipient 3: _____

Recipient 4: _____

By submitting same to a designated civilian employee of the Department of Corrections for prompt processing and mailing by authorized prison personnel within the facility mail room, with sufficient first class postage affixed, and it shall be deemed filed as of the above date.

SIGNATURE: Scott Wayne Ellison

PRINT: Scott Wayne Ellison, *pro se*

ADDRESS: 700 Conley Lake Road

Deer Lodge, MT 59722