

ORIGINAL

FILED

11/27/2019

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

FILED

NOV 26 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

IN THE MATTER OF THE RULES OF
APPELLATE PROCEDURE

Upon consideration of the recommendations of the Clerk of the Montana Supreme Court, the Court hereby adopts the following amendments to Rule 26 of the Montana Rules of Appellate Procedure. We published proposed amendments on August 20, 2019, and allowed 60 days for public comment. No public comment was submitted. Language stricken from the Rule is interlineated, and added language is underlined.

Rule 26. Extension of time.

(1) Extension of time—generally. Except as provided in section (2) of this rule, the supreme court 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 supreme court for its consideration, except for those involving the attorney general and an incarcerated self-represented 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 self-represented 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.

Therefore,

IT IS ORDERED that the amendments to Rule 26 of the Montana Rules of Appellate Procedure are ADOPTED.

IT IS FURTHER ORDERED that these amendments shall be effective January 1, 2020.

This Order shall be posted on the Court's website. In addition, the Clerk is directed to provide copies of this Order to the State Law Library, to Todd Everts and Connie Dixon at Montana Legislative Services, to Chad Thomas and the Thomson Reuters Rules department at Thomson Reuters, to Patti Glueckert and the Statute Legislation department at LexisNexis, and to the State Bar of Montana, with the request that the State Bar provide notice of the revised rule on its website and in the next available issue of the *Montana Lawyer*.

DATED this 26th day of November, 2019.


Chief Justice

James G. Thompson

John B. ...

James ...

James ...

John M. ...

John Rice

Justices