

JEFFERSON COUNTY DISTRICT COURT
STATE OF COLORADO
100 Jefferson County Parkway
Golden, Colorado 80401

GILPIN COUNTY COURT
2960 Dory Hill Road, Golden, Co. 80403
Case No. 95-C-132

WARREN MARTIN HERN, Appellee,

v.

KENNETH TYLER SCOTT, Appellant

▲ COURT USE ONLY ▲

Civil Case No.: 96CV28

Hon. Judge Jackson, presiding

MOTION FOR ENLARGEMENT OF TIME FOR OPENING BRIEF

COMES NOW, the Appellant, KENNETH TYLER SCOTT, for his Motion for Enlargement of Time to file Opening Brief. In support thereof, Appellant states as follows:

1. On or about the 27th of August, Appellant filed his Notice of Appeal to an Order denying his Rule 360(b) Motion. Appellant paid the necessary appeal bond and docket fees and filed his Designation of Record.

2. Rule 411 (b) provides, in pertinent part:

The clerk shall notify, in writing, the opposing parties of the completion of the record, and such parties shall have ten days within which to file objections. If none are received, the record shall be certified forthwith by the judge. If objections are made, the parties shall be called for hearing and the objections settled by the county judge as soon as possible, and the record then certified.

3. The clerk notified the parties, by certificate dated September 20, 2005, that the preparation of the Record had been completed.¹ The Clerk's Certificate did not include an index of the pleadings, orders, exhibits, disclosures, transcripts and testimonies and, therefore, Appellant does not know with certainty, what is contained therein. The clerk also, on that same day, certified that the Record had been filed with the District court.²

4. The Certification of Completion and Certificate of Filing, both mailed to the parties on September 20, 2005, deprived both parties of the ten-day period required under law. (*See*, generally C.C.C.R.C.P. 411(b)).

5. Rule 411 does not require the parties to come into the courthouse to learn and authenticate the contents of the Record, especially when it would conserve both resources of the parties and this Court to include an Index/manifest. However, it is the responsibility of the Appellant to ensure that the Record is complete. *Continental Air Lines v. City & County of Denver*, 129 Colo. 1, 266 P.2d 400 (1954).

6. Because it is the Appellant's responsibility to ensure that a complete Record is available on appeal, Appellant requests a modest extension of twenty (20) days to check out or inspect the Record at the Jefferson County Combined courthouse to ensure its completeness and preserve an opportunity to Motion this Court to supplement the Record, in the event that something is missing. Under the circumstances, such a request is appropriate, prejudices neither party and does not unjustly delay the proceedings. (*See Smith v. Woodall*, 129 Colo. 435, 270 P.2d 746 (1954) (Under Rule 6(b)(1), C.R.C.P., enlargements of time are so readily obtainable where application is made therefor within apt time that there is rarely an occasion where failure to do so would appear to be excusable.))

¹ For the Court's convenience, a copy of the Certificate is attached hereto and made part hereof by reference as Exhibit A.

² A copy of the clerk's Certificate of Filing is also attached hereto and made part hereof by reference as Exhibit B.

7. In the alternative, Appellant request an Order in the nature of *mandamus*, directing the County Court clerk to provide an Index of the Record so that the parties may know what is contained therein.

WHEREFORE, Appellant prays for an Order authorizing him an additional twenty days for the filing of his Opening Brief or, in the alternative, for an Order in the nature of *mandamus*, directing the County Court Clerk to issue forth an Index to the Record.

Respectfully submitted this 5th day of October, 2005,

Kenneth Tyler Scott

CERTIFICATE OF MAILING

I hereby certify that on this _____ day of October 2005, a true and correct copy of the above and foregoing objection was placed in the U.S. Mail, first-class postage prepaid and addressed hereto:

Howard Bittman
1406 Pearle Street, Suite 200
Boulder, CO 80302

Clerk of the Gilpin County Combined Court
2960 Dory Hill Road
Golden, Co. 80403

Jefferson County District Court
100 Jefferson County Pkwy.
Golden, CO 80401
