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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

89-R-99027

The Honorable D. Jeremy Whitmire
Clerk of Appellate Courts
Post Office Box 249
Jackson, Mississippi 39205

Re: **Request for Comments on Proposed Amendments, M.R.A.P. 2(a)(2), 26(b), and 28(h)**

Dear Mr. Whitmire:

I write in response to the public request of the Supreme Court's Rules Committee on Civil Practice and Procedure for comments on proposed amendments to Mississippi Rules of Appellate Procedure 2(a)(2), 26(b), 28(h). First, please let me state that the following comments are my own and should not be taken to reflect the views of my firm or my colleagues.

I endorse the change to Rule 2(a)(2) and note that the amendment conforms the rule to existing Rule 26(b), which says either appellate court "may, upon motion, enlarge the time prescribed by the rules or by its order for doing any act, *or may permit an act to be done after the expiration of such time*" (emphasis added). As it now stands, the text of the two rules may seem to conflict, making the proposed change a good one.

Regarding Rule 28(h), I agree with the October 9, 2025, comment by attorney Cheryl Siler that "deadline" in the proposed amendment needs clarification.

As to Rule 26(b), I have three concerns. One is that, reading the proposed new language literally, an attorney would be unable to request an extension of time if opposing counsel stonewalled and simply did not reply to the attorney's attempts to contact him or her. In that event, the attorney would be unable to state "whether opposing counsel objects to the motion."

The second is that, although the first paragraph of Rule 26(b) refers to the Supreme Court and to the Court of Appeals, the proposed new language says only "each motion submitted to the supreme court" (which, by the way, should probably be capitalized "Supreme Court" in keeping with the style of the Rules). Because the subsection refers to the courts' acting "upon motion," it seems superfluous to specify "submitted to" either court: to whom else could the motion be directed? The prepositional phrase can be safely omitted, making it unnecessary to identify both courts.

Finally, the style of the new language may be susceptible to improvement. In keeping with the advice of such legal-usage experts as Bryan A. Garner, the word "shall" ought to be avoided due to its ambiguity. *A Dictionary of Modern Legal Usage* (2d ed. 1995) 940 (entry for "Words of Authority"). And "note" seems insufficiently formal for a requirement to attest to or certify that an action has been taken.

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Perhaps something like the following would be preferable:

Within the text of each motion requesting an extension of time, counsel must attest that opposing counsel has been asked whether the motion is opposed and state opposing counsel's response, if any. Failure to include this information may constitute grounds for denial of the motion.

I appreciate the Committee's work to improve the Rules. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Andy Lowry". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Andy Lowry