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### O'Neal v. Hudson, 133 Nev. Adv. Op. 29 (June 1, 2017)

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## CIVIL PROCEDURE: TIMELY FILING OF MOTION FOR NEW TRIAL BY E-MAIL

### **Summary**

If a party timely sends a motion for new trial directly to the presiding judge in an email, then that motion is properly filed and will toll the time available to file a notice of appeal so long as: (1) the presiding judge allows the motion to be filed with that judge; and, (2) the presiding judge accepts the motion within the required time-period.

### **Background**

Appellant originally brought a negligence action against the respondents, which centered around a motor-vehicle accident. That district court assigned the case to a short trial program judge and the judge entered judgement in favor of the respondents. The presiding judge filed the notice of entry of judgment on March 24, 2016. That same day, the appellant emailed the presiding judge a motion for new trial in accord with instructions from the Alternative Dispute Resolution Office; but, the appellant did not file the motion for new trial with the clerk's office. The presiding judge denied that motion for new trial, however, which prompted the appellant to file a notice of appeal roughly a month and a half after the entry of judgment from the short trial.

Upon receiving the appellant's notice of appeal, the Nevada Supreme Court found that the appeal was not timely filed because it was not filed within thirty days after the entry of judgment from the short trial and the docket did not show any motion for new trial that tolled those thirty days. Therefore, the Nevada Supreme Court ordered the appellant to show cause as to why the appeal should not be dismissed. In response to that order, the appellant argued that she timely filed the motion for new trial by emailing the presiding judge with the motion within the required thirty-day window; that the judge just failed to file the emailed motion for new trial with the court; and that the timely emailed motion for new trial properly tolled that thirty-day requirement to file a notice of appeal. Thus, appellant argued that the court should consider the motion for new trial as filed at the time that the judge accepted the email with the motion rather than when the trial judge filed the document with the court. Otherwise, the appellant argued, that would punish a party for a ministerial act left to the trial judge—something out of the appellant's control.

### **Discussion**

Under the Nevada Rules of Civil Procedure, a party may either file a motion for new trial with the clerk of the court, or, if the presiding judge permits, with the presiding judge.<sup>2</sup> In the event that the presiding judge allows a document to be filed with the judge, it is the presiding judge's duty to note the filing date and to transmit the documents to the office of the clerk so that those documents appear in the district court's docket-sheet.<sup>3</sup>

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<sup>1</sup> By Kristopher J. Kalkowski.

<sup>2</sup> NEV. R. CIV. PROC. 5(e).

<sup>3</sup> *Id.*

In this case, the appellant timely filed the motion for new trial under NRCP 5(e) by sending the motion as an email attachment to the presiding judge because: (1) the judge allowed that action—as shown by the fact that the judge did not explicitly deny the appellant’s request for the emailed motion to serve as a proper submission to the judge; and, (2) the judge accepted the motion within thirty days of the entry of judgment—as shown by the fact that the judge set a briefing schedule on the motion, the judge entered a written order denying the motion, and the judge stated that the motion was filed. Further, the court deemed the motion filed at the time that the judge accepted the email with the motion. So, even though the judge here failed to properly note the date of filing and failed to send the document to the district court clerk, those facts did not affect the time that the court deemed the motion filed because they were merely ministerial acts of the judge—something entirely outside the hands of the filing party.

### **Conclusion**

The appellant properly filed a motion for new trial after a short trial with the court by sending the presiding judge an email with the motion attached. Further, the court viewed the motion as filed with the court at the time that the judge accepted the motion, not when the judge filed the motion with the district court clerk. Therefore, the appeal at issue could proceed because the timely motion tolled the requisite time-period that the appellant could file a notice of appeal.