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## City of Henderson v. Amado, 133 Nev. Adv. Op. 36 (June 22, 2017)

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## CRIMINAL PROCEDURE: RE-FILING COMPLAINT AFTER VOLUNTARY DISMISSAL

### **Summary**

After a prosecutor voluntarily dismisses a criminal case, NRS § 174.085(5)(b) allows that prosecutor to file an amended complaint in the original case with the original case number. Further, a district court acts arbitrarily and capriciously when it requires the prosecutor to file a new complaint with a new case number following voluntary dismissal.

### **Background**

Henderson police arrested Giano Amado after he allegedly physically assaulted his aunt and nephew. The City of Henderson (Henderson) filed separate criminal complaints against Amado for the two domestic violence incidents. At trial, however, Amado’s aunt and nephew failed to appear. Their absence forced Henderson to voluntarily dismiss the criminal cases against Amado.

The day after Henderson dismissed its case against Amado, it filed an “Amended Criminal Complaint” using the same case number as the original action. Amado moved to dismiss the case in municipal court claiming Henderson must file a new case with a different case number. The municipal court denied Amado’s motion. After this denial, Amado petitioned the district court for a writ of mandamus or prohibition renewing the same argument he made in municipal court. The district court granted the petition finding NRS 174.085(5)(b) required Henderson to file a new case with new case numbers. Henderson appealed.

### **Discussion**

Henderson argues the district court ignored the plain language of NRS § 174.085(5)(b) when it determined a new case number was necessary to prosecute Amado. It also contends the district court’s interpretation of the statute was clearly erroneous and constituted an arbitrary and capricious abuse of discretion. A district court’s decision is arbitrary or capricious when it is “founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law.”<sup>2</sup> Further, a clearly erroneous application of law may also render a district court’s decision arbitrary or capricious.<sup>3</sup>

NRS § 174.085(5)(b) affords a prosecutor the right to voluntarily dismiss a complaint “without prejudice to the right to file another complaint.”<sup>4</sup> The statute’s plain language does not require a prosecutor to file a new case—with a new case number—following such a dismissal. In fact, the statute only requires that when a prosecutor files a subsequent complaint after a voluntary dismissal, that case must be assigned to the same judge as the original case.<sup>5</sup>

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<sup>1</sup> By Andrew S. Clark.

<sup>2</sup> *State v. Eighth Judicial Dist. Court*, 127, Nev. 927, 931–32, 267 P.3d 777, 780 (2011).

<sup>3</sup> *Id.* at 932.

<sup>4</sup> NEV. REV. STAT. § 174.085(5)(b) (2015).

<sup>5</sup> NEV. REV. STAT. § 174.085(6)(a) (2015).

Here, the district court erred when it determined § 174.085(5) required Henderson to file a new complaint with a new case number. Further, Amado failed to identify any prejudice as a result of Henderson labeling the new complaint as “amended” instead of filing an entirely new case. Accordingly, the district court’s decision was contrary to the plain language of the statute, and was thus arbitrary and capricious.

### **Conclusion**

The plain language of NRS § 174.085(5) and (6) allows a prosecutor to file a new or subsequent complaint against a criminal defendant with the same case number as a voluntarily dismissed case. Further, a district court acts arbitrarily and capriciously when it requires a prosecutor to file a new case with a new case number following a voluntary dismissal.