



Kirk Kennedy <ktkennedylaw@gmail.com>

Oneal v. Hudson Post Trial Motion

10 messages

Kirk Kennedy <ktkennedylaw@gmail.com>

Thu, Mar 24, 2016 at 9:24 AM

To: Robert Goldstein <rgoldstein@sklar-law.com>, "James W. Howard (jhoward@howardlawlv.com)" <jhoward@howardlawlv.com>

Judge Goldstein:

Attached is my post trial motion for judgment notwithstanding the verdict, or, motion for new trial. Given that you were the trial judge, I assume this motion shall be heard by you. My question for you is whether I should e-file this or not. If I e-file it, the master calendar will set it for hearing before the district court judge. Please advise on this point of procedure as the Short Trial rules don't address this situation.

Thank you.

Kirk Kennedy

Kirk T. Kennedy, Esq.**Attorney at Law**

815 S. Casino Center Blvd.

Las Vegas, NV 89101

Phone: 702-385-5534

Facsimile: 702-385-1869

2 attachments**oneal.motionnewtrial2016.pdf**

58K

**oneal.exhibit.juryinstruction2016.pdf**

1016K

Robert Goldstein <rgoldstein@sklar-law.com>

Thu, Mar 24, 2016 at 9:48 AM

To: Kirk Kennedy <ktkennedylaw@gmail.com>, James Howard <jhoward@howardlawlv.com>

Please contact the ADR office as I do not know the answer to this question, then let me know.

Thank you

Robert A. Goldstein

SKLAR WILLIAMS

____ PLLC ____

LAW OFFICES

410 South Rampart Blvd. Suite 350

Las Vegas, NV 89145

Ph: 702 360-6000 or 702 582-7890 Fax: 702 360-0000

From: Kirk Kennedy**Sent:** Thursday, March 24, 2016 9:24 AM**To:** Robert Goldstein; James W. Howard (jhoward@howardlawlv.com)**Subject:** Oneal v. Hudson Post Trial Motion*Exh. 1*

[Quoted text hidden]

Kirk Kennedy <ktkennedylaw@gmail.com>
To: Robert Goldstein <rgoldstein@sklar-law.com>
Cc: James Howard <jhoward@howardlawlv.com>

Thu, Mar 24, 2016 at 10:35 AM

Judge Goldstein:

I spoke with Loretta at the ADR office this morning. My motion for new trial and jnov is not filed with the clerk's office. It is filed by service upon you, as the Short Trial Judge. Once you issue a ruling, then your order is filed with my motion as an attached exhibit. So based on that information, which is new for me too, please accept my emailed motion and exhibits as my submission to you for consideration and decision.

Mr. Howard, please accept my earlier emailed motion as service on this date of my motion for new trial and jnov. Thank you.

Kirk Kennedy

Kirk T. Kennedy, Esq.
Attorney at Law
815 S. Casino Center Blvd.
Las Vegas, NV 89101
Phone: 702-385-5534
Facsimile: 702-385-1869

[Quoted text hidden]

Robert Goldstein <rgoldstein@sklar-law.com>
To: Kirk Kennedy <ktkennedylaw@gmail.com>
Cc: James Howard <jhoward@howardlawlv.com>

Thu, Mar 24, 2016 at 11:00 AM

Counsel

I am out of town, so for briefing scheduling purposes, 10 days for the opposition and 5 days for the reply

Rob Goldstein.

Sent from my iphone

[Quoted text hidden]

Kirk Kennedy <ktkennedylaw@gmail.com>
To: Robert Goldstein <rgoldstein@sklar-law.com>

Thu, Mar 24, 2016 at 11:02 AM

Thanks
Kirk

Kirk T. Kennedy, Esq.
Attorney at Law
815 S. Casino Center Blvd.
Las Vegas, NV 89101
Phone: 702-385-5534
Facsimile: 702-385-1869

[Quoted text hidden]

Jimmy Howard <jhoward@howardlawlv.com>
To: Robert Goldstein <rgoldstein@sklar-law.com>, Kirk Kennedy <ktkennedylaw@gmail.com>

Fri, Apr 1, 2016 at 3:01 PM



Kirk Kennedy <ktkennedylaw@gmail.com>

Oneal v. Hudson Post Trial Motion

Jimmy Howard <jhoward@howardlawlv.com>

Fri, Apr 1, 2016 at 3:01 PM

To: Robert Goldstein <rgoldstein@sklar-law.com>, Kirk Kennedy <ktkennedylaw@gmail.com>

Gentlemen

I have the Opposition calendared as due for Friday, April 8. This counts 3 days for service, then 10 days for the Opposition, not including weekends pursuant to NRCP 6. I am noting this because it was served a little differently, and the Judge's email below states 10 days for the Opposition. If I counted a straight 10 days including weekends with no time for service, it is due Monday, April 4.

I am working on it now, but I do not foresee it being done on Monday unless I work late tonight. If either of you believe it should be due on Monday, I would appreciate the courtesy of your letting me know that.

Thanks

Jimmy

James W. Howard, Esq.

The Howard Law Firm

1835 Village Center Circle

Las Vegas, NV 89134

(702) 385-5533 phone

(702) 382-8891 fax

From: Robert Goldstein [mailto:rgoldstein@sklar-law.com]**Sent:** Thursday, March 24, 2016 11:01 AM**To:** Kirk Kennedy**Cc:** Jimmy Howard**Subject:** Re: Oneal v. Hudson Post Trial Motion

[Quoted text hidden]

1 KIRK T. KENNEDY, ESQ.
2 Nevada Bar No: 5032
3 815 S. Casino Center Blvd.
4 Las Vegas, NV 89101
(702) 385-5534
Attorney for Appellant

Electronically Filed
Aug 31 2016 10:01 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

5 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

6 JENNIFER O'NEAL,

No: 70446

7 Appellant,

8 vs.

9 SHARNA HUDSON, individually; GERALD
10 LYLES, individually;

11 Respondents.

12 **APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE**

13
14 COMES NOW, the Appellant, JENNIFER O'NEAL, by and through her
15 undersigned counsel, KIRK T. KENNEDY, ESQ., who files this response to the Court's
16 Order to Show Cause regarding its concern of a jurisdictional defect.

17 In support hereof, Appellant relies on the following Declaration of Counsel.

18 Dated this 31st day of August, 2016.

19 /s/Kirk T. Kennedy
20 KIRK T. KENNEDY, ESQ.
21 Nevada Bar No: 5032
22 815 S. Casino Center Blvd.
23 Las Vegas, NV 89101
24 (702) 385-5534
25 Attorney for Appellant
26
27
28

DECLARATION OF COUNSEL IN RESPONSE TO ORDER TO SHOW CAUSE

STATE OF NEVADA }
COUNTY OF CLARK }SS:

Under penalties of perjury, I, KIRK T. KENNEDY, ESQ., declare and affirm as follows:

1. I am an attorney duly licensed in Nevada and I am counsel for Appellant O'Neal in this matter.
2. Based on previous experience with the Short Trial Program, I have always been instructed to file any and all motions and notices directly with the Short Trial Judge. That has always been the practice and the instruction from previous Short Trial Judges. Since the Short Trial Judge sets all hearings on any motions filed within the program, the setting of a hearing date by Master Calendar conflicts with the authority of the Short Trial Judge to hear and decide any motions according to his or her own schedule.
3. In this case, the Judgment on the Jury Verdict was filed on March 23, 2016. The Notice of Entry of Judgment was then filed on March 24, 2016. On behalf of my client, I had immediately prepared a motion for new trial under NRCP 59, which is a notice of appeal tolling motion. The motion was prepared and ready for submission on March 24, 2016.
4. I was concerned about whether this type of post-trial motion should be filed with the district court clerk's office or directly with the short trial judge. It is the short trial judge who sets the matter for a hearing on his own schedule, not Master Calendar with the Clerk's Office.
The attached email exhibit shows the following history: (See Attached Emails of March 24, 2016 and April 1, 2016)
 - a. On March 24, 2016, I emailed Robert Goldstein, the Short Trial Judge and asked him whether I should e-file the motion for new trial, which I had attached to the email, or file it directly with him.
 - b. Judge Goldstein responded on March 24, 2016, and stated that he was unsure and he ordered me to contact the ADR office to get an answer.

c. On that same date, I personally called the ADR office in Las Vegas at 702-671-4493.

1 I spoke with a pleasant lady named Loretta with the office. Loretta advised that my
2 motion for new trial is not filed with the Clerk's Office. Instead, the ADR Office,
3 through Loretta, advised that my motion for new trial was to be filed directly with the
4 Short Trial Judge. She also stated that once the Short Trial Judge makes a ruling on the
5 motion, then the Short Trial Judge will file his order and attach my motion and the
6 defendant's opposition to the final order as exhibits.

7 d. Based on the procedure outlined by the ADR Office, I then emailed Judge Goldstein
8 again on March 24 and told him the procedure. In my email to Judge Goldstein, I
9 requested that he accept my earlier emailed motion for new trial, on that same date, as
10 filed and served for his consideration with him.

11 Judge Goldstein emailed back and stated that since he was out of town, he set a briefing
12 schedule for the defendant's opposition to be submitted in ten days and five days for any
13 reply.

14 e. Defendant's Counsel, James Howard, Esq., was emailed and copied with all of the
15 foregoing correspondence back and forth. On April 1, 2016, Mr. Howard sent an email
16 discussing the calendaring of his opposition to be filed with the Short Trial Judge. Mr.
17 Howard did not object to the process utilized in this manner regarding the filing of the
18 motion for new trial with the Short Trial Judge directly. Mr. Howard did file a timely
19 opposition to the motion.

20 f. As the records submitted with the Docketing Statement indicate, on April 25, 2016,
21 Short Trial Judge Goldstein did file his Order denying the motion for new trial.

22 g. Pursuant to NRAP 4(a)(4)(C), a motion for new trial filed under NRCP 59 is a
23 motion which tolls the filing of the notice of appeal. Under NRAP 4, once a tolling
24 motion is ruled upon, then the appellant has 30 days from that decision to file a notice of
25 appeal from that decision and from the underlying case. In compliance with NRAP 4(a),
26 I then filed the notice of appeal to his Court on May 19, 2016. The filing of the notice of
27 appeal was timely and in accordance with NRAP 4(a).
28

1 h. Based on the foregoing history, this Court does have proper jurisdiction to hear this
2 appeal. The motion for new trial was filed in accordance with the direction of the ADR
3 Office and the Short Trial Judge accepted the motion for new trial as properly filed with
4 him. The Short Trial Judge then accepted the defendant's opposition and finally ruled on
5 the motion for new trial by his filed order on April 25, 2016.

6 I would request that the Court allow this matter to proceed and reinstate the briefing
7 schedule.

8 Executed under penalties of perjury in accordance with the laws of the Stat of Nevada on
9 this 31st day of August, 2016.

10 
11 KIRK T. KENNEDY, ESQ.

12
13
14
15 **CERTIFICATE OF SERVICE**

16 I hereby affirm that on this 31st day of August, 2016, I mailed via first class
17 U.S. Mail a copy of the foregoing to the Respondent at the
18 address below:

19 James W. Howard, Esq.
20 The Howard Law Firm
21 1835 Village Center Circle
22 Las Vegas, NV 89134

23 /s/Kirk T. Kennedy
24 Law Office of Kirk T. Kennedy
25
26
27
28