

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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3 GRADY EDWARD BYRD,

4 Appellant,

5 vs.

6 CATERINA ANGELA BYRD,

7 Respondent.

) Supreme Court No.: 81198

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Electronically Filed  
Jul 22 2020 11:17 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

11 COMES NOW, the Appellant, GRADY EDWARD BYRD, by and through  
12 BYRON L. MILLS, ESQ. of MILLS & ANDERSON and hereby submits his  
13 response to the Order to Show Cause filed June 29, 2020. Appellant's response  
14 is based on the Points and Authorities as set forth below and the Exhibits attached  
15 hereto.

16 DATED this 22 day of July, 2020.

17 MILLS & ANDERSON

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1 **POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF RELEVANT FACTS**

4 This appeal stems from a post-trial enforcement order issued by the Court in  
5 January 2020. The substantive order resolving the case was entered in January  
6 2020 and was appealed under case # 80548. However, the attorney's fees awards  
7 that are the subject of this appeal were not entered by the Court until March 17  
8 and March 27, 2020 immediately following the eruption of the pandemic and the  
9 executive orders issued by Governor Sisolak essentially closing down business.

10 The Appellant's notices of appeal were due to be filed in the district court  
11 by April 17 and April 27, 2020. However, as a consequence of the shutdown, the  
12 notice of appeal was not filed until May 14, 2020. Appellant filed a docketing  
13 statement stating that his notice of appeal is timely pursuant to governor Sisolak's  
14 Declaration of Emergency Directive 009 (Revised). Section 2 of the directive  
15 states that "[any specific time limit set by state statute or regulation for the  
16 commencement of any legal action is hereby tolled from [April 1, 2020] until 30  
17 days from the date of the state of emergency declared on March 12, 2020 is  
18 terminated."

19 On June 29, 2020, this Court ordered Appellant to show cause why the  
20 appeal should not be dismissed due to the untimely filing of the notice of appeal.  
21 In the OSC, the Court stated that Sisolak's Declaration of Emergency Directive  
22 009 (Revised) does not appear to apply to the time to file a notice of appeal. The  
23 Court reasoned that the time limitation is not established by state statute or  
24 regulation, but by court rule.

25 **II**

26 **ARGUMENT**

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28 This appeal should not be dismissed as untimely. While nothing in

1 Declaration of Emergency Directive 009 (Revised) specifically states that court  
2 rules are not encompassed by the directive, the courts at the district court level all  
3 adopted and applied the directive to the existing court rules. For example, the  
4 Eighth Judicial District Court's Administrative Order 20-17 issued on June 1,  
5 2020 states that "Properly documented service issues related to the COVID-19  
6 pandemic will be considered good cause for a timely motion to extend service of  
7 process."<sup>1</sup> The Administrative Order also states, "For service issues between  
8 March 13, 2020 and June 30, 2020, good cause exists regardless of whether the  
9 motion is made before or after the 120-day service period."

10 In this case, the post-trial attorney's fees awards were entered and noticed  
11 by the district court immediately following the declaration of emergency.  
12 Because of the emergency order and the initial lack of clarity as to who could  
13 continue to operate during the shutdown, counsel did not immediately receive  
14 notice of entry of the orders and, consequently, failed to correctly calendar a  
15 response date. When the error was discovered, counsel immediately filed notice  
16 of appeal with the district court. Given the sweeping restrictions of the  
17 Governor's orders and the effect it had on the ongoing practice of law, this Court  
18 should adopt the suspension of timing rules that was uniformly adopted in the  
19 district court.

20 The primary purpose of Governor Sisolak's declared state of emergency  
21 and the subsequent administrative orders issued by the Eighth Judicial District  
22 Court is to take steps necessary for the protection of the community. A  
23 suspension of timelines was implemented uniformly across the entire Eighth  
24 Judicial District. Therefore, good cause exists for this Court to allow the untimely  
25 notice of appeal and exercise its appellate jurisdiction.  
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<sup>1</sup> Page 15, line 22 through Page 16 line 1.

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**III**

**CONCLUSION**

Based on the above and foregoing, the Appellant, GRADY EDWARD BYRD, respectfully submits that this Court has jurisdiction to consider his appeal on its merits pursuant NRAP 4a and the Declaration of Emergency Directive 009 (Revised).

Dated this 22 day of July, 2020.

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