

**Gale Cooper
P.O. Box 328
Sandia Park, NM 87047
505-286-8483**

April 5, 2017

SENT CERTIFIED MAIL NO. 7015-0640-0006-5160-0898

Chief Judge Louis McDonald
13th Judicial District Court of Sandoval County
P.O. Box 600
Bernalillo, NM 87004

Re: Obstructed filing for my Case No. 1329-CV-2007-01364, Gale Cooper v. Lincoln County Sheriff Rick Virden et al

Dear Chief Judge McDonald:

This is to inform you of an obstruction of my *pro se* filing of my "Addendum" to my March 8, 2017 Hearing on "Final Judgment" with Judge George Eichwald (enclosed), and to request your intervention to complete that filing.

Since the issue is my mailed filing, I inform you that, as a *pro se* litigant, I must file by mail, and am barred from e-filing. I am also mailed - not e-mailed - any Court actions.

BACKGROUND

- 1) I am the prevailing Plaintiff in my Inspection of Public Records Act, whistleblower enforcement litigation, Case No. 1329- CV-2007-01364, against the historic "Billy the Kid Case Hoax" with law enforcement fraud and illegal exhumations: Lincoln County Sheriff's Department Case No. 2003-274.
- 2) On September 16, 2016, after my New Mexico appellate appeals, the Court of Appeals remanded my Case No. 33,876 back to District Court as "Mandate to the District Court Clerk," stating:

This decision now being final, the cause is remanded to you for further proceedings consistent with said decision.

- 3) On April 27, 2017, because my Defendants had not acted on payment of my awards, I mailed to District Court "Plaintiff-Appellant Gale Cooper's Motion to Enforce Judgment on Awards."

- 4) On December 5, 2017, to inform the Court that my Defendants had paid my awards, I mailed to District Court "Plaintiff Gale Cooper's Addendum to Motion to Enforce Judgment on Awards."
- 5) I heard nothing from District Court, but received a February 9, 2017 e-mail from my Defendants informing me that a Hearing had been held by District Court Judge George Eichwald on February 2, 2017 for my case, and requesting me to sign their "Order." I informed the Defendants by e-mail that I had received no notice of that Hearing, and would not sign. (enclosed)
- 6) On February 13, 2017, I filed "Plaintiff-Appellant Gale Cooper's Motion for Hearing on Correcting the Record and Presentment of Final Judgment."
- 7) On March 8, 2017, my requested Hearing was held with Judge George Eichwald. My not being informed of the February 2, 2017 Hearing was acknowledged. However, though it was my requested "Hearing for Presentment of Final Judgment" in my own case, Judge Eichwald would not allow me to make my final statement, nor would he accept my "Proposed Final Judgment" for preparation of his own "Final Judgment." He accepted only my Defendants' "Order." To my objection that my "Plaintiff Gale Cooper's Proposed Final Judgment With Updated Findings of Fact and Conclusions of Law in Accordance with Appeals Courts' Decisions" was relevant, Judge Eichwald accepted it and named it "Exhibit 1." And he signed my Defendants' "Order" at that Hearing.
- 8) On March 9, to correct the record, I mailed to District Court "Plaintiff Gale Cooper's Addendum to Her Hearing on March 8, 2017 on the Final Judgment" ("Addendum") to provide a document for attachment of "Exhibit 1." Its "Certificate of Service" was dated March 9, 2017, and included Judge Eichwald as a recipient. (enclosed)
- 9) On March 20, 2017, I phoned the District Clerk's office to check the filing stamp date on my "Addendum." The Clerk stated the document had not been received. I informed her that its certified return receipt was signed by a Maria Westphal on March 13, 2017. (enclosed) I was then referred to Chief Clerk Cristal Bradford, who was not in the office.
- 10) On March 21, 2017, I spoke to Cristal Bradford, who informed me that the "Addendum" had not been stamped because Judge Eichwald had taken possession of it. I requested that the Court stamp reflect the true receipt date of March 13, 2017. And I asked to be informed of that matter's completion.
- 11) On March 27, 2017, after no follow-up from Cristal Bradford, I mailed her documentation of the blocked filing of my "Addendum." (enclosed)
- 12) To date, I have received no follow-up about the filing of my submitted "Addendum."

DISCUSSION AS TO CASE LAW

SUMMARY: It was improper for the District Court Clerk not to file my “Addendum” at receipt. It was improper for Judge Eichwald to obstruct the filing of my “Addendum.” That fact that the “Addendum” was sent the day after the “Final Order” was signed is irrelevant to its required filing. It was justified to correct the record.

1) The District Court Clerk is required to file documents, as follows:

a) FILING CANNOT BE REFUSED: Under NMRA Rule 1-005(F), “[t]he clerk shall not refuse to accept for filing any paper presented for that purpose.”

b) FILING MUST BE RECORDED: “NMSA Section 34-6-30, Operation; notation of filing” states: “When any paper is filed in his [or her] office, the district court clerk shall immediately enter on the first page his [or her] notation of filing containing the date and time of filing and the court in which filed.”

c) FILING DATE IS DEEMED AS COURT ARRIVAL: New Mexico case law “recognizes that a document is deemed filed when it is delivered to the court clerk to be kept on file.” *Ennis v. Kmart Corp.*, 2001-NMCA-068, ¶ 8, 131 N.M. 32, 33 P.3d 32 (citing *Town of Hurley v. N.M. Mun. Boundary Comm’n*, 94 N.M. 606, 608, 614 P.2d 18, 20 (1980) (‘[T]o file’ a paper, on the part of a party, is to place it in the official custody of the clerk.’). It is not necessary for the clerk to endorse a pleading upon its receipt to effect the filing.” *Town of Hurley*, 94 N.M. at 608, 614 P.2d at 20.

d) COURT OF APPEALS DECISION ON FILING DATE: *Ennis v. Kmart Corp.*, 131 N.M. 32 (2001) 33 P.3d 32, 2001 -NMCA- 068: A customer’s complaint is deemed timely filed when first presented to clerk of court. The clerk does not possess the power to reject a pleading. It is not necessary for the clerk of court to endorse a pleading upon its receipt to effect the filing.

(1) “This is a case involving error by a court clerk, neglect by a courier service, the result that a complaint was not file-stamped prior to the expiration of the statute of limitations ... [leaving the question] whether the trial court had the authority to treat Plaintiff’s complaint as timely filed when the court clerk refused to accept Plaintiff’s original complaint.” (¶ 1)

(2) “Rule 1-005(E) NMRA 2001 prohibits a court clerk from refusing ‘to accept for filing any paper presented for that purpose ...’ The question of whether Rule 1-005(E) authorizes a court to treat as timely filed a pleading improperly rejected by a court clerk is an issue of first impression in New Mexico. Because the language of the rule mirrors its federal counterpart, Fed.R.Civ.P. 5(E), we find federal authority instructive. *See Doe v. Roman Catholic Diocese of Boise, Inc.*, 121 N.M. 738, 741, 918 P.2d 17, 20 (Ct.App.1996).” (¶ 6)

(3) “The federal courts have consistently interpreted Rule [1-00]5(E) to allow this remedy. *See McDowell v. Delaware State Police*, 88 F.3d 188, 190 (3d Cir.1996); *McClellon v. Lone Star Gas Co.*, 66 F.3d 98, 101 (5th Cir.1995); *Dielsi v. Falk*, 916 F.Supp. 985, 990 (C.D.Cal.1996). These cases have recognized that Rule [1-00]5(E)

removes from the clerk any discretion in the decision to accept a technically deficient pleading. See McClellon, 66 F.3d at 101. The advisory committee notes following the 1991 amendment of the federal rules describe this removal of discretion as necessary because the rejection of pleadings ... is 'not a suitable role for the office of the clerk, and ... exposes litigants to the hazards of time bars[.]' ” (§ 7) (emphasis added)

e) OBSTRUCTION OF FILING: It appears, however, that the District Court Clerk was obstructed from filing by my judge, George Eichwald, taking possession of the “Addendum.”

2) It was improper for Judge Eichwald to block the filing of my “Addendum,” and post-judgment filings are not improper, as follows:

a) FILING IS REQUIRED UNDER NMRA RULE 1-005, “Service and Filing of Pleadings and Other Papers, (E) Filing by a party; certificate of service”: states as to timely presentation for filing: “All papers after the complaint required to be served upon a party, together with the certificate of service indicating the date and method of service, shall be filed with the court within a reasonable time after service.”

b) POST-JUDGMENT FILINGS ARE PROPER: “Rule 1-060(A), Relief From Judgment or Order” states: “A. Clerical mistakes. Clerical mistakes in judgments, orders, or parts of the record and errors therein arising from oversight or omission may be corrected by the court *at any time* of its own initiative.” (emphasis added)

3) The Record Proper of my case should not be damaged by improperly blocked filing of my “Addendum”: “ ‘[A] person filing an instrument should not be responsible for the failure of a receiving public official to perform his duty.’ ” Town of Hurley, 94 N.M. at 608, 614 P.2d at 20 (quoting *Thorndal v. Smith, Wild, Beebe & Cades*, 339 F.2d 676, 679 (8th Cir. 1965)). It follows that obstruction of filing by the case’s judge is likewise a “failure of a receiving public official to perform his duty.’ ”

CONCLUSION

- 1) It was proper for me to file my “Addendum” on March 9, 2017 so as to correct the record by supplying the explanatory document for “Exhibit 1,” which had been entered by Judge Eichwald on March 8, 2017.
- 2) Furthermore, the premise that the District Court Clerk cannot refuse any paper presented to her for filing holds true whether I had good grounds for the filing or not.
- 3) It was improper for the District Court Clerk not to court-stamp and file the “Addendum” on its March 13, 2017 receipt.

- 4) It was improper for Judge Eichwald to take possession of my "Addendum," and, thus, obstruct its proper filing.
- 5) A merited remedy is stamping/filing of "Plaintiff Gale Cooper's Addendum to Her Hearing on March 8, 2017 on the Final Judgment" under its true receipt date of March 13, 2017. To correct the record, that "Addendum" should be joined with Judge Eichwald's named "Exhibit 1," which is my "Plaintiff Gale Cooper's Proposed Final Judgment With Updated Findings of Fact and Conclusions of Law in Accordance with Appeals Courts' Decisions."
- 6) I request: (a) notification of said filing, (b) a mailed copy of the stamped "Plaintiff Gale Cooper's Addendum to Her Hearing on March 8, 2017 on the Final Judgment" (for which I will pay requested costs), and (c) the option to check the record personally as to the correction.

Thank you for your attention to this matter.

Sincerely,



Gale Cooper

Enclosures

Cc: Judge George Eichwald (Sent Certified Mail No. 7015-0640-0006-5160-0904)
Chief Clerk Cristal Bradford
Attorney Henry Narvaez
Attorney Desiree Gurulé

Subj: Fwd: D-1329-CV-2007-01364, Cooper v. Steven Sederwall, et al.
Date: 2/9/2017 4:34:04 P.M. Mountain Daylight Time
From: GA5C@aol.com
To: desiree@brownlawnm.com

Dear Attorneys Gurulé and Narvaez,

I am at a loss to understand this communication. I never received a notice of the hearing referenced. The last communication I received about this case was dated December 23, 2016, and was a Motion to Vacate from Attorney Narvaez.

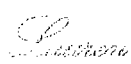
Had I known about a hearing, I would have attended.

Gale Cooper
Cc: Attorney Henry Narvaez

From: Lauren@brownlawnm.com
To: ga5c@aol.com
CC: Desiree@brownlawnm.com, Kevin@brownlawnm.com, hnarvaez@narvaezlawfirm.com
Sent: 2/9/2017 2:16:14 P.M. Mountain Standard Time
Subj: D-1329-CV-2007-01364, Cooper v. Steven Sederwall, et al.

Desiree@brownlawnm.com

I am writing to advise you of the proposed Order on Motion to Enforce Judgment pursuant to the hearing held on February 9, 2017. The proposed Order is attached to this e-mail for your review and approval. Please advise this office of your approval as to form.


Desiree
Legal Assistant

Brown Law Firm
Brown & Gurulé, LLC
3777 The American Rd. NW
Suite 100
Albuquerque, NM 87114

**Gale Cooper
P.O. Box 27
Cedar Crest, NM 87008
505-286-8483**

May 31, 2017

SENT VIA CERTIFIED MAIL NO. 7015-0640-0006-5160-0737

Chief Clerk Cristal Bradford
Clerk's Office
13th Judicial District Court of Sandoval County
P.O. Box 600
Bernalillo, NM, 87004

Re: Updating the issue of obstructed filing of my March 9, 2017 certified "Plaintiff Gale Cooper's Addendum to Her Hearing of March 8, 2017 on the Final Judgment" for my Case No. 1329-CV-2007-01364

Dear Chief Clerk Cristal Bradford:

This communication is to document the ongoing issue of the obstructed filing of my enclosed, Thursday, March 9, 2017, certified "Plaintiff Gale Cooper's Addendum to Her Hearing of March 8, 2017 on the Final Judgment" (hereinafter "Addendum") for my Case No. 1329-CV-2007-01364, received in your Clerk's Office on Monday, March 13, 2017. (enclosed)

The following pertains:

1. You never followed-up with me, as I had requested in writing, about the filing of my "Addendum" after it had been removed from your Clerk's Office, on or about its March 13, 2017 arrival, by Judge George Eichwald, to block its court-stamping.
2. On May 24, 2017, I received a phone call from Clerk Pauline, with regard to mailing me the requested, and paid-for, records in my Case No. 1329-CV-2007-01364. I asked Clerk Pauline about the status of my "Addendum." She stated it was not in my case file, but would check with you about it.
3. On May 26, 2017, Clerk Pauline called me back to confirm that the "Addendum" was not in my case file. She stated that you told her that it was not filed because "Judge Eichwald denied it."

If you would like to respond to this updated information, do so in writing ten (10) days. After that time, I will consider your non-response to constitute agreement as to my correct representation of the information in this communication.

Sincerely,



Gale Cooper