



NEW RULES

Nevada Supreme Court Makes Appealing Rule Changes

BY ELLIOT ANDERSON, ESQ.

On June 7, 2024, the Nevada Supreme Court adopted comprehensive and wholesale changes to the Nevada Rules of Appellate Procedure (NRAP) that govern appeals before the Nevada Supreme Court and the Nevada Court of Appeals. The effort to revise these rules began several years earlier, in 2021, when the Nevada Supreme Court created the NRAP Commission through ADKT 0580. The commission included many different Nevada appellate attorneys: civil and criminal, judges and justices, members of big and small firms, and supreme court staff attorneys.

The commission met for several years before formally proposing changes to nearly – if not every – rule in early

2024. The supreme court considered these changes and invited public comment on the commission’s proposal. After holding a hearing, the court adopted the amended rules later in the year. Notably, the court rejected proposals to allow an extension of the time to file a notice of appeal in NRAP 4.

These changes became effective prospectively on August 15, 2024, to all pending cases and cases initiated after that date. About nine months later, the court made some additional minor amendments to the rules. Litigators, and particularly appellate litigators, must familiarize themselves with the amended rules and double-check their forms. The changes are quite significant, and in many cases, quite helpful and “appealing.”¹ This article cannot fully address every change made, but it does highlight changes to the rules used most often. In other words, be sure to read them in whole and keep them handy.

Foundational Rules

To start, the court changed several foundational rules. Every appeal starts with an appealable order. For civil appeals, addressed in NRAP 3A, the court amended the “special order after final judgment” rule to expressly include orders awarding or refusing attorney fees or costs. Most substantively, the court amended family law order appealability. Rather than just appealing child custody orders,

litigants may now appeal final orders addressing custody; minor guardianship; and parenting time, visitation, or minor relocation. The court also substantially revised the criminal and child custody fast track appeal rules, NRAP 3C and 3E respectively. In NRAP 4, which addresses appellate timing (a *critical* rule), the court significantly clarified and amended the tolling motions and the rules governing timing to file notices of appeal with tolling motions pending. It cannot be emphasized enough how important it is for attorneys to understand this rule and these changes.

Stay Motions, Docketing Statements, Settlement Program, and Routing

The court also changed several less-foundational rules that are still regularly used. One such change addressed NRAP 8: the stay pending appeal rule. As amended, the rule sets a 14-day time limit to move to stay an order or judgment pending an appeal or extraordinary writ petition. But this time limit only applies if the district court has temporarily stayed the underlying order or judgment to allow a stay motion before an appellate court.

Under NRAP 14, the court effectively changed the docketing statement form used, and the current form can be found on the supreme court’s form website, along with all of the other new forms.²

Under NRAP 16, the oft-used settlement conference rule, litigants may now hire their own mediator, rather than use the settlement judge assigned by the court. The court also changed the requirements for confidential settlement statements, including their timing and substance.

Under NRAP 17, addressing the division of cases between both appellate courts, litigants may now request that a case be retained by the supreme court or assigned to the court of appeals using the guidelines set forth in NRAP 17(d)(2). Issues of first impression and questions of statewide public importance are no longer subject to mandatory retention by the supreme court; instead, these are factors that litigants can use to *argue for* supreme court retention. The court also clarified family law routing.

Motions and Formatting

The changes to the motion rule, NRAP 27, should also be noted. Under NRAP 27, parties must now consecutively number the pages of any exhibits submitted in support of a motion, i.e., Bates stamp them. When citing the exhibits to a motion, the Bates-stamped page numbers must be referenced. As amended, this approach is now more akin to citing the appendix in an appellate brief. The court also changed the motion page limit to 10 pages, or 4,667 words, and half that amount for any reply. If you exceed the page total, though, be sure to add a certificate certifying you met the alternative word count; the clerk will strike your filing otherwise.

Additionally, on every filing in our appellate courts, be sure to leave sufficient room in the upper right-hand corner for the file stamp—about 2 inches below and 3 inches to the left of the edge. Otherwise, the clerk will also enter a strike order. Attorneys beware: The clerk has taken a more active approach to striking documents. Nevertheless, if you find yourself subject to a strike order, the clerk *will* give you time to submit a compliant filing—14 days to correct mandatory filings (i.e., briefs) and seven days to correct optional filings (i.e., motions).

Briefing and the Appendix

The appellate merits rules also changed quite a bit too. In particular, the court removed the requirement to prepare a separate “statement of facts” in an

opening brief under NRAP 28 and NRAP 28.1. Now, appellants must include any facts relevant to the issues on appeal in the “statement of the case” section of the brief.

The court also gave NRAP 30, governing the appendix, a major face lift. Now, parties must file both an alphabetical and chronological index in a separate document, contemporaneously with the actual appendix documents, i.e., the record before the district court. Parties must also “OCR” the appendix, which ensures that the appendix can be searched. In practice, the OCR process can reduce file sizes, assist with copying matters in the record (like citations), and streamline a review of the record too. For example, with OCR, a reviewer can simply search for “object” when determining whether a party lodged an evidentiary objection at trial. This is your sign to purchase professional software designed to manage and create PDFs.

Finally, parties can now file a one-time streamlined extension of time for 30 days to file each brief—via an approved form. This process replaces a one-time-per-brief guaranteed extension via stipulation and any 14-day telephonic extension for each brief.

Post-Appellate Judgment

The rules governing post-appellate-judgment matters also deserve attention. Under NRAP 36(c)(3), parties may now cite as persuasive authority any unpublished court of appeals decisions issued on or after August 15, 2024 (be sure to identify them as unpublished). The court also streamlined the rules governing the three types of post-judgment petitions: for rehearing, for en banc reconsideration, and for review. In large part, these changes are stylistic. But the court made several significant changes. For all three petitions, the court amended the page limits to 10 pages, or 4,667 words. As revised, NRAP 40 gives the parties 14 days (not 18 days) after the court’s decision to petition for rehearing, and it adds a new rehearing basis: new directly controlling law. As amended, NRAP 40A allows parties to *immediately* petition for en banc reconsideration without first petitioning for rehearing. Finally, the court significantly changed NRAP 40B, governing petitions for review of court of appeals decisions. Now, the supreme court will expressly analyze whether the parties and the court of appeals raised and considered,

respectively, the petition’s question presented. Additionally, that question “must appear” on the petition’s “first page after the cover.” The petition must also be filed within 14 days after the challenged decision.

In appeals before Nevada’s appellate courts, appellate attorneys should carefully review these requirements and update their brief banks. Likewise, trial attorneys should familiarize themselves with these rules, too, because under the amended rules, decisions made at the trial court level can make or break an appeal. For this reason, it is important to understand appellate practice and focus on these issues throughout the case. In major cases, attorneys should consider having an appellate lawyer on the trial team to help ensure preservation of issues. A final note: these rules have not been fully codified on the Nevada Legislature’s website at this time. To see the amendments and new rules, visit the Nevada Supreme Court’s website, at https://nvcourts.gov/aoc/committees_and_commissions/nrap/adopted_rules.



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ENDNOTES:

1. Pun intended.
2. See Supreme Court of Nevada, Appellate Practice Forms, https://nvcourts.gov/supreme/appellate_practice_forms (last visited April 21, 2025).