

NEVADA SUPREME COURT

INTERNAL OPERATING PROCEDURES



Last Amended: June 1, 2013

Previously Amended:

December 16, 2004

August 1, 2007

January 1, 2009

July 1, 2009

October 21, 2009



Table of Contents

Rule 1.	Court Organization	1
Rule 2.	Case Management	2
Rule 3.	Assignment of Cases.....	5
Rule 4.	Oral Argument and Oral Presentations	6
Rule 5.	Assignment and Preparation of Chambers Cases	7
Rule 6.	Assignment and Preparation of Staff Cases.....	10
Rule 7.	En Banc Conferences and Panel Conferences	11
Rule 8.	Time Limits for Disposition Preparation	13
Rule 9.	Orders and Opinions	13
Rule 10.	Deciding Cases on Points Not Argued	14
Rule 11.	Petitions for Rehearing.....	15
Rule 12.	En Banc Reconsideration	15
Rule 13.	En Banc Review in the First Instance	16
Rule 14.	Emergency Proceedings	16
Rule 15.	Motions	18
Rule 16.	Confidentiality.....	19
Rule 17.	Application and Effective Date of Rules	19
Appendix 1.	Draft Distribution Deadlines.....	21
Appendix 2.	Transmittal of Edits and Conference Materials to Las Vegas.....	23
Appendix 3.	Citations	25
Index	27

Rule 1. Court Organization.

(a) *Composition of the Court.* The Supreme Court of Nevada is comprised of a chief justice and six associate justices. The position of chief justice rotates every 2 years. The justice most senior in current commission serves as chief justice. Unless otherwise agreed by those eligible, if two or more justices are eligible to serve as chief justice, then the chief justice is determined by lot. When two justices are eligible to serve as chief justice, the justice not selected by lot as chief justice serves as associate chief justice. When three justices are eligible to serve as chief justice, of the two justices not selected by lot as chief justice, the justice with the most seniority on the court shall serve as associate chief justice.

(b) *Panel Structure and Operation.* The court may sit, hear and decide cases in panels of three justices. The six associate justices will be randomly appointed to one of two panels, either the northern panel or the southern panel, with panel membership rotating every 12 months. Each newly created panel shall not duplicate a previous panel's membership unless all other combinations have been previously utilized. At least 9 months prior to each rotation, the panel members shall be selected and the justices informed of their panel appointments and the clerk shall announce the names of the panel members at that time. If any justice has served on the same panel (Northern or Southern) for 4 or more consecutive years, that justice may immediately designate a different panel and whether the panel said justice was just randomly selected to shall be the Northern or Southern panel for the next calendar year. Panel membership rotates on the first Monday in January of each year.

(1) *Substitutions in Panel Cases.* If an associate justice is disqualified from participating in a case, the chief justice will serve on the panel in place of the associate justice. If the chief justice is unavailable to serve as a substitute due to absence or disqualification, the justice most senior in commission who is available shall be called upon to act as a member of the panel.

(2) *Substitutions in En Banc Cases.* To avert a possible tie vote in en banc matters, the court will endeavor to convene a quorum comprised of an odd number of justices prior to taking the matter under submission. The court may, however, appoint a substitute at any time in cases where the lack of an odd-numbered quorum was not anticipated prior to submission or where the court's schedule did not allow for a timely substitution.

(3) *Selection of Substitute.* An active district court judge possessing the qualifications stated in NRS 2.020 may be assigned to sit in place of a justice as provided by law. A judge is available to sit if not disqualified by law or by voluntary recusal, except that, absent extraordinary circumstances, no district judge will be assigned to participate in the disposition of cases originating in their own judicial district or of cases over which a judge from their district has presided as a visiting judge in another district. The chief justice shall randomly select a substitute judge from among the names of those eligible under this rule and forward his or her name to the governor for appointment. The chief or associate chief justice, as appropriate, may also recall for temporary duty a retired

Rule 2

justice possessing the qualifications stated in Nev. Const. art. 6, § 19, to sit in place of a justice who is disqualified or recused.

(c) *Chief Justice.* The chief justice is not assigned to a panel, but serves on either panel in place of an associate justice who is disqualified or in other situations when substitution is necessary. The chief justice administers the en banc caseload, and may assign or reassign cases, giving notice thereof to the other justices, in order to balance the workload of the individual justices and panels or to ensure the efficient operation of the court.

(d) *Presiding Justice.* The associate justice most senior in current commission on a panel shall act as the presiding justice of that panel; and, in cases where two or more justices are equal in commission, the presiding justice is determined by lot. Each panel's presiding justice administers that panel's caseload, and may assign or reassign cases, giving notice to the other justices on the panel, in order to balance the workload of the panel members or to ensure the efficient operation of the panel. The presiding justice shall cause to be scheduled any events that assist the panel in the disposition of its caseload.

(e) *Quorum.* A quorum of the full court shall be four and a quorum of the court sitting as a panel shall be two. The concurrence of a majority of the full court or panel is necessary to decide a case. If a panel is unable to reach a consensus, the case shall be decided en banc.

(f) *Executive Committee.* The purpose of the executive committee is to formulate and recommend policies to the court. The executive committee is also authorized to resolve administrative issues either requiring expedited resolution or not warranting the attention of the full court.

(1) The executive committee is comprised of the chief justice, who serves as chair, the incoming chief justice, and an associate justice designated by the chief. Any justice may attend the meetings of the executive committee. At the discretion of the chief justice, the court clerk, the director of the Administrative Office of the Courts, and the legal counsel of the civil and criminal divisions of the central legal staff may be requested to attend the meetings of the executive committee.

(2) The executive committee shall meet no less than quarterly. The chief justice shall distribute the agenda by e-mail no less than 3 days prior to the executive committee meeting, and shall provide the minutes of the meeting within 10 days after the meeting.

Rule 2. Case Management.

(a) *Preliminary Jurisdictional and Rule Compliance Check.* The court will conduct a preliminary jurisdictional review of appeals at or near the time of docketing in accordance with this rule. The court will also monitor all matters for rule compliance throughout the life of the case.

(1) *Criminal Appeals.* The criminal division of the central legal staff shall review all criminal cases for proper jurisdiction and shall monitor rule compliance for these cases. A preliminary jurisdictional check shall be conducted:

(i) Within 30 days after docketing in proper person appeals and appeals that are subject to NRAP 3C;

(ii) Within 30 days after the filing of the docketing statement in all other criminal cases.

(2) *Civil Appeals.* The civil division of the central legal staff shall review all civil cases for proper jurisdiction and shall monitor rule compliance for these cases. A preliminary jurisdictional check shall be conducted:

(i) Within 30 days after docketing in proper person appeals;

(ii) Within 30 days after briefing is reinstated following the conclusion of settlement proceedings; or

(iii) Within 30 days after filing of the docketing statement in cases that are not assigned to the settlement program.

The preliminary jurisdictional check in civil cases shall review substantive appealability and timeliness of the appeal, and include a determination of whether an order that completely removes a party was properly certified under NRCP 54(b) and an analysis of whether the appellant is an aggrieved party under NRAP 3A(a). Jurisdictional checks shall be conducted in connection with motions for stay filed while a case is in the settlement program.

(b) *Decisional Tracks.* Cases are assigned to decisional tracks in order to tailor the decision-making process to the requirements of each case and thereby provide for its fair and expeditious resolution.

There are four decisional tracks: (1) en banc chambers track; (2) panel chambers track; (3) en banc staff track; and (4) panel staff track. Except in cases identified as automatic en banc cases below, the decisional track is generally determined through screening after the answering brief is filed. In addition to recommending assignment to a decisional track, the screening attorneys shall assign a weight to each case or writ proceeding being screened based on the complexity of the issues presented and the anticipated time necessary for resolution.

(1) *Screening.*

(i) *Criminal Cases.* The criminal division of the central legal staff shall screen all criminal appeals for assignment to one of the four decisional tracks. The criminal division may screen writ proceedings arising out of criminal proceedings as appropriate.

(ii) *Civil Cases.* The civil division of the central legal staff shall screen civil proper person cases and, in so doing, shall identify matters in which pro bono representation may be appropriate. The legal division of the clerk's office shall screen all other civil appeals and may screen all other writ proceedings as appropriate.

(2) *Screening Criteria.* The following criteria govern the screening process:

(i) Cases tracked for en banc decision are limited to those raising substantial precedential, constitutional or public policy issues, or where en banc consideration is necessary to secure or maintain uniformity of the court's decisions.

(ii) Cases tracked for panel decision involve analysis of legal issues with limited precedential value or with no impact beyond the litigants.

Rule 2

(iii) Generally, cases tracked to chambers require considerable personal attention from the justices, such as those presenting unsettled questions of general importance and those presenting issues whose resolution by the court allows significant development in important areas of Nevada law.

(iv) Cases tracked to staff involve issues resolved by the application of settled law, or those requiring a thorough reading of the record and an analysis of a single complex issue or multiple non-complex issues.

(3) *Track Assignment.*

(i) A screening memorandum and track recommendation shall be prepared for approval by the chief justice in all cases except proper person appeals, criminal post-conviction appeals, criminal appeals in which the defendant has been sentenced to death, criminal appeals that are subject to NRAP 3C, and emergency matters. Although a formal screening memorandum and track recommendation are not necessary in these cases, the issues raised in these appeals shall be entered in C-Track for purposes of issue tracking.

(ii) The chief justice shall assign each case to a decisional track and may direct the clerk to assign the case to a specific panel or justice or schedule the case for oral argument. When a majority of the assigned panel determines a case has been improperly screened, the presiding justice shall direct the clerk to reassign the case to a different decisional track.

(4) *Automatic or Early En Banc Assignment.* Unless otherwise ordered, the following types of cases shall be assigned to the en banc decisional track as soon as possible after docketing:

- (i) Cases involving ballot or election questions;
- (ii) Except for temporary suspensions, cases involving judicial discipline or attorney admission, discipline, disability, reinstatement following discipline or disability, or resignation;
- (iii) Direct and post-conviction habeas appeals in capital cases;
- (iv) Cases involving the approval of pre-paid legal service plans;
- (v) Questions of law certified by a federal court;
- (vi) Disputes between branches of government;
- (vii) Cases involving the administration of the judicial system;
- (viii) Cases raising as a principal issue a question of first impression involving the Nevada Constitution.

(c) *Issue Tracking and Conflicts Avoidance.*

(1) *Issue Tracking.* Except for emergency matters and proper person post-conviction appeals, the screening attorneys shall review all cases in order to identify the primary issues presented and shall track such issues in an issue-tracking database. The criminal division of the central legal staff shall track issues in criminal appeals and writ proceedings arising out of criminal proceedings. The civil division of the central legal staff and the legal division of the clerk's office shall track issues in civil appeals and non-criminal writ proceedings for which each has screening responsibility. Issue tracking is generally

conducted in conjunction with screening after all briefing required or allowed by the court is completed.

(2) *Clustering*. Grouping or clustering cases enables the court to decide unrelated cases raising the same or similar issues in a consistent and efficient manner. To this end, when identifying issues, the screening attorneys shall also identify cases which present the same or similar issues, and make a recommendation to the chief justice to group or cluster those cases. The chief justice, with input from the screening attorneys, may identify the primary case of the group when appropriate.

(d) *Aging Case Report*. The court clerk shall generate and distribute to the justices an aging case report each quarter. The report shall identify by case number and chambers, staff, or clerk's office assignment all matters that have been ripe for disposition and pending for more than 180 days without decision. A case is deemed ripe for disposition as of the date of its submission or, if the case is not submitted, as of the date of filing of the following: (1) if an appeal, the last merits brief; (2) if a petition or the answer if one has been ordered; or (3) the last response, if pending on order to show cause, motion, or venue appeal. The report shall, if possible, include a brief statement as to the reasons for the case's age. The chief justice shall review the report with staff and chambers and report to the en banc court on the results of that review quarterly.

Rule 3. Assignment of Cases.

(a) Upon docketing, cases will be designated as either panel or en banc. Those cases that are not automatically or initially routed to the en banc court shall be generically identified "panel" until they are ready for assignment to a particular panel.

(b) *Panel Staff Track*. Unless the case shall be orally argued or case management considerations warrant a different assignment, a case assigned to the panel staff track shall be assigned to the panel presiding over oral presentations the month the matter is ready to be considered. Argued cases originating in Clark County shall be heard and decided by the southern panel; argued cases originating outside of Clark County shall be heard and decided by the northern panel. When scheduling the oral argument, the clerk shall, if necessary, reassign panel staff track cases to the appropriate panel.

(c) *Panel Chambers Track*. When assigning panel chambers track cases pursuant to Rule 5, the clerk shall assign any case originating in Clark County to the southern panel and any case originating outside of Clark County to the northern panel. The clerk may assign Clark County cases to the northern panel in order to balance the workload of the panels.

(d) *Effect of Panel Rotation*. Provided they have deliberated or otherwise considered the case on its merits, the justices serving on the panel at the time a case is submitted for decision shall finally determine the case.

Rule 4

Rule 4. Oral Argument and Oral Presentations.

(a) *Scheduling and Location.* The clerk shall schedule cases for oral argument as directed by the chief justice or presiding justice of the panel. Arguments shall be scheduled, whenever possible, during the first or second full week of the month. En banc arguments are held in Carson City and, at the direction of the chief justice, may be held in Las Vegas or elsewhere in Nevada. Unless otherwise directed by the presiding justice, northern panel arguments should be held in Carson City and southern panel arguments should be held in Las Vegas. If possible, Clark County overflow cases heard by the northern panel should be held in Las Vegas or an appropriate venue in Southern Nevada. Likewise, if possible, northern panel cases arising in Washoe County and rural Nevada should be held in Carson City or an appropriate venue in Northern Nevada. Oral arguments shall be scheduled each month either before one of the panels or before the en banc court; however, during July and August, arguments shall be scheduled at the discretion of the chief or presiding justice.

(1) *Argument Sessions.* En banc arguments are normally held during the first week of the month as needed by the court. The panels normally hear oral arguments during the second week of alternate months.

(2) *Argument Determination.* The chief justice, in consultation with the central staff legal counsel, determines which en banc track cases require oral argument. The presiding justice, in consultation with the other panel members, determines which cases assigned to the panel require oral argument. If two justices vote to hold oral argument in a panel case, the matter shall be scheduled and heard. The chief justice in en banc cases and the presiding justice in panel cases shall notify the clerk of the cases requiring oral argument no later than 55 days prior to the start of oral argument week. Unless the clerk is timely directed to submit a chambers case for decision without oral argument, the clerk shall schedule the case for oral argument.

(b) *Notice.* The clerk shall, if possible, send notice of oral argument to counsel at least 6 weeks prior to the scheduled hearing date. When feasible, the notice shall include any particular issues to be addressed by counsel at oral argument. Reminder notices shall be sent approximately 3 weeks prior to the scheduled hearing date. The notices shall state the scheduled time and location of the argument, and whether the argument will be en banc or before a panel. If the matter will be heard before a panel, the notice shall indicate the names of the justices comprising the panel.

(c) *Priority.* When scheduling appeals for argument, the clerk shall, pursuant to NRS 177.225, afford priority in calendaring to direct and pretrial criminal appeals. Civil appeals previously processed by this court and appeals raising the following types of issues shall also be afforded priority: (1) the grant or denial of a change of venue; (2) the grant or refusal to grant an injunction; (3) the dissolution or refusal to dissolve an injunction; (4) the establishment or change of child custody or visitation of minor children, including actions seeking termination of parental rights; (5) the denial of a motion to compel arbitration; and (6) appeals arising from a business court. However, when pending cases

raise the same or similar legal issues, the court may advance or defer the hearing or consideration of a case so that related issues can be heard at the same time.

(d) *Post-Argument Conferences.* At the conclusion of each day's argument, or as often during the day as practicable, the justices shall confer on the cases they have heard. Each justice shall be afforded an opportunity to express his or her tentative views. The justices shall attempt to reach a tentative decision regarding the disposition of each case and whether it should be in the form of a published opinion. Each case is then assigned to a justice for the preparation and circulation of a disposition in accordance with Rule 5(d). The clerk shall attend the conferences and record the tentative votes of the justices.

(e) *Oral Presentations.* Each panel shall hear oral presentation by staff during alternate months in which the panel is not hearing panel oral arguments. The clerk shall schedule the oral presentations in Carson City, with panel members participating by videoconference if necessary. The panels may hear staff oral presentations on any case or motion requiring no extensive research, explanation or consideration, and may also consider staff requests for guidance on more complex matters. Any matter requiring emergency consideration shall also be heard by the panel. The central staff legal counsel and the clerk of the court shall determine which matters their staffs will present to the panel and shall provide the panel with a written agenda and, where possible, draft dispositions at least seven working days in advance of the oral presentation. The central staff legal counsel shall attend each oral presentation.

Rule 5. Assignment and Preparation of Chambers Cases.

(a) *Assignment by the Clerk.* On or before the ninth day of every month, the clerk shall assign cases to chambers based upon criteria set by the chief justice. The clerk shall assign en banc cases to the chambers on a rotating and equal basis. Panel cases shall be randomly assigned to the chambers within the panel. Absent exigent circumstances, the monthly assignment of cases to chambers shall be made at least 60 days prior to the time when the cases will be considered by the court.

(b) *Preparation of Bench Memorandum.* Under the justice's supervision, the law clerks shall prepare a bench memorandum for each case assigned to the chambers, unless the presiding or chief justice dispenses with the bench memorandum in favor of a law clerk oral presentation or other order, such as an order of remand or for further briefing. The bench memorandum shall include recommendations as to whether the case merits oral argument and whether it should be reassigned from en banc to panel or panel to en banc. The bench memorandum shall be circulated no later than 30 days after a case is assigned to the chambers unless the deadline is extended by the chief justice for en banc cases or the presiding justice for panel cases. Copies of bench memoranda in en banc cases must be distributed to each chambers, the clerk, and the central staff legal counsel, and may be distributed to such other staff members as a justice or department head directs. Copies of bench memoranda in panel cases must be distributed to the members of the panel, the

Rule 5

court clerk, the central staff legal counsel, and may be distributed to such other staff members or justices as a panel member or department head directs.

(c) *Argument Determination.* After preparation of the bench memorandum, the chief justice, in en banc cases, and the assigned panel, in panel cases, shall review the case to determine whether oral argument is warranted. Generally, oral argument shall be held in those cases raising precedential or public policy issues or involving unsettled areas of the law, or in those cases where oral argument will substantially aid the court in understanding the facts or in resolving the issues on appeal. The panel shall also review the case to determine whether it is assigned to the appropriate decisional track. For en banc cases, 15 days after circulation of the bench memorandum, the chief justice shall inform the court clerk whether oral argument should be scheduled and whether the case warrants a change in decisional track. For panel cases, 15 days after circulation of the bench memorandum, the presiding justice shall collect the argument determination votes for the cases assigned to the panel and inform the court clerk whether oral argument should be scheduled and whether the panel suggests a change in decisional track. The clerk shall schedule oral arguments and re-track cases as directed by the chief justice and presiding justices. A case submitted without argument to the en banc court may be scheduled for argument after review by the en banc court.

(d) *Disposition.* The justice assigned to the case shall have the responsibility to produce the disposition voted by the majority. In the event the justice assigned the case is not in the majority and does not wish to draft a proposed majority disposition, the chief justice in en banc cases or the presiding justice in panel cases shall select a justice to supervise a law clerk from the chambers assigned the case. At the time a draft disposition is prepared, the author shall research the issue-tracking and opinion databases to ensure the draft disposition is prepared with a full awareness of the court's other cases addressing the same or similar issues.

(e) *Editing.* Chambers dispositions shall be edited by an editing team supervised by the assistant reporter of decisions and by the central legal staff.

(1) Once a case is deemed submitted, the clerk will schedule a deadline for a draft disposition of either 60 or 90 days, pursuant to IOP 8(a).

(2) *Criminal Cases.*

(i) On or before the deadline, the judicial assistant will forward a draft to the assistant reporter of decisions and notify the presiding or chief justice and the clerk that the draft has been sent. The date the draft is sent to the assistant reporter of decisions will be recorded in C-Track.

(ii) The editing team shall have 7 working days from receipt of the draft to edit and substantively cite- and source-check the draft.

(iii) If the draft is an order and substantive review by central legal staff has not been requested by the originating chambers or the presiding or chief justice, the editing team shall return the draft to chambers upon completion of its review without input from central legal staff.

(iv) If the draft is an opinion or substantive review by central legal staff has been requested, the draft shall also be reviewed by central legal staff, who shall have 5 working days from receipt of the draft to review it for major substantive errors and summarize any such errors in a short memo. The central legal staff shall provide the memo to the editing team who will include the memo with the draft that is returned to chambers.

(v) When the draft is returned to the originating chambers, the chambers will incorporate the edits as promptly as practicable. If the draft is an opinion, chambers shall return the draft opinion to the editing team for final review.

(vi) The editing team shall have 5 working days to conduct the final review of draft opinions.

(3) *Civil Cases.*

(i) If the draft is an opinion, on or before the deadline, the judicial assistant will forward a draft to the civil division of the central legal staff and notify the presiding or chief justice and the clerk that the draft has been sent. The date the draft is sent to the central legal staff will be recorded in C-Track.

(ii) The central legal staff shall have 7 working days from receipt of the draft to review it for major substantive errors and summarize any such errors in a short memo. The central legal staff shall return the draft with the memo to chambers.

(iii) The originating chambers will incorporate any suggested changes as promptly as practicable and then send the draft to the editing team, who shall have 5 working days from receipt of the draft to edit and substantively cite- and source-check the draft.

(iv) If the draft is an order, on or before the deadline, the judicial assistant will forward a draft to the editing team and notify the presiding or chief justice and the clerk that the draft has been sent. The date the draft is sent to the editing team will be recorded in C-Track. The editing team shall have 7 working days from receipt of the draft to edit and substantively cite- and source-check the draft. If substantive review by central legal staff has not been requested by the originating chambers or the presiding or chief justice, the editing team shall return the draft order to chambers upon completion of its review without input from central legal staff.

(v) When the draft is returned to the originating chambers, the chambers will review the edits and incorporate or reject them as promptly as practicable. Chambers other than the originating chambers should request copies of the comments reviewed from staff directly from the originating chambers rather than from staff.

(4) The editing team or central legal staff may request extensions of the time deadlines stated in this rule from the originating chambers. Such requests must be made in advance of the deadline.

(5) *Rejection of Substantive Edits or Criticisms.* If the chambers has rejected substantive edits from the editing team or staff, chambers shall circulate a short memo or comments in redline tracked changes to the other justices on the case, setting out the rejected substantive edit(s) and explaining the reason for the rejection.

Rule 6

(6) *Draft Circulation.* Once editing is complete, the draft can be circulated for the next available conference.

Rule 6. Assignment and Preparation of Staff Cases.

(a) *Assignment of Cases.* The central staff legal counsel or a supervisory attorney shall monitor the caseloads of the staff attorneys in each division and make case assignments based on appropriate considerations, including subject-matter specializations, case age, and case weight.

(b) *Argued Cases.* Under the central staff legal counsel's direction and that of a justice, if assigned by the chief or presiding justice, a staff attorney shall prepare a bench memorandum for each staff case to be scheduled for oral argument. Except in cases requiring emergency or expedited consideration, the bench memorandum shall be completed in time to be circulated to the panel or the en banc court no later than 60 days prior to the scheduled oral argument date. Where that deadline cannot be met in cases requiring emergency consideration or cases selected for oral argument following a staff oral presentation, legal counsel shall consult with the chief justice or presiding justice to establish an appropriate deadline and shall notify the other justices participating in the case of that deadline.

(c) *Submitted Cases.* At the discretion of the central staff legal counsel, staff may present submitted cases to the court either by oral presentation, portable agenda, panel conference or en banc draft conference.

(d) *Disposition.* Under the supervision of the central staff legal counsel, staff shall prepare a proposed disposition for each case tracked to staff. However, the chief justice in en banc cases, and the presiding justice in panel cases, may assign a justice to supervise the staff's preparation of the bench memorandum or disposition in any case.

(1) *Time Limits for Cases Submitted to Staff.* Except in capital cases, central staff shall report to the chief justice as provided in Rule 2(d) above as to all cases that have been pending in staff without a draft disposition being circulated for more than 180 days.

(2) *Time Limits for Circulation of Oral Presentation Cases.* Draft dispositions for cases selected for oral presentations shall be circulated no later than 7 days before the oral presentation date except as otherwise provided in this rule. In emergency situations, legal counsel may add a case to the oral presentation agenda less than 7 days before the oral presentation date. An unsigned draft that is passed for consideration at a draft conference must be edited, if necessary, and recirculated for a draft conference as soon as possible but in no event more than 30 days after the original oral presentation. If the panel directs staff to prepare an opinion, the matter will be deemed submitted on that date and the time limits in Rule 6(d)(3) shall apply.

(3) *Time Limits for Argued and Discussion Only Cases.* Once a majority is determined in a staff case that has been argued or considered for discussion only at oral presentations or conference, the matter will be deemed submitted. If the majority is determined at oral presentations, the central staff legal counsel shall notify the clerk so that the deemed submitted date can be recorded. The central staff legal counsel shall cir-

culate a draft disposition within 90 days after the deemed submitted date in en banc cases and within 60 days after the deemed submitted date in panel cases. If a subsequent conference produces a new majority, the new majority draft shall be circulated with 45 days from the date the vote changes in en banc cases and within 30 days in panel cases. If a majority of the court or panel determines that a staff case constitutes an emergency, the timelines for preparation of a disposition shall be suspended and the central staff legal counsel shall consult with the chief justice or presiding justice to establish deadlines consistent with the emergency nature of the matter.

(4) *Extensions of Time.* The above time limits may be changed by the chief justice or presiding justice when extraordinary circumstances preclude timely circulation. When a case is reassigned from chambers to staff, the matter will be deemed submitted when the court or panel has agreed upon a disposition and the case has been reassigned to staff.

Rule 7. En Banc Conferences and Panel Conferences.

(a) *Scheduling.* Under the direction of the chief justice, the clerk shall schedule en banc conferences in Carson City or Las Vegas for consideration of en banc cases and administrative matters. Under the direction of the presiding justices, the clerk shall schedule panel conferences in Carson City or Las Vegas for consideration of panel cases.

(b) *Attendance.* Each justice shall make every effort to attend en banc and panel conferences in person or by videoconference if circumstances require. The chief justice or the presiding justice may grant limited exceptions. The clerk shall also attend unless otherwise directed by the court.

(c) *Draft Circulation and Deadline.* Copies of draft decisions in en banc cases must be distributed to each chambers, the clerk, and the central staff legal counsel, and may be distributed to such other staff members as a justice or department head directs. Copies of draft decisions in panel cases must be distributed to the members of the panel, the court clerk, the central staff legal counsel, and may be distributed to such other staff members or justices as a panel member or department head directs. Except as provided below, drafts to be considered at a conference must be uploaded into SIRE and circulated, with notification by e-mail link to the Las Vegas chambers no later than 3 p.m. on the scheduled draft distribution deadline day. The clerk shall set the distribution deadline at least 8 judicial days prior to the conference, if the court's schedule permits. The central legal staff may add up to three additional items to the draft conference agenda, provided that the proposed draft is circulated at least 8 days before the conference. The practice of adding items to the agenda prior to distribution of a draft is discouraged but not prohibited; however, the chief or presiding justice must approve adding a case to an agenda if the draft is not timely distributed.

(d) *Agenda.* The clerk, based on the drafts distributed, prepares the conference agenda for the en banc and panel conferences. To ensure that conferences are productive, the chief or presiding justice shall work with the clerk to limit the items placed on the agenda to those that are ripe for discussion or further action by the justices. The clerk shall dis-

Rule 7

tribute the agenda by 3 p.m. 7 judicial days before the start of the conference. Unless unavailable, the justice presiding over the conference shall approve the conference agenda prior to distribution. After the agenda is distributed, no case shall be removed or added without a showing of good cause and the express authorization of the justice presiding over the conference. Notwithstanding the provisions of this rule, the chief or presiding justice may add an item to the agenda at any time. Copies of the agenda shall be provided to each justice, judicial assistant and law clerk, each central staff legal counsel, each central staff attorney and assistant, and each assistant and deputy clerk.

(e) *Discussion and Voting.* All final drafts of opinions and orders shall be considered along with such other matters on the agenda as may be requested by the chief justice or any of the other justices. Each justice shall have the opportunity to be heard on each case or agenda item before a final vote is taken. The clerk shall record the vote and any other action taken with respect to each agenda item, and, as soon as practicable after the conference, shall prepare and distribute a conference report to those justices and staff members receiving the agenda.

(1) *Disqualifications.* A justice who is recused or otherwise disqualified from participating in the disposition of a matter shall leave the conference room during any discussion of the matter. Further, any input as to the substance of the case by a disqualified justice is prohibited.

(2) *Panel Cases.* If a justice is not a member of the panel assigned to decide a matter, the justice shall likewise leave the conference room during any such discussion despite that the justice is not disqualified from deciding the matter. Except in connection with a request for en banc consideration, a justice not on the panel shall strictly avoid any input as to the substance of the case.

(f) *Passes.* A justice may request that consideration of a case or matter on a conference agenda be passed to the next conference or, with the approval of the chief justice or presiding justice, to a later conference. Such a request shall be honored unless the chief justice or presiding justice determines that the matter is of such extreme urgency that issuance of an immediate disposition is necessary.

When a matter that previously was passed again appears on the agenda, the justice who requested that the case or matter be passed may request another postponement only for an emergency or highly unusual situation and with the consent of the chief justice or presiding justice. If a majority is ready to sign a final opinion concerning a case that appeared on a previous agenda and was passed, that opinion shall be signed and filed unless a further postponement is granted. The justices who do not agree with the majority may designate how they would like to have their participation in the case designated, *i.e.*, concurrence, concurrence in result only, or dissent. If no particular designation is given by a justice, the justice shall be deemed to have concurred. If a majority is not prepared to sign a final opinion, the case or matter shall be placed on the next conference agenda.

Rule 8. Time Limits for Disposition Preparation.

(a) *Majority Decision.* Once a majority is determined at the post-argument or submitted case conference, the matter will be deemed submitted and the justice to prepare the order or majority opinion shall be designated pursuant to Rule 5(d). The author of the order or opinion shall prepare a draft disposition for circulation within 90 days after submission in en banc cases and within 60 days after submission in panel cases. In the absence of a majority in the initial conference, the matter shall be continued until a subsequent conference produces a majority. At that time, the submission date will be determined as in the first post-argument or submitted case conference. If a subsequent conference produces a new majority, the new majority draft shall be circulated within 45 days from the date the vote changes in en banc cases and within 30 days in panel cases. This rule shall apply to staff cases equally as to chambers cases.

(b) *Concurrence or Dissent.* Any justice desiring to submit a dissenting or concurring opinion or memorandum containing additional authority shall do so within 45 days from the time the majority draft has been distributed in en banc cases and within 30 days in panel cases. If a justice in the majority wishes to prepare a separate opinion or other draft to the position stated in a concurrence or dissent, that justice shall have 30 days to prepare his or her opinion or other draft from the date of circulation of the draft to which he or she is responding. The chief or presiding justice may, if necessary, set a final deadline for submission of any further revisions to the majority, concurrence, or dissent. If the draft by the dissenting or concurring justice is not timely circulated, the opinion may be signed and filed pursuant to Rule 7(f) with only an appropriate notation, such as “I dissent” or “I concur in the result only.”

(c) *Unsigned Drafts.* An unsigned draft must be edited and re-circulated within 30 days of the original draft conference.

(d) *Extensions of Time.* The above time limits may be changed by the chief justice or presiding justice when extraordinary circumstances preclude timely circulation. When a case is assigned to a justice other than at a post-argument conference, the matter will be deemed submitted when a majority of the court or panel has agreed upon a disposition and a justice assigned to prepare the disposition.

(e) *Emergencies.* If a majority of the court votes that a matter constitutes an emergency, the timelines for preparations of a disposition, including dissents or concurrences, shall be suspended and deadlines consistent with the emergency nature of the matter shall be established by the chief justice.

Rule 9. Orders and Opinions.

(a) *Manner of Disposition.* The court or assigned panel shall decide how a case will be disposed of, either by order or opinion. An opinion shall be prepared if the case presents a novel question of law, an issue of public importance, or sets a new legal precedent. An opinion shall not be mandatory when reversing a judgment that does not involve the

Rule 10

above. Although it is contemplated that panel decisions would be by order, a panel may publish its decision when a significant new point of law is involved.

(b) *Per Curiam vs. Authored.* A justice shall have the option of authoring any opinion assigned to him or her to prepare or may designate the majority opinion as “per curiam.” However, in en banc cases, if two or more justices sign a separate opinion, the per curiam designation shall not be used and the published opinion shall designate the name of the authoring justice. Unless unanimous, all panel opinions shall be authored.

(c) *Electronic Version of Opinions.* When an opinion is submitted to the clerk for filing, the author shall provide the clerk with an accurate, electronic copy of the opinion. The author shall ensure that the electronic copy is in proper format for publication on the Internet.

(d) *Circulation of En Banc Opinions.* Prior to filing and publication, the clerk shall circulate copies of all en banc opinions to every justice and all court attorneys. The purpose of the circulation is to determine whether there is a conflict of filed or draft opinions and to flag any gross errors in content or style. Staff attorneys designated by the central staff legal counsel shall check all opinions for conflicts and shall notify the author of any significant, potential inconsistencies with existing caselaw or inconsistencies with other proposed dispositions. The clerk’s office shall review the opinion for technical and procedural accuracy, and finalize the opinion for publication on the Internet. Unless otherwise notified within 5 calendar days of circulation, the clerk shall file and publish the opinion. Absent extraordinary circumstances and the authorization of the chief justice, opinions shall be filed and published on Thursday.

(e) *Circulation of Panel Opinions.* Rule 9(d), governing the circulation of en banc opinions, applies to the circulation of panel opinions, except when a panel opinion proposes to overrule or disapprove of a prior decision of this court, in which event:

(1) The draft opinion shall include a cover memo stating that the draft proposes to overrule or disapprove of existing case precedent;

(2) The circulation time shall be extended from 5 to 14 calendar days, so that an interested justice or justices may request en banc review pursuant to Rule 13(b); and

(3) If en banc review is not requested as provided in Rule 13(b), the opinion shall contain a footnote worded, depending on the circumstances, in substance as follows:

This opinion has been circulated among all justices of this court, any two of whom, under IOP 13(b) may request en banc review of a case. The two votes needed to require en banc review in the first instance of the question of (*e.g.*, overruling *McConnell v. State*) were not cast.

A justice not a member of the panel deciding a matter should avoid substantive input into a circulated draft beyond requesting en banc hearing as provided in Rule 13(b).

Rule 10. Deciding Cases on Points Not Argued. If a panel determines to decide a case upon the basis of a significant point not raised by the parties in their briefs, it shall

give serious consideration to requesting additional briefing and oral argument before issuing a disposition predicated upon the particular point.

Rule 11. Petitions for Rehearing.

(a) *Assignment.* A petition for rehearing of a panel decision is assigned to and reviewed by the panel that decided the case. If the panel determines that rehearing is warranted, rehearing before that panel will be held. The full court shall consider a petition for rehearing of an en banc decision, but only those justices participating in the challenged decision shall determine whether rehearing is warranted.

(b) *Initial Determination Required.* When a petition for rehearing is filed, the clerk shall circulate copies of the petition to each justice participating in the decision of the matter and shall schedule the petition for discussion at a conference no later than 45 days from the filing of the rehearing petition. The justices shall then determine whether to deny the petition summarily or to order an answer to the petition and shall also direct the clerk's office to prepare the appropriate order. No memoranda need be prepared in connection with the initial determination. Rather, the decision to summarily deny or to order an answer will be based upon the petition, the original disposition, and/or the bench memorandum.

(c) *Determination When Answer Ordered.* When the answer to the rehearing petition is filed, the clerk shall circulate copies of the answer to each justice participating in the decision of the matter and shall schedule the rehearing for discussion at the next conference. The justices shall then determine whether or not to grant rehearing and, if rehearing is to be granted, whether additional briefing or oral argument is warranted. Summary denial or correction of the panel's decision may also be ordered.

(d) *Action by Court if Rehearing Granted.* If rehearing is to be granted, an order granting rehearing and reinstating the matter shall be signed and filed as soon as practicable after the determination is made. Once a majority has been determined, the matter will be deemed submitted for decision and the justice to prepare the order or majority opinion shall be designated pursuant to Rule 5(d). The time limits for preparation of a disposition on rehearing are determined pursuant to Rule 8.

(e) *Correction of Decision on Denial of Rehearing.* When the court determines to correct a decision, the corrected decision shall issue as soon as practicable after the determination is made. If the corrected decision is not signed and filed within 30 days, the clerk shall schedule the rehearing for discussion at the next conference.

Rule 12. En Banc Reconsideration.

(a) *Review and Determination of Petitions.* All petitions for en banc reconsideration are reviewed and determined by the full court. When a petition for en banc reconsideration is filed, the clerk shall circulate copies of the petition to all justices and shall schedule the matter for discussion at the next en banc conference. The justices shall determine whether to grant or deny the petition summarily or to order an answer to the petition

Rule 13

and shall also direct the clerk's office to prepare the appropriate order. If an answer to the petition is filed, the clerk shall circulate copies of the answer to each justice participating in the decision of the matter and shall schedule the petition for discussion at the next conference. A single justice may order an answer to the petition and may, with the concurrence of any other justice, direct that the panel's decision be stayed or vacated pending further consideration of the petition.

(b) *Request by a Justice.* A justice may request en banc reconsideration of a case at any time prior to issuance of the remittitur. The justice shall make the request to the presiding justice of the panel assigned the case and provide all other justices and the court clerk with notice of the request.

(c) *Grant or Denial of En Banc Reconsideration.* When two or more justices vote to reconsider a panel decision, en banc reconsideration shall be granted. But if the justices voting in favor of reconsideration consent to the majority's decision to deny reconsideration, their dissent shall be duly noted on the order denying en banc reconsideration. An order granting en banc reconsideration may be signed by a single justice, but the full court shall sign an order denying en banc reconsideration.

(d) *Action by Court if Reconsideration Granted.* If en banc reconsideration is to be granted, an order granting en banc reconsideration and reinstating the matter shall be signed and filed as soon as practicable after the determination is made. Once a majority has been determined, the matter will be deemed submitted for decision and the justice to prepare the order or majority opinion shall be designated pursuant to Rule 5(d). The time limits for preparation of a disposition on en banc reconsideration are determined pursuant to Rule 8.

Rule 13. En Banc Review in the First Instance.

(a) *Request by a Party.* If a party moves for en banc review of a case in the first instance, the assigned panel shall consider the motion and, upon a showing that the case meets the criteria for en banc review set forth in Rule 2(b)(2), the motion shall be granted if it appears that a panel decision would result in a significantly different opinion from an en banc decision.

(b) *Request by a Justice.* A justice may request en banc consideration of a case at any time prior to final disposition of a case. The justice shall make the request to the presiding justice of the panel assigned the case and provide all other justices and the court clerk with notice of the request. The request shall be granted if concurred in by any other justice and an order to that effect shall be signed and filed.

Rule 14. Emergency Proceedings.

(a) When a matter is filed and designated an emergency, central staff will preliminarily review the case to confirm that it qualifies as an emergency and identify the critical legal issue(s) presented. If the matter is, in fact, an emergency, staff will proceed as follows:

(1) In cases already assigned to chambers, the emergency will be resolved by the panel to which the chambers/justice is assigned. In those cases assigned to the chief justice, the emergency will be assigned to the panel hearing emergencies that month. But see (a)(4).

(2) In all unassigned cases, staff will contact the presiding justice of the panel that is currently scheduled to hear oral presentations. The presiding justice, or the presiding justice's designee, shall confirm the staff's assessment of the emergency and determine if the matter can be resolved by the panel members through e-mail with a short explanation and a proposed order or orders. The presiding justice and the panel may reserve the right to request a formal presentation of the emergency motion by staff.

(3) Each justice shall designate an alternate justice to sit in the event that he or she is unavailable. If the designated alternate is unavailable or disqualified, the chief justice shall fill in.

(4) During the months of July and August only, the Southern Panel shall consider any emergencies that are presented from July 1 through July 15 and August 15 through August 31; the Northern Panel shall consider any emergencies that are presented from July 16 through July 31 and August 1 through August 15.

(b) Once confirmed as an emergency, staff will determine the amount of time necessary to prepare the case for presentation to the panel(s) described above.

(c) Staff will then contact the presiding justice's chamber to advise him or her of staff's timeline for presentation to the panel. Staff is encouraged to fix a specific date and time to present the emergency to the panel of justices. Staff will also advise if there are documents that the justices should review in advance of the emergency conference. Whenever possible, staff should make every effort to summarize, comment on, or provide specific citations to the relevant documents.

(d) After the presiding justice's chamber has been advised of the specific date and time for presentation of the emergency, the presiding justice's judicial assistant will arrange for the panel to be available and will provide other members of the panel with the initial case information; *i.e.*, case name and number and whether staff has suggested a review of any particular documents or portions thereof.

(e) Once the panel's composition is known, the presiding justice's judicial assistant will advise central staff which justices will be participating and whether video or telephonic arrangements are needed.

(f) Staff will then make the necessary logistical arrangements for the emergency presentation, such as conference room and video and/or telephonic needs, and will provide the presiding justice's judicial assistant with this information for dissemination to the chambers of each participating justice.

(g) If additional filings are received prior to the date/time set for staff's presentation, if there is additional legal research, or if there are documents received that should be re-

Rule 15

viewed by the participating justices, staff will forward the same to each justice and his or her judicial assistant.

(h) Whenever possible, staff should prepare a proposed disposition.

Rule 15. Motions.

(a) *Priority of Motions.* All non-proper person motions will be assigned a priority status of 1 through 4 when they are received by the division responsible for resolution. Priority status is as follows:

(1) Priority 1: All emergency motions. These motions should be resolved immediately.

(2) Priority 2: All motions for stays (other than emergencies), and motions relating to briefing, *e.g.*, extensions of time in the briefing schedule, permission to file briefs in excess of page limitations, permission to file amicus briefs, etc. These motions should be resolved within 2 weeks.

(3) Priority 3: All motions regarding the contents of the record, preparation of transcripts, extensions of time for responding to a prior order of this court, or other motions in cases where briefing has not been completed. These motions should be resolved within 30 days.

(4) Priority 4: All other motions, *e.g.*, motions to dismiss appeals, motions for bail (other than emergencies), motions to strike parts of the appendix or the briefs, and any other motion requiring a significant investment of time to resolve. These motions should be resolved within 60 days.

(b) *Delegation of Authority to Clerk.*

(1) *Clerk's Orders.* Except in capital cases, the clerk, or such assistant or deputy clerks as the clerk may designate, is authorized to act for the court on the following unopposed procedural motions and stipulations requesting:

(i) Extensions of time;

(ii) Consolidation of appeals or other proceedings;

(iii) Supplementation, amendment or correction of the briefs, record or appendix;

(iv) Authorization to exceed page limits;

(v) Continuation or cancellation of oral argument.

(2) *Court Orders.* Except in capital cases, the clerk, or such assistant or deputy clerks as the clerk may designate, is authorized to issue over the signature of the chief justice the following orders:

(i) Establishing, reinstating or modifying a briefing or transcript preparation schedule;

(ii) Remanding for the appointment of counsel or directing a party appearing in proper person to obtain counsel;

(iii) Directing the district court, counsel, court reporters or parties to submit a required document or filing fee;

(iv) Submitting a case for decision without oral argument;

- (v) Directing the filing of an answer to a petition for a writ, for rehearing, or for full court reconsideration or directing the filing of a reply to an answer;
- (vi) Staying or directing the issuance of the remittitur or notice in lieu of remittitur;
- (vii) Governing the procedural aspects of the settlement conference program;
- (viii) Modifying a caption or redesignating parties pursuant to NRAP 28(h);
- (ix) Correcting clerical errors;
- (x) Directing a party to file a status report; and
- (xi) Directing the return of documents received from a proper person party who is represented by counsel and directing the party to proceed through counsel.

(3) *Orders of Dismissal.* The clerk, or such assistant or deputy clerks as the clerk may designate, is authorized to enter orders of dismissal in civil cases where the appellant has filed a motion for the voluntary dismissal of an appeal or where the parties to an appeal or other proceeding have signed and filed a stipulation that the proceeding be dismissed, specifying terms as to the payment of costs, or where the filing fees have not been paid.

(c) *Motions for Reconsideration.* A motion for reconsideration of an action taken by the clerk's office is decided by the chief justice or, if the chief justice is unavailable, the justice next most senior in commission who is available. Opposition to a motion received after action has been taken by the clerk's office is treated as a motion for reconsideration.

(d) *Limitations on Clerk's Authority.* Regardless of the delegation of authority herein, the clerk or the central legal staff shall present to the court any motion or order involving complex facts or unsettled law, presenting novel or unique situations, or compelling the establishment of a new policy or approach.

Rule 16. Confidentiality. All events and actions taken in administrative matters or in the preparation and circulation of draft opinions or orders, bench memoranda, and memoranda and correspondence between chambers or staff concerning pending cases shall be confidential, as shall the events, action, and votes that are taken at any draft or post-argument conference. The contents of orders or opinions shall remain confidential until filed by the clerk of the court and released to the public. Any material violation of Rule 16 shall constitute a per se violation of NCJC Rule 2.5.

Rule 17. Application and Effective Date of Rules. These rules take effect immediately upon their adoption and govern all proceedings in actions commenced in this court after the effective date. These rules govern all further proceedings in actions pending in this court on the effective date, unless in the opinion of the court their application in a particular pending action would not be feasible or would work an injustice, in which event the former procedure applies.

APPENDIX 1

DRAFT DISTRIBUTION DEADLINES

First Draft:

From Deemed Submitted Date:

- Panel—60 days
- En Banc—90 days

Concur/Dissent:

From First Draft Distribution Date:

- Panel—30 days
- En Banc—45 days

New Majority:

From Date Votes Change:

- Panel—30 days
- En Banc—45 days

Transfer From Panel to En Banc:

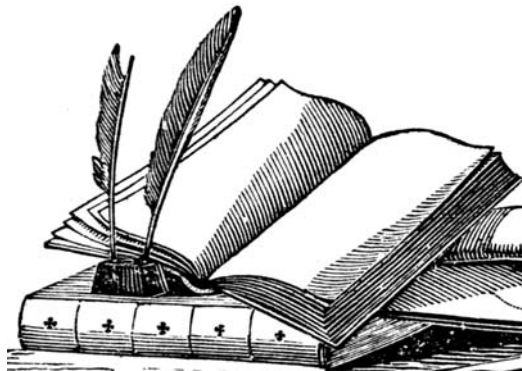
From Date En Banc Court Considers Merits (oral argument or draft conference following transfer):

- Determine on a case-by-case basis

Majority on Rehearing or Reconsideration:

From Deemed Submitted Date:

- Panel—60 days
- En Banc—90 days



APPENDIX 2

TRANSMITTAL OF EDITS AND CONFERENCE MATERIALS TO LAS VEGAS

In order to ensure timely receipt of draft dispositions and agendas, the following guidelines are adopted. Las Vegas chambers shall receive automatic notification of any drafts uploaded to SIRE involving the justices chambered in Las Vegas. Justices who maintain chambers in Carson City may elect to receive automatic notification for all of their cases. If a draft or set of edits are circulated after the deadline set forth in Rule 7(d), the circulating chambers or staff shall e-mail copies of the circulation to all justices involved in the case, regardless of location.

Agendas, post-argument notes, conference notes, chambers assignments, and calendars distributed by the clerk shall be scanned and e-mailed to the Las Vegas chambers when they are distributed to the Carson City chambers, with a hard copy placed in interdepartmental mail.

Agendas, memos, and draft orders for oral presentations that have been generated by central staff should be scanned and e-mailed to the Las Vegas chambers and a hard copy placed in interdepartmental mail.



APPENDIX 3

The court shall follow *Bluebook* conventions in its memos, orders, and opinions except that parallel citations need only be used for cases reported in the *Nevada Reports* and, in lieu of “Nev. Rev. Stat.,” the official “NRS” form shall be used in citing to the *Nevada Revised Statutes*.



INDEX

Administration of Caseload	2
En banc caseload	2
Panel caseload	2
Aging Case Report	5
Application and Effective Date of Rules (Rule 17)	19
Assignment and Preparation of Chambers Cases (Rule 5)	7
Argument determination	8
Assignment by the clerk	7
Bench memorandum preparation	7
Disposition	8
Deadline for a draft disposition	8, 13
Editing	8
Civil cases	9
Criminal cases.....	8
Draft circulation	10
Extensions of time deadlines	9
Rejection of substantive edits or criticisms.....	9
Assignment and Preparation of Staff Cases (Rule 6)	10
Argued cases.....	10
Assignment of cases	10
Disposition	10
Extensions of time.....	11
Time limits for argued and discussion only cases	10
Time limits for cases submitted to staff	10
Time limits for circulation of oral presentation cases	10
Submitted cases	10
Assignment of Cases (Rule 3)	5
Assignment and preparation of chambers cases (Rule 5).....	7
Assignment and preparation of staff cases (Rule 6)	10
Automatic or early en banc assignment	4
Decisional tracks	3
Designation as en banc or panel upon docketing	5
Effect of panel rotation.....	5
Panel chambers track	5
Panel staff track	5
Specific panel or justice.....	4
Associate Chief Justice	1
Automatic or Early En Banc Assignment	4

Bench Memoranda	7, 10
Chambers cases.....	7
Confidentiality.....	19
Staff cases.....	10
Bluebook Conventions in Citations (see Appendix 3)	25
Case Management (Rule 2)	2
Aging case report	5
Automatic or early en banc assignment	4
Decisional tracks	3
Screening responsibility	3
Screening criteria	3
Track assignment	4
Issue tracking and conflicts avoidance.....	4
Clustering	5
Issue tracking.....	4
Preliminary jurisdictional and rule compliance check.....	2
Screening memorandum and track recommendation	4
Chambers Cases (see Rule 5)	7
Argument determination	8
Assignment and preparation	7
Assignment by the clerk	7
Bench memorandum preparation	7
Criteria for assignment set by chief justice	7
Disposition	8
Editing of dispositions drafted by chambers.....	8
Panel chambers track assignment.....	5
Chief Justice	2
Rotation	1
Selection	1
Service on executive committee	2
Citations (see Appendix 3)	25
Clustering or Grouping of Cases	5
Composition of the Court	1
Confidentiality (Rule 16)	19
Court Organization (Rule 1)	1
Chief justice.....	2
Composition of the court	1
Executive committee.....	2
Panel structure and operation	1
Selection of substitute.....	1

Substitutions in en banc cases	1
Substitutions in panel cases	1
Presiding justice	2
Quorum	2
Deadlines	
Argument determination	6
Bench memorandum preparation	7
Circulated opinions	14
Concurrence or dissent	13
Draft conferences	11
Draft disposition deadlines (Appendix 1).....	21
Editing of dispositions drafted by chambers.....	8
<i>Extension of time</i>	
Bench memorandum	7
Draft disposition	11
Editing deadlines.....	9
Staff deadlines	11
<i>Majority decision</i>	
First draft	13
New majority due to vote changes	13
Staff cases	13
Suspension of disposition deadlines for emergency matters	13
Deciding Cases on Points Not Argued (Rule 10)	14
Decisional Tracks.....	3
Automatic or early en banc assignment	4
Screening responsibility	3
Screening criteria.....	3
Track assignment	4
Disposition Preparation	
Assignment to justice	7, 8, 13
Confidentiality.....	19
Editing of dispositions drafted by chambers.....	8
Manner of disposition (order vs. opinion).....	13
Per curiam vs. authored opinion	14
Time limits for disposition preparation (Rule 8; <i>see also</i> Appendix 1)	13, 21
Disqualification of Justice	12
Substitutions for disqualified justice	1
District Judge Substitutions	1
Draft Conferences (<i>see</i> Rule 7)	11
Agenda preparation and distribution.....	11

Attendance	11
Confidentiality.....	19
Discussion and voting.....	12
Disqualified justice (discussion and presence prohibited).....	12
Non-panel member (discussion and presence prohibited).....	12
Draft circulation and deadline	11
Passes.....	12
Denial of pass	12
Scheduling and location.....	11
Draft Distribution Deadlines (Appendix 1)	21
Editing of Dispositions Drafted by Chambers.....	8
Effective Date of Rules (see Rule 17).....	19
Emergency Proceedings (Rule 14)	16
Presentation to panel assigned to hear oral presentations.....	7, 17
Suspension of disposition deadlines for emergency matters.....	13
En Banc Assignment, Automatic or Early	4
En Banc Conferences and Panel Conferences (Rule 7)	11
Agenda.....	11
Attendance	11
Discussion and voting.....	12
Disqualifications	12
Panel cases	12
Draft circulation and deadline	11
Passes.....	12
Scheduling.....	11
En Banc Reconsideration (Rule 12)	15
Action by court if reconsideration granted	16
Grant or denial of en banc reconsideration	16
Request by a justice	16
Review and determination of petitions	15
En Banc Review in the First Instance (Rule 13).....	16
Request by a justice	16
Request by a party.....	16
Executive Committee	2
Meeting time frames.....	2
Members.....	2
Issue Tracking and Conflicts Avoidance	4
Clustering.....	5
Issue tracking	4

Jurisdictional and Rule Compliance Check	2
Civil appeals	3
Criminal appeals	2
Motions (Rule 15)	18
Delegation of authority to clerk	18
Clerk’s orders	18
Court orders	18
Orders of dismissal	19
Limitations on clerk’s authority	19
Motions for reconsideration	19
Priority of motions	18
Oral Argument and Oral Presentations (Rule 4)	6
Notice	6
Oral presentations	7
Post-argument conferences	7
Priority	6
Scheduling and location	6
Argument determination	6
Argument sessions	6
Orders and Opinions (Rule 9)	13
Circulation of en banc opinions	14
Circulation of panel opinions	14
Circulation of panel opinions that propose to overrule or disapprove of prior decision of court	14
Confidentiality	19
Draft distribution deadlines (Appendix 1)	21
Electronic version of opinions	14
Manner of disposition	13
Per curiam vs. authored	14
Transmittal of edits and conference materials to Las Vegas (Appendix 2)	23
Panel Structure and Operation	1
Rotation of panels	1
Selection of panels	1
Substitutions	1
En banc cases	1
Panel cases	1
Selection of substitute	1
Petitions for Rehearing (Rule 11)	15
Action by court if rehearing granted	15
Assignment	15
Correction of decision on denial of rehearing	15

Determination when answer ordered	15
Initial determination required	15
Preliminary Jurisdictional and Rule Compliance Check	2
Presiding Justice	2
Duties	2
Selection	2
Quorum	2
Reconsideration, En Banc (see En Banc Reconsideration)	15
Rehearing Petitions (see Petitions for Rehearing)	15
Screening Responsibility	3
Screening Criteria	3
Screening Memorandum and Track Recommendation	4
Senior/Retired Justice Substitutions	1
Staff Cases	
Disposition	10
Time limits	10, 13
Panel staff track	5
Preparation of staff cases (see Rule 6)	10
Submitted cases	10
Substitutions	
District judges	1
Emergency proceedings	17
En banc cases	1
Panel cases	1
Selection of substitute	1
Time Limits for Disposition Preparation (Rule 8; see also Appendix 1)	13, 21
Concurrence or dissent	13
Emergencies	13
Extensions of time	13
Majority decision	13
Unsigned drafts	13
Track Assignment	4
Transmittal of Edits and Conference Materials to Las Vegas (Appendix 2)	23

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June 1, 2013

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