

NRAP 9-12, and 30 Subcommittee Report

January 31, 2022

Submitted by Don Springmeyer

NRAP 30(c) (Arrangement and Form of Appendix):

- The subcommittee continues to firmly advocate for elimination of the alpha index.
- NRAP 30(c)(2) currently reads: “If the appendix is comprised of more than one volume, one alphabetical index for all documents shall be prepared and placed in each volume of the appendix.” – We are considering a proposal that the index could be filed as a separate document, and not attached to the front of each appendix volume. Phaedra commented: “I find that having the index in each volume is helpful because I have immediate access to the index regardless of which volume I open or am working with, particularly when dealing with a large number of volumes. But I think it would be a fairly easy adjustment if the index were filed as a separate document. That change doesn’t give me major heartburn.”
- We also discussed the appendix volume page limit of 250 pages stated in the Rule, and the unstated but functional megabyte limit for uploading volumes of the appendix, which has been a massive pain for practitioners. Upon a query from Deborah to Phaedra about this, Phaedra reported she communicated with IT staff about the megabyte limit on appendices. The limit was increased last summer so that the single file size limit is now 12MB (used to be 7MB) and the total file size limit is now 48MB (used to be 28MB). Phaedra’s understanding is that increasing the megabyte limit any further would significantly slow down the e-filing system.

My (Don’s) personal opinion is that this is a remarkably stone-age limitation. For example, a few high-resolution images, say photos and maps, can easily hit 48MB. Almost all business and many home internet connections can upload dozens or hundreds of MBs/sec. This limitation can require splitting up an appendix unnecessarily and illogically into many, many volumes.

- NRAP 30(b)(6) (Presentence Investigation Report) – We recommend amending it as follows:

If a copy of appellant’s presentence investigation report is necessary for the Supreme Court’s or Court of Appeals’ review in a criminal case ~~and a copy of the report cannot be included in the appendix~~, appellant ~~or respondent~~ shall file a motion with the clerk of the Supreme Court, within the time period for filing ~~an opening brief or fast track statement~~ the party’s appendix, requesting that the court direct the district court clerk to transmit the report to the clerk of the Supreme Court in a sealed envelope. The motion must demonstrate that the report is necessary for the appeal.

NRAP 9(c)(4) (Duty of the Court Reporter or Recorder)

- When a court reporter or recorder requests and receives an extension of time to prepare transcripts, it reduces the amount of time that a party has access to those transcripts to prepare their briefing. A delay in producing transcripts will necessarily interfere with briefing. Because this circumstance is not the fault of the party that requested the transcripts, that party should automatically receive an equal extension of time whenever the Court grants a court reporter's or recorder's request for an extension.
- Therefore, the subcommittee proposes that a subsection be added to NRAP 9(c)(4) (Extension of Time to Deliver Transcript) to state:

(E) If the Court grants a court reporter or recorder's request for an extension of time for the preparation of a transcript, it shall grant an equal extension of time to the party that requested the transcript to submit their briefing."

NRAP 10 (The Record)

- Nevada's Rule of Appellate Procedure 10 does not contain any provision to address accidental or erroneous omissions or misstatements of the record. The following proposed revision to NRAP 10(c)—which comes from Rule 10(e) of the analogous Federal Rule of Appellate Procedure—would provide a mechanism to allow the parties to cure accidental or erroneous misstatements or omissions from the record:

(c) Correction or Modification of the Record.

(1) If any difference arises about whether the trial court record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties; or

(B) by the district court before or after the record has been forwarded.

(3) Questions as to the form and content of the appellate court record shall be presented to the Clerk.

- We also had some input from Charles regarding requiring that the documents submitted be searchable pdfs as required by the 9th Circuit. The 9th circuit local rule on this issue is Rule 25-5(d):

Technical requirements. All documents must be submitted in Portable Document Format (“PDF”). The version filed with the Court must be generated from the original word processing file to permit the electronic version of the document to be searched and copied. PDF files created by scanning paper documents are prohibited; however, exhibits submitted as attachments to a document may be scanned and attached if the filer does not possess a word processing file version of the attachment. No single attachment shall exceed 100 MB in size. Attachments that exceed that size must be divided into subvolumes.

We have ongoing work to do on 10(a) and 11.