NRAP 8, 21, and 27 Subcommittee Meeting Notes
February 25, 2022

NRAP 27

- Revise NRAP 27(a)(2) to mirror federal rule wording and format.
    - Consensus: Agreed. The revisions will add readability and clarity.
- Mirror FRAP 27(d)(2) length requirement of 5,200 words (about 20 double spaced pages) and 2,600 word replies.
    - Consensus: There should be a word count to maintain consistency with other rules, but the federal word count is too long. The group prefers Nevada's current page limits. 2,600 words for an initial motion/opposition and 1,300 words for a reply is about the correct length.
- Address oral argument. *See* FRAP 27(e) ("A motion will be decided without oral argument unless the court orders otherwise.").
    - Consensus: Agreed. This provision should be added as a new (f).
- Allow motions for summary action/disposition. *See* 3rd Cir. R. 27.4 ("(a) A party may move for summary action affirming, enforcing, vacating, remanding, modifying, setting aside or reversing a judgment, decree or order, alleging that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action. In addition, the court may *sua sponte* list a case for summary action. (b) Except for a change in circumstances or a change in law, motions for summary action or dismissal should be filed before appellant's brief is due. The court or the clerk may at any time refer a motion for summary action to a merits panel and direct that briefs be filed."); 1st Cir. R. 27.0(c) ("Summary Disposition**.** At any time, on such notice as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In case of obvious error the court may, similarly, reverse. Motions for such relief should be promptly filed when the occasion appears."); 4th Cir. R. 27(f)(1) ("Motions for summary affirmance or reversal filed prior to completion of briefing should include a showing that the issues raised on appeal are in fact manifestly unsubstantial and appropriate for disposition by motion. Absent such a showing, the Court will defer action on the motion until briefing is complete."); 10th Cir. R. 27.3.
    - Consensus: Unnecessary. Parties already have this option and the Court often defers these motions until briefing is complete.

- Address motions to dismiss and/or suspension of briefing while pending. *See* 4th R. 27(f)(2)-(3) ("(2) Motion to Dismiss. Motions to dismiss based upon the ground that the appeal is not within the jurisdiction of the Court or on other procedural grounds should be filed within the time allowed for the filing of the response brief. The Court may also sua sponte summarily dispose of any appeal at any time. (3) Suspension of Briefing. Suspension of briefing pending ruling on a motion to summarily affirm, reverse, or dismiss should be requested by separate motion."); 9th Cir. R. 27-11(a)(1) (dismissal motions "stay the schedule for record preparation and briefing pending the court's disposition of the motion.").

    - Consensus: Unnecessary. An automatic suspension could be used for gamesmanship and the parties can always include this request with the motion to dismiss.

- Separate section about Motions for Reconsideration. *See* 9th Cir. R. 27-10.

    - Consensus: NRAP 27(b) already addresses motions to reconsider so there is likely no need for a separate subsection. The group considered adding a time limitation and/or limiting the available grounds to an intervening change in law or factual circumstance.

- Interlocutory effect of motion. *See* 11th Cir. R. 27-1(g) ("A ruling on a motion or other interlocutory matter, whether entered by a single judge or a panel, is not binding upon the panel to which the appeal is assigned on the merits, and the merits panel may alter, amend, or vacate it.").

    - Consensus: Agreed. The last sentence of NRAP 27(c)(2) tries to convey this thought but a modified version of the Eleventh Circuit's Rule 27-1(g) will help clarify.