

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
Director and State Court
Administrator



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DRAFT MEETING SUMMARY
COMMISSION ON NRAP

DATE AND TIME OF MEETING: September 28, 2023

PLACE OF MEETING: Remote Access via Zoom

Members Present:

Justice Kristina Pickering	Judge Michael Gibbons	Judge Bonnie Bulla
Judge Deborah Westbrook	Sally Bassett	Alexander Chen
Sharon Dickinson	Kelly Dove	Micah Echols
Robert Eisenberg	Dayvid Figler	Charles Finlayson
Adam Hosmer-Henner	Debbie Leonard	Emily McFarling
Erica Medley	Jullie Ollom	John Petty
Dan Polsenberg	Abe Smith	Jordan Smith
JoNell Thomas	Jessica Whelan	

Call to Order, Welcome, and Announcements Justice Pickering called the meeting to order at 11:00 a.m. and stated that this was the second to last meeting. Whatever does not get completed today will be held over for the October meeting. Following that meeting, a final draft will be prepared for the Court's Administrative Docket and hearings will be scheduled. Justice Pickering will need support from the Commission members during the public hearing process. The court is indebted to all of the Commission members for the time and work they have given to this project.

Roll Call and Determination of Quorum Status Roll was called, and a quorum was present.

The materials provided for this meeting can be found at: <https://nvcourts.gov/AOC/Templates/documents.aspx?folderID=33507>

Approval of August 16, 2023, Commission Meeting Minutes Ms. Ollom moved, and Ms. Bassett seconded to approve the minutes as presented. Motion passed unanimously.

Discussion Items:

NRAP 3E Fast-Track Child Custody (clean revision of amendment approved during July meeting)– Emily McFarling & Judge Bulla Judge Bulla briefly discussed the 50-state survey regarding fast-track child custody with the idea of possibly separating those cases from other family law. She stated that after reviewing everything she is inclined to leave Rule 3E in its current format with minimal non-substantive revisions.

Ms. McFarling advised that after the July meeting in which the commission voted to approve the proposed amendments subject to revisions discussed during that meeting, a new revision was made to subsection (a) to add the word “primarily.” If approved, the subsection would be changed to say:

(a) Applicability. This Rule applies to appeals and cross-appeals from district court orders primarily pertaining to child custody, guardianship of minors, parenting time, or visitation.

This new revision was made in response to the discussion during the July meeting about appeals being placed in the fast-track program even when child custody is only a minor issue of the appeal. The proposed revision would allow the appeal to be removed from the fast-track program. The case appeal statement would need to be revised so that the appealing party would check a box as to whether the case does or does not primarily pertain to child custody. After further discussion, an informal show of hands was requested for those who were in favor of approving the proposed amendments circulated by Ms. McFarling prior to the meeting or if they were in favor of reverting to the existing version of the rule. Judges Bulla and Westbrook abstained from voting and everyone else raised their hand in favor of approving the proposed amendment that Ms. McFarling circulated. No one raised their hand for reverting to the existing version of the rule.

Mr. A. Smith moved to approve the proposed amendment to NRAP 3E that was circulated by Ms. McFarling prior to the meeting and Ms. Ollom seconded. The motion passed unanimously with two abstentions.

NRAP 16 Settlement – Emily McFarling Ms. McFarling and Mr. A. Smith presented the proposed amendments.

Highlights of the proposed amendments are:

- Some language adjusted to match the fast-track rule.
- Relocation of a minor added as one of the types of cases not subject to the rule.

- If the appeal is not subject to the settlement program, a motion to opt in could be filed by either party.
- New provision to allow for the parties to proceed with a private mediator if desired.
- Adjusted some of the language and timing of notices that are given for clarity.
- New provision for a motion for exemption. *There was strong opposition to this proposal and it was ultimately removed.*
- Settlement conference statement does not need to be submitted until seven days before the settlement conference unless the settlement judge requests it sooner.
- Allow some legal arguments in the settlement statement to be shared with the opposing party, similar to the 9th Circuit.
- The sensitive mediation type materials would still be confidential to the settlement judge.
- Clarifies that the settlement statement shall not be filed with the Supreme Court because that would make it a public document.
- Procedure for reinstating the appeal. *There was a lengthy discussion on this. Ms. McFarling will revise the language.*
- Clarifies settlement agreements do not need to be filed with the Clerk's office.
- Language to allow participants to request to appear by video for good cause. *The commission members decided to remove this proposed language.*
- Language added to compel all parties to sign a confidentiality agreement prior to commencement of the settlement conference. *After discussion, the commission members decided to change "parties" to "participants."*

Justice Pickering called for a motion to approve the proposed amendments with the revisions discussed during the meeting subject to a finalization of the vote at the October meeting after a clean copy is distributed. Ms. Ollom so moved, and Judge Westbrook seconded. Motion passed unanimously.

NRAP 3A Civil Actions Subcommittee – Abe Smith and Emily McFarling. Mr. A. Smith and Ms. McFarling each presented revised versions of their proposed amendments to NRAP 3A. After a lengthy discussion, the matter was tabled for the next meeting for further revisions consistent with the discussion.

NRAP 28, 28.1, 31 & 32 Briefs Subcommittees – Abe Smith. Mr. A. Smith presented proposed amendments for NRAP 28 Briefs. The rule was amended to be consistent with the amendments to Rule 17, and Rule 31(e)'s "Supplemental Authorities" provision was added as 28(i) and removed from Rule 31. Following discussion, Mr. Eisenberg moved, and Judge Bulla seconded to approve the proposed amendment with one additional revision: that (a)(7) and (a)(8) be combined consistent with the FRAP. Motion passed unanimously.

Mr. A. Smith presented proposed amendments to NRAP 28.1 Cross-Appeals. There was discussion about whether this rule applies to fast track child custody cases. Mr. A. Smith did not believe that it does; Ms. Ollom agreed but suggested that Rule 3E (fast track child custody) address cross-appeals. Following discussion, Mr. Petty moved, and Judge

Westbrook seconded to approve the proposed amendment. Motion passed unanimously.

NRAP 31 Filing and Service of Briefs -- Mr. A. Smith presented proposed amendments to NRAP 31. After discussion, the matter was tabled for the next meeting to present a revised version.

Upcoming NRAP Commission meeting: October 19, 2023.

The meeting was adjourned at 1:33 p.m.