

NRAP 17 – Proposed Alt. B

RULE 17. DIVISION OF CASES BETWEEN THE SUPREME COURT AND THE COURT OF APPEALS

(a) **Cases Retained by the Supreme Court.** The Supreme Court ~~shall~~ must hear and decide the following:

(1) Cases in which provisions of the Nevada Constitution or statutes grant original or exclusive jurisdiction to the Supreme Court;

~~(1)~~ (2) All death penalty cases;

~~(2)~~ (3) Cases involving ballot or election questions;

~~(3)~~ (4) Cases involving judicial discipline;

~~(4)~~ (5) Cases involving attorney admission, suspension, discipline, disability, reinstatement, and resignation;

~~(5)~~ (6) Cases involving the approval of prepaid legal service plans;

~~(6)~~ (7) Questions of law certified by a federal court;

~~(7)~~ (8) Disputes between branches of government or local governments;

~~(8)~~ (9) Administrative agency cases involving tax, water, or public utilities commission determinations; and

(10) Cases involving the termination of parental rights or NRS Chapter 432B.

(b) The Supreme Court will ordinarily retain the following types of cases:

~~(9)~~ (1) Cases originating in business court;

~~(10)~~ Cases involving the termination of parental rights or NRS Chapter 432B;

~~(11)~~ (2) Matters raising as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law; and

Commented [JS1]: See Iowa Rule of Appellate Procedure 6.1101(1); Idaho Appellate Rule 108(a)(1); and Miss. R. App. P. 16(a).

Commented [DW2]: The NRAP 29, 5, 12A and 44 subcommittee is considering a proposal to expand NRAP 5(a) to allow the Supreme Court to answer questions of law certified by other state appellate courts and certain foreign jurisdictions as is done in Minnesota. To the extent the Commission wishes to adopt that proposal, this language would need revision, perhaps to "Certified questions of law;"

Commented [JS3]: See Idaho Appellate Rule 108(b); Miss R. App. P. 16 (d); and Iowa Rule of Appellate Procedure 6.1101(2).

~~(12)~~ (3) Matters raising as a principal issue a question of law regarding the validity of a statute, ordinance, court rule, or administrative rule or regulation;

Commented [JS4]: Idaho Appellate Rule 108(b)(4), Iowa Rule of Appellate Procedure 6.1101(2)(a), and Miss. R. App. P. 16(d)(3).

(4) Matters raising as a principal issue a question of state or federal constitutional interpretation;

Commented [JS5]: See Idaho Appellate Rule 108(b)(3)

(4) Matters raising as a principal issue a question of statewide public importance that has application beyond the parties; and

~~(13)~~ (5) Matters raising as a principal issue, or an issue upon which there is an inconsistency in the published decisions of the Court of Appeals or of the Supreme Court or a conflict between published decisions of the two courts.

Commented [DW6]: John Petty proposed this modification to separate two distinct criteria stated in NRAP 17(a)(12) and restate them standing alone. The additional language in the new (12) “that has application beyond the parties” is borrowed from NRAP 36(c)(1)(C). The subcommittee agrees with this proposal.

(b) (c) Cases Presumptively Assigned to Court of Appeals. The Court of Appeals shall will hear and decide only those matters assigned to it by the Supreme Court and those matters within its original jurisdiction. Except as provided in Rule 17(a), the Supreme Court may assign to the Court of Appeals any case filed in the Supreme Court. The following case categories are presumptively assigned to the Court of Appeals:

Commented [DW7]: At the 3/2 Commission meeting, it was agreed that we would strike the word “published” from NRAP 17(b)(13) to reflect the Commission’s recommendation that unpublished decisions may be cited.

The Supreme Court will ordinarily transfer to the Court of Appeals the following:

Commented [JS8]: Similar to Iowa Rule of Appellate Procedure 6.1101(2)(b), Idaho Appellate Rule 108(b)(5), and Miss. R. App. P. 16(d)(4).

(1) Cases presenting the application of existing legal principles;

Commented [JS9]: Iowa Rule of Appellate Procedure 6.1101(3); Idaho Appellate Rule 108(b)

(1) (2) Appeals from a judgment of conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere (Alford);

(2) (3) Appeals from a judgment of conviction based on a jury verdict that:

(A) do not involve a conviction for any offenses that are category A or B felonies; or

(B) challenge only the sentence imposed and/or the sufficiency of the evidence;

~~(3)~~ (4) Postconviction appeals that involve a challenge to a judgment of conviction or sentence for offenses that are not category A felonies;

~~(4)~~ (5) Postconviction appeals that involve a challenge to the computation of time served under a judgment of conviction, a motion to correct an illegal sentence, or a motion to modify a sentence;

~~(5)~~ (6) Appeals from a judgment awarding damages, exclusive of interest, attorney fees, and costs, of \$250,000 or less in a tort case;

~~(6)~~ (7) Cases involving a contract dispute where the amount in controversy is less than \$75,000;

~~(7)~~ (8) Appeals from postjudgment orders in civil cases;

~~(8)~~ (9) Cases involving statutory lien matters under NRS Chapter 108;

~~(9)~~ (10) Administrative agency cases except those involving tax, water, or public utilities commission determinations;

~~(10)~~ (11) Cases involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings;

~~(11)~~ (12) Appeals challenging venue;

~~(12)~~ (13) Cases challenging the grant or denial of injunctive relief;

~~(13)~~ (14) Pretrial writ proceedings challenging discovery orders or orders resolving motions in limine;

~~(14)~~ (15) Cases involving trust and estate matters in which the corpus has a value of less than ~~\$5,430,000~~ the applicable federal estate tax exemption amount; and

~~(15)~~ (16) Cases arising from the foreclosure mediation program.

~~(e)~~ (d) **Consideration of Workload.** In assigning cases to the Court of Appeals, due regard will be given to the workload of each court.

~~(d)~~ (e) **Routing Statements; Finality.** A party who believes that a matter presumptively assigned to the Court of Appeals should be retained by

Commented [DW10]: Steve Silva proposed this language during our Commission meeting on 3/2 as a way to get rid of the presumption that orders granting MSJs, MTDs, and defense verdicts will all go to the Court of Appeals. The Commission should further discuss whether this language solves the problem addressed at the 3/2 meeting.

Commented [DW11]: Abe Smith pointed out that the \$5,430,000 dollar figure in this rule pertained to the federal estate tax exemption amount that existed when the rule was first adopted. Sally Bassett confirmed that Abe was correct, and that the value of the federal estate tax exemption amount has since increased to \$11,700,000 for 2021. Per Sally, this figure appears to change on a yearly basis. See <https://www.kiplinger.com/taxes/601639/estate-tax-exemption-2022>.

On IRS Form 706, this number is set forth in the Table of Basic Exclusion Amounts. https://www.irs.gov/instructions/i706#en_US_2021_publication100075089

Our subcommittee has revised the rule to account for the annual change in federal estate tax exemption amounts.

the Supreme Court may state the reasons as enumerated in (a) and (b) of this Rule in the routing statement of the briefs as provided in Rules 3C, 3E, and 28 or a writ petition as provided in Rule 21. A party may not file a motion or other pleading seeking reassignment of a case that the Supreme Court has assigned to the Court of Appeals. Any reassignment may take place only on order of the Supreme Court.

~~(e)~~ (f) Transfer and Notice. Upon the transfer of a case to the Court of Appeals, the clerk shall will issue a notice to the parties. With the exception of a petition for Supreme Court review under Rule 40B, any pleadings in a case after it has been transferred to the Court of Appeals shall will be entitled “In the Court of Appeals of the State of Nevada.”

Commented [JS12]: Miss. R. App. P. 16(e); Idaho Appellate Rule 108(c)