RULE 3. APPEAL — HOW TAKEN

(a) Filing the Notice of Appeal.

(1) Except for automatic appeals from a judgment of death under NRS 177.055, an appeal permitted by law from a district court may be taken only by filing a notice of appeal with the district court clerk within the time allowed by Rule 4.

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court to act as it deems appropriate, including dismissing the appeal.

(3) The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay any district court fees or Supreme Court filing fee. The district court clerk must apprise appellant of the deficiencies in writing, and must send the notice of appeal to the Supreme Court in accordance with subdivision (g) with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court must docket the appeal in accordance with Rule 12.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A notice of appeal may identify multiple separately appealable determinations issued in the same underlying matter.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) In General. The appellant must serve the notice of appeal on all parties to the action in the district court. Service on a party represented by counsel must be made on counsel. If a party is not represented by counsel, appellant must serve the notice of appeal on the party at the party's last known address. Unless the appellant serves a file stamped copy of the notice of appeal, the notice of appeal served must indicate the date when it was filed or submitted for filing. The notice of appeal filed with the district court clerk must contain an acknowledgment of service or proof of service that conforms to the requirements of Rule 25(d).

(2) Service in Criminal Appeals. When a defendant in a criminal case appeals, appellant's counsel must also serve a copy of the notice of appeal on

the defendant, either by personal service or by mail addressed to the defendant. In criminal appeals governed by Rule 3C, appellant's trial counsel must comply with the provisions of this Rule and Rule 3C(c) governing service of the notice of appeal.

(e) Payment of Fees. Except where provided by statute, upon filing a notice of appeal, the appellant must pay the district court clerk the Supreme Court filing fee and any fees charged by the district court. The Supreme Court filing fee is $250 for each notice of appeal filed. No filing fee is required for amended notices of appeal filed under Rule 4(a)(8).

(f) Case Appeal Statement.

(1) Appellant's Duty to File Case Appeal Statement. Upon filing a notice of appeal, the appellant must also file with the district court clerk a completed case appeal statement that is signed by appellant's counsel.

(2) District Court's Duty to Complete Case Appeal Statement. When the appellant is not represented by counsel, the district court clerk must complete and sign the case appeal statement.

(3) Contents of Case Appeal Statement. The case appeal statement must contain the following information:

(A) the district court case number and caption showing the names of all parties to the proceedings below, but the use of et al. to denote parties is prohibited;

(B) the name of the judge who entered the order or judgment being appealed;

(C) the name of each appellant and the name and address of counsel for each appellant;

(D) the name of each respondent and the name and address of appellate counsel, if known, for each respondent, but if the name of a respondent's

appellate counsel is not known, then the name and address of that respondent's trial counsel;

(E) whether an attorney identified in response to subparagraph (C) or (D) is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42, including a copy of any district court order granting that permission;

(F) whether the appellant was represented by appointed counsel in the district court, and whether the appellant is represented by appointed counsel on appeal;

(G) whether the district court granted the appellant leave to proceed in forma pauperis, and if so, the date of the district court's order granting that leave;

(H) the date that the proceedings commenced in the district court;

(I) a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court;

(J) whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals and, if so, the caption and docket number of the prior proceeding;

(K) whether the appeal involves child custody, guardianship of minors, parenting time, or visitation; and

(L) in civil cases, whether the appeal involves the possibility of settlement.

(4) Form Case Appeal Statement. A case appeal statement must substantially comply with Form 2 in the Appendix of Forms.

(g) Forwarding Appeal Documents to Supreme Court.

(1) District Court Clerk's Duty to Forward.

(A) Upon the filing of the notice of appeal, the district court clerk must immediately forward to the clerk of the Supreme Court the required filing fee, together with a certified, file-stamped copy of the following documents:

- the notice of appeal;
- the case appeal statement;
- any transcript request form filed with the notice of appeal;
- the district court docket entries;
- the civil case cover sheet, if any;
- the judgment(s) or order(s) being appealed;
- any notice of entry of the judgment(s) or order(s) being appealed;
- any certification order directing entry of judgment in accordance with NRCP 54(b);
- the minutes of the district court proceedings; and
- a list of exhibits offered into evidence, if any.

(B) If, at the time of filing of the notice of appeal, any of the enumerated documents have not been filed in the district court, the district court clerk must nonetheless forward the notice of appeal together with all documents then on file with the clerk.

(C) The district court clerk must promptly forward any later docket entries to the clerk of the Supreme Court.

(2) Appellant's Duty. An appellant must take all action necessary to enable the clerk to assemble and forward the documents enumerated in this subsection.

COMMENT

With a few exceptions, the amendments to this rule are mostly intended to be stylistic. Subsection (c)(2) was added to clarify that a party may identify multiple separately appealable determinations in a single notice of appeal. The language "or submitted for filing" was added to subsection (d)(1) to account for the fact that it is the clerk who controls the filing of a document and a party may not know the actual filing date if they simultaneously submit a notice of appeal for filing with the district court and serve the opposing parties with the notice of appeal. Subsection (f)(3)(E) was updated to match the requirement in Form 2. Language was added to subsection (f)(3)(k) so the case appeal statement will do a better job of identifying appeals that will be subject to expedited treatment under NRAP 16. Of note, #11 on Form 2 should be updated to include "or Court of Appeals" so it will be consistent with subsection (f)(3)(J). Because NRAP 3C requires an appellant to file and serve the transcript request form on the same date the notice of appeal is filed, subsection (g)(1)(A) was updated to require the district court clerk to transmit any transcript request form that may have been filed with the notice of appeal.

RULE 3. APPEAL — HOW TAKEN

(a) Filing the Notice of Appeal.

(1) Except for automatic appeals from a judgment of death under NRS 177.055, an appeal permitted by law from a district court may be taken only by filing a notice of appeal with the district court clerk within the time allowed by Rule 4.

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court to act as it deems appropriate, including dismissing the appeal.

(3) **[~~Deficient Notice of Appeal.~~]** The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay **[~~the~~]** any district court fees or Supreme Court filing fee. The district court clerk **[~~shall~~]** must apprise appellant of the deficiencies in writing, and **[~~shall~~]** must send the notice of appeal to the Supreme Court in accordance with subdivision (g) with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court **[~~shall~~]** must docket the appeal in accordance with Rule 12.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal **[~~shall~~]** must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A notice of appeal may identify multiple separately appealable determinations issued in the same underlying matter.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

[~~(3)~~] (4) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) In General. The appellant **[~~shall~~]** must serve the notice of appeal on all parties to the action in the district court. Service on a party represented by counsel **[~~shall~~]** must be made on counsel. If a party is not represented by counsel, appellant **[~~shall~~]** must serve the notice of appeal on the party at the party's last known address. **[~~The appellant must note, on each copy, the date when the notice of appeal was filed.~~]** Unless the appellant serves a file stamped copy of the notice of appeal, the notice of appeal served must indicate the date when it was filed or submitted for filing. The notice of appeal filed with the district court clerk **[~~shall~~]** must contain an acknowledgment of service or proof of service that conforms to the requirements of Rule 25(d).

(2) Service in Criminal Appeals. When a defendant in a criminal case appeals, appellant's counsel **[~~shall~~]** must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. In criminal appeals governed by Rule 3C, appellant's trial counsel must comply with the provisions of this Rule and Rule 3C(c) governing service of the notice of appeal.

(e) Payment of Fees. Except where provided by statute, upon filing a notice of appeal, the appellant must pay the district court clerk the Supreme Court filing fee and any fees charged by the district court. **[~~Except for amended notices of appeal filed under Rule 4(a)(7), the~~]** The Supreme Court filing fee is $250 for each notice of appeal filed. No filing fee is required for amended notices of appeal filed under Rule 4(a)(8).

(f) Case Appeal Statement.

(1) Appellant's Duty to File Case Appeal Statement. Upon filing a notice of appeal, the appellant **[~~shall~~]** must also file with the district court clerk a completed case appeal statement that is signed by appellant's counsel.

(2) District Court's Duty to Complete Case Appeal Statement. When the appellant is not represented by counsel, the district court clerk **[~~shall~~]** must complete and sign the case appeal statement.

(3) Contents of Case Appeal Statement. The case appeal statement must contain the following information:

(A) the district court case number and caption showing the names of all parties to the proceedings below, but the use of et al. to denote parties is prohibited;

(B) the name of the judge who entered the order or judgment being appealed;

(C) the name of each appellant and the name and address of counsel for each appellant;

(D) the name of each respondent and the name and address of appellate counsel, if known, for each respondent, but if the name of a respondent's appellate counsel is not known, then the name and address of that respondent's trial counsel;

(E) whether an attorney identified in response to subparagraph (C) or (D) is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42, including a copy of any district court order granting that permission;

(F) whether the appellant was represented by appointed counsel in the district court, and whether the appellant is represented by appointed counsel on appeal;

(G) whether the district court granted the appellant leave to proceed in forma pauperis, and if so, the date of the district court's order granting that leave;

(H) the date that the proceedings commenced in the district court;

(I) a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court;

(J) whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals and, if so, the caption and docket number of the prior proceeding;

(K) whether the appeal involves child custody, guardianship of minors, parenting time, or visitation; and

(L) in civil cases, whether the appeal involves the possibility of settlement.

(4) Form Case Appeal Statement. A case appeal statement must substantially comply with Form 2 in the Appendix of Forms.

(g) Forwarding Appeal Documents to Supreme Court.

(1) District Court Clerk's Duty to Forward.

(A) Upon the filing of the notice of appeal, the district court clerk **[~~shall~~]** must immediately forward to the clerk of the Supreme Court the required filing fee, together with **[~~3~~]** a certified, file-stamped **[~~copies~~]** copy of the following documents:

- the notice of appeal;
- the case appeal statement;
- any transcript request form filed with the notice of appeal;
- the district court docket entries;
- the civil case cover sheet, if any;
- the judgment(s) or order(s) being appealed;
- any notice of entry of the judgment(s) or order(s) being appealed;
- any certification order directing entry of judgment in accordance with NRCP 54(b);
- the minutes of the district court proceedings; and
- a list of exhibits offered into evidence, if any.

(B) If, at the time of filing of the notice of appeal, any of the enumerated documents have not been filed in the district court, the district court clerk **[~~shall~~]** must nonetheless forward the notice of appeal together with all documents then on file with the clerk.

(C) The district court clerk **[~~shall~~]** must promptly forward any later docket entries to the clerk of the Supreme Court.

(2) Appellant's Duty. An appellant **[~~shall~~]** must take all action necessary to enable the clerk to assemble and forward the documents enumerated in this **[~~subdivision~~]** subsection.

COMMENT

With a few exceptions, the amendments to this rule are mostly intended to be stylistic. Subsection (c)(2) was added to clarify that a party may identify multiple separately appealable determinations in a single notice of appeal. The language "or submitted for filing" was added to subsection (d)(1) to account for the fact that it is the clerk who controls the filing of a document and a party may not know the actual filing date if they simultaneously submit a notice of appeal for filing with the district court and serve the opposing parties with the notice of appeal. Subsection (f)(3)(E) was updated to match the requirement in Form 2. Language was added to subsection (f)(3)(k) so the case appeal statement will do a better job of identifying appeals that will be subject to expedited treatment under NRAP 16. Of note, #11 on Form 2 should be updated to include "or Court of Appeals" so it will be consistent with subsection (f)(3)(J). Because NRAP 3C requires an appellant to file and serve the transcript request form on the same date the notice of appeal is filed, subsection (g)(1)(A) was updated to require the district court clerk to transmit any transcript request form that may have been filed with the notice of appeal.

RULE 4. APPEAL — WHEN TAKEN

(a) Appeals in Civil Cases.

(1) Time and Location for Filing a Notice of Appeal. Except as provided in Rules 4(a)(5) and 4(c), in a civil case in which an appeal is permitted by law from a district court, the notice of appeal required by Rule 3 must be filed with the district court clerk no later than 30 days after written notice of entry of the judgment or order appealed from is served. If an applicable statute provides that a notice of appeal must be filed within a different time period, the notice of appeal required by these Rules must be filed within the time period established by the statute.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal no later than 14 days after the date when the first notice was served, or within the time otherwise prescribed by Rule 4(a), whichever period ends later.

(4) Entry Defined. A judgment or order is entered for purposes of this Rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk. A notice or stipulation of dismissal filed under NRCP 41(a)(1) has the same effect as a judgment or order signed by the judge and filed by the clerk and constitutes entry of a judgment or order for purposes of this Rule. If that notice or stipulation dismisses all unresolved claims pending in an action in the district court, the notice or stipulation constitutes entry of a final judgment or order for purposes of this Rule.

(5) Effect of Certain Motions on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Nevada Rules of Civil Procedure, the notice of appeal must be filed no later than 30 days after service of written notice of entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional findings of fact under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) to alter or amend the judgment under Rule 59;

(iv) for a new trial under Rule 59; or

(v) for relief under Rule 60 if the motion is filed no later than 28 days after service of written notice of entry of the judgment or order.

(B) Notices of appeal involving motions listed in Rule 4(a)(5)(A) are governed by the following:

(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(5)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(5)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the service of written notice of entry of the order disposing of the last such remaining motion.

(6) Motion for Extension of Time.

(A) Except when an appeal period is set by statute, the district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) No extension under Rule 4(a)(6) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(7) Premature Notice of Appeal. A premature notice of appeal does not divest the district court of jurisdiction. The court may dismiss as premature a notice of appeal filed after the oral pronouncement of a decision or order but before entry of the written judgment or order, or before entry of the written disposition of the last-remaining timely motion listed in Rule 4(a)(5). If, however, a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule 4(a)(5), is entered before dismissal of the premature appeal, the notice of appeal is considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

(8) Amended Notice of Appeal. No additional fees are required if any party files an amended notice of appeal in order to comply with the provisions of this Rule.

COMMENT

Most of the amendments in NRAP 4(a), which deals with appeals in civil cases, are intended to be stylistic—making the Nevada rules largely consistent

with federal rules governing the time for notices of appeal. The most significant rule change allows a district court to extend the time for an appeal.

Under caselaw interpreting the former rule, the time for a notice of appeal was considered jurisdictional; neither district courts nor appellate courts could extend the time limit. Under the new rule, the 30-day time limit for a notice of appeal remains the same. Nonetheless, the new rule gives a district court discretion to extend the deadline if the appealing party files a motion for an extension not later than 30 days after expiration of the appeal time. Upon a showing of excusable neglect or good cause, a district court may extend the appeal time to a date up to 30 days after the appeal time expired, or 14 days after the date on which the extension motion is granted, whichever is later. No further extensions are allowed under the amended rule.

This rule change is intended to provide relief from the strict consequences of the previous jurisdictional limitation, without creating an undue burden on the judiciary.

RULE 4. APPEAL — WHEN TAKEN

(a) Appeals in Civil Cases.

(1) Time and Location for Filing a Notice of Appeal. Except as provided in Rules 4(a)(5) and 4(c), in **[~~In~~]** a civil case in which an appeal is permitted by law from a district court, the notice of appeal required by Rule 3 **[~~shall~~]** must be filed with the district court clerk**[~~. Except as provided in Rule 4(a)(4), a notice of appeal must be filed after entry of a written judgment or order, and~~]** no later than 30 days after **[~~the date that~~]** written notice of entry of the judgment or order appealed from is served. If an applicable statute provides that a notice of appeal must be filed within a different time period, the notice of appeal required by these Rules must be filed within the time period established by the statute.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

[~~(2)~~] **(3) Multiple Appeals.** If one party timely files a notice of appeal, any other party may file **[~~and serve~~]** a notice of appeal **[~~within~~]** no later than 14 days after the date when the first notice was served, or within the time otherwise prescribed by Rule 4(a), whichever period **[~~last expires~~]** ends later.

[~~(3)~~] **(4) Entry Defined.** A judgment or order is entered for purposes of this Rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk. A notice or stipulation of dismissal filed under NRCP 41(a)(1) has the same effect as a judgment or order signed by the judge and filed by the clerk and constitutes entry of a judgment or order for purposes of this Rule. If that notice or stipulation dismisses all unresolved claims pending

in an action in the district court, the notice or stipulation constitutes entry of a final judgment or order for purposes of this Rule.

[~~(4)~~] (5) Effect of Certain Motions on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Nevada Rules of Civil Procedure, **[~~the time to file a notice of appeal runs for all parties from entry of an order disposing of the last such remaining motion, and~~]** the notice of appeal must be filed no later than 30 days **[~~from the date of~~]** after service of written notice of entry of **[~~that~~]** the order disposing of the last such remaining motion:

[~~(A)~~] (i) **[~~a motion~~]** for judgment under Rule 50(b);

[~~(B)~~] (ii) **[~~a motion under Rule 52(b)~~]** to amend or make additional findings of fact under Rule 52(b), whether or not granting the motion would alter the judgment;

[~~(C)~~] (iii) **[~~a motion under Rule 59~~]** to alter or amend the judgment under Rule 59;

[~~(D)~~] (iv) **[~~a motion~~]** for a new trial under Rule 59; or

(v) for relief under Rule 60 if the motion is filed no later than 28 days after service of written notice of entry of the judgment or order.

(B) Notices of appeal involving motions listed in Rule 4(a)(5)(A) are governed by the following:

(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(5)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(5)(A), or a judgment's alteration or amendment upon

such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the service of written notice of entry of the order disposing of the last such remaining motion.

~~**[(5) Appeal From Certain Amended Judgments and Post-Judgment Orders. An appeal from a judgment substantively altered or amended upon the granting of a motion listed in Rule 4(a)(4), or from an order granting or denying a new trial, is taken by filing a notice of appeal, or amended notice of appeal, in compliance with Rule 3. The notice of appeal or amended notice of appeal must be filed after entry of a written order disposing of the last such remaining timely motion and no later than 30 days from the date of service of written notice of entry of that order.]**~~

(6) Motion for Extension of Time.

(A) Except when an appeal period is set by statute, the district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) No extension under Rule 4(a)(6) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

[~~(6)~~] (7) Premature Notice of Appeal. A premature notice of appeal does not divest the district court of jurisdiction. The court may dismiss as premature a notice of appeal filed after the oral pronouncement of a decision

or order but before entry of the written judgment or order, or before entry of the written disposition of the last-remaining timely motion listed in Rule **[~~4(a)(4)~~]** 4(a)(5). If, however, a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule **[~~4(a)(4)~~]** 4(a)(5), is entered before dismissal of the premature appeal, the notice of appeal **[~~shall be~~]** is considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

[~~(7)~~] (8) Amended Notice of Appeal. No additional fees **[~~shall be~~]** are required if any party files an amended notice of appeal in order to comply with the provisions of this Rule.

COMMENT

Most of the amendments in NRAP 4(a), which deals with appeals in civil cases, are intended to be stylistic—making the Nevada rules largely consistent with federal rules governing the time for notices of appeal. The most significant rule change allows a district court to extend the time for an appeal.

Under caselaw interpreting the former rule, the time for a notice of appeal was considered jurisdictional; neither district courts nor appellate courts could extend the time limit. Under the new rule, the 30-day time limit for a notice of appeal remains the same. Nonetheless, the new rule gives a district court discretion to extend the deadline if the appealing party files a motion for an extension not later than 30 days after expiration of the appeal time. Upon a showing of excusable neglect or good cause, a district court may extend the appeal time to a date up to 30 days after the appeal time expired, or 14 days after the date on which the extension motion is granted, whichever is later. No further extensions are allowed under the amended rule.

This rule change is intended to provide relief from the strict consequences of the previous jurisdictional limitation, without creating an undue burden on the judiciary.

RULE 4. APPEAL — WHEN TAKEN

(b) Appeals in Criminal and Postconviction Cases.

(1) Time for Filing a Notice of Appeal.

(A) Appeal by Defendant or Petitioner. Except as otherwise provided in NRS 34.560(2), NRS 34.575(1), NRS 176.09183(6), NRS 177.055, and Rule 4(c), the notice of appeal by a defendant or petitioner in a criminal case must be filed with the district court clerk within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of the state's notice of appeal.

(B) Appeal by the State. Except as otherwise provided in NRS 34.575(2), NRS 176.09183(4), and NRS 177.015(2), when an appeal by the state is authorized by statute, the notice of appeal must be filed with the district court clerk within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant or petitioner.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the announcement of a decision, sentence, or order — but before entry of the judgment or order — is treated as filed after such entry and on the day thereof.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions, the notice of appeal from a judgment of conviction must be filed within 30 days after the entry of the order disposing of the last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period comes later. This provision applies to a timely motion:

(i) for judgment of acquittal under NRS 175.381(2);

(ii) for a new trial under NRS 176.515, but if based on newly discovered evidence, only if the motion is made no later than 30 days after the entry of the judgment; or

(iii) for arrest of judgment under NRS 176.525.

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Except when an appeal period is set by statute, upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule.

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under NRS 176.555 or NRS 176.565, nor does the filing of a motion under those statutes affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under NRS 176.555 or NRS 176.565 does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule when it is signed by the judge and filed with the clerk.

(7) Time for Entry of Judgment; Content of Judgment or Order in Postconviction Matters.

(A) Judgment of Conviction. The district court judge must enter a written judgment of conviction within 14 days after sentencing.

(B) Order Resolving Postconviction Matter. The district court judge must enter a written judgment or order finally resolving any postconviction matter. If the district court judge first makes an oral pronouncement of a final decision in such a matter, the written judgment or order must be issued within 21 days after the district court judge's oral pronouncement. The judgment or order in any postconviction matter must contain specific findings of fact and conclusions of law supporting the district court's decision.

(C) Sanctions; Counsel's Failure to Timely Prepare Judgment or Order. The court may impose sanctions on any counsel instructed by the district court judge to draft the judgment or order and who does not submit the proposed judgment or order to the district court judge within the applicable time periods specified in Rule 4(b)(7).

(8) Withdrawal of Appeal. If an appellant no longer desires to pursue an appeal after the notice of appeal is filed, counsel for appellant must file with the clerk of the Supreme Court a notice of withdrawal of appeal. The notice of withdrawal of appeal must substantially comply with Form 8 in the Appendix of Forms.

(c) Untimely Direct Appeal From a Judgment of Conviction and Sentence.

(1) When an Untimely Direct Appeal From a Judgment of Conviction and Sentence May Be Filed. An untimely notice of appeal from

a judgment of conviction and sentence may be filed only under the following circumstances:

(A) A postconviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRS 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and

(B) The district court in which the petition is considered finds that the petitioner has established a valid appeal deprivation claim and is entitled to a direct appeal.

(C) In compliance with Rule 4(b)(7)(B), the district court must enter a written order containing:

(i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;

(ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and

(iii) directions to the district court clerk to prepare and file — within 7 days of the entry of the district court's order — a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

(D) If a federal court of competent jurisdiction issues a final order directing the state to provide a direct appeal to a federal habeas corpus petitioner, the petitioner or petitioner's counsel must file the federal court

order within 30 days of entry of the order in the district court in which petitioner's criminal case was pending. The clerk of the district court must prepare and file — within 30 days of filing of the federal court order in the district court — a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

(2) Service by the District Court Clerk. The district court clerk must serve certified copies of the district court's written order and the notice of appeal required by Rule 4(c) on the petitioner and petitioner's counsel in the postconviction proceeding, if any, the respondent, the Attorney General, the district attorney of the county in which the petitioner was convicted, the appellate counsel appointed to represent the petitioner in the direct appeal, if any, and the clerk of the Supreme Court.

(3) Notice of Appeal Filed by Petitioner's Counsel or Petitioner. If the district court has entered an order containing the findings required by Rule 4(c)(1)(C) and the district court clerk has not yet prepared and filed the notice of appeal on the petitioner's behalf, the petitioner or petitioner's counsel may file the notice of appeal from the judgment of conviction and sentence.

(4) Motion to Dismiss Appeal. The state may challenge a district court's written order granting an appeal-deprivation claim by filing a motion to dismiss the appeal with the clerk of the Supreme Court within 30 days after the date on which the appeal is docketed in the Supreme Court. The state's motion to dismiss must be properly supported with all documents relating to the district court proceeding that are necessary to the Supreme Court's or Court of Appeals' complete understanding of the matter.

(5) Effect on Procedural Bars. When a direct appeal of a criminal conviction and sentence is conducted under this Rule, the timeliness provisions

governing any subsequent habeas corpus attack on the judgment begin to run upon the termination of the direct appeal, as provided in NRS 34.726(1) and NRS 34.800(2). A habeas corpus petition filed after a direct appeal conducted under this Rule must not be deemed a "second or successive petition" under NRS 34.810(2).

(d) Appeal by an Inmate Confined in an Institution. If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is delivered to a prison official for mailing on or before the last day for filing. If the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of this Rule.

(e) Mistaken Filing in the Supreme Court. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the Supreme Court rather than the district court, the clerk of the Supreme Court must note on the notice the date when it was received and send it to the district court clerk. The notice is then considered filed in the district court on the date so noted.

(f) Expediting Criminal Appeals. The court may, with or without motion by the parties, by a majority of its members, make orders to expedite the handling of criminal appeals, including without limitation the following:

(1) Elimination of steps in preparation of the record and the briefs.

(2) Expediting preparation of stenographic transcripts.

(3) Priority of calendaring for oral argument.

(4) Utilization of court opinions or per curiam orders.

(5) Other lawful measures reasonably calculated to expedite the appeal and promote justice.

COMMENT

The proposed amendments to this Rule are both stylistic and substantive. Subsections (1)(A) and (B) incorporate the structure of their analogous federal counterparts, allowing a party to file a notice of appeal within 30 days of the entry of the judgment or order being appealed or the filing of the opposing party's notice of appeal—whichever comes later. These amendments allow the prevailing party additional time to assess whether to cross-appeal. Subsection (4) similarly incorporates the structure of its analogous federal counterpart, allowing a court to extend the time to file a notice of appeal for 30 days upon a showing of excusable neglect or good cause. However, unlike the federal rule, the Commission adopted language clarifying that appellate deadlines set by statute cannot be extended. This amendment promotes justice by allowing appellate review in certain circumstances where the appeal would otherwise be dismissed as untimely. Nevada courts should look to decisions interpreting the federal rule for guidance in interpreting subsection (4). Subsection (5) also incorporates the structural of its analogous federal counterpart.

RULE 4. APPEAL — WHEN TAKEN

(b) Appeals in Criminal and Postconviction Cases.

(1) Time for Filing a Notice of Appeal.

(A) Appeal by Defendant or Petitioner. Except as otherwise provided in NRS 34.560(2), NRS 34.575(1), NRS 176.09183(6), NRS 177.055, and Rule 4(c), the notice of appeal by a defendant or petitioner in a criminal case **[~~shall~~]** must be filed with the district court clerk within 30 days after the **[~~entry of the judgment or order being appealed.~~]** later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of the state's notice of appeal.

(B) Appeal by the State. Except as otherwise provided in NRS 34.575(2), NRS 176.09183(4), and NRS 177.015(2), when an appeal by the state is authorized by statute, the notice of appeal **[~~shall~~]** must be filed with the district court clerk within 30 days after the **[~~entry of the judgment or order being appealed.~~]** later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant or petitioner.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the announcement of a decision, sentence, or order — but before entry of the judgment or order — **[~~shall be~~]** is treated as filed after such entry and on the day thereof.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions, the notice of appeal from a judgment of conviction must be filed within 30 days

after the entry of the order disposing of the last such remaining motion, or within 30 days after the entry of the judgment of conviction, whichever period comes later. This provision applies to a timely motion:

(i) for judgment of acquittal under NRS 175.381(2);

(ii) for a new trial under NRS 176.515, but if based on newly discovered evidence, only if the motion is made no later than 30 days after the entry of the judgment; or

(iii) for arrest of judgment under NRS 176.525. **[~~files a motion in arrest of judgment or a motion for a new trial on any ground other than newly discovered evidence and the motion has not been denied by oral pronouncement or entry of a written order when the judgment of conviction is entered, the notice of appeal from the judgment of conviction may be filed within 30 days after the entry of an order denying the motion.~~]**

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction. **[~~If a defendant files a motion for a new trial based on the ground of newly discovered evidence before entry of the judgment of conviction and the motion has not been denied by oral pronouncement or entry of a written order when the judgment of conviction is entered, the notice of appeal from the judgment of conviction may be filed within 30 days after the entry of an order denying the motion. If a defendant makes such a motion within 30 days after the entry of the judgment of conviction,~~**

~~**the time for the defendant to file the notice of appeal from the judgment of conviction will be similarly extended.]**~~

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Except when an appeal period is set by statute, upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule.

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under NRS 176.555 or NRS 176.565, nor does the filing of a motion under those statutes affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under NRS 176.555 or NRS 176.565 does not suspend the time for filing a notice of appeal from a judgment of conviction.

[~~(4)~~] (6) Entry Defined. A judgment or order is entered for purposes of this Rule when it is signed by the judge and filed with the clerk.

[~~(5)~~] (7) Time for Entry of Judgment; Content of Judgment or Order in Postconviction Matters.

(A) Judgment of Conviction. The district court judge **[~~shall~~]** must enter a written judgment of conviction within 14 days after sentencing.

(B) Order Resolving Postconviction Matter. The district court judge **[~~shall~~]** must enter a written judgment or order finally resolving any postconviction matter. If the district court judge first makes an oral pronouncement of a final decision in such a matter, the written judgment or order must be issued within 21 days after the district court judge's oral

pronouncement **[~~of a final decision in such a matter~~]**. The judgment or order in any postconviction matter must contain specific findings of fact and conclusions of law supporting the district court's decision.

(C) Sanctions; Counsel's Failure to Timely Prepare Judgment or Order. The court may impose sanctions on any counsel instructed by the district court judge to draft the judgment or order and who does not submit the proposed judgment or order to the district court judge within the applicable time periods specified in Rule 4(b)(7)**[~~(5)~~]**.

[~~(6)~~] (8) **Withdrawal of Appeal.** If an appellant no longer desires to pursue an appeal after the notice of appeal is filed, counsel for appellant **[~~shall~~]** must file with the clerk of the Supreme Court a notice of withdrawal of appeal. The notice of withdrawal of appeal **[~~shall~~]** must substantially comply with Form 8 in the Appendix of Forms.

(c) Untimely Direct Appeal From a Judgment of Conviction and Sentence.

(1) When an Untimely Direct Appeal From a Judgment of Conviction and Sentence May Be Filed. An untimely notice of appeal from a judgment of conviction and sentence may be filed only under the following circumstances:

(A) A postconviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRS 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and

(B) The district court in which the petition is considered finds that the petitioner has established a valid appeal deprivation claim and is entitled to a direct appeal.

(C) In compliance with Rule 4(b)(7)(B), the district court must enter**[s]** a written order containing:

(i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;

(ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and

(iii) directions to the district court clerk to prepare and file — within 7 days of the entry of the district court's order — a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

[~~(C)~~] (D) If a federal court of competent jurisdiction issues a final order directing the state to provide a direct appeal to a federal habeas corpus petitioner, the petitioner or **[~~his or her~~]** petitioner's counsel **[~~shall~~]** must file the federal court order within 30 days of entry of the order in the district court in which petitioner's criminal case was pending. The clerk of the district court **[~~shall~~]** must prepare and file — within 30 days of filing of the federal court order in the district court — a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

(2) Service by the District Court Clerk. The district court clerk **[~~shall~~]** must serve certified copies of the district court's written order and the notice of appeal required by Rule 4(c) on the petitioner and petitioner's counsel in the postconviction proceeding, if any, the respondent, the Attorney General,

the district attorney of the county in which the petitioner was convicted, the appellate counsel appointed to represent the petitioner in the direct appeal, if any, and the clerk of the Supreme Court.

(3) Notice of Appeal Filed by Petitioner's Counsel or Petitioner. If the district court has entered an order containing the findings required by Rule 4(c)(1)(C)**[~~(B)~~]** and the district court clerk has not yet prepared and filed the notice of appeal on the petitioner's behalf, the petitioner or petitioner's counsel may file the notice of appeal from the judgment of conviction and sentence.

(4) Motion to Dismiss Appeal. The state may challenge a district court's written order granting an appeal-deprivation claim by filing a motion to dismiss the appeal with the clerk of the Supreme Court within 30 days after the date on which the appeal is docketed in the Supreme Court. The state's motion to dismiss **[~~shall~~]** must be properly supported with all documents relating to the district court proceeding that are necessary to the Supreme Court's or Court of Appeals' complete understanding of the matter.

(5) Effect on Procedural Bars. When a direct appeal of a criminal conviction and sentence is conducted under this Rule, the timeliness provisions governing any subsequent habeas corpus attack on the judgment **[~~shall~~]** begin to run upon the termination of the direct appeal, as provided in NRS 34.726(1) and NRS 34.800(2). A habeas corpus petition filed after a direct appeal conducted under this Rule **[~~shall~~]** must not be deemed a "second or successive petition" under NRS 34.810(2).

(d) Appeal by an Inmate Confined in an Institution. If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is delivered to a prison official for mailing on or before the last day for filing. If the institution has a notice-of-appeal log or

another system designed for legal mail, the inmate must use that log or system to receive the benefit of this Rule.

(e) Mistaken Filing in the Supreme Court. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the Supreme Court rather than the district court, the clerk of the Supreme Court must note on the notice the date when it was received and send it to the district court clerk. The notice is then considered filed in the district court on the date so noted.

(f) Expediting Criminal Appeals. The court may, with or without motion by the parties, by a majority of its members, make orders to expedite the handling of criminal appeals, including without limitation the following:

(1) Elimination of steps in preparation of the record and the briefs.

(2) Expediting preparation of stenographic transcripts.

(3) Priority of calendaring for oral argument.

(4) Utilization of court opinions or per curiam orders.

(5) Other lawful measures reasonably calculated to expedite the appeal and promote justice.

COMMENT

The proposed amendments to this Rule are both stylistic and substantive. Subsections (1)(A) and (B) incorporate the structure of their analogous federal counterparts, allowing a party to file a notice of appeal within 30 days of the entry of the judgment or order being appealed or the filing of the opposing party's notice of appeal—whichever comes later. These amendments allow the prevailing party additional time to assess whether to cross-appeal. Subsection (4) similarly incorporates the structure of its analogous federal counterpart, allowing a court to extend the time to file a notice of appeal for 30 days upon a showing of excusable neglect or good cause.

However, unlike the federal rule, the Commission adopted language clarifying that appellate deadlines set by statute cannot be extended. This amendment promotes justice by allowing appellate review in certain circumstances where the appeal would otherwise be dismissed as untimely. Nevada courts should look to decisions interpreting the federal rule for guidance in interpreting subsection (4). Subsection (5) also incorporates the structural of its analogous federal counterpart.

RULE 7. BOND FOR COSTS ON APPEAL IN CIVIL CASES

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

COMMENT

The former version of this Rule has been replaced with the language from FRAP 7 to modernize and simplify the rule and leave the form, amount, and release of the security to the discretion of the district court.

RULE 7. BOND FOR COSTS ON APPEAL IN CIVIL CASES

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

~~**[(a) When Bond Required. In a civil case, unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking that includes security for the payment of costs on appeal, the appellant shall file a bond for costs on appeal or equivalent security in the district court with the notice of appeal. But a bond shall not be required of an appellant who is not subject to costs.**~~

~~**(b) Amount of Bond. The bond or equivalent security shall be in the sum or value of $500 unless the district court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the Supreme Court or Court of Appeals may direct if the judgment is modified. If a bond or equivalent security in the sum or value of $500 is given, no approval thereof is necessary.**~~

~~**(c) Objections. After a bond for costs on appeal is filed, a respondent may raise for determination by the district court clerk objections to the form of the bond or to the sufficiency of the surety.**~~

~~**(d) Proceeding Against a Surety. Rule 8(b) applies to a surety upon a bond given under this Rule.]**~~

COMMENT

The former version of this Rule has been replaced with the language from FRAP 7 to modernize and simplify the rule and leave the form, amount, and release of the security to the discretion of the district court.

RULE 12. DOCKETING THE APPEAL; FILING OF THE RECORD

(a) Docketing the Appeal. Upon receiving the copies of the notice of appeal and other documents from the district court clerk under Rule 3, the clerk of the Supreme Court will docket the appeal and immediately notify all parties of the docketing date. Automatic appeals from a judgment of conviction of death will be docketed in accordance with SCR 250. If parties on opposing sides file notices of appeal from the same district court judgment or order, in accordance with Rule 4(a), the appellants and cross-appellants will be designated as provided in Rule 28.1. A subsequent appeal will in all respects be treated as an initial appeal, including the payment of the prescribed filing fee. Cross-appeals will be filed under the same docket number and calendared and argued with the initial appeal.

(b) Filing the Record. Upon receiving the record, the clerk of the Supreme Court will file it and immediately notify all parties of the filing date.

COMMENT

The amendments to this Rule are stylistic only. The NRAP Commission recommends avoiding the use of the word "shall" and replacing it with "will" or "must" where applicable.

RULE 12. DOCKETING THE APPEAL; FILING OF THE RECORD

(a) Docketing the Appeal. Upon receiving the copies of the notice of appeal and other documents from the district court clerk under Rule 3, the clerk of the Supreme Court **[~~shall~~]** will docket the appeal and immediately notify all parties of the docketing date. Automatic appeals from a judgment of conviction of death **[~~shall~~]** will be docketed in accordance with SCR 250. If parties on opposing sides file notices of appeal from the same district court judgment or order, in accordance with Rule 4(a), the appellants and cross-appellants **[~~shall~~]** will be designated as provided in Rule 28.1. A subsequent appeal **[~~shall~~]** will in all respects be treated as an initial appeal, including the payment of the prescribed filing fee. Cross-appeals will be filed under the same docket number and calendared and argued with the initial appeal.

(b) Filing the Record. Upon receiving the record, the clerk of the Supreme Court **[~~shall~~]** will file it and immediately notify all parties of the filing date.

COMMENT

The amendments to this Rule are stylistic only. The NRAP Commission recommends avoiding the use of the word "shall" and replacing it with "will" or "must" where applicable.

RULE 13. COURT REPORTERS' AND RECORDERS' DUTIES AND OBLIGATIONS; SANCTIONS

(a) Court Reporters' and Recorders' Duties and Obligations. A person serving as a court reporter or reporter pro tempore or court recorder in trials, proceedings, or hearings subject to court review is, for such purposes, an officer of the Supreme Court, and as such is accountable to the Supreme Court for the faithful performance of their duties and obligations. Subject to the provisions of Rule 9, such person has a duty to expeditiously prepare, and punctually deliver, all transcripts needed for such review; such person accordingly has a duty to refrain from undertaking further professional assignments that may unduly interfere with timely preparation and delivery of transcripts necessary for review of matters already heard; and where appropriate such person must promptly notify every affected judge of the reporter's or recorder's consequent unavailability to report matters currently being heard, so that substitute reporters pro tempore or court recorders may be obtained.

(b) Sanctions. For default in the professional obligations of any court reporter or reporter pro tempore or court recorder, if such default threatens or adversely affects the efficiency or integrity of the court, appropriate sanctions may be imposed. The court may, for reasons stated, enter an order (1) referring an apparent offending court reporter or reporter pro tempore to the certified court reporters' board of Nevada for disciplinary action in accordance with the provisions of Chapter 656 of the Nevada Revised Statutes; or (2) requiring an apparent offender to appear before the court, or its designated master, to show cause why he or she should not be precluded from undertaking to act as a

reporter or recorder in regard to any trial, proceeding, administrative hearing, or deposition, that is subject to court review; why he or she should not be punished for contempt of court; and why damages should not be awarded to either or both parties, and to the State of Nevada, if loss of court time results.

COMMENT

The amendments to this Rule are intended to be stylistic only, with the exception of a minor revision in subsection (b) to make sanctions permissive rather than mandatory.

RULE 13. COURT REPORTERS' AND RECORDERS' DUTIES AND OBLIGATIONS; SANCTIONS

(a) Court Reporters' and Recorders' Duties and Obligations. **[~~Persons~~]** A person serving as a court reporter**[~~s~~]** or reporter**[~~s~~]** pro tempore or court recorder**[~~s~~]** in trials, proceedings, or hearings subject to court review **[~~are~~]** is, for such purposes, an officer**[~~s~~]** of the Supreme Court, and as such **[~~are~~]** is accountable to the Supreme Court for the faithful performance of their duties and obligations. Subject to the provisions of Rule 9, **[~~any~~]** such person **[~~acting as a court reporter or reporter pro tempore or court recorder in a trial, proceeding, or other matter subject to court review~~]** has a duty to expeditiously **[~~to~~]** prepare, and punctually **[~~to~~]** deliver, all transcripts needed for such review; such person accordingly has a duty to refrain from undertaking further professional assignments that may unduly interfere with timely preparation and delivery of transcripts necessary for review of matters already heard; and where appropriate such person **[~~shall~~]** must promptly notify every affected judge of the reporter's or recorder's consequent unavailability to report matters currently being heard, so that substitute reporters pro tempore or court recorders may be obtained.

(b) Sanctions. For default in the professional obligations of any court reporter or reporter pro tempore or court recorder, if such default threatens or adversely affects the efficiency or integrity of the court, appropriate sanctions **[~~will~~]** may be imposed. The court may, for reasons stated, enter an order (1) referring an apparent offending court reporter or reporter pro tempore to the certified court reporters' board of Nevada for disciplinary action in accordance with the provisions of Chapter 656 of the Nevada Revised Statutes; or (2)

requiring an apparent offender to appear before the court, or its designated master, to show cause why he or she should not be precluded from undertaking to act as a reporter or recorder in regard to any trial, proceeding, administrative hearing, or deposition, that is subject to court review; why he or she should not be punished for contempt of court; and why damages should not be awarded to either or both parties, and to the State of Nevada, if loss of court time results.

COMMENT

The amendments to this Rule are intended to be stylistic only, with the exception of a minor revision in subsection (b) to make sanctions permissive rather than mandatory.

RULE 14. DOCKETING STATEMENT

(a) Application and Purpose of Docketing Statement.

(1) In General. Each appellant must file a completed docketing statement in accordance with the provisions of this Rule. Unless a cross-appeal is filed, the respondent must not file a docketing statement but may file a response as specified in Rule 14(f).

(2) Exceptions.

(A) Original Writ Proceedings. This Rule does not apply to original proceedings commenced pursuant to NRS Chapters 34 or 35.

(B) Postconviction Appeals. This Rule does not apply to postconviction appeals in which the appellant is appearing without counsel.

(3) Purpose of Docketing Statement. The purpose of the docketing statement is to assist the Supreme Court in identifying jurisdictional defects, identifying issues on appeal, assessing assignment to the Court of Appeals under Rule 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment, and compiling statistical information.

(4) Statement of Issues on Appeal. A docketing statement must state specifically all issues that a party in good faith reasonably believes to be the issues on appeal. The statement of issues is instrumental to the court's case management procedures; however, such statement is not binding on the court, and the parties' briefs will determine the issues on appeal. Omission of an issue from the statement of issues will not provide an appropriate basis for a motion to strike any portion of the opening brief.

(b) Time for Filing; Form of Docketing Statement. Within 21 days after docketing of the appeal under Rule 12, the appellant must file a docketing statement with the clerk of the Supreme Court, on a form provided by the clerk. Legible copies of the original form provided by the clerk will be accepted by the clerk for filing in lieu of the original form. The appellant may file a docketing statement that is not on the form provided by the clerk so long as it contains every question included in the clerk's form. The docketing statement must be filed, together with proof of service of a copy of the completed statement on all parties and, if the appeal is assigned to the settlement conference program under Rule 16, on the settlement judge.

(c) Consequences of Failure to Comply. The docketing statement must be completed fully and accurately. For civil appeals, copies of all requested documents must be attached to the completed docketing statement. The court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate, or if the requested documentation has not been attached. Failure to file a docketing statement within the time prescribed will not affect the validity of the appeal, but is grounds for such action as the court deems appropriate including sanctions and dismissal of the appeal.

(d) Extensions of Time. Any extension of time must be sought in accordance with Rule 26(b).

(e) Multiple Appellants. In cases involving more than one appellant, any number of appellants may join in a single docketing statement. Multiple appellants are encouraged to consult with each other and, whenever possible, file only one docketing statement.

(f) Response by Respondent(s). Respondent, within 7 days after service of the docketing statement, may file a single-page response, together

with proof of service on all parties, if respondent strongly disagrees with appellant's statement of the case or issues on appeal. If respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss. In cases involving more than one respondent, any number of respondents may join in a single response. Multiple respondents are encouraged to consult with each other and, whenever possible, file only one response.

(g) Cross-Appeals. All parties who have filed a notice of appeal, whether designated as appellants or cross-appellants, must comply with Rule 14(a). Cross-appellants and cross-respondents are subject to all the provisions of this Rule as are appellants and respondents.

COMMENT

The amendments to this rule were intended to be stylistic, with the exception of subsections (b) and (f), which were modified to eliminate the requirement of filing multiple copies. No substantive change was intended by the modification of subsection (d), which was modified to say extensions of time can be sought in accordance with Rule 26(b). Rule 26(b) is the general rule for extensions and permits extensions using the same standard as was listed in Rule 14(d).

RULE 14. DOCKETING STATEMENT

(a) Application and Purpose of Docketing Statement.

(1) In General. [~~Appellants shall~~] Each appellant must file a completed docketing statement**[~~s~~]** in accordance with the provisions of this Rule**[~~in all appeals~~]**. Unless a cross-appeal is filed, the respondent **[~~may~~]** must not **[~~complete~~]** file a docketing statement but may file a response as specified in Rule 14(f).

(2) Exceptions.

(A) Original Writ Proceedings. This Rule does not apply to original proceedings commenced pursuant to NRS Chapters 34 or 35.

(B) Postconviction Appeals. This Rule does not apply to postconviction appeals in which the appellant is appearing without counsel.

(3) Purpose of Docketing Statement. The purpose of the docketing statement is to assist the Supreme Court in identifying jurisdictional defects, identifying issues on appeal, assessing **[~~presumptive~~]** assignment to the Court of Appeals under **[~~NRAP~~]** Rule 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment **[~~and assignment to the Court of Appeals~~]**, and compiling statistical information.

(4) Statement of Issues on Appeal. A docketing statement **[~~shall~~]** must state specifically all issues that a party in good faith reasonably believes to be the issues on appeal. The statement of issues is instrumental to the court's case management procedures**[~~,~~]**; however, such statement is not binding on the court, and the parties' briefs will determine the **[~~final~~]** issues on appeal. Omission of an issue from the statement of issues will not provide an appropriate basis for a motion to strike any portion of the opening brief.

(b) Time for Filing; Form of Docketing Statement. Within 21 days after docketing of the appeal under Rule 12, the appellant **[~~shall~~]** must file a docketing statement with the clerk of the Supreme Court, on a form provided by the clerk. Legible **[~~photostatic~~]** copies of the original form provided by the clerk will be accepted by the clerk for filing in lieu of the original form. The appellant may file a docketing statement that is not on the form provided by the clerk so long as it contains every question included in the clerk's form. **[~~An original and 2 copies shall be~~]** The docketing statement must be filed, together with proof of service of a copy of the completed statement on all parties and, if the appeal is assigned to the settlement conference program under Rule 16, on the settlement judge.

(c) Consequences of Failure to Comply. The docketing statement must be completed fully and accurately. For civil appeals, copies of all requested documents must be attached to the completed docketing statement. The court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate, or if the requested documentation has not been attached. Failure to file a docketing statement within the time prescribed **[~~shall~~]** will not affect the validity of the appeal, but is grounds for such action as the court deems appropriate including sanctions and dismissal of the appeal.

(d) Extensions of Time. [~~A motion for an extension of time within which to file the docketing statement will be granted for good cause. Counsel's caseload generally will not provide grounds for an extension.~~] Any extension of time must be sought in accordance with Rule 26(b).

(e) Multiple Appellants. In cases involving more than one appellant, any number of appellants may join in a single docketing statement. Multiple

appellants are encouraged to consult with each other and, whenever possible, file only one docketing statement.

(f) Response by Respondent(s). Respondent, within 7 days after service of the docketing statement, may file **[~~an original and 1 copy of~~]** a single-page response, together with proof of service on all parties, if respondent strongly disagrees with appellant's statement of the case or issues on appeal. If respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss. In cases involving more than one respondent, any number of respondents may join in a single response. Multiple respondents are encouraged to consult with each other and, whenever possible, file only one response.

(g) Cross-Appeals. All parties who have filed a notice of appeal, whether designated as appellants or cross-appellants, **[~~shall~~]** must comply with Rule 14(a). Cross-appellants and cross-respondents are subject to all the provisions of this Rule as are appellants and respondents.

COMMENT

The amendments to this rule were intended to be stylistic, with the exception of subsections (b) and (f), which were modified to eliminate the requirement of filing multiple copies. No substantive change was intended by the modification of subsection (d), which was modified to say extensions of time can be sought in accordance with Rule 26(b). Rule 26(b) is the general rule for extensions and permits extensions using the same standard as was listed in Rule 14(d).

NRAP 17 – Proposed (Clean Version)
(These revisions were approved by the majority of the Commission members; the alternate revisions in the comment boxes reflect the recommendations of a minority of the members.)

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

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

(1) All death penalty cases;

(2) Cases involving ballot or election questions;

(3) Cases involving judicial discipline;

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

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

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

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

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

(9) Cases involving the termination of parental rights;

(10) Cases involving juvenile certifications under NRS 62B.390; and

(11) Matters raising as a principal issue an inconsistency in the decisions of the Court of Appeals or of the Supreme Court or a conflict between decisions of the two courts.

(b) Cases Ordinarily Retained by the Supreme Court. The Supreme Court will ordinarily retain the following types of cases:

(1) Cases originating in business court;

(2) Matters raising as a principal issue a question of first impression;

Commented [SB1]: Alternate 1: A minority of the NRAP Commission members voted to keep "Cases originating in business court" in section (a) as a category of cases always retained by the Supreme Court, rather than moving it to section (b) (Cases Ordinarily Retained by the Supreme Court).

(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;

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

(5) Matters raising as a principal issue a question of statewide public importance that has application beyond the parties.

(c) Cases Ordinarily Assigned to Court of Appeals. The Court of Appeals 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 Supreme Court will ordinarily transfer to the Court of Appeals the following:

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

Commented [SB2]: Alternate 2: A minority of the NRAP Commission members prefer this to read "Cases presenting the application of settled law."

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

(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;

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

(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;

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

Commented [SB3]: Alternate 3: A minority of the NRAP Commission members voted to change this language to: "Appeals from a judgment awarding damages, exclusive of interest, attorney fees, and costs, of between $1 and $250,000 ~~or less~~ in a tort case."

(7) Cases involving a contract dispute where the amount in controversy is less than $150,000;

(8) Appeals from postjudgment orders in civil cases;

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

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

(11) Cases involving family law matters other than termination of parental rights, including:

(a) Cases involving domestic relations under NRS Title 11;

(b) Cases involving adult and minor guardianship under NRS Title 13; and

(c) Cases involving the protection of children from abuse and neglect under NRS Chapter 432B;

(12) Cases involving juvenile justice under NRS Title 5 other than juvenile certifications under NRS 62B.390;

(13) Appeals challenging venue;

(14) Cases challenging the grant or denial of injunctive relief;

(15) Pretrial writ proceedings challenging discovery orders or orders resolving motions in limine;

(16) Cases involving trust and estate matters in which the corpus has a value of less than the applicable federal estate tax exemption amount; and

(17) Cases arising from the foreclosure mediation program.

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

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

(f) Transfer and Notice. Upon the transfer of a case to the Court of Appeals, the clerk 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 must be entitled "In the Court of Appeals of the State of Nevada."

COMMENT

The NRAP Commission recommends splitting the existing rule into three subsections: (a) cases "always" retained by the Supreme Court; (b) cases "ordinarily" retained by the Supreme Court; and (c) cases "ordinarily" assigned to the Court of Appeals.

The cases "always" retained by the Supreme Court under subsection (a) are clearly defined categories and will now include cases involving juvenile certifications under NRS 62B.390. While cases involving the termination of parental rights will always be retained by the Supreme Court under subsection (a), cases arising under NRS Chapter 432B will ordinarily be assigned to the Court of Appeals under subsection (c)(11). A majority of the Commission recommends removing cases originating in business court from subsection (a) and placing them among the cases ordinarily assigned to the Supreme Court under subsection (b); however, a minority of Commission members would like to see business court cases always retained by the Supreme Court.

For the most part, the cases "ordinarily" retained by the Supreme Court under subsection (b) are less-clearly defined (e.g. "matters raising as a

principal issue a question of first impression") and are subject to argument/interpretation by the parties in their routing statements.

Subsection (c) will govern cases "ordinarily" assigned to the Court of Appeals. Cases presenting "the application of existing legal principles" or "the application of settled law" will ordinarily be assigned to the Court of Appeals under subsection (c)(1). A minority of the Commission recommends that the Court of Appeals no longer ordinarily review decisions granting summary judgment or dismissals of tort claims and has proposed alternate language in subsection (c)(6) limiting the Court of Appeals' review of tort cases to "[a]ppeals from a judgment awarding damages, exclusive of interest, attorney fees, and costs of between $1 and $250,000." The Commission recommends raising the amount in controversy for contract disputes assigned to the Court of Appeals from $75,000 to $150,000 under subsection (c)(7). The family law cases ordinarily assigned to the Court of Appeals under subsection (c)(11) will explicitly include the following: "(a) Cases involving domestic relations under NRS Title 11; (b) Cases involving adult and minor guardianship under NRS Title 13; and (c) Cases involving the protection of children from abuse and neglect under NRS Chapter 432B." Additionally, under subsection (c)(12), the Court of Appeals will ordinarily hear cases involving juvenile justice under NRS Title 5 (except for juvenile certifications). Finally, the Commission recommends revising the value limit on trust and estate matters assigned to the Court of Appeals from "$5,430,000" to "the applicable federal estate tax exemption amount."

NRAP 17 – Proposed
(These revisions were approved by the majority of the Commission members; the alternate revisions in the comment boxes reflect the recommendations of a minority of the members.)

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

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

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(3) Cases involving judicial discipline;

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

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

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

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

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

[~~(9) Cases originating in business court;~~]

[~~(10)~~] (9) Cases involving the termination of parental rights **[~~ or NRS Chapter 432B~~]**;

(10) Cases involving juvenile certifications under NRS 62B.390; and

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

[~~(12)~~] (11) Matters raising as a principal issue **[~~a question of statewide public importance, or an issue upon which there is~~]** an

Commented [SB1]: Alternate 1: A minority of the NRAP Commission members rejected this change and voted to keep "Cases originating in business court" in section (a) as a category of cases always retained by the Supreme Court.

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.

(b) Cases Ordinarily Retained by the Supreme Court. The Supreme Court will ordinarily retain the following types of cases:

(1) Cases originating in business court;

(2) Matters raising as a principal issue a question of first impression;

(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;

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

(5) Matters raising as a principal issue a question of statewide public importance that has application beyond the parties.

[~~(b)~~] (c) Cases Ordinarily 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:~~]** The Supreme Court will ordinarily transfer to the Court of Appeals the following:

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

Commented [SB2]: Alternate 2: A minority of the NRAP Commission members prefer "Cases presenting the application of settled law."

[~~(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, 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~~]** $150,000;

[~~(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;~~]**, including:

(a) Cases involving domestic relations under NRS Title 11;

(b) Cases involving adult and minor guardianship under NRS Title 13; and

(c) Cases involving the protection of children from abuse and neglect under NRS Chapter 432B;

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[~~(13)~~] (15) Pretrial writ proceedings challenging discovery orders or orders resolving motions in limine;

[~~(14)~~] (16) 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)~~] (17) Cases arising from the foreclosure mediation program.

[~~(c)~~] **(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~~]** ordinarily assigned to the Court of Appeals should be retained by 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.

[~~(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~~]** must be entitled "In the Court of Appeals of the State of Nevada."

COMMENT

The NRAP Commission recommends splitting the existing rule into three subsections: (a) cases "always" retained by the Supreme Court; (b) cases "ordinarily" retained by the Supreme Court; and (c) cases "ordinarily" assigned to the Court of Appeals.

The cases "always" retained by the Supreme Court under subsection (a) are clearly defined categories and will now include cases involving juvenile certifications under NRS 62B.390. While cases involving the termination of parental rights will always be retained by the Supreme Court under subsection (a), cases arising under NRS Chapter 432B will ordinarily be assigned to the Court of Appeals under subsection (c)(11). A majority of the Commission recommends removing cases originating in business court from subsection (a) and placing them among the cases ordinarily assigned to the Supreme Court under subsection (b); however, a minority of Commission members would like to see business court cases always retained by the Supreme Court.

For the most part, the cases "ordinarily" retained by the Supreme Court under subsection (b) are less-clearly defined (e.g. "matters raising as a principal issue a question of first impression") and are subject to argument/interpretation by the parties in their routing statements.

Subsection (c) will govern cases "ordinarily" assigned to the Court of Appeals. Cases presenting "the application of existing legal principles" or "the application of settled law" will ordinarily be assigned to the Court of Appeals under subsection (c)(1). A minority of the Commission recommends that the Court of Appeals no longer ordinarily review decisions granting summary judgment or dismissals of tort claims and has proposed alternate language in subsection (c)(6) limiting the Court of Appeals' review of tort cases to "[a]ppeals from a judgment awarding damages, exclusive of interest, attorney fees, and costs of between $1 and $250,000." The Commission recommends raising the amount in controversy for contract disputes assigned to the Court of Appeals from $75,000 to $150,000 under subsection (c)(7). The family law cases ordinarily assigned to the Court of Appeals under subsection (c)(11) will explicitly include the following: "(a) Cases involving domestic relations under

NRS Title 11; (b) Cases involving adult and minor guardianship under NRS Title 13; and (c) Cases involving the protection of children from abuse and neglect under NRS Chapter 432B." Additionally, under subsection (c)(12), the Court of Appeals will ordinarily hear cases involving juvenile justice under NRS Title 5 (except for juvenile certifications). Finally, the Commission recommends revising the value limit on trust and estate matters assigned to the Court of Appeals from "$5,430,000" to "the applicable federal estate tax exemption amount."

RULE 33. APPEAL CONFERENCES

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues. The court, justice, or judge may, as a result of the conference, enter an order controlling the course of the proceedings.

COMMENT

The amendment substantively changes the rule by allowing the court to also direct the parties, not just the attorneys, to participate in an appeal conference. This change mirrors the language in FRAP 33.

RULE 33. APPEAL CONFERENCES

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences **[~~for the parties to appear before the court or a justice or judge thereof for a conference~~]** to address any matter that may aid in disposing of the proceedings, including simplifying the issues. The court, justice, or judge may, as a result of the conference, enter an order controlling the course of the proceedings.

COMMENT

The amendment substantively changes the rule by allowing the court to also direct the parties, not just the attorneys, to participate in an appeal conference. This change mirrors the language in FRAP 33.

RULE 39. COSTS

(a) Against Whom Assessed. The following rules apply in civil appeals unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the respondent;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Limitations on Costs.

(1) Costs of Copies. The cost of producing necessary copies of briefs or appendices is taxable in the Supreme Court or Court of Appeals at a rate not to exceed 10 cents per page, or at actual cost, whichever is less.

(2) Costs of Counsel's Transportation. The actual costs of round-trip transportation within Nevada for one attorney, actually attending arguments before the Supreme Court or Court of Appeals, to the place where the appeal is argued are taxable in the Supreme Court or Court of Appeals. For the purpose of this Rule, "actual costs" for private automobile travel is deemed to be the rate established by the Internal Revenue Service for business travel at the time such travel occurs.

(3) Bill of Costs. Only those categories of costs identified in subsections (b)(1) and (b)(2) are taxable in the Supreme Court or Court of Appeals. A party who wants such costs taxed must — within 14 days after entry of judgment — file an itemized and verified bill of costs with the clerk, with proof of service.

(4) Objections. Objections to a bill of costs must be filed within 7 days after service of the bill of costs, unless the court extends the time.

(5) Limit on Costs. The maximum amount of costs taxable under subsections (b)(1) and (b)(2) is $750.

(c) Clerk to Insert Costs in Remittitur. The clerk will prepare and certify an itemized statement of costs taxed in the Supreme Court or Court of Appeals for insertion in the remittitur, but issuance of the remittitur must not be delayed for taxing costs. If the remittitur issues before costs are finally determined, the district court clerk must — upon the Supreme Court clerk's request — add the statement of costs, or any amendment of it, to the remittitur.

(d) Costs on Appeal Taxable in the District Courts. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this Rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if necessary to determine the appeal;

(3) premiums paid for a supersedeas bond or other security to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

COMMENT

Former section (c) is now section (b). Changes to what is now subsection (b)(1) seek to create more certainty in the copying cost rates that are allowed. Changes to what is now subsection (b)(2) seek to reflect that counsel may travel from a location that is not where the district court is located and to have recoverable private automobile travel costs track the Internal Revenue Service standard. Changes to what is now subsection (b)(3) clarify the existing rule that only the costs identified in what are now subsections (b)(1) and (b)(2) can

be taxed in the appellate courts; all other costs for an appeal must be sought in the district court. Because preparation of the appendix is generally not a hard cost but rather performed by an attorney and/or staff, that has been removed from the list of costs in what is now section (d).

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(a) Against Whom Assessed. The following rules apply in civil appeals unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the respondent;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

[~~(b) Reserved.~~]

[~~(c) Costs of Briefs, Appendices, Counsel's Transportation; Limitation.~~] **(b) Limitations on Costs.**

(1) Costs of Copies. The cost of producing necessary copies of briefs or appendices **[~~shall be~~]** is taxable in the Supreme Court or Court of Appeals at **[~~rates not higher than those generally charged for such work in the area where the district court is located~~]** a rate not to exceed 10 cents per page, or at actual cost, whichever is less.

(2) Costs of Counsel's Transportation. The actual costs of round-trip transportation within Nevada for one attorney, actually attending arguments before the Supreme Court or Court of Appeals, **[~~between the place where the district court is located and~~]** to the place where the appeal is argued **[~~shall be~~]** are taxable in the Supreme Court or Court of Appeals. For the purpose of this Rule, "actual costs" for private automobile travel **[~~shall be~~]** is deemed to be **[~~15 cents per mile, but where commercial air transportation is available at a cost less than private automobile~~**

~~travel, only the cost of the air transportation shall be taxable~~] the rate established by the Internal Revenue Service for business travel at the time such travel occurs.

(3) Bill of Costs. Only those categories of costs identified in subsections (b)(1) and (b)(2) are taxable in the Supreme Court or Court of Appeals. A party who wants such costs taxed [~~shall~~] must — within 14 days after entry of judgment — file an itemized and verified bill of costs with the clerk, with proof of service.

(4) Objections. Objections to a bill of costs [~~shall~~] must be filed within 7 days after service of the bill of costs, unless the court extends the time.

(5) Limit on Costs. The maximum amount of costs taxable under [~~this~~] subsections (b)(1) and (b)(2) [~~shall be $500~~] is $750.

[~~(d)~~] **(c) Clerk to Insert Costs in Remittitur.** The clerk [~~shall~~] will prepare and certify an itemized statement of costs taxed in the Supreme Court or Court of Appeals for insertion in the remittitur, but issuance of the remittitur must not be delayed for taxing costs. If the remittitur issues before costs are finally determined, the district court clerk must — upon the Supreme Court clerk's request — add the statement of costs, or any amendment of it, to the remittitur.

[~~(e)~~] **(d) Costs on Appeal Taxable in the District Courts.** The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this Rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if [~~needed~~] necessary to determine the appeal;

~~[(3) preparation of the appendix;]~~

[~~(4)~~] (3) premiums paid for a supersedeas bond or other **[~~bond~~]** security to preserve rights pending appeal; and

[~~(5)~~] (4) the fee for filing the notice of appeal.

COMMENT

Former section (c) is now section (b). Changes to what is now subsection (b)(1) seek to create more certainty in the copying cost rates that are allowed. Changes to what is now subsection (b)(2) seek to reflect that counsel may travel from a location that is not where the district court is located and to have recoverable private automobile travel costs track the Internal Revenue Service standard. Changes to what is now subsection (b)(3) clarify the existing rule that only the costs identified in what are now subsections (b)(1) and (b)(2) can be taxed in the appellate courts; all other costs for an appeal must be sought in the district court. Because preparation of the appendix is generally not a hard cost but rather performed by an attorney and/or staff, that has been removed from the list of costs in what is now section (d).

RULE 40. PETITION FOR REHEARING

(a) Grounds for Rehearing. The court may consider rehearing in the following circumstances:

(1) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case,

(2) When the court has overlooked, misapplied, or failed to consider a statute, procedural rule, regulation, or decision directly controlling a dispositive issue in the case, or

(3) When a new rule of law, directly controlling on the disposition of the issues in the case, has issued after the court announced its order or opinion but within the time fixed for filing.

(b) Content of Petition. The petition must state with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Any claim that the court has overlooked or misapprehended a material fact must be supported by a reference to the page of the transcript, appendix, or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied, or failed to consider controlling authority must be supported by a reference to the page of the brief where petitioner has raised the issue. Except as necessary to establish the grounds for rehearing set forth in Rule 40(a), matters presented in the briefs and oral arguments may not be reargued, and no point may be raised for the first time. Oral argument in support of the petition will not be permitted.

(c) Time for Filing. Unless the time is shortened or enlarged by order, any party may file a petition for rehearing within 14 days after the filing of the appellate court's decision under Rule 36. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule.

(d) Filing Fee. Except as otherwise provided by statute, a $150 filing fee must be paid to the clerk at the time a petition for rehearing is submitted for filing.

(e) Response to Petition and Reply. No response to a petition for rehearing may be filed unless requested by the court. The response to a petition for rehearing must be filed within 14 days after entry of the order requesting the response, unless otherwise directed by the court. A petition for rehearing will ordinarily not be granted in the absence of a request for a response. If a response to the petition is ordered, the petitioner may file a reply within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(f) Form of Petition, Response, and Reply; Number of Copies; Certificate of Compliance. A petition for rehearing of a decision of the Court of Appeals or of a Supreme Court panel, or a response to such a petition, or a reply, must comply in form with Rule 32, and unless e-filed, the original must be filed with the clerk. One copy must be served on counsel for each party separately represented. The petition, response, or reply must include a certificate that the submission complies with the formatting requirements of Rule 32(a)(4)-(6) and the page- or type-volume limitation of this Rule, computed in compliance with Rule 32(a)(7)(C), must be accompanied by a completed certificate of compliance substantially similar to Form 16 in the Appendix of Forms.

(g) Length of Petition, Response, and Reply. Except by permission of the court, a petition for rehearing, or a response to the petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text. Any reply may not exceed one half of the page or type-volume limitations of the petition.

(h) Decision by Court. A court's decision to grant or deny a petition for rehearing is final and not subject to further requests for rehearing.

(i) Action by Court When Petition Granted. If a petition for rehearing is granted, the court may make a final disposition of the cause without argument or may restore it to the calendar for argument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case. A petition for rehearing of a decision of a Supreme Court panel must be reviewed by the panel that decided the matter. If the panel determines that rehearing is warranted, rehearing before that panel will be held. The full court must consider a petition for rehearing of an en banc decision.

(j) Untimely Petition. A petition for rehearing is timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing. The clerk must not receive or file an untimely petition, but must return the petition unfiled or, if the petition was e-filed, must reject the petition.

(k) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was e-filed, must reject it.

(l) Petition in Criminal Appeals; Exhaustion of State Remedies. A decision by a Supreme Court panel, the en banc Supreme Court, or the Court of Appeals resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in

subsequent federal proceedings. Rehearing is available only under the limited circumstances set forth in Rule 40(a).

COMMENT

The proposed amendments to this Rule are both stylistic and substantive. Initially, the NRAP Commission sought to bring NRAP 40, 40A, and 40B into harmony with one another, by utilizing similar structure and language throughout all three rules. Subsection (a) now lists three grounds for rehearing (as opposed to just two), and subsection (a)(3) would permit rehearing in the event a new rule of law is issued after the court's disposition, but before the rehearing deadline. Subsection (b) clarifies that "except as necessary to establish the grounds for rehearing" matters presented in the briefs and oral arguments may not be reargued, and no point may be raised for the first time. Subsection (c) reduces the time for filing a petition for rehearing from 18 days to 14 days, in conformity with FRAP 40. Additionally, the "answer" to a petition for rehearing is now referred to as the "response" throughout NRAP 40, in conformity with FRAP 40. In the event the court orders a response to a petition for rehearing, subsection (e) now expressly provides for the filing of a reply within 7 days after service of the response.

RULE 40. PETITION FOR REHEARING

(a) [~~Procedure and Limitations.~~] Grounds for Rehearing. The court may consider rehearing in the following circumstances:

(1) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case,

(2) When the court has overlooked, misapplied, or failed to consider a statute, procedural rule, regulation, or decision directly controlling a dispositive issue in the case, or

(3) When a new rule of law, directly controlling on the disposition of the issues in the case, has issued after the court announced its order or opinion but within the time fixed for filing.

[~~(1) Time. Unless the time is shortened or enlarged by order, a petition for rehearing may be filed within 18 days after the filing of the appellate court's decision under Rule 36. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule.~~]

[(2)] (b) Content[~~s~~] of Petition. The petition must state **[~~briefly and~~]** with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. **[~~Oral argument in support of the petition will not be permitted.~~]** Any claim that the court has overlooked or misapprehended a material fact **[~~shall~~]** must be supported by a reference to the page of the transcript, appendix, or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied, or

failed to consider controlling authority **[~~shall~~]** must be supported by a reference to the page of the brief where petitioner has raised the issue. Except as necessary to establish the grounds for rehearing set forth in Rule 40(a), matters presented in the briefs and oral arguments may not be reargued, and no point may be raised for the first time. Oral argument in support of the petition will not be permitted.

[~~(3) Petitions in Criminal Appeals; Exhaustion of State Remedies. A decision by a panel of the Supreme Court, the en banc Supreme Court, or the Court of Appeals resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in subsequent federal proceedings. Rehearing is available only under the limited circumstances set forth in Rule 40(c). Petitions for rehearing filed on the pretext of exhausting state remedies may result in sanctions under Rule 40(g).~~]

[~~(1)~~] (c) Time for Filing. Unless the time is shortened or enlarged by order, any party may file a petition for rehearing **[~~may be filed~~]** within **[~~18~~]** 14 days after the filing of the appellate court's decision under Rule 36. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule.

(d) Filing Fee. Except as otherwise provided by statute, a $150 filing fee must be paid to the clerk at the time a petition for rehearing is submitted for filing.

(e) Response to Petition and Reply. No response to a petition for rehearing may be filed unless requested by the court. The response to a petition for rehearing must be filed within 14 days after entry of the order requesting the response, unless otherwise directed by the court. A petition for rehearing

will ordinarily not be granted in the absence of a request for a response. If a response to the petition is ordered, the petitioner may file a reply within 7 days after service of the response. A reply must not present matters that do not relate to the response.

[~~(b)~~] (f) Form of Petition [~~and Answer~~], Response, and Reply; Number of Copies; [~~Length;~~] Certificate of Compliance[~~; Filing Fee~~].

[~~(1) Decision of Court of Appeals or Supreme Court Panel.~~] A petition for rehearing of a decision of the Court of Appeals or of a **[~~panel of the~~]** Supreme Court panel, or **[~~an answer~~]** a response to such a petition, or a reply, **[~~shall~~]** must comply in form with Rule 32, and unless e-filed, **[~~an~~]** the original **[~~and 5 copies shall~~]** must be filed with the clerk. **[~~unless the court by order in a particular case shall direct a different number.~~]** One copy **[~~shall~~]** must be served on counsel for each party separately represented. The petition, response, or reply must include a certificate that the submission complies with the formatting requirements of Rule 32(a)(4)-(6) and the page- or type-volume limitation of this Rule, computed in compliance with Rule 32(a)(7)(C), must be accompanied by a completed certificate of compliance substantially similar to Form 16 in the Appendix of Forms.

[~~(2) En Banc Decision. A petition for rehearing of a decision of the en banc Supreme Court, or an answer to the petition, shall comply in form with Rule 32, and an original and 9 copies shall be filed with the clerk unless the court by order in a particular case shall direct a different number. One copy shall be served on counsel for each party separately represented.~~]

[~~(3)~~] (g) Length of Petition, Response, and Reply. Except by permission of the court, a petition for rehearing, or **[~~an answer~~]** a response to the petition, **[~~shall~~]** may not exceed 10 pages or 4,667 words or, if it uses a

monospaced typeface, 433 lines of text. **[~~Alternatively, the petition or answer is acceptable if it contains no more than 4,667 words, or if it uses a monospaced typeface, and contains no more than 433 lines of text.~~]** Any reply may not exceed one half of the page or type-volume limitations of the petition.

[~~(4) Certificate of Compliance. A petition for rehearing or an answer shall include a certificate that the submission complies with the formatting requirements of Rule 32(a)(4)-(6) and the page- or type-volume limitation of this Rule, computed in compliance with Rule 32(a)(7)(C) must be accompanied by a completed certificate of compliance substantially similar to Form 16 in the Appendix of Forms.~~]

[~~(5) Filing Fee. Except as otherwise provided by statute, a $150 filing fee shall be paid to the clerk at the time a petition for rehearing is submitted for filing.~~]

[~~(c) Scope of Application; When Rehearing Considered.~~

~~(1) Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, and no point may be raised for the first time on rehearing.~~

~~(2) The court may consider rehearings in the following circumstances:~~

~~(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or~~

~~(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.~~

~~**(d) Answer; Reply. No answer to a petition for rehearing or reply to an answer shall be filed unless requested by the court. Unless otherwise ordered by the court, the answer to a petition for rehearing shall be filed within 14 days after entry of the order requesting the answer. A petition for rehearing will ordinarily not be granted in the absence of a request for an answer.]**~~

(h) Decision by Court. A court's decision to grant or deny a petition for rehearing is final and not subject to further requests for rehearing.

[~~(e)~~] (i) Action by Court [~~if~~] When Petition Granted. If a petition for rehearing is granted, the court may make a final disposition of the cause without **[~~re~~]**argument or may restore it to the calendar for **[~~re~~]**argument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case. A petition for rehearing of a decision of a **[~~panel of the~~]** Supreme Court panel **[~~shall~~]** must be reviewed by the panel that decided the matter. If the panel determines that rehearing is warranted, rehearing before that panel will be held. The full court **[~~shall~~]** must consider a petition for rehearing of an en banc decision.

[~~(f)~~] (j) Untimely Petition[~~s; Unrequested Answer or Reply~~]. A petition for rehearing is timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing. The clerk **[~~shall~~]** must not receive or file an untimely petition, but **[~~shall~~]** must return the petition unfiled or, if the petition was e-filed, must reject the petition. **[~~The clerk shall return unfiled any answer or reply submitted for filing in the absence of an order requesting the same.~~]**

(k) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was e-filed, must reject it.

~~**[(g) Sanctions. Petitions for rehearing which do not comply with this Rule may result in the imposition of appropriate sanctions.]**~~

(l) Petition in Criminal Appeals; Exhaustion of State Remedies. A decision by a Supreme Court panel, the en banc Supreme Court, or the Court of Appeals resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in subsequent federal proceedings. Rehearing is available only under the limited circumstances set forth in Rule 40(a).

COMMENT

The proposed amendments to this Rule are both stylistic and substantive. Initially, the NRAP Commission sought to bring NRAP 40, 40A, and 40B into harmony with one another, by utilizing similar structure and language throughout all three rules. Subsection (a) now lists three grounds for rehearing (as opposed to just two), and subsection (a)(3) would permit rehearing in the event a new rule of law is issued after the court's disposition, but before the rehearing deadline. Subsection (b) clarifies that "except as necessary to establish the grounds for rehearing" matters presented in the briefs and oral arguments may not be reargued, and no point may be raised for the first time. Subsection (c) reduces the time for filing a petition for rehearing from 18 days to 14 days, in conformity with FRAP 40. Additionally, the "answer" to a petition for rehearing is now referred to as the "response" throughout NRAP 40, in conformity with FRAP 40. In the event the court orders a response to a petition for rehearing, subsection (e) now expressly provides for the filing of a reply within 7 days after service of the response.

RULE 40A. PETITION FOR EN BANC RECONSIDERATION OF A SUPREME COURT PANEL DECISION

(a) Grounds for En Banc Reconsideration. En banc reconsideration of a decision of a Supreme Court panel is not favored and ordinarily will not be ordered except when (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue.

(b) Content of Petition. A petition based on grounds that full court reconsideration is necessary to secure and maintain uniformity of the decisions of the Supreme Court or Court of Appeals must demonstrate that the panel's decision is contrary to prior, published opinions of the Supreme Court or Court of Appeals and must include specific citations to those cases. A petition based on grounds that the proceeding involves a substantial precedential, constitutional, or public policy issue must concisely set forth the issue, must specify the nature of the issue, and must demonstrate the impact of the panel's decision beyond the litigants involved. The petition must be supported by points and authorities and must contain argument in support of these points. Except as necessary to establish the grounds for reconsideration set forth in Rule 40A(a), matters presented in the briefs and oral arguments may not be reargued in the petition, and no point may be raised for the first time. Oral argument in support of the petition will not be permitted.

(c) Time for Filing. Unless the time is shortened or enlarged by order, any party may petition for en banc reconsideration of a Supreme Court panel's decision within 14 days after the filing of the panel's decision under Rule 36 or,

if the party timely filed a petition for rehearing, within 14 days after the filing of the panel's decision to deny rehearing. A petition for en banc reconsideration may not be filed while a petition for rehearing is pending before the panel. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule. No petition for en banc reconsideration of a Supreme Court panel's decision to grant rehearing is allowed; however, if a panel grants rehearing, any party may petition for en banc reconsideration of the panel's decision on rehearing within 14 days after the filing of the decision.

(d) Response to Petition and Reply. No response to a petition for en banc reconsideration may be filed unless requested by the court. The response to a petition for en banc reconsideration must be filed within 14 days after entry of the order requesting the response, unless otherwise directed by the court. A petition for en banc reconsideration will ordinarily not be granted in the absence of a request for a response. If a response to the petition is ordered, the petitioner may file a reply within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(e) Form of Petition, Response, and Reply; Number of Copies; Certificate of Compliance. A petition for en banc reconsideration of a Supreme Court panel's decision, a response to such a petition, or a reply must comply in form with Rule 32, and unless e-filed, the original must be filed with the clerk. One copy must be served on counsel for each party separately represented. The petition, response, or reply must include the certification required by Rule 40(f) in substantially the form suggested in Form 16 of the Appendix of Forms.

(f) Length of Petition, Response, and Reply. Except by permission of the court, a petition for en banc reconsideration, or a response to such a petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced

typeface, 433 lines of text. Any reply may not exceed one half of the page or type-volume limitations of the petition.

(g) Decision by Supreme Court. Any two justices may compel the court to grant a petition for en banc reconsideration. The Supreme Court's decision to grant or deny a petition for en banc reconsideration is final and not subject to further requests for rehearing or reconsideration.

(h) Action by Supreme Court When Petition Granted. If a petition for en banc reconsideration is granted, the court may make a final disposition of the cause without argument or may place it on the en banc calendar for argument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(i) Untimely Petition. A petition for en banc reconsideration is timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing. The clerk must not receive or file an untimely petition, but must return the petition unfiled or, if the petition was e-filed, must reject the petition.

(j) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was e-filed, must reject it.

(k) Petition in Criminal Appeals; Exhaustion of State Remedies. A decision of a Supreme Court panel resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in subsequent federal proceedings. En banc reconsideration is available only under the limited circumstances set forth in Rule 40A(a).

COMMENT

The proposed amendments to this Rule are both stylistic and substantive. Initially, the NRAP Commission sought to bring NRAP 40, 40A, and 40B into harmony with one another, by utilizing similar structure and language throughout all three rules. Like the analogous federal rule (FRAP 35), subsection (c) allows a party to file a petition for en banc reconsideration without first filing a petition for rehearing under NRAP 40. However, a petition for en banc reconsideration may not be filed while a petition for rehearing is pending before the panel. The "answer" to a petition for en banc reconsideration is now referred to as the "response" throughout NRAP 40A, in conformity with the federal rules. In the event the court orders a response to a petition for en banc reconsideration, subsection (d) now expressly provides for the filing of a reply within 7 days after service of the response.

RULE 40A. PETITION FOR EN BANC RECONSIDERATION OF A SUPREME COURT PANEL DECISION

(a) Grounds for En Banc Reconsideration. En banc reconsideration of a decision of a **[~~panel of the~~]** Supreme Court panel is not favored and ordinarily will not be ordered except when (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue. **[~~The court considers a decision of a panel of the court resolving a claim of error in a criminal case, including a claim for postconviction relief, to be final for purposes of exhaustion of state remedies in subsequent federal proceedings. En banc reconsideration is available only under the limited circumstances set forth in Rule 40A(a). Petitions for en banc reconsideration in criminal cases filed on the pretext of exhausting state remedies may result in the imposition of sanctions under Rule 40A(g).~~]**

(b) Content of Petition. A petition based on grounds that full court reconsideration is necessary to secure and maintain uniformity of the decisions of the Supreme Court or Court of Appeals must demonstrate that the panel's decision is contrary to prior, published opinions of the Supreme Court or Court of Appeals and must include specific citations to those cases. A petition based on grounds that the proceeding involves a substantial precedential, constitutional, or public policy issue must concisely set forth the issue, must specify the nature of the issue, and must demonstrate the impact of the panel's decision beyond the litigants involved. The petition must be supported by

points and authorities and must contain argument in support of these points. Except as necessary to establish the grounds for reconsideration set forth in Rule 40A(a), matters presented in the briefs and oral arguments may not be reargued in the petition, and no point may be raised for the first time. Oral argument in support of the petition will not be permitted.

[~~(b)~~] (c) Time for Filing[~~; Effect of Filing on Finality of Judgment~~]. Unless the time is shortened or enlarged by order, **[~~A~~]**any party may petition for en banc reconsideration of a Supreme Court panel's decision within 14 days after **[~~written entry~~]** the filing of the panel's decision under Rule 36 or, if the party timely filed a petition for rehearing, within 14 days after the filing of the panel's decision to deny rehearing. A petition for en banc reconsideration may not be filed while a petition for rehearing is pending before the panel. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule. No petition for en banc reconsideration of a Supreme Court panel's decision to grant rehearing is allowed; however, if a panel grants rehearing, any party may petition for en banc reconsideration of the panel's decision on rehearing within 14 days after **[~~written entry~~]** the filing of the decision. **[~~If no petition for rehearing of the Supreme Court panel's decision is filed, then no petition for en banc reconsideration is allowed.~~]**

[~~(c) Content of Petition. A petition based on grounds that full court reconsideration is necessary to secure and maintain uniformity of the decisions of the Supreme Court or Court of Appeals shall demonstrate that the panel's decision is contrary to prior, published opinions of the Supreme Court or Court of Appeals and shall include specific citations to those cases. If the petition is based on grounds that the proceeding involves a substantial precedential,~~

~~**constitutional or public policy issue, the petition shall concisely set forth the issue, shall specify the nature of the issue, and shall demonstrate the impact of the panel's decision beyond the litigants involved. The petition shall be supported by points and authorities and shall contain such argument in support of the petition as the petitioner desires to present. Matters presented in the briefs and oral arguments may not be reargued in the petition, and no point may be raised for the first time.]**~~

(d) Response to Petition and Reply. No response to a petition for en banc reconsideration may be filed unless requested by the court. The response to a petition for en banc reconsideration must be filed within 14 days after entry of the order requesting the response, unless otherwise directed by the court. A petition for en banc reconsideration will ordinarily not be granted in the absence of a request for a response. If a response to the petition is ordered, the petitioner may file a reply within 7 days after service of the response. A reply must not present matters that do not relate to the response.

[~~(d)~~] (e) Form of Petition, [~~and Answer~~] Response, and Reply; Number of Copies; [~~Length;~~] Certificate of Compliance. A petition for en banc reconsideration of a Supreme Court panel's decision, **[~~or an answer~~]** a response to such a petition, or a reply must **[~~shall~~]** comply in form with Rule 32, and unless e-filed, **[~~an~~]** the original **[~~and 8 copies shall~~]** must be filed with the clerk. **[~~unless the court by order in a particular case shall direct a different number.~~]** One copy **[~~shall~~]** must be served on counsel for each party separately represented. The petition, response, or reply must include the certification required by Rule 40(f) in substantially the form suggested in Form 16 of the Appendix of Forms. **[~~Except by permission of the court, a petition for en banc reconsideration, or an answer to such~~**

~~**a petition, shall not exceed 10 pages. Alternatively, the petition or answer is acceptable if it contains no more than 4,667 words, or if it uses a monospaced typeface, and contains no more than 433 lines of text. The petition or answer shall include the certification required by NRAP 40(b)(4) in substantially the form suggested in Form 16 of the Appendix of Forms.**~~**]**

(f) Length of Petition, Response, and Reply. Except by permission of the court, a petition for en banc reconsideration, or a response to such a petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text. Any reply may not exceed one half of the page or type-volume limitations of the petition.

[~~**(e) Answer and Reply. No answer to a petition for en banc reconsideration or reply to an answer shall be filed unless requested by the court. Unless otherwise ordered by the court, the answer to a petition for en banc reconsideration shall be filed within 14 days after entry of the order requesting the answer. A petition for en banc reconsideration will ordinarily not be granted in the absence of a request for an answer.**~~**]**

(g) Decision by Supreme Court. Any two justices may compel the court to grant a petition for en banc reconsideration. The Supreme Court's decision to grant or deny a petition for en banc reconsideration is final and not subject to further requests for rehearing or reconsideration.

[~~**(f)**~~**]** **(h) Action by Supreme Court [**~~**if**~~**] When Petition Granted.** ~~**[Any two justices may compel the court to grant a petition for en banc reconsideration.]**~~ If a petition for en banc reconsideration is granted, the court may make a final disposition of the cause without **[**~~**re**~~**]**argument or may place it on the en banc calendar for **[**~~**re**~~**]**argument or resubmission or may make

such other orders as are deemed appropriate under the circumstances of the particular case.

[~~(g) Frivolous Petitions; Costs Assessed. Unless a case meets the rigid standards of Rule 40A(a), the duty of counsel is discharged without filing a petition for en banc reconsideration of a panel decision. Counsel filing a frivolous petition shall be deemed to have multiplied the proceedings in the case and to have increased costs unreasonably and vexatiously. At the discretion of the court, counsel personally may be required to pay an appropriate sanction, including costs and attorney fees, to the opposing party.~~]

[~~(h)~~] (i) Untimely Petition[~~s; Unrequested Answer or Reply~~]. A petition for en banc reconsideration is timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing. The clerk **[~~shall~~]** must not receive or file an untimely petition, but **[~~shall~~]** must return the petition unfiled or, if the petition was e-filed, must reject the petition. **[~~The clerk shall return unfiled any answer or reply submitted for filing in the absence of an order requesting the same.~~]**

(j) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was e-filed, must reject it.

(k) Petition in Criminal Appeals; Exhaustion of State Remedies. A decision of a Supreme Court panel resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in subsequent federal proceedings. En banc reconsideration is available only under the limited circumstances set forth in Rule 40A(a).

COMMENT

The proposed amendments to this Rule are both stylistic and substantive. Initially, the NRAP Commission sought to bring NRAP 40, 40A, and 40B into harmony with one another, by utilizing similar structure and language throughout all three rules. Like the analogous federal rule (FRAP 35), subsection (c) allows a party to file a petition for en banc reconsideration without first filing a petition for rehearing under NRAP 40. However, a petition for en banc reconsideration may not be filed while a petition for rehearing is pending before the panel. The "answer" to a petition for en banc reconsideration is now referred to as the "response" throughout NRAP 40A, in conformity with the federal rules. In the event the court orders a response to a petition for en banc reconsideration, subsection (d) now expressly provides for the filing of a reply within 7 days after service of the response.

RULE 40B. PETITION FOR REVIEW BY THE SUPREME COURT

(a) Grounds for Review. A decision of the Court of Appeals is a final decision that is not reviewable by the Supreme Court except on petition for review. Supreme Court review is not a matter of right but of judicial discretion. The following, while neither controlling nor fully measuring the Supreme Court's discretion, are factors that will be considered in the exercise of that discretion:

(1) Whether the question presented is one of first impression of general statewide significance;

(2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court;

(3) Whether the case involves fundamental issues of statewide public importance; or

(4) Whether the question presented was raised by the parties below or decided by the Court of Appeals.

(b) Content of Petition; Question(s) Presented. A petition for review must state the question(s) presented for review and the reason(s) review is warranted and may include citation of authority in support of that contention. No citation to authority or argument may be incorporated into the petition by reference to another document. The question(s) presented for review must appear on the first page after the cover.

(c) Time for Filing. Unless the time is shortened or enlarged by order, any party may file a petition for review within 14 days after the filing of the Court of Appeals' decision under Rule 36, or its decision on rehearing under

Rule 40. A petition for review may not be filed while a petition for rehearing is pending in the Court of Appeals. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule.

(d) Response to Petition and Reply. No response to a petition for review may be filed unless requested by the Supreme Court. The response to a petition for review must be filed within 14 days after entry of the order requesting the response, unless otherwise directed by the court. A petition for review will not ordinarily be granted in the absence of a request for a response. If a response to the petition is ordered, the petitioner may file a reply within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(e) Form of Petition, Response, and Reply; Number of Copies; Certificate of Compliance. A petition for review of a Court of Appeals' decision, a response to such a petition, or a reply must comply in form with Rule 32, and unless e-filed, an original must be filed with the clerk. One copy must be served on counsel for each party separately represented. The petition, response, or reply must include the certification required by Rule 40(f) in substantially the form suggested in Form 16 of the Appendix of Forms.

(f) Length of Petition, Response, and Reply. Except by permission of the court, a petition for review by the Supreme Court, or a response to such a petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text. Any reply may not exceed one half of the page or type-volume limitations of the petition.

(g) Decision by Supreme Court. The Supreme Court may grant a petition for review on the affirmative vote of a majority of the justices. The Supreme Court's decision to grant or deny a petition is final and is not subject to further requests for rehearing or reconsideration.

(h) Action by Supreme Court When Petition Granted. The Supreme Court may limit the question(s) on review. The Supreme Court's review on the grant of a petition for review will be conducted on the record and briefs previously filed in the Court of Appeals, but the Supreme Court may require supplemental briefs on the merits of all or some of the issues for review. Unless otherwise ordered, a grant of a petition for review does not vacate the Court of Appeals' decision.

(i) Untimely Petitions. A petition for review is timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing. The clerk of the Supreme Court must not receive or file an untimely petition, but must return the petition unfiled or, if the petition was e-filed, must reject the petition.

(j) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was e-filed, must reject it.

(k) Petition in Criminal Appeals; Exhaustion of State Remedies. A decision of the Court of Appeals resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in subsequent federal proceedings. Review of decisions of the Court of Appeals by the Supreme Court is available only under the limited circumstances set forth in Rule 40B(a).

COMMENT

The proposed amendments to this Rule are both stylistic and substantive. Initially, the NRAP Commission sought to bring NRAP 40, 40A, and 40B into harmony with one another, by utilizing similar structure and language throughout all three rules. Subsection (a) provides the Supreme

Court with an additional factor to consider when deciding whether to grant review—"[w]hether the question presented was raised by the parties below or decided by the Court of Appeals"—understanding that some parties may utilize NRAP 40B to seek a second bite at the apple by raising new issues that were not previously raised or decided. Subsection (b) adds a requirement that "[t]he question(s) presented for review must appear on the first page after the cover." Subsection (c) changes the time for filing a petition for review from 18 days to 14 days. In the event the court orders a response to a petition for review, subsection (d) now expressly provides for the filing of a reply within 7 days after service of the response. Subsection (h) clarifies that "[u]nless otherwise ordered, a grant of a petition for review does not vacate the Court of Appeals' decision."

RULE 40B. PETITION FOR REVIEW BY THE SUPREME COURT

(a) [~~Decisions of Court of Appeals Reviewable by Petition for Review~~] Grounds for Review. A decision of the Court of Appeals is a final decision that is not reviewable by the Supreme Court except on petition for review. **[~~A party aggrieved by a decision of the Court of Appeals may file a petition for review with the clerk of the Supreme Court. The petition must state the question(s) presented for review and the reason(s) review is warranted.~~]** Supreme Court review is not a matter of right but of judicial discretion. The following, while neither controlling nor fully measuring the Supreme Court's discretion, are factors that will be considered in the exercise of that discretion:

(1) Whether the question presented is one of first impression of general statewide significance;

(2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; **[~~or~~]**

(3) Whether the case involves fundamental issues of statewide public importance; or

(4) Whether the question presented was raised by the parties below or decided by the Court of Appeals.

(b) Content of Petition; Question(s) Presented. A petition for review must state the question(s) presented for review and the reason(s) review is warranted and may include citation of authority in support of that contention. No citation to authority or argument may be incorporated into the

petition by reference to another document. The question(s) presented for review must appear on the first page after the cover.

[~~(b) Petition in Criminal Appeals; Exhaustion of State Remedies. In all appeals from criminal convictions or postconviction relief matters, a party shall not be required to petition for review of an adverse decision of the Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when a claim has been presented to the Court of Appeals and relief has been denied, the party shall be deemed to have exhausted all available state remedies. Review of decisions of the Court of Appeals by the Nevada Supreme Court is limited to the circumstances set forth in these Rules and is an extraordinary remedy outside the normal process of appellate review, which is not available as a matter of right.~~]

(c) Time for Filing. Unless the time is shortened or enlarged by order, any party may file a **[~~A~~]** petition for review **[~~of a decision of the Court of Appeals must be filed in the Supreme Court~~]** within **[~~18~~]** 14 days after the filing of the Court of Appeals' decision under Rule 36, or its decision on rehearing under Rule 40. A petition for review **[~~shall~~]** may not be filed while a petition for rehearing is pending in the Court of Appeals. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule. **[~~The clerk of the Supreme Court shall not receive or file an untimely petition, but shall return the petition unfiled.~~]**

[~~(d) Content and Form of Petition. A petition for review shall comply in form with Rule 32, and an original and 9 copies shall be filed with the clerk unless the court by order in a particular case shall direct a different number. The petition may not exceed 10 pages or~~

~~**4,667 words or, if it uses a monospaced typeface, 433 lines of text. The petition shall succinctly state the precise basis on which the party seeks review by the Supreme Court and may include citation of authority in support of that contention. No citation to authority or argument may be incorporated into the petition by reference to another document.**~~**]**

[~~(e)~~] (d) Response to Petition and Reply. No response to a petition for review **[~~shall~~]** may be filed unless requested by the Supreme Court. The response to a petition for review must be filed within 14 days after entry of the order requesting the response, unless otherwise directed by the court. A petition for review will not ordinarily be granted in the absence of a request for a response. If a response to the petition is ordered, the petitioner may file a reply within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(e) Form of Petition, Response, and Reply; Number of Copies; Certificate of Compliance. A petition for review of a Court of Appeals' decision, a response to such a petition, or a reply must comply in form with Rule 32, and unless e-filed, an original must be filed with the clerk. One copy must be served on counsel for each party separately represented. The petition, response, or reply must include the certification required by Rule 40(f) in substantially the form suggested in Form 16 of the Appendix of Forms.

(f) Length of Petition, Response, and Reply. Except by permission of the court, a petition for review by the Supreme Court, or a response to such a petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text. Any reply may not exceed one half of the page or type-volume limitations of the petition.

[~~(f)~~] (g) Decision by Supreme Court. The Supreme Court may grant a petition for review on the affirmative vote of a majority of the justices. The Supreme Court's decision to grant or deny a petition is final and is not subject to further requests for rehearing or reconsideration.

[~~(g)~~] (h) Action by Supreme Court When Petition Granted. The Supreme Court may limit the question(s) on review. The Supreme Court's review on the grant of a petition for review **[~~shall~~]** will be conducted on the record and briefs previously filed in the Court of Appeals, but the Supreme Court may require supplemental briefs on the merits of all or some of the issues for review. Unless otherwise ordered, a grant of a petition for review does not vacate the Court of Appeals' decision.

(i) Untimely Petitions. A petition for review is timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing. The clerk of the Supreme Court must not receive or file an untimely petition, but must return the petition unfiled or, if the petition was e-filed, must reject the petition.

(j) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was e-filed, must reject it.

(k) Petition in Criminal Appeals; Exhaustion of State Remedies. A decision of the Court of Appeals resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in subsequent federal proceedings. Review of decisions of the Court of Appeals by the Supreme Court is available only under the limited circumstances set forth in Rule 40B(a).

COMMENT

The proposed amendments to this Rule are both stylistic and substantive. Initially, the NRAP Commission sought to bring NRAP 40, 40A, and 40B into harmony with one another, by utilizing similar structure and language throughout all three rules. Subsection (a) provides the Supreme Court with an additional factor to consider when deciding whether to grant review—"[w]hether the question presented was raised by the parties below or decided by the Court of Appeals"—understanding that some parties may utilize NRAP 40B to seek a second bite at the apple by raising new issues that were not previously raised or decided. Subsection (b) adds a requirement that "[t]he question(s) presented for review must appear on the first page after the cover." Subsection (c) changes the time for filing a petition for review from 18 days to 14 days. In the event the court orders a response to a petition for review, subsection (d) now expressly provides for the filing of a reply within 7 days after service of the response. Subsection (h) clarifies that "[u]nless otherwise ordered, a grant of a petition for review does not vacate the Court of Appeals' decision."