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Sent: Friday, January 21, 2022 6:20 PM
To: Pickering, Justice Kristina <kpickering@nvcourts.nv.gov>
Cc: Gibbons, Judge Michael <MichaelGibbons@nvcourts.nv.gov>
Subject: Revisions to NRAP 36 and 41

KP,

Our subcommittee met. I met with Chief Judge Gibbons, Elizabeth, Kurt, Kim and Phaedra on these two rules and we came up with these edits. We would not adopt the federal rules but instead edit our NRAPs. The first part of 41 will track FRAP 41, but that's about it.

CJ Gibbons and I agree that COA should be citable and to relieve pressure for practitioners trying to figure out time frames, we are alright just saying that they are citable once these rules go into effect from the same time as the supreme court.

I can talk more with you next week, but these are ready to be voted on by the commission unless our court adds a rule about PJR's must be stayed until COA decides a motion to publish. With that caveat, our subcommittee thinks these edits will work.

I am happy to go over them verbally with our group on 1/31 and explain our edits and why we did what we did.

Have a nice weekend. 😊

Abbi Silver

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RULE 36. ENTRY OF JUDGMENT

(a) Entry. The filing of the court’s decision or order constitutes entry of the judgment. The clerk shall file the judgment after receiving it from the court. If a judgment is rendered without an opinion, the clerk shall enter the judgment following instruction from the court.

(b) Notice. On the date when judgment is entered, the clerk shall ~~mail~~ serve all parties a copy of the opinion, if any, or of the order entering judgment, if no opinion was written.

(c) Form of Decision. The Supreme Court and Court of Appeals decide cases by either published or unpublished disposition.

(1) A published disposition is an opinion designated for publication in the Nevada Reports. The Supreme Court or Court of Appeals will decide a case by published opinion if it:

(A) Presents an issue of first impression;

(B) Alters, modifies, or significantly clarifies a rule of law previously announced by either the Supreme Court or the Court of Appeals; or

(C) Involves an issue of public importance that has application beyond the parties.

(2) An unpublished disposition, while publicly available, does not establish mandatory precedent except in a subsequent stage of a case in which the unpublished disposition was entered, in a related case, or in any case for purposes of issue or claim preclusion or to establish law of the case.

(3) A party may cite for its persuasive value, if any, an unpublished disposition issued by the Supreme Court or Court of Appeals on or after January 1, 2016. When citing such an unpublished disposition, the party must cite an electronic database, if available, and the docket number and date filed in the Supreme Court or Court of Appeals (with the notation “unpublished

disposition”). A party citing such an unpublished disposition must serve a copy of it on any party not represented by counsel.

(d) Duplicate Order or Opinion. ~~[(1)]~~ The justices of the Supreme Court, judges of the Court of Appeals, or district judges designated by the governor to serve on the Supreme Court or Court of Appeals for a specific case, if they are physically present within the State of Nevada, may sign duplicate copies of any order or opinion. Signed duplicate copies of orders and opinions shall be transmitted to the clerk of court for filing. ~~[If duplicate copies of an order or opinion are signed by the various members of the Supreme Court or Court of Appeals, the justices or judges signing the duplicate copies shall date their signatures on duplicate copies and shall immediately inform the clerk of the court that the duplicate copies are signed. The clerk of the court shall then note on the appropriate signature line of the original order or opinion that the absent justices or judges have signed duplicate copies of the order or opinion under this Rule. When possible, a facsimile of each signed duplicate copy of the order or opinion shall also be transmitted immediately to the clerk of the court. The duplicate copies of the order or opinion containing the original signatures of the justices or judges shall be sent by the fastest means available to the clerk of the Supreme Court, who shall place those duplicates in the court’s file.~~

~~— (2) The clerk shall file an order or opinion that is signed in duplicate under this Rule upon receiving notice from the absent justices or judges that they have signed the duplicate copies. The order or opinion shall be effective for all purposes when the clerk receives notice under this Rule that the requisite number of signatures have been obtained and files the order or opinion. An order~~

~~or opinion that is signed under this Rule shall contain a notice to the parties that it was signed under this Rule.]~~

~~[(e) Reversal, Modification; Certified Copy of Opinion to Lower Court. Where a judgment is reversed or modified, a certified copy of the opinion or other disposition shall be transmitted with the remittitur to the court below.]~~

~~[(f)]~~ **(e) Motion to Reissue an Order as an Opinion.** A motion to reissue an unpublished disposition or order as an opinion to be published in the Nevada Reports may be made under the provisions of this subsection by any interested person. With respect to the form of such motions, the provisions of Rule 27(d) apply; in all other respects, such motions must comply with the following:

(1) Time to File. Such a motion shall be filed within 14 days after the filing of the order. Parties may not stipulate to extend this time period, and any motion to extend this time period must be filed before the expiration of the 14-day deadline.

(2) Response. No response to such a motion shall be filed unless requested by the court.

(3) Contents. Such a motion must be based on one or more of the criteria for publication set forth in Rule 36(c)(1)(A)-(C). The motion must state concisely and specifically on which criteria it is based and set forth argument in support of such contention. If filed by or on behalf of a nonparty, the motion must also identify the movant and his or her interest in obtaining publication.

(4) Decision. The granting or denial of a motion to publish is entrusted to the sound discretion of the panel that issued the disposition. Publication is disfavored if revisions to the text of the unpublished disposition will result in discussion of additional issues not included in the original decision.

(5) Resolution of motion to publish filed in the Court of Appeals when NRAP 40B petition is pending in the Supreme Court. When a motion to publish is pending in the Court of Appeals, resolution of any pending petition for review filed in the Supreme Court will be held in abeyance until the motion to publish is resolved.

RULE 41. ISSUANCE OF REMITTITUR; STAY OF REMITTITUR

(a) ~~When Issued; Contents.~~

~~(1) When Issued. The court's remittitur shall issue 25 days after the entry of judgment unless the time is shortened or enlarged by order. Unless an appeal or other proceeding is dismissed under Rule 42, a formal remittitur shall issue.~~

~~(2)]Contents.~~ A certified copy of the judgment and ~~[opinion]~~ written decision of the court~~[, if any,]~~ and any direction as to costs shall be included with the remittitur.

(b) When Issued. The court's remittitur shall issue 25 days after the entry of judgment unless the time is shortened or enlarged by order. Unless an appeal or other proceeding is dismissed under Rule 42, a formal remittitur shall issue.

(c) Effective Date. The remittitur is effective when issued.

~~(b)](d) Stay of Remittitur.~~

(1) Petition for Rehearing or En Banc Reconsideration. The timely filing of a petition for rehearing or en banc reconsideration stays the remittitur until disposition of the petition, unless the court orders otherwise. If the petition is denied, the remittitur shall issue 25 days after entry of the order denying the petition, unless the time is shortened or enlarged by order.

(2) Petition for Review by Supreme Court. The timely filing of a petition for review by the Supreme Court of a Court of Appeals' decision shall stay the issuance of the remittitur of the Court of Appeals. Upon the issuance of an order denying a petition for review, the clerk of the Supreme Court shall issue the remittitur.

(3) Application for Certiorari to the United States Supreme Court.

(A) A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of certiorari. The motion must be served on all parties and must show that the petition would present a substantial question and that there is good cause for a stay.

(B) The stay shall not exceed 120 days, unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the Supreme Court of Nevada a notice from the clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court of the United States.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the remittitur.

(D) The clerk of the Supreme Court shall issue the remittitur immediately when a copy of a United States Supreme Court order denying the petition for writ of certiorari is filed.