

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
Director and State Court
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MEETING SUMMARY
COMMISSION ON NRAP

DATE AND TIME OF MEETING: April 25, 2022

PLACE OF MEETING: Remote Access via BlueJeans

Members Present:

Justice Kristina Pickering	Justice Abbi Silver	Sally Bassett
Alexander Chen	Kelly Dove	Robert Eisenberg
Charles Finlayson	Judge Michael Gibbons	Adam Hosmer-Henner
Phaedra Kalicki	Debbie Leonard	Emily McFarling
John Petty	Steve Silva	Don Springmeyer
David Stanton	JoNell Thomas	Deborah Westbrook
Sally Bassett		
Sharon Dickinson (guest)	Darin Imlay (guest)	

Call to Order, Welcome, and Announcements: Justice Pickering called the meeting to order at 12:01 p.m.

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

Approval of March 28, 2022, Commission Meeting Minutes: Justice Pickering moved, and Justice Silver seconded to approve the minutes as presented. Motion carried unanimously.

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

NRAP 17 Subcommittee report (Proposal for NRAP 17) – Ms. Westbrook gave a brief description of the most current draft, version C. The subcommittee recommends a three-part structure of: (a) specific “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.” “Ordinarily” replaces the term “presumptively” to allow more flexibility in case assignments. Cases originating in business court was moved from subsection (a) to (b).

At the request of Ms. Westbrook, Darin Imlay, from the Clark County Public Defender's office addressed a proposal that was made after the March 28, 2022, meeting to place all juvenile cases under subsection (c), including NRS 62B.390 juvenile certification cases. Mr. Imlay advised that juvenile certification cases are the most serious cases and cannot be handled by family or juvenile court. Once the juvenile is certified, the cases are assigned to criminal court. He also advised that most of the certification cases handled in Clark County involve category A and B felonies. If convicted, the juvenile faces decades in prison. Therefore, those cases should always be retained by the Supreme Court.

Proposed amendment:

17(c) Cases Ordinarily Assigned to Court of Appeals.

...

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

At the April 25, 2022, NRAP Commission Meeting, almost all members present recommended keeping this language the same. However, Justices Pickering and Silver voted to change the language to the following: "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." The subcommittee unanimously recommended that the tort rule not be changed and that included members that previously recommended changes.

At this point it was decided to see where the committee members stood on individual sections of the proposed NRAP 17 revisions.

Ms. Westbrook moved to accept the following proposed amendments: place NRS 62B.390 juvenile certification cases with the cases always retained by the Supreme Court and all family law matters other than termination of parental rights with the cases ordinarily assigned to the Court of Appeals. Justice Pickering seconded the motion. No one had any concerns or questions and the motion passed.

The committee then moved to the business court proposals. Justice Pickering said that she supports the proposal to place them with the cases ordinarily retained by the Supreme Court. She said that business court cases are not always created equal and do not need to be mandatorily assigned to the Supreme Court.

Judge Gibbons commented that when he spoke with Retired Justice Gibbons about these proposals, his thoughts were much the same as Justice Pickering's. The arguments against removing business court cases from mandatory Supreme Court assignment are that this signals to attorneys that business court cases are given the highest priority and the parties will not have to incur the higher costs of going through two rounds of appellate procedures. The argument in favor of moving them to cases ordinarily retained by the Supreme Court is that many of the cases do not necessarily need that level of attention and the Court should be able to assign them on a case-by-case basis.

Mr. Silva moved to approve the proposal leaving the business court cases under mandatory assignment to the Supreme Court and Ms. Kalicki seconded. A majority of the commission members favor moving the cases to the “ordinarily assigned to the Supreme Court” section while a minority favor leaving it with mandatory assignment to the Supreme Court.

Ms. Westbrook moved to approve the proposal to place contract dispute cases under cases ordinarily assigned to the Court of Appeals as well as the proposal to increase the amount in controversy from \$75,000 to \$150,000. Mr. Silva seconded, and the motion passed.

Justice Pickering moved to have the commission submit alternate NRAP 17 proposals to the Supreme Court and Ms. Westbrook seconded. Motion passed.

NRAP 9-13 & 30 Subcommittee report (Proposals for NRAP 9 & 30) – Mr. Springmeyer presented the subcommittee’s draft NRAP 9 proposal, which reads:

NRAP 9(c) Duty of Court Reporter or Recorder.

(4) Extension of Time to Deliver Transcript.

(E) Effect of Extension on Briefing Schedule. If the Supreme Court grants a court reporter or recorder’s request for an extension of time for the preparation of a transcript, it shall grant an equal extension of time to the party that requested the transcript to submit their briefing.

Ms. Westbrook suggested this proposal because there have been times in the past where the Court Reporter requested extra time to deliver the transcript, which left the party with less time to review the transcript prior to the deadline for their brief. She said that the Court does not always grant an extension to the party. Following discussion by the commission members, the current proposal was withdrawn. A revised proposal may be submitted to Abe Smith, as a possible amendment to NRAP 31(b) – Extensions of Time for Filing Briefs.

Mr. Springmeyer presented the subcommittee’s draft NRAP 30(b)(6) proposal:

(6) Presentence Investigation Report. If a copy of appellant’s presentence investigation report is necessary for the Supreme Court’s or Court of Appeals’ review in a criminal case ~~and a copy of the report cannot be included in the appendix~~, appellant or respondent shall file a motion with the clerk of the Supreme Court within the time period for filing ~~an opening brief or fast track statement~~ the party’s appendix, requesting that the court direct the district court clerk to transmit the report to the clerk of the Supreme Court in a sealed envelope. The motion must demonstrate that the report is necessary for the appeal.

Ms. Westbrook explained that this proposal was made in part from the District Attorney’s office to give them permission to request PSI reports when they are the respondent in a case. The proposal to delete the text, “and a copy of the report cannot be included in the appendix,” was suggested by Mr. Eisenberg because NRS 176.1565 mandates that PSIs are confidential and must not be made any part of the public record. Therefore, the language is unnecessary.

Ms. McFarling pointed out that family law cases also have a significant amount of confidential file documents that could be included in this same section of the rule and offered to draft some language for consideration.

Other NRAP 30(c) revisions the subcommittee considered:

1. Elimination of the alpha index of the appendix or filing it as a separate document
2. Removal of the 250-page limitation for each volume of the appendix including the unstated, but functional 12-megabyte limitation for uploading each volume of the appendix (48 megabytes total for all volumes combined)

Ms. Kalicki explained the combined technological and resource issues which prevent the Court from increasing the megabyte limitation at this time and cannot be addressed in a rule. The Court is looking at some different options and potential enhancements, but much of that depends on whether the Court can get funding from the Legislature. Mr. Springmeyer said they would drop that suggestion at this time.

After further discussion on the issues related to the alpha index, Mr. Finlayson suggested allowing the index to be filed separately with a requirement that it to be searchable. That way, the index can be searched alphabetically and chronologically. Justice Pickering commented that the suggestion might be a good compromise and if an attorney is unable to submit a searchable index, then they will have to provide both an alpha and a chronological index, which would be filed separately. That may incentivize them to invest in the software necessary to create searchable documents.

Mr. Springmeyer advised that his subcommittee will bring a new proposal back to the commission at the next meeting.

Ms. Thomas suggested she would like to see the courts get to the point where only court recorders are used for criminal cases because of issues that have occurred in the past, i.e., a court reporter quits and keeps the stenographic record, leaving the court and parties without a transcript. After discussion Justice Pickering requested that Ms. Thomas do some research and report back to the commission.

The next meeting was scheduled for May 23, 2022.

Meeting adjourned at 1:17 p.m.