11-18-21 – NRAP 40, 40A, 40B Subcommittee Discussion (via email)

Chair: Deborah Westbrook
John Petty
Colby Williams
Steve Silva
Charlie Finlayson
Sharon Dickinson
Jenny Noble

After our 11-9-21 meeting, the group continued discussing various issues via e-mail, including the following:

(1) Whether it is preferable to use the word "answer" or "response" to refer to the document filed after a petition for rehearing, reconsideration, or review:

- Steve – I prefer response, but I only really care that we use the same word throughout. This might be one where we need to discuss with the whole group on how to treat responsive documents to various filings.
- Charlie – I vote for response because it's what the federal rule uses.
- Colby – I don't feel strongly about answer vs. response. Response feels like the better choice to me, but agree with Steve that the primary goal should be the consistent use of one or the other.
- Deborah – Like Colby, I don't feel strongly one way or the other, but prefer consistency, and given our task is to try to align with the federal rules, I would probably lean toward response.
- John – I think the language should be consistent throughout these three rules.
- Sharon – I like the word answer. I believe the court uses the word answer in writs and if we use the word answer here then the documents filed will contain uniform language. It seems like the word response is used interchangeably in the rules for different types of documents - for an opposition, a reply, or in fast track rules.
- Jenny – I agree that "Response" is more appropriate. When I think of Answer I think of a more general denial/concession document to enumerated allegations.

(2) Whether the subcommittee prefers to use longer language or shorter language in the 3 rules when discussing length and type-volume limitations:

> Version 1: Except by permission of the court, a petition for en banc reconsideration, or an answer to such a petition, may 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.
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> Version 2: Except by permission of the court, a petition for en banc reconsideration, or an answer to the petition, may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text.

- Steve – prefers the shorter version.
- Colby – I prefer the shorter sentence as well.
- Charlie – Longer just because of the double or in the shorter version.
- John – prefers the longer version.
- Deborah – I prefer the longer version.
- Sharon – prefers longer.

(3) Whether (for Rule 40) we want to recommend adopting language from FRAP 40(a)(1) which allows government parties in civil cases to have 45 days to petition for rehearing, presumably to allow the government additional time to consider whether to challenge a ruling, given bureaucratic issues involved in making such decisions.

- Steve: As a person who primarily represents outside counsel, I think a 45 day rule is appropriate. This is especially urgent in light of the Hansen decision, which could be read as obligating government entities to have full-blown public meetings on a petition for review (because it goes from one court to another).
- Charlie: I say flag it, but don't add it. No one has asked for it as far as I'm aware of, and you can always ask for more time to file your petition explaining that you need time to discuss the decision with relevant parties.
- Colby: I lean against including a blanket 45-day period for government agencies. If more time is needed, an extension can be requested based on the specific facts.
- John: is agnostic on the 45 days.
- Deborah: I would love to hear from other practitioners who represent government entities with experience in this area before making a recommendation one way or another.
- Sharon: My opinion: I do not think the agencies in Nevada have the same structure as there is in the federal system. So I see no need for the addition time.