

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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COMMISSION ON NRAP

DATE AND TIME OF MEETING: October 25, 2021, 12:00-1:30 p.m.

PLACE OF MEETING: Remote Access via BlueJeans

Members Present:

Justice Kristina Pickering	Justice Abbi Silver	Kelly Dove
Micah Echols	Robert Eisenberg	Dayvid Figler
Charles Finlayson	Travis Gerber	Hon. Michael Gibbons
Adam Hosmer-Henner	Phaedra Kalicki	Debbie Leonard
Emily McFarling	John Petty	Daniel Polsenberg
Steven Silva	Abraham Smith	Jordan Smith
JoNell Thomas	Anne Traum	Deborah Westbrook
J. Colby Williams	Sally Bassett	Alexander Chen
Don Springmeyer		

Call to Order, Welcome, and Announcements: Justice Pickering called the meeting to order at 12:01 p.m., welcomed everyone, and thanked them for undertaking this project. Some of the members previously served on the Nevada Rules of Civil Procedure (NRCP) committee, such as Don Springmeyer, Bob Eisenberg, and Dan Polsenberg, to name a few. Justice Pickering stated it was an incredible amount of work, but the committee accomplished a lot and did a good job for the Nevada Court system. The Nevada Rules of Appellate Procedure (NRAP) are only half as long as the NRCP and she is hopeful that this project will not be as difficult or take as long. The Nevada Supreme Court Justices are grateful to the committee members for contributing their immense time

and talent for this project.

Roll call was taken and a quorum was in attendance.

Overall Approach of the NRAP Committee: The goal of the first meeting was to give an overview of the project and the work to be done. Counterpoint sections of the NRAP and FRAP were prepared and distributed ahead of time so that the committee members have a point of reference. Justice Pickering advised that the NRCP committee found it helpful to review Nevada's rules in comparison to the FRCP, which evolved after their adoption. They descended from the same original language, but over time, each evolved in different ways becoming traps for the unwary. Nevada's rules contain archaisms that have not been kept up-to-date and will need to be brought into sync with the modern view. Justice Pickering suggested that the committee members compare the FRAP and NRAP as a helpful point of reference for future discussions. A commission website will be created by AOC to which the meeting minutes, agendas, and other meeting materials will be posted, which will maximize input from practitioners beyond this committee.

The NRCP committee also found it helpful in the beginning to identify which rules may not need amending and which ones may be more contentious. Surprisingly, some of the rules they thought would be utterly uncontroversial ended up taking a lot more time and others that they thought would be controversial were not. Justice Pickering asked the committee members to think about this when they are reviewing the NRAP and FRAP.

Some obvious examples of rules that may not need to be addressed are NRAP 2 – Suspension of Rules, which is verbatim to FRAP 2; NRAP 37 – Interest on Judgments, again verbatim to FRAP 37 and does not even need revising for archaic language. Outdated rules would be those that refer to multiple physical copies of documents, signature copies, or are related to policy questions that may have been added to the NRAP at a time when they were necessary, but are no longer so. Any rules that can be taken out of contention will be posted on the AOC website. After an earlier meeting of the Bench-Bar Committee, some of its members prepared memos that will be helpful to the NRAP committee. With permission of the authors of those memos, will be posted to the AOC website. **Some of the rules identified in those members are outlined below.**

In order to facilitate the work of this committee, the following subcommittees were created:

Identification Subcommittee. Abe Smith, Chair, Emily McFarling, JoNell Thomas, Jordan Smith, and Justice Pickering. This subcommittee will review and compare the FRAP and NRAP to come up with separate lists of rules that may or may not need to be amended as well as identifying future subcommittees to address the amendments. They may also want to look at the U.S. Circuit Court rules, which might spark something that may have been missed or not previously addressed. There are also rules in odd spots; for example, the Nevada Supreme Court's Internal Operating Procedures has a rule that if the Court is going to venture into an issue not directly raised by the parties, the Court shall normally ask for supplemental briefing.

NRAP 3C Fast Track Criminal Appeals. JoNell Thomas and Deborah Westbrook as Co-Chairs; Alex Chen and Charles Finlayson as prosecutors; John Petty and Dayvid Figler for the criminal defense side; Anne Traum; and Phaedra Kalicki, who is head of the Court's Central Legal Staff and does both criminal and civil.

NRAP 4 Appeal – When Taken. Bob Eisenberg, chair, Dan Polsenberg, Deborah Westbrook, John Petty, Micah Echols, Abe Smith, and possibly Alex Chen, who had to leave the meeting early.

NRAP 29 Brief of an Amicus Curiae. Micah Echols, chair, Colby Williams, Steve Silva, Deborah Westbrook.

NRAP 30 Appendix to the Briefs. Don Springmeyer, chair, Robert Eisenberg. This subcommittee was initially left at two. Any other members who would like to volunteer can contact Justice Pickering or Justice Silver.

NRAP 36 Entry of Judgment. Justice Silver, Judge Michael Gibbons, John Petty, Colby Williams

NRAP 40A Petition for En Banc Reconsideration. Deborah Westbrook is interested in potentially chairing a subcommittee on this issue to bring it closer in line with FRAP 35C, which allows you to petition for EB Reconsideration without first petitioning for rehearing. Justice Pickering would like that to include discussion on Petitions for Rehearing and Petitions for Review from the Court of Appeals. The subcommittee can identify other issues that exist if they are considered together.

Pro Se Rules/Issues. Anne Traum, chair, Justice Pickering, Kelly Dove, Dayvid Figler, Charles Finlayson, and Phaedra Kalicki. Pro Se litigants make up about one-half of the Nevada Supreme Court's docket as well as other courts of appeal. The Pro Se rules show up in a variety of places. In Nevada, Pro Se litigants are not allowed to argue their cases. Anne Traum has done some research and says that Nevada is not in the majority in terms of how it treats Pro Se litigants and their access to the courts. Anne Traum would like to figure this out and research where the rules are so they can be brought together.

The next meeting will be held on November 22, 2021. Justice Pickering asked that the subcommittee chairs advise her or Justice Silver by November 12 if they will have anything to present and if so, when it will be ready so that the agenda can be prepared so that everyone will have time to review it prior to the meeting.

The meeting was adjourned at 1:01 p.m.