

**NRAP 8, 21, and 27 Subcommittee Meeting Notes
December 21, 2021**

NRAP 8

- Add a deadline to seek appellate extension of district court’s stay of order or judgment. *See* 9th Cir. R. 27-2 (“If a district court stays an order or judgment to permit application to the Court of Appeals for a stay pending appeal, an application for such stay shall be filed in the Court of Appeals within 7 days after issuance of the district court’s stay.”).
 - Consensus: Agreed. Mr. Polsenburg suggested 14 days to be consistent with NRAP 27.

- Require the motion to include a copy of the relevant order or judgment. *See* 11th Cir. R. 8-1 (“Motions for stay or injunction pending appeal must include a copy of the judgment or order from which relief is sought and of any opinion or findings of the district court.”); 7th Cir. R. 8 (“Filing with the motion a copy of the order or memorandum of decision in which the reasons were stated, or if they were stated orally in open court, a copy of the transcript of proceedings is preferred; but, in an emergency, if such a copy is not available, counsel's statement of the reasons given by the district or bankruptcy court will suffice.”); Fed. Cir. R. 8(a).
 - Consensus: Agreed. Ms. Kalicki thought the Seventh Circuit Rule might work best because it covers scenarios where the written order has not been entered yet.
 - Next Steps: Mr. Petty provided proposed language for the subcommittee to consider.

- Modify title of NRAP 8(c) to include injunctions (“Stays **or Injunctions** in Civil Cases Not Involving Child Custody.”).
 - Consensus: Agreed.

- Allow for rehearing or en banc reconsideration. *See* 11th Cir. R. 8-2 (“A motion to reconsider, vacate, or modify an order granting or denying relief under FRAP 8 must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing.”).
 - Discussion: Ms. Kalicki thought this addition may be more appropriate for NRAP 27 and had concerns about the Eleventh Circuit’s 21-day deadline. Mr. Abe Smith expressed concerns about the applicable standard.
 - Consensus: Perhaps unnecessary if already covered or allowed by current rules.

- Clarify relationship to Emergency Motions in NRAP 27(e). *See* 4th Cir R. 8 (“Filing and assignment of emergency motions for stay or injunction pending appeal are governed by Local Rule 27(e)”).
 - Consensus: Unnecessary because NRAP 27(e) already applies, and a specific reference may be more likely to confuse practitioners.
- Allow Court to expedite underlying appeal. *See* 9th Cir. R. 3-3(c) (“If a party files a motion to expedite the appeal or a motion to grant or stay the injunction pending appeal, the Court, in resolving those motions, may order a schedule for briefing that differs from that described above.”).
 - Consensus: Unnecessary because the rules already allow parties to expedite proceedings.
- Allow dispositive motion to be combined with a motion for stay/injunction or opposition thereto. *See* D.C. Cir. R. 8(b) (“A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the appeal in its entirety. When a response to a motion for a stay or other emergency relief is combined with a dispositive motion, the combined pleading may not exceed 7,800 words if produced using a computer and 30 pages if handwritten or typewritten. The response to such a combined pleading may not exceed 3,900 words if produced using a computer and 15 pages if handwritten or typewritten. The final reply may not exceed 2,600 words if produced using a computer and 10 pages if handwritten or typewritten.”).
 - Consensus: Unnecessary because parties are already able to make this type of request with an NRAP 8 motion.
- Add a provision for interim or administrative stays.
 - Consensus: Unnecessary to keep the Court’s flexibility. Mr. Jordan Smith expressed concern that infrequent practitioners may not know this is available.
- Modify NRAP 8(f) to track NRS 176.488
 - Consensus: This may be needed if no separate rules are adopted for death penalty cases.
- Adopt separate rule(s) for preliminary injunction appeals. *See* 9th Cir. R. 3-3.
 - Discussion:
- Modify NRAP 8(c) to address stays in criminal cases.
 - Discussion: Mr. Petty circulated proposed language for consideration at the subcommittee’s next meeting.

NRAP 21

- Include the standard the Court uses when deciding whether to direct an answer. *E.g.*, “arguable merit.” *See Gallen v. Eighth Jud. Dist. Ct. In & For Cty. of Clark*, 112 Nev. 209, 211, 911 P.2d 858, 859 (1996) (“Because it appeared that Gallen may have set forth issues of arguable merit, on June 29, 1995, we ordered King to file an answer to the petition. King filed his answer on July 19, 1995.”); *Zebe v. State, Cty. of Lander*, 112 Nev. 1482, 1484, 929 P.2d 927, 928 (1996) (same); *State ex rel. List v. Douglas Cty.*, 92 Nev. 114, 115, 546 P.2d 235, 236 (1976) (“In the answer to the instant petition, which was ordered pursuant to NRAP 21(b), Douglas County and its commissioners fail to present arguable cause against issuance of the writ.”).
 - “We conclude that an answer may assist this court in resolving the petition.”
 - 9th Cir. R. 21-4 Advisory Committee Note (“If the panel does not believe that the petition makes a prima facie showing justifying issuance of the writ, it will deny the petition forthwith. That denial is not regarded as a decision on the merits of the claims. In other instances, the panel will direct that an answer and reply may be filed within specified times. The panel may also issue a stay or injunction pending further consideration of the petition.”).
 - Discussion: Possibly unnecessary because the Court has made the decision not to use the “arguable merit” standard and the Court will have more flexibility without stating a specific standard. There may be a need to ensure a uniform standard between the Supreme Court and Court of Appeals.
- Clarify permissible materials in the appendix i.e. original proceeding that does not arise from a lower court v. an original proceeding challenging a ruling from a lower court.
 - Consensus: Agreed. This may cut down on motions to strike. An amendment may need to include a cross-reference to NRAP 30.
- Mirror FRAP 21(d) length requirement of 7,800 words (about 31 pages double spaced).
 - Consensus: Leave as is. Mr. Jordan Smith was inclined to adopt the federal word limit.
- Address concurrently filed emergency motions. *See* 4th Cir. R. 21(b) (“A motion for emergency relief pending determination of the petition may be filed and will be assigned in accordance with Local Rule 27(e).”).
 - Consensus: Unnecessary.

- Deadline to direct an answer. *See* 8th Cir. R. 21.A (“Within 14 days after the filing of the petition, or as the court orders, the court must either dismiss the petition or direct that an answer be filed.”).
 - Consensus: Any particular deadline is likely unrealistic.
- Allow Court to grant a petition without answer in emergency cases. *See* 9th Cir. R. 21-4 (“Except in emergency cases, the Court will not grant a petition without a response.”).
 - Consensus: Unnecessary because the Court can always grant a stay and expedite briefing. The Court also has inherent authority to grant a petition without answer in the exceptional case.
- Address amicus briefs. *See* Fed. Cir. R. 21(e) (“An amicus curiae brief supporting a petition must be accompanied by a motion for leave to file and be filed no later than four (4) days after the petition is docketed. An amicus curiae brief in opposition to a petition must be accompanied by a motion for leave and be filed no later than the date the court directs for parties to respond to the petition. The court may act on the petition before leave is sought, and thus the filing of a brief and a motion for leave should be expedited if appropriate. Federal Rules of Appellate Procedure 29(a)(3) and 29(a)(4) apply to the motion and brief, except that the brief may not exceed 3,900 words if prepared electronically or fifteen (15) pages otherwise.”).
 - Consensus: A good idea but perhaps address it in NRAP 29 with a reference to “7 days after the brief *or petition*”
- Address panel rehearing, en banc reconsideration, or petitions for review. *See* Fed. Cir. R. 21(f) (“Federal Rule of Appellate Procedure 40 and Federal Circuit Rule 40 apply to any petition for panel rehearing. Federal Rule of Appellate Procedure 35 and Federal Circuit Rule 35 apply to any petition for rehearing en banc or a combined petition for panel rehearing and rehearing en banc.”).
 - Consensus: Unnecessary because the rules already allow it without any specific reference.
- Panel rehearing, en banc reconsideration, or petitions for review of decision to deny writ petition without answer.
 - Consensus: Unnecessary.
- Add reference in NRAP 21(a)(5) to affidavit “or declaration.”
 - Consensus: Agreed.