

NRAP 8 – Proposed

RULE 8. STAY OR INJUNCTION PENDING APPEAL OR RESOLUTION OF ORIGINAL WRIT PROCEEDINGS

(a) Motion for Stay.

(1) **Initial Motion in the District Court.** A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring or granting an injunction while an appeal or original writ petition is pending;

(D) if a district court stays an order or judgment to permit application to the Supreme Court for a stay pending appeal, an application for such stay shall be filed in the Supreme Court within 14 days after issuance of the district court's stay.

(2) **Motion in the Court; Conditions on Relief.** A motion for the relief mentioned in Rule 8(a)(1) may be made to the Supreme Court or the Court of Appeals or to one of its justices or judges.

(A) The motion shall:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion shall also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record including the order or memorandum of decision in which the reasons or findings 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 court will suffice until an order or transcript is available.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) In an exceptional case in which time constraints make consideration by a panel impracticable, the motion may be considered by a single justice or judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) Proceedings Against Sureties. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district court clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district court clerk, who shall promptly mail a copy to each surety whose address is known.

(c) Stays or Injunctions in Civil and Criminal Cases but Not Cases Involving Child Custody. In deciding whether to issue a stay or

injunction, the Supreme Court or Court of Appeals will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

(d) Stays in Civil Cases Involving Child Custody. In deciding whether to issue a stay in matters involving child custody, the Supreme Court or Court of Appeals will consider the following factors: (1) whether the child(ren) will suffer hardship or harm if the stay is either granted or denied; (2) whether the nonmoving party will suffer hardship or harm if the stay is granted; (3) whether movant is likely to prevail on the merits in the appeal; and (4) whether a determination of other existing equitable considerations, if any, is warranted.

(e) Stays in Criminal Cases; Admission to Bail. Stays in criminal cases shall be had in accordance with the provisions of NRS 177.095 et seq. Admission to bail shall be as provided in NRS 178.4873 through 178.488.

(f) Stay of Execution of Death Penalty. Immediately upon entry of an order of the Supreme Court staying execution of the death penalty, the clerk shall deliver copies thereof to the Governor of Nevada, the Director of the Department of Corrections, the warden of the institution in which the offender is imprisoned and the Office of the Attorney General in Carson City.