Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
Director and State Court Administrator

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MEETING SUMMARY
COMMISSION ON NRAP

DATE AND TIME OF MEETING: August 16, 2023
PLACE OF MEETING: Remote Access via Zoom

Members Present:

Justice Kristina Pickering	Judge Michael Gibbons	Judge Bonnie Bulla
Judge Deborah Westbrook	Sally Bassett	Alexander Chen
Sharon Dickinson	Kelly Dove	Bob Eisenberg
Adam Hosmer-Henner	Emily McFarling	Erica Medley
Julie Ollom	John Petty	Dan Polsenberg
Abe Smith	JoNell Thomas	Colby Williams

Call to Order, Welcome, and Announcements Justice Pickering called the meeting to order at 11:31 a.m. She welcomed everyone stating that she hopes this will be the second to the last meeting. If not, one more meeting may need to be scheduled.

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

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

Approval of July 19, 2023, Commission Meeting Minutes Julie Ollom moved, and Sally Bassett seconded to approve the minutes as presented. Motion passed unanimously.

Discussion Items:

NRAP 1, 26.1, 28.2, 38, 47, & 48 Scope and Operation of Rules; Regulation of Parties, Attorneys, and Clerk Subcommittee – Adam Hosmer-Henner

Rule 1 Scope, Construction of Rules. Mr. Hosmer-Henner explained that the draft proposal includes a small amount of clean up and changing "shall" to "must" where appropriate.

Judge Westbrook asked if "shall" is going to be anywhere in these rules such that we need to say that "shall" is mandatory, or has everything been replaced with "must."

Mr. Hosmer-Henner stated that it is his understanding that there are instances where "must" does not make sense and "shall" is left in there. He does not see any reason to not continue to define it as mandatory.

Judge Bulla moved and Judge Westbrook seconded to approve the proposed changes to NRAP 1. The motion passed unanimously.

Rule 26.1. Disclosure Statements. Mr. Hosmer-Henner explained that there are two proposed changes to sections (a) and (c). The subcommittee recommends deleting **(c) Number of Copies** since it relates to paper copies of documents. With respect to **(a) Who Must File Statement and Contents,** the primary changes simplify the rule further to bring it more into conformity with the federal rule and to distinguish between the disclosure and identification of the parties' attorneys and parent company. There is a difference between the identification of the attorneys, which all parties need to disclose, and the identification of the interested financial parties and corporations, which only some entities need to do.

Judge Westbrook questioned what the thinking was with respect to that particular recommendation. Government parties and attorneys for those government parties would be required to disclose the names of all attorneys with any relation to the case. This may create issues with the public defender's and DA's offices where there can be multiple attorneys in a case. In any criminal case you could have any number of attorneys that might appear at a setting in justice court or district court.

Mr. Hosmer-Henner explained that the genesis of this rule was to make sure that a potential conflict or some attorney's involvement in the case didn't disappear just because their name was left off the appellate caption. He presumed that the same rationale for requiring disclosure of the attorneys who appeared in the district court in a civil case would apply to the criminal section as well. Judge Westbrook asked to hear the thoughts of the criminal practitioners and government attorneys.

Discussion Highlights:

- The Clark County Special Public Defender's office has not filed a disclosure statement since shortly after the rule was enacted and to my knowledge it's never been a problem. There could possibly be a situation if, for instance, the spouse/partner of a sitting Appellate Court Judge or Justice was one of the primary attorneys on a case; or there might be limited other situations, but even if they appeared on a status check as a substitution one day, I am not sure if that that would really present a conflict. If there is value to the court, have the government attorneys file them, but if there is minimal value it would be nice to skip this.
- Because it's such a small community, lately we are getting more identifications of potential conflicts where the courts have identified some kind of connection to the parties in a case and give a set amount of time for either party to challenge it. We never challenge it because we believe that everybody is capable of doing the job fairly. I don't know what this would necessarily do.

- I don't want to build a requirement into a rule that is not followed. Comparing this to the federal rule's disclosure statement, the primary focus is not on the counsel as much as on the parties and the parties' affiliates with private parties, in civil cases primarily.
- The clerk's office does not look at the disclosure statement unless it's received early. It's not always clear who the previous attorneys were, so if they are listed in a disclosure statement, then it may be a tool for the judges and justices to be able to look at and make sure they don't need to be disqualified or possibly need to file a disclosure notice.
- The Clark County Public Defender's Office would file a notice disclosing just the agency name, but not every person that touched the file.
- Even for the non-government parties, requiring disclosure of all attorneys in addition to law firms could be a huge burden because the parties will need to name every attorney or associate who has ever appeared in the case.
- Adding this disclosure may not be any more beneficial for the clerk's office than the current procedure.
- It would be better to keep the lead sentence focused on the parties and party affiliates. That information is more important for conflict purposes than a list of attorneys.

After further discussion this item was tabled until the September meeting to revise the draft. Disclosures will be limited to names of law firms and corporate affiliations and parents. The revised draft will be similar to the federal rule.

Rule 28.2. Attorney's Certificate. Mr. Hosmer-Henner pointed out the one proposed amendment in 28.2(b)—changing "shall" to "will." He then stated that 28.2 is usually combined in practice with Rule 32 and seems to be, to some extent, redundant and duplicative regarding ethical rules. He suggested merging 28.2 into Rule 32.

Mr. A. Smith advised that his subcommittee is working on Rule 32, which mirrors the shorter federal rule. He is not sure why there are two separate rules either.

Ms. Ollom advised that 28.2 includes a representation that the attorney read the brief and that the brief complies with all applicable rules, which is not in 32.

After further discussion on the language in the certificate that currently applies only to attorneys and whether pro se litigants should also have to file a certificate, it was decided they would try and come up with an amendment to Rule 32 which would incorporate language from Rule 28.2. Mr. Hosmer-Henner will work with Mr. A. Smith and come up with a draft for the next meeting.

Rule 38. Frivolous Civil Appeals—Damages and Costs. The proposed amendment would consolidate the two existing sections into one. The rule is substantively changed to remove the "appeal being occasioned by respondent's imposition on the court below" language as a basis for a sanction and to provide the alleged offending party an opportunity to respond prior to the court imposing any sanction. After a lengthy discussion, Ms. Ollom moved to approve the proposed amendment with the removal of "such" and the removal of 's on "attorney's fees" and approve it as otherwise written. Ms. McFarling seconded the motion. Motion passed unanimously.

Rule 47. Rules of Appellate Practice. Mr. Hosmer-Hener advised that the proposed amendment to 47(a) would allow rules to be amended after giving public notice and opportunity to comment. He suggested deleting 47(b), which appears to be a style guide for referencing amended rules and does not seem to fit with the appellate rules. It's his understanding from a conversation with the clerk's office that that's the way it's done anyway. After discussion, Mr. Hosmer-Henner moved to approve the proposed amendment to Rule 47(a), leaving 47(b), and deleting the proposed comment. Justice Pickering seconded, and the motion passed unanimously.

Rule 48. Title. There were no proposed amendments to Rule 48. Mr. Hosmer-Henner moved, and Ms. Ollom seconded to leave Rule 48 in its current form. Motion passed unanimously.

The next item on the agenda was the following proposal:

> **Proposal to remove word and line counts from individual rules and add one rule stating:**
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> **A party may elect to count length using the number of words or number of lines. If counting by words, _____ words shall be considered one page. If counting by lines,____ ___ lines shall be considered one page. Any extension to the page limit shall be construed as extending the line or word count accordingly.**

Ms. McFarling is making this proposal but had not thought about a specific location in the rules where it would be appropriate to add it. She proposes deleting the word and line counts from all of the individual rules and replacing them with page counts. There would then need to be a rule added somewhere allowing for consistency with all of the other rules. When there is a motion to change a page count, it also encompasses a change to the word count and the line count, so that there does need to be a further request for an expansion of a word count or a line count.

In response to a question from Judge Westbrook, Ms. Ollom said this would impact the fast track rules, potentially the rules on the motions, Rule 28, 28.1, and possibly Rule 31, as well as all the rules related to rehearing, reconsideration, and review. She stated further that the consistency rule may fit into Rule 1.

Mr. A. Smith stated that he does not use line counts but thinks it's helpful to have word counts in the rules rather than having to do some kind of calculation for each of the individual rules. What might be valuable is that when you ask for an enlargement of the word count or the page count and the court grants an enlargement in terms of pages, you could translate it to words and vice-versa. If you are the one asking for the enlargement, you should be asking for it in the proper format, so you are getting what you want from the court.

Ms. Dove suggested looking at the federal rule which says that no page can have more than a certain number of lines as opposed to incorporating it into an overall length requirement.

After further discussion, it was decided that Ms. McFarling and Mr. A. Smith will try to come up with something for the next meeting, possibly incorporating it into Rule 32.

Justice Pickering stressed that she is open to discussing this but does not want it to become an impediment to wrapping up the Commission's work.

NRAP 3A Civil Actions Subcommittee – (Discussion only to get Commission's Guidance. No Handouts) – Abe Smith and Emily McFarling. There was a very long discussion on two

conceptual revisions for Rule 3A, one which would completely rewrite it to have different subsections for different types of cases. Mr. A. Smith's subcommittee will discuss the commission's comments and have drafts available for the next meeting.

The commission will have two additional meetings, set forth below, to wrap up the rest of the rule amendments.

Upcoming NRAP Commission meetings: September 28, 2023, 11 a.m. to 1:30 p.m. and October 19, 2023, 11:30 a.m. to 1:30 p.m.

The meeting was adjourned at 1:57 p.m.