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**NRCP 62.1 – Proposed
(Adopt Federal Rule, with comment)**

Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

(a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the appellate court ~~of appeals~~ remands for that purpose or that the motion raises a substantial issue.

(b) **Notice to the Supreme Court of Appeals.** The movant must promptly notify the ~~circuit~~ clerk of the supreme court under Nevada Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) **Remand.** The district court may decide the motion if the appellate court ~~of appeals~~ remands for that purpose.

DRAFTER’S NOTE—2017 AMENDMENT

This rule does not attempt to define the circumstances in which an appeal limits or defeats the district court’s authority to act in the face of a pending appeal. The rules that govern the relationship between the trial courts and the appellate courts may be complex, depending in part on the nature of the order and the source of appellate jurisdiction. Rule 62.1 applies only when those rules deprive the district

1 court of authority to grant relief without appellate permission. If the district court
2 concludes that it has authority to grant relief without appellate permission, it can
3 act without falling back on this procedure.

4 Under this rule, after an appeal has been docketed and while it remains
5 pending, the district court may entertain a motion which is subject to this rule and
6 deny the motion, defer consideration, or state that it would grant the motion if the
7 supreme court or the court of appeals remands for that purpose. The court may also
8 state that the motion raises a substantial issue which the district court would
9 consider if the appellate court granted remand. In general, the district court should
10 determine whether it in fact would grant the motion if the appellate court remands
11 for that purpose. But a motion may present complex issues that require extensive
12 litigation and that may either be made moot or be presented in a different context by
13 decision of the issues raised on appeal. In such circumstances, the district court may
14 prefer to state that the motion raises a substantial issue and to state the reasons
15 why it prefers to decide the motion only if the appellate court agrees that it would be
16 useful to decide the motion before decision of the pending appeal. The district court
17 is not bound to grant the motion after stating that the motion raises a substantial
18 issue; further proceedings on remand may show that the motion ought not be
19 granted.

20 To ensure proper coordination of proceedings in the district court and in the
21 appellate court, the movant must notify the clerk of the supreme court under NRAP
22 12.1 if the district court states that it would grant the motion or that the motion
23 raises a substantial issue. Remand is in the appellate court's discretion under NRAP
24 12.1.

1 This rule restates and is not intended to abrogate the law developed in
2 *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), and its progeny.

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