

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
Director and State Court
Administrator



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DRAFT MEETING SUMMARY
COMMISSION ON NRAP

DATE AND TIME OF MEETING: September 26, 2022

PLACE OF MEETING: Remote Access via Zoom

Members Present:

Justice Kristina Pickering	Justice Abbi Silver	Judge Michael Gibbons
Judge Bonnie Bulla	Sally Bassett	Alexander Chen
Kelly Dove	Micah Echols	Bob Eisenberg
Charles Finlayson	Adam Hosmer-Henner	Phaedra Kalicki
Debbie Leonard	Emily McFarling	John Petty
Dan Polsenberg	Steve Silva	Abe Smith
Jordan Smith	Don Springmeyer	JoNell Thomas
Colby Williams		
GUESTS		
Sharon Dickinson		

CALL TO ORDER, WELCOME, AND ANNOUNCEMENTS.

Justice Pickering called the meeting to order at 12:01 p.m. and made the following announcement: Justice Silver is retiring, and this will be her last day with the committee. Her contributions have been invaluable on so many different committees, commissions, courts, opinions, Pardons' Board, everything, and she may be the only person in the state who has been at every level of the courts system. Thank you for your service and thank you for your help on this committee, Justice Silver. You will be greatly missed.

Justice Silver thanked everyone and said that she is glad she was able to get some of the rules she was assigned voted on. She announced that she is passing the baton or the binder, so to speak, to Judge Bulla, who will take her place on the commission. Justice Pickering said that the commission is grateful that Judge Bulla will be joining them.

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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 27, 2022, COMMISSION MEETING MINUTES. Justice Pickering called for a motion to approve the July 27, 2022, minutes. Mr. Petty moved to approve the minutes as presented and Mr. Springmeyer seconded. Motion passed unanimously.

APPROVAL OF THE AUGUST 17, 2022, COMMISSION MEETING MINUTES. Justice Pickering called for a motion to approve the August 17, 2022, minutes. Mr. Petty moved to approve the minutes as presented and Mr. Springmeyer seconded. Motion passed unanimously.

DISCUSSION ITEMS.

NRAP 29. Brief of an Amicus Curiae: Mr. Echols discussed the current revisions which reflect the commission's discussion from a previous meeting:

- A "federally recognized tribe" was added to 29(a).
- The previously proposed revision to 29(a) regarding a blanket consent letter was removed.
- A reference to Rule 21(d) regarding the length of amicus briefs in writ proceedings was added to 29(d).
- The previously proposed revision to 21(f) that spelled out when you can and cannot file an amicus brief in writ proceedings was removed since timing is typically determined at the discretion of the court. The existing language which says the court can grant leave for a later filing if it's beyond the 7 days of the brief that it supports will remain.

The commission discussed the conflict between the word count for amicus briefs under 29(d) [one-half of the party's brief] and Rule 21(d) [7800 words]. Several members thought that it was one-half for both based on the court's 2020 ADKT 533 amendment of Rule 21. A suggestion was made and ultimately rejected to move all amicus references from Rule 21 to Rule 29 for those who do not practice appellate proceedings very often.

The commission discussed the 3500 word count for amicus briefs in post-judgment filings, 29(h) and decided to increase it to 4667 to match the word count allowed for initial post-judgment rehearing, reconsideration, and review briefs.

Mr. Silva moved to approve the proposed amendment with the revision to 29(h) as previously discussed. Mr. Springmeyer seconded the motion. Motion carried.

NRAP 8, 21 & 27 SUBCOMMITTEE REPORT (Proposals for NRAP 8, 21, & 27)

NRAP 21. Writs of Mandamus & Prohibition & Other Extraordinary Writs: Mr. J. Smith briefly discussed the proposed amendment with minimal edits made following the commission's discussion in a previous meeting. Mr. Silva moved to approve the proposed amendment as presented and Mr. Echols seconded. Motion carried.

NRAP 27. Motions: Mr. J. Smith presented the revised proposed draft. He explained that the big revision made after discussion during the July commission meeting was the addition of a new section (c) titled Motions for Reconsideration. This new section was modeled after 9th Circuit Rule 27-10. Mr. J. Smith said the commission should discuss whether it wants to specifically delineate motions for reconsideration and explain the difference or leave it a little more subtle. He explained that the subcommittee's initial concern was that specifying motions for reconsideration might encourage them. But following the commission's previous discussion, the subcommittee decided to add this section for the group's consideration.

Discussion highlights:

- This may create confusion with rehearing and reconsideration practice, particularly with pro se parties.
- Sections (c)(1) and (c)(2) set off the difference between regular motions for reconsideration and the petitions for rehearing. Section (c)(1) explains when a petition for rehearing should be granted as opposed to a motion for reconsideration.
- This amendment may not be necessary or even prudent. First, there is a section that says look at other rules. Second, there is a section that says, ok, there is a time limit for different kinds of motions for reconsideration.
- This will encourage motions for reconsideration and create a lot of ancillary litigation over whether section (c)(2)'s 14-day limit for filing such a motion should apply. The court can consider what the required showing is on a case-by-case basis.
- This addition is a good idea. Leaving it out because people may take advantage of it is not a good idea. If motions for consideration are allowed, the bar should be informed.

- One potential modification may be to add language stating that motions for reconsideration are disfavored and rarely granted.
- 27(a)(1) already indicates a party can get relief for most anything by motion. If they are not sure a petition for rehearing or a motion for consideration applies, why not just file a motion for reconsideration.
- Right now, the rules already allow for any motion. The only thing that should be specifically added to the rule is if a particular motion is precluded. Otherwise, it creates confusion.

A straw vote was held to determine where everyone was on the proposed amendment to add the motion for reconsideration section. The vote was split, and the commission decided to remove it.

The other revision to the amendment pertained to increasing the current 7-day response time in 27(a)(3)(A) *Time to File* to 10 days. This revision was made based on the discussion during the July meeting. After further discussion, Mr. Silva moved, and Mr. Eisenberg seconded to change it back to 7 days. Motion carried.

Mr. Springmeyer then moved to approve the current proposed draft with the deletion of proposed section (c) *Motions for Reconsideration* and the change of the 10-day response time in 27(a)(3)(A) back to 7 days. Mr. Silva seconded the motion. Motion carried.

NRAP 2, 37, & 43 (Proposal to make no amendments to these rules)

NRAP 2. Suspension of Rules: Justice Pickering advised that it has been determined that no amendments need to be made to this rule and asked if anyone disagreed. No disagreement. Mr. Silva moved, and Judge Gibbons seconded to leave NRAP 2 as is. Motion passed unanimously.

NRAP 37. Interest on Judgments: Justice Pickering advised that it has been determined that no amendments need to be made to this rule and asked if anyone disagreed. No disagreement. Ms. Leonard moved, and Mr. Silva seconded to leave NRAP 37 as is. Motion passed unanimously.

NRAP 43. Substitution of Parties: Justice Pickering advised that it has been determined that no amendments need to be made to this rule and asked if anyone disagreed. No disagreement. Mr. Silva moved, and Judge Gibbons seconded to leave NRAP 43 as is. Motion passed unanimously.

COMMISSION STATUS AND MEMBERSHIP

New Subcommittee (NRAP 3A) Justice Pickering announced that Ms. McFarling has a huge subcommittee (NRAP 3, 3A, 14, 16, & 33) and the work is more than they will be able to complete. She has asked if anyone is interested in taking NRAP 3A. Volunteers: Abe Smith as chair with members: Judge Bulla, Micah Echols, Emily McFarling, Kelly Dove is happy to help if they need another, Jordan Smith, Dan Polsenberg.

Commission's Work to Date & End Date Justice Pickering reminded everyone that when this commission was created, it was tasked with submitting a report to the Supreme Court with its findings and recommendations no later than October 31, 2022. Based on Ms. Bassett's status report, the commission is not going to meet that deadline. Justice Pickering asked what everyone thinks about extending the work of the commission and offered a graceful exit to anyone who felt this is too onerous. She suggested extending the work for another six months or until the end of April 2023. There was a brief discussion, and everyone agreed to the suggested extension.

UPCOMING DATES/EVENTS

The following meeting dates were scheduled:

October 25, 2022

November 15, 2022

December 15, 2022

Each meeting will be scheduled from noon to 1 p.m.

Meeting adjourned at 1:11 p.m.