

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS  
Director and State Court  
Administrator



JOHN MCCORMICK  
Assistant Court Administrator

**MEETING SUMMARY**  
**COMMISSION ON NRAP**

**DATE AND TIME OF MEETING:** October 25, 2022, at noon  
**PLACE OF MEETING:** Remote Access via BlueJeans

**Members Present:**

Justice Kristina Pickering	Judge Bonnie Bulla	Judge Michael Gibbons
Sally Bassett	Alex Chen	Kelly Dove
Micah Echols	Bob Eisenberg	Dayvid Figler
Charles Finlayson	Emily McFarling	Dan Polsenberg
Jordan Smith	Don Springmeyer	David Stanton
JoNell Thomas	Deborah Westbrook	Julie Ollom
<b>GUESTS</b>		
Sharon Dickinson		

**CALL TO ORDER, WELCOME, AND ANNOUNCEMENTS**

Justice Pickering called the meeting to order at 12:02 p.m. and announced that Ms. Kalicki has resigned from the commission for personal reasons. Julie Ollom, with the Clerk's office will take her place. Ms. Ollom is well versed in all the internal workings of the court. The commission extends their thanks to Ms. Kalicki for the work she has done on the commission.

**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 SEPTEMBER 26, 2022, COMMISSION MEETING MINUTES**

Justice Pickering called for a motion to approve the September 26, 2022, minutes. Mr. Eisenberg moved, and Judge Bulla seconded to approve the minutes as presented. Motion carried unanimously.

**DISCUSSION ITEMS:**

**NRAP 8 SUBCOMMITTEE REPORT (PROPOSAL FOR NRAP 8) – JORDAN SMITH**

Mr. J. Smith advised that the final draft version of NRAP 8 that was circulated for this meeting includes the changes that were discussed at an earlier meeting. Nothing new came out of the subcommittee from that last discussion. Mr. J. Smith advised that the new language in 8(a)(2)(iii) related to the relevant parts of the record, including an order or transcript in certain circumstances, might be better suited in rule 27(e). He was reluctant to go back to a discussion about 27(e) since the commission already approved the amendments to Rule 27, but it occurred to him that the circumstance where you might not have an order in an emergency circumstance isn't necessarily limited to the circumstances that might be covered by NRAP 8 and would probably come up more often in NRAP 27(e) for related writ proceedings. He asked the commission members for their thoughts. Justice Pickering said this was a good idea and suggested that if the commission members agreed, this could be brought back for the next meeting for technical approval and asked if there was any opposition in doing so. No one opposed. Ms. Westbrook suggested that it would be easier if the commission members could see what the language would look like. Mr. J. Smith will make the necessary revisions to Rules 8 and 27 and bring the drafts back to the next meeting.

Mr. J. Smith briefly discussed the remaining revisions to Rule 8. Judge Bulla asked if the new subsection (D) under 8(a)(1) might flow better if it was moved up to (a)(1)(A). After further discussion, Mr. J. Smith agreed that it does make sense and will include that revision in the final draft that will be submitted at the next meeting.

**NRAP 3B, 3C, 22 & 23 SUBCOMMITTEE REPORT – JONELL THOMAS**

Ms. Thomas thanked the subcommittee members for their work on these proposed revisions. There was a lot of good collaboration and substantial agreement on most of the revisions. She gave a special shout out to Deborah Westbrook and Phaedra Kalicki for their amazing work. Ms. Kalicki's insight really helped. Before discussing the specific changes to the rules, Ms. Thomas gave a summary of how the proposed revision came to be. Quite a few of the subcommittee members came into this assignment thinking that the fast-track rules in criminal cases should be abolished and just go to regular briefing for everything. But after some discussion, they concluded that there is value in a fast-track system. It has limited briefing on a faster time schedule for those cases in

which the client or defendant has entered a plea of guilty; guilty, but mentally ill; no contest; or for cases involving probation revocation. The universal issues in these situations are limited and there is often a need to process those cases more quickly than other appeals. If someone has had their probation revoked improperly, relief needs to happen quickly. If a guilty plea is to be undone, normally it's in everyone's best interests for that to happen quickly so that the case can go to trial while memories are still fresh. The proposed amendment is asking to expand the fast track rules to apply to category A, B, and probational C offenses as long as the judgment was entered pursuant to a plea. It would limit the rule in any case that went to trial because you can easily have just as complicated an evidentiary issue as a suppression motion or a Batson issue. The types of issues that you get from trial can come up just as easily with a D level felony as they do in A level felony. The records are usually much bigger. The types of issues that can be raised are much more involved and so the fast-track rule would not apply in cases where an accused represented himself at trial and would not apply if the death penalty was imposed.

Ms. Dickinson said that she would prefer retaining the fast-track form, but the group wants to have a fast-track brief.

Judge Bulla asked what the reasoning was for the change to not allow submission of audio or video recording of the proceedings. Ms. Westbrook said that is not a new addition. It was in the original rule and moved from one section to another. It merely emphasizes the fact that the court will not accept audio or video in lieu of a rough draft transcript. Ms. Thomas suggested that it doesn't take too long to put together a transcript of a sentencing hearing or the entry of plea and that it's probably faster for the court and the staff to read a transcript than it is to listen to or watch a video. Ms. Westbrook advised that NRAP 10 is being revised to ensure that audio or video could be submitted as a potential reconstructing of the record, as it were. Ms. Ollom reminded everyone that an audio recording or video could still be submitted as an exhibit under NRAP 30(b).

### **NRAP 3B. Criminal Actions: Rules Governing**

Rule 3B states which rules apply in criminal cases. The subcommittee proposes adding NRS 34.560 which provides for an appeal in cases where a judge commits a person to the custody of someone outside the court's jurisdiction. The rest of the revisions are stylistic. There were no questions. Ms. Westbrook moved to approve the proposed amendment and Ms. Thomas seconded. Justice Pickering asked if there was any further discussion and there was none. The motion passed unanimously.

### **NRAP 3C. Fast Track Criminal Appeals**

Ms. Thomas presented the proposed amendment. As stated previously, the rule would be limited to probation revocation orders, guilty pleas, no contest pleas, and pleas of guilty but mentally ill, where a defendant was represented by counsel and not sentenced to death. The proposed amendment would expand the fast track rules to apply to category A, B, and probational C offenses. The rule would not apply to appeals filed in accordance with NRAP 4(c).

#### **Under Responsibilities of Trial Counsel:**

- Trial counsel would mean the attorney or their office
- The appellate division will handle the fast track statements instead of the trial attorney in the public defender offices.
- The State Public Defender would be able to substitute in and handle appeals on behalf of rural practitioners. The Nevada Department of Indigent Defenses Services (DIDS) has a provision in their regulations to allow rural counties to contract through an opt-in provision with the State Public Defender's Office to handle appellate cases. Adding that provision here would be consistent with those regulations.

There is a substantive change under **Responsibilities**. Currently, trial counsel submits a fast track brief or statement and then if appellate counsel is appointed, they would file a second brief. That will no longer be necessary. Justice Pickering requested that when the rule is finalized that a comment be included that explains the reason for omitting the consultation with appellate counsel.

Mr. J. Smith asked Ms. Thomas to explain the new section (b)(4) entitled **Substitution of State Public Defender as Trial Counsel**. She responded that the court needs to know who counsel is on a case and there needs to be a mechanism for that to happen. Normally it would be—you know, if her office files a notice of appeal, the service list is going to include their attorneys who are handling the case. If someone with a contract to do public defense in Nye County is handing off an appeal to the State Public Defender, the court needs to know that is happening. The entities are not at the same address, they are not under the same umbrella, and so this would provide a way for the court and everyone else to know that the state PD has taken over the case. It also defines the obligations that trial counsel would not withdraw from the case until after they have filed the notice of appeal and the request for transcripts. It needs to be clear who has that obligation and because of the limited time available for filing the notice of appeal. It makes more sense for

the trial attorney, who has the motivation to hand off the appeal to someone else, to take care of those basic responsibilities on the front end. It's basically defining the procedure that would be employed by section (1) in those cases. There may be cases where the rural defender wants to keep the appeal and there may be cases where a county has not opted into the state PD system. There needs to be some mechanism for the court to know who has the case now and what needs to be done before it is transferred. Ms. Westbrook further explained that (b)(1) references the State Public Defender following a notice of substitution filed under rule 3C(b)(4), which cross-references (rule 4). DIDS wanted clear language spelling out how that transition would take place as well as the parties' obligations.

Justice Pickering commented that there does not seem to be a procedure for a substitution of trial counsel who isn't the State Public Defender. Ms. Thomas replied that those cases would fall under the normal substitution of counsel provisions. Justice Pickering said that it's seems odd that the rule expresses one thing but does not seem to contemplate another. Ms. Thomas suggested adding a subsection (5) spelling out how those substitutions are handled. A lengthy discussion on this issue followed with various suggestions made for revising the proposed language. Mr. Polsenberg suggested that there may be unusual cases that would require 60, 90, or 180 days for filing the Notice of Appeal.

Ms. Thomas went through the rest of the proposed changes. Ms. Ollom pointed out that counsel can make a telephonic request for a 7-day extension to file the fast track brief. The current proposal does not address extensions for filing the docketing statement and case appeal statement, which are supposed to be filed simultaneously. The question is whether they should be limited to the same 7-days or if they would fall under NRAP 26. Additional extensions seem to defeat the purpose of the fast track procedures. There was a lengthy discussion on this issue.

Ms. Thomas and Ms. Westbrook will revise the language and bring a new proposal to the next meeting.

**UPCOMING NRAP COMMISSION MEETINGS:**

November 15, 2022 & December 15, 2022.

The meeting was adjourned at 1:25 p.m.