

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS  
Director and State Court  
Administrator



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**MEETING SUMMARY**

**Commission to Study the Adjudication of Water Law Cases**

**Subcommittee to Finalize Proposed Rules for Water Law Adjudications**

November 21, 2022

12:00 PM

*Summary prepared by: Jamie Gradick*

**Members Present**

Justice James Hardesty, Chair  
Micheline Fairbank  
Judge John Schlegelmilch  
John Zimmerman

**AOC Staff Present**

Jamie Gradick

- I. Call to Order
  - Justice Hardesty called the meeting to order at 12:05 pm and welcomed attendees.
  - A quorum was present.
  
- II. Items for Subcommittee Review and Discussion
  - Attendees discussed the proposed rule draft submitted by Judge Schlegelmilch and agreed to simplify the final product.
    - Justice Hardesty commented that a component of the rule would be the adoption of the approved water law curriculum for water law judges by the Nevada Supreme Court. As such, the rule needs to include language clarifying that water law judges would become “qualified” when they have completed the curriculum or can certify they have alternate education or experience to satisfy the requirements.
      - Discussion was held regarding Nevada’s Senior Judge program; compliance with education requirements is verified through the AOC. This program could be set up similarly.
      - Under New Mexico’s rule, the Chief Justice appoints water law judges. There would need to be a similar process in Nevada.
      - Ms. Gradick provided a copy of SCR 10, outlining the appointment process for senior judges; a similar process could be followed for appointment of water judges.

- Ms. Fairbank provided a brief overview of her suggested edits to the proposed rule draft.
  - The language should be simplified; the rule should address adjudications arising under Title 48, rather than listing all the statutory chapters.
- Mr. Zimmerman commented on the importance of cases being heard locally; the rule should give judge appointment preference to local water judges (if available).
  - Discussion was help regarding the benefit of local judge assignment during the pilot program.
  - Attendees agreed that cases should be heard in the district in which it was filed, this will be the presumptive rule - unless the parties agree to have it heard by a water law judge in another district.
- Discussion was held regarding what case types would fall under the rule and which would be excluded.
  - Justice Hardesty asked Ms. Fairbank and Mr. Zimmerman to draft and provide language to Ms. Gradick and himself regarding this.
- Attendees discussed whether to include the peremptory challenge rule in the draft.
  - The rule would need to clarify that a peremptory challenge will still result in the case being heard by a water law judge.
  - Mr. Zimmerman suggested the rule borrow the applicable language from the EJDCR (regarding business court) 1.61(d). Attendees agreed.
- Attendees discussed water law case statistic reporting requirements.
  - Justice Hardesty suggested that each district court judge be required to report their statistics to the AOC for inclusion in the Nevada Supreme Court’s annual report.
- Attendees discussed whether to allow water law judges to submit published opinions to the Nevada Supreme Court for publication.
  - Opinions would be considered persuasive authority.
  - Justice Hardesty expressed concern that the Court would be hesitant to certify these opinions for publication because it may appear as though the Nevada Supreme Court decided it; this could be seen as an endorsement of the opinion when the case is still appealable.
    - Justice Hardesty suggested that rule simply state “A water court judge’s’ opinion is citable by the parties as persuasive authority.”
    - Attendees discussed potential, appropriate places to post these opinions. Ms. Fairbank supported the idea of posting these to her office’s webpage.
- Attendees briefly discussed the use of senior judges in water law cases and agreed that senior judges should only be used in limited instances like settlements or to back up water law judge’s regular docket.

### III. Next Steps

- Justice Hardesty and Ms. Gradick will revise the rule draft based upon the discussion of this meeting the edits/comments provided by subcommittee members. A new draft will be provided prior to next week’s meeting.

- Judge Schlegelmilch will share this draft with other Nevada judges present at next week's water law conference in New Mexico and will report back with any input or additional suggestions.
- Judge Schlegelmilch will circulate the rule recently adopted by the Utah Supreme Court.

IV. Next Meeting Date

- The subcommittee is scheduled to meet at 3:00 pm on November 29; the meeting will be held via Zoom.

IV. Adjournment

- The meeting was adjourned at 12:50 pm.