

Rule 5, 12A, 29 and 44 Subcommittee Report – 5/2/22

Chair: Micah Echols
Steve Silva
Jordan Smith
Colby Williams
Deborah Westbrook

Recommendations regarding NRAP 5, 12A, and 44

The group discussed our recommendations regarding NRAP 5, 12A and 44 via email and the highlights of our discussions are set forth below:

Rule 44 – Minor changes recommended, as follows:

- Steve indicated that he thought NRAP 44 worked well as written; however, he “wondered off and on about whether the word ‘Act’ should be changed to ‘statute enacted by the Legislature and approved by the Governor’, but [was] not sure the current language is unclear.”
- Micah concurred that “Act” could have a better definition.
- Jordan suggested, “On NRAP 44, we could modify “Act” along the lines of FRAP 44(b)’s reference to “a statute of a State.” We may also need to clarify that it applies in both civil and criminal cases, because there is some confusion post *State Office of the Att’y Gen. v. Justice Ct. of Las Vegas Twp.*, 133 Nev. 78, 83, 392 P.3d 170, 174 (2017) (“we conclude that NRS 30.130 does not entitle the AG to notice and opportunity to be heard when constitutional challenges to statutes arise in criminal proceedings.”).
- Based on the foregoing, the subcommittee recommends the following language:

If a party questions the constitutionality of [a statute of the State of Nevada](#) ~~an Act of the Legislature~~ in [any](#) proceeding, [including civil and criminal matters](#), in which the state or its agency, officer, or employee is not a party in an official capacity, the questioning party shall give written notice to the clerk of the Supreme Court immediately upon the filing of the docketing statement ~~or~~ as soon as the question is raised in the court. The clerk shall then certify that fact to the Attorney General.

Rule 5 – No changes recommended; however, Commission should consider whether to allow additional jurisdictions to certify questions of law to the Nevada Supreme Court.

- Micah pointed out that Rule 5 does not have a federal cognate, and that he looked at Supreme Court Rule 19 and did not see anything we need to add.
https://www.law.cornell.edu/rules/supct/rule_19

- Jordan pointed out that Minnesota allows its appellate courts to answer certified questions from other state appellate courts and certain foreign jurisdictions, and that the current version of NRAP 5 does not allow the Supreme Court to accept questions from sister state appellate courts. See Minn. Stat. § 480.065(3) (“The supreme court of this state may answer a question of law certified to it by a court of the United States or by an appellate court of another state, of a tribe, of Canada or a Canadian province or territory, or of Mexico or a Mexican state, if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision or statute of this state.”)
- Subcommittee is not making any recommendation at this time, but would like to raise this as a discussion point at the next Commission meeting, to see if this is something we might want to consider.

Rule 12A – No changes recommended

- Deborah and Colby looked at NRAP 12A, which is already virtually identical to its federal counterpart, and determined that no changes were necessary.
- Micah reviewed NRAP 12A in conjunction with NRCP 62.1 and did not believe any changes were necessary for NRAP 12A.
- Subcommittee concurred.