

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

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## MEETING SUMMARY OF COMMISSION ON NRAP

**DATE AND TIME OF MEETING:** July 19, 2023

**PLACE OF MEETING:** Remote Access via Zoom

**Members Present:**

Justice Kristina Pickering	Judge Michael Gibbons	Judge Bonnie Bulla
Judge Deborah Westbrook	Sally Bassett	Alexander Chen
Kelly Dove	Robert Eisenberg	Dayvid Figler
Charles Finlayson	Debbie Leonard	Emily McFarling
Erica Medley	Jullie Ollom	John Petty
Daniel Polsenberg	Abe Smith	Steven Silva
Jordan Smith	JoNell Thomas	Jessica Whelan

**Call to Order, Welcome, and Announcements.** Justice Pickering welcomed everyone and called the meeting to order at 11:31 a.m.

**Roll Call and Determination of Quorum Status.** Roll was called, and a quorum was present.

**Approval of June 14, 2023, Commission Meeting Minutes.** Julie Ollom moved, and Judge Westbrook seconded to approve the minutes as presented. Motion carried unanimously.

The materials provided for this meeting can be found at:  
<https://nvcourts.gov/AOC/Templates/documents.aspx?folderID=33507>

Discussion Items:

**NRAP 3E Child Custody – Emily McFarling and Julie Ollom.**

Ms. McFarling opened the floor for questions as she provided details of the proposed amendments during the June 14, 2023, meeting.

Judge Westbrook had a question related to the subsection entitled **Supplemental Request for Transcripts or Rough Draft Transcripts**, which sets forth that “[t]he request must be made no more than 7 days after appellant served the transcript request made pursuant to subsection (c)(2) of this Rule.” The comparable criminal fast track rule specifies only 3 days. Judge Westbrook was curious why the civil rule provides for opposing party to make a supplemental request after seven days versus only three days in the criminal context. Ms. McFarling and Judge Gibbons advised that they had not noticed that distinction. After further discussion, Judge Westbrook moved to amend criminal rule 3C(d)(4)(A) to allow opposing counsel seven days to make a “supplemental request for portions of the rough draft transcript that were not previously requested” and Judge Bulla seconded. The motion passed unanimously.

**Discussion highlights:**

- The amendment proposes changing fast track statements/responses to normal length briefs. Why would there be a need to also allow the parties to request leave to further expand the length of the briefs?
- The thought behind the further expansion was for those cases that have other issues besides child custody, i.e., alimony and property division which may need more than 14,000 words.
- A suggestion was made that subsection (f) which would provide for expanding the length of the briefs may not be necessary when Rule 32 already provides a mechanism to go through and get permission to exceed type volume limitation.
  - After a lengthy discussion on this issue, the commission decided to revise the proposed language in subsection **(f) Expanded Fast Track Opening Brief, Answering Brief, or Reply Brief** to say, “*When a case presents complex issues, a party may seek leave of the court to expand the length of the fast track opening brief, answering brief, or reply brief pursuant to Rule 32.*”
- What was the reason for adding guardianships of minors and parenting time to 3E and how will that impact the fast track program?
- When the appeal comes in, the case appeal statement includes boxes to check whether or not the case relates to child custody. If the answer is yes, then it is routed to the fast track program. If no, then it would be exempted.
- The rule is meant to be broad so that child custody is the focus and given the special treatment allowed under 3E.

- There is a later section in the rule that makes it easier to exempt out of the fast track program.
- Guardianship of minors was added to conform with 2017 Legislative changes that separated guardianship of minors and adults into separate statutes. Parenting time is a more precise term that the COA has been trying to get practitioners and other courts to follow as more modern language.
- The appellate courts currently do not have a time limit on disposing of child custody fast track cases. A proposal has been made that they must attempt to dispose of the case within 90 days.
- Then why would an attorney want to be exempted from the fast track program if they know it could be disposed of in 90 days?
- This amendment is opening the door to full briefing and lengthening the time for resolution of a child custody matter. An attorney will always choose the outside chance of a faster resolution if they can, and this will open the door for more coming in. The COA may likely say that is not what was envisioned here. The vision was for child custody fast track disputes to have short briefs, quick turnaround, and no elaborate extensions. Extensions are not needed if the cases are faithful to their original purpose.
- One of the main goals of the amendments regarding extensions was to make sure that cases are not stuck in the fast track program if custody is only a small issue and there are other bigger issues.
- These amendments are suggested to allow the practitioners to better present their cases.
- The proposal includes an exemption that fast track briefs would not need to include a table of contents or authorities. Is that because it is expected that the majority of the fast track briefs would be filed by pro se litigants?
- Response: The current rule does not require tables of contents or authorities for the fast track statements.
- It may make sense to carve it out specifically to apply to pro se litigants.
- This was also a huge discussion of debate by the criminal fast track subcommittee, and they finally decided to leave them out.
- Leaving them out may present a challenge for the appellate court if the cases have multiple issues.
- The criminal fast track subcommittee addressed the issue by limiting it to a small number of specific types of cases.
  - After further discussion on the issue, the commission decided to include additional language stating that tables of contents or authorities must be provided in briefs that exceed 20 pages.
- Ms. Ollom will send the subcommittee a list of non-substantive revisions to the draft proposal for inclusion in the final draft version.

Mr. Finlayson moved, and Ms. Ollom seconded to approve the proposed amendments to Rule 3E subject to the revisions discussed above. The motion passed unanimously. A final clean version of the proposed amendment will be circulated for the August meeting.

**NRAP 35 & 45A Judicial Subcommittee – Justice Pickering, Julie Ollom, Jessica Whelan, and Erica Medley.**

Ms. Ollom presented the subcommittee’s proposed amendment to **Rule 35(a)**, which would require that a separate motion for disqualification would need to be filed for each judge or justice that the party is moving to disqualify. This will allow the court to process those motions in a more efficient manner. Currently, if a single motion to disqualify all of the judges and justices is filed, the court is unable to rule on the motion because there is no one available to act on the request. The remaining suggested changes are non-substantive. There were no questions or concerns. Ms. McFarling moved, and Mr. Finlayson seconded to approve the proposed amendment to Rule 35 as presented. The motion passed unanimously.

Ms. Ollom presented the subcommittee’s proposal to repeal **Rule 45A** in light of SB 63. SB 63, which was passed by the Legislature this year, amends the statutes regarding court seals. As amended, NRS 1.140 now reads:

1. Each court of justice in this State shall have a seal.
2. The Supreme Court shall adopt rules relating to the format of a seal required by subsection 1 and the use and storage of any such seal.

As a result of this amendment, the Supreme Court will have to adopt provisions regarding court seals that were previously contained in NRS 1.140 through 1.190. Since the rules regarding seals will apply to all courts of justice, and not just the appellate courts, it appears the best place to adopt those rules will be in the SCR. In order to keep all of the rules regarding seals together, the subcommittee recommends repealing this rule, revising it to include language regarding the seal for the Court of Appeals, and including these provisions in the other rules regarding court seals to be added to the SCR. Repealing this provision will not require renumbering other rules in the NRAP. The following is the revised version of this rule that the subcommittee suggests adding to the SCR.

**SEALS OF THE APPELLATE COURTS**

- (a) Supreme Court.** The seal of the Supreme Court must contain the words “Supreme Court State of Nevada” on the upper part of the outer edge, preceded and followed by a star; and the words “Fiat Justitia” on the lower part of the outer edge, running from left to right; and in the center an eagle with its left wing displayed and the figure of the Goddess of Liberty, her left hand holding a liberty pole surmounted by a Phrygian cap, her right hand supporting a shield.

**(b) Court of Appeals.** The seal of the Court of Appeals is the Nevada State Seal, as described in NRS 235.010.

After a brief discussion, Mr. Finlayson moved, and Ms. Dove seconded to approve the subcommittee's recommendation to repeal Rule 45A and move it to the SCRs. The motion passed unanimously.

**Committees With Reports Forthcoming.**

**NRAP 3A & NRAP 28, 28.1, 31 & 32 Civil Actions & Briefs Subcommittees – Abe Smith.**

**NRAP 24, 34 & 46A Pro Se Subcommittee – Kelly Dove.**

**NRAP 1, 26, 26.1, 28.2, 38, 45, 46, 47, 48 Scope and Operation of Rules; Regulation of Parties, Attorneys, and Clerk Subcommittee – Adam Hosmer-Henner – *August 16 meeting.***

**NRAP 9-11 Transcript; Record – Judge Westbrook - *August 16 meeting.***

**NRAP 16 Settlement – Emily McFarling**

Each one of the subcommittee chairs above who were in attendance gave a brief outline of where their proposed revisions were at and stated that they hope to have their proposals ready for discussion at either the August or September meeting.

**Upcoming NRAP Commission meetings:**

The next meeting was previously scheduled for August 16, 2023, 11 a.m. to 1:30 p.m. The new start time will be 11:30 a.m.

What is anticipated to be the final meeting of the NRAP Commission was scheduled for September 28, 2023, 11 a.m. to 1:30 p.m.

The meeting was adjourned at 12:55 p.m.