

1 **NRCP 5.1**
2 **(Reject Federal Rule)**

3 No Rule

4 Subcommittee Notes to Committee:

5 FRCP 5.1 provides for notice to the state or federal Attorney General's (AG's)
6 office of constitutional challenges to statutes based on 28 U.S.C. § 2403, which
7 requires that parties notify the respective AG when constitutionally challenging a
8 state or federal statute, regardless of the nature of the action or which cause of action
9 is brought. Nevada law is not the same. NRS 30.130 provides that only in
10 declaratory relief actions challenging the constitutionality of a municipal ordinance
11 or franchise, or possibly a statute related thereto, then the AG should be notified of
12 the constitutional challenge. *See Attorney Gen. v. Justice Court of Las Vegas Twp.*,
13 133 Nev., Adv. Op. 12, 392 P.3d 170 (2017); *Moldon v. Cty. of Clark*, 124 Nev. 507,
14 188 P.3d 76 (2008); *City of Reno v. Saibini*, 83 Nev. 315, 429 P.2d 559 (1967). In
15 addition, NRS 218F.720 provides the Legislative Counsel Bureau (LCB) with broad
16 authority to intervene in actions challenging statutes, but does not require notice to
17 the LCB of such a challenge. Accordingly, as Nevada and Federal statutes differ, the
18 Subcommittee proposes rejecting FRCP 5.1 and not adopting it as part of the NRCP.

19 Moreover, NRAP 44 does require notice to the AG of a constitutional challenge
20 to a statute once the case is appealed to an appellate court (which would review de
21 novo the district court's constitutional conclusions or statutory interpretation). Once
22 in the appellate court, the AG could seek amicus curiae status to file a brief, while
23 there is no similar mechanism to permit the AG to intervene in the district courts.