

# Office of the Special Public Defender

330 S. Third Street, Ste. 800, Las Vegas NV 89155-2316

(702) 455-6265

Fax: (702) 455-6273

Family Defense Division (702) 455-6266

Family Defense Division Fax (702) 380-6948



A CENTURY OF SERVICE

**COMMISSIONERS**

Susan Brager, Chair  
 Steve Sisolak, Vice-Chair  
 Tom Collins  
 Chris Giunchigliani  
 Lawrence Weekly  
 Larry Brown, Vice-Chair  
 Mary Beth Scow

**COUNTY MANAGER**

Don Burnette

**SPECIAL PUBLIC DEFENDER**

David M. Schleck  
 ASST. SPECIAL PUB. DEF.  
 Randall H. Pike

**FILED**

DEC 03 2014

TRACIE K. LINDEMAN  
 CLERK OF SUPREME COURT  
 BY: *[Signature]*  
 CHIEF DEPUTY CLERK

December 3, 2014

Chief Justice Gibbons  
 Nevada Supreme Court  
 201 South Carson Street  
 Carson City, Nevada 89701

re: ADKT 501, Written Comments on Proposed Amendments  
 To The Rules of Appellate Procedure

Dear Chief Justice Gibbons:

I offer the following written comments in response to ADKT 501 and the proposed amendments to the Nevada Rules of Appellate Procedure, which will be heard by the Court on December 4, 2014. I am interested in participating in the hearing.

**Caption**

Under the proposed amendments, I am not clear as to which appellate court should be identified in the caption of documents filed for an appeal, such as motions and briefs. I see a number of alternatives, such as listing the Supreme Court until such time as the case is assigned to the Court of Appeals, or listing both courts, or listing the appellate court which I believe will be assigned. I have no preference about this matter, but seek guidance as to the proper form.

14-39381

Chief Justice Gibbons  
December 3, 2014  
Page Two

**Rule 17(a)(1)(B) and Rule 17(b)(1)(A):**

Both proposed rules use the term "primary offense," but the meaning of the term is unclear and could lead to confusion. Omission of the word "primary" would cure this defect.

Reading the two rules together leads to confusion for several types of cases which I routinely handle. Specifically, Rule 17(a)(1)(B) provides that direct appeals in capital cases and cases that involve a conviction for a primary offense that is a category A or category B felony shall be heard and decided by the Supreme Court. Rule 17(b)(1)(A), however, provides that any direct appeal from a judgment of conviction based on a plea of guilty, and direct appeals from a judgment of conviction that challenges only the sentence imposed or the sufficiency of the evidence, are presumptively to be heard and decided by the Court of Appeals. Under these rules, I am unclear as to which court would hear and decide the following:

- \* A direct appeal from a plea of guilty to a category A or B felony which challenges the sufficiency of the plea canvass, the denial of a motion to withdraw the plea, or issues preserved for appellate review in the plea.
- \* A direct appeal from a plea of guilty to a category A or B felony which challenges the sentence imposed or sentencing process.
- \* A direct appeal in a capital case which challenges only the sentence imposed, as could occur if a case is remanded for a new penalty trial.

**Rule 17(a)(1)(L):**

The rule provides that Termination of Parental Rights cases are retained by the Supreme Court, but it is unclear whether

Chief Justice Gibbons  
December 3, 2014  
Page Three

writs originating from Abuse and Neglect Cases ("J Cases") are considered a family law matter and presumptively assigned to the Court of Appeals under Rule 17(b)(1)(E). The Abuse and Neglect Cases are part one of the two-tier process for Termination of Parental Rights cases. Both cases are related, involve the same parties, and the same evidence. Our office recommends that writs involving J Cases be resolved by the Supreme Court to avoid duplicative and potentially conflicting decisions within what is essentially the same case. Doing so would also avoid another level of appeal and petitions for rehearing, which is an important consideration in timely resolving these important matters.

**Rule 17 & Pretrial Writs In Capital Cases**

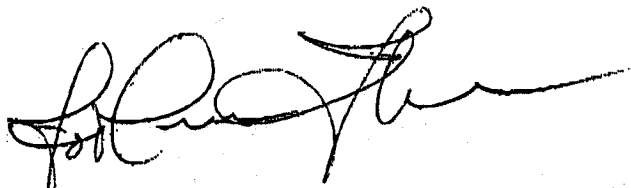
On occasion I file pretrial petitions for writs of mandamus in capital cases concerning legal issues related to the Notice of Intent to Seek Death Penalty or particular aggravating circumstances. These petitions do not always involve issues of first impression, which would be addressed by NRAP 17(a)(1)(M); issues of statewide public importance, which would be addressed by NRAP 17(a)(1)(N); or issues challenging orders involving discovery, motions in limine, or motions to suppress, which would be addressed by NRAP 17(b)(1)(G). I believe that these matters should be heard by the Supreme Court.

Thank you for your consideration of these issues. I look forward

Chief Justice Gibbons  
December 3, 2014  
Page Four

to the hearing. Please contact me at your convenience if I can be  
of any assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jonell Thomas", with a long horizontal flourish extending to the right.

JONELL THOMAS  
Deputy Special Public Defender

JT:kf