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August 29, 2018

Elizabeth A. Brown  
Clerk of the Supreme Court  
201 South Carson Street  
Carson City, Nevada 89701

**FILED**

**AUG 31 2018**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

Re: *Comments on ADKT 501*

Dear Ms. Brown:

This letter is in response to the invitation from the Nevada Supreme Court to submit written comments regarding the proposed amendments to Nevada Rule of Appellate Procedure 17. Our law firm regularly represents clients before the business court judges of the Second Judicial District Court and the Eighth Judicial District Court. Based on this experience, we support the petition filed by the Honorable Lidia S. Stiglich to amend NRAP 17 so that appeals from cases originating in business courts will be presumptively retained by the Nevada Supreme Court.

After the approval of a Constitutional amendment establishing the Court of Appeals, the Nevada Supreme Court amended the Nevada Rules of Appellate Procedure to divide cases between the Supreme Court and the Court of Appeals. ADKT 0501, Order, Dec. 18, 2014. That initial division provided that the Nevada Supreme Court “shall hear and decide . . . cases originating in business court.” NRAP 17(10) (2015). Two years later, the Nevada Supreme Court amended NRAP 17 such that “[c]ases originating in business court that do not involve questions of first impression” were instead presumptively assigned to the Court of Appeals. ADKT 0501, Order, Oct. 12, 2016. The Order Amending Nevada Rules of Appellate Procedure 17 and 21 was entered without the solicitation of written comments from the bench, bar, or public and without a public hearing on the matter. For the following three reasons, we believe that the presumptive

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assignment of business court cases to the Nevada Supreme Court was and remains the correct choice.

First, the proposed amendment would realign the handling of business court cases with similar appeals. Nevada's business courts were created "to resolve the most complex, lengthy, and expensive business disputes." 2015 State of the Judiciary Message, Apr. 15, 2015. Under NRAP 17(a), the Nevada Supreme Court retains questions of first impression, questions of statewide public importance, ballot or election questions, disputes between branches of government or local government, and questions of law certified by a federal court. On the other hand, NRAP 17(b) pushes cases to the Court of Appeals if they are tort cases involving a judgment of \$250,000 or less, contract disputes where the amount in controversy is less than \$75,000, or trust and estate matters where the corpus has a value of less than \$5,430,000. The "most complex, lengthy, and expensive business disputes" in Nevada are similar in importance to the other appeals listed in NRAP 17(a) and not to the "error-correction cases assigned to the Court of Appeals" by NRAP 17(b). 2013 State of the Judiciary Message, Mar. 1, 2013.

Second, after the creation of the Court of Appeals, there was an indication that the Nevada Supreme Court could "complete the Business Court plan by publishing more opinions expanding our jurisprudence on business law cases." 2015 State of the Judiciary Message, Apr. 15, 2015. As a result of recent amendments to NRAP 36, unpublished decisions of the Court of Appeals "may not be cited in any Nevada court for any purpose." ADKT 0504, Order, Sep. 14, 2017. Assigning business court cases to the Court of Appeals defeats the intention to publish more opinions to provide guidance to Nevada's businesses. While the Court of Appeals could theoretically publish opinions on business court cases, the statistics demonstrate a different reality as the Court of Appeals published four opinions in total in FY2015, 15 opinions in

FY2016, and 1 opinion in FY2017. Annual Report of the Nevada Judiciary, July 1, 2016 – June 30, 2017. The continued development of jurisprudence applicable to business court cases is important not only to the legal community but to the business community as well. 2015 State of the Judiciary Message, Apr. 15, 2015 (describing statistics that “send a clear message to local businesses and those outside Nevada’s borders that Nevada’s judicial system is fully prepared to address the legal needs of Nevada’s businesses in a timely, cost-effective way.”); 2009 State of the Judiciary Message, Mar. 24, 2009 (“In short, business courts keep companies in business and Nevadans working.”). Retaining business court cases at the Nevada Supreme Court would help generate a more robust body of case law and precedent and further assist the business courts with their goal of resolving complex disputes in a timely and cost-efficient manner.

Third, the current assignment of business court cases to the Court of Appeals may act as a disincentive for the selection of business court at the district court level. While there is no doubt that the Court of Appeals is competent to address the legal merits of the complex disputes, when the stakes are as high as they often are in business court cases, the parties simply may not be willing to terminate the litigation prior to receiving a final determination from Nevada’s highest court. A party filing in business court is willing to pay a higher filing fee (\$1,520 for a business court complaint versus \$260 for a standard complaint in Washoe County), in return for enhanced case management and other benefits. Under the current version of NRAP 17, these advantages must be weighed against the additional cost and delay that might occur at the appellate level from assignment to the Court of Appeals. Rather than maintain the expedited and cost-efficient handling of these cases, the current appellate assignment may disadvantage business court cases as compared to cases filed without special designation.

Thank you for considering our comments.

Sincerely,



Adam Hosmer-Henner

/s/ Pat Lundvall

Pat Lundvall

Chair of the Litigation Practice Group of McDonald Carano LLP

/s/ Debbie Leonard

Debbie Leonard

Chair of the Appellate Practice Group of McDonald Carano LLP