

September 14, 2018

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SEP 18 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

Elizabeth A. Brown
Clerk of the Supreme Court
201 S. Carson St.
Carson City, Nevada 89701

Re: ADKT 501, Proposed NRAP 3F

Dear Ms. Brown:

We write today in response to the August 24, 2018 petition in ADKT 501, proposing to create NRAP 3F to expedite the disposition of certain civil appeals. Our firm represents clients across a wide spectrum of industries, generating a consistent volume of motion practice resulting in appeals. Our clients are constantly pushing for faster results, at lower cost. We support the proposed changes because they represent an opportunity for Nevada's appellate courts to also deliver faster results, at lower cost.

Presently, when an order granting a motion to dismiss or for summary judgment is appealed, a standard briefing schedule applies. After the appeal is docketed, or the briefing schedule reinstated following a NRAP 16 settlement process, NRAP 31(a)(1)(a) requires the appellant to file and serve an opening brief within 120 days. This includes preparing an appendix that contains the facts and arguments presented to the district court leading to the contested order. Once the appellant's brief is filed, the respondent submits its brief within 30 days per NRAP 31(a)(1)(b). This may also include a separate appendix if the parties could not agree on a joint appendix. The appellant is then allowed to reply within 30 days per NRAP 31(a)(1)(c). This 180 day briefing period can be longer, as NRAP 31(b) permits various extensions in certain circumstances. It may also be longer in a cross-appeal if the respondent/cross-appellant is allowed a further 30 days to reply as to the cross-appeal only. The appellate court's task to decide the appeal commences only once all briefing is complete.

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The cost of waiting to the parties may be significant. Both parties incur additional legal fees to prepare briefing and appendices. If a judgment has been entered, interest accrues on the judgment while the appeal is pending. When a judgment is collected while an appeal is pending, the debtor is also deprived of money and property on an order the debtor contends is erroneous.

Eliminating the briefing period and relying instead upon the record presented to the district court is a creative way for Nevada's appellate courts to address litigants' concerns about the time and expense of a potentially meritorious appeal. NRAP 3F(a) eliminates the work and cost of preparing briefing and an appendix entirely. Instead, the district court simply forwards the record for review.

NRAP 3F(b) eliminates briefing, but still requires the parties to prepare a joint appendix within 60 days of docketing. If a joint appendix is not submitted, the respondent is allowed 20 further days to submit its own, separate appendix. This is potentially 100 to 120 fewer days of waiting. The fees incurred preparing only an appendix should be substantially lower than those incurred preparing briefing with a supporting appendix.

Further, the proposed NRAP 3F is consistent with current appellate standards of review because when an order of dismissal or summary judgment is appealed, the appellate court is limited to the facts and argument presented to the district court. The parties' appellate briefing should be nothing more than a restatement of the facts and argument already available in the record. This is inefficient and often unnecessary.

NRAP 3F may also indirectly assist the district court's decision making process. If parties are limited on appeal to the record presented to the district court, without further briefing, they may be motivated to present higher quality briefing and arguments. This in turn could provide a district court a greater understanding of the issues presented so as to reach an appropriate order.

Finally, we believe the proposed NRAP 3F could be improved by expanding the scope of matters it includes. As drafted, motions to dismiss are included only if granted under NRCP 12(b)(2) or (b)(5). NRCP 12(b)(2) concerns lack of personal jurisdiction, NRCP 12(b)(5) concerns a failure to state a claim upon which relief can be granted. We believe the benefits NRAP 3F could create would apply equally to all NRCP 12(b) motions. For example, the facts and law supporting dismissal per NRCP 12(b)(4) due to insufficient service of process should be contained within the record presented to the district court. Additional briefing is generally unnecessary.

NRAP 3F's benefits may also apply to other types of civil appeals that arise from motion practice. It could lead to faster dispositions for appeals of case ending orders entered per NRCP 37, orders denying motions to set aside default judgments, and perhaps orders under NRCP 59 and 60.

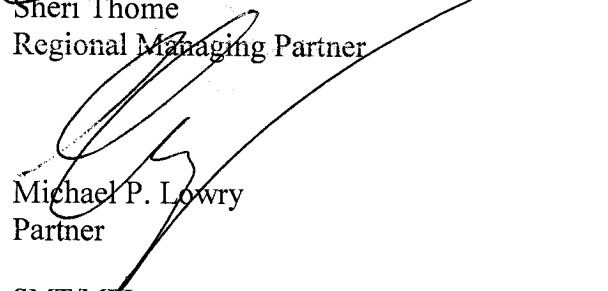
It is still true that justice delayed is justice denied. Nevada's appellate courts recognized that by creating expedited appellate procedures for other types of appeals. We support the effort to create similar expedited appellate procedures for certain civil appeals.

Best regards,

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP



Sheri Thome
Regional Managing Partner



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SMT/MPL