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

SENT VIA EMAIL

October 24, 2018

Elizabeth Brown
Clerk of the Supreme Court
201 South Carson Street Carson City, NV 89701
nvscclerk@nvcourts.nv.gov

RE: Public hearing on ADKT 501 on NRAP 3 set for November 5, 2018

Dear. Ms. Brown:

Please accept this letter as my ***desire to comment*** at the upcoming public hearing in the above captioned matter.

Also, I have serious concerns about the changes, as currently proposed, would prejudice a Plaintiff's appeal rights. As an advocate who represents only Plaintiff's, while I do not have any empirical statistics, which I am sure the Supreme Court does, invariably, in the overwhelming majority of circumstances, and based upon my 26 years of practice, I would not be wrong in saying that **99.9%** of all 12(b) motions are brought by Defendants. I would also surmise that ***at least* 90%** of all motions for summary judgment are brought by Defendants.

These motions are terminating motions by their very nature. While all pertinent and relevant issues must be raised at the trial level for the reviewing court to consider them, there are a wide variety of ***nuanced or issues of first impression***, that while must be briefed and brought up in the underlying motion, (especially with respect MSJ), ***many of those issues cannot not be truly explained and developed at the trial level.***

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Our trial courts work very hard every day doing their job, but the reality is that they are very overworked, many times these nuanced and issues of first impression fall through the cracks. This is why we have Courts of appeal. When an MSJ gets granted, without some sort of briefing being allowed by the aggrieved party on these issues at the appellant level, (***which invariably would almost always would be the Plaintiff***), parties bringing claims would be at a distinct and unfair disadvantage on appeal in these situations. While this is clearly not the intent of the rule, it is the PRACTICAL effect of the proposed rule change.

I am extremely mindful of this Court's increasing case load and their diligent efforts in reviewing and ruling on appeals, ***but I don't believe efficiency should be sacrificed at the expense of aggrieved Plaintiff's whose case is terminated, especially by an MSJ.***

Consequently, while I am against any total ban on any and all briefing, if the court is inclined to make a briefing change, then I might suggest that on grants of MSJ from a final appealable order, cut down the briefing size, at most. While the court may find the briefing on many of these issues on MSJ as "perfunctory," ***there are numerous cases that have very nuanced and issues of first impression which can really only be fully developed and explored by a full and fair briefing on both sides.***

Thank you for your consideration.

Sincerely,

/s/ George O. West III

George O. West III