

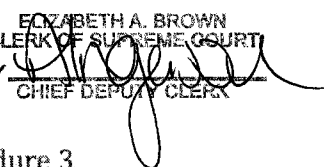
October 24, 2018

VIA Electronic Delivery

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

FILED

OCT 24 2018

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

Re: ADKT No. 0501 – Proposed Revisions of Nevada Rule of Appellate Procedure 3
Proposed New Rule 3F

Dear Ms. Brown:

I wish to add my voice to those critical of Proposed Nev. R. App. P. 3F “Summary Proceedings in Certain Civil Appeals.” In particular, I strongly oppose Proposed Rule 3F(b)(3), which provides that appeals from grants of: (1) dismissal for lack of personal jurisdiction, (2) dismissal for failure to state a claim, and (3) summary judgment would be “submitted for decision on the record without briefs or oral argument unless the court otherwise orders.”

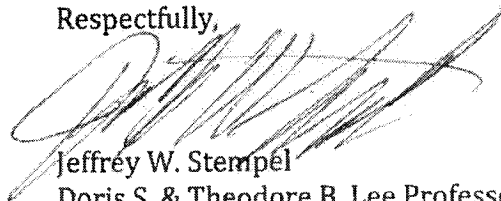
I have reviewed the Comments of the Appellate Litigation Section of the State Bar of Nevada and concur in the Section’s analysis opposing Proposed Rule 3F. Rule 12 motions are the “workhorses” of the litigation system – with personal jurisdiction dismissals and failure to state a claim dismissals holding particular importance. The same is true with summary judgment. In a world where full trials are increasingly rare, most adjudication is through pretrial motion practice. Where dispositive Rule 12(b)(2), Rule 12(b)(5) and Rule 56 motions are granted, aggrieved litigants should have an absolute right to argue their case in writing before an appellate tribunal. Briefing will better illuminate the issues on appeal and improve disposition of matters.

To be sure, in many cases arguments for reversal will be mere reruns of arguments that have already failed at the trial court. But appellants in a significant number of cases will be framing the issues differently on appeal than was the case at trial and will improve the clarity and force of their arguments. They should have this opportunity on appeal (as a matter of course) and appellate courts should have the benefit of this additional briefing. Weak or repetitive briefs will impose relatively modest cost on the reviewing appellate court that is outweighed by promoting a full airing of the issues presented.

In short, the current system in favor of briefing these important issues is not "broken." It does not need to be "fixed" by the Proposed Rule 3F, one that is likely to have substantial adverse consequences.

Thank you for the Court's consideration of this comment.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jeffrey W. Stempel', written over a horizontal line.

Jeffrey W. Stempel
Doris S. & Theodore B. Lee Professor of Law
William S. Boyd School of Law
University of Nevada Las Vegas