

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENT TO
NEVADA RULE OF APPELLATE
PROCEDURE 36 AND REPEAL OF
SUPREME COURT RULE 123 TO
ALLOW CITATION OF UNPUBLISHED
DISPOSITIONS.

ADKT 0504

FILED

NOV 12 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
CHIEF DEPUTY CLERK

**ORDER AMENDING NEVADA RULE OF APPELLATE
PROCEDURE 36 AND REPEALING SUPREME COURT RULE 123**

WHEREAS, on February 27, 2015, the Hon. James Hardesty, Chief Justice and the Hon. Kristina Pickering, Associate Justice filed a petition in this court seeking the amendment of Nevada Rule of Appellate Procedure (NRAP) 36 and the repeal of Supreme Court Rule (SCR) 123; and

WHEREAS, this court solicited comment from the bench, bar, and public on the proposed rule amendments and conducted a public hearing on the matter on July 1, 2015; and

WHEREAS, this court has determined that amendment of NRAP 36 and the repeal of SCR 123 is warranted; accordingly,

IT IS HEREBY ORDERED that NRAP 36 shall be amended and shall read as set forth in Exhibit A, and that SCR 123 shall be repealed.

IT IS FURTHER ORDERED that the amendment of these rules shall be effective January 1, 2016, and shall apply to orders entered by this court on or after that date. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the

advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

Dated this 12th day of November, 2015.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

I dissent.

Saitta, J.
Saitta

cc: Laurence P. Digesti, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
Administrative Office of the Courts

EXHIBIT A

AMENDMENT TO RULE 36 OF THE NEVADA RULES OF APPELLATE PROCEDURE

RULE 36. ENTRY OF JUDGMENT

(a) **Entry.** The filing of the court's decision or order constitutes entry of the judgment. The clerk shall file the judgment after receiving it from the court. If a judgment is rendered without an opinion, the clerk shall enter the judgment following instruction from the court.

(b) **Notice.** On the date when judgment is entered, the clerk shall mail to all parties a copy of the opinion, if any, or of the order entering judgment, if no opinion was written.

(c) **Form of Decision.** The court decides cases by either published or unpublished disposition. ~~[An unpublished disposition, while publicly available, may not be cited as precedent except in very limited circumstances, pursuant to SCR 123.]~~

(1) A published disposition is an opinion designated for publication in the *Nevada* ~~[*Reports* and may be cited as precedent.]~~ *Reports*. The court will decide a case by published opinion if it:

~~[(1)]~~ (A) Presents an issue of first impression;

~~[(2)]~~ (B) Alters, modifies, or significantly clarifies a rule of law previously announced by the court; or

~~[(3)]~~ (C) Involves an issue of public importance that has application beyond the parties.

(2) An unpublished disposition, while publicly available, does not establish mandatory precedent except in a subsequent stage of a case in

which the unpublished disposition was entered, in a related case, or in any case for purposes of issue or claim preclusion or to establish law of the case.

(3) A party may cite for its persuasive value, if any, an unpublished disposition issued by this court on or after January 1, 2016. When citing an unpublished disposition to this court, the party must cite an electronic database, if available, and the docket number and filing date in this court (with the notation "unpublished disposition"). A party citing an unpublished disposition must serve a copy of it on any party not represented by counsel.

(d) Duplicate Order or Opinion.

(1) The justices of the Supreme Court, judges of the Court of Appeals, or district judges designated by the governor to serve on the Supreme Court or Court of Appeals for a specific case, if they are physically present within the State of Nevada, may sign duplicate copies of any order or opinion. If duplicate copies of an order or opinion are signed by the various members of the Supreme Court or Court of Appeals, the justices or judges signing the duplicate copies shall date their signatures on duplicate copies and shall immediately inform the clerk of the court that the duplicate copies are signed. The clerk of the court shall then note on the appropriate signature line of the original order or opinion that the absent justices or judges have signed duplicate copies of the order or opinion under this Rule. When possible, a facsimile of each signed duplicate copy of the order or opinion shall also be transmitted immediately to the clerk of the court. The duplicate copies of the order or opinion containing the original signatures of the justices or judges shall be sent by the fastest means available to the clerk of the Supreme Court, who shall place those duplicates in the court's file.

(2) The clerk shall file an order or opinion that is signed in duplicate under this Rule upon receiving notice from the absent justices or judges that

they have signed the duplicate copies. The order or opinion shall be effective for all purposes when the clerk receives notice under this Rule that the requisite number of signatures have been obtained and files the order or opinion. An order or opinion that is signed under this Rule shall contain a notice to the parties that it was signed under this Rule.

(e) Reversal, Modification; Certified Copy of Opinion to Lower Court. Where a judgment is reversed or modified, a certified copy of the opinion [~~in the case~~] or other disposition shall be transmitted with the remittitur to the court below.

(f) Motion to Reissue an Order as an Opinion. A motion to reissue an unpublished disposition or order as an opinion to be published in the *Nevada Reports* may be made under the provisions of this subsection by any interested person. With respect to the form of such motions, the provisions of Rule 27(d) apply; in all other respects, such motions must comply with the following:

(1) Time to File. Such a motion shall be filed within 15 days after the filing of the order. Parties may not stipulate to extend this time period, and any motion to extend this time period must be filed before the expiration of the 15-day deadline.

(2) Response. No response to such a motion shall be filed unless requested by the court.

(3) Contents. Such a motion must be based on one or more of the criteria for publication set forth in Rule 36(c)(1)-(3). The motion must state concisely and specifically on which criteria it is based and set forth argument in support of such contention. If filed by or on behalf of a nonparty, the motion must also identify the movant and his or her interest in obtaining publication.

(4) Decision. The granting or denial of a motion to publish is entrusted to the sound discretion of the panel that issued the disposition. Publication is disfavored if revisions to the text of the unpublished disposition will result in discussion of additional issues not included in the original decision.