

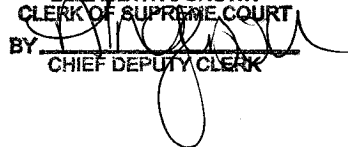
IN THE SUPREME COURT OF THE STATE OF NEVADA

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ALLOW CITATION OF UNPUBLISHED  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**

FEB 28 2017

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

*PETITION TO AMEND NEVADA RULE OF  
APPELLATE PROCEDURE 36*

COMES NOW the Honorable Michael A. Cherry, Chief Justice, and petitions the Nevada Supreme Court on its administrative docket to amend Rule 36 of the Nevada Rules of Appellate Procedure (NRAP). Specifically, as evidenced by questions that have arisen regarding citation of unpublished dispositions issued by the appellate courts, the rule requires amendment to clarify that only unpublished dispositions issued by the Supreme Court, and not those issued by the Court of Appeals, may be cited for persuasive value.

Accordingly, petitioner requests that the court place this issue on its administrative docket, hold such hearings as it deems necessary, and consider amendments to NRAP 36 to accomplish the objectives set

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forth above; proposed amendments are set forth in Exhibit A attached to this petition.

Dated this 28th day of February, 2017.

Respectfully submitted,

Cherry, C.J.  
Cherry

## 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**Form of Decision.** The [~~court decides~~] Supreme Court and Court of Appeals decide cases by either published or unpublished disposition.

(1) A published disposition is an opinion designated for publication in the *Nevada Reports*. The [~~court~~] Supreme Court or Court of Appeals will decide a case by published opinion if it:

(A) Presents an issue of first impression;

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

(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]~~ the Supreme Court on or after January 1, 2016. When citing such an unpublished ~~[disposition to this court,]~~ disposition, the party must cite an electronic database, if available, and the docket number and ~~[filing date in this court]~~ date filed in the Supreme Court (with the notation “unpublished disposition”). A party citing such an unpublished disposition must serve a copy of it on any party not represented by counsel. Unpublished dispositions issued by the Court of Appeals may not be cited for persuasive value.

**(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 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(e)(1)-(3).]~~ 36(c)(1)(A)-(C). 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.