

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

GREGORY FELTON,
Appellant,
vs.
DOUGLAS COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; and APPEALS
OFFICE of the DEPARTMENT OF
ADMINISTRATION,
Respndents

No. 70497

Electronically Filed
Jun 22 2016 01:23 p.m.

DOCKETING Tsaia K Mendem
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District First Department I
County Carson City Judge Hon. James T. Russell
District Ct. Case No. 15 OC 00048 1B

2. Attorney filing this docketing statement:

Attorney Edward L. Oueilhe, Esq. Telephone 775-684-7555

Firm Nevada Attorney for Injured Workers

Address 1000 E. William Street
Suite 208
Carson City, Nevada 89701

Client(s) Gregory Felton

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Robert F. Balkenbush, Esq. Telephone 775-786-2882

Firm Thorndal Armstrong Delk Balkenbush & Eisinger

Address 6590 South McCarran Blvd.
Suite B
Reno, Nevada 89509

Client(s) Douglas County

Attorney John D. Hooks, Esq. Telephone 702-366-0622

Firm Thorndal Armstrong Delk Balkenbush & Eisinger

Address 1100 East Bridger Avenue
PO Drawer 2070
Las Vegas, Nevada 89125

Client(s) Douglas County

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Gregory Felton vs. Douglas County, Public Agency Compensation Trust, and Appeals Office of the Department of Administration; Case No. 15 OC 00048 1B; the First Judicial District Court of the State of Nevada in and for Carson City; February 2, 2016.

In the Matter of the Industrial Insurance Claim of Gregory Felton; Appeal No.:47863-WDD; Appeals Officer, Nevada Department of Administration; February 4, 2015.

8. Nature of the action. Briefly describe the nature of the action and the result below:

The February 4, 2015, Decision and Order of the Appeals Officer was affirmed on Mr. Felton's Petition For Judicial Review with the First District Court.

Mr. Felton argued that the proper review of NRS 616A.065, NRS 616C.420 and NAC 616C.447 was independent review for an error of law. More specifically, Mr. Felton argued that the Appeals Officer committed an error of law because NRS 616A.065 does not prohibit the summing of his deemed volunteer search and rescue wage and his concurrent wages as a Hewlett Packard employee, and NRS 616C.420 and NAC 616C required that Mr. Felton's deemed volunteer wage and actual wage must be summed when determining his average monthly wage.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the Appeals Officer's order presents an error of law because the Appeals Officer incorrectly construed and applied NRS 616A.065 and concluded that where the Legislature in NRS 616C.420 required the Division Industrial Relations to enact regulations which dictate the process by which average monthly wages are to be calculated in NAC 616C.447, Mr. Felton's earned wage and volunteer deemed wage should not be summed to determine Mr. Felton's average monthly wage.

Because NRS 616A.065 does not prohibit the summing of Mr. Felton's deemed wage and his concurrent wage as mandated in NRS 616C.420 and NAC 616C.447, the appeals officer and the reviewing court committed an error of law and abuse of discretion.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

This appeal has not been before the Nevada Supreme Court previously.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The Appellant asks the Court rule on a substantial issue of first impression.

14. Trial. If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Administrative law hearing on 08/25/2014 (1 hour)

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 02/02/2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 04/26/2016

Was service by:

☒ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 05/23/2016

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☒ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Gregory Felton; Douglas County, Public Agency Compensation Trust; Appeals Office of the Department of Administration.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

No Statement of Intent to Participate was filed by the Appeals Office of the Department of Administration at the District Court.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant seeks independent review of an issue of statutory and regulation construction.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)): NRAP 3A(b)

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Gregory Felton
Name of appellant

06/22/2016
Date

Edward L. Oueilhe, Esq.
Name of counsel of record


Signature of counsel of record

Nevada, Carson City
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 22nd day of June, 2016, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Robert F. Balkenbush, Esq.
Thorndal Armstrong et al
6590 South McCarran Blvd., Suite B
Reno, NV 89509-6112

John D. Hooks, Esq.
Thorndal Armstrong et al
1100 East Bridger Avenue
PO Drawer 2070
Las Vegas, NV 89701

Dated this 22nd day of June, 2016


Signature