


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO NEVADA RULES OF APPELLATE
PROCEDURE 3(D)(d) AND 3(E).

ADKT 0570

FILED

DEC 10 2020

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

PETITION

James W. Hardesty, Justice of the Nevada Supreme Court, petitions the Supreme Court to amend Nevada Rules of Appellate Procedure (NRAP) Rule 3D(d) to allow 30 days to file a notice of appeal from an order issued by the Commission on Judicial Discipline and to amend Rule 3E to expressly allow an appellant to file a reply to a fast track response.

With respect to the proposed amendments to Rule 3(D)(d), that rule currently provides that the filing and service of a notice of appeal from an order issued by the Commission on Judicial Discipline must be made within 14 days after service of the order on the respondent. There is no constitutional or legislative history that justifies a time period for a judge to file a notice of appeal that differs from the time period provided to other civil or criminal litigants. To promote uniformity among appellate litigants, the proposed amendment changes the time period when a notice of appeal must be filed from 14 days to 30 days. The proposed amendments to NRAP 3(D)(d) are set forth in Exhibit A attached.


As to the proposed amendment to Rule 3(E), the Supreme Court clerk's office routinely receives motions to file replies to responses in fast track child custody cases and those motions are consistently granted. This circumstance places an unnecessary burden on the parties and court staff

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to prepare, file, and process motions to file replies that can be resolved by including a rule that permits the filing of replies. Further, the delay that a case suffers from motions to file replies can be overcome by the proposed rule change. The proposed amendments to NRAP 3E are set forth in Exhibit B attached.

The aforementioned proposed amendments will improve court administration and ease burdens on appellate litigants in fast track and judicial discipline cases. Petitioner requests that the Nevada Supreme Court place this matter on its administrative docket, hold such hearings as it deems necessary and consider the proposed amendments to NRAP 3D(d) and NRAP 3E.

Respectfully submitted this 10TH day of December, 2020.



James W. Hardesty
Supreme Court Justice

EXHIBIT A
AMENDMENTS TO NEVADA RULE OF APPELLATE PROCEDURE
3(D)(d) JUDICIAL DISCIPLINE: RIGHT TO APPEAL: HOW TAKEN:
RULES GOVERNING

* * *

(d) Notice of Appeal. An appeal to the Supreme Court from a commission order shall be taken by filing a notice of appeal with the clerk of the commission and serving a copy of the notice on the prosecuting counsel, if any. Filing and service must be made within [~~14 days~~] 30 days after service on the respondent of the commission's formal order of suspension, censure, removal, retirement, or other discipline, together with its formal findings of fact and conclusions of law. Upon the filing of the notice of appeal, the clerk of the commission shall immediately transmit to the clerk of the Supreme Court 2 file-stamped copies of the notice of appeal.

EXHIBIT B
AMENDMENTS TO NEVADA RULE OF APPELLATE
PROCEDURE 3(E) FAST TRACK CHILD CUSTODY APPEALS

(a) Applicability. This Rule applies to appeals and cross-appeals from district court orders pertaining to child custody or visitation.

(b) Responsibilities of Appellant. Appellant and cross-appellant are responsible for filing the notice of appeal, case appeal statement, docketing statement, a transcript request form, and a fast track statement for the case identifying the appellate issues that are raised. An appellant and/or cross-appellant who is proceeding without counsel need not prepare a case appeal statement, as the district court clerk will prepare this document in accordance with Rule 3(f)(2).

(c) Request for Transcripts or Rough Draft Transcripts.

(1) Rough Draft Transcript. For the purposes of this Rule, a rough draft transcript is a computer-generated transcript that can be expeditiously prepared in a condensed fashion, but is not proofread, corrected or certified to be an accurate transcript. A rough draft transcript shall:

(A) be printed on paper 8 1/2 by 11 inches in size, double-sided, with the words "Rough Draft Transcript" printed on the bottom of each page;

(B) be produced with a yellow cover sheet;

(C) include a concordance, indexing key words contained in the transcript; and

(D) include an acknowledgment by the court reporter or recorder that the document submitted pursuant to this Rule is a true original or copy of the rough draft transcript.

(2) Transcript Requests.

(A) Filing and Serving Request Form. The parties have a duty to confer and attempt to reach an agreement concerning the transcripts necessary for the court's review on appeal. When a transcript is necessary for an appeal, appellant shall file the transcript or rough draft transcript request form with the district court and shall serve a copy of the request form upon the court reporter or recorder and the opposing party. Appellant shall file and serve the request form within 14 days of the date that the Supreme Court approves the settlement conference report indicating that the parties were unable to settle or, if the case was exempted or removed from the settlement program, within 14 days of the date that the case was exempted or removed from the settlement program. Appellant shall file with the clerk of the Supreme Court 2 file-stamped copies of the transcript or rough draft transcript request form and proof of service of the form upon the court reporter or recorder and the opposing party. The transcript request form shall substantially comply with Form 3 or 11 in the Appendix of Forms unless the party filing the form is proceeding pro se, in which case the transcript request form shall substantially comply with Form 17 in the Appendix of Forms. If no transcript is to be requested, appellant shall file with the clerk of the Supreme Court and serve the opposing party with a certificate to that effect within the same period that the transcript request form must be filed and served under this subsection. Such a certificate shall substantially comply with Form 14 in the Appendix of Forms.

(B) Appellant shall order transcripts of only those portions of the proceedings that appellant reasonably and in good faith believes are necessary to determine the appellate issues.

(C) The court reporter or recorder shall submit an original transcript or rough draft transcript, as requested by appellant, to the district court no more than 21 days after the date that the request is served. The court reporter or recorder shall also deliver certified copies of the transcript or rough draft transcript to the requesting and opposing parties no more than 21 days after the date when the request is served. Within 7 days after delivering the certified copies of the rough draft transcript, the court reporter or recorder shall file with the clerk of the Supreme Court a certificate acknowledging delivery of the completed transcript and specifying the transcripts that have been delivered and the date that they were delivered to the requesting party. Form 15 in the Appendix of Forms is a suggested form of certificate of delivery. The preparation of transcripts shall conform with the provisions of this Rule.

(D) When a transcript request form is submitted by a pro se party who is proceeding in forma pauperis, the court reporter or recorder shall take no action on the request unless directed to do so by the Supreme Court or Court of Appeals in accordance with Rule 9(b).

(E) Relevant portions of the trial or hearing that were audio recorded or video recorded shall be submitted in typewritten form. The court will not accept audio- or videotapes in lieu of transcripts.

(3) Supplemental Request for Transcripts or Rough Draft Transcripts.

The opposing party may make a supplemental request for portions of the transcript or rough draft transcript that were not previously requested. The request shall be made no more than 7 days after appellant served the

transcript request made pursuant to subsection (c)(2) of this Rule. In all other respects, the opposing party shall comply with the provisions of this Rule governing a transcript or rough draft transcript request when making a supplemental transcript request.

(4) Sufficiency of the Rough Draft Transcript. In the event that appellant elects to use rough draft transcripts, appellant shall be responsible for reviewing the sufficiency of the rough draft transcripts. In the event that a substantial question arises regarding a rough draft transcript's accuracy, the court may order the production of a certified transcript.

(d) Filing Fast Track Statement, Response, Reply, and Appendix.

(1) Filing Fast Track Statement. Within 40 days after the Supreme Court approves the settlement conference report indicating that the parties were unable to settle the case or, if the appeal is removed or exempted from the settlement program, within 40 days after the appeal is removed or exempted, appellant and cross-appellant shall file and serve an original and 1 copy of both a fast track statement form and an appendix with the clerk of the Supreme Court and serve 1 copy of the fast track statement and appendix on the opposing party. The fast track statement shall substantially comply with Form 12 in the Appendix of Forms. The fast track statement shall not exceed 16 pages in length or shall comply with the type-volume limitations stated in Rule 3E(e)(2). The fast track statement shall include the following:

(A) A statement of jurisdiction for the appeal;

(B) A statement of the case and procedural history of the case;

(C) A concise statement summarizing all facts material to a consideration of the issues on appeal;

(D) An outline of the alleged district court error(s);

(E) Legal argument, including authorities, pertaining to the alleged error(s) of the district court;

(F) When applicable, a statement regarding the sufficiency of the rough draft transcript;

(G) When applicable, a reference to all related or prior appeals, including the appropriate citations for those appeals; and

(H) A statement, setting forth whether the matter should be retained by the Supreme Court or assigned to the Court of Appeals, including reference to any appropriate provisions in Rule 17. If the appellant believes that the Supreme Court should retain the case despite its presumptive assignment under Rule 17 to the Court of Appeals, the statement shall identify the specific issue(s) or circumstance(s) that warrant retaining the case and an explanation of their importance or significance.

(2) Filing Fast Track Response. Within 21 days from the date a fast track statement is served, the respondent and cross-respondent shall file an original and 1 copy of a fast track response and serve 1 copy of the fast track response on the opposing party. The fast track response shall substantially comply with Form 13 in the Appendix of Forms. The fast track response shall not exceed 11 pages in length or shall comply with the type-volume limitations stated in Rule 3E(e)(2). The fast track response shall include additional authority and factual information necessary to rebut the contentions in the fast track statement. In cases involving a pro se appellant and/or cross-appellant, Rule 46A(c) shall not

apply and the respondent/cross-respondent shall file a fast track response as required by this Rule.

(3) Fast Track Reply. The appellant may file a reply to the Fast Track Response that shall be entitled “Reply to Fast Track Response.” The reply shall be no longer than 5 pages or shall comply with the type-volume limitations stated that in Rule 3E(e)(2). The reply must be limited to answering matters set forth in the Fast Track Response. The reply must be filed within 14 days of service of the Fast Track Response.

[(3)] (4) Expanded Fast Track Statement[, ~~or~~]Response, or Reply. A party may seek leave of the court to expand the length of the fast track statement, ~~or~~ response, or reply. The requesting party must demonstrate that the complexity of the case and the issues presented warrant granting the request. A request for expansion must be filed at least 14 days before the fast track statement, ~~or~~ response, or reply is otherwise due, and must specify the number of additional pages requested.

[(4)] (5) Appendix. The parties have a duty under Rule 30 to confer and attempt to reach an agreement concerning a possible joint appendix to be filed with the fast track statement. In the absence of an agreement respecting a joint appendix, appellant shall prepare and file a separate appendix with the fast track statement, and respondent may prepare and file a separate appendix with the fast track response. The preparation and contents of appendices shall comply with Rules 30 and 32 and shall be paginated sequentially. Every assertion in the fast track statement or response regarding matters in an appendix shall cite to the specific page number that supports that assertion.

~~[(5)] (6) Pro Se Appellant; Appendix.~~ A pro se appellant or cross-appellant shall not file an appendix. If the court's review of the record is necessary in such a case, the court may direct that the complete record be transmitted as provided in Rule 11(a)(2). Pro se parties are encouraged, but not required, to support assertions made in the fast track statement or response regarding matters in the record by citing to the specific page number in the record that supports the assertions.

(e) Format; Type-Volume Limitation; Certificate of Compliance.

(1) Format. Fast track filings shall comply with the formatting requirements of Rule 32(a)(4)-(6), and Rule 32(a)(7)(C) shall apply in computing permissible length, and Rule 32(a)(8) shall apply with regard to handwritten documents by pro se parties.

(2) Type-Volume Limitation. The size of a fast track filing may be calculated by type-volume in lieu of page limitation. Using a type-volume limitation, a fast track statement is acceptable if it contains no more than 7,267 words or 693 lines of text. A fast track response is acceptable if it contains no more than two-thirds the type-volume specified for a fast track statement (4,845 words or 462 lines of text); and a fast track reply or supplement is acceptable if it contains no more than 2,333 words or 216 lines of text.

(3) Certificate of Compliance. Fast track filings must include a certificate of compliance in substantially the form required by Rule 32(a)(8). A certificate that includes the first two paragraphs under "Verification" in Forms 6 and 7 of

the Appendix of Forms will be regarded as sufficient to meet the requirements of this Rule.

(f) Extensions of Time.

(1) Transcripts or Rough Draft Transcripts. A court reporter or recorder may request, by telephone, a 7-day extension of time for the preparation of a transcript or rough draft transcript if such preparation requires more time than is allowed under this Rule. The clerk of the Supreme Court or designated deputy may, for good cause, grant such requests by telephone or by written order.

(2) Fast Track Statements, ~~[or]~~ Responses, or Replies. Either party may request, by telephone, a 7-day extension of time for filing a fast track statement, ~~[or]~~ response, or reply. The clerk of the Supreme Court or designated deputy may, for good cause, grant such requests by telephone or by written order.

(3) Subsequent Request for Extensions. Any subsequent request for an extension of time must be made by written motion to the court. The motion must justify the requested extension in light of the time limits provided in this Rule, and shall specify the exact length of the extension requested. Extensions of time for the filing of fast track statements, **~~[and]~~** responses, and replies shall be granted only upon demonstration of extreme need or merit. Sanctions may be imposed if a subsequent motion for an extension of time is brought without reasonable grounds.

(g) Appeal Disposition, Full Briefing, or Calendaring.

(1) Based solely upon review of the transcripts or rough draft transcripts, fast track statement, fast track response, reply, and any other documents filed with the court, the court may resolve the matter or direct full briefing.

(2) A party may seek leave of the court to remove an appeal from the fast track program and direct full briefing. The motion must demonstrate that the specific issues raised in the appeal are complex and/or too numerous for resolution in the fast track program. If the moving party is represented by counsel, the movant must attach a written waiver from the client certifying that counsel has discussed the implications of full briefing and that the client waives expeditious resolution of the appeal.

(3) If the court orders an appeal to be fully briefed, the parties are not required to file transcript request forms pursuant to Rule 9(a) unless otherwise ordered. If a party's brief cites to a transcript not previously filed in the court, that party shall cause a supplemental transcript to be prepared and filed in the district court and the court under Rule 9 within the time specified for filing the brief in the court's briefing order. If a represented party's brief cites to documents not previously filed in the court, that party shall file and serve an appropriately documented supplemental appendix with the brief. In accordance with Rule 30, pro se parties shall not file an appendix, but when the court's review of the record is necessary in a pro se appeal, the court may direct that the complete record be transmitted as provided in Rule 11(a)(2).

(4) Subject to extensions, and if the court does not order full briefing, the court shall dispose of all fast track child custody appeals within 90 days of the date the fast track response is filed.

(h) Court Reporter or Recorder Protection and Compensation. When preparing and submitting rough draft transcripts under this Rule,

(1) Court reporters or recorders shall not be subject to civil, criminal or administrative causes of action for inaccuracies in a rough draft transcript unless the court reporter or recorder willfully

(A) fails to take full and accurate stenographic notes of the proceeding for which the rough draft transcript is submitted, or willfully and improperly alters stenographic notes from the proceeding, or willfully transcribes audio- or videotapes inaccurately; and

(B) such willful conduct proximately causes injury or damage to a party asserting the action, and that party demonstrates that appellate relief was granted or denied based upon the court reporter's or recorder's inaccuracies.

(2) Court reporters shall be compensated as follows:

(A) For the preparation of a transcript or rough draft transcript, the court reporter shall receive 100 percent of the rate established by NRS 3.370 for each transcript page and for costs. A party ordering transcripts or copies must pay the court reporter's fee. No reporter may be required to perform any service in a civil case until the fees have been paid to him or her, or deposited with the court clerk.

(B) In the event that a certified transcript is ordered after the rough draft transcript is prepared, the court reporter shall receive an additional fee as established by NRS 3.370.

(i) Sanctions. Any party, attorney, court reporter, or court recorder who lacks due diligence in compliance with this Rule may be subject to sanctions by the court. Sanctionable actions include, but are not limited to, failure of appellant to timely file a fast track statement or respondent's failure to file a fast track response; and failure of a party to raise material issues or arguments in a fast track statement or response.

(j) Conflict. The provisions of this Rule shall prevail over conflicting provisions of any other rule.