

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3   IN THE MATTER OF THE CREATION,   )       ADKT 0580

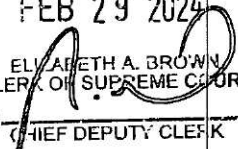
4   OF A COMMISSION ON NEVADA       )

5   RULE OF APPELLATE PROCEDURE     )

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**FILED**

**FEB 29 2024**

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

7   **CLARK COUNTY PUBLIC DEFENDER'S OFFICE REPONSE TO**

8   **ORDER DATED JANUARY 30, 2024, REQUESTING PUBLIC**

9   **COMMENT ON PROPOSED AMENDMENTS TO THE NEVADA**

10   **RULES OF APPELLATE PROCEDURE**

11           The Clark County Public Defender's Office appreciates the

12   opportunity to provide comments to the proposed changes to the Nevada

13   Rules of Appellate Procedure and the undersigned William M. Waters, Chief

14   Deputy Appellate Attorney for the Public Defender's Office would also

15   appreciate an opportunity to speak at the public hearing scheduled for March

16   7, 2024.

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19           The Clark County Public Defender's Office recognizes the

20   tremendous work done by the commission members and notes the Office is

21   satisfied with the vast majority of the proposed changes. Nevertheless, the

22   Clark County Public Defender's Office desires to provide specific comments

23   regarding certain proposed rule changes as noted below.

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26       1. NRAP 3C.

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1       The Clark County Public Defender's Office believes this Court should  
2 eliminate Fast Track Briefing in all criminal cases, especially since the  
3 creation of the Nevada Court of Appeals. Nevertheless, if this Court desires  
4 to retain fast track briefing in criminal cases, the Clark County Public  
5 Defender's Office prefers the current distinction that an appeal from  
6 judgment of conviction for either an A, B, or non-probationable C felony is  
7 not subject to fast track briefing. Additionally, if this Court desires to retain  
8 fast track briefing, the Clark County Public Defender's Office appreciates  
9 the amendments in NRAP 3C(g)(2)(B) which would automatically extend  
10 time for the Appellant to file the fast track brief should the court reporter  
11 request additional time to file transcripts.  
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16       2. NRAP 4.  
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18       The proposed changes in NRAP 4(b)(1)(A)(ii) and NRAP  
19 4(b)(1)(B)(ii) allowing a criminal defendant 30 days to file a notice of  
20 appeal from "the filing of the state's notice of appeal," doesn't make logical  
21 sense because a defendant can only appeal "final orders" while the State can  
22 appeal final orders and adverse interlocutory orders. Any final order adverse  
23 to the State would be beneficial to the defendant and therefore, there would  
24 not be any logical reason for a defendant to appeal the decision. Should the  
25 State choose to appeal an interlocutory order, the order would once again be  
26 beneficial to the defendant. However, more importantly, any interlocutory  
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1 appeal by the state would not be from a “final” order which is the only type  
2 of order the defendant can appeal.

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4 The proposed changes in NRAP 4(b)(3)(A), which effectively extends  
5 the deadline to file a notice of appeal when certain motions are filed in the  
6 district court is confusing. This is especially true because NRAP 4(b)(5)  
7 suggests that filing those motions does not extend time to file a notice of  
8 appeal from a judgment of conviction. Thus, if a notice of appeal is filed  
9 after a judgment of conviction, but before any motion listed in NRAP  
10 4(b)(3)(A)(i)-(iii), it could be interpreted that the defendant must file a  
11 notice of appeal for both the judgment of conviction and a notice of appeal  
12 from denial of any motion listed in NRAP 4(b)(3)(A)(i)-(iii) that is resolved  
13 more than 30 days after the judgment of conviction is filed. If this is  
14 inaccurate, the Clark County Public Defender’s Office appreciate  
15 clarification.

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21 3. NRAP 8.

22 The Clark County Public Defender’s Office interprets the proposed  
23 changes in NRAP 8(a)(1)(D) to require a petitioner seeking appeal or  
24 extraordinary relief to apply for a stay in this Court even after a stay has  
25 been granted in the district court pending resolution in this Court. If this is  
26 accurate, the Clark County Public Defender’s Office opposes this  
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1 requirement. If, however, the district court issues a limited stay, then this  
2 requirement would make more sense.

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4 4. NRAP 9.

5 Under proposed Rule 9(b)(4)(C), an appellant can request to extend  
6 the briefing schedule via motion if court reporter requests more time to file  
7 transcripts. The Clark County Public Defender's Office believes an  
8 extension should be automatic like in proposed rule 3C(g)(2)(B).  
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10 5. NRAP 10.

11 The Clark County Public Defender's Office agrees with proposed  
12 changes to Rule 10(c)(2)(A)-(C) making it easier for the parties to correct  
13 the record in the district court.  
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15 6. NRAP 14.

16 The Clark County Public Defender's Office believes it is  
17 impracticable for the Office to include a "Statement of Issues on Appeal" in  
18 the docketing statement. The Appellate Deputy from Clark County Public  
19 Defender's Office will have almost no familiarity with the case on appeal  
20 because that deputy did not participate in the trial. Additionally, because  
21 the Clark County Public Defender's Office accepts appointments for all  
22 indigent defendants for both trial and appeal, if private counsel withdraws  
23 after trial, and the Clark County Public Defender's Office is appointed to  
24 represent the defendant on appeal, the Clark County Public Defender's  
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1 Office will not know anything about the case until transcripts are filed in the  
2 district court.

3       The Clark County Public Defender's Office also believes that under  
4 Rule 14(f), if the Respondent believes there's a jurisdictional defect in the  
5 appeal, the Respondent should be required, rather than simply allowed, to  
6 file a motion to dismiss shortly after the docketing statement is filed.  
7 Currently, the Clark County District Attorney's Office files motions to  
8 dismiss based upon alleged jurisdictional defects after the Opening Brief has  
9 been filed when the supposed jurisdictional defect should have been  
10 apparent from the docketing statement. Requiring the motion to be filed  
11 before the opening brief would save the district attorney's office, the public  
12 defender's office, and this Court time and resources when there is an actual  
13 jurisdictional defect.  
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19       7. NRAP 17.

20       The Clark County Public Defender's Office believes changes from  
21 "presumptive assignment" language to "ordinarily retained" language  
22 creates confusion regarding where cases are routed on appeal. The Clark  
23 County Public Defender's Office would prefer absolute clarity on where  
24 specific category of cases are assigned. The Clark County Public  
25 Defender's Office believes the categories of cases under Rule 17(b) sub (2),  
26 (3), (4), (5), should always be retained by Supreme Court because given the  
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1 “push-down model,” if this Court disagrees with an appellant’s contention  
2 that his case meets the criteria under sub (2), (3), (4) and (5), this Court can  
3 always assign the case to the Court of Appeals.  
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5 8. NRAP 30.

6 NRAP 30(b) requires that “all matters not essential to the decision of  
7 the issues presented by the appeal must be omitted.” This creates logistical  
8 problems for the Clark County Public Defender’s Office, which files the  
9 most criminal appeals in the State of Nevada. As noted elsewhere, the  
10 appellate deputy assigned to the appeal will not know what is essential to the  
11 issues on appeal until after the appendix is created. This is especially true  
12 where the Clark County Public Defender’s Office is appointed after private  
13 counsel has withdrawn.  
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17 9. NRAP 32.

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19 The Clark County Public Defender’s Office reiterates its belief that  
20 under NRAP 32(a)(7), the length of briefs should be increased in all cases.  
21 An appeal from a non-capital case after trial in the district court can include  
22 numerous issues requiring extensive argument. Given post-conviction  
23 concerns, an appellate attorney should not be forced to make judgment calls  
24 regarding what issues should be included in a brief simply to meet an  
25 arbitrarily imposed length limit. Rather, briefs should be over-inclusive to  
26 include all colorable claims arising from the proceedings in the district court.  
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1       10. NRAP 34.

2           To preserve valuable taxpayer resources, the Clark County Public  
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4   Defender's Office believes all oral arguments from cases originating in  
5   southern Nevada should, absent an emergency, be scheduled in Las Vegas  
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7   and not Carson City.

8           The Clark County Public Defender's Office agrees with the  
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10   elimination of the requirement that the Appellant must file a Reply brief to  
11   present rebuttal argument.

12       11. NRAP 36.

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14       The Clark County Public Defender's Office does not agree with  
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16   proposed changes in NRAP 36(c)(3), which would allow citation to  
17   unpublished decision of the Nevada Court of Appeals. It is the Clark  
18   County Public Defender's Office's understanding that initially, and perhaps  
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20   still, the Court of Appeals functions to expeditiously decide appeals where  
21   the record and law is clear. If true, any unpublished decision from the Court  
22   of Appeals from its inception would not provide any precedential value  
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24   outside the parties in that particular case.

25       Moreover, from anecdotal experience, the Clark County Public  
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27   Defender's Office believes many unpublished decisions from the Court of  
28   Appeals are not as well reasoned – perhaps due to its function to  
expeditiously decide appeals and its limited number of justices – as

1 decisions from this Court which has necessitated our office to file numerous  
2 Petitions for Supreme Court Review. While the Clark County Public  
3 Defender's Office does appreciate the invaluable service the Court of  
4 Appeals provides in resolving cases expeditiously, the Clark County Public  
5 Defender's Office would suggest if this Court were inclined to allow citation  
6 to unpublished decisions from the Court of Appeals, that allowance should  
7 be prospective from the date the amendments to the Nevada Rules of  
8 Appellate Procedure are adopted.

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12 12. NRAP 40B.

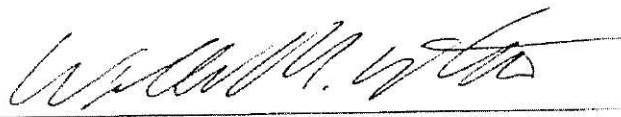
13 Ideally, to save resources, the Clark County Public Defender's Office  
14 believes Rule 40B should delineate with absolute clarity and precision the  
15 instances where the Court will accept petition for review. Understanding  
16 that it is likely impossible, the Clark County Public Defender's Office  
17 nevertheless would suggest that if a decision from the Court of Appeals  
18 contains a dissenting opinion, which directly implicates the relief granted by  
19 the Court of Appeals, this Court should presumptively grant the Petition for  
20 Review to clarify whether the Court of Appeals dissenting Justice's opinion  
21 is correct.

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26 DATED this 29th day of February, 2024.

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28 DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER



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