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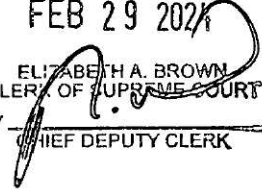
February 29, 2024

Via E-Mail: nvsclerk@nvcourts.nv.gov

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

FILED

FEB 29 2024

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

Re: ADKT No. 0580

In the Matter of the Creation of a Commission on Nevada Rules of Appellate Procedure

To the Honorable Justices of the Nevada Supreme Court and Ms. Brown,

The Legal Aid Center of Southern Nevada Inc. ("Legal Aid Center"), along with the Nevada Coalition of Legal Services Providers, supports changes to the Nevada Rules of Appellate Procedure. Specifically, Legal Aid Center is in support of amending the Nevada Rules of Appellate Procedure to ensure greater access to the courts, and to ensure a more streamlined process for counsel who accept cases pro bono or through other court-approved legal aid programs. This would not only ensure more access to justice for underrepresented parties, but would also encourage attorneys to accept more cases pro bono by removing obstacles that can at times overcomplicate their representation in pro bono matters. Our suggested changes to NRAP 9, 10, and 11 are attached for your consideration.

First, we recommend amending proposed NRAP 9:

a) Waiving Costs for Preparation and Delivery of Transcripts.

While the proposed changes to NRAP 9 create a new process whereby a party can move for waiver of costs associated with preparation and delivery of transcripts, this Court should provide an even more simplified process for parties who are proceeding in forma pauperis, are a "client of a program for legal aid" as defined by NRS 12.015(8), are represented by pro bono counsel pursuant to a program authorized by the Supreme Court and administered by a program for legal aid, or are otherwise qualified and have been accepted for representation through a program for legal aid. The current process in NRAP 9 has created obstacles for pro bono counsel and attorneys representing clients through other court-approved legal aid programs, which has resulted in counsel either bearing the cost of preparation and delivery of transcripts or foregoing requesting the transcripts altogether. With such litigants the goal should be to simplify the process to the greatest extent possible, which will encourage attorneys in the community to accept more pro bono cases and will allow more access to justice for underrepresented litigants.

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The proposed amendment to NRAP 9 creates a new multi-step process to waive costs for preparation of delivery of transcripts, rather than streamlining the process. Moreover, the current language in the proposed amendment to NRAP 9 describing what parties can seek waiver of costs for preparation and delivery of transcripts leaves out critical programs that legal aid entities administer in conjunction with the district courts, like the Children's Attorney Project. Accordingly, Legal Aid Center recommends removing the motion for waiver of costs process created in the proposed amendment to Rule 9. Instead, Legal Aid Center recommends including language that captures critical programs for legal aid that are not represented under the proposed amendment and provides for the waiver of costs for preparation and delivery of transcripts by counsel simply providing proof with their transcript request form that the party is proceeding in forma pauperis, is a "client of a program for legal aid" as defined by NRS 12.015(8), is represented by pro bono counsel pursuant to a program authorized by the Supreme Court and administered by a program for legal aid, or has otherwise qualified and been accepted for representation through a program for legal aid.

Second, we recommend amending NRAP 10 and 11:

a) Allowing Access to Sealed Records for the Purposes of Appeal.

The proposed amendments to NRAP 10 and 11 do not address obstacles that routinely arise in appeals where the underlying district court case is sealed. In such appeals, counsel for a party is required to appear in a limited capacity before the district court and engage in motion practice to access transcripts for the appeal. Even if the record has been transmitted to the appellate court from the district court, counsel for a party is denied access to the sealed records even though the sealed records appear on the docket in the appeal and are part of the appellate record. Currently, counsel in such cases is forced to navigate a lengthy and ambiguous process before the district court without any direction provided in the NRAP or district court local rules.

The proposed amendment to NRAP 11 should address this issue and make access to the appellate record easier for parties, especially in cases where a party is represented by pro bono counsel or otherwise represented through a program for legal aid. Removing obstacles like the ones currently in place in cases where the underlying district court records have been sealed should be of the utmost importance to ensure access to justice. Legal Aid Center recommends providing a two-tiered process for accessing sealed district court records for the purposes of appeal.

Legal Aid Center recommends including language in NRAP 11 stating that in cases where a party is a "client of a program for legal aid" as defined by NRS 12.015(8), is represented by pro bono counsel pursuant to a program authorized by the Supreme Court and administered by a program for legal aid, or has otherwise qualified and been accepted for representation with a program for legal aid, counsel should be allowed access to the sealed district court records upon

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their appearance as counsel in the appeal regarding the underlying sealed case. All that counsel should need to provide to the district court to obtain the sealed records is proof that they are in fact counsel in the appeal related to the sealed district court case. This would streamline the process for obtaining the appellate record for counsel who accept cases pro bono or through other court-approved legal aid programs.

We also recommend that in regards to any other case, NRAP 11 should include language that provides direction to counsel that access to the sealed district court record will be allowed upon the filing of a Notice of Limited Appearance with the district court. This would reflect the process that the district court already requires and would provide direction that does not currently appear in the NRAP.

Thank you for your time and consideration.

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Attachments: Suggested revisions to proposed amendments for NRAP 9, NRAP 10, NRAP 11

RULE 9. REQUESTS FOR AND PREPARATION OF TRANSCRIPTS

(a) The Appellant's Duty to Request Transcripts.

(1) What to Request. Unless otherwise provided in these Rules, the appellant must request transcripts of district court proceedings that the appellant deems necessary for proper consideration of the issues on appeal but that were not prepared and filed in the district court before the appeal was docketed under Rule 12.

(2) When and How to Comply with Duty to Request. The appellant must do either of the following no later than 14 days from the date the appeal is docketed under Rule 12:

(A) request the court reporter or recorder to prepare the necessary transcripts by:

(i) preparing a transcript request form that complies with Rule 9(a)(6); and

(ii) filing the original transcript request form with the district court clerk and a file-stamped copy with the clerk of the Supreme Court; or

(B) file and serve a certificate that substantially complies with Form 14 in the Appendix of Forms, stating that no transcript will be requested.

(3) Multiple Appeals from the Same Judgment. If multiple parties appeal from the same judgment, each appellant must comply with the provisions of this Rule. The appellants must confer and attempt to reach an agreement concerning the transcripts necessary for the appellate court's review to avoid duplicative requests.

(4) Service of Request Form. Except as otherwise provided in this Rule, the appellant must serve a copy of the transcript request form on the named court reporter or recorder and on all parties to the appeal within the time provided in Rule 9(a)(2). ~~An appellant who will seek a waiver of the costs associated with the preparation and delivery of transcripts under Rule 9(a)(9) must serve a copy of the~~

~~transcript request on all parties to the appeal within the time provided in Rule 9(a)(2) but need not serve the request on the named court reporter or recorder.~~

(5) Payment of Deposit. Except as otherwise provided in this Rule, the appellant must pay an appropriate deposit to the court reporter or recorder when the transcript request form is served. Where several parties have appealed from the same judgment or any part thereof, or there is a cross-appeal, the deposit must be borne equally by the parties appealing, or as the parties may agree. If an appellant's costs associated with preparation and delivery of transcripts are waived pursuant to Rule 9(a)(9), then appellant is not required to pay a deposit.~~An appellant who is not required to serve the transcript request form on the court reporter or recorder under Rule 9(a)(4), is not required to pay a deposit.~~

(6) Contents of the Transcript Request Form. The appellant must prepare a separate transcript request form addressed to each court reporter or recorder who recorded the necessary proceedings, specifying only those proceedings recorded by the named court reporter or recorder. The transcript request form must substantially comply with Form 3 in the Appendix of Forms and must contain the following information based on appellant's examination of the district court minutes:

- (i) Name of the judge or officer who heard the proceedings;
- (ii) Date or dates of the trial or hearing to be transcribed; individual dates must be specified, a range of dates is not acceptable;
- (iii) Portions of the transcript requested; specify the type of proceedings (e.g., suppression hearing, trial, closing argument);
- (iv) Number of copies required; and
- (v) A certification by appellant or appellant's counsel, if any, that the required transcripts have been requested and that the required deposits have been paid. This certification must specify from whom the transcript was ordered, the date the transcript was ordered, and the date the deposit was paid. The appellant may

omit this certification if the appellant's costs are subject to waiver pursuant to Rule 9(a)(9) is not required to serve the transcript request form on the court reporter or recorder pursuant to Rule 9(a)(4).

(7) Number of Copies of Transcript; Costs. Appellant must provide a copy of the certified transcript to each party appearing separately. Unless costs associated with preparation and delivery of transcripts are waived pursuant to Rule 9(a)(9) otherwise ordered under Rule 9(a)(9), the appellant initially must pay any costs associated with the preparation and delivery of the transcript. Where several parties have appealed from the same judgment or any part thereof, or there is a cross-appeal, the costs associated with the preparation and delivery of the transcript must be borne equally by the parties appealing, or as the parties may agree.

(8) Supplemental Requests.

(A) Partial Transcript. Unless the entire transcript is ordered, the parties have a duty to confer and attempt to reach an agreement concerning the transcripts necessary for the appellate court's review.

(i) If the parties cannot agree on the necessary transcripts, within 14 days from the date the initial transcript request is filed, respondent must notify appellant in writing of the additional portions it believes are required.

(ii) Appellant then has 14 days to file and serve a supplemental transcript request form and pay any additional deposit required.

(iii) Unless appellant has ordered all additional portions of the transcript requested by respondent within 14 days and has so notified respondent, the respondent may, within the following 14 days either order the additional portions of the transcript or move in the district court for an order requiring the appellant to do so.

(B) Pro Bono Program Appeals. If counsel has been assigned to represent the appellant pro bono pursuant to a program authorized by the Supreme Court, pro bono counsel may proceed as provided in Rule 9(a)(9) to obtain necessary transcripts not previously prepared.

(9) Motion for Waiver of Costs Associated with Preparation and Delivery of Transcripts. An appellant who has been permitted to proceed in forma pauperis, is a “client of a program for legal aid” as defined by NRS 12.015(8), or is represented by pro bono counsel pursuant to a program authorized by the Supreme Court and administered by a program for legal aid, or has otherwise qualified and been accepted for representation with a program for legal aid may request a waiver of ~~shall~~ not be required to pay the costs associated with the preparation and delivery of the transcripts by filing a motion with the clerk of the Supreme Court. To obtain waiver of costs associated with preparation and delivery of transcripts, an appellant must include proof of one of following with their transcript request form: in forma pauperis status, representation through pro bono counsel pursuant to a program authorized by the Supreme Court and administered by a program for legal aid, or representation through a program for legal aid. ~~—The motion must specify each proceeding for which a transcript is requested and explain why each transcript is necessary for the appellate court’s review. If the court grants the motion, it will specify the transcripts that are necessary for appellate review and direct the district court to order that those~~ If appellant provides proof of in forma pauperis status, representation through pro bono counsel pursuant to a program authorized by the Supreme Court and administered by a program for legal aid, or representation through a program for legal aid, transcripts shall be prepared at county expense in accordance with NRS 12.015(3).

(10) Consequences of Failure to Comply. An appellant's failure to comply with the provisions of this Rule may result in the imposition of sanctions, including dismissal of the appeal.

(b) Duty of the Court Reporter or Recorder.

(1) Preparation, Filing, and Delivery of Transcripts.

(A) Time to File and Deliver Transcripts. Upon receiving a transcript request form and the required deposit, the court reporter or recorder must promptly prepare or arrange for the preparation of the transcript. Except as provided in Rule 9(c)(1)(B) and (c)(4), the court reporter or recorder must — within 30 days after the date that a request form is served:

- (i) file the original transcript with the district court clerk; and
- (ii) deliver to the party ordering the transcript 1 certified copy and an additional certified copy for the appendix.

(B) Appellant's Failure to Pay Deposit. The court reporter or recorder is not obligated to prepare the transcript until receipt of the deposit required by Rule 9(a)(5), unless costs associated with preparation and delivery of transcripts are waived pursuant to Rule 9(a)(9). If appellant fails to timely pay the deposit, the court reporter or recorder must — no later than 30 days from the date that the transcript request form is served:

- (i) file with the clerk of the Supreme Court a written notice that the deposit has not been received, setting forth the full amount of the deposit and the amount that remains unpaid; and
- (ii) serve a copy of the notice on the party requesting the transcript.

(2) Notice to Clerk of the Supreme Court. Within 14 days after the transcript is filed with the district court and delivered to the requesting party, the court reporter or recorder must file with the clerk of the Supreme Court a notice that the completed transcript has been filed and delivered. The notice must specify the transcripts that

have been filed and delivered and the date that those transcripts were filed and delivered. Form 15 in the Appendix of Forms is a suggested form of certificate of delivery.

(3) Format of Transcript. A certified transcript may be produced in a conventional page-for-page format. A concordance indexing keywords in the transcript must be provided.

(4) Extension of Time to Deliver Transcript.

(A) Motion Required. If the court reporter or recorder cannot deliver a transcript within the time provided in Rule 9(c)(1)(A), the reporter or recorder must seek an extension of time by filing a written motion with the clerk of the Supreme Court on or before the date that the transcripts are due.

(B) Supporting Documentation and Affidavits. A motion to extend the time for delivering a transcript must be accompanied by the affidavit of the court reporter or recorder setting forth the reasons for the requested extension and the length of additional time needed to prepare the transcript.

(C) Service. The motion must be served on the party requesting the transcript.

(D) Standard for Granting. Requests for extensions of time to prepare a transcript will be closely scrutinized and will be granted only upon a showing of good cause.

(5) Sanctions for Failure to Comply. A court reporter or recorder who fails to file and deliver a timely transcript without sufficient cause as provided in Rule 9(c)(4) may be subject to sanctions under Rule 13.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If a hearing or trial was not recorded, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection.

The statement must be served on the respondent, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district court clerk in the trial court record, and the appellant must include a file-stamped copy of the statement in an appendix filed with the clerk of the Supreme Court.

RULE 10. THE RECORD

(a) The District Court Record. The district court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.

(1) Retention of Record. The district court clerk shall retain the district court record. When the appellate court deems it necessary to review the district court record, the district court clerk must assemble and transmit the portions of the record designated by the clerk of the Supreme Court in accordance with the provisions of Rule 11. If a party is represented by counsel in the Supreme Court or Court of Appeals, and the district court case on appeal is sealed, the district court clerk shall provide appellate counsel access to the district record in accordance with the provisions of Rule 11. The appellate court may direct a party to pay any costs associated with the preparation and transmission of the record.

(b) The Record on Appeal.

(1) The Appendix. For the purposes of appeal, the parties shall submit to the clerk of the Supreme Court copies of the portions of the district court record to be used on appeal, including all transcripts necessary to the Supreme Court's or Court of Appeals' review, as appendices to their briefs. Under Rule 30(a), a joint appendix is preferred. This Rule does not apply to pro se parties. The Supreme Court or Court of Appeals will determine whether its review of the complete record is necessary in a pro se appeal and direct the district court clerk to transmit the record as provided in Rule 11(a)(2).

(2) Exhibits. If exhibits cannot be copied to be included in the appendix, the parties may request transmittal of the original exhibits to the clerk of the Supreme Court under Rule 30(d).

(3) Audio or Video Recordings. If an official audio or video recording of a processing is necessary to the Supreme Court's or Court of Appeals' meaningful review of an issue raised on appeal, a party may request transmittal of the recording to the clerk of the Supreme Court. The court will not accept audio or video recordings in lieu of a transcript.

(c) Correction or Modification of the Record.

(1) If any difference arises about whether the district court record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the district court record, the omission or misstatement may be corrected:

(A) on stipulation of the parties;

(B) on order of the district court; or

(C) on order of the Supreme Court or Court of Appeals.

(3) All other questions as to the form and content of the record must be presented to the Supreme Court or Court of Appeals.

**RULE 11. PREPARING, FORWARDING, AND GRANTING ACCESS
TO THE RECORD**

(a) Preparation of the Record. The district court clerk must transmit the district court record to the clerk of the Supreme Court only when required by statute or court rule or upon order of the Supreme Court or Court of Appeals. The district court clerk must assemble, paginate, and index the record in the same manner as an appendix to the briefs under Rule 30. If the Supreme Court or Court of Appeals determines that its review of original papers or exhibits is necessary, the district court clerk must forward the original trial court record in lieu of copies.

(1) Exhibits. If the Supreme Court or Court of Appeals directs transmittal of exhibits, the exhibits must not be included with the documents comprising the record. The district court clerk must place exhibits in an envelope or other appropriate container, so far as practicable. The title of the case, the court docket number, and the number and description of all exhibits must be listed on the envelope, or if no envelope is used, then on a separate list.

(2) Record in Pro Se Cases. When the court directs transmission of the complete record in cases in which the appellant is proceeding without counsel, the record must contain each and every paper, pleading and other document filed in, or submitted for filing, in the district court. The record must also include any previously prepared transcripts of the proceedings in the district court. If the Supreme Court or Court of Appeals should determine that additional transcripts are necessary to its review, the court may order the reporter or recorder who recorded the proceedings to prepare and file the transcripts.

(3) Record in Sealed Cases.

(A) Except as stated in Rule 11(3)(B), when the underlying trial court record is sealed and a party to an appeal is represented by counsel, counsel must file a Notice of Limited Appearance with the district court for the sole purpose of obtaining access to the trial record necessary on appeal. Upon counsel filing the Notice of Limited Appearance with the district court, the district court clerk shall immediately provide counsel access to the district record as defined by NRAP 10(a). The district court shall not treat or construe the Notice of Limited Appearance pursuant to this rule as a Notice of Limited or Formal Representation in the district court matter. Unless otherwise expressly indicated by appellant or respondent's counsel, a Notice of Limited Appearance pursuant to this rule shall not result in the automatic listing of said counsel on the court docket as attorney of record in the district court matter. Upon issuance of the remittitur in the appeal(s) related to the

case where access was granted pursuant to this rule, counsel shall file a Notice of Withdrawal.

(B) If a party is a “client of a program for legal aid” as defined by NRS 12.015(8), is represented by pro bono counsel pursuant to a program authorized by the Supreme Court and administered by a program for legal aid, or has otherwise qualified and been accepted for representation with a program for legal aid then counsel for such a party shall not be required to enter a Notice of Limited Appearance as described in NRAP 11(3)(A) with the district court in order to obtain the trial court record as defined by NRAP 10(a). In such cases, counsel shall have access to the trial court record upon filing a Notice of Appearance in the pending appeal.

(b) Duty of Clerk to Certify and Forward the Record. The district court clerk must certify and forward the record to the clerk of the Supreme Court. The district court clerk must indicate, by endorsement on the face of the record or otherwise, the date upon which it is forwarded to the clerk of the Supreme Court.

(c) Time for Forwarding the Record. The trial court record shall be forwarded within the time allowed by the court, unless the time is extended by an order entered under Rule 11(d). If access to a sealed district court matter was granted to counsel pursuant to this Rule, the duration of such access shall be limited to the time the appeal is pending with the Supreme Court or Court of Appeals.

(d) Failure of Timely Transmittal; Extensions.

(1) Failure of Timely Transmittal. A district court clerk who fails to forward a timely record on appeal or grant appellate counsel access to the same without sufficient excuse may be subject to sanctions.

(2) Extension of Time; Supporting Documentation and Affidavits. If the district court clerk cannot timely forward the record, the clerk shall seek an extension of time from the requesting court. The district court clerk may request by telephone

a 14-day extension of time to transmit the record. If good cause is shown, the clerk of the Supreme Court may grant the request by telephone. Any additional request for an extension of time to transmit the record must sought by filing a written motion with the clerk of the Supreme Court and must be accompanied by a declaration of the district court clerk or deputy clerk setting forth the reasons for the requested extension, and the length of additional time needed to prepare the record.