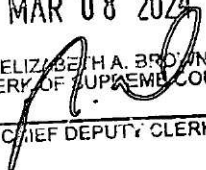


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION OF
A COMMISSION ON NEVADA RULES OF
APPELLATE PROCEDURE

FILED

MAR 08 2024

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

ADKT 0580

**SUPPLEMENTAL COMMENTS OF
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24-08322

SUPPLEMENTAL COMMENTS

As authorized by the Court at the public hearing held on March 7, 2024, regarding the proposed amendments to the Nevada Rules of Appellate Procedure, Kevin C. Powers, General Counsel, Legislative Counsel Bureau, Legal Division (“LCB Legal”), hereby submits these supplemental written comments proposing technical drafting revisions to the proposed amendments to NRAP prepared by the Commission on the Nevada Rules of Appellate Procedure (“Commission”) for consideration by the Court under NRS 2.120. For purposes of these supplemental comments, the following typeface and fonts are intended to have the following meanings:

1. Matter shown in bolded double underlined italics (e.g., ***bolded double underlined italics***) is new material that LCB Legal is proposing should be added to the amended rules; and

2. Matter shown in bolded italicized brackets with double strikethrough (e.g., ~~***bolded italicized brackets with double strikethrough***~~) is existing material that LCB Legal is proposing should be omitted from the amended rules.

Supplemental Comment 1. Definition of “Pro Se.”

(a) Exhibit B, Page 2—Revise **NRAP 1(e)(7)** to read as follows:

(7) “Pro se” or “unrepresented” or any other similar term refers to a party acting on his or her own behalf without the assistance of counsel. The term does not include attorneys who are representing themselves and are active members of the State Bar of Nevada during such representation.

Supplemental explanation regarding the use of “or any other similar term”: Although not an exhaustive list, the following appellate rules include examples of the use of terms that are similar to “pro se” or “unrepresented,” such as “self-represented.” LCB Legal’s proposed revisions ensure that the definition of “pro se” or “unrepresented” includes “any other similar term” within the scope of the definition. *See, e.g.*, Rule 3(d)(1) (“a party is not represented by counsel”); Rule 3(f)(2) (“appellant is not represented by counsel”); Rule 3C(a)(3) (“a defendant or petitioner who was not represented by counsel”); Rule 16(a)(3) (“self-represented party”); Rule 28(k) (“[a]ppellants proceeding without assistance of counsel”); Rule 30(i) (“a party who is not represented by counsel” and “a pro se party”); Rule 31(d) (“appellant not represented by counsel”); Rule 32(a)(5)(C) (“self-represented”); Rule 32(a)(9) (“self-represented”); Rule 34(g) (“appellant not represented by counsel”); Rule 36(c)(3) (“any party not represented by counsel”).

Previous explanation regarding attorneys representing themselves: In the course of litigation, attorneys who are active members of the State Bar of Nevada may be required to represent themselves in proceedings before Nevada’s appellate courts. For example, in cases where the district court has disqualified or imposed sanctions on attorneys under the civil rules or the rules of professional conduct, those attorneys have standing, in their own right, to seek writ relief and represent themselves in such writ proceedings before Nevada’s appellate courts. *See, e.g., State ex rel. Cannizzaro v. First Jud. Dist. Ct.*, 136 Nev. 315, 316-18, 466 P.3d 529, 530-32 (2020); *Valley Health Sys., LLC v. Estate of Doe*, 134 Nev. 634, 643-45, 427 P.3d 1021, 1030-31 (2018). Under such circumstances, those attorney litigants generally are not considered to be typical “pro se” parties; instead, they are subject to the same standards of professional conduct in the litigation as other attorneys representing parties. *See In re Discipline of Schaefer*, 117 Nev. 496, 507-08, 25 P.3d 191, 199-200, *opinion modified on denial of reh’g*, 31 P.3d 365 (2001) (holding that the rules of professional conduct prohibit a lawyer who is representing himself in a case from directly contacting another party to the case who is represented by counsel); *see also Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 70, 412 P.3d 56, 63 (2018) (holding that attorney litigants who proceed pro se cannot be awarded attorney fees because when attorneys represent themselves or their law firms, no fees are actually incurred, but such attorney litigants may recover costs).

Supplemental Comment 2. Premature Notice of Appeal.

(a) Exhibit B, Pages 45 and 48—Delete proposed NRAP 4(a)(2) and keep existing NRAP 4(a)(7) relating to the filing of a premature notice of appeal:

~~*{(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.}*~~

* * *

~~{(6)}~~ (7) Premature Notice of Appeal. A premature notice of appeal does not divest the district court of jurisdiction. The court may dismiss as premature a notice of appeal filed after the oral pronouncement of a decision or order but before entry of the written judgment or order, or before entry of the written disposition of the last-remaining timely motion listed in Rule ~~{4(a)(4)}~~ 4(a)(5)(A). If, however, a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule ~~{4(a)(4)}~~ 4(a)(5)(A), is entered before dismissal of the premature appeal, the notice of appeal ~~{shall be}~~ is considered filed on the date of and after entry of the order, judgment, or written disposition of the last-remaining timely motion.

Supplemental explanation: The proposed amendments result in two separate provisions relating to the filing of a premature notice of appeal. LCB Legal believes that the Court should delete proposed Rule 4(a)(2), which is modeled on FRAP 4(a)(2), and keep existing Rule 4(a)(7) as Nevada’s rule.

However, if the Court believes that proposed Rule 4(a)(2) can be harmonized with existing Rule 4(a)(7), LCB Legal believes that the Court should consolidate the separate provisions into the same subdivision and make all revisions that are necessary to harmonize the provisions within the consolidated subdivision.

Supplemental Comment 3. Bonds or Other Security.

- (a) Exhibit B, Page 60—Revise **NRAP 7** to read as follows:

In a civil case, *unless an appellant is exempted by law*, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this Rule.

- (b) Exhibit B, Page 62—Revise **NRAP 8(a)(2)(E)** to read as follows:

(a) Motion for stay.

(2) Motion in the Court; Conditions on Relief.

(E) ~~The~~ Unless the moving party is exempted by law, the court may condition relief on a party's filing a bond or other appropriate security in the district court.

- (c) Exhibit B, Page 187—Revise **NRAP 41(d)(3)(C)** to read as follows:

(d) Stay of Remittitur.

(3) Application for Certiorari to the United States Supreme Court.

(C) ~~The~~ Unless the party is exempted by law, the court may require a bond or other security as a condition to granting or continuing a stay of the remittitur.

Supplemental explanation: Under Article 4, Section 22 of the Nevada Constitution, the Legislature has not waived its sovereign immunity and is exempted by law from the payment of another party's costs on appeal. NRS 218F.720(1) (providing that, in litigation, "the Legislature may not be assessed or held liable for: (a) [a]ny filing or other court or agency fees; or (b) [t]he attorney's fees or any other fees, costs or expenses of any other parties.")). In addition, NRS 20.040(1) provides:

1. In any action or proceeding before any court or other tribunal in this State, wherein the State of Nevada or any county, city or town of this State, or any officer thereof in his or her official capacity, is a party plaintiff or defendant, **no bond, undertaking or security shall be required** of the State, county, city or town, or such officer in his or her official capacity, but on complying with the other provisions of law the State, county, city or town, or

officer thereof, acting as aforesaid, shall have the same rights, remedies and benefits as though such bond, undertaking or security were given and approved as required by law.

NRS 20.040(1) (emphasis added). LCB Legal's proposed revisions ensure that Rule 7, Rule 8(a)(2)(E), and Rule 41(d)(3)(C) conform with the provisions of state law which exempt the state government and certain local governments from provisions requiring bonds or other security.

Supplemental Comment 4. Requests for Transcripts.

(a) Exhibit B, Page 65—Revise **NRAP 9(a)(2)** to read as follows:

(2) When and How to Comply with Duty to Request. ~~*The*~~
~~*Except as provided in Rule 16(b)(1), 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*~~
~~*the Certificate of No Transcript Request Form on the Nevada*~~
~~*Supreme Court website, stating that no transcript will be requested.*~~

(b) Exhibit B, Page 71—Revise **NRAP 9(b)(1)(A)** to read as follows:

(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 ~~*shall*~~ must promptly prepare or arrange for the preparation of the transcript. Except as provided in Rule 9~~*(e)*~~~~*(b)*~~(1)(B) and ~~*(e)*~~~~*(b)*~~(4) and Rule 16(b)(1), the court reporter or recorder ~~*shall*~~ 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.

Supplemental explanation: Under Rule 16(b)(1), the clerk's issuance of the referral notice informing the parties that the appeal may be assigned to the settlement conference program automatically stays the time for filing a request for transcripts and for filing briefs. The notice also stays the preparation and filing of any transcripts requested. LCB Legal's proposed revisions ensure that Rule 9 includes appropriate cross-references to the exceptions in Rule 16(b)(1).

Supplemental Comment 5. Record and Appendix for Pro Se Parties.

- (a) Exhibit B, Page 75—Revise **NRAP 10(b)(1)** to read as follows:

(b) The Record on Appeal.

(1) The Appendix. For the purposes of appeal, the parties ~~shall~~ must submit to the clerk of the Supreme Court copies of the portions of the ~~trial~~ 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, except as provided in Rule 21(a)(4) governing proceedings for extraordinary writs. 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).

- (b) Exhibit B, Page 128—Revise **NRAP 28(e)(3)** to read as follows:

(e) References in Briefs to the Record.

(3) ~~4~~ Except as provided in Rule 21(a)(4) governing proceedings for extraordinary writs, a pro se party is not permitted to file an appendix under Rule 30(i), and therefore is not required to comply with Rule 28(e)(1). ~~Pro~~ In cases where pro se parties are not permitted to file an appendix, they are encouraged to support assertions in briefs regarding matters in the record by providing citations to the appropriate pages and volume numbers of the ~~trial~~ district court record.

(c) Exhibit B, Page 144—Revise **NRAP 30(i)** to read as follows:

(i) Pro Se Party Exception. ~~{This}~~ Except as provided in Rule 21(a)(4) governing proceedings for extraordinary writs, this Rule does not apply to a party who is not represented by counsel ~~6.4f~~, and such a pro se party ~~{shall}~~ must not file an appendix except as otherwise provided in these Rules or ordered by the court. If the court’s review of the complete record is necessary, the court will direct the district court to transmit the record as provided in Rule 11.

Supplemental explanation: Under Rule 21(a)(4), the petitioner must submit with the writ petition an appendix that complies with Rule 30. Additionally, Rule 21(a)(4) provides that Rule 30(i)—which prohibits pro se parties from filing an appendix—does not apply to a petition for writ relief filed under Rule 21, and thus pro se writ petitions must be accompanied by an appendix. Further, in writ petitions arising from the district court, the appendix must comply with Rule 10. LCB Legal’s proposed revisions ensure that Rule 10(b)(1), Rule 28(e)(3), and Rule 30(i) include appropriate cross-references to the exception in Rule 21(a)(4).

Supplemental Comment 6. Filing and Computing and Extending Time.

(a) Exhibit B, Page 105—Revise **NRAP 25(a)(2)(B)(iii)** to read as follows:

(iii) Timeliness. A paper is timely filed if, on or before the last day for filing, it is ~~{(vi)}~~ electronically transmitted to the court’s electronic filing system consistent with NEFCR 8. ~~If technical failure prevents timely electronic filing of any paper, the filing party {shall}~~ must preserve documentation of the failure and seek appropriate relief from the court.

Supplemental explanation: LCB Legal’s proposed revisions ensure conformity with the drafting conventions followed by the Commission regarding the use of “must” and “shall.”

(b) Exhibit B, Page 116—Revise **NRAP 26(c)** to read as follows:

(c) Additional Time After Service. ~~*When*~~ *Except as provided in this Rule and Rule 40(c), Rule 40A(c), and Rule 40B(c), when* a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule, ~~*26(c)*~~ a paper that is served electronically is treated as delivered on the date of service stated in the proof of service. Specific due dates set by court order or acts required to be taken within a time period set forth in a court order are not subject to the additional 3-day allowance.

Supplemental explanation: Under Rule 40(c), Rule 40A(c), and Rule 40B(c), the 3-day mailing period set forth in Rule 26(c) does not apply to the time limits for filing a petition for rehearing, for en banc reconsideration, or for Supreme Court review of a Court of Appeals decision. LCB Legal’s proposed revisions ensure that Rule 26(c) includes appropriate cross-references to the exceptions in Rule 40(c), Rule 40A(c), and Rule 40B(c).

Supplemental Comment 7. Covers and Captions of Briefs and Other Papers.

(a) Exhibit B, Page 121—Revise **NRAP 27(d)(1)(B)** to read as follows:

(B) Cover. A cover is not required, but there must be a caption that includes the name of the court and the docket number, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. *The caption must be formatted so there is sufficient blank space for the court’s file stamp in the upper right corner of the paper, in the area approximately 2 inches from the top edge and 3 inches from the right edge, and the information in the caption must not obscure the file stamp.* If a cover is used, it ~~*shall*~~ *must* be white *and must comply with Rule 32(a)(2).*

(b) Exhibit B, Pages 131-132—Revise **NRAP 28.1(d)** to read as follows:

(d) Cover. ~~[The cover of the appellant's opening brief must be blue; the respondent's combined answering brief on appeal and opening brief on cross appeal, red; the appellant's combined reply brief on appeal and answering brief on cross appeal, yellow; the respondent's reply brief on cross appeal, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan.]~~ The ~~front~~ cover of a brief must ~~contain the information required by~~ be white and must comply with Rule 32(a)(2). ~~[A pro se party who is incarcerated is not required to comply with the provisions of this Rule regarding the color of the cover of a brief filed by that party.]~~

(c) Exhibit B, Pages 151-152—Revise **NRAP 32(a)(2)** to read as follows:

(2) Cover. ~~[Covers for briefs are required. The cover of the appellant's brief must be blue; the respondent's, red; an intervenor's or amicus curiae's, green; and any reply, gray. A pro se party who is incarcerated is not required to comply with the provisions of this Rule regarding the color of the cover of a brief filed by that party.]~~ The cover of a brief must be white and must be formatted so there is sufficient blank space for the court's file stamp in the upper right corner of the cover, in the area approximately 2 inches from the top edge and 3 inches from the right edge, and the information on the cover must not obscure the file stamp. The ~~front~~ cover ~~of a brief shall~~ must contain the following information:

- (A) the name of the court and the number of the case;
- (B) the title of the case (see Rule 12(a));
- (C) the nature of the proceedings in the court (e.g., Appeal) and the name of the court below;
- (D) the title of the document (e.g., Appellant's Opening Brief, Respondent's Answering Brief); and
- (E) the names, addresses, telephone numbers, and State Bar of Nevada identification numbers of counsel, if any, representing the party for whom the brief is filed.

(d) Exhibit B, Page 157—Revise **NRAP 32(c)(2)** to read as follows:

(2) Other Papers. Any other paper, including a petition for rehearing and a petition for en banc reconsideration, and any response to such a petition, ~~{shall}~~ must be reproduced in the manner prescribed by Rule 32(a)(1), (3), (4), (5), (6), and (8) and ~~{shall}~~ must contain a caption setting forth the name of the court, the title of the case, the case number, and a brief descriptive title indicating the purpose of the paper. The caption must be formatted so there is sufficient blank space for the court's file stamp in the upper right corner of the paper, in the area approximately 2 inches from the top edge and 3 inches from the right edge, and the information in the caption must not obscure the file stamp. If a cover is used, it must be white and must comply with Rule 32(a)(2).

Supplemental explanation: LCB Legal agrees with the proposed amendments to the extent that they remove the requirements that the covers of briefs and other papers must be various colors. However, LCB Legal believes that the appellate rules should expressly require that the covers must be white. Otherwise, in the absence of any express requirements regarding colors, it is possible that pro se parties or other parties may proceed under the mistaken belief that they have the discretion to utilize colors—other than white—to suit their personal tastes.

With regard to the court's file stamp, in its Reviewing Note for Rule 32, the Commission states that “[w]hen formatting the cover, practitioners should consider the placement of the court's file electronic stamp in the upper right-hand corner about 2 inches below and 3 inches to the left of the edge. The court name, case number, and case title should be formatted so as not to obscure the file stamp.” In line with the Commission, LCB Legal believes that obscured file stamps on briefs and other papers have become a persistent problem for the clerk's office and the other parties. However, unlike the Commission, LCB Legal believes that this persistent problem should be addressed in the text of the appellate rules. Therefore, LCB Legal's proposed revisions expressly provide that all covers and captions on briefs and other papers must be formatted so there is sufficient blank space for the court's file stamp in the upper right corner, in the area approximately 2 inches from the top edge and 3 inches from the right edge, and the information included in such covers and captions must not obscure the file stamp.

Supplemental Comment 8. Contents of Briefs.

(a) Exhibit B, Page 127—Revise **NRAP 28(d)** to read as follows:

(d) References in Briefs to Parties. In briefs and at oral argument, the parties ~~{will be expected to keep to a minimum}~~ should minimize references to the parties by such designations as “appellant” and “respondent.” ~~{It promotes clarity to}~~ To make briefs ~~{clear, and oral argument clearer, the parties should}~~ use the ~~{designations used in the lower court or the actual names of}~~ parties’ actual names, the designations used in the lower court, or relevant or helpful descriptive terms such as “the employee,” or “the injured person,” ~~{etc.}~~

(b) Exhibit B, Page 128—Revise **NRAP 28(f)** to read as follows:

(f) Reproductions of Constitutional Provisions, Statutes, Rules, Regulations, Etc., or Similar Materials. If the court’s determination of the issues presented requires the study of constitutional provisions, treaties, statutes, rules, regulations, etc., charters, codes, ordinances, or interstate, cooperative, joint, or interlocal compacts or agreements, or any other similar materials, the relevant parts ~~{shall}~~ must be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(c) Exhibit B, Page 129—Revise **NRAP 28(k)** to read as follows:

(k) Briefs by Pro Se Appellants. ~~{Appellants}~~ A pro se appellant proceeding without assistance of counsel may file the informal brief form ~~{brief}~~ provided by the ~~{supreme court}~~ clerk of the Supreme Court in lieu of the opening brief described in Rule 28(a). If ~~{an appellant}~~ a pro se appellant uses the informal brief form to file the opening brief, the pro se appellant’s optional reply brief need not comply with the technical requirements of Rule 28(c) or Rule 32(a).

Supplemental explanation: LCB Legal believes its proposed revisions enhance the clarity and readability of these appellate rules.

Supplemental Comment 9. Appendix and Indexes to Appendix.

(a) Based on common definitions of “index” from merriam-webster.com and dictionary.com, LCB Legal believes that the term “indexes” is an accepted and generally preferred plural form of “index.” Therefore, LCB Legal’s proposed revisions replace “indices” with “indexes.”

(b) Exhibit B, Page 1—Revise **NRAP 1(e)** by adding a definition for the appellate rules as a whole to read as follows:

(2) “Appendix” means the appendix and the separate document containing the indexes to the appendix prepared under Rule 30.

(c) Exhibit B, Page 142—Revise **NRAP 30(c)(3)-(4)** to read as follows:

(3) Cover. The cover of an appendix ~~{shall}~~ must be white and ~~{shall}~~ must ~~contain the same information as the cover of a brief under~~ comply with Rule 32(a), but ~~{shall}~~ must be prominently entitled “JOINT APPENDIX,” or “APPELLANT’S APPENDIX,” or “RESPONDENT’S APPENDIX” or “APPELLANT’S REPLY APPENDIX.”

(4) ~~Indices~~ Indexes to Appendix. The party filing the appendix must prepare both an alphabetical index and a chronological index, arranged in that order, identifying each document in the appendix with reasonable definiteness, and indicating the volume and page of the appendix where the document is located. These ~~indices~~ indexes must be filed contemporaneously with the appendix as a separate document. The cover of the ~~indices~~ indexes must be white and must ~~contain the same information as the cover of a brief under~~ comply with Rule 32(a), but must be prominently entitled “INDEXES TO JOINT APPENDIX,” or “INDEXES TO APPELLANT’S APPENDIX,” or “INDEXES TO RESPONDENT’S APPENDIX” or “INDEXES TO APPELLANT’S REPLY APPENDIX.”

Supplemental explanation: The proposed amendments provide that the indexes to the appendix must be filed contemporaneously with the appendix as a **separate document**. By defining the term “appendix” for the NRAP as a whole, LCB Legal’s proposed revisions ensure that every reference to the term “appendix” in

the NRAP also encompasses the indexes to the appendix even though they are filed as a separate document.

Supplemental Comment 10. Filing and Service of Briefs.

(a) Exhibit B, Page 133—Revise **NRAP 28.1(f)** to read as follows:

(f) Time to Serve and File a Brief. Unless ~~*the court orders*~~ a different briefing schedule ~~*in a particular case*~~, *is provided by court order or these Rules, including Rule 16(b)(1) or any fast track rules,* briefs in cross-appeals must be served and filed as provided in this Rule. Motions for extensions of time are governed by Rule 31(b).

(a) Exhibit B, Page 144—Revise **NRAP 31(a)** to read as follows:

(a) Time for Serving and Filing Briefs. Unless a different briefing schedule is provided by ~~*a*~~ court order ~~*in a particular case or by these or any other court rules*~~ *or rules, these Rules, including Rule 16(b)(1) or any fast track rules,* the parties ~~*shall*~~ *must* observe the briefing schedule set forth in this Rule.

Supplemental explanation: Under Rule 16(b)(1), the clerk’s issuance of the referral notice informing the parties that the appeal may be assigned to the settlement conference program automatically stays the time for filing briefs. In addition, the fast track rules establish different briefing schedules for certain types of cases. LCB Legal’s proposed revisions ensure that Rule 28.1(f) and Rule 31(a) use similar and consistent language to convey that a different briefing schedule may be provided by the appellate rules.

Supplemental Comment 11. Formatting of Briefs and Page and Type-Volume Limitations.

(a) Exhibit B, Page 152—Revise **NRAP 32(a)(4)** to read as follows:

(4) Paper Size, Line Spacing, Margins, and Page Numbers. The brief must be on 8 1/2 by 11-inch paper. The text ~~*shall*~~ *must* be double-spaced, except that quotations of more than two lines may be indented and single-spaced. Headings and footnotes may be single-

spaced. Margins must be at least 1 inch on all four sides. The pages ~~{shall}~~ must be consecutively numbered at the bottom. Pages in the brief preceding any introduction and the statement of the case must be numbered in lowercase Roman numerals, and pages in the brief beginning with any introduction and the statement of the case must be numbered in Arabic numerals.

(b) Exhibit B, Page 154—Revise **NRAP 32(a)(7)(C)** to read as follows:

(C) Computing Page ~~{}~~ and Type-Volume Limitations. The disclosure statement, table of contents, table of authorities, jurisdictional statement, routing statement, and statement of the issues, which must precede any introduction and the statement of the case in the brief under Rule 28, and the signature blocks required by Rule 25(a)(5), certificate of service ~~and~~ if required by Rule 25(d)(1), certificate of compliance ~~with these Rules,~~ required by Rule 32(a)(9), and any addendum ~~containing statutes, rules, or regulations~~ prepared under Rule 28(f), which must follow the conclusion in the brief under Rule 28, do not count toward a brief's page ~~{}~~ or type-volume limitation. The page ~~{}~~ or type-volume limitation applies to all other portions of the brief beginning with any introduction and the statement of the case, including headings, footnotes, and quotations, and ending with the last word in the conclusion in the brief. ~~{Pages in the brief preceding the statement of the case must be numbered in lowercase Roman numerals, and pages in the brief beginning with the statement of the case must be numbered in Arabic numerals.}~~

Supplemental explanation: LCB Legal believes that the formatting and page and type-volume limitations in Rule 32(a)(4) and Rule 32(a)(7)(C) should be as clear and precise as possible. LCB Legal also believes that most briefs contain introductions before the statement of the case and those introductions should be included in the page and type-volume limitations. By contrast, LCB Legal believes that the jurisdictional statement, routing statement, and statement of the issues—which precede any introduction and the statement of the case under Rule 28(a)-(b)—should be excluded from the page and type-volume limitations. This is especially true if the Court adopts the proposed amendments to Rule 17, which would revise the standards for determining the assignment or “routing” of cases between the Supreme Court and the Court of Appeals. Based on the Commission’s Reviewing Note to Rule 17, the proposed amendments would define

the cases “ordinarily” retained by the Supreme Court to include categories that “are less clearly defined (e.g., ‘matters raising as a principal issue a question of first impression’) and are subject to [more] argument/interpretation by the parties in their routing statements.” Under such circumstances, LCB Legal believes that any argument/interpretation in the routing statement should not count toward the page or type-volume limitations.

Supplemental Comment 12. Petitions for rehearing, for en banc reconsideration, or for Supreme Court review of a Court of Appeals decision.

(a) Exhibit B, Page 175—Revise **NRAP 40(j)-(k)** to read as follows:

~~{(f)}~~ **(j) Untimely Petition[s]; Unrequested Answer or Reply.** ~~{4/}~~ *Timeliness of a* petition for rehearing is ~~*timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing.*~~ *governed by Rule 25(a)(2).* The clerk ~~{shall}~~ must not receive or file an untimely petition, but ~~{shall}~~ must return the petition unfiled or, if the petition was ~~*te-filed*~~ *filed electronically*, must reject the petition.

(k) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was ~~te-filed~~ filed electronically, must reject it.

(b) Exhibit B, Pages 180-181—Revise **NRAP 40A(i)-(j)** to read as follows:

~~{(h)}~~ **(i) Untimely Petition[s]; Unrequested Answer or Reply.** ~~{4/}~~ *Timeliness of a* petition for en banc reconsideration is ~~*timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing.*~~ *governed by Rule 25(a)(2).* The clerk ~~{shall}~~ must not receive or file an untimely petition, but ~~{shall}~~ must return the petition unfiled or, if the petition was ~~*te-filed*~~ *filed electronically*, must reject the petition. ~~**{The clerk shall return unfiled any answer or reply submitted for filing in the absence of an order requesting the same.}**~~

(j) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was ~~te-filed~~ filed electronically, must reject it.

(c) Exhibit B, Page 185—Revise **NRAP 40B(i)-(j)** to read as follows:

(i) Untimely Petition~~s~~. ~~*Timeliness of a petition for review is timely if e-filed, mailed, or sent by commercial carrier to the clerk within the time fixed for filing, governed by Rule 25(a)(2). The clerk of the Supreme Court*~~ must not receive or file an untimely petition, but must return the petition unfiled or, if the petition was ~~fe-~~~~filed,~~ filed electronically, must reject the petition.

(j) Unrequested Response. Absent an order requesting a response, the clerk must not receive or file a response, but must return it unfiled or, if the response was ~~fe-filed,~~ filed electronically, must reject it.

Supplemental explanation: Rule 25(a)(2) governs timeliness. LCB Legal believes that the timeliness provisions in Rules 40(j), 40A(i), and 40B(i) are underinclusive because they do not include all the methods available to a party to complete timely filing of a petition under Rule 25(a)(2), such as being “delivered to the clerk in person in Carson City,” or being “deposited in the Supreme Court drop box as provided in Rule 25(a)(3),” or being “transmitted directly to the clerk by facsimile transmission as provided in Rule 25(a)(4).” LCB Legal also believes that the term “e-filed”—which is not used in any other provisions of NRAP or NEFCR—should be replaced with “filed electronically,” which is the term used in Rule 25(a)(2). Accordingly, in addition to the foregoing rules, LCB Legal also believes that the term “e-filed” should be replaced with “filed electronically” in **Rules 40(f), 40A(e), and 40B(e).**

Supplemental Comment 13. Clerk’s Duties.

(a) Exhibit B, Page 192—Revise **NRAP 45(f)** to read as follows:

(f) Fees. ~~*The*~~ Except as provided in Rule 3(a) governing the filing of a notice of appeal, the clerk ~~shall~~ is not ~~be~~ required to file any paper or record in the clerk’s office or docket any proceeding until the fee required by law and these Rules has been paid.

Supplemental explanation: Under Rule 3(a), the district court clerk must file the appellant’s notice of appeal despite perceived deficiencies in the notice of appeal, including the failure to pay the district court or Supreme Court filing fees. Even though the district court clerk must apprise the appellant of the deficiencies in writing, the district court clerk must nevertheless send the notice of appeal to the clerk of the Supreme Court with a notation setting forth the deficiencies. Upon

receipt of the notice of appeal—and despite any deficiencies in the notice of appeal—the clerk of the Supreme Court must docket the appeal in accordance with Rule 12, whether or not the fees required by law and the appellate rules have been paid by the appellant.

DATED: This 8th day of March, 2024.

By: /s/ Kevin C. Powers
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CERTIFICATE OF SUBMISSION

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 8th day of March, 2024, as authorized by the Court at the public hearing held on March 7, 2024, regarding the proposed amendments to NRAP, I submitted a true and correct copy of the Supplemental Comments of Kevin C. Powers, General Counsel, Legislative Counsel Bureau, Legal Division, by electronic mail, directed to:

Elizabeth A. Brown
Clerk of the Supreme Court
nvscclerk@nvcourts.nv.gov

/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau