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FILED

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

October 24, 2018

Elizabeth Brown
Clerk of the Supreme Court
201 S. Stewart Street
Carson City, NV 89701
Via email only to: nvscclerk@nvcourts.nv.gov

Re: ADKT 501 – Proposed amendments to NRAP 3A and adoption of 3F

Dear Ms. Brown:

Please accept this letter as my comments with respect to the Petition filed on August 24, 2018 proposing to amend NRAP 3A and adopt NRAP 3F. If I can resolve a scheduling conflict, I intend to participate in the hearing on November 5, 2018.

It appears that the proposal does not substantively change the existing expedited appeal process for venue issues, and I have no concerns with that part of the proposed changes. With respect to appeals of dismissals for lack of personal jurisdiction, I do not have significant experience with such matters, but I suspect many are highly fact-specific and need relatively quick resolution. I do not have an opinion on that part of the change.

At this time, I oppose the remainder of the petition, particularly the part related to summary appeals for cases decided on summary judgment. However, I would be interested to hear more regarding the purpose and rationale for the proposed change, and the problem(s) it is intended to solve. I also would be interested in whether other states' appellate courts use this type of procedure, and if so, how this rule compares to those states' rules.

My initial impression is that it is inappropriate to allow only a summary appeal (unless the court orders otherwise) of civil cases disposed of by summary judgment. I do not know the percentage of appeals that are cases decided on summary judgment, but in my practice, the vast majority of my cases that are not settled are decided by summary judgment. But that does not mean they involve trivial or simple issues.

I am confident that the court would order full briefing on most election law cases, which tend to raise novel issues having significant public policy implications. But I am concerned that "ordinary" cases that nevertheless involve significant questions of law and application of the law to the facts will be given short shrift. For example, any breach of contract case with potentially tens of thousands in damages (enough to be filed in district court) is a very serious matter to the

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client. The client should have the *right* to a full appeal, regardless of whether the matter is ultimately decided by summary judgment, a bench trial, or a jury trial.

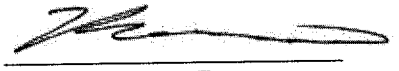
As I understand the proposed change, it would especially disfavor the litigants who unsuccessfully opposed the motion for summary judgment, because the moving (prevailing) party would always get the last word, even on appeal, contrary to current practice. Furthermore, in my experience, district courts' orders granting summary judgment vary dramatically in quality. Some are carefully and excellently crafted by the judge and his or her clerk, but most are drafted by the prevailing party. Some do little more than state that the motion is granted. More importantly, there may be mistakes or errors in the order which the party opposing the motion would never have an opportunity to address if the appeal is determined in a summary manner. It seems to me that defeats the entire purpose of the right to appeal.

Finally, given the creation of the Court of Appeals and the effort to create more Nevada case law to help guide attorneys and litigants, I do not understand the necessity of a summary appeal process for most cases decided by summary judgment. (I presume that summary affirmations or reversals will have little or no precedential value.) Many such cases still involve important interpretations or applications of the laws. Already I often experience frustration that a particular statute or fact pattern has only been addressed in an unciteable unpublished opinion. I am afraid that summary appeals would result in even less citeable authority.

If there are particular classes of cases that are causing significant problems with the Court's docket, I would suggest that the rule be explicitly limited to those types of cases. For example, under the federal Prisoner Litigation Reform Act, most civil rights cases brought by inmates in federal court must undergo a screening process, which essentially determines whether the plaintiff has even stated a claim. Perhaps it would be possible to similarly apply the summary appeal process only to certain types of cases.

Summary appeal procedures should be reserved for situations where speed or cost-savings may be paramount. Thus it may be a boon to litigants who mutually agree to the procedure, or on motions to change venue, or perhaps on cases decided by judgment on the pleadings. But cases resolved on summary judgment can still be extremely complex both factually and legally, and may involve substantial amounts of money or otherwise represent a "high stakes" issue to the client. A client should not be deprived of the right to full appeal simply because the case was decided on summary judgment.

Respectfully,



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