

Received By

JUN 16 2010

IN THE SUPREME COURT OF THE STATE OF NEVADA

State Bar of Nevada

IN THE MATTER OF AMENDMENTS
TO THE NEVADA RULES OF
APPELLATE PROCEDURE.

ADKT No. 381

FILED

JUN 14 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER SCHEDULING PUBLIC HEARING AND
ALLOWING PUBLIC COMMENT

On May 4, 2010, the Hon. Michael Cherry, Justice of the Nevada Supreme Court, filed a petition with this court proposing amendments to NRAP 3C (the criminal fast track rules) and other related appellate rules. The petition and proposed amendments are attached.

The Nevada Supreme Court will conduct a public hearing on the proposed amendments Tuesday, July 20, 2010, at 3:00 p.m. in the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 200 Lewis Avenue, 17th Floor (Regional Justice Center), Las Vegas, Nevada.

The bench, bar and the public are invited to submit written comments on the proposed changes. An original and 8 copies of written comments are to be submitted to: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., July 16, 2010. Persons interested in participating in the hearing must notify the Clerk no later than July 16, 2010.

Hearing date: July 20, 2010, at 3:00 p.m.
Supreme Court Courtroom
201 South Carson Street
Carson City, Nevada 89701

Comment deadline: July 16, 2010, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 14th day of June, 2010.

 C.J.

cc: Kathleen J. England, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Clerks
All Court Reporters and Recorders
Certified Court Reporters' Board of Nevada
Administrative Office of the Courts

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO THE NEVADA RULES OF
APPELLATE PROCEDURE

ADKT No. 381

FILED

MAY 04 2010

TRACEY L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

PETITION TO AMEND CERTAIN RULES OF APPELLATE
PROCEDURE RELATED TO FAST TRACK APPEALS

COMES NOW the Honorable Michael Cherry, Justice of the Nevada Supreme Court, to petition the Nevada Supreme Court on its administrative docket to amend NRAP 3C and other related appellate rules, and alleges that:

On December 31, 2008, this court entered an order amending the Nevada Rules of Appellate Procedure. In the Matter of Amendments to the Nevada Rules of Appellate Procedure, ADKT No. 381 (Order Amending the Nevada Rules of Appellate Procedure, December 31, 2008). The amendments became effective on July 1, 2009, and apply to all appeals docketed in this court on or after that date. Id. These comprehensive amendments to the appellate rules included amendments to NRAP 3C, which governs fast track criminal appeals.

Relative to my duties as Chairman of this court's Indigent Defense Commission, in March of 2009 I formed a Fast Track Appeals Subcommittee to study the fast track system for criminal appeals and to make suggestions for further improvements. The subcommittee consisted of representatives from the prosecution, the defense, and the court. Over

the course of several meetings, the subcommittee members expressed their experiences with and critique of the fast track system. The subcommittee also reviewed written comments which had been submitted in response to the NRAP amendments which were proposed and ultimately enacted by this court by way of the order referenced above.

The subcommittee made several unanimous recommendations, which were presented to the Indigent Defense Commission at its meeting on August 5, 2009. Those recommendations were: (1) to permit limited fast track replies; (2) to increase the length of the fast track statement to be consistent with the page limit for fast track statements in fast track child custody appeals; (3) to permit a motion for full briefing under limited circumstances in order to conform the rule to already-existing practice; and (4) to permit page-for-page rough draft transcripts, in order to increase their readability. A copy of the subcommittee's recommended amendments is attached hereto as Exhibit A.

At its August 5, 2009, meeting, the Indigent Defense Commission approved the proposed recommendations and agreed to put the matter before this court. Accordingly, I request that the Nevada Supreme Court review and amend Nevada Rule of Appellate Procedure 3C, and other related appellate rules, consistent with the above recommendations. The proposed amendments are set forth in Exhibit B attached to this petition.

Respectfully submitted this 3 day of May, 2010.

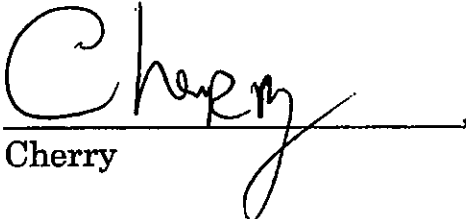

Cherry J.

EXHIBIT A

INDIGENT DEFENSE COMMISSION, FAST TRACK SUBCOMMITTEE
PROPOSED NRAP AMENDMENTS
08/05/09

1. Recommendation: Permit Limited Fast Track Replies

We propose amending NRAP 3C(g) (and renumber subsequent provisions & change corresponding cross-references) to add the following provision:

Fast Track Reply.

The appellant may file a reply to the Fast Track Response which shall be entitled "Reply to Fast Track Response." The reply shall be no longer than five pages. The reply must be limited to answering matters set forth in the Fast Track Response. The reply must be filed within fourteen days of service of the Fast Track Response.

2. Recommendation: Increase Length of Fast Track Statement to be Consistent with Fast Track Child Custody Appeals

A rule amendment to permit excess page motions is no longer required, because they are now covered by NRAP 32(a)(7)(c) (effective July 1, 2009).

However, in reviewing the rules, it was noted that it had been the intent of the original NRAP amendment committee to permit 15 page fast track statements, but the change was inadvertently omitted from the rules that went into effect July 1. Accordingly, we propose amending NRAP 3C(e)(1)(b) to state that the fast track statement shall not exceed 15 pages in length, rather than 10 as the rule presently states.

3. Recommendation: Permit Motion for Full Briefing Under Limited Circumstances, to Conform the Rule with Already-Existing Practice

We propose amending NRAP 3C(j)(2) (and renumber subsequent provisions & change corresponding cross-references) to add the following provision:

Motion for Full Briefing.

A party may seek leave of the Supreme Court to remove an appeal from the fast track program and direct full briefing. The motion may not be filed solely for purposes of delay. It may be filed in addition to or in lieu of the fast track pleading.

The motion must identify specific reasons why the appeal is not appropriate for resolution in the fast track program. Such reasons may include, but are not limited to, the following circumstances:

- the case raises one or more issues that involve substantial precedential, constitutional or public policy questions; and/or
- the case is legally or factually complex.

If the issues or facts are numerous but not complex, full briefing will not be granted but an excess page motion may be entertained.

No opposition may be filed unless ordered by the court.

4. Recommendation: Permit Page-for-Page Rough Draft Transcripts to Increase Readability

We propose amending the rules to permit rough draft transcripts to be produced in a page-for-page format rather than the minimum four-to-a-page format presently mandated.

The rule presently states that the rough draft transcript “shall” be produced with a yellow cover sheet “in a condensed format that produces at least four conventional transcript pages on one condensed page.” NRAP 3C(d)(1)(B). We propose eliminating the at-least-4-to-a-page language, so that the rule would read as follows: A rough draft transcript shall “[b]e produced with a yellow cover sheet.”

Identical language in the rules governing fast track child custody appeals should likewise be amended in the same fashion. NRAP 3E(c)(1)(b).

Additionally, a comparable provision in NRAP 9(b)(3) re: court reporter/ recorder’s duties should also be amended to permit page-for-page transcripts. The rule, which presently reads, “A certified transcript may be produced in a condensed format that produces at least 4 conventional transcript pages on 1 condensed page,” should be amended to read: “A certified transcript may be produced in a conventional page-for-page format.”

EXHIBIT B

NEVADA RULES OF APPELLATE PROCEDURE

* * *

RULE 3C. FAST TRACK CRIMINAL APPEALS

* * *

(d) Rough Draft Transcript. 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.

(1) Format. For the purposes of this Rule, 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 [~~in a condensed format that produces at least four conventional transcript pages on one condensed page~~];

(C) Include a concordance indexing key words in the transcript; and

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

* * *

(e) Filing of Fast Track Statement, [~~and~~] Appendix[-], and Fast Track Reply.

(1) Fast Track Statement.

(A) Time for Serving and Filing. Within 40 days from the date that the appeal is docketed in the Supreme Court under Rule 12, appellant's trial counsel shall serve and file a fast track statement that substantially complies with Form 6 in the Appendix of Forms.

(B) Length and Contents. Except by court order granting a motion filed in accordance with Rule 32(a)(7)(C), the fast track statement shall not exceed [~~10~~] 15 pages in length and shall include the following:

(i) A statement of jurisdiction for the appeal;

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

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

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

(v) A statement describing how the alleged issues on appeal were preserved during trial;

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

(vii) Where applicable, a statement regarding the sufficiency of the rough draft transcript; and

(viii) Where applicable, a reference to all related or prior appeals, including the appropriate citations for those appeals.

(C) References to the Appendix. Every assertion in the fast track statement regarding matters in a rough draft transcript or other document shall cite to the page and volume number, if any, of the appendix that supports the assertion.

(D) Number of Copies to Be Filed and Served. An original and 1 copy of the fast track statement shall be filed with the clerk of the Supreme Court, and 1 copy shall be served on counsel for each party separately represented.

(2) Appendix.

(A) Joint Appendix. Counsel have a duty to confer and attempt to reach an agreement concerning a possible joint appendix to be filed with the fast track statement.

(B) Appellant's Appendix. In the absence of an agreement respecting a joint appendix, appellant shall prepare and file an original and 1 copy of a separate appendix with the fast track statement. Appellant shall serve a copy of the appendix on counsel for each party separately represented.

(C) Form and Content. The preparation and contents of appendices shall comply with Rules 30 and 32 and shall be paginated sequentially.

(3) Fast Track Reply. The appellant may file a reply to the Fast Track Response which shall be entitled "Reply to Fast Track Response." The reply shall be no longer than 5 pages. 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.

* * *

(j) Full Briefing, Calendaring or Summary Disposition.

(1) Based solely upon review of the rough draft transcript, fast track statement, fast track response, and any supplemental documents, the Supreme Court may summarily dismiss the appeal, may affirm or reverse the decision appealed from without further briefing or argument, may order the appeal to be fully briefed and argued or submitted for decision without argument, may order that briefing and any argument be limited to specific issues, or may direct the appeal to proceed in any manner reasonably calculated to expedite its resolution and promote justice.

(2) Motion for Full Briefing.

(A) A party may seek leave of the Supreme Court to remove an appeal from the fast track program and direct full briefing. The motion may not be filed solely for purposes of delay. It may be filed in addition to or in lieu of the fast track pleading.

(B) The motion must identify specific reasons why the appeal is not appropriate for resolution in the fast track program. Such reasons may include, but are not limited to, the following circumstances:

(i) The case raises one or more issues that involve substantial precedential, constitutional or public policy questions; and/or

(ii) The case is legally or factually complex.

(C) If the issues or facts are numerous but not complex, full briefing will not be granted but an excess page motion may be entertained.

(D) No opposition may be filed unless ordered by the court.

~~[(2)]~~ (3) If the Supreme Court orders an appeal to be fully briefed, and neither party objects to the sufficiency of the rough draft transcripts to adequately inform this court of the issues raised in the appeal, counsel are not required to file certified transcript request forms under Rule 9(a). If a party's brief will cite to a transcript not previously included in an appendix submitted to this court, that party shall file and serve a transcript request form in accordance with Rule 9 within the time specified for filing the brief in the Supreme Court's briefing order. If a party's brief will cite to documents not previously filed in the Supreme Court, that party shall file and serve an appropriately documented supplemental appendix with the brief.

RULE 3E. FAST TRACK CHILD CUSTODY APPEALS

* * *

(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 ~~[in a condensed format that produces at least four conventional transcript pages on one condensed page]~~;

(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.

* * *

RULE 9. TRANSCRIPT; DUTY OF COUNSEL; DUTY OF THE COURT REPORTER OR RECORDER

* * *

(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 promptly prepare or arrange for the preparation of the transcript. Except as provided in Rule 9(b)(1)(B) and (b)(4), the court reporter or recorder shall—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)(3)(B). 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 counsel for the party requesting the transcript.

(2) Notice to Supreme Court. Within 10 days after the transcript is filed with the district court and delivered to the requesting party, the court reporter or recorder shall file with the clerk of the Supreme Court a notice that the completed transcript has been filed and delivered. The notice shall 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 [condensed] conventional page-for-page format ~~[that produces at least 4 conventional transcript pages on 1 condensed page]~~. A concordance indexing keywords in the transcript shall be provided.

