

# COMPREHENSIVE CHANGES TO THE NEVADA RULES OF APPELLATE PROCEDURE

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Attorneys who do not routinely handle civil cases in the Supreme Court may find themselves reading and re-reading the Nevada Rules of Appellate Procedure (NRAP) every time they have a new Supreme Court case. Now that the Supreme Court has adopted comprehensive changes to the NRAP, attorneys handling cases in the Supreme Court should make sure they are following the correct version of the NRAP. The key date to remember is July 1, 2009. All cases docketed in the Supreme Court on, or after, this effective date must comply with the amended NRAP. While many of the appellate rules have not changed, there are certain new changes that will govern the timing, place and format of filed documents. The order showing the new changes to the NRAP is available on the court's website at [www.nevadajudiciary.us](http://www.nevadajudiciary.us). This article provides an overview of the most notable changes to the NRAP for civil appeals but does not include specific changes that may have been made to the appellate rules governing criminal, child custody or visitation appeals.

## CASE APPEAL STATEMENT

**NRAP 3:** In addition to the information formerly required in the case appeal statement, the new statement must now include the following additional information:

- (1) Whether or not retained counsel is admitted to practice in Nevada or pro hac vice;



- (2) a brief description of the action, including the orders appealed from;
- (3) if the case has been previously appealed or involved a writ petition;
- (4) if the case involves child custody or visitation; and
- (5) if the appeal can possibly be settled (NRAP 3(f)(3)).

This additional information is somewhat duplicative of information contained in the docketing statement but the case appeal statement, unlike the docketing statement, is sent directly to the Supreme Court with the notice of appeal and, thus, assists the court in grouping appeals into different classes.

## APPEARANCE OF COUNSEL

**NRAP 46:** Attorneys who did not sign the notice of appeal must now file a formal, written notice of appearance within 10 days of service of the notice of appeal. Any attorney who will participate in oral argument must file a notice of appearance at least five days prior to the date set for oral argument (NRAP 46(a)(2)).

## BOND FOR COSTS ON APPEAL

**NRAP 7:** This rule increases the required bond for costs from \$250 to \$500 (NRAP 7(b)). The prevailing party, on appeal, can now recover up to \$500 in costs according to NRAP 39(c)(5). Unless the requirement to post a cost bond is waived, the cost to appeal will now be \$250 for the Supreme Court filing fee and \$500 for the cost bond, in addition to any District Court filing fees.

## REQUEST FOR TRANSCRIPTS

**NRAP 9:** The original request for transcripts is now filed in the District Court, rather than the Supreme Court, and a file-stamped copy of the request is also filed in the Supreme Court (NRAP 9(a)(3)(A)).

## DOCKETING STATEMENT

**NRAP 14:** This rule now clarifies that no docketing statement needs to be filed in original writ proceedings (NRAP 14(a)(2)). Additionally, the time to file a docketing statement is now 20 days, instead of 15 days, from the docketing of the appeal (NRAP 14(b)). Unless filing is done electronically (which requires no additional copies), the original and two copies of the docketing statement must now be filed with the Supreme Court.

## WRIT PETITIONS

**NRAP 21:** When a writ petition is directed to a lower court, the actual writ petition to the Supreme Court must be accompanied by a notice of filing of writ petition that is served on all parties to the proceedings of the lower court, and filed in the lower court as well (NRAP 21(a)(1)). The appendix accompanying a writ petition must now comply with the format requirements of NRAP 30, which governs the format of an appendix in appeals (NRAP 21(a)(4)).

If a petition requests emergency relief, it must comply with NRAP 27(e), discussed below, which governs emergency motions (NRAP 21(a)(6)).

## FILING AND SERVICE

**NRAP 25:** Any document filed in the Supreme Court may be served upon other parties by electronic means, if the party being served consents in writing (NRAP 25(c)(1)(D)). When attorneys register for electronic filing in the Supreme Court, which is not yet mandatory, they also consent to be served electronically.

## COMPUTING AND EXTENDING TIME

**NRAP 26:** Non-judicial days are now excluded when the deadline is less than 11 days, rather than seven days (NRAP 26(a)(2)). The rule does not apply when “the period is stated as a specific date.” The new rule now conforms with the Nevada Rules of Civil Procedure for computing time.

A five-day telephonic extension of time for performing any act other than filing

a notice of appeal is now available for “good cause” through the Supreme Court clerk’s office (NRAP 26(b)(1)(B)). Unlike the Ninth Circuit’s similar rule, a request for a telephonic extension in the Nevada Supreme Court does not preclude subsequent stipulations or motions for extension to the court.

Additional time of three days after service applies to any form of service “unless the paper is delivered on the date of service stated in the proof of service” (NRAP 26(c)). The three-day allowance does not apply to specific due dates set forth by court order or acts required to be taken within a specific time period set forth in an order. For purposes of this rule, “a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.” Adding upon the language of NRAP 26(c), the Nevada Electronic Filing Rules (NEFR) explain that the time to respond to a document received electronically is counted from the judicial day after receiving the document (NEFR 9(f)). So, documents served on non-judicial days are not treated as served until the next judicial day. The Supreme Court’s website also clarifies that the three-day allowance for service does not apply for registered users of the court’s electronic filing system.<sup>1</sup>

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## MOTIONS

**NRAP 27:** A response to a motion may request affirmative relief (NRAP 27(a)(3)(B)). There is, thus, no need to file a separate motion seeking affirmative relief, as a countermotion is now acceptable. The length of a motion or a response is now limited to 10 pages (NRAP 27(d)(2)). All motions, responses, replies and briefs must comply with the typeface requirements of NRAP 32(a).

A reply to a response may now be filed without requesting leave to file (NRAP 27(a)(4)). The reply must be filed within five days of service of the response and is limited to five pages (NRAP 27(d)(2)).

The following requirements now govern emergency motions:

- (1) counsel must notify the Supreme Court clerk and opposing counsel that an emergency motion is being filed;
- (2) the document must be titled "Emergency Motion Under NRAP 27(e)";
- (3) counsel must include a certificate of counsel with addresses and telephone numbers of all

counsel, facts demonstrating an emergency and proof of service on the other counsel; and

- (4) counsel must certify that all grounds upon which relief is requested, in the Supreme Court, were raised in the District Court (NRAP 27(e)). This new requirement closely mirrors Ninth Circuit Rule 27-3.

## BRIEFS

**NRAP 28:** Opening briefs now must include a jurisdictional statement at the beginning of the brief that establishes the timeliness of the appeal and the basis for the court's appellate jurisdiction (NRAP 28(a)). The opening brief must also contain a summary of the argument that does not merely repeat the argument headings (NRAP 28(a)(7)). Finally, the brief must provide a standard of review within each issue section of the argument or in a separate section preceding discussion of the issues (NRAP 28(a)(8)(B)).

Citation to the volume number of the appendix, as well as the page number, is now required (NRAP 28(e)(1)). This change is reflected in the new language of the certificate of compliance (NRAP 28.2(a)(3)).

Any footnotes must be the same size and typeface as the body of the brief (NRAP 32(a)(5)). The length of the reply brief is now limited to 15 pages (NRAP 32(a)(7)).

The amended rules now provide that motions for extensions of time beyond that to which the parties are permitted to stipulate under Rule 31(b)(2) "are not favored." The Supreme Court will grant such a motion for extension of time "only upon a clear showing of good cause." Additional extensions of time will be granted "upon a showing of extraordinary circumstances and extreme need" (NRAP 31(b)(3)(B)). The revised rule appears to conform to present Supreme Court practice with regard to motions for extension of time.

Supplemental authorities may now be filed within 10 days, rather than 15 days, of the date set for oral argument (NRAP 31(e)). Any response must be made "promptly."

## CROSS-APPEALS

**NRAP 28.1:** This new rule provides that the appellant in a cross-appeal is always the party to first file a notice of appeal (NRAP 28.1(b)). Previously, the plaintiff in the district court was always the appellant in a case involving a cross-appeal. As previously, the Supreme Court may change the designation of the parties by order. This change conforms with FRAP 28.1. The change creates a potential incentive, in a case with a basis for a cross-appeal, to be the first to file a notice of appeal so as to be designated the appellant. The cover color of appellant's combined reply

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brief on appeal and answering brief on cross-appeal is now yellow (NRAP 28.1(d)). All other brief cover colors remain the same. If there is any supplemental brief, the cover must be tan. Briefs filed electronically do not need a colored cover.

Respondents are now allowed 40 pages for their combined answering brief on appeal and opening brief on cross-appeal (NRAP 28.1(e)). The length of the reply brief on cross-appeal is limited to 15 pages, consistent with NRAP 32(a)(7)(A). The time to file and serve the reply brief on cross-appeal is now only 14 days (NRAP 28.1(f)(1)). However, NRAP 31(a)(1) still provides 30 days to file the reply brief in cases not involving a cross-appeal.

## APPENDICES

**NRAP 30:** Since electronic filing in the Supreme Court is not yet mandatory, it is still permissible to file paper copies of documents, including appendices. However, the court recently adopted amended NRAP 30(f)(2) which now requires that a CD-ROM of all appendices accompany the paper copies that are filed in the court and served on opposing counsel.<sup>2</sup>

## AMICUS CURIAE BRIEFS

**NRAP 29:** An amicus brief must now accompany the motion for leave to file an amicus brief (NRAP 29(c)). An amicus brief may be no longer than one-half the maximum length allowed by the rules for a party's brief, as opposed to the previous rule that imposed

no page limit (NRAP 29(e)). An amicus brief may now be filed seven days after the brief being supported, rather than at the same time (NRAP 29(f)). If an amicus curiae is not supporting any party, the amicus brief must be filed within seven days after the opening brief. An amicus curiae brief must contain a table of contents, a table of authorities, and an NRAP 28.2 certificate of compliance, which was not previously required (NRAP 29(d)).

## REMITTITUR

**NRAP 41:** A petition for en banc reconsideration, not only a petition for rehearing, now stays the issuance of the remittitur until resolution of the petition (NRAP 41(a)(1)). In addition, a stay may last up to 120 days instead of the previous 60 days while an application to the Supreme Court of the United States for a writ of certiorari is pending (NRAP 41(b)(2)). ■

**TEST ON PAGE 30**

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1 [efile.nvsupremecourt.us/faqs.jsp](http://efile.nvsupremecourt.us/faqs.jsp)

2 See *In the Matter of the Amendment of the Nevada Rules of Appellate Procedure to Require the Filing of Appendices on CD-ROM*, ADKT No. 441 (filed Nov. 10, 2009).

# { Test #6 }

## COMPREHENSIVE CHANGES TO THE NEVADA RULES OF APPELLATE PROCEDURE – 1 Hour CLE Credit

### Questions: Answer True or False.

- All cases docketed in the Supreme Court on or after July 1, 2009 must comply with the amended NRAP.  
**True or False**
- The amount of the cost bond required by amended NRAP 7 is \$250.  
**True or False**
- The request for transcripts required by amended NRAP 9 is only filed in the Supreme Court.  
**True or False**
- Since electronic filing in the Supreme Court is not mandatory, it is acceptable to file paper copies of appendices, without any accompanying electronic format of the documents.  
**True or False**
- A five-day telephonic extension of time can be requested under amended NRAP 26 to extend the filing deadline for any document, including a notice of appeal.  
**True or False**
- There is no longer a requirement to request leave of the Supreme Court to file a reply in support of a motion under amended NRAP 27.  
**True or False**
- When citing to the appendix within briefs, it is sufficient to cite only to the page number of the appendix, as explained in NRAP 28.  
**True or False**
- Under amended NRAP 28.1, the plaintiff in the District Court is always the appellant for cases involving a combined appeal and cross-appeal.  
**True or False**
- An amicus curiae brief can be filed up to seven days after the filing of the brief being supported, according to amended NRAP 29.  
**True or False**
- Amended NRAP 41 now permits a petition for en banc reconsideration, instead of only a petition for rehearing, to stay the issuance of the remittitur until resolution of the petition.  
**True or False**

CERTIFICATION: This self-study activity has been approved for one hour of continuing legal education credit by the Nevada Board of Continuing Legal Education.

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#### **TEST #6** COMPREHENSIVE CHANGES TO THE NEVADA RULES OF APPELLATE PROCEDURE

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