http://www.clarkcountycourts.us/departments/clerk/document-codes/

END of DOCUMENT

[Please see actual rule and statute sites if you want to ensure you have the most up to date version. Almost all listed here is a hyperlink either to this document or offsite].

Link to Legislative Counsel Bureau Court Rules of Nevada
Link to Nevada Rules of Appellate Procedure
https://www.leg.state.nv.us/CourtRules/NRAP.html
LINK TO WEBSITE CHAPTER 177

STATUTES:
CHAPTER 177 APPEALS AND REMEDIES AFTER CONVICTIONS – THIS SITE
LINK TO WEBSITE CHAPTER 177

CHAPTER 34 - WRITS: CERTIORARI; MANDAMUS; PROHIBITION; HABEAS CORPUS – THIS SITE
LINK TO WEBSITE CHAPTER 34

Nevada Constitution Offsite Link

Forms – this Site

Selection of Hearings and Motions:

EVIDENTIARY HEARING

FARETTA HEARING

OTHER ACTS NRS 48.045(2) NRS 48.061

NOTICE OF WITNESSES 174.234

PETROCELLI HEARING

Stockmeier Challenges – to PSI

Useful Summary from Las Vegas Defense Group
Link to Website of Las Vegas Defense Group

APPEALS: WHEN ALLOWED, HOW TAKEN AND EFFECT THEREOF

NRS 177.015	**Appeals to district court, court of appeals and Supreme Court.**
NRS 177.025	**Appeal to court of appeals or Supreme Court taken on questions of law alone.**
NRS 177.035	**Designation of parties on appeal.**
NRS 177.045	**Intermediate order or proceeding may be reviewed on appeal.**
NRS 177.055	**Automatic appeal in certain cases; mandatory review of death sentence by court of appeals or Supreme Court.**
NRS 177.075	**Appeal to court of appeals or Supreme Court: Notice.**
NRS 177.085	**Effect of appeal by State.**
NRS 177.095	**Stay of execution upon sentence of death.**
NRS 177.105	**Stay of execution upon sentence of imprisonment.**
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NRS 177.135	**Admission to bail upon appeal.**
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NRS 177.225 **Judgment may be affirmed but cannot be reversed without argument.**
NRS 177.235 **Number of counsel in argument on appeal.**
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NEVADA RULES OF APPELLATE PROCEDURE

ADOPTED
BY THE
SUPREME COURT OF NEVADA

Effective July 1, 1973
and Including
Amendments Through March 1, 2019

PREFACE

Pursuant to its rule-making powers (NRS 2.120), the Supreme Court of Nevada in 1970 appointed the undersigned Committee to study that part of the Supreme Court Rules governing practice and procedure in the Supreme Court, and to propose amendments or revision.

On January 24, 1972, the Committee submitted to the Court a report of its activities and recommended adoption of a complete revision of the rules governing practice and procedure, to be known as Nevada Rules of Appellate Procedure. The Court referred back to the Committee certain minor amendments which were then integrated into the proposed draft.

The format of the Federal Rules of Appellate Procedure was chosen as particularly harmonious with the Federal Rules of Civil Procedure (governing practice and procedure in the lower courts), the latter having been adopted earlier and successfully used in Nevada. Also convenient to the lawyer is the similarity of these rules to those in use in the U.S. Courts of Appeals. The federal numbering system is preserved to facilitate research and amendment.

In the opinion of the Committee, the bar should experience little difficulty in transition from practice under SCR to practice under these rules.

ADVISORY COMMITTEE FOR NEVADA
RULES OF APPELLATE PROCEDURE

Harry E. Claiborne
Jon R. Collins
Rex A. Jemison
Peter D. Laxalt
Maurice J. Sullivan
Louis J. Wiener, Jr.
Earl M. Hill, Chairman

AMENDED ORDERS ADOPTING NEVADA RULES OF APPELLATE PROCEDURE

Pursuant to the appellate authority vested in this Court by Section 4 of Article 6 of the Constitution of the State of Nevada, and the rule-making authority vested in this Court by NRS 2.120, the Supreme Court of the State of Nevada has adopted new rules governing appellate practice before this Court, and has heretofore on March 7, 1973, entered an order adopting such rules and directing their publication. Said order of March 7, 1973, is amended and superceded by this order. Good cause appearing,

IT IS ORDERED:

1. That the Rules hereto annexed as Exhibit "A," to be known as the Nevada Rules of Appellate Procedure, be, and they are hereby prescribed to govern the procedure in appeals from the District Courts and in applications for writs and other relief which the Supreme Court or a justice thereof is competent to give. The full text of the Nevada Rules of Appellate Procedure, a copy of which is hereto annexed as Exhibit "A," is hereby by reference incorporated herein.

2. That the foregoing rules shall take effect on the 1st day of July, 1973, and shall govern all proceedings and appeals and extraordinary writs hereafter taken, and in all such proceedings therein pending, except to the extent that in the opinion of the Supreme Court their application in a particular proceeding then pending would not be feasible or would work an injustice, in which case the former procedure may be followed.

3. That Rule 6 and 81 of Nevada Rules of Civil Procedure of the District Courts of Nevada be, and they are hereby, amended effective the 1st day of July, 1973, as set forth in Exhibit "B" hereto annexed and hereby by reference incorporated herein.

4. That all of Rules 72, 73, 74, 75, 76 and 76A of the Nevada Rules of Civil Procedure for the District Courts of Nevada, and Form 27 annexed to the said rules, be, and they hereby are, abrogated, effective the 1st day of July, 1973.

5. That Rules 6 to 38, inclusive, of the Supreme Court Rules, be, and they hereby are, abrogated, effective the 1st day of July, 1973.

6. That the Nevada Rules of Appellate Procedure shall appear in the April, 1973 issue of the Nevada State Bar Journal, which shall constitute publication of such rules as required by NRS 2.120, and the official Appellate Procedure Rules of this Court until amended by further order of this Court.

DATED this 15th day of March, 1973.

BY THE COURT

S/ GORDON THOMPSON
Gordon Thompson, Chief Justice

S/ JOHN MOWBRAY
John Mowbray, Associate Justice

S/ E. M. GUNDERSON
E. M. Gunderson, Associate Justice

S/ CAMERON BATJER
Cameron Batjer, Associate Justice

S/ DAVID ZENOFF
David Zenoff, Associate Justice

NEVADA RULES OF APPELLATE PROCEDURE

I. APPLICABILITY OF RULES

RULE 1. SCOPE, CONSTRUCTION OF RULES

(a) Scope of Rules. These Rules govern procedure in the Supreme Court of Nevada and the Nevada Court of Appeals.

(b) Rules Not to Affect Jurisdiction. These Rules shall not be construed to extend or limit the jurisdiction of the Supreme Court or the Court of Appeals as established by law.

(c) Construction of Rules. These Rules shall be liberally construed to secure the proper and efficient administration of the business and affairs of the courts and to promote and facilitate the administration of justice by the courts.

(d) Effect of Rule and Subdivision Headings. Rule and subdivision headings set forth in these Rules shall not in any manner affect the scope, meaning or intent of any of the provisions of these Rules.

(e) Definitions of Words and Terms. In these Rules, unless the context or subject matter otherwise requires:

(1) "Appellant" includes, if appropriate, a petitioner.

(2) "Case" includes action and proceeding.

(3) "Clerk" and "clerk of the Supreme Court" means the person appointed to serve as clerk of both the Supreme Court and Court of Appeals.

(4) "Court" means the Supreme Court or Court of Appeals.

(5) "Party," "applicant," "petitioner" or any other designation of a party include such party's attorney of record. Whenever under these Rules a notice or other paper is required to be given or served on a party, such notice or service shall be made on his attorney of record if he has one.

(6) "Person" includes and applies to corporations, firms, associations and all other entities, as well as natural persons.

(7) "Pro se" refers to a party acting on his or her own behalf without the assistance of counsel.

(8) "Postconviction appeal" includes any appeal from an order resolving a postconviction challenge to a judgment of conviction, sentence, or the computation of time served under a judgment of conviction, including, but not limited to, proceedings instituted under NRS Chapter 34.

(9) "Shall" is mandatory and "may" is permissive.

(10) The past, present and future tense shall each include the others; the masculine, feminine and neuter gender shall include the others; and the singular and plural numbers shall each include the other.

[As amended; effective October 1, 2015.]

RULE 2. SUSPENSION OF RULES

On the court's own or a party's motion, the court may — to expedite its decision or for other good cause — suspend any provision of these Rules in a particular case and order proceedings as the court directs, except as otherwise provided in Rule 26(b).

[As amended; effective January 20, 2015.]

II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

RULE 3. APPEAL — HOW TAKEN

(a) Filing the Notice of Appeal.

(1) Except for automatic appeals from a judgment of death under NRS 177.055, an appeal permitted by law from **a district court may be taken only by filing a notice of appeal with the district court clerk within the time allowed by Rule 4.**

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court to act as it deems appropriate, including dismissing the appeal.

(3) Deficient Notice of Appeal. The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall send the notice of appeal to the Supreme Court in accordance with subdivision (g) with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court upon its own motion or upon motion of a party.

(c) Contents of the Notice of Appeal.

(1**) The notice of appeal shall:**

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(3) **Form 1 in the Appendix of Forms** is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) In General. The appellant shall serve the notice of appeal on all parties to the action in the district court. Service on a party represented by counsel shall be made on counsel. If a party is not represented by counsel, appellant shall serve the notice of appeal on the party at the party's last known address. The appellant must note, on each copy, the date when the notice of appeal was filed. The notice of appeal filed with the district court clerk shall contain an acknowledgment of service or proof of service that conforms to the requirements of Rule 25(d).

(2) Service in Criminal Appeals. When a defendant in a criminal case appeals, appellant's counsel shall also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. In criminal appeals governed by Rule 3C, appellant's trial counsel must comply with the provisions of this Rule and Rule 3C(c) governing service of the notice of appeal.

(e) Payment of Fees. Except where provided by statute, upon filing a notice of appeal, the appellant must pay the district court clerk the Supreme Court filing fee and any fees charged by the district court. Except for amended notices of appeal filed under Rule 4(a)(7), the Supreme Court filing **fee is $250** for each notice of appeal filed.

(f) Case Appeal Statement.

(1) Appellant's Duty to File Case Appeal Statement. Upon filing a notice of appeal, the appellant shall also file with the district court clerk a completed case appeal statement that is signed by appellant's counsel.

(2) District Court's Duty to Complete Case Appeal Statement. When the appellant is not represented by counsel, the district court clerk shall complete and sign the case appeal statement.

(3) Contents of Case Appeal Statement. The case appeal statement must contain the following information:

(A) the district court case number and caption showing the names of all parties to the proceedings below, but the use of et al. to denote parties is prohibited;

(B) the name of the judge who entered the order or judgment being appealed;

(C) the name of each appellant and the name and address of counsel for each appellant;

(D) the name of each respondent and the name and address of appellate counsel, if known, for each respondent, but if the name of a respondent's appellate counsel is not known, then the name and address of that respondent's trial counsel;

(E) whether an attorney identified in response to subparagraph (D) is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42, including a copy of any district court order granting that permission;

(F) whether the appellant was represented by appointed counsel in the district court, and whether the appellant is represented by appointed counsel on appeal;

(G) whether the district court granted the appellant leave to proceed in forma pauperis, and if so, the date of the district court's order granting that leave;

(H) the date that the proceedings commenced in the district court;

(I) a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court;

(J) whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals and, if so, the caption and docket number of the prior proceeding;

(K) whether the appeal involves child custody or visitation; and

(L) in civil cases, whether the appeal involves the possibility of settlement.

(4) Form Case Appeal Statement. A case appeal statement must substantially comply with Form 2 in the Appendix of Forms.

(g) Forwarding Appeal Documents to Supreme Court.

(1) District Court Clerk's Duty to Forward.

(A) Upon the filing of the notice of appeal, the district court clerk shall immediately forward to the clerk of the Supreme Court the required filing fee, together with 3 certified, file-stamped copies of the following documents:

- the notice of appeal;
- the case appeal statement;
- the district court docket entries;
- the civil case cover sheet, if any;
- the judgment(s) or order(s) being appealed;
- any notice of entry of the judgment(s) or order(s) being appealed;
- any certification order directing entry of judgment in accordance with NRCP 54(b);
- the minutes of the district court proceedings; and
- a list of exhibits offered into evidence, if any.

(B) If, at the time of filing of the notice of appeal, any of the enumerated documents have not been filed in the district court, the district court clerk shall nonetheless forward the notice of appeal together with all documents then on file with the clerk.

(C) The district court clerk shall promptly forward any later docket entries to the clerk of the Supreme Court.

(2) Appellant's Duty. An appellant shall take all action necessary to enable the clerk to assemble and forward the documents enumerated in this subdivision.

[As amended; effective March 1, 2019.]

RULE 3A. CIVIL ACTIONS: STANDING TO APPEAL; APPEALABLE DETERMINATIONS

(a) Standing to Appeal. A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial.

(b) Appealable Determinations. An appeal may be taken from the following judgments and orders of a district court in a civil action:

(1) A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.

(2) An order granting or denying a motion for a new trial.

(3) An order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.

(4) An order appointing or refusing to appoint a receiver or vacating or refusing to vacate an order appointing a receiver.

(5) An order dissolving or refusing to dissolve an attachment.

(6) An order changing or refusing to change the place of trial only when a notice of appeal from the order is filed within 30 days.

(A) Such an order may only be reviewed upon a timely direct appeal from the order and may not be reviewed on appeal from the judgment in the action or proceeding or otherwise. On motion of any party, the court granting or refusing to grant a motion to change the place of trial of an action or proceeding shall enter an order staying the trial of the action or proceeding until the time to appeal from the order granting or refusing to grant the motion to change the place of trial has expired or, if an appeal has been taken, until the appeal has been resolved.

(B) Whenever an appeal is taken from such an order, the clerk of the district court shall forthwith certify and transmit to the clerk of the Supreme Court, as the record on appeal, the original papers on which the motion was heard in the district court and, if the appellant or respondent demands it, a transcript of any proceedings had in the district court. The district court shall require its court reporter to expedite the preparation of the transcript in preference to any other request for a transcript in a civil matter. When the appeal is docketed in the court, it stands submitted without further briefs or oral argument unless the court otherwise orders.

(7) An order entered in a proceeding that did not arise in a juvenile court that finally establishes or alters the custody of minor children.

(8) A special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment.

(9) An interlocutory judgment, order or decree in an action to redeem real or personal property from a mortgage or lien that determines the right to redeem and directs an accounting.

(10) An interlocutory judgment in an action for partition that determines the rights and interests of the respective parties and directs a partition, sale or division.

[As amended; effective January 20, 2015.]

RULE 3B. CRIMINAL ACTIONS: RULES GOVERNING

Appeals from district court determinations in criminal actions shall be governed by these Rules and by NRS 176.09183, NRS 177.015 to 177.305, and NRS 34.575. All appeals in capital cases are also subject to the provisions of SCR 250. Rule 3C applies to all other direct and postconviction criminal appeals, except those matters specifically excluded by Rule 3C(a).

[As amended; effective October 1, 2015.]

RULE 3C. FAST TRACK CRIMINAL APPEALS

(a) Applicability.

(1) This Rule applies to an appeal from a district court judgment or order entered in a criminal or postconviction proceeding, whether the appellant is the State or the defendant.

(2) The Supreme Court may exercise its discretion and apply this Rule to appeals arising from criminal and postconviction proceedings that are not subject to this Rule.

(3) Unless the court otherwise orders, an appeal is not subject to this Rule if:

(A) the appeal challenges an order or judgment in a case involving a category A, category B, or non-probationable category C felony, as described in NRS 193.130(2)(a), (b), or (c);

(B) the appeal is brought by a defendant or petitioner who was not represented by counsel in the district court; or

(C) the appeal is filed in accordance with Rule 4(c).

RULE 3C(b). FAST TRACK CRIMINAL APPEALS Responsibilities of Trial Counsel

(b) Responsibilities of Trial Counsel.

(1) Definition. For purposes of this Rule, "trial counsel" means the attorney who represented the defendant or postconviction petitioner in district court in the underlying proceedings that are the subject of the appeal.

(2) Responsibilities. Trial counsel shall file the notice of appeal, rough draft transcript request form, and fast track statement and consult with appellate counsel for the case regarding the appellate issues that are raised. Trial counsel shall arrange their calendars and adjust their public or private contracts for compensation to accommodate the additional duties imposed by this Rule.

(3) Withdrawal. To withdraw from representation during the appeal, trial counsel shall file with the clerk a motion to withdraw from representation. The motion shall be considered only after trial counsel has filed the notice of appeal, rough draft transcript request and fast track statement. The granting of such motions shall be conditioned upon trial counsel's full cooperation with appellate counsel during the appeal.

(c) Notice of Appeal. When an appellant elects to appeal from a district court order or judgment governed by this Rule, appellant's trial counsel shall serve and file a notice of appeal **pursuant to applicable rules and statutes.**

(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;

(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.

(2) Notification of Court Reporter or Recorder. When a case may be subject to this Rule, the presiding district court judge shall notify the court reporter or recorder for the case before trial that a rough draft transcript may be required.

(3) Request for Rough Draft Transcript.

(A) Filing and Service.

(i) When a rough draft transcript is necessary for an appeal, trial counsel shall file a rough draft transcript request form with the district court and shall serve a copy of the request form upon the court reporter or recorder and opposing counsel.

(ii) Trial counsel shall serve and file the rough draft transcript request form on the same date the notice of appeal is served and filed.

(iii) Trial counsel shall file with the clerk 2 file-stamped copies of the rough draft transcript request form and proof of service of the form upon the court reporter or recorder and opposing counsel.

(B) Form. The rough draft transcript request shall substantially comply with Form 5 in the Appendix of Forms.

(C) Necessary Transcripts. Counsel shall order transcripts of only those portions of the proceedings that counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. In particular, transcripts of jury voir dire, opening statements, closing arguments, and the reading of jury instructions shall not be requested unless pertinent to the appeal.

(D) No Transcripts. If no transcript is to be requested, trial counsel shall serve and file with the clerk a certificate to that effect within the same period that a rough draft transcript request form must be served and filed under subparagraph (A). Such a certificate shall substantially comply with Form 14 in the Appendix of Forms.

(E) Court Reporter or Recorder's Duty.

(i) The court reporter or recorder shall submit an original rough draft transcript, as requested by appellant's or respondent's counsel, to the district court no more than 21 days after the date that the request is served.

(ii) The court reporter or recorder shall also deliver certified copies of the rough draft transcript to the requesting attorney and counsel for each party appearing separately no more than 21 days after the date of service of the request. The court reporter or recorder shall deliver an additional certified copy of the rough draft transcript to the requesting attorney for inclusion in the appendix. Within 7 days after delivering the certified copies of the rough draft transcript, the court reporter or recorder shall file with the clerk a certificate acknowledging delivery of the completed transcript and specifying the transcripts that have been delivered and the date that they were delivered to the requesting party. Form 15 in the Appendix of Forms is a suggested form of certificate of delivery.

(iii) Relevant portions of the trial or hearing that were audio recorded or video recorded shall be submitted in typewritten form. The court will not accept audio- or videotapes in lieu of a rough draft transcript.

(4) Supplemental Request for Rough Draft Transcript.

(A) Opposing counsel may make a supplemental request for portions of the rough draft transcript that were not previously requested. The request shall be made no more than 3 days after opposing counsel is served with the transcript request made under Rule 3C(d)(3)(A).

(B) In all other respects, opposing counsel shall comply with the provisions of this Rule governing a rough draft transcript request when making a supplemental rough draft transcript request.

(5) Sufficiency of the Rough Draft Transcript. Trial counsel shall review the sufficiency of the rough draft transcript. If a substantial question arises regarding an inaccuracy in a rough draft transcript, the court may order that a certified transcript be produced.

(6) Exceptions. The provisions of Rule 3C(d)(1) shall not apply to preparation of transcripts produced by means other than computer-generated technology. But time limits and other procedures governing requests for and preparation of transcripts produced by means other than computer-generated technology shall conform with the provisions of this Rule respecting rough draft transcripts.

(e) Filing of Fast Track Statement, 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 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)(D), the fast track statement shall not exceed 16 pages in length or shall comply with the type-volume limitations stated in Rule 3C(h)(2). The fast track statement 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;

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

(ix) A statement, setting forth whether the matter should be retained by the Supreme Court or assigned to the Court of Appeals, including reference to any appropriate provisions in Rule 17. If the appellant believes that the Supreme Court should retain the case despite its presumptive assignment under Rule 17 to the Court of Appeals, the statement shall identify the specific issue(s) or circumstance(s) that warrant retaining the case and an explanation of their importance or significance.

(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 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 that shall be entitled "Reply to Fast Track Response." The reply shall be no longer than 5 pages or shall comply with the type-volume limitations stated in Rule 3C(h)(2). 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.

(f) Filing of Fast Track Response and Appendix.

(1) Fast Track Response.

(A) Time for Service and Filing. Within 21 days from the date a fast track statement is served, the respondent shall serve and file a fast track response that substantially complies with Form 7 in the Appendix of Forms.

(B) Length and Contents. Except by court order granting a motion filed in accordance with Rule 32(a)(7)(D), the fast track response shall not exceed 11 pages in length or shall comply with the type-volume limitations stated in Rule 3C(h)(2). The fast track response shall include additional authority and factual information necessary to rebut the contentions in the fast track statement. The fast track response also shall include a statement, setting forth whether the matter should be retained by the Supreme Court or assigned to the Court of Appeals, including reference to any appropriate provisions in Rule 17. If the respondent believes that the Supreme Court should retain the case despite its presumptive assignment under Rule 17 to the Court of Appeals, the statement shall identify the specific issue(s) or circumstance(s) that warrant retaining the case and an explanation of their importance or significance.

(C) References to the Appendix. Every assertion in the fast track response 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 response shall be filed with the clerk, 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.

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

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

(g) Filing of Supplemental Fast Track Statement and Response.

(1) Supplemental Fast Track Statement.

(A) When Permitted; Length. A supplemental fast track statement of not more than 5 pages or its equivalent calculated under the type-volume limitation provisions of Rule 3C(h)(2) may be filed when appellate counsel differs from trial counsel and can assert material issues that should be considered but were not raised in the fast track statement.

(B) Time for Service and Filing; Number of Copies. When permitted under subparagraph (A), an original and 1 copy of a supplemental fast track statement shall be filed with the clerk, and 1 copy shall be served upon opposing counsel, no more than 21 days after the fast track statement is filed or appellate counsel is appointed, whichever is later.

(2) Supplemental Fast Track Response. No later than 14 days after a supplemental fast track statement is served, the respondent may file and serve a response of not more than 5 pages or its equivalent calculated under the type-volume limitation provisions of Rule 3C(h)(2).

(h) Format; Type-Volume Limitation; Certificate of Compliance.

(1) Format. Fast track filings shall comply with the formatting requirements of Rule 32(a)(4)-(6), and Rule 32(a)(7)(D) shall apply in computing permissible length.

(2) Type-Volume Limitation. The size of a fast track filing may be calculated by type-volume in lieu of page limitation. Using a type-volume limitation, a fast track statement is acceptable if it contains no more than 7,267 words or 693 lines of text. A fast track response is acceptable if it contains no more than two-thirds the type-volume specified for a fast track statement (4,845 words or 462 lines of text); and a fast track reply or supplement is acceptable if it contains no more than 2,333 words or 216 lines of text.

(3) Certificate of Compliance. Fast track filings must include a certificate of compliance in substantially the form required by Rule 32(a)(8). A certificate that includes the first two paragraphs under "Verification" in Forms 6 and 7 of the Appendix of Forms will be regarded as sufficient to meet the requirements of this Rule.

(i) Extensions of Time.

(1) Preparation of Rough Draft Transcript.

(A) Seven-Day Telephonic Extension. A court reporter or recorder may request by telephone a 7-day extension of time to prepare a rough draft transcript if the preparation requires more time than is allowed under this Rule. If good cause is shown, the clerk or a designated deputy may grant the request by telephone or by written order of the clerk.

(B) Additional Extensions by Motion. Subsequent extensions of time for filing rough draft transcripts shall be granted only upon motion to the court. The motion shall justify the requested extension in light of the time limits provided in this Rule, and shall specify the exact length of the extension requested. Extensions of time for the filing of rough draft transcripts shall be granted only upon demonstration of good cause. Sanctions may be imposed if a motion is brought without reasonable grounds.

(2) Fast Track Statement and Response; Supplemental Statement and Response.

(A) Seven-Day Telephonic Extension. Counsel may request by telephone a 7-day extension of time for filing fast track statements and responses, and supplemental fast track statements and responses. If good cause is shown, the clerk may grant the request by telephone or by written order of the clerk.

(B) Additional Extensions by Motion. Subsequent extensions of time for filing fast track statements and responses, and supplemental fast track statements and responses shall be granted only upon motion to the court. The motion shall justify the requested extension in light of the time limits provided in this Rule, and shall specify the exact length of the extension requested. Extensions of time for the filing of fast track statements and responses, and supplemental fast track statements and responses shall be granted only upon demonstration of extreme need or merit. Sanctions may be imposed if a motion is brought without reasonable grounds.

(j) Amendments to Statements and Responses. Leave to amend fast track statements and responses, or supplemental fast track statements and responses shall be granted only upon motion to the court. A motion to amend shall justify the absence of the offered arguments in the initial or supplemental fast track statement or response. The motion shall be granted only upon demonstration of extreme need or merit.

(k) 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 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 court to remove an appeal from the fast track program and direct full briefing. A motion for full briefing shall be granted unless it is 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) No opposition may be filed unless ordered by the court.

(3) If the 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 court's briefing order. If a party's brief will cite to documents not previously filed in the court, that party shall file and serve an appropriately documented supplemental appendix with the brief.

(l) Withdrawal of Appeal. If an appellant no longer desires to pursue an appeal after the notice of appeal is filed, counsel responsible for the appeal at that time shall file with the clerk a notice of withdrawal of appeal. The notice of withdrawal of appeal shall substantially comply with Form 8 in the Appendix of Forms.

(m) Court Reporter or Recorder Protection and Compensation.

(1) Liability. Court reporters or recorders shall not be subject to civil, criminal or administrative causes of action for inaccuracies in a rough draft transcript unless the court reporter or recorder willfully:

(A) Fails to take full and accurate stenographic notes of the criminal proceeding for which the rough draft transcript is submitted, or willfully and improperly alters stenographic notes from the criminal proceeding, or willfully transcribes audio- or videotapes inaccurately; and

(B) Such willful conduct proximately causes injury or damage to the party asserting the action, and that party demonstrates that appellate or postconviction relief was granted or denied based upon the court reporter's or recorder's inaccuracies.

(2) Compensation. Court reporters shall be compensated as follows:

(A) For preparing a rough draft transcript, the court reporter shall receive 100 percent of the rate established by NRS 3.370 for each transcript page as defined by NRS 3.370 and $25 for costs. Costs include the cost of delivery of the original and copies of the rough draft transcript. In the event that overnight delivery is required to or from outlying areas, that cost shall be additional.

(B) In the event a certified transcript is ordered after the rough draft transcript is prepared, the court reporter shall receive an additional fee equal to 25 percent of the amount established by NRS 3.370 for the already prepared rough draft portion of the transcript. Any portions not included with the rough draft transcript will be compensated by the amount established by NRS 3.370.

(n) Sanctions. Any attorney, court reporter, or court recorder who lacks due diligence in compliance with this Rule may be subject to sanctions by the court. Sanctionable actions include, but are not limited to, failure of trial counsel to file a timely fast track statement or fast track response; failure of trial counsel to fully cooperate with appellate counsel during the course of the appeal; and failure of counsel to raise material issues or arguments in a fast track statement, response, supplemental statement or supplemental response.

(o) Conflict. The provisions of this Rule shall prevail over conflicting provisions of any other rule.
[Added; effective September 1, 1996; as amended; effective March 1, 2019.]

RULE 3D. JUDICIAL DISCIPLINE: RIGHT TO APPEAL; HOW TAKEN; RULES GOVERNING

(a) Definitions. As used in this Rule:

(1) "Respondent" means any Supreme Court justice, Court of Appeals judge, district judge, justice of the peace, or municipal court judge or referee, master, or commissioner who is the subject of any disciplinary or removal proceedings instituted before the commission on judicial discipline.

(2) "Service" means service by personal delivery or by registered mail or certified mail, return receipt requested.

(b) Who May Appeal. Any Supreme Court justice, Court of Appeals judge, district judge, justice of the peace, or municipal court judge or referee, master, commissioner or other judicial officer who is the subject of any disciplinary or removal proceedings instituted before the commission on judicial discipline may appeal to the Supreme Court from the orders set forth in Rule 3D(c).

(c) Appealable Decisions. An appeal may be taken:

(1) From an order of suspension from the exercise of office under NRS 1.4675.

(2) From an order of censure, removal, retirement, or other form of discipline.

(d) Notice of Appeal. An appeal to the Supreme Court from a commission order shall be taken by filing a notice of appeal with the clerk of the commission and serving a copy of the notice on the prosecuting counsel, if any. Filing and service must be made within 14 days after service on the respondent of the commission's formal order of suspension, censure, removal, retirement, or other discipline, together with its formal findings of fact and conclusions of law. Upon the filing of the notice of appeal, the clerk of the commission shall immediately transmit to the clerk of the Supreme Court 2 file-stamped copies of the notice of appeal.

(e) Transcripts. Any request for all or part of a transcript must be made in accordance with rules adopted by the commission in regard thereto.

(f) Applicable Rules. In all other respects an appeal from a commission order shall proceed in the same manner as a civil appeal except that the provisions of Rule 4(f) for expediting criminal appeals shall apply to all appeals from orders or actions taken by the commission. Other provisions in the Nevada Rules of Appellate Procedure apply to appeals from a commission order, unless this Rule expressly provides to the contrary or application of a particular rule is clearly impracticable, inappropriate, or inconsistent. All references to the district court in applicable portions of the Nevada Rules of Appellate Procedure must be deemed references to the commission.

(g) Interlocutory Orders. Review of interlocutory orders of the commission, which are considered either by the prosecuting officer or the respondent judge to be without or in excess of jurisdiction, may be sought by way of petition for an appropriate extraordinary writ.

(h) Disqualification of Supreme Court Justices. Any justice who sat on the commission is disqualified from participating in the consideration or decision of an appeal from an action that was taken by the commission during his or her membership on the commission.
[Added; effective February 21, 2003; as amended; effective March 1, 2019.]

RULE 3E. FAST TRACK CHILD CUSTODY APPEALS

(a) Applicability. This Rule applies to appeals and cross-appeals from district court orders pertaining to child custody or visitation.

(b) Responsibilities of Appellant. Appellant and cross-appellant are responsible for filing the notice of appeal, case appeal statement, docketing statement, a transcript request form, and a fast track statement for the case identifying the appellate issues that are raised. An appellant and/or cross-appellant who is proceeding without counsel need not prepare a case appeal statement, as the district court clerk will prepare this document in accordance with Rule 3(f)(2).

(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;

(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.

(2) Transcript Requests.

(A) Filing and Serving Request Form. The parties have a duty to confer and attempt to reach an agreement concerning the transcripts necessary for the court's review on appeal. When a transcript is necessary for an appeal, appellant shall file the transcript or rough draft transcript request form with the district court and shall serve a copy of the request form upon the court reporter or recorder and the opposing party. Appellant shall file and serve the request form within 14 days of the date that the Supreme Court approves the settlement conference report indicating that the parties were unable to settle or, if the case was exempted or removed from the settlement program, within 14 days of the date that the case was exempted or removed from the settlement program. Appellant shall file with the clerk of the Supreme Court 2 file-stamped copies of the transcript or rough draft transcript request form and proof of service of the form upon the court reporter or recorder and the opposing party. The transcript request form shall substantially comply with Form 3 or 11 in the Appendix of Forms unless the party filing the form is proceeding pro se, in which case the transcript request form shall substantially comply with Form 17 in the Appendix of Forms. If no transcript is to be requested, appellant shall file with the clerk of the Supreme Court and serve the opposing party with a certificate to that effect within the same period that the transcript request form must be filed and served under this subsection. Such a certificate shall substantially comply with Form 14 in the Appendix of Forms.

(B) Appellant shall order transcripts of only those portions of the proceedings that appellant reasonably and in good faith believes are necessary to determine the appellate issues.

(C) The court reporter or recorder shall submit an original transcript or rough draft transcript, as requested by appellant, to the district court no more than 21 days after the date that the request is served. The court reporter or recorder shall also deliver certified copies of the transcript or rough draft transcript to the requesting and opposing parties no more than 21 days after the date when the request is served. Within 7 days after delivering the certified copies of the rough draft transcript, the court reporter or recorder shall file with the clerk of the Supreme Court a certificate acknowledging delivery of the completed transcript and specifying the transcripts that have been delivered and the date that they were delivered to the requesting party. Form 15 in the Appendix of Forms is a suggested form of certificate of delivery. The preparation of transcripts shall conform with the provisions of this Rule.

(D) When a transcript request form is submitted by a pro se party who is proceeding in forma pauperis, the court reporter or recorder shall take no action on the request unless directed to do so by the Supreme Court or Court of Appeals in accordance with Rule 9(b).

(E) Relevant portions of the trial or hearing that were audio recorded or video recorded shall be submitted in typewritten form. The court will not accept audio- or videotapes in lieu of transcripts.

(3) Supplemental Request for Transcripts or Rough Draft Transcripts. The opposing party may make a supplemental request for portions of the transcript or rough draft transcript that were not previously requested. The request shall be made no more than 7 days after appellant served the transcript request made pursuant to subsection

(c)(2) of this Rule. In all other respects, the opposing party shall comply with the provisions of this Rule governing a transcript or rough draft transcript request when making a supplemental transcript request.

(4) Sufficiency of the Rough Draft Transcript. In the event that appellant elects to use rough draft transcripts, appellant shall be responsible for reviewing the sufficiency of the rough draft transcripts. In the event that a substantial question arises regarding a rough draft transcript's accuracy, the court may order the production of a certified transcript.

(d) Filing Fast Track Statement, Response and Appendix.

(1) Filing Fast Track Statement. Within 40 days after the Supreme Court approves the settlement conference report indicating that the parties were unable to settle the case or, if the appeal is removed or exempted from the settlement program, within 40 days after the appeal is removed or exempted, appellant and cross-appellant shall file and serve an original and 1 copy of both a fast track statement form and an appendix with the clerk of the Supreme Court and serve 1 copy of the fast track statement and appendix on the opposing party. The fast track statement shall substantially comply with Form 12 in the Appendix of Forms. The fast track statement shall not exceed 16 pages in length or shall comply with the type-volume limitations stated in Rule 3E(e)(2). The fast track statement shall include the following:

(A) A statement of jurisdiction for the appeal;

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

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

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

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

(F) When applicable, a statement regarding the sufficiency of the rough draft transcript;

(G) When applicable, a reference to all related or prior appeals, including the appropriate citations for those appeals; and

(H) A statement, setting forth whether the matter should be retained by the Supreme Court or assigned to the Court of Appeals, including reference to any appropriate provisions in Rule 17. If the appellant believes that the Supreme Court should retain the case despite its presumptive assignment under Rule 17 to the Court of Appeals, the statement shall identify the specific issue(s) or circumstance(s) that warrant retaining the case and an explanation of their importance or significance.

(2) Filing Fast Track Response. Within 21 days from the date a fast track statement is served, the respondent and cross-respondent shall file an original and 1 copy of a fast track response and serve 1 copy of the fast track response on the opposing party. The fast track response shall substantially comply with Form 13 in the Appendix of Forms. The fast track response shall not exceed 11 pages in length or shall comply with the type-volume limitations stated in Rule 3E(e)(2). The fast track response shall include additional authority and factual information necessary to rebut the contentions in the fast track statement. In cases involving a pro se appellant and/or cross-appellant, Rule 46A(c) shall not apply and the respondent/cross-respondent shall file a fast track response as required by this Rule.

(3) Expanded Fast Track Statement or Response. A party may seek leave of the court to expand the length of the fast track statement or response. The requesting party must demonstrate that the complexity of the case and the issues presented warrant granting the request. A request for expansion must be filed at least 14 days before the fast track statement or response is otherwise due, and must specify the number of additional pages requested.

(4) Appendix. The parties have a duty under Rule 30 to confer and attempt to reach an agreement concerning a possible joint appendix to be filed with the fast track statement. In the absence of an agreement respecting a joint appendix, appellant shall prepare and file a separate appendix with the fast track statement, and respondent may prepare and file a separate appendix with the fast track response. The preparation and contents of appendices shall comply with Rules 30 and 32 and shall be paginated sequentially. Every assertion in the fast track statement or response regarding matters in an appendix shall cite to the specific page number that supports that assertion.

(5) Pro Se Appellant; Appendix. A pro se appellant or cross-appellant shall not file an appendix. If the court's review of the record is necessary in such a case, the court may direct that the complete record be transmitted as provided in Rule 11(a)(2). Pro se parties are encouraged, but not required, to support assertions made in the fast track

statement or response regarding matters in the record by citing to the specific page number in the record that supports the assertions.

(e) Format; Type-Volume Limitation; Certificate of Compliance.

(1) Format. Fast track filings shall comply with the formatting requirements of Rule 32(a)(4)-(6), and Rule 32(a)(7)(C) shall apply in computing permissible length, and Rule 32(a)(8) shall apply with regard to handwritten documents by pro se parties.

(2) Type-Volume Limitation. The size of a fast track filing may be calculated by type-volume in lieu of page limitation. Using a type-volume limitation, a fast track statement is acceptable if it contains no more than 7,267 words or 693 lines of text. A fast track response is acceptable if it contains no more than two-thirds the type-volume specified for a fast track statement (4,845 words or 462 lines of text); and a fast track reply or supplement is acceptable if it contains no more than 2,333 words or 216 lines of text.

(3) Certificate of Compliance. Fast track filings must include a certificate of compliance in substantially the form required by Rule 32(a)(8). A certificate that includes the first two paragraphs under "Verification" in Forms 6 and 7 of the Appendix of Forms will be regarded as sufficient to meet the requirements of this Rule.

(f) Extensions of Time.

(1) Transcripts or Rough Draft Transcripts. A court reporter or recorder may request, by telephone, a 7-day extension of time for the preparation of a transcript or rough draft transcript if such preparation requires more time than is allowed under this Rule. The clerk of the Supreme Court or designated deputy may, for good cause, grant such requests by telephone or by written order.

(2) Fast Track Statements or Responses. Either party may request, by telephone, a 7-day extension of time for filing a fast track statement or response. The clerk of the Supreme Court or designated deputy may, for good cause, grant such requests by telephone or by written order.

(3) Subsequent Request for Extensions. Any subsequent request for an extension of time must be made by written motion to the court. The motion must justify the requested extension in light of the time limits provided in this Rule, and shall specify the exact length of the extension requested. Extensions of time for the filing of fast track statements and responses shall be granted only upon demonstration of extreme need or merit. Sanctions may be imposed if a subsequent motion for an extension of time is brought without reasonable grounds.

(g) Appeal Disposition, Full Briefing, or Calendaring.

(1) Based solely upon review of the transcripts or rough draft transcripts, fast track statement, fast track response, and any other documents filed with the court, the court may resolve the matter or direct full briefing.

(2) A party may seek leave of the court to remove an appeal from the fast track program and direct full briefing. The motion must demonstrate that the specific issues raised in the appeal are complex and/or too numerous for resolution in the fast track program. If the moving party is represented by counsel, the movant must attach a written waiver from the client certifying that counsel has discussed the implications of full briefing and that the client waives expeditious resolution of the appeal.

(3) If the court orders an appeal to be fully briefed, the parties are not required to file transcript request forms pursuant to Rule 9(a) unless otherwise ordered. If a party's brief cites to a transcript not previously filed in the court, that party shall cause a supplemental transcript to be prepared and filed in the district court and the court under Rule 9 within the time specified for filing the brief in the court's briefing order. If a represented party's brief cites to documents not previously filed in the court, that party shall file and serve an appropriately documented supplemental appendix with the brief. In accordance with Rule 30, pro se parties shall not file an appendix, but when the court's review of the record is necessary in a pro se appeal, the court may direct that the complete record be transmitted as provided in Rule 11(a)(2).

(4) Subject to extensions, and if the court does not order full briefing, the court shall dispose of all fast track child custody appeals within 90 days of the date the fast track response is filed.

(h) Court Reporter or Recorder Protection and Compensation. When preparing and submitting rough draft transcripts under this Rule,

(1) Court reporters or recorders shall not be subject to civil, criminal or administrative causes of action for inaccuracies in a rough draft transcript unless the court reporter or recorder willfully

(A) fails to take full and accurate stenographic notes of the proceeding for which the rough draft transcript is submitted, or willfully and improperly alters stenographic notes from the proceeding, or willfully transcribes audio- or videotapes inaccurately; and

(B) such willful conduct proximately causes injury or damage to a party asserting the action, and that party demonstrates that appellate relief was granted or denied based upon the court reporter's or recorder's inaccuracies.

(2) Court reporters shall be compensated as follows:

(A) For the preparation of a transcript or rough draft transcript, the court reporter shall receive 100 percent of the rate established by NRS 3.370 for each transcript page and for costs. A party ordering transcripts or copies must pay the court reporter's fee. No reporter may be required to perform any service in a civil case until the fees have been paid to him or her, or deposited with the court clerk.

(B) In the event that a certified transcript is ordered after the rough draft transcript is prepared, the court reporter shall receive an additional fee as established by NRS 3.370.

(i) Sanctions. Any party, attorney, court reporter, or court recorder who lacks due diligence in compliance with this Rule may be subject to sanctions by the court. Sanctionable actions include, but are not limited to, failure of appellant to timely file a fast track statement or respondent's failure to file a fast track response; and failure of a party to raise material issues or arguments in a fast track statement or response.

(j) Conflict. The provisions of this Rule shall prevail over conflicting provisions of any other rule.

[Added; effective June 1, 2006; as amended; effective March 1, 2019.]

RULE 4. APPEAL — WHEN TAKEN

(a) Appeals in Civil Cases.

(1) Time and Location for Filing a Notice of Appeal. In a civil case in which an appeal is permitted by law from a district court, the notice of appeal required by Rule 3 shall be filed with the district court clerk. Except as provided in Rule 4(a)(4), a notice of appeal must be filed after entry of a written judgment or order, and no later than **30 days after the date that written notice of entry of the judgment or order appealed from is served**. If an applicable statute provides that a notice of appeal must be filed within a different time period, the notice of appeal required by these Rules must be filed within the time period established by the statute.

[As amended; effective January 20, 2015.]

(2) Multiple Appeals. If one party timely files a notice of appeal, any other party may file and serve a notice of appeal within 14 days after the date when the first notice was served, or within the time otherwise prescribed by Rule 4(a), whichever period last expires.

[As amended; effective July 1, 2009.]

(3) Entry Defined. A judgment or order is entered for purposes of this Rule when it is signed by the judge or by the clerk, as the case may be, and filed with the clerk. A notice or stipulation of dismissal filed under NRCP 41(a)(1) has the same effect as a judgment or order signed by the judge and filed by the clerk and constitutes entry of a judgment or order for purposes of this Rule. If that notice or stipulation dismisses all unresolved claims pending in an action in the district court, the notice or stipulation constitutes entry of a final judgment or order for purposes of this Rule.

[As amended; effective July 1, 2009.]

(4) Effect of Certain Motions on a Notice of Appeal. If a party timely files in the district court any of the following motions under the Nevada Rules of Civil Procedure, the time to file a notice of appeal runs for all parties

from entry of an order disposing of the last such remaining motion, and the notice of appeal must be filed no later than 30 days from the date of service of written notice of entry of that order:

(A) a motion for judgment under Rule 50(b);

(B) a motion under Rule 52(b) to amend or make additional findings of fact;

(C) a motion under Rule 59 to alter or amend the judgment;

(D) a motion for a new trial under Rule 59.

[Added; effective December 16, 2004; as amended; effective July 1, 2009.]

(5) Appeal From Certain Amended Judgments and Post-Judgment Orders. An appeal from a judgment substantively altered or amended upon the granting of a motion listed in Rule 4(a)(4), or from an order granting or denying a new trial, is taken by filing a notice of appeal, or amended notice of appeal, in compliance with Rule 3. The notice of appeal or amended notice of appeal must be filed after entry of a written order disposing of the last such remaining timely motion and no later than **30 days from the** date of service of written notice of entry of that order.

[Added; effective December 16, 2004.]

(6) 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). If, however, a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule 4(a)(4), is entered before dismissal of the premature appeal, the notice of appeal shall be considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

[Added; effective December 16, 2004; as amended; effective January 20, 2015.]

(7) Amended Notice of Appeal. No additional fees shall be required if any party files an amended notice of appeal in order to comply with the provisions of this Rule.

[Added; effective September 1, 1989; as amended; December 16, 2004.]

(b) Appeals in Criminal Cases.

(1) Time for Filing a Notice of Appeal.

(A) Appeal by Defendant or Petitioner. Except as otherwise provided in NRS 34.560(2), NRS 34.575(1), NRS 176.09183(6), NRS 177.055, and Rule 4(c), the notice of appeal by a defendant or petitioner in a criminal case shall be filed with the district court clerk within 30 days after the entry of the judgment or order being appealed.

(B) Appeal by the State. Except as otherwise provided in NRS 34.575(2), NRS 176.09183(4), and NRS 177.015(2), when an appeal by the state is authorized by statute, the notice of appeal shall be filed with the district court clerk within 30 days after the entry of the judgment or order being appealed.

(2) Filing Before Entry of Judgment. A notice of appeal filed after the announcement of a decision, sentence or order — but before entry of the judgment or order — shall be treated as filed after such entry and on the day thereof.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely files a motion in arrest of judgment or a motion for a new trial on any ground other than newly discovered evidence and the motion has not been denied by oral pronouncement or entry of a written order when the judgment of conviction is entered, **the notice of appeal from the judgment of conviction may be filed within 30 days after the entry of an order denying the motion.**

(B) If a defendant files a motion for a new trial based on the ground of newly discovered evidence before entry of the judgment of conviction and the motion has not been denied by oral pronouncement or entry of a written order when the judgment of conviction is entered, the notice of appeal from the judgment of conviction may be filed within 30 days after the entry of an order denying the motion. If a defendant makes such a motion within 30 days after the entry of the judgment of conviction, the time for the defendant to file the notice of appeal from the judgment of conviction will be similarly extended.

(4) Entry Defined. A judgment or order is entered for purposes of this Rule when it is signed by the judge and filed with the clerk.

(5) Time for Entry of Judgment; Content of Judgment or Order in Postconviction Matters.

(A) Judgment of Conviction. The district court judge shall enter a written judgment of conviction within 14 days after sentencing.

(B) Order Resolving Postconviction Matter. The district court judge shall enter a written judgment or order finally resolving any postconviction matter within 21 days after the district court judge's oral pronouncement of a final decision in such a matter. The judgment or order in any postconviction matter must contain specific findings of fact and conclusions of law supporting the district court's decision.

(C) Sanctions; Counsel's Failure to Timely Prepare Judgment or Order. The court may impose sanctions on any counsel instructed by the district court judge to draft the judgment or order and who does not submit the proposed judgment or order to the district court judge within the applicable time periods specified in Rule 4(b)(5).

(6) Withdrawal of Appeal. If an appellant no longer desires to pursue an appeal after the notice of appeal is filed, counsel for appellant shall file with the clerk of the Supreme Court a notice of withdrawal of appeal. The notice of withdrawal of appeal shall substantially comply with Form 8 in the Appendix of Forms.

[As amended; effective March 1, 2019.]

(c) Untimely Direct Appeal From a Judgment of Conviction and Sentence.

(1) When an Untimely Direct Appeal From a Judgment of Conviction and Sentence May Be Filed. An untimely notice of appeal from a judgment of conviction and sentence may be filed only under the following circumstances:

(A) A postconviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRS 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and

(B) The district court in which the petition is considered enters a written order containing:

(i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;

(ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and

(iii) directions to the district court clerk to prepare and file — within 7 days of the entry of the district court's order — a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

(C) If a federal court of competent jurisdiction issues a final order directing the state to provide a direct appeal to a federal habeas corpus petitioner, the petitioner or his or her counsel shall file the federal court order within 30 days of entry of the order in the district court in which petitioner's criminal case was pending. The clerk of the district court shall prepare and file — within 30 days of filing of the federal court order in the district court — a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

(2) Service by the District Court Clerk. The district court clerk shall serve certified copies of the district court's written order and the notice of appeal required by Rule 4(c) on the petitioner and petitioner's counsel in the postconviction proceeding, if any, the respondent, the Attorney General, the district attorney of the county in which the petitioner was convicted, the appellate counsel appointed to represent the petitioner in the direct appeal, if any, and the clerk of the Supreme Court.

(3) Notice of Appeal Filed by Petitioner's Counsel or Petitioner. If the district court has entered an order containing the findings required by Rule 4(c)(1)(B) and the district court clerk has not yet prepared and filed the notice of appeal on the petitioner's behalf, the petitioner or petitioner's counsel may file the notice of appeal from the judgment of conviction and sentence.

(4) Motion to Dismiss Appeal. The state may challenge a district court's written order granting an appeal-deprivation claim by filing a motion to dismiss the appeal with the clerk of the Supreme Court within 30 days after the date on which the appeal is docketed in the Supreme Court. The state's motion to dismiss shall be properly

supported with all documents relating to the district court proceeding that are necessary to the Supreme Court's or Court of Appeals' complete understanding of the matter.

(5) Effect on Procedural Bars. When a direct appeal of a criminal conviction and sentence is conducted under this Rule, the timeliness provisions governing any subsequent habeas corpus attack on the judgment shall begin to run upon the termination of the direct appeal, as provided in NRS 34.726(1) and NRS 34.800(2). A habeas corpus petition filed after a direct appeal conducted under this Rule shall not be deemed a "second or successive petition" under NRS 34.810(2).

(d) Appeal by an Inmate Confined in an Institution. If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is delivered to a prison official for mailing on or before the last day for filing. If the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of this Rule.

(e) Mistaken Filing in the Supreme Court. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the Supreme Court rather than the district court, the clerk of the Supreme Court must note on the notice the date when it was received and send it to the district court clerk. The notice is then considered filed in the district court on the date so noted.

(f) Expediting Criminal Appeals. The court may, by a majority of its members, make orders to expedite the handling of criminal appeals, including without limitation the following:

(1) Elimination of steps in preparation of the record and the briefs.

(2) Expediting preparation of stenographic transcripts.

(3) Priority of calendaring for oral argument.

(4) Utilization of court opinions or per curiam orders.

(5) Other lawful measures reasonably calculated to expedite the appeal and promote justice.
[As amended; effective March 1, 2019.]

RULE 5. CERTIFICATION OF QUESTIONS OF LAW

(a) Power to Answer. The Supreme Court may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States or of the District of Columbia, a United States District Court, or a United States Bankruptcy Court when requested by the certifying court, if there are involved in any proceeding before those courts questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court or Court of Appeals of this state.

(b) Method of Invoking. This Rule may be invoked by an order of any of the courts referred to in Rule 5(a) upon the court's own motion or upon the motion of any party to the cause.

(c) Contents of Certification Order. A certification order shall set forth:

(1) The questions of law to be answered;

(2) A statement of all facts relevant to the questions certified;

(3) The nature of the controversy in which the questions arose;

(4) A designation of the party or parties who will be the appellant(s) and the party or parties who will be the respondent(s) in the Supreme Court;

(5) The names and addresses of counsel for the appellant and respondent; and

(6) Any other matters that the certifying court deems relevant to a determination of the questions certified.

(d) Preparation of Certification Order. The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the Supreme Court by the clerk of the certifying court under its official seal. The Supreme Court may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the Supreme Court, the record or portion thereof may be necessary in answering the questions.

(e) Costs of Certification. Fees and costs shall be the same as in civil appeals docketed before the Supreme Court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

(f) Docketing in Supreme Court. Upon receiving the certification order, the clerk of the Supreme Court shall docket the case and notify the clerk of the certifying court, the certifying judge, and the parties that the case has been docketed in the Supreme Court.

(g) Briefs and Argument.

(1) The Supreme Court will consider whether to accept a question certified to it without oral or written argument from the parties unless otherwise directed by the Supreme Court.

(2) If the Supreme Court accepts certification of a question of law, the parties shall brief the certified question of law unless the court orders otherwise. The clerk of the Supreme Court shall notify the parties of the court's decision to accept certification and set a briefing schedule. Briefs and any appendices must be in the form provided in Rules 28, 30, and 32.

(3) If the Supreme Court decides to hear oral argument on the certified question of law, Rule 34 will govern the proceedings.

(h) Opinion. The written opinion of the Supreme Court stating the law governing the questions certified shall be sent by the clerk under the seal of the Supreme Court to the certifying court and to the parties and shall be res judicata as to the parties.

[Added; effective October 26, 1987; as amended; effective January 20, 2015.]

RULE 6. RESERVED

RULE 7. BOND FOR COSTS ON APPEAL IN CIVIL CASES

(a) When Bond Required. In a civil case, unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking that includes security for the payment of costs on appeal, the appellant shall file a bond for costs on appeal or equivalent security in the district court with the notice of appeal. But a bond shall not be required of an appellant who is not subject to costs.

(b) Amount of Bond. The bond or equivalent security shall be in the sum or value of $500 unless the district court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the Supreme Court or Court of Appeals may direct if the judgment is modified. If a bond or equivalent security in the sum or value of $500 is given, no approval thereof is necessary.

(c) Objections. After a bond for costs on appeal is filed, a respondent may raise for determination by the district court clerk objections to the form of the bond or to the sufficiency of the surety.

(d) Proceeding Against a Surety. Rule 8(b) applies to a surety upon a bond given under this Rule.

[As amended; effective January 20, 2015.]

RULE 8. STAY OR INJUNCTION PENDING APPEAL OR RESOLUTION OF ORIGINAL WRIT PROCEEDINGS

(a) Motion for Stay.

(1) Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring or granting an injunction while an appeal or original writ petition is pending.

(2) Motion in the Court; Conditions on Relief. A motion for the relief mentioned in Rule 8(a)(1) may be made to the Supreme Court or the Court of Appeals or to one of its justices or judges.

(A) The motion shall:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion shall also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) In an exceptional case in which time constraints make consideration by a panel impracticable, the motion may be considered by a single justice or judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) Proceedings Against Sureties. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district court clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district court clerk, who shall promptly mail a copy to each surety whose address is known.

(c) Stays in Civil Cases Not Involving Child Custody. In deciding whether to issue a stay or injunction, the Supreme Court or Court of Appeals will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

(d) Stays in Civil Cases Involving Child Custody. In deciding whether to issue a stay in matters involving child custody, the Supreme Court or Court of Appeals will consider the following factors: (1) whether the child(ren) will suffer hardship or harm if the stay is either granted or denied; (2) whether the nonmoving party will suffer hardship or harm if the stay is granted; (3) whether movant is likely to prevail on the merits in the appeal; and (4) whether a determination of other existing equitable considerations, if any, is warranted.

(e) Stays in Criminal Cases; Admission to Bail. Stays in criminal cases shall be had in accordance with the provisions of NRS 177.095 et seq. Admission to bail shall be as provided in NRS 178.4873 through 178.488.

(f) Stay of Execution of Death Penalty. Immediately upon entry of an order of the Supreme Court staying execution of the death penalty, the clerk shall deliver copies thereof to the Governor of Nevada and to the warden of the Nevada State Prison.

[As amended; effective January 20, 2015.]

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

(a) Counsel's Duty to Request Transcript.

(1) Necessary Transcripts.

(A) Counsel have a duty to confer and attempt to reach an agreement concerning the transcripts necessary for the court's review on appeal.

(B) Unless otherwise provided in these Rules, the appellant shall file a transcript request form in accordance with Rule 9(a)(3) when a verbatim record was made of the district court proceedings and the necessary portions of the transcript were not prepared and filed in the district court before the appeal was docketed under Rule 12.

(C) If no transcript is to be requested, the appellant shall file and serve a certificate to that effect within the period set forth in Rule 9(a)(3) for the filing of a transcript request form. Such a certificate shall substantially comply with Form 14 in the Appendix of Forms.

(2) Multiple Appeals. If more than one appeal is taken, each appellant shall comply with the provisions of this Rule.

(3) Transcript Request Form.

(A) Filing. The appellant shall file an original transcript request form with the district court clerk and 1 file-stamped copy of the transcript request form with the clerk of the Supreme Court no later than 14 days from the date that the appeal is docketed under Rule 12.

(B) Service and Deposit. The appellant shall serve a copy of the transcript request form on the court reporter or recorder who recorded the proceedings and on all parties to the appeal within the time provided in subparagraph (A). The appellant must pay an appropriate deposit to the court reporter or recorder at the time of service, unless appellant is proceeding in forma pauperis or is otherwise exempt from payment of the fees. Where several parties appeal from the same judgment or any part thereof, or there is a cross-appeal, the deposit shall be borne equally by the parties appealing, or as the parties may agree.

(C) Contents of Form. The appellant shall examine the district court minutes to ascertain the name of each court reporter or recorder who recorded the proceedings for which transcripts are necessary. The appellant shall 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 court reporter or recorder named on the request form. The transcript request form must substantially comply with Form 3 in the Appendix of Forms and must contain the following information:

(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's counsel that the attorney has ordered the required transcripts and has paid the required deposits. This certification shall specify from whom the transcript was ordered, the date the transcript was ordered, and the date the deposit was paid.

(4) Number of Copies of Transcript; Costs. Appellant shall provide a copy of the certified transcript to counsel for each party appearing separately. Unless otherwise ordered, the appellant initially shall pay any costs associated with the preparation and delivery of the transcript. Where several parties appeal 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 shall be borne equally by the parties appealing, or as the parties may agree.

(5) Supplemental Request. If the parties cannot agree on the transcripts necessary to the court's review, and appellant requests only part of the transcript, appellant shall request any additional parts of the transcript that the respondent considers necessary. Within 14 days from the date the initial transcript request is filed, respondent shall notify appellant in writing of the additional portions required. Appellant shall have 14 days thereafter within which to file and serve a supplemental transcript request form and pay any additional deposit required.

(6) In Forma Pauperis. In a civil case, if appellant is represented by counsel but has been permitted to proceed in forma pauperis or has filed a statement of legal aid eligibility under NRAP 24, counsel may request a waiver of the costs associated with the preparation and delivery of the transcripts by filing a motion with the clerk of the Supreme Court specifying each proceeding for which a transcript is requested and a statement explaining why each transcript is necessary for the court's review on appeal. The court may order that the transcripts be prepared at the expense of the county in which the proceeding occurred, but at a reduced rate established by the county in accordance with NRS 12.015(3).

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

(b) Pro Se Parties' Duty to Request Transcripts in Civil Cases. A pro se appellant in a civil appeal shall identify and request all necessary transcripts. If no transcript is to be requested, the pro se appellant shall file with the clerk of the Supreme Court and serve upon the parties a certificate to that effect within 14 days of the date the appeal is docketed under Rule 12. Such a certificate shall substantially comply with Form 14 in the Appendix of Forms.

(1) Transcript Request Form.

(A) Filing. A pro se appellant shall have 14 days from the date the appeal is docketed under Rule 12 to file an original transcript request form with the clerk of the Supreme Court. The transcript request form must substantially comply with Form 17 in the Appendix of Forms.

(B) Service, Deposit, and Costs. A pro se appellant who has not been granted in forma pauperis status shall serve a copy of the transcript request form on the court reporter or recorder who recorded the proceedings and on all parties to the appeal within the time provided in subparagraph (A) and must pay an appropriate deposit to the court reporter or recorder at the time of service. Upon receiving the transcript, the litigant(s) requesting that transcript shall file a copy of the transcript with the clerk of the Supreme Court.

(C) Pro Se Appellant Granted in Forma Pauperis Status. A pro se appellant proceeding in forma pauperis shall serve a copy of the transcript request form on all parties to the appeal within the time provided in subparagraph (A), but need not serve that document on the court reporter or recorder. The Supreme Court or Court of Appeals will review any completed transcript request forms and determine which transcripts, if any, shall be prepared and will issue an order directing the preparation of any necessary transcripts.

(2) Respondent's Request for Transcripts. Respondent may request any additional transcripts respondent considers necessary to the Supreme Court's or Court of Appeals' review. A transcript request form prepared by a pro se respondent must substantially comply with Form 17 in the Appendix of Forms. A transcript request form prepared by counsel must substantially comply with Form 3 in the Appendix of Forms. Respondents shall have 14 days from the date of service of appellant's transcript request form to request any transcripts that respondent deems necessary. If respondent requests a transcript, respondent shall furnish each party appearing separately with a copy of the transcript. Any costs associated with the preparation and delivery of a transcript requested by respondent shall be paid by the respondent unless otherwise ordered by the Supreme Court or Court of Appeals.

(c) 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(c)(1)(B) and (c)(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) or Rule 9(b)(1)(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 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 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 conventional page-for-page format. A concordance indexing keywords in the transcript shall 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 shall 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 shall 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.

(d) 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 shall 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 shall then be submitted to the district court for settlement and approval. As settled and approved, the statement shall be included by the district court clerk in the trial court record, and the appellant shall include a file-stamped copy of the statement in an appendix filed with the clerk of the Supreme Court.

[Added; effective September 1, 1996; as amended; effective March 1, 2019.]

RULE 10. THE RECORD

(a) The Trial Court Record. The trial 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 trial court record. When the court deems it necessary to review the trial court record, the district court clerk shall assemble and transmit the portions of the record designated by the clerk of the Supreme Court in accordance with the provisions of Rule 11. Any costs associated with the preparation and transmission of the record shall be paid initially by the appellant, unless otherwise ordered.

(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 trial 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).

(c) Correction or Modification of the Record. If any difference arises about whether the trial court record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record conformed accordingly. Questions as to the form and content of the appellate court record shall be presented to the clerk.

[Replaced; effective September 1, 1996; as amended; effective October 1, 2015.]

RULE 11. PREPARING AND FORWARDING THE RECORD

(a) Preparation of the Record. Upon written direction from the court, the district court clerk shall provide the clerk of the Supreme Court with the papers or exhibits comprising the trial court record. The record shall be assembled, paginated, and indexed 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 shall 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 shall not be included with the documents comprising the record. The district court clerk shall 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 shall 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 shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court. The record shall 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.

(b) Duty of Clerk to Certify and Forward the Record. The district court clerk shall certify and forward the record to the clerk of the Supreme Court. The district court clerk shall 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).

(d) Failure of Timely Transmittal; Extensions.

(1) Failure of Timely Transmittal. A district court clerk who fails to forward a timely record on appeal 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. A motion to extend the time for transmitting the record shall be accompanied by the affidavit of the clerk or deputy clerk setting forth the reasons for the requested extension, and the length of additional time needed to prepare the record.

[Replaced; effective September 1, 1996; as amended; effective October 1, 2015.]

RULE 12. DOCKETING THE APPEAL; FILING OF THE RECORD

(a) Docketing the Appeal. Upon receiving the copies of the notice of appeal and other documents from the district court clerk under Rule 3, the clerk of the Supreme Court shall docket the appeal and immediately notify all parties of the docketing date. Automatic appeals from a judgment of conviction of death shall be docketed in accordance with SCR 250. If parties on opposing sides file notices of appeal from the same district court judgment or order, in accordance with Rule 4(a), the appellants and cross-appellants shall be designated as provided in Rule 28.1.

A subsequent appeal shall in all respects be treated as an initial appeal, including the payment of the prescribed filing fee. Cross-appeals will be filed under the same docket number and calendared and argued with the initial appeal.

(b) Filing the Record. Upon receiving the record, the clerk of the Supreme Court shall file it and immediately notify all parties of the filing date.

[As amended; effective July 1, 2009.]

RULE 12A. REMAND AFTER AN INDICATIVE RULING BY THE DISTRICT COURT ON A MOTION FOR RELIEF THAT IS BARRED BY A PENDING APPEAL

(a) Notice to the Appellate Court. If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the clerk of the Supreme Court if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) Remand After an Indicative Ruling. If the district court states that it would grant the motion or that the motion raises a substantial issue, the Supreme Court or the Court of Appeals may remand for further proceedings but the appellate court retains jurisdiction unless it expressly dismisses the appeal. If the appellate court remands but retains jurisdiction, the parties must promptly notify the clerk of the Supreme Court when the district court has decided the motion on remand.

[Added; effective March 1, 2019.]

RULE 13. COURT REPORTERS' AND RECORDERS' DUTIES AND OBLIGATIONS; SANCTIONS

(a) Court Reporters' and Recorders' Duties and Obligations. Persons serving as court reporters or reporters pro tempore or court recorders in trials, proceedings, or hearings subject to court review are, for such purposes, officers of the Supreme Court, and as such are accountable to the Supreme Court for the faithful performance of their duties and obligations. Subject to the provisions of Rule 9, any person acting as a court reporter or reporter pro tempore or court recorder in a trial, proceeding, or other matter subject to court review has a duty expeditiously to prepare, and punctually to deliver, all transcripts needed for such review; such person accordingly has a duty to refrain from undertaking further professional assignments that may unduly interfere with timely preparation and delivery of transcripts necessary for review of matters already heard; and where appropriate such person shall promptly notify every affected judge of the reporter's or recorder's consequent unavailability to report matters currently being heard, so that substitute reporters pro tempore or court recorders may be obtained.

(b) Sanctions. For default in the professional obligations of any court reporter or reporter pro tempore or court recorder, if such default threatens or adversely affects the efficiency or integrity of the court, appropriate sanctions will be imposed. The court may, for reasons stated, enter an order (1) referring an apparent offending court reporter or reporter pro tempore to the certified court reporters' board of Nevada for disciplinary action in accordance with the provisions of Chapter 656 of the Nevada Revised Statutes; or (2) requiring an apparent offender to appear before the court, or its designated master, to show cause why he or she should not be precluded from undertaking to act as a reporter or recorder in regard to any trial, proceeding, administrative hearing, or deposition, that is subject to court review; why he or she should not be punished for contempt of court; and why damages should not be awarded to either or both parties, and to the State of Nevada, if loss of court time results.

[As amended; effective January 20, 2015.]

RULE 14. DOCKETING STATEMENT

(a) Application and Purpose of Docketing Statement.

(1) In General. Appellants shall file completed docketing statements in accordance with the provisions of this Rule in all appeals. Unless a cross-appeal is filed, the respondent may not complete a docketing statement but may file a response as specified in Rule 14(f).

(2) Exceptions.

(A) Original Writ Proceedings. This Rule does not apply to original proceedings commenced pursuant to NRS Chapters 34 or 35.

(B) Postconviction Appeals. This Rule does not apply to postconviction appeals in which the appellant is appearing without counsel.

(3) Purpose of Docketing Statement. The purpose of the docketing statement is to assist the Supreme Court in identifying jurisdictional defects, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

(4) Statement of Issues on Appeal. A docketing statement shall state specifically all issues that a party in good faith reasonably believes to be the issues on appeal. The statement of issues is instrumental to the court's case management procedures, however, such statement is not binding on the court and the parties' briefs will determine the final issues on appeal. Omission of an issue from the statement of issues will not provide an appropriate basis for a motion to strike any portion of the opening brief.

[As amended; effective October 1, 2015.]

(b) Time for Filing; Form of Docketing Statement. Within 21 days after docketing of the appeal under Rule 12, the appellant shall file a docketing statement with the clerk of the Supreme Court, on a form provided by the clerk. Legible photostatic copies of the original form provided by the clerk will be accepted by the clerk for filing in lieu of the original form. The appellant may file a docketing statement that is not on the form provided by the clerk so long as it contains every question included in the clerk's form. An original and 2 copies shall be filed, together with proof of service of a copy of the completed statement on all parties and, if the appeal is assigned to the settlement conference program under Rule 16, on the settlement judge.

[As amended; effective March 1, 2019.]

(c) Consequences of Failure to Comply. The statement must be completed fully and accurately. For civil appeals, copies of all requested documents must be attached to the completed docketing statement. The court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate, or if the requested documentation has not been attached. Failure to file a docketing statement within the time prescribed shall not affect the validity of the appeal, but is grounds for such action as the court deems appropriate including sanctions and dismissal of the appeal.

[As amended; effective October 1, 2015.]

(d) Extensions of Time. A motion for an extension of time within which to file the docketing statement will be granted for good cause. Counsel's caseload generally will not provide grounds for an extension.

(e) Multiple Appellants. In cases involving more than one appellant, any number of appellants may join in a single docketing statement. Multiple appellants are encouraged to consult with each other and, whenever possible, file only one docketing statement.

(f) Response by Respondent(s). Respondent, within 7 days after service of the docketing statement, may file an original and 1 copy of a single-page response, together with proof of service on all parties, if respondent strongly disagrees with appellant's statement of the case or issues on appeal. If respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss. In cases involving more than one respondent, any number of respondents may join in a single response. Multiple respondents are encouraged to consult with each other and, whenever possible, file only one response.

(g) Cross-Appeals. All parties who have filed a notice of appeal, whether designated as appellants or cross-appellants, shall comply with Rule 14(a). Cross-appellants and cross-respondents are subject to all the provisions of this Rule as are appellants and respondents.

[As amended; effective July 1, 2009.]

RULE 15. REPEALED [EFFECTIVE DECEMBER 30, 1997.]

RULE 16. SETTLEMENT CONFERENCES IN CIVIL APPEALS

(a) Assignment of Case to Settlement Conference Program. Any civil appeal in which all parties are represented by counsel and that does not involve termination of parental rights may be assigned to the settlement conference program. The settlement conference program administrator shall determine whether to assign an appeal to the settlement conference program. The settlement conference shall be presided over by a qualified mediator who has been appointed as a settlement judge by the Supreme Court.

(1) Settlement Notice; Suspension of Rules. The clerk shall issue a settlement notice informing the parties that the appeal will be assigned to the settlement conference program. The settlement notice automatically stays the time for filing a request for transcripts under Rule 9 and for filing briefs under Rule 31. The notice also stays the preparation and filing of any transcripts requested under Rule 9.

(2) Assignment Notice. The clerk of the Supreme Court shall issue an assignment notice informing the parties that a case has been assigned to the settlement conference program and of the name of the settlement judge.

(3) Service. Papers or documents filed with the Supreme Court while a case is in the settlement program shall be served on all parties and the settlement judge.

(b) Early Case Assessment. The settlement judge shall conduct a pre-mediation telephone conference with counsel and file an Early Case Assessment Report within 30 days of assignment. In that report, the settlement judge shall inform the court whether the case is appropriate for the program or should be removed from the program. If the settlement judge reports that the case is not appropriate for the settlement conference program, the court may remove the case from the program and reinstate the timelines for requesting transcripts under Rule 9 and briefing under Rule 31.

(c) Scheduling of Settlement Conference. Unless the Supreme Court removes the case from the settlement conference program under Rule 16(b), the settlement judge shall schedule a settlement conference within 90 days of assignment. If the case involves child custody, visitation, relocation or guardianship issues, the conference shall be scheduled within 60 days of assignment.

(d) Settlement Statement.

(1) Each party to the appeal shall submit a settlement statement directly to the settlement judge within 14 days from the date of the clerk's assignment notice. A settlement statement shall not be filed with the Supreme Court and shall not be served on opposing counsel.

(2) A settlement statement is limited to 10 pages, and shall concisely state: (1) the relevant facts; (2) the issues on appeal; (3) the argument supporting the party's position on appeal; (4) the weakest points of the party's position on appeal; (5) a settlement proposal that the party believes would be fair or would be willing to make in order to conclude the matter; and (6) all matters which, in counsel's professional opinion, may assist the settlement judge in conducting the settlement conference. Form 10 in the Appendix of Forms is a suggested form of a settlement statement.

(e) Settlement Conference. The settlement conference shall be held at a time and place designated by the settlement judge.

(1) Attendance. Counsel for all parties and their clients must attend the conference. The settlement judge may, for good cause shown, excuse a client's attendance at the conference, provided that counsel has written authorization to resolve the case fully or has immediate telephone access to the client.

(2) Agenda. The agenda for the settlement conference and the sequence of presentation shall be at the discretion of the settlement judge. A subsequent settlement conference may be conducted by agreement of the parties or at the direction of the settlement judge.

(3) Settlement Conference Status Reports. Within 14 days from the date of any settlement conference, the settlement judge shall file a settlement conference status report. The report must state the result of the settlement conference, but shall not disclose any matters discussed at the conference.

(4) Settlement Documents. If a settlement is reached, the parties shall immediately execute a settlement agreement and a stipulation to dismiss the appeal, and shall file the stipulation to dismiss with the clerk of the Supreme Court. The settlement agreement does not need to be filed with the Supreme Court.

(f) Length of Time in Settlement Conference Program.

(1) Time Limits. Within 180 days of assignment, the settlement judge must file a final settlement conference status report indicating whether the parties were able to agree to a settlement. For cases involving child custody, visitation, relocation or guardianship issues, a final settlement conference status report must be filed within 120 days of assignment.

(2) Extensions. Upon stipulation of all parties or upon the settlement judge's recommendation, the settlement program administrator may extend the time for filing a final settlement conference status report. In cases not involving child custody, visitation, relocation or guardianship issues, the time may be extended for an additional 90 days. In cases involving child custody, visitation, relocation or guardianship issues, the time may be extended for an additional 60 days.

(3) Reinstatement of Rules. At the discretion of the settlement program administrator, the timelines for requesting transcripts under Rule 9 and filing briefs under Rule 31 may be reinstated during any extension period granted under Rule 16(f)(2).

(g) Sanctions. The failure of a party, or the party's counsel, to participate in good faith in the settlement conference process by not attending a scheduled conference or not complying with the procedural requirements of the program may be grounds for sanctions against the party, the party's counsel, or both. If a settlement judge believes sanctions are appropriate, the settlement judge may file a settlement conference status report recommending the sanction to be imposed and describing the conduct warranting that sanction. Sanctions include, but are not limited to, payment of attorney's fees and costs of the opposing party, dismissal of the appeal, or reversal of the judgment below.

(h) Confidentiality. Papers or documents prepared by counsel or a settlement judge in furtherance of a settlement conference, excluding the settlement conference status report, shall not be available for public inspection or submitted to or considered by the Supreme Court or Court of Appeals. Matters discussed at the settlement conference and papers or documents prepared under this rule shall not be admissible in evidence in any judicial proceeding and shall not be subject to discovery.

[Added; effective February 26, 1997; as amended; effective March 1, 2019.]

RULE 17. DIVISION OF CASES BETWEEN THE SUPREME COURT AND THE COURT OF APPEALS

(a) Cases Retained by the Supreme Court. The Supreme Court shall hear and decide the following:

(1) All death penalty cases;

(2) Cases involving ballot or election questions;

(3) Cases involving judicial discipline;

(4) Cases involving attorney admission, suspension, discipline, disability, reinstatement, and resignation;

(5) Cases involving the approval of prepaid legal service plans;

(6) Questions of law certified by a federal court;

(7) Disputes between branches of government or local governments;

(8) Administrative agency cases involving tax, water, or public utilities commission determinations;

(9) Cases originating in business court;

(10) Cases involving the termination of parental rights or NRS Chapter 432B;

(11) Matters raising as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law; and

(12) Matters raising as a principal issue a question of statewide public importance, or an issue upon which there is an inconsistency in the published decisions of the Court of Appeals or of the Supreme Court or a conflict between published decisions of the two courts.

(b) Cases Assigned to Court of Appeals. The Court of Appeals shall hear and decide only those matters assigned to it by the Supreme Court and those matters within its original jurisdiction. Except as provided in Rule 17(a), the Supreme Court may assign to the Court of Appeals any case filed in the Supreme Court. The following case categories are presumptively assigned to the Court of Appeals:

(1) Appeals from a judgment of conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere (Alford);

(2) Appeals from a judgment of conviction based on a jury verdict that:

(A) do not involve a conviction for any offenses that are category A or B felonies; or

(B) challenge only the sentence imposed and/or the sufficiency of the evidence;

(3) Postconviction appeals that involve a challenge to a judgment of conviction or sentence for offenses that are not category A felonies;

(4) Postconviction appeals that involve a challenge to the computation of time served under a judgment of conviction, a motion to correct an illegal sentence, or a motion to modify a sentence;

(5) Appeals from a judgment, exclusive of interest, attorney fees, and costs, of $250,000 or less in a tort case;

(6) Cases involving a contract dispute where the amount in controversy is less than $75,000;

(7) Appeals from postjudgment orders in civil cases;

(8) Cases involving statutory lien matters under NRS Chapter 108;

(9) Administrative agency cases except those involving tax, water, or public utilities commission determinations;

(10) Cases involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings;

(11) Appeals challenging venue;

(12) Cases challenging the grant or denial of injunctive relief;

(13) Pretrial writ proceedings challenging discovery orders or orders resolving motions in limine;

(14) Cases involving trust and estate matters in which the corpus has a value of less than $5,430,000; and

(15) Cases arising from the foreclosure mediation program.

(c) Consideration of Workload. In assigning cases to the Court of Appeals, due regard will be given to the workload of each court.

(d) Routing Statements; Finality. A party who believes that a matter presumptively assigned to the Court of Appeals should be retained by the Supreme Court may state the reasons as enumerated in (a) of this Rule in the routing statement of the briefs as provided in Rules 3C, 3E, and 28 or a writ petition as provided in Rule 21. A party may not file a motion or other pleading seeking reassignment of a case that the Supreme Court has assigned to the Court of Appeals.

(e) Transfer and Notice. Upon the transfer of a case to the Court of Appeals, the clerk shall issue a notice to the parties. With the exception of a petition for Supreme Court review under Rule 40B, any pleadings in a case after it has been transferred to the Court of Appeals shall be entitled "In the Court of Appeals of the State of Nevada."

[Added; effective January 20, 2015; as amended; effective October 22, 2018.]

COMMENT

Nothing in Rule 17(b)(13) should be interpreted to deviate from current jurisprudence regarding challenges to discovery orders and orders resolving motions in limine.

RULE 18. RESERVED

RULE 19. RESERVED

RULE 20. RESERVED

III. EXTRAORDINARY WRITS

RULE 21. WRITS OF MANDAMUS AND PROHIBITION AND OTHER EXTRAORDINARY WRITS

(a) Mandamus or Prohibition: Petition for Writ; Service and Filing.

(1) Filing and Service. A party petitioning for a writ of mandamus or prohibition must file a petition with the clerk of the Supreme Court with proof of service on the respondent judge, corporation, commission, board or officer and on each real party in interest. A petition directed to a court shall also be accompanied by a notice of the filing of the petition, which shall be served on all parties to the proceeding in that court.

(2) Caption. The petition shall include in the caption: the name of each petitioner; the name of the appropriate judicial officer, public tribunal, corporation, commission, board or person to whom the writ is directed as the respondent; and the name of each real party in interest, if any.

(3) Contents of Petition. The petition must state:

(A) whether the matter falls in one of the categories of cases retained by the Supreme Court pursuant to NRAP 17(a) or presumptively assigned to the Court of Appeals pursuant to NRAP 17(b);

(B) the relief sought;

(C) the issues presented;

(D) the facts necessary to understand the issues presented by the petition; and

(E) the reasons why the writ should issue, including points and legal authorities.

(4) Appendix. The petitioner shall submit with the petition an appendix that complies with Rule 30. Rule 30(i), which prohibits pro se parties from filing an appendix, shall not apply to a petition for relief filed under this Rule and thus pro se writ petitions shall be accompanied by an appendix as required by this Rule. The appendix shall include a copy of any order or opinion, parts of the record before the respondent judge, corporation, commission, board or officer, or any other original document that may be essential to understand the matters set forth in the petition.

(5) Verification. A petition for an extraordinary writ shall be verified by the affidavit of the petitioner or, if the petitioner is unable to verify the petition or the facts stated therein are within the knowledge of the petitioner's attorney, by the affidavit of the attorney. The affidavit shall be filed with the petition.

(6) Emergency Petitions. A petition that requests the court to grant relief in less than 14 days shall also comply with the requirements of Rule 27(e).

(b) Denial; Order Directing Answer.

(1) The court may deny the petition without an answer. Otherwise, it may order the respondent or real party in interest to answer within a fixed time.

(2) Two or more respondents or real parties in interest may answer jointly.

(3) The court may invite an amicus curiae to address the petition.

(4) In extraordinary circumstances, the court may invite the trial court judge to address the petition.

(c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 21(a) shall be made by filing a petition with the clerk of the Supreme Court with proof of service on the parties named as respondents and any real party in interest. Proceedings on the application shall conform, so far as is practicable, to the procedure prescribed in Rule 21(a) and (b).

(d) Form of Papers; Number of Copies. All papers must conform to Rule 32(c)(2). An original and 2 copies shall be filed unless the court requires the filing of a different number by order in a particular case.

(e) Payment of Fees. The court shall not consider any application for an extraordinary writ until the petition has been filed; and the clerk shall receive no petition for filing until the $250 fee has been paid, unless the applicant is exempt from payment of fees, or the court or a justice or judge thereof orders waiver of the fee for good cause shown.

[As amended; effective January 1, 2017.]

IV. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

RULE 22. HABEAS CORPUS PROCEEDINGS

Application for the Original Writ. An application for an original writ of habeas corpus should be made to the appropriate district court. If an application is made to the district court and denied, the proper remedy is by appeal from the district court's order denying the writ.

[As amended; effective January 20, 2015.]

RULE 23. CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice or judge of this state for the release of a prisoner, the person having custody of the prisoner shall not transfer custody to another unless a transfer is directed in accordance with the provisions of this Rule and NRS 174.325. When, upon application, a custodian shows the need for a transfer, the court, justice or judge rendering the decision may authorize the transfer and substitute the successor custodian as a party.

(b) Detention or Release of Prisoner Pending Review of Decision Not to Release. While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the Supreme Court or Court of Appeals or a justice or judge thereof may order that the prisoner be:

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

(c) Release of Prisoner Pending Review of Decision Ordering Release. While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering the decision, or the Supreme Court or Court of Appeals or a justice or judge thereof orders otherwise — be released on personal recognizance, with or without surety.

(d) Modification of Initial Order on Custody. An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the Supreme Court or Court of Appeals or to a justice or judge thereof, the order is modified or an independent order regarding custody, release, or surety is issued.

[As amended; effective January 20, 2015.]

RULE 24. PROCEEDINGS IN FORMA PAUPERIS

(a) Leave to Proceed on Appeal in Forma Pauperis.

(1) Motion in the District Court. Except as stated in Rule 24(a)(3) and (5)(b), a party to a district court action who desires to appeal in forma pauperis shall file a motion in the district court. The party shall attach an affidavit that:

(A) shows in the detail prescribed by Form 4 in the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) Action on the Motion. If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs. If the district court denies the motion, it must state its reasons in writing.

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in a civil district court action may proceed on appeal in forma pauperis without further authorization, unless the district court — before or after the notice of appeal is filed — certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding.

(4) Notice of District Court's Denial. The district court clerk shall immediately notify the parties and the clerk of the Supreme Court when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) Motion in the Supreme Court. A party who desires to proceed on appeal in forma pauperis may file one of the following:

(A) a motion to proceed on appeal in forma pauperis in the court within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion shall include a copy of the affidavit filed in the district court and a copy of the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party shall include the affidavit prescribed by Rule 24(a)(1); or

(B) in a civil appeal, a statement of legal aid eligibility providing that the party is a client of a program for legal aid as defined by NRS 12.015(8).

(b) Reserved.

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

[As amended; effective October 1, 2015.]

V. GENERAL PROVISIONS

RULE 25. FILING AND SERVICE

(a) Filing.

(1) Filing With the Clerk. A paper required or permitted to be filed in the court shall be filed with the clerk as provided by this Rule.

(2) Filing: Method and Timeliness.

(A) Filing may be accomplished by mail addressed to the clerk at the Supreme Court of Nevada, 201 South Carson Street, Suite 201, Carson City, Nevada 89701-4702.

(B) Unless the court by order in a particular case directs otherwise, a document is timely filed if, on or before the last day for filing, it is:

(i) delivered to the clerk in person in Carson City;

(ii) mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid;

(iii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 days;

(iv) deposited in the Supreme Court drop box as provided in Rule 25(a)(3);

(v) transmitted directly to the clerk by facsimile transmission as provided in Rule 25(a)(4); or

(vi) electronically transmitted to the court's electronic filing system consistent with NEFCR 8.

(3) Clerk's Drop Box. A paper may be submitted for filing with the clerk of the Supreme Court by means of the clerk's drop box as provided in this Rule.

(A) Papers Eligible for Drop Box Submission. A paper required or permitted to be filed in the court may be deposited in the drop box located in the Las Vegas office of the clerk of the Supreme Court. A document that requires the payment of a filing fee may be deposited in the drop box accompanied by the filing fee in the form of a check or money order payable to the clerk. No cash shall be deposited in the drop box.

(B) Requests for Emergency or Expedited Relief. A request for emergency or expedited relief, or a response thereto, should not be deposited in the drop box. To ensure timely consideration by the Supreme Court or Court of Appeals, counsel must submit such documents to the clerk's office in Carson City by the most expeditious means feasible, such as overnight delivery, same-day courier service, or facsimile transmission as provided for in Rule 25(a)(4).

(C) Procedure. A paper may be deposited in the drop box during all hours the Las Vegas office is open. Before being placed in the drop box, a paper must be date and time stamped and enclosed in a sealed envelope. Filing is timely if, on or before the last day of the prescribed filing period, the document is properly date and time stamped and deposited in the drop box. A document is properly date and time stamped if the original document, or the envelope containing the document, bears the drop box stamp. Stamping of copies submitted to the court is not required.

(D) Transmission of Documents to Carson City. A document will be transmitted to the clerk's office in Carson City the next judicial day after its deposit in the drop box. Upon receiving the papers in Carson City, the clerk shall process them in accordance with these Rules.

(4) Filing by Facsimile Transmission. A paper may be filed with the clerk of the Supreme Court by means of facsimile transmission as provided in this Rule.

(A) In Cases Involving Death Penalty. Documents that relate to stays of execution in death penalty cases will be received for filing by the clerk of the Supreme Court through facsimile transmission to the facsimile machine situated in the office of the clerk in Carson City. Such transmission may be made whenever counsel believes that the client's interests will be served.

(B) In Other Cases. In all other cases, documents may be received for filing by the clerk through facsimile transmission only in cases of emergency, and only if an oral request for permission to do so has first been tendered to the clerk and approved, upon a showing of good cause, by any justice or judge or the clerk.

(C) Procedure. In all instances, including matters relating to stays of execution in death penalty cases, counsel must first notify the clerk of counsel's intention to transmit documents by facsimile. In all cases not involving stays of execution of the death penalty, counsel must be advised by the clerk that approval has been granted under Rule 25(a)(4)(B) before any document may be transmitted. Upon receiving the transmitted documents, the clerk shall make the number of photocopies of the transmissions required by these Rules and shall file the photocopies.

(D) Original; Service. In all cases where a document has been facsimile transmitted and filed under this Rule, counsel must file the original document with the clerk, in the manner provided in Rule 25(a)(2)(B)(i)-(iii), within 3 days of the date of the facsimile transmission. The original shall be accompanied by proof of service on all parties

as required by Rule 25(d). A copy of a document filed by facsimile transmission shall be served on all parties to the appeal or review by facsimile transmission and by mail at the time the document is filed with the court.

(E) Costs. The party filing a document by means of facsimile transmission shall be responsible for all costs of the facsimile transmission and the costs of photocopying the documents transmitted. The clerk of the Supreme Court shall promptly inform counsel of the amount of costs. Such costs shall be paid within 14 days of the date of the facsimile request.

(5) Original Signature and Bar Number Required. All documents submitted to the court for filing by a represented party shall include the original signature of at least 1 attorney of record who is an active member of the bar of this state, and the address, telephone number, and State Bar of Nevada identification number of the attorney and of any associated attorney appearing for the party filing the paper. All documents submitted to this court for filing by unrepresented parties shall include the original signature of the party and shall state the party's address and telephone number.

(b) Service of All Papers Required. Unless a rule requires service by the clerk, a party or person acting for that party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel shall be made on the party's counsel.

(c) Manner of Service.

(1) Service may be any of the following:
(A) personal, including delivery of the copy to a clerk or other responsible person at the office of counsel;
(B) by mail;
(C) by third-party commercial carrier for delivery within 3 days;
(D) by electronic means, if the party being served consents in writing; or
(E) notice by electronic means to registered users of the court's electronic filing system consistent with NEFCR 9.

(2) When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service on a party shall be by a manner at least as expeditious as the manner used to file the paper with the court.

(3) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means under Rule 25(c)(1)(D) is complete on transmission, unless the party making service is notified that the paper was not received by the party served. Service through the court's electronic filing system under Rule 25(c)(1)(E) is complete at the time that the document is submitted to the court's electronic filing system.

(d) Proof of Service.

(1) Papers presented for filing shall contain either of the following:
(A) an acknowledgment of service by the person served; or
(B) proof of service in the form of a statement by the person who made service certifying:
(i) the date and manner of service;
(ii) the names of the persons served; and
(iii) the mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) Proof of service may appear on or be affixed to the papers filed.

(3) The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter. The court will not take any action on any such papers, including requests for ex parte relief, until an acknowledgment or proof of service is filed.

[As amended; effective March 1, 2019.]

RULE 25A. COURT COMPOSITION, SESSION, QUORUM AND ADJOURNMENTS

(a) Transaction of Judicial Business in Open Court, Chambers. Matters of judicial business to be transacted in open court shall be arranged by calendar setting fixed by court order. Matters of judicial business to be transacted in chambers shall be arranged by appointment with the clerk.

(b) Sessions, Quorum and Adjournments.

(1) No arguments will be heard or open sessions held on Saturday, Sunday or other nonjudicial days.

(2) Constitution of Court.

(A) Supreme Court. The full court consists of all seven members of the court. A panel consists of three members of the court. A quorum of the full court sitting en banc shall be four and a quorum of the court sitting as a panel shall be two.

(B) Court of Appeals. The Court of Appeals consists of all three members of the court. A quorum of the court shall be two.

(C) A senior justice, senior Court of Appeals judge, or active district court judge may be assigned to sit in place of a justice or judge as provided by law.

(3) Where only four justices are present for oral argument before the full Supreme Court or where only two justices are present for oral argument before a panel of the Supreme Court or the Court of Appeals, the absent justice(s) or judge(s) may participate in the decision and the opinion of the court upon the written briefs or points and authorities. In the absence of a quorum, on any day appointed for holding a session of the court, the justices or judges attending (or if no justices or judges are present, the clerk or a deputy clerk) may adjourn the court until there is a quorum.

(4) The court may, in appropriate instances, direct the clerk or the bailiff to announce recesses and adjournments.

[As amended; effective January 20, 2015.]

RULE 26.1. DISCLOSURE STATEMENTS

(a) Who Must File Statement and Contents. Every attorney for a nongovernmental party or amicus curiae to a proceeding in the court must file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock or states that there is no such corporation. The statement must also disclose the names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court. If any litigant is using a pseudonym, the statement must disclose the litigant's true name. A disclosure required by the preceding sentence will be kept under seal.

(b) Time to File; Supplemental Filing. A party must file the disclosure statement with the principal brief or upon filing a motion, response, petition, or answer in the court. Even if the party's statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under NRAP 26.1(a) changes.

(c) Number of Copies. If the Rule 26.1 statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 1 copy unless the court requires a different number by order.

(d) Form. The certificate must be in the following form:

(1) Caption setting forth the name of the court, the title of the case, the case number and the title "NRAP 26.1 Disclosure";

(2) The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

(Here list names of all such persons and entities and identify their connection and interest.)

Attorney of record for .....

[Added; effective January 3, 2012; as amended; effective January 20, 2015.]

RULE 26. COMPUTING AND EXTENDING TIME

(a) Computing Time. The following rules apply in computing any time period specified in these rules, in any appellate court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Inaccessibility of the Clerk's Office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) "Last Day" Defined. Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing under the NEFCR, at 11:59 p.m. in the court's local time;

(B) for filing under Rules 4(d) and 25(a)(2)(B)(ii) and (iii), at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system;

(C) for filing via the Supreme Court clerk's drop box under Rule 25(a)(2)(B)(iv), when the Supreme Court building in Las Vegas is scheduled to close; and

(D) for filing by other means, when the clerk's office is scheduled to close.

(5) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) "Legal Holiday" Defined. "Legal holiday" means any day set aside as a legal holiday by NRS 236.015.

(b) Extending Time.

(1) By Court Order.

(A) For good cause, the court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file a notice of appeal except as provided in Rule 4(c).

(B) Except as otherwise provided in these Rules, a party may, on or before the due date sought to be extended, request by telephone a single 14-day extension of time for performing any act except the filing of a notice of appeal. If good cause is shown, the clerk may grant such a request by telephone or by written order of the clerk. The grant of an extension of time to perform an act under this Rule will bar any further extensions of time to perform the same act unless the party files a written motion for an extension of time demonstrating extraordinary and compelling circumstances why a further extension of time is necessary.

(2) By Stipulation. Except as otherwise provided in these Rules, or when not otherwise controlled by statute, the time prescribed by these Rules to perform any act may be extended once for appellant(s) and once for respondent(s) by stipulation of the parties. No stipulation extending time is effective unless approved by the court or a justice or judge thereof; and such stipulations must be filed before expiration of the time period that is sought to be extended.

(c) Additional Time After Service. 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.

(d) Shortening Time. Except as otherwise provided in these Rules, or when not otherwise controlled by statute, the time prescribed by these Rules to perform any act may be shortened by stipulation of the parties, or by order of the court or a justice or judge.

[As amended; effective March 1, 2019.]

RULE 27. MOTIONS

(a) In General.

(1) Application for Relief. An application for an order or other relief is made by motion unless these Rules prescribe another form. A motion must be in writing and be accompanied by proof of service.

(2) Contents of a Motion. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion. If a motion is supported by affidavits or other papers, they shall be served and filed with the motion.

(3) Response.

(A) Time to File. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 7 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8 or 41 may be acted upon after reasonable notice to the parties that the court intends to act sooner.

(B) Request for Affirmative Relief. A response may include a motion for affirmative relief. The time to respond to the new motion is governed by Rule 27(a)(3)(A). The title of the response must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response shall be filed within 7 days after service of the response. A reply shall not present matters that do not relate to the response.

[As amended; effective March 1, 2019.]

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response. Under Rule 27(c), the clerk may act on motions for specified types of procedural orders. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

[As amended; effective July 1, 2009.]

(c) Power of a Single Justice or Judge to Entertain Motions; Delegation of Authority to Entertain Motions.

(1) Authority of the Court of Appeals to Entertain Motions. The Court of Appeals and its judges may entertain motions in appeals that the Supreme Court has transferred to that court.

(2) Order of a Single Justice or Judge. In addition to the authority expressly conferred by these Rules or by law, a justice or judge of the Supreme Court or Court of Appeals may act alone on any motion but may not dismiss or otherwise determine an appeal or other proceeding. The Supreme Court or Court of Appeals may provide that only the Supreme Court or Court of Appeals may act on any motion or class of motions. The court may review the action of a single justice or judge.

(3) Clerk's Orders.

(A) Procedural Motions. The chief justice or judge may delegate to the clerk authority to decide motions that are subject to disposition by a single justice or judge. An order issued by the clerk under this Rule shall be subject to reconsideration by a single justice or judge pursuant to motion filed within 14 days after entry of the clerk's order.

(B) Orders of Dismissal. The Supreme Court or Court of Appeals may delegate to the clerk authority to enter orders of dismissal in civil cases where the appellant has filed a motion or parties to an appeal or other proceeding have signed and filed a stipulation that the proceeding be dismissed, specifying terms as to the payment of costs.

[As amended; effective March 1, 2019.]

(d) Form of Papers; Number of Copies.

(1) Format.

(A) Reproduction. All papers relating to motions may be reproduced by any process that yields a clear black image of letter quality. The paper must be opaque and unglazed. Only one side of the paper may be used.

(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. If a cover is used, it shall be white.

(C) Binding. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) Paper Size, Line Spacing, and Margins. The document must be on 8 1/2 by 11-inch paper. The text must be double-spaced, but quotations more than 2 lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least 1 inch on all 4 sides. The pages shall be consecutively numbered at the bottom.

(E) Typeface and Type Style. The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(F) A pro se party who is incarcerated or detained in a state prison or county jail or other facility may file documents under this Rule that are legibly handwritten in black ink and that otherwise conform to the requirements of this Rule. Handwritten documents are not otherwise permitted without leave of the court.

(2) Page Limits. A motion or a response to a motion shall not exceed 10 pages, unless the court permits or directs otherwise. A reply to a response shall not exceed 5 pages.

(3) Number of Copies. An original and 1 copy must be filed unless the court requires a different number by order.

[As amended; effective October 1, 2015.]

(e) Emergency Motions. If a movant certifies that to avoid irreparable harm relief is needed in less than 14 days, the motion shall be governed by the following requirements:

(1) Before filing the motion, the movant shall make every practicable effort to notify the clerk of the Supreme Court, opposing counsel, and any opposing parties proceeding without counsel and to serve the motion at the earliest possible time. If an emergency motion is not filed at the earliest possible time, the court may summarily deny the motion.

(2) A motion filed under this subdivision shall include the title "Emergency Motion Under NRAP 27(e)" immediately below the caption of the case and a statement immediately below the title of the motion that states the date or event by which action is necessary.

(3) A motion filed under this subdivision shall be accompanied by a certificate of the movant or the movant's counsel, if any, entitled "NRAP 27(e) Certificate," that contains the following information:

(A) The telephone numbers and office addresses of the attorneys for the parties and the telephone numbers and addresses for any pro se parties;

(B) Facts showing the existence and nature of the claimed emergency; and

(C) When and how counsel for the other parties and any pro se parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.

(4) If the relief sought in the motion was available in the district court, the motion shall state whether all grounds advanced in support of the motion in the court were submitted to the district court, and, if not, why the motion should not be denied.

(5) The motion shall otherwise comply with the provisions of this Rule.
[Added; effective July 1, 2009; as amended; effective October 1, 2015.]

RULE 28. BRIEFS

(a) Appellant's Brief. Except as provided in Rule 28(k), the appellant's brief shall be entitled "Appellant's Opening Brief" and shall contain under appropriate headings and in the order indicated:

(1) a disclosure that complies with Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:
(A) the basis for the Supreme Court's or Court of Appeals' jurisdiction;
(B) the filing dates establishing the timeliness of the appeal; and
(C) an assertion that the appeal is from a final order or judgment, or information establishing the Supreme Court's or Court of Appeals' jurisdiction on some other basis.

(5) a routing statement, setting forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and citing the subparagraph(s) of the Rule under which the matter falls. If the appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, based on a principal issue raised in the matter, the routing statement must include a clear statement of the relevant issue, citations to the record where the issue was raised and resolved, and an explanation of the importance of the issue;

(6) a statement of the issues presented for review;

(7) a statement of the case briefly indicating the nature of the case, the course of the proceedings, and the disposition below;

(8) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));

(9) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief and which must not merely repeat the argument headings;

(10) the argument, which must contain:
(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and
(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(11) a short conclusion stating the precise relief sought; and

(12) an attorney's certificate that complies with Rule 28.2, if the appellant is represented by an attorney.

(b) Respondent's Brief. The respondent's brief shall be entitled "Respondent's Answering Brief" and shall conform to the requirements of Rule 28(a)(1)-(10) and (12), except that none of the following need appear unless the respondent is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) a routing statement, setting forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and citing the subparagraph(s) of the Rule under which the matter falls. If the respondent believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, based on a principal issue raised in the matter, the routing statement must include a clear statement of the relevant issue, citations to the record where the issue was raised and resolved, and an explanation of the importance of the issue;

(3) the statement of the issues;

(4) the statement of the case;

(5) the statement of the facts; and

(6) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the respondent's answering brief that shall be entitled "Appellant's Reply Brief." A reply brief shall comply with Rule 28(a)(1)-(2) and (10) and must be limited to answering any new matter set forth in the opposing brief. Unless the court permits, no further briefs may be filed. A party may waive the right to file a reply brief. Providing the clerk with immediate notice of that waiver will expedite submission of the case to the court.

(d) References in Briefs to Parties. In briefs and at oral argument, parties will be expected to keep to a minimum references to parties by such designations as "appellant" and "respondent." It promotes clarity to use the designations used in the lower court or the actual names of parties, or descriptive terms such as "the employee," "the injured person," etc.

(e) References in Briefs to the Record.

(1) Except as provided in Rule 28(e)(3), every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(2) Parties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal.

(3) 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 se parties 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 court record.

(f) Reproductions of Statutes, Rules, Regulations, Etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) Length of Briefs. See Rule 32(a)(7) for provisions regarding the length of briefs.

(h) Reserved.

(i) Briefs in a Case Involving Multiple Appellants or Respondents. In a case involving more than one appellant or respondent, including consolidated cases, any number of appellants or respondents may join in a single brief, and any party may adopt by reference a part of another's brief. Parties may similarly join in reply briefs.

(j) Sanctions for Inadequate Briefs. All briefs under this Rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions.

(k) Briefs by Pro Se Appellants. Appellants proceeding without assistance of counsel may file the form brief provided by the supreme court clerk in lieu of the brief described in Rule 28(a). If an appellant uses the informal brief form, the optional reply brief need not comply with the technical requirements of Rule 28(c) or Rule 32(a).

[As amended; effective October 1, 2015.]

RULE 28.1. CROSS-APPEALS

(a) Applicability. This Rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this Rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for all purposes. If the notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Opening Brief on Appeal. The appellant shall file an opening brief in the appeal. That brief must comply with Rule 28(a).

(2) Respondent's Answering Brief on Appeal and Opening Brief on Cross-Appeal. The respondent shall file a combined answering brief on appeal and opening brief on cross-appeal. That brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the respondent is dissatisfied with the appellant's statement.

(3) Appellant's Reply Brief on Appeal and Answering Brief on Cross-Appeal. The appellant shall file a brief that responds to the opening brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(1)-(10) and (12), except that none of the following need appear unless the appellant is dissatisfied with the respondent's statement in the cross-appeal:

(A) a routing statement, setting forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and citing the subparagraph(s) of the Rule under which the matter falls. If the appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, based on a principal issue raised in the matter, the routing statement must include a clear statement of the relevant issue, citations to the record where the issue was raised and resolved, and an explanation of the importance of the issue;

(B) the statement of the issues;

(C) the statement of the case;

(D) the statement of the facts; and

(E) the statement of the standard of review.

(4) Respondent's Reply Brief on Cross-Appeal. The respondent may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(1)-(2) and (12) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(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 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.

(e) Length.

(1) Page Limitation. Unless it complies with Rule 28.1(e)(2) and (3) or permission of the court is obtained under Rule 32(a)(7)(D), the appellant's opening brief must not exceed 30 pages; the respondent's combined answering brief on appeal and opening brief on cross-appeal, 40 pages; the appellant's combined reply brief on appeal and answering brief on cross-appeal, 30 pages; and the respondent's reply brief, 15 pages.

(2) Type-Volume Limitation.

(A) The appellant's opening brief or the appellant's combined reply/answering brief is acceptable if:

(i) it contains no **more than 14,000 words; or**

(ii) it uses a monospaced typeface and contains no more than 1,600 lines of text.

(B) The respondent's combined answering and opening brief is acceptable if:

(i) it contains no more than 18,500 words; or

(ii) it uses a monospaced typeface and contains no more than 1,600 lines of text.

(C) The respondent's reply brief is acceptable if it contains no more than half of the type-volume specified in Rule 28.1(e)(2)(A).

(3) Certificate of Compliance. A brief submitted pursuant to this Rule shall comply with Rule 32(a)(8).

(f) Time to Serve and File a Brief. Unless the court orders a different briefing schedule in a particular case, 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).

(1) All Cross-Appeals Except Child Custody and Visitation.

(A) the appellant's opening brief, within **120 days** after the date on which the appeal is docketed in the Supreme Court;

(B) the respondent's combined answering brief on appeal and opening brief on cross-appeal, within 30 days after the appellant's opening brief is served;

(C) the appellant's combined reply brief on appeal and answering brief on cross-appeal, within 30 days after the respondent's combined answering brief on appeal and opening brief on cross-appeal is served; and

(D) the respondent's reply brief on cross-appeal, within 14 days after the appellant's combined reply brief on appeal and answering brief on cross-appeal is served.

(2) Cross-Appeals Involving Child Custody or Visitation.

(A) the appellant's opening brief, within 90 days after the date on which the appeal is docketed in the Supreme Court;

(B) the respondent's combined answering brief on appeal and opening brief on cross-appeal, within 21 days after the appellant's opening brief is served;

(C) the appellant's combined reply brief on appeal and answering brief on cross-appeal, within 21 days after the respondent's combined answering brief on appeal and opening brief on cross-appeal is served; and

(D) the respondent's reply brief on cross-appeal, within 14 days after the appellant's combined reply brief on appeal and answering brief on cross-appeal is served.

[Added; effective July 1, 2009; as amended; effective March 1, 2019.]

RULE 28.2. ATTORNEY'S CERTIFICATE

(a) Certificate Required Upon Filing of Any Brief. Any brief submitted for filing on behalf of a party represented by counsel must contain a certificate signed by at least 1 attorney of record who is an active member of the bar of this state. This certificate must substantially comply with Form 9 in the Appendix of Forms, and must contain the following information:

(1) A representation that the signing attorney has read the brief;

(2) A representation that to the best of the attorney's knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(3) A representation by the signing attorney that the brief complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the briefs regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found; and

(4) A representation that the brief complies with the formatting requirements of Rule 32(a)(4)-(6), and either the page- or type-volume limitations stated in Rule 32(a)(7).

(b) Striking a Brief Without the Required Certificate. If a brief does not contain the certification required by this Rule, it shall be stricken unless such a certification is provided within 14 days after the omission is called to the attorney's attention.

(c) Sanctions. The Supreme Court or Court of Appeals may impose sanctions against an attorney whose certification is incomplete or inaccurate. In addition, the Supreme Court or Court of Appeals may impose sanctions against any attorney who, upon being informed that the brief does not contain the certificate provided for by subsection (a), fails to cure the deficiency within 14 days after the omission is called to his or her attention.

[As amended; effective March 1, 2019.]

RULE 29. BRIEF OF AN AMICUS CURIAE

(a) When Permitted. The United States, the State of Nevada, an officer or agency of either, a political subdivision thereof, or a state, territory or commonwealth may file an amicus curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court granted on motion or at the court's request or if accompanied by written consent of all parties.

(b) Foreign Counsel. If an amicus brief is prepared by an attorney who is not a member of the State Bar of Nevada, that attorney must move for permission to appear before the Supreme Court or Court of Appeals under SCR 42 and comply with Rule 46(a).

(c) Motion for Leave to File. A motion for leave to file an amicus brief shall be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reasons why an amicus brief is desirable.

(d) Contents and Form. An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(1) A table of contents, with page references.

(2) A table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(3) A concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file.

(4) An argument, which may be preceded by a summary.

(5) An attorney's certificate that complies with the requirements contained in Rule 28.2.

(e) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these Rules for a party's brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(f) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's opening brief is filed. The court may grant leave for later filing, specifying the time within which an opposing party may answer.

(g) Reply Brief. An amicus may not file a reply brief.

(h) Oral Argument. An amicus may file a motion to participate in oral argument, but the court will grant such motions only for extraordinary reasons.

[As amended; effective January 20, 2015.]

RULE 30. APPENDIX TO THE BRIEFS

(a) Joint Appendix; Duty of the Parties. Counsel have a duty to confer and attempt to reach an agreement concerning a possible joint appendix. In the absence of an agreement, the parties may file separate appendices to their briefs.

(b) Contents of the Appendix. Except as otherwise required by this Rule, all matters not essential to the decision of issues presented by the appeal shall be omitted. Brevity is required; the court may impose costs upon parties or attorneys who unnecessarily enlarge the appendix.

(1) Transcripts. Copies of all transcripts that are necessary to the Supreme Court's or Court of Appeals' review of the issues presented on appeal shall be included in the appendix.

(2) Documents Required for Inclusion in Joint Appendix. In addition to the transcripts required by Rule 30(b)(1), the joint appendix shall contain:

(A) Complaint, indictment, information or petition (including all amendments);
(B) All answers, counterclaims, cross-claims and replies, and all amendments thereto;
(C) Pretrial orders;
(D) All jury instructions given to which exceptions were taken, and excluded when offered;
(E) Verdict or findings of fact and conclusions of law with direction for entry of judgment thereon;
(F) Master's report, if any, in nonjury cases;
(G) Opinion;
(H) All judgments or orders appealed from;
(I) All notices of appeal; and
(J) Proof of service, if any, of:
(i) the summons and complaint;
(ii) written notice of entry of the judgment or order appealed from;
(iii) post-judgment motions enumerated in Rule 4(a); and
(iv) written notice of entry of an order resolving any post-judgment motions enumerated in Rule 4(a).

(3) Appellant's Appendix. If a joint appendix is not prepared, appellant's appendix to the opening brief shall include those documents required for inclusion in the joint appendix under this Rule, and any other portions of the record essential to determination of issues raised in appellant's appeal.

(4) Respondent's Appendix. If a joint appendix is not prepared, respondent's appendix to the answering brief may contain any transcripts or documents which should have been but were not included in the appellant's appendix, and shall otherwise be limited to those documents necessary to rebut appellant's position on appeal which are not already included in appellant's appendix.

(5) Reply Appendix. Appellant may file an appendix to the reply brief which shall include only those documents necessary to reply to respondent's position on appeal.

(6) Presentence Investigation Report. If a copy of appellant's presentence investigation report is necessary for the Supreme Court's or Court of Appeals' review in a criminal case and a copy of the report cannot be included in the appendix, appellant shall file a motion with the clerk of the Supreme Court within the time period for filing an

opening brief or fast track statement that the court direct the district court clerk to transmit the report to the clerk of the Supreme Court in a sealed envelope. The motion must demonstrate that the report is necessary for the appeal.

(c) Arrangement and Form of Appendix. The appendix shall be in the form required by Rule 32(b), shall be bound separately from the briefs, and shall be arranged as set forth in this Rule.

(1) Order and Numbering of Documents. All documents included in the appendix shall be placed in chronological order by the dates of filing beginning with the first document filed, and shall bear the file-stamp of the district court clerk, clearly showing the date the document was filed in the proceedings below. Transcripts that are included in the appendix shall be placed in chronological order by date of the hearing or trial. Each page of the appendix shall be numbered consecutively in the lower right corner of the document.

(2) Page Limits; Index of Appendix. Each volume of the appendix shall contain no more than 250 pages. The appendix shall contain an alphabetical index identifying each document with reasonable definiteness, and indicating the volume and page of the appendix where the document is located. The index shall preface the documents comprising the appendix. If the appendix is comprised of more than one volume, one alphabetical index for all documents shall be prepared and shall be placed in each volume of the appendix.

(3) Cover. The cover of an appendix shall be white and shall contain the same information as the cover of a brief under Rule 32(a), but shall be prominently entitled "JOINT APPENDIX," or "APPELLANT'S APPENDIX," or "RESPONDENT'S APPENDIX" or "APPELLANT'S REPLY APPENDIX."

(d) Exhibits. Copies of relevant and necessary exhibits shall be clearly identified, and shall be included in the appendix as far as practicable. If the exhibits are too large or otherwise incapable of being reproduced in the appendix, the parties may file a motion requesting the court to direct the district court clerk to transmit the original exhibits. The court will not permit the transmittal of original exhibits except upon a showing that the exhibits are relevant to the issues raised on appeal, and that the court's review of the original exhibits is necessary to the determination of the issues.

(e) Time for Service and Filing of Appendix. A joint appendix shall be filed and served no later than the filing of appellant's opening brief. An appellant's appendix shall be served and filed with appellant's opening brief. A respondent's appendix shall be served and filed with respondent's answering brief. If a reply brief is filed, any reply appendix shall be served and filed with the reply brief.

(f) Number of Copies to Be Filed and Served.

(1) Paper Copies. One paper copy of the appendix shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented, unless the court orders otherwise.

(2) Electronic Copies. A party represented by counsel must submit every appendix on a CD-ROM, and serve a CD-ROM version on all opposing counsel, in addition to filing the required number of paper copies, unless the appendix has been electronically filed in the court or counsel certifies that submitting a CD-ROM version of the appendix would constitute extreme hardship.

(g) Filing as Certification; Sanctions for Nonconforming Copies or for Substantial Underinclusion.

(1) Filing an appendix constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the district court file. Willful or grossly negligent filing of an appendix containing nonconforming copies is an unlawful interference with the proceedings of the Supreme Court or Court of Appeals, and subjects counsel, and the party represented, to monetary and any other appropriate sanctions.

(2) If an appellant's appendix is so inadequate that justice cannot be done without requiring inclusion of documents in the respondent's appendix which should have been in the appellant's appendix, or without the court's independent examination of portions of the original record which should have been in the appellant's appendix, the court may impose monetary sanctions.

(h) Costs. Each party shall, initially, bear the cost of preparing its separate appendices. The appellant shall, initially, bear the cost of preparing a joint appendix; where several parties appeal from the same judgment or any part thereof, or there is a cross-appeal, the initial expense of preparing a joint appendix shall be borne equally by the parties appealing, or as the parties may agree.

(i) Pro Se Party Exception. This Rule does not apply to a party who is not represented by counsel. A pro se party shall 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.

[Replaced; effective September 1, 1996; as amended; effective October 1, 2015.]

RULE 31. FILING AND SERVICE OF BRIEFS

(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, parties shall observe the briefing schedule set forth in this Rule.

(1) All Appeals Except Child Custody, Visitation, or Capital Cases.

(A) The appellant shall serve and file the opening brief within 120 days after the date on which the appeal is docketed in the Supreme Court.

(B) The respondent shall serve and file the answering brief within 30 days after the appellant's brief is served.

(C) The appellant's reply brief must be served and filed within 30 days after the respondent's brief is served.

(2) Child Custody or Visitation Cases. If an appeal is taken from any district court order affecting the custody or visitation of minor children, including actions seeking termination of parental rights:

(A) The appellant shall serve and file the opening brief within 90 days after the date on which the appeal is docketed in the Supreme Court.

(B) The respondent shall serve and file the answering brief within 21 days after the appellant's brief is served.

(C) The appellant's reply brief must be served and filed within 14 days after the respondent's brief is served.

(D) The Supreme Court or Court of Appeals may order oral argument at its discretion. Where oral argument is not ordered, the matter shall be submitted for decision on the briefs and the appendix within 60 days of the date that the final brief is due.

(3) Direct Appeals in Capital Cases. On direct appeal from a judgment of conviction and sentence of death:

(A) The appellant shall serve and file the opening brief within 120 days from the date that the record on appeal is filed in the Supreme Court.

(B) The respondent shall serve and file the answering brief within 60 days after the appellant's brief is served.

(C) The appellant's reply brief must be served and filed within 45 days after the respondent's brief is served.

(4) Postconviction Appeals in Capital Cases. On appeal from a judgment or order resolving an application for postconviction relief in a capital case:

(A) The appellant shall serve and file the opening brief within 120 days after the date on which the appeal is docketed in the Supreme Court.

(B) The respondent shall serve and file the answering brief within 30 days after service of the opening brief.

(C) The appellant's reply brief must be served and filed within 30 days after the respondent's brief is served.

(b) Extensions of Time for Filing Briefs.

(1) Telephonic Requests. A party may request by telephone a single 14-day extension of time for filing a brief under Rule 26(b)(1)(B). A telephonic request may be made only if there have been no prior requests for extension of time for filing the brief. No further extensions for filing the brief may be granted except on motion under Rule 31(b)(3).

(2) Stipulations. Unless the court orders otherwise, in all appeals except child custody, visitation, or capital cases, the parties may extend the time for filing any brief for a total of 30 days beyond the due dates set forth in Rule 31(a)(1) by filing a written stipulation with the clerk of the Supreme Court on or before the brief's due date. No extensions of time by stipulation are permitted in child custody, visitation, or capital cases.

(3) Motions for Extensions of Time. A motion for extension of time for filing a brief may be made no later than the due date for the brief and must comply with the provisions of this Rule and Rule 27.

(A) Contents of Motion. A motion for extension of time for filing a brief shall include the following:

(i) The date when the brief is due;

(ii) The number of extensions of time previously granted (including a 14-day telephonic extension), and if extensions were granted, the original date when the brief was due;

(iii) Whether any previous requests for extensions of time have been denied or denied in part;

(iv) The reasons or grounds why an extension is necessary (including demonstrating extraordinary and compelling circumstances under Rule 26(b)(1)(B), if required); and

(v) The length of the extension requested and the date on which the brief would become due.

(B) Motions in All Appeals Except Child Custody, Visitation, or Capital Cases. Applications for extensions of time beyond that to which the parties are permitted to stipulate under Rule 31(b)(2) are not favored. The court will grant an initial motion for extension of time for filing a brief only upon a clear showing of good cause. The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.

(C) Motions in Child Custody or Visitation Cases. The court will grant a motion for extension of time for filing a brief in child custody or visitation cases only in extraordinary cases that present unforeseeable circumstances justifying an extension of time.

(D) Motions in Capital Cases. The Supreme Court may grant an initial motion for an extension of time of up to 60 days for filing a brief in a capital case upon a showing of good cause. The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.

(c) Number of Copies to Be Filed and Served. An original and 2 copies of each brief shall be filed with the clerk unless the court by order in a particular case shall direct a different number, and 1 copy shall be served on counsel for each party separately represented. The original must be signed in compliance with Rules 25(a)(5), 28.2(a), and 32(d).

(d) Consequences of Failure to File Briefs or Appendix.

(1) Appellant. If an appellant fails to file an opening brief or appendix within the time provided by this Rule, or within the time extended, a respondent may move for dismissal of the appeal or the court may dismiss the appeal on its own motion. If an appellant has not filed a reply brief, oral argument will be limited as provided by Rule 34(c). This Rule does not apply to postconviction appeals in which the appellant is not represented by counsel. In those cases, the court may decide the appeal based on the record without briefing as provided in Rule 34(g).

(2) Respondent. If a respondent fails to file an answering brief, respondent will not be heard at oral argument except by permission of the court. The failure of respondent to file a brief may be treated by the court as a confession of error and appropriate disposition of the appeal thereafter made. Unless the court has ordered the respondent to file an answering brief as provided in Rule 46A(c), this Rule does not apply to appeals in which the appellant is not represented by counsel.

(e) Supplemental Authorities. When pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before a decision, a party may promptly advise the Supreme Court or Court of Appeals by filing and serving a notice of supplemental authorities, setting forth the citations. The notice shall provide references to the page(s) of the brief that is being supplemented. The notice shall further state concisely and without argument the legal proposition for which each supplemental authority is cited. The notice may not raise any new points or issues. Any response must be made promptly and must be similarly limited. If filed less than 14 days before oral argument, a notice of supplemental authorities shall not be assured of consideration by the court at oral argument; provided, however, that no notice of supplemental authorities shall be rejected for filing on the ground that it was filed less than 14 days before oral argument.

[As amended; effective March 1, 2019.]

RULE 32. FORM OF BRIEFS, THE APPENDIX AND OTHER PAPERS

(a) Form of a Brief.

(1) Reproduction.

(A) A brief shall be reproduced by any process that yields a clear black image of letter quality. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a **clarity that equals or exceeds the output of a laser printer.**

(C) Carbon copies of briefs may not be submitted without permission of the court, except on behalf of parties allowed to proceed in forma pauperis.

(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 front cover of a brief shall contain:

(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.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, Margins, and Page Numbers. The brief must be on 8 1/2 by 11-inch paper. The text shall 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 be consecutively numbered at the bottom. 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.

(5) Typeface. Either a proportionally spaced or a monospaced typeface may be used. Footnotes must be in the same size and typeface as the body of the brief.

(A) A proportionally spaced typeface (e.g., Century Schoolbook, CG Times, Times New Roman, and New Century) must be 14-point or larger.

(B) A monospaced typeface (e.g., Courier and Pica) may not contain more than 10 1/2 characters per inch (e.g., Courier 12-point).

(C) Unrepresented litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(6) Type Styles. A brief must be set in a plain, roman style, although underlining, italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length.

(A) Noncapital Cases.

(i) Page Limitation. Unless it complies with Rule 32(a)(7)(A)(ii) or permission of the court is obtained under Rule 32(a)(7)(D), an opening or answering brief shall not exceed 30 pages, and a reply brief shall not exceed 15 pages.

(ii) Type-Volume Limitation. An opening or answering brief is acceptable if it contains no more than 14,000 words, or if it uses a monospaced typeface, and contains no more than 1,300 lines of text. A reply brief is acceptable if it contains no more than half the type-volume specified for an opening or answering brief under this Rule.

(B) Capital Cases.

(i) Page Limitation. Unless it complies with Rule 32(a)(7)(B)(ii) or permission of the court is obtained under Rule 32(a)(7)(D), an opening or answering brief in a capital case shall not exceed 80 pages, and a reply brief in a capital case shall not exceed 40 pages.

(ii) Type-Volume Limitation. An opening or answering brief in a capital case is acceptable if it contains no more than 37,000 words, or if it uses a monospaced typeface, shall contain no more than 3,500 lines of text. A reply brief in a capital case is acceptable if it contains no more than half the type-volume specified in this Rule for an opening or answering brief in a capital case.

(C) Computing Page- and Type-Volume Limitation. The disclosure statement, table of contents, table of authorities, required certificate of service and compliance with these Rules, and any addendum containing statutes, rules, or regulations 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 the statement of the case, including headings, footnotes, and quotations. 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.

(D) Permission to Exceed Page Limit or Type-Volume Limitation.

(i) The court looks with disfavor on motions to exceed the applicable page limit or type-volume limitation, and therefore, permission to exceed the page limit or type-volume limitation will not be routinely granted. A motion to file a brief that exceeds the applicable page limit or type-volume limitation will be granted only upon a showing of diligence and good cause. The court will not consider the cost of preparing and revising the brief in ruling on the motion.

(ii) A motion seeking an enlargement of the page limit or type-volume limitation for a brief shall be filed on or before the brief's due date and shall be accompanied by a declaration stating in detail the reasons for the motion and the number of additional pages, words, or lines of text requested. A motion to exceed the type-volume limitation shall be accompanied by a certification as required by Rule 32(a)(9)(C) as to the line or word count.

(iii) The motion shall also be accompanied by a single copy of the brief the applicant proposes to file.

(8) Handwritten Briefs. A pro se party who is incarcerated or detained in a state prison or county jail or other facility may file documents under this Rule that are legibly handwritten in black ink and that otherwise conform to the requirements of this Rule. Handwritten documents are not otherwise permitted without leave of the court.

(9) Certificate of Compliance.

(A) Requirement of Certificate. The brief must include a certificate by the attorney, or an unrepresented party, that it complies with the typeface and type style requirements of Rule 32(a)(4)-(6), identifying the typeface and type style used, and that it complies with either the page- or type-volume limitation under the applicable Rule.

(B) Type-Volume Certificate. A certification based on type-volume limitations may rely on the word or line count of the word-processing system used to prepare the brief and must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(C) Form of Certificate. The certificate required by this Rule may be combined with the certificate required by Rule 28.2. A certificate that includes the first two paragraphs of Form 9 in the Appendix of Forms will be regarded as sufficient to meet the requirements of this Rule.

(b) Form of Appendices. An appendix must comply with Rule 32(a)(1), (2), (3), and (4) with the following exceptions:

(1) The cover of the appendix must be white (see Rule 30(c)(3)).

(2) An appendix may include a legible photocopy of any document found in the trial court record (see Rule 30).

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.

(c) Form of Other Papers.

(1) Motion. The form of a motion is governed by Rule 27(d).

(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 be reproduced in the manner prescribed by Rule 32(a)(1), (3), (4), (5), (6), and (8) and shall 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. If a cover is used, it must be white.

(d) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) Effect of Noncompliance With Rule. If a brief, petition, motion or other paper is not prepared in accordance with this Rule, the clerk will not file the document, but shall return it to be properly prepared.

[As amended; effective October 1, 2015.]

RULE 33. APPEAL CONFERENCES

The court may direct the attorneys for the parties to appear before the court or a justice or judge thereof for a conference to address any matter that may aid in disposing of the proceedings, including simplifying the issues. The court, justice, or judge may, as a result of the conference, enter an order controlling the course of the proceedings.

[As amended; effective January 20, 2015.]

RULE 34. ORAL ARGUMENT

(a) Notice of Argument; Postponement. The clerk shall advise all parties of the date, time, and place for oral argument, the time allowed for oral argument, the court before which argument will occur, and if before the Supreme Court, whether it will be before the full court or a panel, and if deemed appropriate, the issues to be addressed at oral argument. A motion to postpone the argument must be filed reasonably in advance of the date fixed for hearing.

(b) Time Allowed for Argument. Unless the case is submitted for decision on the briefs under Rule 34(f), each side, at the court's discretion, will be allowed 15 or 30 minutes for argument. If counsel believes that additional time is necessary for the adequate presentation of his or her argument, counsel may request such additional time as he or she deems necessary. A motion to allow longer argument must be filed reasonably in advance of the date fixed for the argument and shall be liberally granted if cause therefor is shown. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and Content of Argument. The appellant opens and concludes the argument. If the appellant has not filed a reply brief, however, a concluding or rebuttal argument will not be allowed except by permission of the court or at the request of a justice or judge. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) Cross-Appeals and Separate Appeals. Unless the court directs otherwise, a cross-appeal or separate appeal shall be argued with the initial appeal at a single argument. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the respondent for the purpose of this Rule, unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) Nonappearance of a Party. If the respondent fails to appear for argument, the court will hear the appellant's argument. If the appellant fails to appear, the court may hear the respondent's argument. If neither party appears, the case will be decided on the briefs unless the court orders otherwise.

(f) Submission on Briefs.

(1) The court may order a case submitted for decision on the briefs, without oral argument.

(2) The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(3) Appeals brought in pro se and postconviction appeals will be submitted for decision without oral argument, but the court may direct that a case be argued.

(g) Submission on Record Without Briefs. Postconviction appeals may be submitted and decided on the record on appeal without briefing when the appellant is not represented by counsel.

[As amended; effective October 1, 2015.]

RULE 35. DISQUALIFICATION OF A JUSTICE OR JUDGE

(a) Motion for Disqualification. A request that a justice or judge of the Supreme Court or Court of Appeals be disqualified from sitting in a particular case shall be made by motion. Unless the court permits otherwise, the motion shall be in writing and shall be in the form required by Rule 27.

(1) Time to File. A motion to disqualify a justice or judge shall be filed with the clerk of the Supreme Court within 60 days after docketing of the appeal under Rule 12, together with proof of service on all other parties. Except for good cause shown, the failure to file a timely motion to disqualify shall be deemed a waiver of the moving party's right to object to a justice's or judge's participation in a case.

(2) Contents of a Motion.

(A) Grounds, Supporting Facts, and Legal Authorities. A motion shall state clearly and concisely in separately numbered paragraphs each ground relied upon as a basis for disqualification with the specific facts alleged in support thereof and the legal argument, including citations to relevant cases, statutes or rules, necessary to support it.

(B) Verification. All assertions of fact in a motion must be supported by proper sworn averments in an affidavit or by citations to the specific page and line where support appears in the record of the case.

(i) A verification by affidavit shall be served and filed with the motion.

(ii) The affidavit shall be made upon personal knowledge by a person or persons affirmatively shown competent to testify and shall set forth only those facts that would be admissible in evidence.

(iii) The affidavit shall set forth the date or dates when the moving party first became aware of the facts set forth in the motion.

(C) Attorney's Certificate. A motion under this Rule filed by a party represented by counsel shall contain a certificate signed by at least 1 attorney of record who is an active member of the bar of this state. The certificate must contain the following information:

(i) A representation that the signing attorney has read the motion and supporting documents;

(ii) A representation that the motion and supporting documents are in the form required by this Rule; and

(iii) A representation that, based on personal investigation, the signing attorney believes all grounds asserted to be legally valid and all supporting factual allegations to be true, and that the motion is made in good faith and not for purposes of delay or for other improper motive.

(D) Striking a Motion Without an Attorney's Certificate. If a motion does not contain the certification required by Rule 35(a)(2)(C), it shall be stricken unless such a certification is provided within 14 days after the omission is called to the attorney's attention.

(b) Response.

(1) By a Party. Any party may file a response to a motion to disqualify a justice or judge. The response shall be filed within 14 days after service of the motion unless the court shortens or extends the time.

(2) By the Justice or Judge. The challenged justice or judge may submit a response to the motion in writing or orally at any hearing that may be ordered by the court.

(c) Reply. A reply may not be filed unless permission is first obtained from the court.

[Added; effective May 25, 1990; as amended; effective March 1, 2019.]

RULE 36. ENTRY OF JUDGMENT

(a) Entry. The filing of the court's decision or order constitutes entry of the judgment. The clerk shall file the judgment after receiving it from the court. If a judgment is rendered without an opinion, the clerk shall enter the judgment following instruction from the court.

(b) Notice. On the date when judgment is entered, the clerk shall mail to all parties a copy of the opinion, if any, or of the order entering judgment, if no opinion was written.

(c) Form of Decision. The Supreme Court and Court of Appeals decide cases by either published or unpublished disposition.

(1) A published disposition is an opinion designated for publication in the *Nevada Reports*. The Supreme Court or Court of Appeals will decide a case by published opinion if it:

(A) Presents an issue of first impression;

(B) Alters, modifies, or significantly clarifies a rule of law previously announced by either the Supreme Court or the Court of Appeals; or

(C) Involves an issue of public importance that has application beyond the parties.

(2) An unpublished disposition, while publicly available, does not establish mandatory precedent except in a subsequent stage of a case in which the unpublished disposition was entered, in a related case, or in any case for purposes of issue or claim preclusion or to establish law of the case.

(3) A party may cite for its persuasive value, if any, an unpublished disposition issued by the Supreme Court on or after January 1, 2016. When citing such an unpublished disposition, the party must cite an electronic database, if available, and the docket number and date filed in the Supreme Court (with the notation "unpublished disposition"). A party citing such an unpublished disposition must serve a copy of it on any party not represented by counsel. Except to establish issue or claim preclusion or law of the case as permitted by subsection (2), unpublished dispositions issued by the Court of Appeals may not be cited in any Nevada court for any purpose.

(d) Duplicate Order or Opinion.

(1) The justices of the Supreme Court, judges of the Court of Appeals, or district judges designated by the governor to serve on the Supreme Court or Court of Appeals for a specific case, if they are physically present within the State of Nevada, may sign duplicate copies of any order or opinion. If duplicate copies of an order or opinion are signed by the various members of the Supreme Court or Court of Appeals, the justices or judges signing the duplicate copies shall date their signatures on duplicate copies and shall immediately inform the clerk of the court that the duplicate copies are signed. The clerk of the court shall then note on the appropriate signature line of the original order or opinion that the absent justices or judges have signed duplicate copies of the order or opinion under this Rule. When possible, a facsimile of each signed duplicate copy of the order or opinion shall also be transmitted immediately to the clerk of the court. The duplicate copies of the order or opinion containing the original signatures of the justices or judges shall be sent by the fastest means available to the clerk of the Supreme Court, who shall place those duplicates in the court's file.

(2) The clerk shall file an order or opinion that is signed in duplicate under this Rule upon receiving notice from the absent justices or judges that they have signed the duplicate copies. The order or opinion shall be effective for all purposes when the clerk receives notice under this Rule that the requisite number of signatures have been obtained and files the order or opinion. An order or opinion that is signed under this Rule shall contain a notice to the parties that it was signed under this Rule.

(e) Reversal, Modification; Certified Copy of Opinion to Lower Court. Where a judgment is reversed or modified, a certified copy of the opinion or other disposition shall be transmitted with the remittitur to the court below.

(f) Motion to Reissue an Order as an Opinion. A motion to reissue an unpublished disposition or order as an opinion to be published in the *Nevada Reports* may be made under the provisions of this subsection by any interested person. With respect to the form of such motions, the provisions of Rule 27(d) apply; in all other respects, such motions must comply with the following:

(1) Time to File. Such a motion shall be filed within 14 days after the filing of the order. Parties may not stipulate to extend this time period, and any motion to extend this time period must be filed before the expiration of the 14-day deadline.

(2) Response. No response to such a motion shall be filed unless requested by the court.

(3) Contents. Such a motion must be based on one or more of the criteria for publication set forth in Rule 36(c)(1)(A)-(C). The motion must state concisely and specifically on which criteria it is based and set forth argument in support of such contention. If filed by or on behalf of a nonparty, the motion must also identify the movant and his or her interest in obtaining publication.

(4) Decision. The granting or denial of a motion to publish is entrusted to the sound discretion of the panel that issued the disposition. Publication is disfavored if revisions to the text of the unpublished disposition will result in discussion of additional issues not included in the original decision.

[As amended; effective March 1, 2019.]

RULE 37. INTEREST ON JUDGMENTS

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

[As amended; effective July 1, 2009.]

RULE 38. FRIVOLOUS CIVIL APPEALS — DAMAGES AND COSTS

(a) Frivolous Appeals; Costs. If the Supreme Court or Court of Appeals determines that an appeal is frivolous, it may impose monetary sanctions.

(b) Frivolous Appeals; Attorney Fees as Costs. When an appeal has frivolously been taken or been processed in a frivolous manner, when circumstances indicate that an appeal has been taken or processed solely for purposes of delay, when an appeal has been occasioned through respondent's imposition on the court below, or whenever the appellate processes of the court have otherwise been misused, the court may, on its own motion, require the offending party to pay, as costs on appeal, such attorney fees as it deems appropriate to discourage like conduct in the future.

[As amended; effective January 20, 2015.]

RULE 39. COSTS

(a) Against Whom Assessed. The following rules apply in civil appeals unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the respondent;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Reserved.

(c) Costs of Briefs, Appendices, Counsel's Transportation; Limitation.

(1) Costs of Copies. The cost of producing necessary copies of briefs or appendices shall be taxable in the Supreme Court or Court of Appeals at rates not higher than those generally charged for such work in the area where the district court is located.

(2) Costs of Counsel's Transportation. The actual costs of round trip transportation for one attorney, actually attending arguments before the Supreme Court or Court of Appeals, between the place where the district court is located and the place where the appeal is argued shall be taxable. For the purpose of this Rule, "actual costs" for private automobile travel shall be deemed to be 15 cents per mile, but where commercial air transportation is available at a cost less than private automobile travel, only the cost of the air transportation shall be taxable.

(3) Bill of Costs. A party who wants such costs taxed shall — within 14 days after entry of judgment — file an itemized and verified bill of costs with the clerk, with proof of service.

(4) Objections. Objections to a bill of costs shall be filed within 7 days after service of the bill of costs, unless the court extends the time.

(5) Limit on Costs. The maximum amount of costs taxable under this section shall be $500.

(d) Clerk to Insert Costs in Remittitur. The clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court or Court of Appeals for insertion in the remittitur, but issuance of the remittitur must not be delayed for taxing costs. If the remittitur issues before costs are finally determined, the district court clerk must — upon the Supreme Court clerk's request — add the statement of costs, or any amendment of it, to the remittitur.

(e) Costs on Appeal Taxable in the District Courts. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this Rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) preparation of the appendix;

(4) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(5) the fee for filing the notice of appeal.

[As amended; effective March 1, 2019.]

RULE 40. PETITION FOR REHEARING

(a) Procedure and Limitations.

(1) Time. Unless the time is shortened or enlarged by order, a petition for rehearing may be filed within 18 days after the filing of the appellate court's decision under Rule 36. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule.

(2) Contents. The petition shall state briefly and with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. Any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied or failed to consider controlling authority shall be supported by a reference to the page of the brief where petitioner has raised the issue.

(3) Petitions in Criminal Appeals; Exhaustion of State Remedies. A decision by a panel of the Supreme Court, the en banc Supreme Court, or the Court of Appeals resolving a claim of error in a criminal case, including a claim for postconviction relief, is final for purposes of exhaustion of state remedies in subsequent federal proceedings. Rehearing is available only under the limited circumstances set forth in Rule 40(c). Petitions for rehearing filed on the pretext of exhausting state remedies may result in sanctions under Rule 40(g).

(b) Form of Petition and Answer; Number of Copies; Length; Certificate of Compliance; Filing Fee.

(1) Decision of Court of Appeals or Supreme Court Panel. A petition for rehearing of a decision of the Court of Appeals or of a panel of the Supreme Court, or an answer to such petition, shall comply in form with Rule 32, and an original and 5 copies shall be filed with the clerk unless the court by order in a particular case shall direct a different number. One copy shall be served on counsel for each party separately represented.

(2) En Banc Decision. A petition for rehearing of a decision of the en banc Supreme Court, or an answer to the petition, shall comply in form with Rule 32, and an original and 9 copies shall be filed with the clerk unless the court by order in a particular case shall direct a different number. One copy shall be served on counsel for each party separately represented.

(3) Length. Except by permission of the court, a petition for rehearing, or an answer to the petition, shall not exceed 10 pages. Alternatively, the petition or answer is acceptable if it contains no more than 4,667 words, or if it uses a monospaced typeface, and contains no more than 433 lines of text.

(4) Certificate of Compliance. A petition for rehearing or an answer shall include a certificate that the submission complies with the formatting requirements of Rule 32(a)(4)-(6) and the page- or type-volume limitation of this Rule, computed in compliance with Rule 32(a)(7)(C). The petition or answer must be accompanied by a completed certificate of compliance substantially similar to Form 16 in the Appendix of Forms.

(5) Filing Fee. Except as otherwise provided by statute, a $150 filing fee shall be paid to the clerk at the time a petition for rehearing is submitted for filing.

(c) Scope of Application; When Rehearing Considered.

(1) Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, and no point may be raised for the first time on rehearing.

(2) The court may consider rehearings in the following circumstances:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or

(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

(d) Answer; Reply. No answer to a petition for rehearing or reply to an answer shall be filed unless requested by the court. Unless otherwise ordered by the court, the answer to a petition for rehearing shall be filed within 14 days after entry of the order requesting the answer. A petition for rehearing will ordinarily not be granted in the absence of a request for an answer.

(e) Action by Court if Granted. If a petition for rehearing is granted, the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case. A petition for rehearing of a decision of a panel of the Supreme Court shall be reviewed by the panel that decided the matter. If the panel determines that rehearing is warranted, rehearing before that panel will be held. The full court shall consider a petition for rehearing of an en banc decision.

(f) Untimely Petitions; Unrequested Answer or Reply. A petition for rehearing is timely if mailed or sent by commercial carrier to the clerk within the time fixed for filing. The clerk shall not receive or file an untimely petition, but shall return the petition unfiled. The clerk shall return unfiled any answer or reply submitted for filing in the absence of an order requesting the same.

(g) Sanctions. Petitions for rehearing which do not comply with this Rule may result in the imposition of appropriate sanctions.

[As amended; effective March 1, 2019.]

RULE 40A. PETITION FOR EN BANC RECONSIDERATION

(a) Grounds for En Banc Reconsideration. En banc reconsideration of a decision of a panel of the Supreme Court is not favored and ordinarily will not be ordered except when (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue. The court considers a decision of a panel of the court

resolving a claim of error in a criminal case, including a claim for postconviction relief, to be final for purposes of exhaustion of state remedies in subsequent federal proceedings. En banc reconsideration is available only under the limited circumstances set forth in Rule 40A(a). Petitions for en banc reconsideration in criminal cases filed on the pretext of exhausting state remedies may result in the imposition of sanctions under Rule 40A(g).

(b) Time for Filing; Effect of Filing on Finality of Judgment. Any party may petition for en banc reconsideration of a Supreme Court panel's decision within 14 days after written entry of the panel's decision to deny rehearing. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule. No petition for en banc reconsideration of a Supreme Court panel's decision to grant rehearing is allowed; however, if a panel grants rehearing, any party may petition for en banc reconsideration of the panel's decision on rehearing within 14 days after written entry of the decision. If no petition for rehearing of the Supreme Court panel's decision is filed, then no petition for en banc reconsideration is allowed.

(c) Content of Petition. A petition based on grounds that full court reconsideration is necessary to secure and maintain uniformity of the decisions of the Supreme Court or Court of Appeals shall demonstrate that the panel's decision is contrary to prior, published opinions of the Supreme Court or Court of Appeals and shall include specific citations to those cases. If the petition is based on grounds that the proceeding involves a substantial precedential, constitutional or public policy issue, the petition shall concisely set forth the issue, shall specify the nature of the issue, and shall demonstrate the impact of the panel's decision beyond the litigants involved. The petition shall be supported by points and authorities and shall contain such argument in support of the petition as the petitioner desires to present. Matters presented in the briefs and oral arguments may not be reargued in the petition, and no point may be raised for the first time.

(d) Form of Petition and Answer; Number of Copies; Length; Certificate of Compliance. A petition for en banc reconsideration of a Supreme Court panel's decision, or an answer to such a petition, shall comply in form with Rule 32, and an original and 8 copies shall be filed with the clerk unless the court by order in a particular case shall direct a different number. One copy shall be served on counsel for each party separately represented. Except by permission of the court, a petition for en banc reconsideration, or an answer to such a petition, shall not exceed 10 pages. Alternatively, the petition or answer is acceptable if it contains no more than 4,667 words, or if it uses a monospaced typeface, and contains no more than 433 lines of text. The petition or answer shall include the certification required by NRAP 40(b)(4) in substantially the form suggested in Form 16 of the Appendix of Forms.

(e) Answer and Reply. No answer to a petition for en banc reconsideration or reply to an answer shall be filed unless requested by the court. Unless otherwise ordered by the court, the answer to a petition for en banc reconsideration shall be filed within 14 days after entry of the order requesting the answer. A petition for en banc reconsideration will ordinarily not be granted in the absence of a request for an answer.

(f) Action by Court if Granted. Any two justices may compel the court to grant a petition for en banc reconsideration. If a petition for en banc reconsideration is granted, the court may make a final disposition of the cause without reargument or may place it on the en banc calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(g) Frivolous Petitions; Costs Assessed. Unless a case meets the rigid standards of Rule 40A(a), the duty of counsel is discharged without filing a petition for en banc reconsideration of a panel decision. Counsel filing a frivolous petition shall be deemed to have multiplied the proceedings in the case and to have increased costs unreasonably and vexatiously. At the discretion of the court, counsel personally may be required to pay an appropriate sanction, including costs and attorney fees, to the opposing party.

(h) Untimely Petitions; Unrequested Answer or Reply. A petition for en banc reconsideration is timely if mailed or sent by commercial carrier to the clerk within the time fixed for filing. The clerk shall not receive or file an untimely petition, but shall return the petition unfiled. The clerk shall return unfiled any answer or reply submitted for filing in the absence of an order requesting the same.

[As amended; effective March 1, 2019.]

RULE 40B. PETITION FOR REVIEW BY THE SUPREME COURT

(a) Decisions of Court of Appeals Reviewable by Petition for Review. A decision of the Court of Appeals is a final decision that is not reviewable by the Supreme Court except on petition for review. A party aggrieved by a decision of the Court of Appeals may file a petition for review with the clerk of the Supreme Court. The petition must state the question(s) presented for review and the reason(s) review is warranted. Supreme Court review is not a matter of right but of judicial discretion. The following, while neither controlling nor fully measuring the Supreme Court's discretion, are factors that will be considered in the exercise of that discretion:

(1) Whether the question presented is one of first impression of general statewide significance;

(2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or

(3) Whether the case involves fundamental issues of statewide public importance.

(b) Petition in Criminal Appeals; Exhaustion of State Remedies. In all appeals from criminal convictions or postconviction relief matters, a party shall not be required to petition for review of an adverse decision of the Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when a claim has been presented to the Court of Appeals and relief has been denied, the party shall be deemed to have exhausted all available state remedies. Review of decisions of the Court of Appeals by the Nevada Supreme Court is limited to the circumstances set forth in these Rules and is an extraordinary remedy outside the normal process of appellate review, which is not available as a matter of right.

(c) Time for Filing. A petition for review of a decision of the Court of Appeals must be filed in the Supreme Court within 18 days after the filing of the Court of Appeals' decision under Rule 36, or its decision on rehearing under Rule 40. A petition for review shall not be filed while a petition for rehearing is pending in the Court of Appeals. The 3-day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule. The clerk of the Supreme Court shall not receive or file an untimely petition, but shall return the petition unfiled.

(d) Content and Form of Petition. A petition for review shall comply in form with Rule 32, and an original and 9 copies shall be filed with the clerk unless the court by order in a particular case shall direct a different number. The petition may not exceed 10 pages or 4,667 words or, if it uses a monospaced typeface, 433 lines of text. The petition shall succinctly state the precise basis on which the party seeks review by the Supreme Court and may include citation of authority in support of that contention. No citation to authority or argument may be incorporated into the petition by reference to another document. The petitioner must attach a copy of the decision of the Court of Appeals and any petition for rehearing filed in the Court of Appeals.

(e) Response to Petition. No response to a petition for review shall be filed unless requested by the Supreme Court.

(f) Decision by Supreme Court. The Supreme Court may grant a petition for review on the affirmative vote of a majority of the justices. The Supreme Court's decision to grant or deny a petition is final and is not subject to further requests for rehearing or reconsideration.

(g) Action by Supreme Court When Petition Granted. The Supreme Court may limit the question(s) on review. The Supreme Court's review on the grant of a petition for review shall be conducted on the record and briefs previously filed in the Court of Appeals, but the Supreme Court may require supplemental briefs on the merits of all or some of the issues for review.

[Added; effective January 20, 2015.]

RULE 41. ISSUANCE OF REMITTITUR; STAY OF REMITTITUR

(a) When Issued; Contents.

(1) When Issued. The court's remittitur shall issue 25 days after the entry of judgment unless the time is shortened or enlarged by order. Unless an appeal or other proceeding is dismissed under Rule 42, a formal remittitur shall issue.

(2) Contents. A certified copy of the judgment and opinion of the court, if any, and any direction as to costs shall be included with the remittitur.

(b) Stay of Remittitur.

(1) Petition for Rehearing or En Banc Reconsideration. The timely filing of a petition for rehearing or en banc reconsideration stays the remittitur until disposition of the petition, unless the court orders otherwise. If the petition is denied, the remittitur shall issue 25 days after entry of the order denying the petition, unless the time is shortened or enlarged by order.

(2) Petition for Review by Supreme Court. The timely filing of a petition for review by the Supreme Court of a Court of Appeals' decision shall stay the issuance of the remittitur of the Court of Appeals. Upon the issuance of an order denying a petition for review, the clerk of the Supreme Court shall issue the remittitur.

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

(A) A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of certiorari. The motion must be served on all parties.

(B) The stay shall not exceed 120 days, unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the Supreme Court of Nevada a notice from the clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court of the United States.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the remittitur.

(D) The clerk of the Supreme Court shall issue the remittitur immediately when a copy of a United States Supreme Court order denying the petition for writ of certiorari is filed.

[As amended; effective January 20, 2015.]

RULE 42. VOLUNTARY DISMISSAL

(a) Reserved.

(b) Dismissal in the Supreme Court or Court of Appeals. The clerk may dismiss an appeal or other proceeding if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no remittitur or other process shall issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

[As amended; effective January 20, 2015.]

RULE 43. SUBSTITUTION OF PARTIES

(a) Death of a Party.

(1) After Notice of Appeal Is Filed. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Supreme Court or Court of Appeals, the decedent's personal representative may be substituted as a party on motion filed by the representative or by any party with the clerk of the Supreme Court. A party's motion shall be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings.

(2) Before Notice of Appeal Is Filed — Potential Respondent. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be in accordance with Rule 43(a)(1).

(3) Before Notice of Appeal Is Filed — Potential Appellant. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative — or, if there is no personal representative, the decedent's

attorney of record — may file a notice of appeal within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be in accordance with Rule 43(a)(1).

(b) Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) Public Officer: Identification; Substitution.

(1) Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the failure to enter an order shall not affect the substitution.

(2) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name; but the court may require the public officer's name to be added.

[As amended; effective January 20, 2015.]

RULE 44. CASES INVOLVING CONSTITUTIONAL QUESTIONS WHERE STATE IS NOT A PARTY

If a party questions the constitutionality of an Act of the Legislature in a proceeding in which the state or its agency, officer, or employee is not a party in an official capacity, the questioning party shall give written notice to the clerk of the Supreme Court immediately upon the filing of the docketing statement or as soon as the question is raised in the court. The clerk shall then certify that fact to the Attorney General.

[As amended; effective July 1, 2009.]

RULE 45. CLERK'S DUTIES

(a) General Provisions.

(1) Qualifications. The clerk of the Supreme Court shall take the oath and post any bond required by law. Neither the clerk nor any deputy clerk shall practice as an attorney or counselor in any court while in office.

(2) When Court Is Open. The Supreme Court and Court of Appeals are always open for filing any proper paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and nonjudicial days. The court may provide by rule or by order that the clerk's office shall be open for specified hours on Saturdays or on particular nonjudicial days.

(b) Records.

(1) The Docket. The clerk shall maintain a docket, in the form and style prescribed by the court, and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the folio of the docket whereon the first entry is made. All papers filed with the clerk and all process, orders and judgments shall be entered chronologically in the docket on the folio assigned to the case. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The clerk shall keep a suitable index of cases contained in the docket.

(2) Calendar. The clerk shall prepare, under the direction of the court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk shall give preference to appeals in criminal cases and to appeals and other proceedings entitled to preference by law.

(3) Other Records. The clerk shall keep such other books and records as may be required from time to time by the court.

(c) Notice of Orders or Judgments. Upon the entry of an order or judgment, the clerk shall immediately serve a notice of entry by mail on each party, with a copy of any opinion, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.

(d) Custody of Records and Papers. The clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk shall not permit an original record or paper to be taken from the clerk's custody. Upon disposition of the case, original papers transmitted from a court or agency shall be returned to the court or agency from which they were received. The clerk shall preserve a copy of any briefs or other papers that have been filed. The transcript and appendices to the briefs must be retained for 90 days after issuance of the remittitur, and then may be destroyed.

(e) Office Location; Attendance at Court Sessions; Removal of Papers.

(1) The clerk's office shall be kept in Carson City, Nevada.

(2) The clerk or the clerk's deputy shall attend in person the sessions of the court.

(f) Fees. The clerk shall 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.

[As amended; effective January 20, 2015.]

RULE 45A. SEAL OF SUPREME COURT

The seal of the Supreme Court shall contain the words "Supreme Court State of Nevada" on the upper part of the outer edge, preceded and followed by a star; and the words "Fiat Justitia" on the lower part of the outer edge, running from left to right; and in the center an eagle with its left wing displayed and the figure of the Goddess of Liberty, her left hand holding a liberty pole surmounted by a Phrygian cap, her right hand supporting a shield.

[As amended; effective January 20, 2015.]

RULE 46. ATTORNEYS

(a) Practice Before Supreme Court or Court of Appeals — Bar Membership Required; Exceptions.

(1) Bar Membership Required. No person may practice law before the Supreme Court or Court of Appeals who is not an active member of the State Bar of Nevada except as provided by SCR 42 and subject to Rule 46(a)(3).

(2) Appearance of Counsel. Counsel for each party shall file a formal written notice of appearance as counsel of record on appeal within 14 days after service of the notice of appeal. A notice of appeal signed by an attorney will be treated as a notice of appearance by that attorney. An attorney who will participate in oral argument of a case must have filed a written notice of appearance with the clerk of the Supreme Court no later than 7 days before the date set for oral argument.

(3) Foreign Counsel. If foreign counsel has been granted permission to appear under SCR 42 upon a motion in district court, that attorney must file a copy of the district court's order with the clerk of the Supreme Court. If foreign counsel appears before the Supreme Court or Court of Appeals in the first instance, that attorney must file a motion in the Supreme Court or Court of Appeals as provided by SCR 42. If foreign counsel is associated on the briefs or any other documents submitted for filing, all such briefs and documents shall be signed by Nevada counsel, who shall be responsible to the court for the content. If foreign counsel is associated upon oral argument, Nevada counsel shall be present during oral argument and shall be responsible to the court for all matters presented.

(b) Reserved.

(c) Appointment of Counsel — Indigent Criminal, Habeas Corpus Cases. Only the court may appoint counsel to represent indigent criminal defendants and indigent habeas corpus petitioners in original proceedings before the court.

(d) Withdrawal, Substitution, or Discharge of Attorney in Criminal Appeals. The withdrawal, substitution, or discharge of an attorney in a criminal appeal pending before the Supreme Court or Court of Appeals shall be governed by this Rule.

(1) In General. After the filing of a notice of appeal, any stipulation or motion that effects a change in the representation of a party to the appeal must be filed in the court.

(2) Substitution. A substitution or change of counsel may be effected by serving and filing a substitution in the Supreme Court or Court of Appeals, signed by the affected attorneys and the client or, in lieu of the client's signature, an affidavit of counsel stating that the client has been informed of and consents to the substitution. The Supreme Court or Court of Appeals may disapprove a substitution that does not have the necessary signatures or affidavit.

(3) Withdrawal.

(A) The attorney shall file a motion to withdraw with the clerk of the Supreme Court and serve a copy of the motion on the attorney's client and any adverse party. The motion shall clearly state whether counsel was appointed or retained and the reasons for the motion. Unless the motion is filed after judgment or final determination as provided in SCR 46, the motion shall be accompanied by:

(i) In a direct appeal from a judgment of conviction in which the defendant is represented by retained counsel, an affidavit or signed statement from the defendant stating that the defendant has discharged retained counsel, the grounds for that discharge, and whether the defendant qualifies for appointment of new counsel; or

(ii) In a direct appeal from a judgment of conviction in which the defendant is represented by appointed counsel, an affidavit or signed statement from the defendant stating that the defendant consents to appointed counsel's being relieved and requesting appointment of substitute counsel; or

(iii) In a postconviction appeal, an affidavit or signed statement from the defendant stating that the defendant wants to proceed without counsel or with substitute counsel retained by defendant.

(B) A motion filed under this Rule that is not accompanied by defendant's affidavit or signed statement shall set forth the reasons for the omission. A motion that is filed after judgment or final determination as provided in SCR 46 will only be granted if the Supreme Court or Court of Appeals has issued a final decision in the matter and the time for filing a petition for rehearing has expired.

(4) Death, Suspension. Any party to a criminal appeal may notify the Supreme Court or Court of Appeals in writing when an attorney representing a party dies, or is removed or suspended, or ceases to act as an attorney.

(e) Withdrawal, Substitution, or Discharge of Attorney in Civil Appeals. The withdrawal, substitution or discharge of an attorney in a civil appeal pending before the Supreme Court or Court of Appeals shall be governed by this Rule.

(1) In General. After the filing of a notice of appeal, any stipulation or motion that effects a change in the representation of a party to the appeal must be filed with the clerk of the Supreme Court.

(2) Substitution. A substitution or change of counsel may be effected by serving and filing a substitution with the clerk of the Supreme Court, signed by the client, the withdrawing attorney and the substituted attorney. The Supreme Court or Court of Appeals may disapprove a substitution that is not signed by the client and all affected attorneys.

(3) Withdrawal. A withdrawal of counsel may be effected only by filing a motion in the court. The withdrawing attorney shall serve a copy of the motion on the attorney's client and any adverse party. The motion shall clearly state the reasons for the attorney's withdrawal consistent with SCR 46 and RPC 1.16. A motion that is filed after judgment or final determination as provided in SCR 46 will only be granted if the Supreme Court or Court of Appeals has issued a final decision in the matter and the time for filing a petition for rehearing has expired.

(4) Suspension. When an attorney is suspended or ceases to act as an attorney, the attorney shall notify the clerk of the Supreme Court in writing and serve a copy of the notice on the attorney's client and any adverse parties. The notice shall identify the name and address of any new counsel retained by the client or the current address for the client if no new counsel has been retained.

(5) Death. When an attorney dies, the attorney's client must promptly notify the clerk of the Supreme Court in writing and serve a copy of the notice on any adverse parties. The notice shall state that the client has retained new counsel or that the client will proceed without counsel if such is permitted under Rule 46A.

[As amended; effective March 1, 2019.]

RULE 46A. PARTIES APPEARING WITHOUT COUNSEL

(a) In General. Except as otherwise provided in this Rule, a party may appear without counsel and file written briefs and other papers submitted in accordance with these Rules. A party who is represented by counsel shall proceed through counsel and is not permitted to file written briefs or other papers, in pro se, with the exception of a motion to remove counsel.

(b) Exceptions.

(1) Direct Appeal From a Judgment of Conviction. A defendant who is appealing from a judgment of conviction may not appear without counsel.

(2) Corporations and Other Entities. A corporation or other entity may not appear without counsel.

(c) Response Not Required. An opposing party is not required to respond to documents, including briefs, filed by a party appearing without counsel unless ordered to do so by the Supreme Court or Court of Appeals. Except for motions described in Rule 27(b) and 46(d), the court generally will not grant relief without providing an opportunity to file a response.

(d) Return of Documents. The clerk of the Supreme Court shall return any document submitted in violation of this Rule.

[Added; effective October 1, 2015.]

RULE 47. RULES OF APPELLATE PRACTICE

(a) Promulgation of Rules by the Supreme Court. The Supreme Court by action of a majority of the justices may from time to time make and amend these Rules governing practice in the Supreme Court and Court of Appeals. In all cases not provided for by rule, the Supreme Court or Court of Appeals may regulate its practice in any manner consistent with law and justice. The clerk of the Supreme Court shall cause a notice of entry of an order amending these Rules to be published in the official publication of the State Bar of Nevada.

(b) Drafting and Printing of Orders Amending Rules; Marking of New and Old Matter. In orders amending the Nevada Rules of Appellate Procedure, new matter shall be indicated by underscoring or italics. Matter to be omitted shall be indicated by brackets and boldface and strikethrough type. In subsequent orders all matter appearing as omitted and bracketed in previously entered orders shall be omitted entirely.

[As amended; effective January 20, 2015.]

RULE 48. TITLE

These Rules shall be known and cited as the Nevada Rules of Appellate Procedure, or abbreviated NRAP.

[As amended; effective July 1, 2009.]

APPENDIX OF FORMS

Form 1. Notice of Appeal to the Supreme Court From a Judgment or Order of a District Court

No..... Dept. No. .....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF .....

A. B., Plaintiff }
v. }
C. D., Defendant }

NOTICE OF APPEAL

Notice is hereby given that C. D., defendant above named, hereby appeals to the Supreme Court of Nevada (from the final judgment) (from the order (describing it)) entered in this action on the ..... day of ....., 20 .....

/s/.....
Attorney for C.D.
.....
Address

Form 2. Case Appeal Statement

No. ..... Dept. No. .....

IN THE …… JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF …….

A. B., Plaintiff }
v. }
C. D., Defendant }

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
2. Identify the judge issuing the decision, judgment, or order appealed from:
3. Identify each appellant and the name and address of counsel for each appellant:
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):
5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):
6. Indicate whether appellant was represented by appointed or retained counsel in the district court:
7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:
9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):
10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:
11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:
12. Indicate whether this appeal involves child custody or visitation:
13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Dated this …… day of ……, 20…… .

.....
(Signature of Attorney)

.....

(Nevada Bar Identification No.)

.....
(Law Firm)

.....
(Address)

.....
(Telephone Number)

[Added; effective September 1, 1996; As amended; effective July 1, 2009.]

Form 3. Transcript Request Form

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....
v. }
C. D., Respondent }

REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: [Court Reporter Name]

Appellant requests preparation of a transcript of the proceedings before the district court, as follows:

Judge or officer hearing the proceeding:

Specific individual dates of proceedings for which transcripts are being requested (a range of dates is not acceptable):

Specific portions of the transcript being requested (e.g., suppression hearing, trial, closing argument, etc.):

Number of copies required:

I hereby certify that on the ..... day of ....., 20..... I ordered the transcript(s) listed above from the court reporter named above, and paid the required deposit on the ..... day of ....., 20..... .

Dated this …… day of ……, 20…… .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective September 1, 1996; As amended; effective July 1, 2009.]

Form 4. Affidavit and Order to Accompany Motion for Leave to Appeal in Forma Pauperis

No. ..... Dept. No. .....

IN THE JUDICIAL DISTRICT ..... COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF .....

STATE OF NEVADA }
v. }
A. B. ..... }

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED
ON APPEAL IN FORMA PAUPERIS

State of Nevada }
}ss.
County of..... }

I, ... being first duly sworn, depose and say that I am the ..... in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, cost or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

.....

SUBSCRIBED AND SWORN to before me this ..... day of ....., 20.....

.....
Notary Public

ORDER

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

DATED this ..... day of ....., 20.....

.....
District Judge

Form 5. Request for Rough Draft Transcript of Proceeding in the District Court

No. ..... Dept. No. .....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF .....

A. B., Plaintiff }
v. }
C. D., Defendant }

REQUEST FOR ROUGH DRAFT TRANSCRIPT

TO: [Court Reporter Name]

(C.D.), defendant named above, requests preparation of a rough draft transcript of certain portions of the proceedings before the district court, as follows:

Specific individual dates of proceedings for which transcripts are being requested (a range of dates is not acceptable):

Specific portions of the transcript being requested (e.g., suppression hearing, trial, closing argument, etc.):

This notice requests a transcript of only those portions of the district court proceedings that counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel, and the reading of jury instructions shall not be transcribed unless specifically requested above.

I recognize that I must serve a copy of this form on the above named court reporter and opposing counsel, and that the above named court reporter shall have twenty-one (21) days from the receipt of this notice to prepare and submit to the district court the rough draft transcript requested herein.

Dated this …… day of ……, 20…… .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective September 1, 1996; as amended; effective March 1, 2019.]

Form 6. Fast Track Statement

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....

v. }
C. D., Respondent }

FAST TRACK STATEMENT

1. Name of party filing this fast track statement:
2. Name, law firm, address, and telephone number of attorney submitting this fast track statement:
3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:
4. Judicial district, county, and district court docket number of lower court proceedings:
5. Name of judge issuing decision, judgment, or order appealed from:
6. Length of trial. If this action proceeded to trial in the district court, how many days did the trial last?
7. Conviction(s) appealed from:
8. Sentence for each count:
9. Date district court announced decision, sentence, or order appealed from:
10. Date of entry of written judgment or order appealed from:

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

11. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the court:

(a) Specify whether service was by delivery or by mail:

12. If the time for filing the notice of appeal was tolled by a post-judgment motion,

(a) specify the type of motion, and the date of filing of the motion:

(b) date of entry of written order resolving motion:

13. Date notice of appeal filed:
14. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015, or other:
15. Specify statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from:
16. Specify the nature of disposition below, *e.g.*, judgment after bench trial, judgment after jury verdict, judgment upon guilty plea, etc.:
17. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (*e.g.*, separate appeals by co-defendants, appeal after postconviction proceedings):
18. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):
19. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues you intend to raise in this appeal:
20. Procedural history. Briefly describe the procedural history of the case (provide citations for every assertion of fact to the appendix, if any, or to the rough draft transcript):
21. Statement of facts. Briefly set forth the facts material to the issues on appeal:
22. Issues on appeal. State concisely the principal issue(s) in this appeal:
23. Legal argument, including authorities:
24. Preservation of issues. State concisely how each enumerated issue on appeal was preserved during trial. If the issue was not preserved, explain why this court should review the issue:
25. Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest: If so, explain:

VERIFICATION

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[ ] This fast track statement has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*]; or

[ ] This fast track statement has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or arguments in the fast track statement, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information and belief.

Dated this ..... day of ....., 20..... .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective September 1, 1996; as amended; effective January 3, 2012.]

Form 7. Fast Track Response

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....
v. }
C. D., Respondent }

FAST TRACK RESPONSE

1. Name of party filing this fast track response:
2. Name, law firm, address, and telephone number of attorney submitting this fast track response:
3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:
4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal:
5. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement:
6. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix, if any, or to the rough draft transcript):
7. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:
8. Legal argument, including authorities:
9. Preservation of issues. State concisely your response to appellant's position concerning the preservation of issues on appeal:

VERIFICATION

1. I hereby certify that this fast track response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[ ] This fast track response has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*]; or

[ ] This fast track response has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this ..... day of ....., 20..... .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective September 1, 1996; as amended; effective January 3, 2012.]

Form 8. Notice of Withdrawal of Appeal

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....
v. }
C. D., Respondent }

NOTICE OF WITHDRAWAL OF APPEAL

_____(A.B.)_____, appellant named above, hereby moves to voluntarily withdraw the appeal mentioned above.

I ……, as counsel for the appellant, explained and informed_____(A.B.)_____of the legal effects and consequences of this voluntary withdrawal of this appeal, including that _____(A.B.)_____cannot hereafter seek to reinstate this appeal and that any issues that were or could have been brought in this appeal are forever waived. Having been so informed, _____(A.B.)_____hereby consents to a voluntary dismissal of the above-mentioned appeal.

VERIFICATION

I recognize that pursuant to NRAP 3C I am responsible for filing a notice of withdrawal of appeal and that the Supreme Court of Nevada may sanction an attorney for failing to file such a notice. I therefore certify that the information provided in this notice of withdrawal of appeal is true and complete to the best of my knowledge, information and belief.

Dated this …… day of ……, 20…… .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective September 1, 1996.]

Form 9. Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[ ] This brief has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*]; or

[ ] This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this ..... day of ....., 20..... .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[As amended; effective January 3, 2012.]

Form 10. Settlement Statement

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....
v. }

C. D., Respondent }

CONFIDENTIAL SETTLEMENT STATEMENT

TO: [Settlement Judge Name]

1. Name of party filing this settlement statement:
2. Concisely state the relevant facts:
3. Concisely state the issues on appeal:
4. Concisely state the argument supporting your position on appeal:
5. Concisely state the weakest points of your position on appeal:
6. Concisely state the settlement proposal you believe would be fair or you would be willing to make in order to conclude this matter:
7. Concisely state all matters which, in counsel's professional opinion, may assist the settlement judge in conducting the settlement conference.

Dated this …… day of ……, 20…… .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective February 25, 1997.]

Form 11. Request for Rough Draft Transcript of Child Custody Proceeding in the District Court

No. ..... Dept. No. .....

IN THE ..... JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF .....

A. B., Plaintiff }
v. }
C. D., Defendant }

REQUEST FOR ROUGH DRAFT TRANSCRIPT

TO: [Court Reporter Name]

_____(C.D.)_____, plaintiff/defendant named above, requests preparation of a rough draft transcript of certain portions of the proceedings before the district court, as follows:

Specific individual dates of proceedings for which transcripts are being requested (a range of dates is not acceptable):

Specific portions of the transcript being requested (e.g., suppression hearing, trial, closing argument, etc.):

This notice requests a transcript of only those portions of the district court proceedings that counsel reasonably and in good faith believes are necessary for resolution of appellate issues.

I recognize that I must serve a copy of this form on the above named court reporter and opposing party, and that the above named court reporter shall have twenty-one (21) days from the receipt of this notice to prepare and submit to the district court the rough draft transcript requested herein.

Dated this …… day of ……, 20…… .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective June 1, 2006; as amended; effective March 1, 2019.]

Form 12. Child Custody Fast Track Statement

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....
v. }
C. D., Respondent }

CHILD CUSTODY FAST TRACK STATEMENT

1. Name of party filing this fast track statement:
2. Name, law firm, address, and telephone number of attorney submitting this fast track statement:
3. Judicial district, county, and district court docket number of lower court proceedings:
4. Name of judge issuing judgment or order appealed from:
5. Length of trial or evidentiary hearing. If the order appealed from was entered following a trial or evidentiary hearing, then how many days did the trial or evidentiary hearing last?
6. Written order or judgment appealed from:
7. Date that written notice of the appealed written judgment or order's entry was served:
8. If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4),

(a) specify the type of motion, and the date and method of service of the motion, and date of filing:

(b) date of entry of written order resolving tolling motion:

9. Date notice of appeal was filed:
10. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a), NRS 155.190, or other:
11. Specify the statute, rule or other authority, which grants this court jurisdiction to review the judgment or order appealed from:
12. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which involve the same or some of the same parties to this appeal:
13. Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:
14. Procedural history. Briefly describe the procedural history of the case (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):
15. Statement of facts. Briefly set forth the facts material to the issues on appeal (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):
16. Issues on appeal. State concisely the principal issue(s) in this appeal:

17. Legal argument, including authorities:

18. Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest: Yes ..... No ..... . If so, explain:

VERIFICATION

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[ ] This fast track statement has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*]; or

[ ] This fast track statement has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track statement and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track statement, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

Dated this ..... day of ....., 20..... .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective June 1, 2006; as amended; effective January 3, 2012.]

Form 13. Child Custody Fast Track Response

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....
v. }
C. D., Respondent }

CHILD CUSTODY FAST TRACK RESPONSE

1. Name of party filing this fast track response:

2. Name, law firm, address, and telephone number of attorney or proper person respondent submitting this fast track response:

3. Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:

4. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

5. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

6. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:

7. Legal argument, including authorities:

VERIFICATION

1. I hereby certify that this fast track response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[ ] This fast track response has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*]; or

[ ] This fast track response has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track response. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information, and belief.

Dated this ..... day of ....., 20..... .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective June 1, 2006; as amended; effective January 3, 2012.]

Form 14. Certificate of No Transcript Request

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....
v. }
C. D., Respondent }

CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED

Notice is hereby given that appellant A.B. is not requesting the preparation of transcripts for this appeal.

Dated this …… day of ……, 20…… .

.....
(Signature of Attorney)
.....

(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective July 1, 2009.]

Form 15. Notice of Completion and Delivery of Transcript

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant } No.....
v. }
C. D., Respondent }

NOTICE OF COMPLETION AND DELIVERY OF TRANSCRIPT(S)

Name of court reporter/recorder filing this notice:

Specific transcripts that were prepared in response to a transcript request form filed in this appeal:

On the ……. day of ……., 20……., I filed the original transcript(s) listed above in the district court.

On the ……. day of ……., 20……., I delivered copies of the transcript(s) listed above to the following (indicate name and address at which the transcripts were served and indicate number of copies delivered to each):

Dated this …… day of ……, 20…… .

(Signature of Court Reporter/Recorder)

(Address)

(Telephone Number)

[Added; effective July 1, 2009.]

Form 16. Certificate of Compliance Pursuant to Rules 40 and 40A

1. I hereby certify that this petition for rehearing/reconsideration or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[ ] It has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*]; or

[ ] It has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40 or 40A because it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

Dated this ..... day of ....., 20..... .

.....
(Signature of Attorney)
.....
(Nevada Bar Identification No.)
.....
(Law Firm)
.....
(Address)
.....
(Telephone Number)

[Added; effective January 3, 2012.]

Form 17. Pro Se Request for Transcript of District Court Hearing or Trial

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B., Appellant	}	No. .....
v.	}	
C. D., Respondent	}	

TO: .....
Court Reporter Name

……. requests preparation of a transcript of the proceedings before the district court, as follows:

Judge or officer hearing the trial or hearing: .....

Date(s) of trial or hearing: .....
.....

Portions of the transcript requested: .....
.....
.....

Number of copies required: ……

.....
Name of person requesting transcripts
.....
Address
.....
City/State/Zip
.....
Telephone number

CERTIFICATION

I certify that on this date I ordered these transcripts from the court reporter(s) named above by mailing or delivering this form to the court reporter(s) and I paid the required deposit.

.....
Signature

.....
Date

CERTIFICATION

I certify that on the date indicated below, I served a copy of this completed transcript request form upon the court reporter(s) and all parties to the appeal:

☐ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served by mail):

DATED this ……. day of …….., 20…...

.....
Signature
.....
Print Name
.....
Address
.....
City/State/Zip
.....
Telephone number

Las Vegas Defense Group Useful Outline

Appeal of Nevada Criminal Convictions (NRS 177) Explained by Las Vegas Appellate Attorneys

You or a loved one went to trial in Nevada. The judge or jury rendered a "guilty" verdict. The court imposed a long prison sentence. Is this the end of the story? Not necessarily.

In the article below, our Nevada criminal appeals lawyers explain the process of appealing a conviction...including where to file your appeal, deadlines, grounds for appeal and chances of success.

What is an appeal in Nevada criminal law?

An appeal is when a person who is found guilty of a crime, and subsequently requests a higher court to review the case. For example, if John is convicted of the Las Vegas crime of arson in Clark County District Court, he may then appeal to the Nevada Court of Appeals or Nevada Supreme Court. (See our articles on the Nevada Supreme Court in Las Vegas and the Nevada Supreme Court in Carson City.)

A defendant may appeal a criminal conviction for any number of reasons including:

- the trial was unfair, and/or
- the guilty verdict was wrong, and/or
- the sentence was excessive

If the appellate court determines that the trial court's verdict was indeed wrong, they may "overturn" the judgment and acquit the defendant. Or if they decide that the trial was unfair or that the sentence was excessive, the appellate court may order a new trial or a new sentencing hearing back in the trial court.

But if the appellate court finds that the trial court acted properly, the appellate court will "affirm" the judgment and the conviction stands.

Is an appeal like a new trial?

No, a criminal appeal in Nevada is simply a review of your trial. The appellate court looks only at the records and the transcripts of what occurred in trial court. Your attorney may not introduce new evidence or testimony during oral arguments or in your appellate brief (the document explaining to the court why you should win an appeal). For information about motions for a new trial in Nevada, go to our article motions for a new trial in Nevada.

Are appeals the only way to challenge a criminal conviction?

No, there are various post-trial motions your Nevada criminal appeals attorney can file with the trial court requesting that they change its verdict or order a new trial. However, judges rarely overrule themselves, so appeals are usually the best bet to attempt to overturn a conviction.

Which court do I appeal to in Nevada?

It depends on which court presided over your trial.

If you were tried in a justice court or a municipal court (which means the charge was for only a misdemeanor in Nevada), then you may appeal to the district court in your county. For example, if you want to appeal a Nevada DUI conviction you got in Las Vegas Justice Court, then you may appeal to Clark County District Court.

But if you were tried in a county district court (which means the charge was for either a felony in Nevada or a gross misdemeanor in Nevada), then you may appeal to the Nevada Supreme Court. If that appeal is unsuccessful you *can* petition the matter further...all the way to the Supreme Court of the United States. But they hear very few cases and chances are they will not entertain your appeal. For more information on felony appeals in Nevada, read our article on felony appeals in Nevada.

Finally, if your case was in federal court (the United States District Court - District of Nevada), then your attorney may appeal to the Ninth Circuit Court of Appeals. Failing that, your final resort is the Supreme Court of the United States, though, again, chances are slim they will hear your case. For information about Nevada federal appeals, go to our article Nevada federal appeals law.

How long do I have to appeal my conviction in Nevada?

It depends which court your criminal case was in: If your trial was in district court, your lawyer has thirty (30) days from the date you were convicted to commence the appeals process. If your case was in justice court or federal district court, then you have only ten (10) days.

If you are convicted of a crime and you wish to appeal, you must seek counsel as soon as possible. *If you miss your deadline to appeal, you lose the right to appeal!*

Top

How does the appeals process work in Nevada criminal cases?

Step One:

The first step is for your Nevada criminal appeals attorney to file what is called a "notice of appeal" with the court in which your trial took place. This must be done before the deadline has passed (refer to the previous question for time limits).

Just like it sounds, the notice of appeal is a short document informing the Nevada court that you are planning to appeal your case. It also contains a "case appeal statement" where your lawyer briefly explains to the court your "grounds of appeal," which are the reasons you are appealing.

Step Two:

Once the notice of appeal is submitted, the trial court will file your trial's "record" (the transcripts) with the appellate court. At that point, your attorney usually has 120 days to review the record and compose an "appellate brief," which is a lengthy document citing laws and past cases in support of your position and arguing to the court why you should win on appeal.

After your Nevada criminal appeals attorney submits the appellate brief, the state's lawyer (called the "district attorney") will file "an opposition" challenging your arguments. In some cases your attorney may be allowed to submit a "reply brief" in response to the opposition.

Step Three:

Depending on the case, your appeals lawyer may be allowed to give an "oral argument" in front of the appellate judges to supplement the brief. The last step is that the judges in the appellate court will review the briefs and oral arguments (if any) and deliver a decision in the form of a written opinion.

What are grounds of appeal in Nevada criminal cases?

Grounds of appeal are all legal or factual errors that may have happened in the course of your trial and that could have influenced your case's verdict and denied your Constitutional right to a fair trial. When appealing your case, your attorney will argue that you have one or more grounds of appeal and that you therefore should have your guilty verdict reversed or vacated.

Typical grounds of appeal in Las Vegas include:

- prosecutorial misconduct in Nevada (such as the D.A. withholding "exculpatory" evidence that could have helped your defense)
- judicial errors (such as the judge permitting evidence that should have been excluded or vice versa, or the judge refusing to sever a case with multiple charges or co-defendants when the Nevada joinder was prejudicial to the defendant)
- erroneous application of a law or regulation

- improper jury instructions
- the evidence did not prove your guilt *beyond a reasonable doubt*

How long does the appeals process take in Nevada criminal cases?

All appeals in Nevada are automatically "fast-tracked" *unless* you were sentenced to life in prison or you specifically request a full-length appeal. Fast track appeals are typically decided within only three months; otherwise, an appeal can take over a year.

The downside of fast-track appeals is that your "appellate brief" is limited to only ten pages and your attorney usually may not give an oral argument in front of the judges. However, the court may ask your attorney for a longer brief if they believe your grounds of appeal warrant a more in-depth review.

Can I appeal my guilty plea in Nevada?

Yes. But note that these kinds of appeals are often unsuccessful because judges are less sympathetic to defendants who admitted their guilt via a plea than to defendants who always maintained their innocence and were then convicted by a jury. However, appealing a guilty plea is still an avenue worth exploring especially if the only reason you took the plea was because of bad advice by a lawyer or if you were mentally incompetent at the time. For information about withdrawing a guilty plea in Nevada, go to our article on withdrawing a guilty plea in Nevada.

What can I do if I lose my appeal in Nevada?

If you lose your appeal in the Nevada Supreme Court and remain incarcerated, you have one (1) year to file a "writ of habeas corpus." It allows a defendant to challenge their conviction and imprisonment by raising errors that occurred during the trial.

As opposed to appeals, writs of habeas corpus may introduce new evidence not raised at trial. But as with appeals, do not attempt to file a writ of habeas corpus on your own without a lawyer . . . if you make a mistake, your writ may get dismissed and you may not be allowed to file another.

Convicted? Call us to appeal . . . .

If after reading this you would like our Nevada criminal appeals attorneys to look into appealing your case, call us at 702-DEFENSE (702-333-3673) to schedule a free consultation today. We may be able to get you a new trial or your conviction reversed.

For more information also refer to our articles on: Clark County District Court; Las Vegas crime of arson; misdemeanor in Nevada; Nevada DUI; felony in Nevada; gross misdemeanor in Nevada; and appealing California criminal convictions.

- To learn about the appeals process in California, visit our page on appealing California criminal convictions.

9) Appeals in Las Vegas, Nevada

Defendants who are found guilty of a crime at trial have the right to appeal to a higher court. For instance, a case in Clark County District Court may be appealed to the Nevada Supreme Court. But the process is very confusing and complicated, so defendants need counsel to ensure they follow the procedural rules.

Appeals are not the only options defendants have after being convicted at trial. They can also file a motion for a new trial. And if they are in prison defendants can file a writ of habeas corpus protesting their incarceration. Read more about the appeals process at our page on how to appeal a Nevada criminal conviction.

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3. Habeas Corpus

Petitions for a Writ of “Habeas Corpus” in Las Vegas, Nevada

A writ of habeas corpus is a court order requiring a hearing to establish whether there is a constitutional basis for confining you following an arrest or conviction. If granted, the court will hold a hearing to determine whether your confinement or sentence is legal. If you prevail at the hearing, you will go free.

In Nevada, you can petition for a writ of habeas corpus if:

- You are still in the custody of the legal system; and
- You have no other avenue to challenge your criminal conviction (such as an appeal), or
- You wish to challenge the constitutionality of your conditions of incarceration.

Habeas corpus is not the same as a regular criminal appeal. You cannot use it to go free simply because the jury reached the wrong verdict. A write of habeas corpus is considered "extraordinary relief." It is granted when you can no longer appeal but there was something that made your conviction or sentence inherently unfair -- for instance:

- A prosecutor introduced false evidence;
- Your trial lawyer or appellate lawyer was incompetent;
- The United States Supreme Court has recognized a new constitutional right and made it apply retroactively; or
- New evidence has come to light (such as someone else confessing to the crime for which you were convicted).

The percentage of habeas petitions granted in Nevada is very low. Habeas corpus is most often granted in death penalty cases and in federal (rather than Nevada) court.

Many prisoners file habeas petitions on their own. However, you can improve your chances greatly by hiring a lawyer with significant habeas corpus experience.

To help you better understand habeas corpus petitions in Nevada, our Las Vegas criminal defense lawyers answer the following, below:

1. What is habeas corpus?

"Habeas corpus" is a Latin phrase meaning "you shall have the body." The "body" in the phrase means the body of someone who is in custody because they have been arrested or convicted of a crime.

The foundation for the right of habeas corpus originates in the due process clause of the 14th amendment to the United States Constitution. Section 1 of the 14th amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law..."

Accordingly, if a person's imprisonment does not conform with fundamental constitutional requirements, courts are charged with ordering the person to be released from custody immediately.[1]

Nearly 200 petitions for habeas corpus were filed in Nevada's state and federal courts in the year 2000 (the most recent year for which statistics are available). Of those, eight involved application of the death penalty.

Other common reasons for habeas corpus petitions in Nevada include ineffective assistance of counsel, trial court errors, due process violations and violation of the constitutional right against self-incrimination.[2]

2. Who can petition for habeas corpus in Nevada?

You may file for habeas corpus if you believe:

- Your detention by the justice system was unlawful;[3] or
- Your conviction violated your constitutional rights;[4] or
- Your sentence was improperly computed.[5]

Two basic conditions must be met, however, before you can file for habeas review:

- You must be in custody when your petition is filed, and
- You must have been denied on appeal, or the time for appealing your conviction has expired.[6]

2.1. The legal meaning of "in custody"

You can seek habeas corpus in Nevada only if you are in custody or your liberty is otherwise restrained.[7] This means you can file a petition if:

- You are currently in jail, prison or juvenile detention;
- You are under house arrest;
- You are on parole or probation (both of which involve restrictions on liberty);
- Your sentence has been suspended while you complete counseling or other conditions; or
- You are out on bail or released on your own recognizance while charges are pending.

2.2. Can I petition for habeas corpus if I am here illegally or on a green card?

Aliens subject to removal from the United States may file for a writ of habeas corpus, including on the grounds of being detained by U.S. Department of Homeland Security Immigration and Customs Enforcement (ICE) beyond the 90-day removal period.[8]

Both legal and undocumented immigrants can seek a writ of habeas corpus in Nevada.

3. What are the grounds for habeas corpus in Nevada?

Section 34.500 of the Nevada Revised Statutes (NRS 34.500) sets forth nine basic conditions under which a Nevada petition for habeas corpus may be granted:

1. When the jurisdiction of the court or officer has been exceeded.
2. When the imprisonment was at first lawful, yet by some act, omission or event, which has taken place afterwards, the petitioner has become entitled to be discharged.
3. When the process is defective in some matter of substance required by law, rendering it void.
4. When the process, though proper in form, has been issued in a case not allowed by law.
5. When the person having the custody of the petitioner is not the person allowed by law to detain the petitioner.
6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.
7. Where the petitioner has been committed or indicted on a criminal charge, including a misdemeanor, except misdemeanor violations of [traffic laws] without reasonable or probable cause.
8. Where the petitioner has been committed or indicted on any criminal charge under a statute or ordinance that is unconstitutional, or if constitutional on its face is unconstitutional in its application.
9. Where the court finds that there has been a specific denial of the petitioner's constitutional rights with respect to the petitioner's conviction or sentence in a criminal case.
   You may also file a petition for a writ of habeas corpus if you have been wrongfully denied bail before conviction.[9]

4. How long do I have to file for habeas corpus?

Unless there is good cause shown for delay, you must challenge the validity of your judgment or sentence within 1 year after:

- Entry of the judgment of conviction or,

- If you appealed your conviction, the date on which the disposition of the appeal became final or the right to appeal expired.[10]
  For the purposes of this subsection, good cause for delay exists if you can demonstrate to the satisfaction of the court that:

- The delay was not your fault; and

- Dismissal of the petition as untimely will unduly prejudice you.[11]
  Reasons the delay might not be your fault include:

- You were prevented from timely filing for habeas corpus by a wrongful action of the state of Nevada;

- The Supreme Court recognized a new constitutional right and made it retroactively applicable to cases on collateral review; or

- New facts have arisen that you could not have discovered earlier through the exercise of due diligence (for instance, someone unknown to you has recently confessed to the crime for which you were convicted).[12]

5. What is the procedure for filing for habeus corpus in Nevada?

You can petition for a writ of habeas corpus yourself or your Nevada criminal defense attorney can do it for you.

Your petition must specify:

- The fact that you are imprisoned or restrained of your liberty,

- The place where you are confined,

- The officer(s) or other person(s) who has /have confined or restrained you, by name, if known, or else by description,

- If the basis for your petition is illegal restraint or detention, the facts which support your contention, and

- If your petition requests relief from a criminal judgment of conviction or sentence, an identification of the proceedings in which you were convicted, including:
- The date of entry of the final judgment,

- Any previous proceeding initiated by you in state or federal court to secure relief from your conviction or sentence,

- Which of your constitutional rights you believe were violated, and

- The acts constituting violations of those rights.

Your petition should be accompanied by affidavits, records or other evidence supporting the allegations or an explanation of why you have failed to attach such materials. An argument, citations and other supporting documents are not necessary.[13]

You can find the form for petitioning for habeas corpus in Nevada courts at NRS 34.735. Petitions not conforming to NRS 34.735 may be rejected.

Once your petition is complete, the original and one copy must be filed with the clerk of the Nevada district court for the county in which you were convicted. One copy must be mailed to the respondent (the person unlawfully detaining you), one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence.[14]

As soon as you have done all of the above, things will proceed quickly. Judges are required by Nevada law to examine petitions for habeas corpus expeditiously.[15]

If the petition challenges the validity of a judgment of conviction or sentence and if this is the first petition you have filed, the judge or justice shall order the district attorney or the Attorney General (as appropriate) to review and respond, usually within 45 days.[16]

The judge will then review all the documents and determine whether an evidentiary hearing is required.[17]If the judge determines that there is possible merit in your petition, he or she will grant the writ and set a date for the hearing.[18]

Otherwise, the judge will dismiss your petition without a hearing (summary dismissal).[19]

Reasons for dismissal of a habeas corpus petition often include:

- The original conviction was based on a plea of guilty, or guilty but mentally ill, and there is no allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel; or
- The conviction was the result of a trial and the grounds for the petition could have been:
- Presented at trial;
- Raised in a direct appeal or a prior petition for a writ of habeas corpus or other post-conviction relief; or
- Raised in any other proceeding you have taken to secure relief from your conviction and sentence.[20]
  In other words, habeas corpus will not be granted if you could have (but did not) raise the issues that form the basis of your habeas corpus petition in another proceeding.

However, you may still prevail if the court finds both:

1. Reasonable cause for your failure to present such grounds (such as ineffective counsel), and
2. Actual prejudice to you.

6. Can I appeal a denial of habeas corpus or petition again?

You have the right to appeal the judge's decision if it goes against you.[21]

You may also file a second or successive petition for habeas corpus, but only if:

- It alleges new or different grounds for relief, *and*
- You can show good cause for your failure to present the claim earlier; *and*
- You will suffer actual prejudice if the petition is not granted.
  Your new petition must disclose all prior proceedings in which you challenged the same conviction or sentence; otherwise, the court will dismiss it.

7. What if I cannot afford a lawyer?

If it is a death penalty case and this is your first petition for habeas corpus, the court will appoint a Nevada public defender for you. Otherwise, you must allege in your petition that you are unable to pay the costs of the proceedings or to employ a Nevada criminal defense attorney.

If the judge agrees that you are indigent and your petition is not dismissed summarily, the court may appoint public counsel to represent you. In making its determination, the court may consider, among other things, the severity of the consequences facing you and whether:

- The issues presented are difficult;
- You are unable to comprehend the proceedings; or
- Counsel is necessary to proceed with discovery.[22]

8. What happens if I prevail at my hearing?

If the judge finds that there is no legal cause for your imprisonment or restraint, you will immediately be released from custody.[23]

You cannot thereafter be imprisoned, restrained or kept in custody for the same cause, unless you are subsequently lawfully arrested or committed for the same offense by legal order or process.[24]

9. Special habeas corpus procedures in Nevada death penalty cases

If you have been sentenced to the death penalty and the petition for habeas corpus is the first one challenging the validity of your conviction or sentence, the court will:

- Appoint counsel to represent you if you do not already have a lawyer; and
- Stay execution of the judgment pending disposition of your petition and appeal.[25] If your execution has been scheduled, your petition must include the date for which your execution is scheduled.

Your petition must also state why the issues of fact you are alleging were not determined in prior hearings and why such hearings were inadequate. You can find a full list of the required disclosures in death penalty cases in NRS 34.820.

Note that in order to get a stay of execution, you must:

- Actually file a petition for habeas corpus; and

CHAPTER 177 - APPEALS AND REMEDIES AFTER CONVICTION

APPEALS: WHEN ALLOWED, HOW TAKEN AND EFFECT THEREOF

NRS 177.015	**Appeals to district court, court of appeals and Supreme Court.**
NRS 177.025	**Appeal to court of appeals or Supreme Court taken on questions of law alone.**
NRS 177.035	**Designation of parties on appeal.**
NRS 177.045	**Intermediate order or proceeding may be reviewed on appeal.**
NRS 177.055	**Automatic appeal in certain cases; mandatory review of death sentence by court of appeals or Supreme Court.**
NRS 177.075	**Appeal to court of appeals or Supreme Court: Notice.**
NRS 177.085	**Effect of appeal by State.**
NRS 177.095	**Stay of execution upon sentence of death.**
NRS 177.105	**Stay of execution upon sentence of imprisonment.**
NRS 177.115	**Stay of execution upon fine.**
NRS 177.125	**Stay of probation.**
NRS 177.135	**Admission to bail upon appeal.**
NRS 177.145	**Application for relief pending review.**
NRS 177.155	**Supervision of appeal.**
NRS 177.165	**Preparation of record and papers on appeal.**

DISMISSAL OR ARGUMENT OF APPEAL

JUDGMENT UPON APPEAL

APPEALS: WHEN ALLOWED, HOW TAKEN AND EFFECT THEREOF

NRS 177.015 Appeals to district court, court of appeals and Supreme Court. The party aggrieved in a criminal action may appeal only as follows:

1. Whether that party is the State or the defendant:

(a) To the district court of the county from a final judgment of the justice court.

(b) To the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from an order of the district court granting a motion to dismiss, a motion for acquittal or a motion in arrest of judgment, or granting or refusing a new trial.

(c) To the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from a determination of the district court about whether a defendant is intellectually disabled that is made as a result of a hearing held pursuant to NRS 174.098. If the appellate court of competent jurisdiction entertains the appeal, it shall enter an order staying the criminal proceedings against the defendant for such time as may be required.

2. The State may, upon good cause shown, appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from a pretrial order of the district court granting or denying a motion to suppress evidence made pursuant to NRS 174.125. Notice of the appeal must be filed with the clerk of the district court within 2 judicial days and with the Clerk of the Supreme Court within 5 judicial days after the ruling by the district court. The clerk of the district court shall notify counsel for the defendant or, in the case of a defendant without counsel, the defendant within 2 judicial days after the filing of the notice of appeal. The appellate court of competent jurisdiction may establish such procedures as it determines proper in requiring the appellant to make a preliminary showing of the propriety of the appeal and whether there may be a miscarriage of justice if the appeal is not entertained. If the appellate court of competent jurisdiction entertains the appeal, or if it otherwise appears necessary, it may enter an order staying the trial for such time as may be required.

3. The defendant only may appeal from a final judgment or verdict in a criminal case.

4. Except as otherwise provided in subsection 3 of NRS 174.035, the defendant in a criminal case shall not appeal a final judgment or verdict resulting from a plea of guilty, guilty but mentally ill or nolo contendere that the defendant entered into voluntarily and with a full understanding of the nature of the charge and the consequences of the plea, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings. The appellate court of competent jurisdiction may establish procedures to require the defendant to make a preliminary showing of the propriety of the appeal.

(Added to NRS by 1967, 1443; A 1971, 1450; 1973, 1489; 1981, 1705; 1991, 652; 1995, 1535; 1997, 645; 2003, 769, 1468; 2007, 1422; 2013, 687, 1758)

NRS 177.025 Appeal to court of appeals or Supreme Court taken on questions of law alone. The appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the district court can be taken on questions of law alone.

(Added to NRS by 1967, 1444; A 2013, 1759)

NRS 177.035 Designation of parties on appeal. The party appealing shall be known as the appellant, and the adverse party as the respondent, but the title of the action is not changed by reason of the appeal.

(Added to NRS by 1967, 1444)

NRS 177.045 Intermediate order or proceeding may be reviewed on appeal. Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.

(Added to NRS by 1967, 1444)

NRS 177.055 Automatic appeal in certain cases; mandatory review of death sentence by court of appeals or Supreme Court.

1. When upon a plea of not guilty or not guilty by reason of insanity a judgment of death is entered, an appeal is deemed automatically taken by the defendant without any action by the defendant or the defendant's counsel, unless the defendant or the defendant's counsel affirmatively waives the appeal within 30 days after the rendition of the judgment.

2. Whether or not the defendant or the defendant's counsel affirmatively waives the appeal, the sentence must be reviewed on the record by the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, which shall consider, in a single proceeding, if an appeal is taken:

(a) Any errors enumerated by way of appeal;

(b) If a court determined that the defendant is not intellectually disabled during a hearing held pursuant to NRS 174.098, whether that determination was correct;

(c) Whether the evidence supports the finding of an aggravating circumstance or circumstances;

(d) Whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor; and

(e) Whether the sentence of death is excessive, considering both the crime and the defendant.

3. The appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, when reviewing a death sentence, may:

(a) Affirm the sentence of death;

(b) Set the sentence aside and remand the case for a new penalty hearing before a newly impaneled jury; or

(c) Set aside the sentence of death and impose the sentence of imprisonment for life without possibility of parole.

(Added to NRS by 1967, 1444; A 1977, 1545; 1985, 1597; 1995, 2456; 2003, 770, 1468, 2084; 2013, 688, 1759)

NRS 177.075 Appeal to court of appeals or Supreme Court: Notice.

1. Except where appeal is automatic, an appeal from a district court to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution is taken by filing a notice of appeal with the clerk of the district court. Bills of exception and assignments of error in cases governed by this chapter are abolished.

2. When a court imposes sentence upon a defendant who has not pleaded guilty or guilty but mentally ill and who is without counsel, the court shall advise the defendant of the right to appeal, and if the defendant so requests, the clerk shall prepare and file forthwith a notice of appeal on the defendant's behalf.

3. A notice of appeal must be signed:

(a) By the appellant or appellant's attorney; or

(b) By the clerk if prepared by the clerk.

(Added to NRS by 1967, 1444; A 1971, 149; 1985, 62; 1995, 2457; 2003, 1469; 2007, 1423; 2013, 1760)

NRS 177.085 Effect of appeal by State.

1. An appeal taken by the State shall in no case stay or affect the operation of a judgment in favor of the defendant; but if the appeal by the State is from an order granting a motion to set aside an indictment or information, and upon such appeal the order is reversed, the defendant shall thereupon be liable to arrest and trial upon the indictment or information. In all such cases any statute of limitations on the offense from which the appeal is taken is tolled from the time the notice of appeal is filed by the State until such appeal is heard and a ruling made thereon.

2. If the appeal by the State is from an order allowing a motion in arrest of judgment, or granting a motion for a new trial, and upon appeal the order is reversed, the trial court shall enter judgment against the defendant.

(Added to NRS by 1967, 1444; A 1969, 106)

NRS 177.095 Stay of execution upon sentence of death. A sentence of death shall be stayed if an appeal is taken.

(Added to NRS by 1967, 1445)

NRS 177.105 Stay of execution upon sentence of imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail.

(Added to NRS by 1967, 1445)

NRS 177.115 Stay of execution upon fine. A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by a Justice Court, district court, the Court of Appeals or by the Supreme Court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the court appealed from, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating the defendant's assets.

(Added to NRS by 1967, 1445; A 2013, 1760)

NRS 177.125 Stay of probation. An order placing the defendant on probation may be stayed if an appeal is taken.

(Added to NRS by 1967, 1445)

NRS 177.135 Admission to bail upon appeal. Admission to bail upon appeal shall be as provided in this title.

(Added to NRS by 1967, 1445)

NRS 177.145 Application for relief pending review. If application is made to a district court, the Court of Appeals or a justice of the Supreme Court for bail pending appeal or for an extension of time for filing the record on appeal or for any other relief which might have been granted by the trial court, the application shall be upon notice and shall show that:

1. Application to the court below or a judge thereof is not practicable;
2. Application has been made and denied, with the reasons given for the denial; or
3. The action on the application did not afford the relief to which the applicant considers himself or herself to be entitled.

(Added to NRS by 1967, 1445; A 2013, 1760)

NRS 177.155 Supervision of appeal. The supervision and control of the proceedings on appeal shall be in the appellate court from the time the notice of appeal is filed with its clerk, except as otherwise provided in this title. The appellate court may at any time entertain a motion to dismiss the appeal, or for directions to the trial court, or to modify or vacate any order made by the trial court or by any judge or justice of the peace in relation to the prosecution of the appeal, including any order fixing or denying bail.

(Added to NRS by 1967, 1445)

NRS 177.165 Preparation of record and papers on appeal. All appeals from a district court to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution shall be heard on the original papers and the reporter's transcript of evidence or proceedings. The form and manner of preparation of the record and of other papers filed may be prescribed by the appellate court of competent jurisdiction, and to the extent not otherwise so prescribed shall conform to the practice in civil cases.

(Added to NRS by 1967, 1445; A 2013, 1760)

DISMISSAL OR ARGUMENT OF APPEAL

NRS 177.205 Dismissal by court of appeals or Supreme Court. The appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution may, on its own motion or on motion of the respondent, dismiss an appeal:

1. If the appeal is irregular in any substantial particular.

2. If the appellant has failed to comply with the requirements for docketing of the record on appeal or filing briefs, unless for good cause shown an extension is granted.

(Added to NRS by 1967, 1446; A 1985, 63; 2013, 1761)

NRS 177.215 Date for argument. Unless good cause is shown for an earlier hearing, the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution shall set the appeal for argument on a date not less than 30 days after the expiration of the time limited for filing briefs and as soon thereafter as the state of the calendar will permit. Preference shall be given to appeals in criminal cases over appeals in civil cases.

(Added to NRS by 1967, 1446; A 2013, 1761)

JUDGMENT UPON APPEAL

NRS 177.225 Judgment may be affirmed but cannot be reversed without argument. Judgment of affirmance may be granted without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, orally or upon written brief, though the respondent fail to appear.

(Added to NRS by 1967, 1446)

NRS 177.235 Number of counsel in argument on appeal. Upon the argument of the appeal, if the offense is punishable with death, two counsel shall be heard on each side, if they require it. In any other case the Court may, in its discretion, restrict the argument to one counsel on each side.

(Added to NRS by 1967, 1446)

NRS 177.245 Defendant need not be present. The defendant need not personally appear in the appellate court of competent jurisdiction.

(Added to NRS by 1967, 1446; A 2013, 1761)

NRS 177.255 Court to give judgment without regard to technical errors. After hearing the appeal, the Court shall give judgment without regard to technical error or defect which does not affect the substantial rights of the parties.

(Added to NRS by 1967, 1446)

NRS 177.265 Determination of appeal. The appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.

(Added to NRS by 1967, 1447; A 2013, 1761)

NRS 177.275 Defendant to be discharged on reversal without ordering new trial. If a judgment against the defendant is reversed, without ordering a new trial, the appellate court of competent jurisdiction shall direct, if the defendant is in custody, that the defendant be discharged therefrom, or if admitted to bail, that the defendant's bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

(Added to NRS by 1967, 1447; A 2013, 1761)

NRS 177.285 Judgment to be executed on affirmance. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the appellate court of competent jurisdiction shall direct.

(Added to NRS by 1967, 1447; A 2013, 1761)

NRS 177.305 Jurisdiction of court of appeals or Supreme Court to cease after certificate of judgment remitted. After the certificate of judgment has been remitted, the appellate court of competent jurisdiction shall have no further jurisdiction of the appeal or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted.

(Added to NRS by 1967, 1447; A 2013, 1761)

- Establish a compelling basis for the stay.
  It is not enough that you could have filed a petition because you are within the one-year period following entry of your judgment of conviction or appeal.

10. Federal writs of habeas corpus

You have the right to petition a federal court for habeas corpus if:

- Your Nevada petition for habeas corpus was denied, or
- You were convicted of a federal crime.
  Let's look at each of these scenarios separately.

10.1 Federal habeas corpus for Nevada state prisoners

U.S. law is strict on when a habeas corpus petition is permitted to challenge a state sentence.

In order to obtain federal habeas relief, you must be able to show that your conviction or custody violated either federal law or your constitutional rights. It is not enough that your conviction may have violated Nevada law.

Just as importantly, you will need to show that you have exhausted all remedies available in Nevada. Unlike Nevada law, which sometimes allows you to petition for habeas corpus even if you did not appeal your conviction, federal law requires that you have appealed to the Nevada courts at every possible opportunity.[26]The only exception is if you can show a valid reason why Nevada state remedies were not able to protect your rights.

Additionally, a federal court will not grant your petition unless:

- The Nevada courts made a mistake that actually prejudiced your rights, and
- The mistake was contrary to clearly established federal law, as determined by the Supreme Court of the United States (not by the 9th circuit court of appeals or any other federal court), or
- The mistakes were based on a completely unreasonable determination of the facts in light of the evidence.[27].
  Because this bar is so high, very few federal habeas petitions challenging state sentences are granted. Nevertheless, since federal courts are more likely than Nevada courts to grant habeas relief, it is often worth petitioning, especially in death penalty or serious felony cases.

Although Nevada has not executed anyone since April 2006, a petition for habeas corpus may be able to get you off of death row. And in the unlikely case that a date for

execution has been set, the federal court will stay the order while your habeas petitioning is proceeding.[28]

10.2. Habeas corpus for federal prisoners in Nevada

Habeas petitions for federal prisoners in Nevada must be filed in federal (not Nevada state) court.[29]

Federal prisoners must file their petitions for habeas corpus within one year of the latest of:

- The date on which their conviction became final,
- The date on which the Supreme Court recognized a new constitutional basis on which a conviction can be challenged, or
- The date on which new facts were discovered or could have been discovered through reasonable efforts.[30]

11. Can habeas corpus help deportable aliens stay in the U.S.?

Potentially. Aliens in Nevada who have been convicted of deportable crimes face removal from the U.S. However, they may be able to stay if they can get their convictions overturned or get their sentences significantly lowered so the conviction no longer qualifies as deportable...

Non-citizens who have pursued all over avenues of getting their convictions vacated may file a writ of habeas corpus petition as a last resort. Every case is different, but if the judge grants the habeas petition, the non-citizen should be released from custody and usually can stay in the U.S. Learn more about the criminal defense of immigrants in Nevada.

12. What are other forms of post-conviction relief in Nevada?

Habeas corpus petitions are a "last resort" for defendants seeking to get their convictions overturned or sentences commuted. Other forms of post-conviction relief in Nevada that defendants should attempt first (if applicable) are motion to withdraw a plea and motions for a new trial.

Motions to withdraw a plea

Defendants who entered a guilty plea may ask the court any time prior to sentencing to withdraw the plea so he/she can negotiate a better plea or go through with trial. Courts

are hesitant to grant a motion to withdraw a plea unless the defendant can show either of the following:

- Ineffective assistance of counsel,
- Ineffective assistance of translators,
- The plea was not made knowingly, voluntarily, or intelligently, or
- The defendant was not informed that probation may be available.
  Note that people may file for motions to withdraw a plea only prior to sentencing. Following sentencing, the defendant's only option for negating the plea is through a habeas corpus petition.[31]

Motion for a new trial

Defendants who were convicted at trial may ask the court to redo the trial if they believe they were deprived of their right to a fair trial. Courts are very reluctant to grant motions for a new trial unless the defendant can prove they were prejudiced by either:

- Ineffective assistance of counsel,
- Prosecutorial misconduct,
- Judicial error, jury misconduct,
- Perjury, or
- Various evidentiary issues.
  Motions for new trial must be made within seven (7) days after the verdict unless there is newly discovered evidence, which pushes the deadline to two (2) years past the verdict.[32] Learn more about post-conviction relief in Nevada.[33]

Commutation of sentence

People convicted of Nevada crimes can apply to the Nevada Pardons Board for a reduced sentence. Not everyone is eligible for a shortened ("commuted") sentence, though. Learn more in our article on how to commute a sentence in Nevada.

Wrongfully convicted in Nevada? Call us for help…

If you or someone you know is interested in filing a petition for habeas corpus relief in Nevada, we invite you to contact us for a free consultation.

A writ of habeas corpus is an extraordinary remedy that is difficult to obtain. But sometimes it is the only hope for regaining your freedom.

Our caring Las Vegas and Reno defense lawyers are experienced at crafting compelling habeas corpus petitions. We will carefully review your case, interview witnesses and find out what your trial and/or appellate lawyer may have missed. Then we will fight to secure your freedom.

To schedule your free consultation, call us at 7**02-DEFENSE (702-333-3673)** or complete the form on this page. One of our experienced criminal defense lawyers will get back to you promptly to discuss the best approach to your federal or Nevada habeas corpus petition.

If you were convicted in California, please see our article on Petitioning for a Writ of Habeas Corpus in California.

Legal references:

1. See 28 U.S. Code 2241, 2254 and 2255.
2. Federal Habeas Corpus Review, Bureau of Justice Statistics Discussion Paper, NCJ 155504, September 1995.
3. Nevada Revised Statutes (NRS) 34.360.
4. NRS 34.724.
5. Same.
6. NRS 34.726.
7. NRS 34.370.
8. Calcano-Martinez v. INS 533 U.S. 348 (2001); Zadvydas v. Davis 533 U.S. 678 (2001); Clark v. Martinez 543 U.S. 371 (2005).
9. NRS 34.530.
10. NRS 34.726.
11. Same.
12. See 28 U.S. Code 2244.
13. NRS 34.370.

14. NRS 34.735 (7).
15. NRS 34.740.
16. NRS 34.745.
17. NRS 34.770 (1).
18. NRS 34.770 (3).
19. NRS 34.770 (2).
20. NRS 34.810.
21. NRS 34.575.
22. NRS 34.750.
23. NRS 34.480.
24. NRS 34.590.
25. NRS 34.820 (1).
26. 28 U.S. Code 2254(b)(1).
27. 28 U.S. Code 2254(d).
28. 28 U.S. Code 2251.
29. 28 U.S. Code 2255.
30. Same.
31. NRS 176.165.
32. NRS 176.175.
33. NRS 213.020.

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CHAPTER 34 - WRITS: CERTIORARI; MANDAMUS; PROHIBITION; HABEAS CORPUS

CERTIORARI

MANDAMUS

PROHIBITION

HABEAS CORPUS

General Provisions

Petitions for Pretrial Relief

Petitions for Postconviction Relief

CERTIORARI

NRS 34.010 Writ of certiorari denominated writ of review. The writ of certiorari may be denominated the writ of review.

[1911 CPA § 741; RL § 5683; NCL § 9230]

NRS 34.020 Writ may be granted by appellate and district courts; when writ may issue.

1. This writ may be granted, on application, by the Supreme Court, the Court of Appeals, a district court, or a judge of the district court. When the writ is issued by the district court or a judge of the district court it shall be made returnable before the district court.

2. The writ shall be granted in all cases when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.

3. In any case prosecuted for the violation of a statute or municipal ordinance wherein an appeal has been taken from a Justice Court or from a municipal court, and wherein the district court has passed upon the constitutionality or validity of such statute or ordinance, the writ shall be granted by the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution upon application of the State or municipality or defendant, for the purpose of reviewing the constitutionality or validity of such statute or ordinance, but in no case shall the defendant be tried again for the same offense.

[1911 CPA § 742; A 1939, 114; 1931 NCL § 9231] — (NRS A 2013, 1733)

NRS 34.030 Application for writ made on affidavit; notice to adverse party may be required. The application shall be made on affidavit by the party beneficially interested, and the court or judge to whom the application is made may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without further notice.

[1911 CPA § 743; RL § 5685; NCL § 9232]

NRS 34.040 Writ may be directed to inferior tribunal, board or officer. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

[1911 CPA § 744; RL § 5686; NCL § 9233]

NRS 34.050 Court may order return and hearing at any time. The writ of certiorari may, in the discretion of the court or judge issuing the writ, be made returnable and a hearing thereon be had at any time.

[Part 1911 CPA § 769; RL § 5711; NCL § 9258]

NRS 34.060 Contents of writ. The writ of review shall command the party to whom it is directed to certify fully to the court before which the writ is returnable, at a specified time and place, and annex to the writ a transcript of the record and proceeding, describing or referring to them with convenient certainty, that the same may be reviewed by the court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

[1911 CPA § 745; RL § 5687; NCL § 9234]

NRS 34.070 Suspension of proceedings in inferior courts. If a stay of proceedings be not intended the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted in the sound discretion

of the court or the judge issuing the writ, but if omitted, the power of the inferior court or officer shall not be suspended nor the proceedings stayed.

[1911 CPA § 746; RL § 5688; NCL § 9235]

NRS 34.080 Service of writ. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court or judge issuing the writ.

[1911 CPA § 747; RL § 5689; NCL § 9236]

NRS 34.090 Extent of review. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board or officer has regularly pursued the authority of such tribunal, board or officer.

[1911 CPA § 748; RL § 5690; NCL § 9237]

NRS 34.100 Perfection of defective return; hearing and judgment. If the return to the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below.

[1911 CPA § 749; RL § 5691; NCL § 9238]

NRS 34.110 Copy of judgment to be transmitted to inferior tribunal, board or officer. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified up.

[1911 CPA § 750; RL § 5692; NCL § 9239]

NRS 34.120 Judgment roll; appeal from judgment. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceedings be had in any other than the Supreme Court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

[1911 CPA § 751; RL § 5693; NCL § 9240]

NRS 34.130 Rules of practice in certiorari proceedings. Except as otherwise provided in NRS 34.010 to 34.120, inclusive, the provisions of NRS and Nevada Rules of Civil Procedure relative to civil actions in the district court are applicable to and constitute the rules of practice in the proceedings mentioned in NRS 34.010 to 34.120, inclusive.

[Part 1911 CPA § 770; RL § 5712; NCL § 9259]

NRS 34.140 Procedure in new trials and appeals in certiorari proceedings. The provisions of the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to new trials in, and appeals from, the district court, except so far as they are inconsistent with the provisions of NRS 34.010 to 34.120, inclusive, apply to the proceedings mentioned in NRS 34.010 to 34.120, inclusive.

[Part 1911 CPA § 771; RL § 5713; NCL § 9260]

MANDAMUS

NRS 34.150 Writ of mandamus denominated writ of mandate. The writ of mandamus may be denominated the writ of mandate.

[1911 CPA § 752; RL § 5694; NCL § 9241]

NRS 34.160 Writ may be issued by appellate and district courts; when writ may issue. The writ may be issued by the Supreme Court, the Court of Appeals, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.

[1911 CPA § 753; RL § 5695; NCL § 9242] — (NRS A 2013, 1734)

NRS 34.170 Writ to issue when no plain, speedy and adequate remedy in law. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

[1911 CPA § 754; RL § 5696; NCL § 9243]

NRS 34.180 Writ may be made returnable; hearing. Except as otherwise provided in NRS 34.185, the writ of mandamus may, in the discretion of the court or judge issuing the writ, be made returnable and a hearing thereon be had at any time.

[Part 1911 CPA § 769; RL § 5711; NCL § 9258] — (NRS A 1999, 176)

NRS 34.185 Application alleging unconstitutional prior restraint; court required to render judgment on application not later than 30 days after application is filed.

1. If the applicant is alleging an unconstitutional prior restraint of the applicant's rights pursuant to the First Amendment to the Constitution of the United States or Section 9 of Article 1 of the Constitution of the State of Nevada, the applicant shall insert the words "First Amendment Petition" in the caption of the application for the writ in at least 10-point type.

2. The court shall render judgment on an application for a writ described in subsection 1 not later than 30 days after the date on which the application for the writ is filed.

(Added to NRS by 1999, 176)

NRS 34.190 Writ must be either alternative or peremptory; substance of writ.

1. The writ shall be either alternative or peremptory.

2. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why the party has not done so.

3. The peremptory writ shall be in a form similar to the alternative writ, except that the words requiring the party to show cause why the party has not done as commanded shall be omitted, and a return day shall be inserted.

[1911 CPA § 755; RL § 5697; NCL § 9244]

NRS 34.200 Issuance of alternative or peremptory writ; notice of application; case heard by court whether adverse party appears or not. When the application to the court or district judge is made without notice to the adverse party, and the writ is allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ is allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least 10 days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

[1911 CPA § 756; RL § 5698; NCL § 9245]

NRS 34.210 Adverse party may show cause by answer under oath. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the court or district judge issuing the writ may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

[1911 CPA § 757; RL § 5699; NCL § 9246]

NRS 34.220 If answer raises essential question of fact, court may order jury trial. If an answer is made, which raises a question as to matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for a writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for the applicant.

[1911 CPA § 758; RL § 5700; NCL § 9247]

NRS 34.230 Applicant may object to sufficiency of answer or countervail it by proof. On the trial, the applicant shall not be precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

[1911 CPA § 759; RL § 5701; NCL § 9248]

NRS 34.240 Motion for new trial and new trial. If either party is dissatisfied with the verdict of the jury, the party may, without a statement in support of the motion, move for a new trial upon the minutes of the court for any of the causes or grounds for new trials provided in Nevada Rules of Civil Procedure. The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried. If a new trial is granted, the jury shall, within 5 days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

[1911 CPA § 760; RL § 5702; NCL § 9249]

NRS 34.250 Clerk to transmit verdict to court where writ is pending, after which hearing may be had on application for writ. If no notice for a new trial be given or, if given, be denied, the clerk, within 5 days after the rendition of the verdict, or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

[1911 CPA § 761; RL § 5703; NCL § 9250]

NRS 34.260 Court may grant time for reply to answer; hearing by court. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in NRS 34.220, but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law or put in issue immaterial statements not affecting the substantial rights of the parties, the court shall proceed to hear or fix a day for hearing the argument of the case.

[1911 CPA § 762; RL § 5704; NCL § 9251]

NRS 34.270 Recovery of damages by applicant; execution may issue to enforce judgment. If judgment be given for the applicant, the applicant shall recover the damages which the applicant shall have sustained as found by the jury, or as may be determined by the court or master, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay.

[1911 CPA § 763; RL § 5705; NCL § 9252]

NRS 34.280 Service of writ.

1. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the order of the court or district judge issuing the writ.
2. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

[1911 CPA § 764; RL § 5706; NCL § 9253] + [Part 1911 CPA § 765; RL § 5707; NCL § 9254]

NRS 34.290 Penalties for refusal or neglect to obey writ; state and county officers.

1. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person, upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, after notice and hearing, adjudge the party guilty of contempt and upon motion impose a fine not exceeding $1,000.
2. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding 3 months and may make any orders necessary and proper for the complete enforcement of the writ.
3. If a fine be imposed upon a judge or officer who draws a salary from the State or county, a certified copy of the order shall be forwarded to the State Controller or county treasurer, as the case may be, and the amount thereof may be retained from the salary of such judge or officer. Such judge or officer for such willful disobedience shall also be deemed guilty of a misdemeanor in office.

[Part 1911 CPA § 765; RL § 5707; NCL § 9254]

NRS 34.300 Rules of practice in mandamus proceedings. Except as otherwise provided in NRS 34.150 to 34.290, inclusive, the provisions of NRS and Nevada Rules of Civil Procedure relative to civil actions in the district court are applicable to and constitute the rules of practice in the proceedings mentioned in NRS 34.150 to 34.290, inclusive.

[1911 CPA § 770; RL § 5712; NCL § 9259] — (NRS A 1999, 176)

NRS 34.310 Procedure in new trials and appeals in mandamus proceedings. The provisions of the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to new trials in, and appeals from,

the district court, except so far as they are inconsistent with the provisions of NRS 34.150 to 34.290, inclusive, apply to the proceedings mentioned in NRS 34.150 to 34.290, inclusive.

[1911 CPA § 771; RL § 5713; NCL § 9260]

PROHIBITION

NRS 34.320 Writ of prohibition defined. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

[1911 CPA § 766; RL § 5708; NCL § 9255]

NRS 34.330 Writ may be issued by appellate or district court when no plain, speedy and adequate remedy in law. The writ may be issued only by the Supreme Court, the Court of Appeals or a district court to an inferior tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

[1911 CPA § 767; RL § 5709; NCL § 9256] — (NRS A 2003, 1409; 2013, 1734)

NRS 34.340 Writ must be alternative or peremptory; form of writ.

1. The writ must be either alternative or peremptory.
2. The alternative writ must state generally the allegation against the party to whom it is directed and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter.
3. The peremptory writ must be in a form similar to the alternative writ, except that the words requiring the party to show cause why the party should not be absolutely restrained from any further proceedings in such action or matter, must be omitted and a return day inserted.

[1911 CPA § 768; RL § 5710; NCL § 9257]

NRS 34.350 Court may order return and hearing at any time. The writ of prohibition may, in the discretion of the court issuing the writ, be made returnable and a hearing thereon be had at any time.

[Part 1911 CPA § 769; RL § 5711; NCL § 9258]

HABEAS CORPUS

General Provisions

NRS 34.360 Persons who may prosecute writ. Every person unlawfully committed, detained, confined or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

[1:93:1862; B § 349; BH § 3671; C § 3744; RL § 6226; NCL § 11375] — (NRS A 1967, 1469; 1969, 106)

NRS 34.370 Application for writ; verification required; contents; supporting documents.

1. A petition for a writ of habeas corpus must be verified by the petitioner or the petitioner's counsel. If the petition is verified by counsel, counsel shall also verify that the petitioner personally authorized counsel to commence the action.
2. A verified petition for issuance of a writ of habeas corpus must specify that the petitioner is imprisoned or restrained of the petitioner's liberty, the officer or other person by whom the petitioner is confined or restrained, and the place where the petitioner is confined, naming all the parties if they are known, or describing them if they are not known.
3. If the petitioner claims that the imprisonment is illegal, the petitioner must state facts which show that the restraint or detention is illegal.
4. If the petition requests relief from a judgment of conviction or sentence in a criminal case, the petition must identify the proceedings in which the petitioner was convicted, give the date of entry of the final judgment and set forth which constitutional rights of the petitioner were violated and the acts constituting violations of those rights. Affidavits, records or other evidence supporting the allegations in the petition must be attached unless the petition recites the cause for failure to attach these materials. The petition must identify any previous proceeding in state or

federal court initiated by the petitioner to secure relief from the petitioner's conviction or sentence. Argument, citations and other supporting documents are unnecessary.

[2:93:1862; B § 350; BH § 3672; C § 3745; RL § 6227; NCL § 11376] — (NRS A 1985, 1233; 1987, 1215)

NRS 34.390 Judge to grant writ without delay; exceptions; effect of writ.

1. Any judge empowered to grant a writ of habeas corpus applied for pursuant to this chapter, if it appears that the writ ought to issue, shall grant the writ without delay, except as otherwise provided in NRS 34.720 to 34.830, inclusive.

2. A writ of habeas corpus does not entitle a petitioner to be discharged from the custody or restraint under which the petitioner is held. The writ requires only the production of the petitioner to determine the legality of the petitioner's custody or restraint.

[4:93:1862; B § 352; BH § 3674; C § 3746 1/2; RL § 6229; NCL § 11378] — (NRS A 1985, 1235; 1991, 77)

NRS 34.400 Contents of writ. The writ must be directed to the person who has the petitioner in custody or under restraint, commanding the person to have the body of the petitioner produced before the district court, Court of Appeals or Supreme Court at a time which the judge or justice directs.

[5:93:1862; B § 353; BH § 3675; C § 3747; RL § 6230; NCL § 11379] — (NRS A 1985, 1235; 2013, 1734)

NRS 34.410 Service of writ.

1. If the writ be directed to the sheriff or other ministerial officer, it shall be delivered to such officer without delay by the clerk of the court presided over by the judge issuing the writ.

2. If the writ be directed to any other person, it shall be delivered to the sheriff or the sheriff's deputy, and shall be served by the sheriff or the sheriff's deputy without delay upon such person by delivering the same to the person.

3. If the officer or person to whom the writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering the writ, it may be served or delivered by leaving it at the residence of the officer or person to whom it is directed or by affixing the same on some conspicuous place on the outside of the officer's or person's dwelling house, or of the place where the party is confined or under restraint.

4. Service of the writ is made by serving a copy and exhibiting the original, and where posting is required, by posting a copy.

[6:93:1862; B § 354; BH § 3676; C § 3748; RL § 6231; NCL § 11380] + [7:93:1862; B § 355; BH § 3677; C § 3749; RL § 6232; NCL § 11381] + [8:93:1862; B § 356; BH § 3678; C § 3750; RL § 6233; NCL § 11382]

NRS 34.420 Proceedings upon disobedience of writ. If the officer or person to whom such writ is directed refuse, after service, to obey the same, the judge shall, upon affidavit, issue an attachment against such person, directed to the sheriff, or, if the sheriff be the defendant, to an elisor, appointed for the purpose by the judge, commanding the sheriff or elisor forthwith to apprehend such person and bring the person immediately before such judge; and upon being so brought the person shall be committed to the jail of the county until the person makes due return to such writ, or be otherwise legally discharged.

[9:93:1862; B § 357; BH § 3679; C § 3751; RL § 6234; NCL § 11383]

NRS 34.430 Return and answer: Service and filing; contents; signature and verification.

1. Except as otherwise provided in subsection 1 of NRS 34.745, the respondent shall serve upon the petitioner and file with the court a return and an answer that must respond to the allegations of the petition within 45 days or a longer period fixed by the judge or justice.

2. The return must state plainly and unequivocally whether the respondent has the party in custody, or under the respondent's power or restraint. If the respondent has the petitioner in the respondent's custody or power, or under the respondent's restraint, the respondent shall state the authority and cause of the imprisonment or restraint, setting forth with specificity the basis for custody.

3. If the petitioner is detained by virtue of any judgment, writ, warrant or other written authority, a certified or exemplified copy must be annexed to the return.

4. If the respondent has the petitioner in the respondent's power or custody or under the respondent's restraint before or after the date of the writ of habeas corpus but has transferred custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority the transfer took place.

5. The return must be signed by the respondent and, unless the respondent is a sworn public officer who makes the return in the respondent's official capacity, verified under oath or affirmation.

[10:93:1862; B § 358; BH § 3680; C § 3752; RL § 6235; NCL § 11384] — (NRS A 1985, 1235; 1991, 77; 1999, 144)

NRS 34.440 Person served must bring body of person in custody; exceptions. If the writ of habeas corpus be served, the person or officer to whom the same is directed shall also bring the body of the party in the person's or officer's custody or under the person's or officer's restraint, according to the command of the writ, except in the cases specified in NRS 34.450.

[11:93:1862; B § 359; BH § 3681; C § 3753; RL § 6236; NCL § 11385]

NRS 34.450 Sickness or infirmity of party restrained; hearing may proceed or be adjourned.

1. Whenever, from sickness or infirmity of the party directed to be produced by any writ of habeas corpus, the party cannot, without danger, be brought before the judge, the officer or person in whose custody or power the party is may state that fact in the officer's or person's return to the writ, verifying the same by affidavit.

2. If the judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, the judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

[12:93:1862; B § 360; BH § 3682; C § 3754; RL § 6237; NCL § 11386] + [13:93:1862; B § 361; BH § 3683; C § 3755; RL § 6238; NCL § 11387]

NRS 34.470 Answer to return; summary proceeding; attendance of witnesses.

1. The petitioner brought before the judge on the return of the writ may deny or controvert any of the material facts or matters set forth in the return or answer, deny the sufficiency thereof, or allege any fact to show either that the petitioner's imprisonment or detention is unlawful or that the petitioner is entitled to discharge.

2. The judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against or in favor of such imprisonment or detention, and to dispose of the case as justice may require.

3. The judge may compel the attendance of witnesses by process of subpoena and attachment and perform all other acts necessary to a full and fair hearing and determination of the case.

[15:93:1862; B § 363; BH § 3685; C § 3757; RL § 6240; NCL § 11389] + [16:93:1862; B § 364; BH § 3686; C § 3758; RL § 6241; NCL § 11390] + [17:93:1862; B § 365; BH § 3687; C § 3759; RL § 6242; NCL § 11391] — (NRS A 1985, 1236)

NRS 34.480 If no legal cause shown, judge shall discharge person from custody. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such judge shall discharge such party from the custody or restraint under which the party is held.

[18:93:1862; B § 366; BH § 3688; C § 3760; RL § 6243; NCL § 11392]

NRS 34.500 Grounds for discharge in certain cases. If it appears on the return of the writ of habeas corpus that the petitioner is in custody by virtue of process from any court of this State, or judge or officer thereof, the petitioner may be discharged in any one of the following cases:

1. When the jurisdiction of the court or officer has been exceeded.

2. When the imprisonment was at first lawful, yet by some act, omission or event, which has taken place afterwards, the petitioner has become entitled to be discharged.

3. When the process is defective in some matter of substance required by law, rendering it void.

4. When the process, though proper in form, has been issued in a case not allowed by law.

5. When the person having the custody of the petitioner is not the person allowed by law to detain the petitioner.

6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

7. Where the petitioner has been committed or indicted on a criminal charge, including a misdemeanor, except misdemeanor violations of chapters 484A to 484E, inclusive, of NRS or any ordinance adopted by a city or county to regulate traffic, without reasonable or probable cause.

8. Where the petitioner has been committed or indicted on any criminal charge under a statute or ordinance that is unconstitutional, or if constitutional on its face is unconstitutional in its application.

9. Where the court finds that there has been a specific denial of the petitioner's constitutional rights with respect to the petitioner's conviction or sentence in a criminal case.

[20:93:1862; B § 368; BH § 3690; C § 3762; RL § 6245; NCL § 11394] — (NRS A 1967, 1469; 1971, 773; 1985, 1236)

NRS 34.510 Defect of form in warrant or commitment not ground for discharge. If any person be committed to prison, or be in custody of any officer on any criminal charge, by virtue of any warrant or commitment

of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the ground of any defect of form in such warrant or commitment.

[21:93:1862; B § 369; BH § 3691; C § 3763; RL § 6246; NCL § 11395]

NRS 34.520 If charge defectively set forth in process or warrant, judge shall examine witnesses and discharge or recommit person. If it shall appear to the judge, by affidavit, or upon hearing of the matter, or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the judge, that the party is guilty of a criminal offense, or ought not to be discharged, the judge, although the charge is defectively or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant, or other necessary witnesses, to be subpoenaed to attend at such time as ordered, to testify before the judge; and upon the examination, the judge shall discharge such prisoner, let the prisoner to bail, if the offense be bailable, or recommit the prisoner to custody, as may be just and legal.

[22:93:1862; B § 370; BH § 3692; C § 3764; RL § 6247; NCL § 11396]

NRS 34.530 Writ for purposes of bail. Any person who is imprisoned or detained in custody on any criminal charge before conviction for want of bail may file a petition for a writ of habeas corpus for the purpose of giving bail, upon averring that fact in the person's petition, without alleging that the person is illegally confined.

[23:93:1862; B § 371; BH § 3693; C § 3765; RL § 6248; NCL § 11397] — (NRS A 1987, 1216)

NRS 34.540 Bail in habeas corpus proceedings. Any Supreme Court justice, judge of the Court of Appeals or judge, before whom any person who has been committed on a criminal charge before conviction is brought on a writ of habeas corpus, if that person is bailable, may take a recognizance from that person, as in other cases, and shall file the same in the proper court without delay. In no case where the applicant for a writ of habeas corpus has been admitted to bail and failed to appear before the Supreme Court justice, the judge of the Court of Appeals, the judge or presiding judge of the court wherein the bail was fixed may the proceedings for a writ of habeas corpus be dismissed, except upon good cause shown. Upon the failure of that person to appear, the justice, judge of the Court of Appeals, district judge or presiding judge shall cause a bench warrant to be issued and that person arrested and brought before the justice, judge or court as upon contempt.

[24:93:1862; A 1953, 257] — (NRS A 1987, 1216; 2013, 1734)

NRS 34.550 Judge to remand to custody if party not entitled to discharge or is not bailed. If a party brought before the judge on the return of the writ is not entitled to discharge, and is not bailed where such bail is allowable, the judge shall remand the party to custody or place the party under the restraint from which the party was taken, if the person under whose custody or restraint the party was is legally entitled thereto.

[25:93:1862; B § 373; BH § 3695; C § 3767; RL § 6250; NCL § 11399]

NRS 34.560 Judge may order change of custody; enforcement of commitment order stayed; appeal.

1. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.
2. If a party is ordered committed to the restraint or custody of an officer from a jurisdiction outside the State of Nevada, the district judge ordering such commitment shall stay the enforcement thereof for 5 days, during which time an aggrieved party may file a notice of appeal therefrom to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution.
3. Upon the filing of a notice of appeal as provided in subsection 2, the enforcement of such order of commitment shall be stayed during the pendency of the appeal.
4. During any period of stay as provided in this section, the local officer having custody of such party shall retain custody thereof.

[26:93:1862; B § 374; BH § 3696; C § 3768; RL § 6251; NCL § 11400] — (NRS A 1959, 18; 2013, 1734)

NRS 34.570 Pending judgment on proceedings, judge may commit or place in custody. Until judgment is given on a petition, the judge before whom any party may be brought on the petition may:

1. Commit the party to the custody of the sheriff of the county; or
2. Place the party in such care or under such custody as the party's age or circumstances may require.

[27:93:1862; B § 375; BH § 3697; C § 3769; RL § 6252; NCL § 11401] — (NRS A 1999, 145)

NRS 34.575 Appeal from order of district court granting or denying writ.

1. An applicant who, after conviction or while no criminal action is pending against the applicant, has petitioned the district court for a writ of habeas corpus and whose application for the writ is denied, may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the order and judgment of the district court, but the appeal must be made within 30 days after service by the court of written notice of entry of the order or judgment.

2. The State of Nevada is an interested party in proceedings for a writ of habeas corpus. If the district court grants the writ and orders the discharge or a change in custody of the petitioner, the district attorney of the county in which the application for the writ was made, or the city attorney of a city which is situated in the county in which the application for the writ was made, or the Attorney General on behalf of the State, may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the order of the district judge within 30 days after the service by the court of written notice of entry of the order.

3. Whenever an appeal is taken from an order of the district court discharging a petitioner or committing a petitioner to the custody of another person after granting a pretrial petition for habeas corpus based on alleged want of probable cause, or otherwise challenging the court's right or jurisdiction to proceed to trial of a criminal charge, the clerk of the district court shall forthwith certify and transmit to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, as the record on appeal, the original papers on which the petition was heard in the district court and, if the appellant or respondent demands it, a transcript of any evidentiary proceedings had in the district court. The district court shall require its court reporter to expedite the preparation of the transcript in preference to any request for a transcript in a civil matter. When the appeal is docketed in the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court, it stands submitted without further briefs or oral argument unless the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court otherwise orders.

(Added to NRS by 1991, 74; A 2013, 1735)

NRS 34.580 Defect of form in writ immaterial. No writ of habeas corpus shall be disobeyed for defect of form if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining the party, and the judge before whom the party is to be brought.

[28:93:1862; B § 376; BH § 3698; C § 3770; RL § 6253; NCL § 11402]

NRS 34.590 Cases where imprisonment after discharge is permitted. No person who has been discharged by the order of the judge upon habeas corpus issued pursuant to the provisions of this chapter shall be again imprisoned, restrained or kept in custody for the same cause, except in the following cases:

1. If the person shall have been discharged from custody on a criminal charge and be afterwards committed for the same offense by legal order or process.

2. If after a discharge for defect of proof, or for any defect of the process, warrant or commitment in a criminal case, the person be again arrested on sufficient proof and committed by legal process for the same offense.

[29:93:1862; B § 377; BH § 3699; C § 3771; RL § 6254; NCL § 11403]

NRS 34.600 In certain cases warrant may issue instead of writ. Whenever it shall appear by satisfactory proof, by affidavit, to any judge authorized by law to grant a writ of habeas corpus, that anyone is illegally held in custody, confinement or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of such judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, the judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff or any constable of the county, commanding such officer to take such person thus held in custody, confinement or restraint and forthwith bring him or her before such judge, to be dealt with according to law.

[30:93:1862; B § 378; BH § 3700; C § 3772; RL § 6255; NCL § 11404]

NRS 34.610 Judge may include in warrant order for arrest of person charged with illegal detention. The judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

[31:93:1862; B § 379; BH § 3701; C § 3773; RL § 6256; NCL § 11405]

NRS 34.620 Execution of warrant. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the judge who may have directed the issuing of such warrant.

[32:93:1862; B § 380; BH § 3702; C § 3774; RL § 6257; NCL § 11406]

NRS 34.630 Return, answer and hearing on warrant. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in the case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs and trial shall be thereon had as upon the return to a writ of habeas corpus.

[33:93:1862; B § 381; BH § 3703; C § 3775; RL § 6258; NCL § 11407]

NRS 34.640 Party may be discharged or remanded. If such party be held under illegal restraint or custody, the party shall be discharged, and if not, the party shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

[34:93:1862; B § 382; BH § 3704; C § 3776; RL § 6259; NCL § 11408]

NRS 34.650 Writ of process may issue on Sunday or nonjudicial day. Any writ of process authorized by NRS 34.360 to 34.830, inclusive, may be issued and served on Sunday or any other nonjudicial day.

[35:93:1862; B § 383; BH § 3705; C § 3777; RL § 6260; NCL § 11409]

NRS 34.660 Clerk to issue writs, warrants, processes and subpoenas; when returnable. All writs, warrants, processes and subpoenas authorized by the provisions of NRS 34.360 to 34.830, inclusive, shall be issued by the clerk of the court, and, except subpoenas, sealed with the seal of the court, and shall be served and returned forthwith, unless the judge shall specify a particular time for any such return.

[36:93:1862; B § 384; BH § 3706; C § 3778; RL § 6261; NCL § 11410]

NRS 34.670 Damages recoverable for failure to issue or obey writ. If any judge, after a proper application is made, shall refuse to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, the judge, officer or person shall forfeit and pay to the person aggrieved a sum not exceeding $5,000, to be recovered by action in any court of competent jurisdiction.

[37:93:1862; B § 385; BH § 3707; C § 3779; RL § 6262; NCL § 11411]

NRS 34.680 Penalties for custodian or accessory disobeying or avoiding writ.

1. Any person having in his or her custody or under his or her restraint or power any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this chapter, who, with the intent to elude the service of such writ or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place the person under the power or control of another or shall conceal or exchange the place of the person's confinement or restraint, or shall remove the person without the jurisdiction of such judge, shall be deemed guilty of a gross misdemeanor.
2. Every person who shall knowingly aid or assist in the commission of any offense specified in subsection 1 shall be punished as in subsection 1 mentioned.

[38:93:1862; B § 386; BH § 3708; C § 3780; RL § 6263; NCL § 11412] + [39:93:1862; B § 387; BH § 3709; C § 3781; RL § 6264; NCL § 11413] + [40:93:1862; B § 388; BH § 3710; C § 3782; RL § 6265; NCL § 11414] — (NRS A 1967, 528)

Petitions for Pretrial Relief

NRS 34.700 Time for filing; waiver and consent of accused respecting date of trial.

1. Except as provided in subsection 3, a pretrial petition for a writ of habeas corpus based on alleged lack of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge may not be considered unless:

(a) The petition and all supporting documents are filed within 21 days after the first appearance of the accused in the district court; and

(b) The petition contains a statement that the accused:

(1) Waives the 60-day limitation for bringing an accused to trial; or

(2) If the petition is not decided within 15 days before the date set for trial, consents that the court may, without notice or hearing, continue the trial indefinitely or to a date designated by the court.

2. The arraignment and entry of a plea by the accused must not be continued to avoid the requirement that a pretrial petition be filed within the period specified in subsection 1.
3. The court may extend, for good cause, the time to file a petition. Good cause shall be deemed to exist if the transcript of the preliminary hearing or of the proceedings before the grand jury is not available within 14 days after the accused's initial appearance and the court shall grant an ex parte application to extend the time for filing a petition. All other applications may be made only after appropriate notice has been given to the prosecuting attorney.

(Added to NRS by 1977, 1350; A 1981, 506; 1985, 1233)

NRS 34.710 Limitations on submission and consideration of pretrial petition.

1. A district court shall not consider any pretrial petition for habeas corpus:

(a) Based on alleged lack of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge unless a petition is filed in accordance with NRS 34.700.

(b) Based on a ground which the petitioner could have included as a ground for relief in any prior petition for habeas corpus or other petition for extraordinary relief.

2. If an application is made to the Court of Appeals for a writ of habeas corpus and the application is entertained by the Court of Appeals, and thereafter denied, the person making the application may not submit thereafter an application to the district judge of the district in which the applicant is held in custody, nor to any other district judge in any other judicial district of the State, premised upon the illegality of the same charge upon which the applicant is held in custody.

3. If an application is made to a justice of the Supreme Court for a writ of habeas corpus and the application is entertained by the justice or the Supreme Court, and thereafter denied, the person making the application may not submit thereafter an application to the Court of Appeals, the district judge of the district in which the applicant is held in custody, nor to any other district judge in any other judicial district of the State, premised upon the illegality of the same charge upon which the applicant is held in custody.

[3:93:1862; A 1953, 257] — (NRS A 1959, 17; 1971, 235; 1973, 502; 1977, 768, 1350, 1352; 1979, 312; 1981, 507; 1985, 1234; 1987, 1216; 1991, 78; 2013, 1735)

Petitions for Postconviction Relief

NRS 34.720 Scope of provisions. The provisions of NRS 34.720 to 34.830, inclusive, apply only to petitions for writs of habeas corpus in which the petitioner:

1. Requests relief from a judgment of conviction or sentence in a criminal case; or
2. Challenges the computation of time that the petitioner has served pursuant to a judgment of conviction.

(Added to NRS by 1985, 1233; A 1987, 1217; 1991, 79)

NRS 34.722 "Petition" defined. As used in NRS 34.720 to 34.830, inclusive, unless the context otherwise requires, "petition" means a postconviction petition for habeas corpus filed pursuant to NRS 34.724.

(Added to NRS by 1991, 75)

NRS 34.724 Persons who may file petition; effect of filing.

1. Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State, or who claims that the time the person has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that the person has served.

2. Such a petition:

(a) Is not a substitute for and does not affect any remedies which are incident to the proceedings in the trial court or the remedy of direct review of the sentence or conviction.

(b) Comprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them.

(c) Is the only remedy available to an incarcerated person to challenge the computation of time that the person has served pursuant to a judgment of conviction.

3. For the purposes of this section, a motion to withdraw a plea of guilty, guilty but mentally ill or nolo contendere pursuant to NRS 176.165 that is made after sentence is imposed or imposition of sentence is suspended is a remedy which is incident to the proceedings in the trial court if:

(a) The person has not filed a prior motion to withdraw the plea and has not filed a prior postconviction petition for a writ of habeas corpus;

(b) The motion is filed within 1 year after the date on which the person was convicted, unless the person pleads specific facts demonstrating that some impediment external to the defense precluded bringing the motion earlier;

(c) At the time the person files the motion to withdraw the plea, the person is not incarcerated for the charge for which the person entered the plea; and

(d) The motion is not barred by the doctrine of laches. A motion filed more than 5 years after the date on which the person was convicted creates a rebuttable presumption of prejudice to the State on the basis of laches.

4. The court shall not appoint counsel to represent a person for the purpose of subsection 3.

(Added to NRS by 1991, 75; A 2017, 370)

NRS 34.726 Limitations on time to file; stay of sentence.

1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

(a) That the delay is not the fault of the petitioner; and

(b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

2. The execution of a sentence must not be stayed for the period provided in subsection 1 solely because a petition may be filed within that period. A stay of sentence must not be granted unless:

(a) A petition is actually filed; and

(b) The petitioner establishes a compelling basis for the stay.

(Added to NRS by 1991, 75; A 2013, 1736)

NRS 34.730 Petition: Verification; title; service; filing by clerk; prerequisites for hearing.

1. A petition must be verified by the petitioner or the petitioner's counsel. If the petition is verified by counsel, counsel shall also verify that the petitioner personally authorized counsel to commence the action.

2. The petition must be titled "Petition for Writ of Habeas Corpus (Postconviction)" and be in substantially the form set forth in NRS 34.735. The petition must name as respondent and be served by mail upon the officer or other person by whom the petitioner is confined or restrained. A copy of the petition must be served by mail upon:

(a) The Attorney General; and

(b) In the case of a petition challenging the validity of a judgment of conviction or sentence, the district attorney in the county in which the petitioner was convicted.

3. Except as otherwise provided in this subsection, the clerk of the district court shall file a petition as a new action separate and distinct from any original proceeding in which a conviction has been had. If a petition challenges the validity of a conviction or sentence, it must be:

(a) Filed with the record of the original proceeding to which it relates; and

(b) Whenever possible, assigned to the original judge or court.

4. No hearing upon the petition may be set until the requirements of NRS 34.740 to 34.770, inclusive, are satisfied.

(Added to NRS by 1985, 1229; A 1987, 1218; 1991, 79)

NRS 34.735 Petition: Form. A petition must be in substantially the following form, with appropriate modifications if the petition is filed in the Court of Appeals or the Supreme Court:

Case No. .....
Dept. No. .....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF.....

.....
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

.....
Respondent.

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: .....
.....

2. Name and location of court which entered the judgment of conviction under attack:
.....

3. Date of judgment of conviction: .....

4. Case number: .....

5. (a) Length of sentence: .....
.....

(b) If sentence is death, state any date upon which execution is scheduled:

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes ..... No .....
If "yes," list crime, case number and sentence being served at this time: .....
.....
.....

7. Nature of offense involved in conviction being challenged: .....
.....

8. What was your plea? (check one)

(a) Not guilty .....

(b) Guilty .....

(c) Guilty but mentally ill .....

(d) Nolo contendere .....

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:
.....
.....

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury .....

(b) Judge without a jury .....

11. Did you testify at the trial? Yes ..... No .....

12. Did you appeal from the judgment of conviction? Yes ..... No .....

13. If you did appeal, answer the following:

(a) Name of court: .....

(b) Case number or citation: .....

(c) Result: .....

(d) Date of result: .....

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: .....

.....

.....

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ..... No .....

16. If your answer to No. 15 was "yes," give the following information:

(a) (1) Name of court: .....

(2) Nature of proceeding: .....

.....

(3) Grounds raised: .....

.....

.....

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....

(5) Result: .....

(6) Date of result: .....

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

.....

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: .....

(2) Nature of proceeding: .....

(3) Grounds raised: .....

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....

(5) Result: .....

(6) Date of result: .....

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

.....

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ..... No .....

Citation or date of decision: .....

(2) Second petition, application or motion? Yes ..... No .....

Citation or date of decision: .....

(3) Third or subsequent petitions, applications or motions? Yes ..... No .....

Citation or date of decision: .....

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

.....

.....

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: .....

.....

(b) The proceedings in which these grounds were raised: .....
.....

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) .....
.....

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)
.....

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) .....
.....

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ..... No .....
If yes, state what court and the case number: .....
.....

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:
.....

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ..... No .....
If yes, specify where and when it is to be served, if you know: .....
.....

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground one: .....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.): .....
.....
.....

(b) Ground two: .....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.): .....
.....
.....

(c) Ground three: .....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.): .....
.....
.....

(d) Ground four: .....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.): .....
.....
.....

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at ..... on the ..... day of the month of ..... of the year .....

.....
Signature of petitioner
.....
Address

.....
Signature of attorney (if any)
.....
Attorney for petitioner
.....
Address

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

.....
Petitioner
.....
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, ..., hereby certify, pursuant to N.R.C.P. 5(b), that on this ..... day of the month of ..... of the year ....., I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

.....
Respondent prison or jail official
.....
Address
.....
Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, Nevada 89710

.....
District Attorney of County of Conviction
.....
Address

.....
Signature of Petitioner

(Added to NRS by 1987, 1210; A 1989, 451; 1991, 79; 1993, 243; 1995, 2460; 2001, 21; 2001 Special Session, 207; 2003, 1473; 2007, 1429; 2013, 1736)

NRS 34.738 Petition: Filing in appropriate county; limitation on scope.

1. A petition that challenges the validity of a conviction or sentence must be filed with the clerk of the district court for the county in which the conviction occurred. Any other petition must be filed with the clerk of the district court for the county in which the petitioner is incarcerated.
2. A petition that is not filed in the district court for the appropriate county:

(a) Shall be deemed to be filed on the date it is received by the clerk of the district court in which the petition is initially lodged; and

(b) Must be transferred by the clerk of that court to the clerk of the district court for the appropriate county.

3. A petition must not challenge both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment. If a petition improperly challenges both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment, the district court for the appropriate county shall resolve that portion of the petition that challenges the validity of the judgment of conviction or sentence and dismiss the remainder of the petition without prejudice.

(Added to NRS by 1991, 76; A 1999, 145)

NRS 34.740 Petition: Expeditious judicial examination. The original petition must be presented promptly to a district judge, a judge of the Court of Appeals or a justice of the Supreme Court by the clerk of the court. The petition must be examined expeditiously by the judge or justice to whom it is assigned.

(Added to NRS by 1985, 1229; A 1991, 85; 2013, 1741)

NRS 34.745 Judicial order to file answer and return; when order is required; form of order; summary dismissal of successive petitions; record of proceeding.

1. If a petition challenges the validity of a judgment of conviction or sentence and is the first petition filed by the petitioner, the judge or justice shall order the district attorney or the Attorney General, whichever is appropriate, to:

(a) File:

(1) A response or an answer to the petition; and

(2) If an evidentiary hearing is required pursuant to NRS 34.770, a return,

➥ within 45 days or a longer period fixed by the judge or justice; or

(b) Take other action that the judge or justice deems appropriate.

2. If a petition challenges the computation of time that the petitioner has served pursuant to a judgment of conviction, the judge or justice shall order the Attorney General to:

(a) File:

(1) A response or an answer to the petition; and

(2) A return,

➥ within 45 days or a longer period fixed by the judge or justice.

(b) Take other action that the judge or justice deems appropriate.

3. An order entered pursuant to subsection 1 or 2 must be in substantially the following form, with appropriate modifications if the order is entered by a judge of the Court of Appeals or a justice of the Supreme Court:

Case No.....
Dept. No.....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF .....

.....
Petitioner,

v. ORDER

.....
Respondent.

Petitioner filed a petition for a writ of habeas corpus on ..... (month) ..... (day), ... (year). The court has reviewed the petition and has determined that a response would assist the court in determining whether petitioner is illegally imprisoned and restrained of petitioner's liberty. Respondent shall, within 45 days after the date of this order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

Dated ..... (month) ..... (day), ... (year)

.....
District Judge

➥ A copy of the order must be served on the petitioner or the petitioner's counsel, the respondent, the Attorney General and the district attorney of the county in which the petitioner was convicted.

4. If the petition is a second or successive petition challenging the validity of a judgment of conviction or sentence and if it plainly appears from the face of the petition or an amended petition and documents and exhibits that are annexed to it, or from records of the court that the petitioner is not entitled to relief based on any of the grounds set forth in subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary dismissal and cause the petitioner to be notified of the entry of the order.

5. If the judge or justice relies on the records of the court in entering an order pursuant to this section, those records must be made a part of the record of the proceeding before entry of the order.

(Added to NRS by 1991, 76; A 1999, 145; 2001, 57; 2013, 1741)

NRS 34.750 Appointment of counsel for indigents; pleadings supplemental to petition; response to motion to dismiss.

1. A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:

(a) The issues presented are difficult;

(b) The petitioner is unable to comprehend the proceedings; or

(c) Counsel is necessary to proceed with discovery.

2. If the court determines that the petitioner is unable to pay all necessary costs and expenses incident to the proceedings of the trial court and the reviewing court, including court costs, stenographic services, printing and reasonable compensation for legal services, all costs must be paid from money appropriated to the office of the State Public Defender for that purpose. After appropriations for that purpose are exhausted, money must be allocated to the office of the State Public Defender from the Reserve for Statutory Contingency Account for the payment of the costs, expenses and compensation.

3. After appointment by the court, counsel for the petitioner may file and serve supplemental pleadings, exhibits, transcripts and documents within 30 days after:

(a) The date the court orders the filing of an answer and a return; or

(b) The date of counsel's appointment,

➥ whichever is later. If it has not previously been filed, the answer by the respondent must be filed within 15 days after receipt of the supplemental pleadings and include any response to the supplemental pleadings.

4. The petitioner shall respond within 15 days after service to a motion by the State to dismiss the action.

5. No further pleadings may be filed except as ordered by the court.

(Added to NRS by 1985, 1230; A 1987, 1218; 1991, 85, 1751, 1824)

NRS 34.760 Contents of respondent's answer; supplemental material.

1. The answer must state whether the petitioner has previously applied for relief from the petitioner's conviction or sentence in any proceeding in a state or federal court, including a direct appeal or a petition for a writ of habeas corpus or other postconviction relief.

2. The answer must indicate what transcripts of pretrial, trial, sentencing and postconviction proceedings are available, when these transcripts can be furnished and what proceedings have been recorded and not transcribed. The respondent shall attach to the answer any portions of the transcripts, except those in the court's file, which the respondent deems relevant. The court on its own motion or upon request of the petitioner may order additional portions of existing transcripts to be furnished or certain portions of the proceedings which were not transcribed to be transcribed and furnished. If a transcript is not available or procurable, the court may require a narrative summary of the evidence to be submitted.

3. If the petitioner appealed from the judgment of conviction or any adverse judgment or order in a prior petition for a writ of habeas corpus or postconviction relief, a copy of the petitioner's brief on appeal and any opinion of the appellate court must be filed by the respondent with the answer.

(Added to NRS by 1985, 1230; A 1991, 86)

NRS 34.770 Judicial determination of need for evidentiary hearing: Dismissal of petition or granting of writ.

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.

2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing.

3. If the judge or justice determines that an evidentiary hearing is required, the judge or justice shall grant the writ and shall set a date for the hearing.

(Added to NRS by 1985, 1230; A 1991, 86)

NRS 34.780 Applicability of Nevada Rules of Civil Procedure; discovery.

1. The Nevada Rules of Civil Procedure, to the extent that they are not inconsistent with NRS 34.360 to 34.830, inclusive, apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive.

2. After the writ has been granted and a date set for the hearing, a party may invoke any method of discovery available under the Nevada Rules of Civil Procedure if, and to the extent that, the judge or justice for good cause shown grants leave to do so.

3. A request for discovery which is available under the Nevada Rules of Civil Procedure must be accompanied by a statement of the interrogatories or requests for admission and a list of any documents sought to be produced.

(Added to NRS by 1985, 1231; A 1987, 1219; 1991, 87)

NRS 34.790 Record of evidentiary hearing after writ is granted; submission of additional material.

1. If an evidentiary hearing is required, the judge or justice may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the petition.

2. The expanded record may include, without limitation, letters which predate the filing of the petition in the district court, documents, exhibits and answers under oath to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.

3. In any case in which the record is expanded, copies of proposed letters, documents, exhibits and affidavits must be submitted to the party against whom they are to be offered, and the party must be afforded an opportunity to admit or deny their correctness.

4. The court must require the authentication of any material submitted pursuant to subsection 2 or 3.

(Added to NRS by 1985, 1231)

NRS 34.800 Dismissal of petition for delay in filing.

1. A petition may be dismissed if delay in the filing of the petition:

(a) Prejudices the respondent or the State of Nevada in responding to the petition, unless the petitioner shows that the petition is based upon grounds of which the petitioner could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the State occurred; or

(b) Prejudices the State of Nevada in its ability to conduct a retrial of the petitioner, unless the petitioner demonstrates that a fundamental miscarriage of justice has occurred in the proceedings resulting in the judgment of conviction or sentence.

2. A period exceeding 5 years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction creates a rebuttable presumption of prejudice to the State. In a motion to dismiss the petition based on that prejudice, the respondent or the State of Nevada must specifically plead laches. The petitioner must be given an opportunity to respond to the allegations in the pleading before a ruling on the motion is made.

(Added to NRS by 1985, 1231; A 1987, 1219; 1991, 87)

NRS 34.810 Additional reasons for dismissal of petition.

1. The court shall dismiss a petition if the court determines that:

(a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

(1) Presented to the trial court;

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief; or

(3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner's conviction and sentence,

➥ unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

2. A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

➥ The petitioner shall include in the petition all prior proceedings in which the petitioner challenged the same conviction or sentence.

4. The court may dismiss a petition that fails to include any prior proceedings of which the court has knowledge through the record of the court or through the pleadings submitted by the respondent.

(Added to NRS by 1985, 1232; A 1989, 457; 1995, 2465; 2003, 1478; 2007, 1435)

NRS 34.820 Procedure in cases where petitioner has been sentenced to death.

1. If a petitioner has been sentenced to death and the petition is the first one challenging the validity of the petitioner's conviction or sentence, the court shall:

(a) Appoint counsel to represent the petitioner; and

(b) Stay execution of the judgment pending disposition of the petition and the appeal.

2. The petition must include the date upon which execution is scheduled, if it has been scheduled. The petitioner is not entitled to an evidentiary hearing unless the petition states that:

(a) Each issue of fact to be considered at the hearing has not been determined in any prior evidentiary hearing in a state or federal court; or

(b) For each issue of fact which has been determined in a prior evidentiary hearing, the hearing was not a full and fair consideration of the issue. The petition must specify all respects in which the hearing was inadequate.

3. If the petitioner has previously filed a petition for relief or for a stay of the execution in the same court, the petition must be assigned to the judge or justice who considered the previous matter.

4. The court shall inform the petitioner and the petitioner's counsel that all claims which challenge the conviction or imposition of the sentence must be joined in a single petition and that any matter not included in the petition will not be considered in a subsequent proceeding.

5. If relief is granted or the execution is stayed, the clerk shall forthwith notify the respondent, the Attorney General and the district attorney of the county in which the petitioner was convicted.

6. If a district judge conducts an evidentiary hearing, a daily transcript must be prepared for the purpose of appellate review.

7. The judge or justice who considers a petition filed by a petitioner who has been sentenced to death shall make all reasonable efforts to expedite the matter and shall render a decision within 60 days after submission of the matter for decision.

(Added to NRS by 1985, 1232; A 1987, 1219; 1991, 87)

NRS 34.830 Contents and notice of order finally disposing of petition.

1. Any order that finally disposes of a petition, whether or not an evidentiary hearing was held, must contain specific findings of fact and conclusions of law supporting the decision of the court.

2. A copy of any decision or order discharging the petitioner from the custody or restraint under which the petitioner is held, committing the petitioner to the custody of another person, dismissing the petition or denying the requested relief must be served by the clerk of the court upon the petitioner and the petitioner's counsel, if any, the respondent, the Attorney General and the district attorney of the county in which the petitioner was convicted.

3. Whenever a decision or order described in this section is entered by the district court, the clerk of the court shall prepare a notice in substantially the following form and mail a copy of the notice to each person listed in subsection 2:

Case No. .....
Dept. No. .....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF .....

.....
Petitioner,

v. NOTICE OF ENTRY OF DECISION OR ORDER

.....
Respondent.

PLEASE TAKE NOTICE that on ..... (month) ..... (day) ..... (year), the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within 33 days after the date this notice is mailed to you. This notice was mailed on ..... (month) ..... (day) ..... (year)

Dated ..... (month) ..... (day) ..... (year)

.....
Clerk of court

(SEAL) By .....
Deputy

(Added to NRS by 1985, 1233; A 1987, 1220; 1991, 88; 2001, 26; 2013, 1743)

CHAPTER 177 - APPEALS AND REMEDIES AFTER CONVICTION

APPEALS: WHEN ALLOWED, HOW TAKEN AND EFFECT THEREOF

DISMISSAL OR ARGUMENT OF APPEAL

JUDGMENT UPON APPEAL

_____

_____

APPEALS: WHEN ALLOWED, HOW TAKEN AND EFFECT THEREOF

NRS 177.015 Appeals to district court, court of appeals and Supreme Court. The party aggrieved in a criminal action may appeal only as follows:

1. Whether that party is the State or the defendant:

(a) To the district court of the county from a final judgment of the justice court.

(b) To the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from an order of the district court granting a motion to dismiss, a motion for acquittal or a motion in arrest of judgment, or granting or refusing a new trial.

(c) To the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from a determination of the district court about whether a defendant is intellectually disabled that is made as a result of a hearing held pursuant to NRS 174.098. If the appellate court of competent jurisdiction entertains the appeal, it shall enter an order staying the criminal proceedings against the defendant for such time as may be required.

2. The State may, upon good cause shown, appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from a pretrial order of the district court granting or denying a motion to suppress evidence made pursuant to NRS 174.125. Notice of the appeal must be filed with the clerk of the district court within 2 judicial days and with the Clerk of the Supreme Court within 5 judicial days after the ruling by the district court. The clerk of the district court shall notify counsel for the defendant or, in the case of a defendant without counsel, the defendant within 2 judicial days after the filing of the notice of appeal. The appellate court of competent jurisdiction may establish such procedures as it determines proper in requiring the appellant to make a preliminary showing of the propriety of the appeal and whether there may be a miscarriage of justice if the appeal is not entertained. If the appellate court of competent jurisdiction entertains the appeal, or if it otherwise appears necessary, it may enter an order staying the trial for such time as may be required.

3. The defendant only may appeal from a final judgment or verdict in a criminal case.

4. Except as otherwise provided in subsection 3 of NRS 174.035, the defendant in a criminal case shall not appeal a final judgment or verdict resulting from a plea of guilty, guilty but mentally ill or nolo contendere that the defendant entered into voluntarily and with a full understanding of the nature of the charge and the consequences of the plea, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings. The appellate court of competent jurisdiction may establish procedures to require the defendant to make a preliminary showing of the propriety of the appeal.

(Added to NRS by 1967, 1443; A 1971, 1450; 1973, 1489; 1981, 1705; 1991, 652; 1995, 1535; 1997, 645; 2003, 769, 1468; 2007, 1422; 2013, 687, 1758)

NRS 177.025 Appeal to court of appeals or Supreme Court taken on questions of law alone. The appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the district court can be taken on questions of law alone.

(Added to NRS by 1967, 1444; A 2013, 1759)

NRS 177.035 Designation of parties on appeal. The party appealing shall be known as the appellant, and the adverse party as the respondent, but the title of the action is not changed by reason of the appeal.

(Added to NRS by 1967, 1444)

NRS 177.045 Intermediate order or proceeding may be reviewed on appeal. Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.

(Added to NRS by 1967, 1444)

NRS 177.055 Automatic appeal in certain cases; mandatory review of death sentence by court of appeals or Supreme Court.

1. When upon a plea of not guilty or not guilty by reason of insanity a judgment of death is entered, an appeal is deemed automatically taken by the defendant without any action by the defendant or the defendant's counsel, unless the defendant or the defendant's counsel affirmatively waives the appeal within 30 days after the rendition of the judgment.

2. Whether or not the defendant or the defendant's counsel affirmatively waives the appeal, the sentence must be reviewed on the record by the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, which shall consider, in a single proceeding, if an appeal is taken:

(a) Any errors enumerated by way of appeal;

(b) If a court determined that the defendant is not intellectually disabled during a hearing held pursuant to NRS 174.098, whether that determination was correct;

(c) Whether the evidence supports the finding of an aggravating circumstance or circumstances;

(d) Whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor; and

(e) Whether the sentence of death is excessive, considering both the crime and the defendant.

3. The appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, when reviewing a death sentence, may:

(a) Affirm the sentence of death;

(b) Set the sentence aside and remand the case for a new penalty hearing before a newly impaneled jury; or

(c) Set aside the sentence of death and impose the sentence of imprisonment for life without possibility of parole.

(Added to NRS by 1967, 1444; A 1977, 1545; 1985, 1597; 1995, 2456; 2003, 770, 1468, 2084; 2013, 688, 1759)

NRS 177.075 Appeal to court of appeals or Supreme Court: Notice.

1. Except where appeal is automatic, an appeal from a district court to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution is taken by filing a notice of appeal with the clerk of the district court. Bills of exception and assignments of error in cases governed by this chapter are abolished.

2. When a court imposes sentence upon a defendant who has not pleaded guilty or guilty but mentally ill and who is without counsel, the court shall advise the defendant of the right to appeal, and if the defendant so requests, the clerk shall prepare and file forthwith a notice of appeal on the defendant's behalf.

3. A notice of appeal must be signed:

(a) By the appellant or appellant's attorney; or

(b) By the clerk if prepared by the clerk.

(Added to NRS by 1967, 1444; A 1971, 149; 1985, 62; 1995, 2457; 2003, 1469; 2007, 1423; 2013, 1760)

NRS 177.085 Effect of appeal by State.

1. An appeal taken by the State shall in no case stay or affect the operation of a judgment in favor of the defendant; but if the appeal by the State is from an order granting a motion to set aside an indictment or information, and upon such appeal the order is reversed, the defendant shall thereupon be liable to arrest and trial upon the indictment or information. In all such cases any statute of limitations on the offense from which the appeal is taken is tolled from the time the notice of appeal is filed by the State until such appeal is heard and a ruling made thereon.

2. If the appeal by the State is from an order allowing a motion in arrest of judgment, or granting a motion for a new trial, and upon appeal the order is reversed, the trial court shall enter judgment against the defendant.

(Added to NRS by 1967, 1444; A 1969, 106)

NRS 177.095 Stay of execution upon sentence of death. A sentence of death shall be stayed if an appeal is taken.

(Added to NRS by 1967, 1445)

NRS 177.105 Stay of execution upon sentence of imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail.

(Added to NRS by 1967, 1445)

NRS 177.115 Stay of execution upon fine. A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by a Justice Court, district court, the Court of Appeals or by the Supreme Court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the court appealed from, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating the defendant's assets.

(Added to NRS by 1967, 1445; A 2013, 1760)

NRS 177.125 Stay of probation. An order placing the defendant on probation may be stayed if an appeal is taken.

(Added to NRS by 1967, 1445)

NRS 177.135 Admission to bail upon appeal. Admission to bail upon appeal shall be as provided in this title.

(Added to NRS by 1967, 1445)

NRS 177.145 Application for relief pending review. If application is made to a district court, the Court of Appeals or a justice of the Supreme Court for bail pending appeal or for an extension of time for filing the record on appeal or for any other relief which might have been granted by the trial court, the application shall be upon notice and shall show that:

1. Application to the court below or a judge thereof is not practicable;
2. Application has been made and denied, with the reasons given for the denial; or
3. The action on the application did not afford the relief to which the applicant considers himself or herself to be entitled.

(Added to NRS by 1967, 1445; A 2013, 1760)

NRS 177.155 Supervision of appeal. The supervision and control of the proceedings on appeal shall be in the appellate court from the time the notice of appeal is filed with its clerk, except as otherwise provided in this title. The appellate court may at any time entertain a motion to dismiss the appeal, or for directions to the trial court, or to modify or vacate any order made by the trial court or by any judge or justice of the peace in relation to the prosecution of the appeal, including any order fixing or denying bail.

(Added to NRS by 1967, 1445)

NRS 177.165 Preparation of record and papers on appeal. All appeals from a district court to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution shall be heard on the original papers and the reporter's transcript of evidence or proceedings. The form and manner of preparation of the record and of other papers filed may be prescribed by the appellate court of competent jurisdiction, and to the extent not otherwise so prescribed shall conform to the practice in civil cases.

(Added to NRS by 1967, 1445; A 2013, 1760)

DISMISSAL OR ARGUMENT OF APPEAL

NRS 177.205 Dismissal by court of appeals or Supreme Court. The appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution may, on its own motion or on motion of the respondent, dismiss an appeal:

1. If the appeal is irregular in any substantial particular.
2. If the appellant has failed to comply with the requirements for docketing of the record on appeal or filing briefs, unless for good cause shown an extension is granted.

(Added to NRS by 1967, 1446; A 1985, 63; 2013, 1761)

NRS 177.215 Date for argument. Unless good cause is shown for an earlier hearing, the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution shall set the appeal for argument on a date not less than 30 days after the expiration of the time limited for filing briefs and as soon thereafter as the state of the calendar will permit. Preference shall be given to appeals in criminal cases over appeals in civil cases.

(Added to NRS by 1967, 1446; A 2013, 1761)

JUDGMENT UPON APPEAL

NRS 177.225 Judgment may be affirmed but cannot be reversed without argument. Judgment of affirmance may be granted without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, orally or upon written brief, though the respondent fail to appear.

(Added to NRS by 1967, 1446)

NRS 177.235 Number of counsel in argument on appeal. Upon the argument of the appeal, if the offense is punishable with death, two counsel shall be heard on each side, if they require it. In any other case the Court may, in its discretion, restrict the argument to one counsel on each side.

(Added to NRS by 1967, 1446)

NRS 177.245 Defendant need not be present. The defendant need not personally appear in the appellate court of competent jurisdiction.

(Added to NRS by 1967, 1446; A 2013, 1761)

NRS 177.255 Court to give judgment without regard to technical errors. After hearing the appeal, the Court shall give judgment without regard to technical error or defect which does not affect the substantial rights of the parties.

(Added to NRS by 1967, 1446)

NRS 177.265 Determination of appeal. The appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.

(Added to NRS by 1967, 1447; A 2013, 1761)

NRS 177.275 Defendant to be discharged on reversal without ordering new trial. If a judgment against the defendant is reversed, without ordering a new trial, the appellate court of competent jurisdiction shall direct, if the defendant is in custody, that the defendant be discharged therefrom, or if admitted to bail, that the defendant's bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

(Added to NRS by 1967, 1447; A 2013, 1761)

NRS 177.285 Judgment to be executed on affirmance. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the appellate court of competent jurisdiction shall direct.

(Added to NRS by 1967, 1447; A 2013, 1761)

NRS 177.305 Jurisdiction of court of appeals or Supreme Court to cease after certificate of judgment remitted. After the certificate of judgment has been remitted, the appellate court of competent jurisdiction shall have no further jurisdiction of the appeal or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted.

(Added to NRS by 1967, 1447; A 2013, 1761)

CHAPTER 34 - WRITS: CERTIORARI; MANDAMUS; PROHIBITION; HABEAS CORPUS

CERTIORARI

MANDAMUS

PROHIBITION

HABEAS CORPUS

GENERAL PROVISIONS

PETITIONS FOR PRETRIAL RELIEF

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TOP

CERTIORARI

NRS 34.010 Writ of certiorari denominated writ of review. The writ of certiorari may be denominated the writ of review.

[1911 CPA § 741; RL § 5683; NCL § 9230]

NRS 34.020 Writ may be granted by appellate and district courts; when writ may issue.

1. This writ may be granted, on application, by the Supreme Court, the Court of Appeals, a district court, or a judge of the district court. When the writ is issued by the district court or a judge of the district court it shall be made returnable before the district court.

2. The writ shall be granted in all cases when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.

3. In any case prosecuted for the violation of a statute or municipal ordinance wherein an appeal has been taken from a Justice Court or from a municipal court, and wherein the district court has passed upon the constitutionality or validity of such statute or ordinance, the writ shall be granted by the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution upon application of the State or municipality or defendant, for the purpose of reviewing the constitutionality or validity of such statute or ordinance, but in no case shall the defendant be tried again for the same offense.

[1911 CPA § 742; A 1939, 114; 1931 NCL § 9231] — (NRS A 2013, 1733)

NRS 34.030 Application for writ made on affidavit; notice to adverse party may be required. The application shall be made on affidavit by the party beneficially interested, and the court or judge to whom the application is made may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without further notice.

[1911 CPA § 743; RL § 5685; NCL § 9232]

NRS 34.040 Writ may be directed to inferior tribunal, board or officer. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

[1911 CPA § 744; RL § 5686; NCL § 9233]

NRS 34.050 Court may order return and hearing at any time. The writ of certiorari may, in the discretion of the court or judge issuing the writ, be made returnable and a hearing thereon be had at any time.

[Part 1911 CPA § 769; RL § 5711; NCL § 9258]

NRS 34.060 Contents of writ. The writ of review shall command the party to whom it is directed to certify fully to the court before which the writ is returnable, at a specified time and place, and annex to the writ a transcript of the record and proceeding, describing or referring to them with convenient certainty, that the same may be reviewed by the court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

[1911 CPA § 745; RL § 5687; NCL § 9234]

NRS 34.070 Suspension of proceedings in inferior courts. If a stay of proceedings be not intended the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted in the sound discretion of the court or the judge issuing the writ, but if omitted, the power of the inferior court or officer shall not be suspended nor the proceedings stayed.

[1911 CPA § 746; RL § 5688; NCL § 9235]

NRS 34.080 Service of writ. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court or judge issuing the writ.

[1911 CPA § 747; RL § 5689; NCL § 9236]

NRS 34.090 Extent of review. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board or officer has regularly pursued the authority of such tribunal, board or officer.

[1911 CPA § 748; RL § 5690; NCL § 9237]

NRS 34.100 Perfection of defective return; hearing and judgment. If the return to the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below.

[1911 CPA § 749; RL § 5691; NCL § 9238]

NRS 34.110 Copy of judgment to be transmitted to inferior tribunal, board or officer. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified up.

[1911 CPA § 750; RL § 5692; NCL § 9239]

NRS 34.120 Judgment roll; appeal from judgment. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceedings be had in any other than the Supreme Court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

[1911 CPA § 751; RL § 5693; NCL § 9240]

NRS 34.130 Rules of practice in certiorari proceedings. Except as otherwise provided in NRS 34.010 to 34.120, inclusive, the provisions of NRS and Nevada Rules of Civil Procedure relative to civil actions in the district court are applicable to and constitute the rules of practice in the proceedings mentioned in NRS 34.010 to 34.120, inclusive.

[Part 1911 CPA § 770; RL § 5712; NCL § 9259]

NRS 34.140 Procedure in new trials and appeals in certiorari proceedings. The provisions of the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to new trials in, and appeals from, the district court, except so far as they are inconsistent with the provisions of NRS 34.010 to 34.120, inclusive, apply to the proceedings mentioned in NRS 34.010 to 34.120, inclusive.

[Part 1911 CPA § 771; RL § 5713; NCL § 9260]

MANDAMUS

NRS 34.150 Writ of mandamus denominated writ of mandate. The writ of mandamus may be denominated the writ of mandate.

[1911 CPA § 752; RL § 5694; NCL § 9241]

NRS 34.160 Writ may be issued by appellate and district courts; when writ may issue. The writ may be issued by the Supreme Court, the Court of Appeals, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.

[1911 CPA § 753; RL § 5695; NCL § 9242] — (NRS A 2013, 1734)

NRS 34.170 Writ to issue when no plain, speedy and adequate remedy in law. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

[1911 CPA § 754; RL § 5696; NCL § 9243]

NRS 34.180 Writ may be made returnable; hearing. Except as otherwise provided in NRS 34.185, the writ of mandamus may, in the discretion of the court or judge issuing the writ, be made returnable and a hearing thereon be had at any time.

[Part 1911 CPA § 769; RL § 5711; NCL § 9258] — (NRS A 1999, 176)

NRS 34.185 Application alleging unconstitutional prior restraint; court required to render judgment on application not later than 30 days after application is filed.

1. If the applicant is alleging an unconstitutional prior restraint of the applicant's rights pursuant to the First Amendment to the Constitution of the United States or Section 9 of Article 1 of the Constitution of the State of Nevada, the applicant shall insert the words "First Amendment Petition" in the caption of the application for the writ in at least 10-point type.
2. The court shall render judgment on an application for a writ described in subsection 1 not later than 30 days after the date on which the application for the writ is filed.

(Added to NRS by 1999, 176)

NRS 34.190 Writ must be either alternative or peremptory; substance of writ.

1. The writ shall be either alternative or peremptory.

2. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why the party has not done so.

3. The peremptory writ shall be in a form similar to the alternative writ, except that the words requiring the party to show cause why the party has not done as commanded shall be omitted, and a return day shall be inserted.

[1911 CPA § 755; RL § 5697; NCL § 9244]

NRS 34.200 Issuance of alternative or peremptory writ; notice of application; case heard by court whether adverse party appears or not. When the application to the court or district judge is made without notice to the adverse party, and the writ is allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ is allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least 10 days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

[1911 CPA § 756; RL § 5698; NCL § 9245]

NRS 34.210 Adverse party may show cause by answer under oath. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the court or district judge issuing the writ may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

[1911 CPA § 757; RL § 5699; NCL § 9246]

NRS 34.220 If answer raises essential question of fact, court may order jury trial. If an answer is made, which raises a question as to matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for a writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for the applicant.

[1911 CPA § 758; RL § 5700; NCL § 9247]

NRS 34.230 Applicant may object to sufficiency of answer or countervail it by proof. On the trial, the applicant shall not be precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

[1911 CPA § 759; RL § 5701; NCL § 9248]

NRS 34.240 Motion for new trial and new trial. If either party is dissatisfied with the verdict of the jury, the party may, without a statement in support of the motion, move for a new trial upon the minutes of the court for any of the causes or grounds for new trials provided in Nevada Rules of Civil Procedure. The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried. If a new trial is granted, the jury shall, within 5 days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

[1911 CPA § 760; RL § 5702; NCL § 9249]

NRS 34.250 Clerk to transmit verdict to court where writ is pending, after which hearing may be had on application for writ. If no notice for a new trial be given or, if given, be denied, the clerk, within 5 days after the rendition of the verdict, or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

[1911 CPA § 761; RL § 5703; NCL § 9250]

NRS 34.260 Court may grant time for reply to answer; hearing by court. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in NRS 34.220, but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law or put in issue immaterial statements

not affecting the substantial rights of the parties, the court shall proceed to hear or fix a day for hearing the argument of the case.

[1911 CPA § 762; RL § 5704; NCL § 9251]

NRS 34.270 Recovery of damages by applicant; execution may issue to enforce judgment. If judgment be given for the applicant, the applicant shall recover the damages which the applicant shall have sustained as found by the jury, or as may be determined by the court or master, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay.

[1911 CPA § 763; RL § 5705; NCL § 9252]

NRS 34.280 Service of writ.

1. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the order of the court or district judge issuing the writ.

2. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

[1911 CPA § 764; RL § 5706; NCL § 9253] + [Part 1911 CPA § 765; RL § 5707; NCL § 9254]

NRS 34.290 Penalties for refusal or neglect to obey writ; state and county officers.

1. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person, upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, after notice and hearing, adjudge the party guilty of contempt and upon motion impose a fine not exceeding $1,000.

2. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding 3 months and may make any orders necessary and proper for the complete enforcement of the writ.

3. If a fine be imposed upon a judge or officer who draws a salary from the State or county, a certified copy of the order shall be forwarded to the State Controller or county treasurer, as the case may be, and the amount thereof may be retained from the salary of such judge or officer. Such judge or officer for such willful disobedience shall also be deemed guilty of a misdemeanor in office.

[Part 1911 CPA § 765; RL § 5707; NCL § 9254]

NRS 34.300 Rules of practice in mandamus proceedings. Except as otherwise provided in NRS 34.150 to 34.290, inclusive, the provisions of NRS and Nevada Rules of Civil Procedure relative to civil actions in the district court are applicable to and constitute the rules of practice in the proceedings mentioned in NRS 34.150 to 34.290, inclusive.

[1911 CPA § 770; RL § 5712; NCL § 9259] — (NRS A 1999, 176)

NRS 34.310 Procedure in new trials and appeals in mandamus proceedings. The provisions of the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to new trials in, and appeals from, the district court, except so far as they are inconsistent with the provisions of NRS 34.150 to 34.290, inclusive, apply to the proceedings mentioned in NRS 34.150 to 34.290, inclusive.

[1911 CPA § 771; RL § 5713; NCL § 9260]

PROHIBITION

NRS 34.320 Writ of prohibition defined. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

[1911 CPA § 766; RL § 5708; NCL § 9255]

NRS 34.330 Writ may be issued by appellate or district court when no plain, speedy and adequate remedy in law. The writ may be issued only by the Supreme Court, the Court of Appeals or a district court to an inferior tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

[1911 CPA § 767; RL § 5709; NCL § 9256] — (NRS A 2003, 1409; 2013, 1734)

NRS 34.340 Writ must be alternative or peremptory; form of writ.

1. The writ must be either alternative or peremptory.

2. The alternative writ must state generally the allegation against the party to whom it is directed and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter.

3. The peremptory writ must be in a form similar to the alternative writ, except that the words requiring the party to show cause why the party should not be absolutely restrained from any further proceedings in such action or matter, must be omitted and a return day inserted.

[1911 CPA § 768; RL § 5710; NCL § 9257]

NRS 34.350 Court may order return and hearing at any time. The writ of prohibition may, in the discretion of the court issuing the writ, be made returnable and a hearing thereon be had at any time.

[Part 1911 CPA § 769; RL § 5711; NCL § 9258]

HABEAS CORPUS

General Provisions

NRS 34.360 Persons who may prosecute writ. Every person unlawfully committed, detained, confined or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

[1:93:1862; B § 349; BH § 3671; C § 3744; RL § 6226; NCL § 11375] — (NRS A 1967, 1469; 1969, 106)

NRS 34.370 Application for writ; verification required; contents; supporting documents.

1. A petition for a writ of habeas corpus must be verified by the petitioner or the petitioner's counsel. If the petition is verified by counsel, counsel shall also verify that the petitioner personally authorized counsel to commence the action.

2. A verified petition for issuance of a writ of habeas corpus must specify that the petitioner is imprisoned or restrained of the petitioner's liberty, the officer or other person by whom the petitioner is confined or restrained, and the place where the petitioner is confined, naming all the parties if they are known, or describing them if they are not known.

3. If the petitioner claims that the imprisonment is illegal, the petitioner must state facts which show that the restraint or detention is illegal.

4. If the petition requests relief from a judgment of conviction or sentence in a criminal case, the petition must identify the proceedings in which the petitioner was convicted, give the date of entry of the final judgment and set forth which constitutional rights of the petitioner were violated and the acts constituting violations of those rights. Affidavits, records or other evidence supporting the allegations in the petition must be attached unless the petition recites the cause for failure to attach these materials. The petition must identify any previous proceeding in state or federal court initiated by the petitioner to secure relief from the petitioner's conviction or sentence. Argument, citations and other supporting documents are unnecessary.

[2:93:1862; B § 350; BH § 3672; C § 3745; RL § 6227; NCL § 11376] — (NRS A 1985, 1233; 1987, 1215)

NRS 34.390 Judge to grant writ without delay; exceptions; effect of writ.

1. Any judge empowered to grant a writ of habeas corpus applied for pursuant to this chapter, if it appears that the writ ought to issue, shall grant the writ without delay, except as otherwise provided in NRS 34.720 to 34.830, inclusive.

2. A writ of habeas corpus does not entitle a petitioner to be discharged from the custody or restraint under which the petitioner is held. The writ requires only the production of the petitioner to determine the legality of the petitioner's custody or restraint.

[4:93:1862; B § 352; BH § 3674; C § 3746 1/2; RL § 6229; NCL § 11378] — (NRS A 1985, 1235; 1991, 77)

NRS 34.400 Contents of writ. The writ must be directed to the person who has the petitioner in custody or under restraint, commanding the person to have the body of the petitioner produced before the district court, Court of Appeals or Supreme Court at a time which the judge or justice directs.

[5:93:1862; B § 353; BH § 3675; C § 3747; RL § 6230; NCL § 11379] — (NRS A 1985, 1235; 2013, 1734)

NRS 34.410 Service of writ.

1. If the writ be directed to the sheriff or other ministerial officer, it shall be delivered to such officer without delay by the clerk of the court presided over by the judge issuing the writ.

2. If the writ be directed to any other person, it shall be delivered to the sheriff or the sheriff's deputy, and shall be served by the sheriff or the sheriff's deputy without delay upon such person by delivering the same to the person.

3. If the officer or person to whom the writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering the writ, it may be served or delivered by leaving it at the residence of the officer or person to whom it is directed or by affixing the same on some conspicuous place on the outside of the officer's or person's dwelling house, or of the place where the party is confined or under restraint.

4. Service of the writ is made by serving a copy and exhibiting the original, and where posting is required, by posting a copy.

[6:93:1862; B § 354; BH § 3676; C § 3748; RL § 6231; NCL § 11380] + [7:93:1862; B § 355; BH § 3677; C § 3749; RL § 6232; NCL § 11381] + [8:93:1862; B § 356; BH § 3678; C § 3750; RL § 6233; NCL § 11382]

NRS 34.420 Proceedings upon disobedience of writ. If the officer or person to whom such writ is directed refuse, after service, to obey the same, the judge shall, upon affidavit, issue an attachment against such person, directed to the sheriff, or, if the sheriff be the defendant, to an elisor, appointed for the purpose by the judge, commanding the sheriff or elisor forthwith to apprehend such person and bring the person immediately before such judge; and upon being so brought the person shall be committed to the jail of the county until the person makes due return to such writ, or be otherwise legally discharged.

[9:93:1862; B § 357; BH § 3679; C § 3751; RL § 6234; NCL § 11383]

NRS 34.430 Return and answer: Service and filing; contents; signature and verification.

1. Except as otherwise provided in subsection 1 of NRS 34.745, the respondent shall serve upon the petitioner and file with the court a return and an answer that must respond to the allegations of the petition within 45 days or a longer period fixed by the judge or justice.

2. The return must state plainly and unequivocally whether the respondent has the party in custody, or under the respondent's power or restraint. If the respondent has the petitioner in the respondent's custody or power, or under the respondent's restraint, the respondent shall state the authority and cause of the imprisonment or restraint, setting forth with specificity the basis for custody.

3. If the petitioner is detained by virtue of any judgment, writ, warrant or other written authority, a certified or exemplified copy must be annexed to the return.

4. If the respondent has the petitioner in the respondent's power or custody or under the respondent's restraint before or after the date of the writ of habeas corpus but has transferred custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority the transfer took place.

5. The return must be signed by the respondent and, unless the respondent is a sworn public officer who makes the return in the respondent's official capacity, verified under oath or affirmation.

[10:93:1862; B § 358; BH § 3680; C § 3752; RL § 6235; NCL § 11384] — (NRS A 1985, 1235; 1991, 77; 1999, 144)

NRS 34.440 Person served must bring body of person in custody; exceptions. If the writ of habeas corpus be served, the person or officer to whom the same is directed shall also bring the body of the party in the person's or officer's custody or under the person's or officer's restraint, according to the command of the writ, except in the cases specified in NRS 34.450.

[11:93:1862; B § 359; BH § 3681; C § 3753; RL § 6236; NCL § 11385]

NRS 34.450 Sickness or infirmity of party restrained; hearing may proceed or be adjourned.

1. Whenever, from sickness or infirmity of the party directed to be produced by any writ of habeas corpus, the party cannot, without danger, be brought before the judge, the officer or person in whose custody or power the party is may state that fact in the officer's or person's return to the writ, verifying the same by affidavit.

2. If the judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, the judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

[12:93:1862; B § 360; BH § 3682; C § 3754; RL § 6237; NCL § 11386] + [13:93:1862; B § 361; BH § 3683; C § 3755; RL § 6238; NCL § 11387]

NRS 34.470 Answer to return; summary proceeding; attendance of witnesses.

1. The petitioner brought before the judge on the return of the writ may deny or controvert any of the material facts or matters set forth in the return or answer, deny the sufficiency thereof, or allege any fact to show either that the petitioner's imprisonment or detention is unlawful or that the petitioner is entitled to discharge.

2. The judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against or in favor of such imprisonment or detention, and to dispose of the case as justice may require.

3. The judge may compel the attendance of witnesses by process of subpoena and attachment and perform all other acts necessary to a full and fair hearing and determination of the case.

[15:93:1862; B § 363; BH § 3685; C § 3757; RL § 6240; NCL § 11389] + [16:93:1862; B § 364; BH § 3686; C § 3758; RL § 6241; NCL § 11390] + [17:93:1862; B § 365; BH § 3687; C § 3759; RL § 6242; NCL § 11391] — (NRS A 1985, 1236)

NRS 34.480 If no legal cause shown, judge shall discharge person from custody. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such judge shall discharge such party from the custody or restraint under which the party is held.

[18:93:1862; B § 366; BH § 3688; C § 3760; RL § 6243; NCL § 11392]

NRS 34.500 Grounds for discharge in certain cases. If it appears on the return of the writ of habeas corpus that the petitioner is in custody by virtue of process from any court of this State, or judge or officer thereof, the petitioner may be discharged in any one of the following cases:

1. When the jurisdiction of the court or officer has been exceeded.

2. When the imprisonment was at first lawful, yet by some act, omission or event, which has taken place afterwards, the petitioner has become entitled to be discharged.

3. When the process is defective in some matter of substance required by law, rendering it void.

4. When the process, though proper in form, has been issued in a case not allowed by law.

5. When the person having the custody of the petitioner is not the person allowed by law to detain the petitioner.

6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

7. Where the petitioner has been committed or indicted on a criminal charge, including a misdemeanor, except misdemeanor violations of chapters 484A to 484E, inclusive, of NRS or any ordinance adopted by a city or county to regulate traffic, without reasonable or probable cause.

8. Where the petitioner has been committed or indicted on any criminal charge under a statute or ordinance that is unconstitutional, or if constitutional on its face is unconstitutional in its application.

9. Where the court finds that there has been a specific denial of the petitioner's constitutional rights with respect to the petitioner's conviction or sentence in a criminal case.

[20:93:1862; B § 368; BH § 3690; C § 3762; RL § 6245; NCL § 11394] — (NRS A 1967, 1469; 1971, 773; 1985, 1236)

NRS 34.510 Defect of form in warrant or commitment not ground for discharge. If any person be committed to prison, or be in custody of any officer on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the ground of any defect of form in such warrant or commitment.

[21:93:1862; B § 369; BH § 3691; C § 3763; RL § 6246; NCL § 11395]

NRS 34.520 If charge defectively set forth in process or warrant, judge shall examine witnesses and discharge or recommit person. If it shall appear to the judge, by affidavit, or upon hearing of the matter, or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the judge, that the party is guilty of a criminal offense, or ought not to be discharged, the judge, although the charge is defectively or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant, or other necessary witnesses, to be subpoenaed to attend at such time as ordered, to testify before the judge; and upon the examination, the judge shall discharge such prisoner, let the prisoner to bail, if the offense be bailable, or recommit the prisoner to custody, as may be just and legal.

[22:93:1862; B § 370; BH § 3692; C § 3764; RL § 6247; NCL § 11396]

NRS 34.530 Writ for purposes of bail. Any person who is imprisoned or detained in custody on any criminal charge before conviction for want of bail may file a petition for a writ of habeas corpus for the purpose of giving bail, upon averring that fact in the person's petition, without alleging that the person is illegally confined.

[23:93:1862; B § 371; BH § 3693; C § 3765; RL § 6248; NCL § 11397] — (NRS A 1987, 1216)

NRS 34.540 Bail in habeas corpus proceedings. Any Supreme Court justice, judge of the Court of Appeals or judge, before whom any person who has been committed on a criminal charge before conviction is brought on a writ of habeas corpus, if that person is bailable, may take a recognizance from that person, as in other cases, and shall file the same in the proper court without delay. In no case where the applicant for a writ of habeas corpus has been admitted to bail and failed to appear before the Supreme Court justice, the judge of the Court of Appeals, the judge or presiding judge of the court wherein the bail was fixed may the proceedings for a writ of habeas corpus be dismissed, except upon good cause shown. Upon the failure of that person to appear, the justice, judge of the Court of Appeals, district judge or presiding judge shall cause a bench warrant to be issued and that person arrested and brought before the justice, judge or court as upon contempt.

[24:93:1862; A 1953, 257] — (NRS A 1987, 1216; 2013, 1734)

NRS 34.550 Judge to remand to custody if party not entitled to discharge or is not bailed. If a party brought before the judge on the return of the writ is not entitled to discharge, and is not bailed where such bail is allowable, the judge shall remand the party to custody or place the party under the restraint from which the party was taken, if the person under whose custody or restraint the party was is legally entitled thereto.

[25:93:1862; B § 373; BH § 3695; C § 3767; RL § 6250; NCL § 11399]

NRS 34.560 Judge may order change of custody; enforcement of commitment order stayed; appeal.

1. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.
2. If a party is ordered committed to the restraint or custody of an officer from a jurisdiction outside the State of Nevada, the district judge ordering such commitment shall stay the enforcement thereof for 5 days, during which time an aggrieved party may file a notice of appeal therefrom to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution.
3. Upon the filing of a notice of appeal as provided in subsection 2, the enforcement of such order of commitment shall be stayed during the pendency of the appeal.
4. During any period of stay as provided in this section, the local officer having custody of such party shall retain custody thereof.

[26:93:1862; B § 374; BH § 3696; C § 3768; RL § 6251; NCL § 11400] — (NRS A 1959, 18; 2013, 1734)

NRS 34.570 Pending judgment on proceedings, judge may commit or place in custody. Until judgment is given on a petition, the judge before whom any party may be brought on the petition may:

1. Commit the party to the custody of the sheriff of the county; or
2. Place the party in such care or under such custody as the party's age or circumstances may require.

[27:93:1862; B § 375; BH § 3697; C § 3769; RL § 6252; NCL § 11401] — (NRS A 1999, 145)

NRS 34.575 Appeal from order of district court granting or denying writ.

1. An applicant who, after conviction or while no criminal action is pending against the applicant, has petitioned the district court for a writ of habeas corpus and whose application for the writ is denied, may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the order and judgment of the district court, but the appeal must be made within 30 days after service by the court of written notice of entry of the order or judgment.
2. The State of Nevada is an interested party in proceedings for a writ of habeas corpus. If the district court grants the writ and orders the discharge or a change in custody of the petitioner, the district attorney of the county in which the application for the writ was made, or the city attorney of a city which is situated in the county in which the application for the writ was made, or the Attorney General on behalf of the State, may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the order of the district judge within 30 days after the service by the court of written notice of entry of the order.
3. Whenever an appeal is taken from an order of the district court discharging a petitioner or committing a petitioner to the custody of another person after granting a pretrial petition for habeas corpus based on alleged want of probable cause, or otherwise challenging the court's right or jurisdiction to proceed to trial of a criminal charge, the clerk of the district court shall forthwith certify and transmit to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution, as the record on appeal, the original papers on which the petition was heard in the district court and, if the appellant or respondent

demands it, a transcript of any evidentiary proceedings had in the district court. The district court shall require its court reporter to expedite the preparation of the transcript in preference to any request for a transcript in a civil matter. When the appeal is docketed in the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court, it stands submitted without further briefs or oral argument unless the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court otherwise orders.

(Added to NRS by 1991, 74; A 2013, 1735)

NRS 34.580 Defect of form in writ immaterial. No writ of habeas corpus shall be disobeyed for defect of form if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining the party, and the judge before whom the party is to be brought.

[28:93:1862; B § 376; BH § 3698; C § 3770; RL § 6253; NCL § 11402]

NRS 34.590 Cases where imprisonment after discharge is permitted. No person who has been discharged by the order of the judge upon habeas corpus issued pursuant to the provisions of this chapter shall be again imprisoned, restrained or kept in custody for the same cause, except in the following cases:

1. If the person shall have been discharged from custody on a criminal charge and be afterwards committed for the same offense by legal order or process.
2. If after a discharge for defect of proof, or for any defect of the process, warrant or commitment in a criminal case, the person be again arrested on sufficient proof and committed by legal process for the same offense.

[29:93:1862; B § 377; BH § 3699; C § 3771; RL § 6254; NCL § 11403]

NRS 34.600 In certain cases warrant may issue instead of writ. Whenever it shall appear by satisfactory proof, by affidavit, to any judge authorized by law to grant a writ of habeas corpus, that anyone is illegally held in custody, confinement or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of such judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, the judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff or any constable of the county, commanding such officer to take such person thus held in custody, confinement or restraint and forthwith bring him or her before such judge, to be dealt with according to law.

[30:93:1862; B § 378; BH § 3700; C § 3772; RL § 6255; NCL § 11404]

NRS 34.610 Judge may include in warrant order for arrest of person charged with illegal detention. The judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

[31:93:1862; B § 379; BH § 3701; C § 3773; RL § 6256; NCL § 11405]

NRS 34.620 Execution of warrant. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the judge who may have directed the issuing of such warrant.

[32:93:1862; B § 380; BH § 3702; C § 3774; RL § 6257; NCL § 11406]

NRS 34.630 Return, answer and hearing on warrant. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in the case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs and trial shall be thereon had as upon the return to a writ of habeas corpus.

[33:93:1862; B § 381; BH § 3703; C § 3775; RL § 6258; NCL § 11407]

NRS 34.640 Party may be discharged or remanded. If such party be held under illegal restraint or custody, the party shall be discharged, and if not, the party shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

[34:93:1862; B § 382; BH § 3704; C § 3776; RL § 6259; NCL § 11408]

NRS 34.650 Writ of process may issue on Sunday or nonjudicial day. Any writ of process authorized by NRS 34.360 to 34.830, inclusive, may be issued and served on Sunday or any other nonjudicial day.

[35:93:1862; B § 383; BH § 3705; C § 3777; RL § 6260; NCL § 11409]

NRS 34.660 Clerk to issue writs, warrants, processes and subpoenas; when returnable. All writs, warrants, processes and subpoenas authorized by the provisions of NRS 34.360 to 34.830, inclusive, shall be issued

by the clerk of the court, and, except subpoenas, sealed with the seal of the court, and shall be served and returned forthwith, unless the judge shall specify a particular time for any such return.

[36:93:1862; B § 384; BH § 3706; C § 3778; RL § 6261; NCL § 11410]

NRS 34.670 Damages recoverable for failure to issue or obey writ. If any judge, after a proper application is made, shall refuse to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, the judge, officer or person shall forfeit and pay to the person aggrieved a sum not exceeding $5,000, to be recovered by action in any court of competent jurisdiction.

[37:93:1862; B § 385; BH § 3707; C § 3779; RL § 6262; NCL § 11411]

NRS 34.680 Penalties for custodian or accessory disobeying or avoiding writ.

1. Any person having in his or her custody or under his or her restraint or power any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this chapter, who, with the intent to elude the service of such writ or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place the person under the power or control of another or shall conceal or exchange the place of the person's confinement or restraint, or shall remove the person without the jurisdiction of such judge, shall be deemed guilty of a gross misdemeanor.

2. Every person who shall knowingly aid or assist in the commission of any offense specified in subsection 1 shall be punished as in subsection 1 mentioned.

[38:93:1862; B § 386; BH § 3708; C § 3780; RL § 6263; NCL § 11412] + [39:93:1862; B § 387; BH § 3709; C § 3781; RL § 6264; NCL § 11413] + [40:93:1862; B § 388; BH § 3710; C § 3782; RL § 6265; NCL § 11414] — (NRS A 1967, 528)

Petitions for Pretrial Relief

NRS 34.700 Time for filing; waiver and consent of accused respecting date of trial.

1. Except as provided in subsection 3, a pretrial petition for a writ of habeas corpus based on alleged lack of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge may not be considered unless:

(a) The petition and all supporting documents are filed within 21 days after the first appearance of the accused in the district court; and

(b) The petition contains a statement that the accused:

(1) Waives the 60-day limitation for bringing an accused to trial; or

(2) If the petition is not decided within 15 days before the date set for trial, consents that the court may, without notice or hearing, continue the trial indefinitely or to a date designated by the court.

2. The arraignment and entry of a plea by the accused must not be continued to avoid the requirement that a pretrial petition be filed within the period specified in subsection 1.

3. The court may extend, for good cause, the time to file a petition. Good cause shall be deemed to exist if the transcript of the preliminary hearing or of the proceedings before the grand jury is not available within 14 days after the accused's initial appearance and the court shall grant an ex parte application to extend the time for filing a petition. All other applications may be made only after appropriate notice has been given to the prosecuting attorney.

(Added to NRS by 1977, 1350; A 1981, 506; 1985, 1233)

NRS 34.710 Limitations on submission and consideration of pretrial petition.

1. A district court shall not consider any pretrial petition for habeas corpus:

(a) Based on alleged lack of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge unless a petition is filed in accordance with NRS 34.700.

(b) Based on a ground which the petitioner could have included as a ground for relief in any prior petition for habeas corpus or other petition for extraordinary relief.

2. If an application is made to the Court of Appeals for a writ of habeas corpus and the application is entertained by the Court of Appeals, and thereafter denied, the person making the application may not submit thereafter an application to the district judge of the district in which the applicant is held in custody, nor to any other district judge in any other judicial district of the State, premised upon the illegality of the same charge upon which the applicant is held in custody.

3. If an application is made to a justice of the Supreme Court for a writ of habeas corpus and the application is entertained by the justice or the Supreme Court, and thereafter denied, the person making the application may not submit thereafter an application to the Court of Appeals, the district judge of the district in which the applicant is held

in custody, nor to any other district judge in any other judicial district of the State, premised upon the illegality of the same charge upon which the applicant is held in custody.

[3:93:1862; A 1953, 257] — (NRS A 1959, 17; 1971, 235; 1973, 502; 1977, 768, 1350, 1352; 1979, 312; 1981, 507; 1985, 1234; 1987, 1216; 1991, 78; 2013, 1735)

Petitions for Postconviction Relief

NRS 34.720 Scope of provisions. The provisions of NRS 34.720 to 34.830, inclusive, apply only to petitions for writs of habeas corpus in which the petitioner:

1. Requests relief from a judgment of conviction or sentence in a criminal case; or
2. Challenges the computation of time that the petitioner has served pursuant to a judgment of conviction.

(Added to NRS by 1985, 1233; A 1987, 1217; 1991, 79)

NRS 34.722 "Petition" defined. As used in NRS 34.720 to 34.830, inclusive, unless the context otherwise requires, "petition" means a postconviction petition for habeas corpus filed pursuant to NRS 34.724.

(Added to NRS by 1991, 75)

NRS 34.724 Persons who may file petition; effect of filing.

1. Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State, or who claims that the time the person has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that the person has served.
2. Such a petition:

(a) Is not a substitute for and does not affect any remedies which are incident to the proceedings in the trial court or the remedy of direct review of the sentence or conviction.

(b) Comprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them.

(c) Is the only remedy available to an incarcerated person to challenge the computation of time that the person has served pursuant to a judgment of conviction.

3. For the purposes of this section, a motion to withdraw a plea of guilty, guilty but mentally ill or nolo contendere pursuant to NRS 176.165 that is made after sentence is imposed or imposition of sentence is suspended is a remedy which is incident to the proceedings in the trial court if:

(a) The person has not filed a prior motion to withdraw the plea and has not filed a prior postconviction petition for a writ of habeas corpus;

(b) The motion is filed within 1 year after the date on which the person was convicted, unless the person pleads specific facts demonstrating that some impediment external to the defense precluded bringing the motion earlier;

(c) At the time the person files the motion to withdraw the plea, the person is not incarcerated for the charge for which the person entered the plea; and

(d) The motion is not barred by the doctrine of laches. A motion filed more than 5 years after the date on which the person was convicted creates a rebuttable presumption of prejudice to the State on the basis of laches.

4. The court shall not appoint counsel to represent a person for the purpose of subsection 3.

(Added to NRS by 1991, 75; A 2017, 370)

NRS 34.726 Limitations on time to file; stay of sentence.

1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

(a) That the delay is not the fault of the petitioner; and

(b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

2. The execution of a sentence must not be stayed for the period provided in subsection 1 solely because a petition may be filed within that period. A stay of sentence must not be granted unless:

(a) A petition is actually filed; and

(b) The petitioner establishes a compelling basis for the stay.

(Added to NRS by 1991, 75; A 2013, 1736)

NRS 34.730 Petition: Verification; title; service; filing by clerk; prerequisites for hearing.

1. A petition must be verified by the petitioner or the petitioner's counsel. If the petition is verified by counsel, counsel shall also verify that the petitioner personally authorized counsel to commence the action.

2. The petition must be titled "Petition for Writ of Habeas Corpus (Postconviction)" and be in substantially the form set forth in NRS 34.735. The petition must name as respondent and be served by mail upon the officer or other person by whom the petitioner is confined or restrained. A copy of the petition must be served by mail upon:

(a) The Attorney General; and

(b) In the case of a petition challenging the validity of a judgment of conviction or sentence, the district attorney in the county in which the petitioner was convicted.

3. Except as otherwise provided in this subsection, the clerk of the district court shall file a petition as a new action separate and distinct from any original proceeding in which a conviction has been had. If a petition challenges the validity of a conviction or sentence, it must be:

(a) Filed with the record of the original proceeding to which it relates; and

(b) Whenever possible, assigned to the original judge or court.

4. No hearing upon the petition may be set until the requirements of NRS 34.740 to 34.770, inclusive, are satisfied.

(Added to NRS by 1985, 1229; A 1987, 1218; 1991, 79)

NRS 34.735 Petition: Form. A petition must be in substantially the following form, with appropriate modifications if the petition is filed in the Court of Appeals or the Supreme Court:

Case No. .....
Dept. No. .....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF.....

.....
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

.....
Respondent.

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: .....
.....

2. Name and location of court which entered the judgment of conviction under attack:
.....

3. Date of judgment of conviction: .....

4. Case number: .....

5. (a) Length of sentence: .....
.....

(b) If sentence is death, state any date upon which execution is scheduled:

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes ..... No .....
If "yes," list crime, case number and sentence being served at this time: .....
.....
.....

7. Nature of offense involved in conviction being challenged: .....
.....

8. What was your plea? (check one)
(a) Not guilty .....
(b) Guilty .....
(c) Guilty but mentally ill .....
(d) Nolo contendere .....

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:
.....
.....

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)
(a) Jury .....
(b) Judge without a jury .....

11. Did you testify at the trial? Yes ..... No .....

12. Did you appeal from the judgment of conviction? Yes ..... No .....

13. If you did appeal, answer the following:
(a) Name of court: .....
(b) Case number or citation: .....
(c) Result: .....
(d) Date of result: .....
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: .....
.....
.....

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ..... No .....

16. If your answer to No. 15 was "yes," give the following information:
(a) (1) Name of court: .....

(2) Nature of proceeding: .....
.....
(3) Grounds raised: .....
.....
.....
(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....
(5) Result: .....
(6) Date of result: .....
(7) If known, citations of any written opinion or date of orders entered pursuant to such result:
.....
(b) As to any second petition, application or motion, give the same information:
(1) Name of court: .....
(2) Nature of proceeding: .....
(3) Grounds raised: .....
(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....
(5) Result: .....
(6) Date of result: .....
(7) If known, citations of any written opinion or date of orders entered pursuant to such result:
.....
(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.
(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?
(1) First petition, application or motion? Yes ..... No .....
Citation or date of decision: .....
(2) Second petition, application or motion? Yes ..... No .....
Citation or date of decision: .....
(3) Third or subsequent petitions, applications or motions? Yes ..... No .....
Citation or date of decision: .....
(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)
.....
.....
17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:
(a) Which of the grounds is the same: .....
.....
(b) The proceedings in which these grounds were raised: .....
.....
(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) .....
.....
18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)
.....
19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to

the petition. Your response may not exceed five handwritten or typewritten pages in length.) .....
.....

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ..... No .....
If yes, state what court and the case number: .....
.....

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:
.....

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ..... No .....
If yes, specify where and when it is to be served, if you know: .....
.....

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground one: .....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.): .....
.....
.....

(b) Ground two: .....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.): .....
.....
.....

(c) Ground three: .....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.): .....
.....
.....

(d) Ground four: .....
.....
Supporting FACTS (Tell your story briefly without citing cases or law.): .....
.....
.....

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at ..... on the ..... day of the month of ..... of the year .....

.....
Signature of petitioner
.....
Address

.....
Signature of attorney (if any)
.....
Attorney for petitioner
.....
Address

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own

knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

.....
Petitioner

.....
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, ..., hereby certify, pursuant to N.R.C.P. 5(b), that on this ..... day of the month of ..... of the year ....., I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

.....
Respondent prison or jail official

.....
Address

.....
Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, Nevada 89710

.....
District Attorney of County of Conviction

.....
Address

.....
Signature of Petitioner

(Added to NRS by 1987, 1210; A 1989, 451; 1991, 79; 1993, 243; 1995, 2460; 2001, 21; 2001 Special Session, 207; 2003, 1473; 2007, 1429; 2013, 1736)

NRS 34.738 Petition: Filing in appropriate county; limitation on scope.

1. A petition that challenges the validity of a conviction or sentence must be filed with the clerk of the district court for the county in which the conviction occurred. Any other petition must be filed with the clerk of the district court for the county in which the petitioner is incarcerated.

2. A petition that is not filed in the district court for the appropriate county:

(a) Shall be deemed to be filed on the date it is received by the clerk of the district court in which the petition is initially lodged; and

(b) Must be transferred by the clerk of that court to the clerk of the district court for the appropriate county.

3. A petition must not challenge both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment. If a petition improperly challenges both the validity of a judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to that judgment, the district court for the appropriate county shall resolve that portion of the petition that challenges the validity of the judgment of conviction or sentence and dismiss the remainder of the petition without prejudice.

(Added to NRS by 1991, 76; A 1999, 145)

NRS 34.740 Petition: Expeditious judicial examination. The original petition must be presented promptly to a district judge, a judge of the Court of Appeals or a justice of the Supreme Court by the clerk of the court. The petition must be examined expeditiously by the judge or justice to whom it is assigned.

(Added to NRS by 1985, 1229; A 1991, 85; 2013, 1741)

NRS 34.745 Judicial order to file answer and return; when order is required; form of order; summary dismissal of successive petitions; record of proceeding.

1. If a petition challenges the validity of a judgment of conviction or sentence and is the first petition filed by the petitioner, the judge or justice shall order the district attorney or the Attorney General, whichever is appropriate, to:

(a) File:

(1) A response or an answer to the petition; and

(2) If an evidentiary hearing is required pursuant to NRS 34.770, a return,

➥ within 45 days or a longer period fixed by the judge or justice; or

(b) Take other action that the judge or justice deems appropriate.

2. If a petition challenges the computation of time that the petitioner has served pursuant to a judgment of conviction, the judge or justice shall order the Attorney General to:

(a) File:

(1) A response or an answer to the petition; and

(2) A return,

➥ within 45 days or a longer period fixed by the judge or justice.

(b) Take other action that the judge or justice deems appropriate.

3. An order entered pursuant to subsection 1 or 2 must be in substantially the following form, with appropriate modifications if the order is entered by a judge of the Court of Appeals or a justice of the Supreme Court:

Case No.....
Dept. No.....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF .....

.....
Petitioner,

v. ORDER

.....
Respondent.

Petitioner filed a petition for a writ of habeas corpus on ..... (month) ..... (day), ... (year). The court has reviewed the petition and has determined that a response would assist the court in determining whether petitioner is illegally imprisoned and restrained of petitioner's liberty. Respondent shall, within 45 days after the date of this order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

Dated ..... (month) ..... (day), ... (year)

.....
District Judge

➥ A copy of the order must be served on the petitioner or the petitioner's counsel, the respondent, the Attorney General and the district attorney of the county in which the petitioner was convicted.

4. If the petition is a second or successive petition challenging the validity of a judgment of conviction or sentence and if it plainly appears from the face of the petition or an amended petition and documents and exhibits that are annexed to it, or from records of the court that the petitioner is not entitled to relief based on any of the grounds set forth in subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary dismissal and cause the petitioner to be notified of the entry of the order.

5. If the judge or justice relies on the records of the court in entering an order pursuant to this section, those records must be made a part of the record of the proceeding before entry of the order.

(Added to NRS by 1991, 76; A 1999, 145; 2001, 57; 2013, 1741)

NRS 34.750 Appointment of counsel for indigents; pleadings supplemental to petition; response to motion to dismiss.

1. A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:

(a) The issues presented are difficult;

(b) The petitioner is unable to comprehend the proceedings; or

(c) Counsel is necessary to proceed with discovery.

2. If the court determines that the petitioner is unable to pay all necessary costs and expenses incident to the proceedings of the trial court and the reviewing court, including court costs, stenographic services, printing and reasonable compensation for legal services, all costs must be paid from money appropriated to the office of the State Public Defender for that purpose. After appropriations for that purpose are exhausted, money must be allocated to the office of the State Public Defender from the Reserve for Statutory Contingency Account for the payment of the costs, expenses and compensation.

3. After appointment by the court, counsel for the petitioner may file and serve supplemental pleadings, exhibits, transcripts and documents within 30 days after:

(a) The date the court orders the filing of an answer and a return; or

(b) The date of counsel's appointment,

➥ whichever is later. If it has not previously been filed, the answer by the respondent must be filed within 15 days after receipt of the supplemental pleadings and include any response to the supplemental pleadings.

4. The petitioner shall respond within 15 days after service to a motion by the State to dismiss the action.

5. No further pleadings may be filed except as ordered by the court.

(Added to NRS by 1985, 1230; A 1987, 1218; 1991, 85, 1751, 1824)

NRS 34.760 Contents of respondent's answer; supplemental material.

1. The answer must state whether the petitioner has previously applied for relief from the petitioner's conviction or sentence in any proceeding in a state or federal court, including a direct appeal or a petition for a writ of habeas corpus or other postconviction relief.

2. The answer must indicate what transcripts of pretrial, trial, sentencing and postconviction proceedings are available, when these transcripts can be furnished and what proceedings have been recorded and not transcribed. The respondent shall attach to the answer any portions of the transcripts, except those in the court's file, which the respondent deems relevant. The court on its own motion or upon request of the petitioner may order additional portions of existing transcripts to be furnished or certain portions of the proceedings which were not transcribed to be transcribed and furnished. If a transcript is not available or procurable, the court may require a narrative summary of the evidence to be submitted.

3. If the petitioner appealed from the judgment of conviction or any adverse judgment or order in a prior petition for a writ of habeas corpus or postconviction relief, a copy of the petitioner's brief on appeal and any opinion of the appellate court must be filed by the respondent with the answer.

(Added to NRS by 1985, 1230; A 1991, 86)

NRS 34.770 Judicial determination of need for evidentiary hearing: Dismissal of petition or granting of writ.

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.

2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing.

3. If the judge or justice determines that an evidentiary hearing is required, the judge or justice shall grant the writ and shall set a date for the hearing.

(Added to NRS by 1985, 1230; A 1991, 86)

NRS 34.780 Applicability of Nevada Rules of Civil Procedure; discovery.

1. The Nevada Rules of Civil Procedure, to the extent that they are not inconsistent with NRS 34.360 to 34.830, inclusive, apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive.

2. After the writ has been granted and a date set for the hearing, a party may invoke any method of discovery available under the Nevada Rules of Civil Procedure if, and to the extent that, the judge or justice for good cause shown grants leave to do so.

3. A request for discovery which is available under the Nevada Rules of Civil Procedure must be accompanied by a statement of the interrogatories or requests for admission and a list of any documents sought to be produced.

(Added to NRS by 1985, 1231; A 1987, 1219; 1991, 87)

NRS 34.790 Record of evidentiary hearing after writ is granted; submission of additional material.

1. If an evidentiary hearing is required, the judge or justice may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the petition.

2. The expanded record may include, without limitation, letters which predate the filing of the petition in the district court, documents, exhibits and answers under oath to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.

3. In any case in which the record is expanded, copies of proposed letters, documents, exhibits and affidavits must be submitted to the party against whom they are to be offered, and the party must be afforded an opportunity to admit or deny their correctness.

4. The court must require the authentication of any material submitted pursuant to subsection 2 or 3.

(Added to NRS by 1985, 1231)

NRS 34.800 Dismissal of petition for delay in filing.

1. A petition may be dismissed if delay in the filing of the petition:

(a) Prejudices the respondent or the State of Nevada in responding to the petition, unless the petitioner shows that the petition is based upon grounds of which the petitioner could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the State occurred; or

(b) Prejudices the State of Nevada in its ability to conduct a retrial of the petitioner, unless the petitioner demonstrates that a fundamental miscarriage of justice has occurred in the proceedings resulting in the judgment of conviction or sentence.

2. A period exceeding 5 years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction creates a rebuttable presumption of prejudice to the State. In a motion to dismiss the petition based on that prejudice, the respondent or the State of Nevada must specifically plead laches. The petitioner must be given an opportunity to respond to the allegations in the pleading before a ruling on the motion is made.

(Added to NRS by 1985, 1231; A 1987, 1219; 1991, 87)

NRS 34.810 Additional reasons for dismissal of petition.

1. The court shall dismiss a petition if the court determines that:

(a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

(1) Presented to the trial court;

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief; or

(3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner's conviction and sentence,

➥ unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

2. A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

➥ The petitioner shall include in the petition all prior proceedings in which the petitioner challenged the same conviction or sentence.

4. The court may dismiss a petition that fails to include any prior proceedings of which the court has knowledge through the record of the court or through the pleadings submitted by the respondent.

(Added to NRS by 1985, 1232; A 1989, 457; 1995, 2465; 2003, 1478; 2007, 1435)

NRS 34.820 Procedure in cases where petitioner has been sentenced to death.

1. If a petitioner has been sentenced to death and the petition is the first one challenging the validity of the petitioner's conviction or sentence, the court shall:

(a) Appoint counsel to represent the petitioner; and

(b) Stay execution of the judgment pending disposition of the petition and the appeal.

2. The petition must include the date upon which execution is scheduled, if it has been scheduled. The petitioner is not entitled to an evidentiary hearing unless the petition states that:

(a) Each issue of fact to be considered at the hearing has not been determined in any prior evidentiary hearing in a state or federal court; or

(b) For each issue of fact which has been determined in a prior evidentiary hearing, the hearing was not a full and fair consideration of the issue. The petition must specify all respects in which the hearing was inadequate.

3. If the petitioner has previously filed a petition for relief or for a stay of the execution in the same court, the petition must be assigned to the judge or justice who considered the previous matter.

4. The court shall inform the petitioner and the petitioner's counsel that all claims which challenge the conviction or imposition of the sentence must be joined in a single petition and that any matter not included in the petition will not be considered in a subsequent proceeding.

5. If relief is granted or the execution is stayed, the clerk shall forthwith notify the respondent, the Attorney General and the district attorney of the county in which the petitioner was convicted.

6. If a district judge conducts an evidentiary hearing, a daily transcript must be prepared for the purpose of appellate review.

7. The judge or justice who considers a petition filed by a petitioner who has been sentenced to death shall make all reasonable efforts to expedite the matter and shall render a decision within 60 days after submission of the matter for decision.

(Added to NRS by 1985, 1232; A 1987, 1219; 1991, 87)

NRS 34.830 Contents and notice of order finally disposing of petition.

1. Any order that finally disposes of a petition, whether or not an evidentiary hearing was held, must contain specific findings of fact and conclusions of law supporting the decision of the court.

2. A copy of any decision or order discharging the petitioner from the custody or restraint under which the petitioner is held, committing the petitioner to the custody of another person, dismissing the petition or denying the requested relief must be served by the clerk of the court upon the petitioner and the petitioner's counsel, if any, the respondent, the Attorney General and the district attorney of the county in which the petitioner was convicted.

3. Whenever a decision or order described in this section is entered by the district court, the clerk of the court shall prepare a notice in substantially the following form and mail a copy of the notice to each person listed in subsection 2:

Case No. .....
Dept. No. .....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF .....

.....
Petitioner,

v. NOTICE OF ENTRY OF DECISION OR ORDER

.....
Respondent.

PLEASE TAKE NOTICE that on ..... (month) ..... (day) ..... (year), the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within 33 days after the date this notice is mailed to you. This notice was mailed on ..... (month) ..... (day) ..... (year)

Dated ..... (month) ..... (day) ..... (year)

.....
Clerk of court

(SEAL) By .....
Deputy

(Added to NRS by 1985, 1233; A 1987, 1220; 1991, 88; 2001, 26; 2013, 1743)

ctive January 17, 2012.] PART III. CRIMINAL PRACTICE Rule 3.01. Scope of rules. The rules in Part III govern the practice and procedure in all criminal proceedings except in juvenile cases expressly provided for in Title 5 of NRS. Rule 3.10. Consolidation and reassignment. (a) When an indictment or information is filed against a defendant who has other criminal cases pending in the court, the new case may be assigned directly to the department wherein a case against that defendant is already pending. (b) Unless objected to by one of the judges concerned, criminal cases, writs or motions may be consolidated or reassigned to any criminal department for trial, settlement or other resolution. (c) In the event of negotiations being reached as to multiple cases having the same defendant, defense counsel and the prosecution may stipulate to having all of the involved cases assigned to the department having the oldest case with the lowest case number, and the court clerk shall then so reassign the involved cases. If the negotiations later break down, then the court clerk will again reassign the involved cases back to their respective department(s) of origin. The objection provision of subparagraph (b) hereinabove does not pertain to this present subparagraph (c). [Amended; effective July 29, 2011.] Rule 3.20. Motions. (a) Unless otherwise provided by law or by these rules, all motions must be served and filed not less than 15 days before the date set for trial. The court will only consider late motions based upon an affidavit demonstrating good cause and it may decline to consider any motion filed in violation of this rule. (b) Except as provided in Rules 3.24 and 3.28, each motion must contain a notice of hearing setting the matter for hearing not less than 10 days from the date the motion is served and filed. A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported. (c) Within 7 days after the service of the motion, the opposing party must serve and file written opposition thereto. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion is meritorious and a consent to granting of the same. (d) Unless otherwise allowed by the court, all motions to increase or decrease bail must be in writing, supported by an affidavit of the movant or the movant’s attorney, and contain a notice of hearing setting the matter for hearing not less than 2 full judicial days from the date the motion is served and filed. The opponent to the motion may respond orally in open court. (e) Either the prosecutor or the defendant may place a matter on calendar by oral request to the clerk of the court made not later than 11:00 a.m. on the day preceding the date of the hearing. Such requests are to be used only to bring to the attention of

the court a matter of an emergency nature or to place a case on calendar when the matter is to be resolved, such as by entry of a guilty plea or for dismissal. An oral request to the clerk to place a case on the calendar for the hearing of any other matter is improper. Rule 3.24. Discovery motions. (a) Any defendant seeking a court order for discovery pursuant to the provisions of NRS 174.235 or NRS 174.245 may make an oral motion for discovery at the time of initial arraignment. The relief granted for all oral motions for discovery will be as follows: (1) That the State of Nevada furnish copies of all written or recorded statements or confessions made by the defendant which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known to the district attorney. (2) That the State of Nevada furnish copies of all results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with this case which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known to the district attorney. (3) That the State of Nevada permit the defense to inspect and copy or photograph books, papers, documents, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody or control of the State, provided that the said items are material to the preparation of the defendant's case at trial and constitute a reasonable request. (b) Pursuant to NRS 174.255, the court may condition a discovery order upon a requirement that the defendant permit the State to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within the defendant's possession, custody or control provided the said items are material to the preparation of the State's case at trial and constitute a reasonable request. Rule 3.28. Motions in limine. All motions in limine to exclude or admit evidence must be in writing and noticed for hearing not later than calendar call, or if no calendar call was set by the court, no later than 7 days before trial. The court may refuse to consider any oral motion in limine and any motion in limine which was not timely filed. Rule 3.40. Writs of habeas corpus. (a) Each petition for a writ of habeas corpus based on alleged want of probable cause or otherwise challenging the court's jurisdiction to proceed to the trial of a criminal charge must contain a notice of hearing setting the matter for hearing 14 days from the date the petition is filed and served. In the event the judge to whom the case is assigned is not scheduled to hear motions on the 14th day following the service and filing of the petition, the notice must designate the next day when the judge has scheduled the hearing of motions. (b) Any other petition for writ of habeas corpus, including those alleging a delay in any of the proceedings before the magistrate or a denial of the petitioner's right to a speedy trial, must contain a notice of hearing setting the matter for hearing not less than 1 full judicial day from the date the writ is filed and served. (c) All points and authorities in support of the petition for writ of habeas corpus must be served and filed at the time of the filing of the petition. The prosecutor must serve and file a return and a response to the petitioner's points and authorities within 10 days from the receipt of a petition for a writ of habeas corpus based on alleged want of probable cause or otherwise challenging the court's jurisdiction to proceed to the trial of a criminal charge. The prosecutor may serve and file a return and a response to the petitioner's points and authorities in open court at the time noticed for the hearing on any other writ of habeas corpus.

FARETTA HEARING

When defendant wants to represent himself - A **Faretta hearing** is a pretrial trial **hearing** designed to determine whether an individual who is seeking to represent himself or herself at trial is voluntarily waiving his or her right to counsel.

PETROCELLI HEARING

Prior Bad Acts Hearing

NRS 34.750 Appointment of counsel for indigents; pleadings supplemental to petition; response to motion to dismiss.

1. A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:

(a) The issues presented are difficult;

(b) The petitioner is unable to comprehend the proceedings; or

(c) Counsel is necessary to proceed with discovery.

2. If the court determines that the petitioner is unable to pay all necessary costs and expenses incident to the proceedings of the trial court and the reviewing court, including court costs, stenographic services, printing and reasonable compensation for legal services, all costs must be paid from money appropriated to the office of the State Public Defender for that purpose. After appropriations for that purpose are exhausted, money must be allocated to the office of the State Public Defender from the Reserve for Statutory Contingency Account for the payment of the costs, expenses and compensation.

3. After appointment by the court, counsel for the petitioner may file and serve supplemental pleadings, exhibits, transcripts and documents within 30 days after:

(a) The date the court orders the filing of an answer and a return; or

(b) The date of counsel's appointment,

➥ whichever is later. If it has not previously been filed, the answer by the respondent must be filed within 15 days after receipt of the supplemental pleadings and include any response to the supplemental pleadings.

4. The petitioner shall respond within 15 days after service to a motion by the State to dismiss the action.

5. No further pleadings may be filed except as ordered by the court.

(Added to NRS by 1985, 1230; A 1987, 1218; 1991, 85, 1751, 1824)

NRS 34.760 Contents of respondent's answer; supplemental material.

1. The answer must state whether the petitioner has previously applied for relief from the petitioner's conviction or sentence in any proceeding in a state or federal court, including a direct appeal or a petition for a writ of habeas corpus or other postconviction relief.

2. The answer must indicate what transcripts of pretrial, trial, sentencing and postconviction proceedings are available, when these transcripts can be furnished and what proceedings have been recorded and not transcribed. The respondent shall attach to the answer any portions of the transcripts, except those in the court's file, which the respondent deems relevant. The court on its own motion or upon request of the petitioner may order additional portions of existing transcripts to be furnished or certain portions of the proceedings which were not transcribed to be transcribed and furnished. If a transcript is not available or procurable, the court may require a narrative summary of the evidence to be submitted.

3. If the petitioner appealed from the judgment of conviction or any adverse judgment or order in a prior petition for a writ of habeas corpus or postconviction relief, a copy of the petitioner's brief on appeal and any opinion of the appellate court must be filed by the respondent with the answer.

(Added to NRS by 1985, 1230; A 1991, 86)

NRS 34.770 Judicial determination of need for evidentiary hearing: Dismissal of petition or granting of writ.

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.

2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing.

3. If the judge or justice determines that an evidentiary hearing is required, the judge or justice shall grant the writ and shall set a date for the hearing.

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NRS 34.780 Applicability of Nevada Rules of Civil Procedure; discovery.

1. The Nevada Rules of Civil Procedure, to the extent that they are not inconsistent with NRS 34.360 to 34.830, inclusive, apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive.

2. After the writ has been granted and a date set for the hearing, a party may invoke any method of discovery available under the Nevada Rules of Civil Procedure if, and to the extent that, the judge or justice for good cause shown grants leave to do so.

3. A request for discovery which is available under the Nevada Rules of Civil Procedure must be accompanied by a statement of the interrogatories or requests for admission and a list of any documents sought to be produced.

(Added to NRS by 1985, 1231; A 1987, 1219; 1991, 87)

NRS 34.790 Record of evidentiary hearing after writ is granted; submission of additional material.

1. If an evidentiary hearing is required, the judge or justice may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the petition.

2. The expanded record may include, without limitation, letters which predate the filing of the petition in the district court, documents, exhibits and answers under oath to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.

3. In any case in which the record is expanded, copies of proposed letters, documents, exhibits and affidavits must be submitted to the party against whom they are to be offered, and the party must be afforded an opportunity to admit or deny their correctness.

4. The court must require the authentication of any material submitted pursuant to subsection 2 or 3.

(Added to NRS by 1985, 1231)

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1. A petition may be dismissed if delay in the filing of the petition:

(a) Prejudices the respondent or the State of Nevada in responding to the petition, unless the petitioner shows that the petition is based upon grounds of which the petitioner could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the State occurred; or

(b) Prejudices the State of Nevada in its ability to conduct a retrial of the petitioner, unless the petitioner demonstrates that a fundamental miscarriage of justice has occurred in the proceedings resulting in the judgment of conviction or sentence.

2. A period exceeding 5 years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction creates a rebuttable presumption of prejudice to the State. In a motion to dismiss the petition based on that prejudice, the respondent or the State of Nevada must specifically plead laches. The petitioner must be given an opportunity to respond to the allegations in the pleading before a ruling on the motion is made.

(Added to NRS by 1985, 1231; A 1987, 1219; 1991, 87)

NRS 34.810 Additional reasons for dismissal of petition. [Effective through December 31, 2019.]

1. The court shall dismiss a petition if the court determines that:

(a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

(1) Presented to the trial court;

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief; or

(3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner's conviction and sentence,

➥ unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

2. A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

➥ The petitioner shall include in the petition all prior proceedings in which the petitioner challenged the same conviction or sentence.

4. The court may dismiss a petition that fails to include any prior proceedings of which the court has knowledge through the record of the court or through the pleadings submitted by the respondent.

(Added to NRS by 1985, 1232; A 1989, 457; 1995, 2465; 2003, 1478; 2007, 1435)

NRS 34.810 Additional reasons for dismissal of petition. [Effective January 1, 2020

EVIDENTIARY HEARING

NRS 34.770 Judicial determination of need for evidentiary hearing: Dismissal of petition or granting of writ.

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.

2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing.

3. If the judge or justice determines that an evidentiary hearing is required, the judge or justice shall grant the writ and shall set a date for the hearing.

(Added to NRS by 1985, 1230; A 1991, 86)

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