

APPELLATE BRIEFS

By: *Debbie Leonard, McDonald Carano Wilson*

THE SUPREME COURT'S DECISION-MAKING PROCESS

Attorneys and litigants alike often wonder how their case makes its way through the Supreme Court. You file a notice of appeal and docketing statement and then brief the case according to the Court's scheduling order. But what is happening behind the scenes? Who decides the case, and what does the decisional process look like? An abridged description follows. This information comes from the Supreme Court's Internal Operating Procedures, which can be found on the Court's website.

Jurisdictional Check

One of the first things that happens once an appeal is docketed is screening by Supreme Court staff to ensure that appellate jurisdiction exists. The appellant assists with this jurisdictional check by accurately responding to the docketing statement questions regarding timeliness of the notice of appeal and substantive appealability. If the Court has concerns regarding its jurisdiction, it will issue an order to show cause why the case should not be dismissed. Generally, in civil appeals, even if the respondent files a motion to dismiss for lack of jurisdiction, the Court will wait until after the settlement process is completed before making a decision regarding its jurisdiction.

Assignment to the Court of Appeals

The docketing statement also helps the Supreme Court determine which cases should be assigned to the Court of Appeals. The Supreme Court presumptively assigns certain types of cases according to NRAP 17(b).

Decisional Tracks

For appeals that the Supreme Court decides to retain, cases are assigned to one of four decisional tracks in order to tailor the decision-making process to the needs of each case. These tracks

are: (1) en banc chambers track; (2) panel chambers track; (3) en banc staff track; and (4) panel staff track. Some cases are automatically designated as en banc cases soon after the case is docketed. These include cases that involve ballot or election questions; judicial or attorney discipline; the death penalty; approval of pre-paid legal service plans; questions of law certified by a federal court; disputes between branches of government; the administration of the judicial system; or that raise as a principal issue a question of first impression involving the Nevada Constitution.

For all other cases, the decisional track is generally determined through screening by staff attorneys after the answering brief is filed. Cases tracked for en banc decision are limited to those that raise substantial precedential, constitutional or public policy issues, or where en banc consideration is necessary to secure or maintain uniformity of the Supreme Court's decisions. Cases that are tracked for panel decision involve legal issues that have limited precedential value or have no impact beyond the litigants.

Generally, cases that require considerable personal attention from the justices will be tracked to chambers. Such cases include ones that present unsettled questions of general importance or that will allow the Court to better develop important areas of Nevada law. In contrast, cases that are tracked to staff can be resolved by the application of settled law. In addition to recommending a decisional track, the screening attorneys also assign a weight to each case based on the complexity of the issues presented and the anticipated time necessary for resolution. Ultimately, the chief justice, based upon the

recommendation from the screening attorneys, makes the decision as to how a case will be tracked.

Oral Argument or Presentations

For cases that are assigned to chambers, generally, a law clerk will prepare a bench memorandum for the justices to review. Staff attorneys prepare the bench memorandum for cases that are on the staff track. After preparation of the bench memorandum, the chief justice (in en banc cases) and the assigned panel (in panel cases) reviews the case to determine whether oral argument is warranted. For the most part, oral argument is only held in cases that raise precedential or public policy issues or that involve unsettled areas of the law. However, to the extent the justices believe that oral argument will substantially aid them to better understand the facts or otherwise resolve the issues on appeal, the Court may schedule it. For staff-tracked cases or motions, in lieu of oral argument, staff attorneys may make oral presentations to a panel of justices to assist with the decisional process.

Resolution

For each case that is tracked to staff, staff prepares a proposed disposition under the supervision of the Court's central staff legal counsel. The chief justice (in en banc cases) and the presiding justice (in panel cases) may assign a justice to supervise the staff's preparation of the bench memorandum or disposition.

For each case in which oral argument occurs, following each day's argument, the justices who are assigned to a case hold a conference to share their respective views. The justices try to reach a tentative decision and determine whether the disposition will take the form of a published

opinion or unpublished order. After a chambers case is submitted, either with or without oral argument, the case is assigned to a justice for preparation and circulation of a draft disposition.

A draft disposition will go through an extensive editing process that involves the justices and staff. The Court sets internal deadlines for each stage of the drafting and editing process. At the time a draft disposition is prepared, the author must research the Court's issue-tracking and opinion databases to ensure that the new disposition accounts for the Court's precedents.

These are just a few highlights from the Court's Internal Operating Procedures to illustrate how the Court's decision-making process is designed to provide for the fair and expeditious resolution of each case.

Debbie Leonard is a partner at McDonald Carano LLP, where her practice focuses on appeals before Nevada's appellate courts, the Ninth Circuit Court of Appeals and administrative agencies. She served as the 2013-2014 Chair of the State Bar's Appellate Litigation Section and is Lead Editor of the Nevada Appellate Practice Manual, 2016 edition. She is also a mediator and Nevada Supreme Court settlement judge.



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P E O P L E

In Memory of E. Pierre Gezelin (April 11, 1941 - March 19, 2017)

E. Pierre Gezelin became a proud member of the Nevada State Bar in 1971 after graduating from the McGeorge School of Law at the University of the Pacific. From 1971 to 1977 he served as an Assistant U.S. Attorney for the District of Nevada. He then went into private practice until 1991 in Reno. The last 26 years of his distinguished legal career were spent diligently serving as Deputy Attorney General in Carson City with the Department of Transportation. After a courageous battle with cancer, Pierre passed away at his home on March 19, 2017, surrounded by family and loved ones. Pierre will be remembered not only for being a skilled and accomplished attorney but also as a loving father, brother, uncle and friend.



In Memory of Debby Lumkes (January 3, 1950 - April 17, 2017)

Debby Lumkes was born in San Mateo, California. Debby graduated in 1972 from UNR with a degree in journalism. Debby worked for the CIA, before going to law school at McGeorge School of Law. In 1980 she graduated from law school and became a member of the State Bar of Nevada and WCBA. In 1992, Debby was hired as the first female Court Master in Washoe County. Debby has been a Judge Pro Tem in the Reno Justice Court, and a Judge Pro Tem in the Reno Municipal Court since 1985. In 2006, Debby was awarded the Child Advocate Attorney of the Year Award.

SUSAN HALLAHAN ANNOUNCES RETIREMENT IN JULY 2017

After 25 years of service, Susan will retire as the Chief Deputy District Attorney for the Family Support Division.

Susan attended Reed High

school, third generation Nevadan, graduated from UNR with a Bachelor in Criminal Justice in 1988, and graduated from law school with a J.D. from Santa Clara University in 1991, and was admitted to practice law in Nevada in 1991.

While in law school, Susan spent two summers (1989 and 1990) working for the private law firm of Walther, Key, et. al. In the spring semester of 1991, Susan did a full-time externship in Federal Court with Judge Howard McKibben until her graduation in May 1991. Susan took the bar exam in July 1991 and then began working for Federal Judge Bruce R. Thompson. Susan served as his law clerk, court clerk, and administrative assistant until his passing in 1992.

Susan was hired by the Washoe County District Attorney's Office, Family Support Division, on July 13, 1992. This was Susan's ultimate dream job. Susan and her sister were raised by a single mom without financial assistance from their father and Susan wanted to help people like her mom and assist in providing financial stability for children. Susan wanted to make a difference! She was hired by then DA Dorothy Nash Holmes and continued to work under Dick Gammick and now under Chris Hicks.

Susan was promoted to Chief Deputy District Attorney in 1994 and has been in that position ever since. Her Division collects over \$2 million per month in child support and are currently the top performing child support office in the State of Nevada. "What a time to retire!! I'm so proud of all who work with me in the Family Support Division and who focus on furthering our mission every day".

When people ask me what I'm going to do after I retire, here is my answer: "I'm going to do what's most fun!"

"I will sincerely miss this job and working with all of the many wonderful people whom I have met and have had the opportunity to collaborate with and for in the last 2 1/2 decades!!"