

# The WRIT

OFFICIAL PUBLICATION OF THE WASHOE COUNTY BAR ASSOCIATION

**Wednesday, December 12, 2018, Harrah's Convention Center**

**12:00 p.m.**

## **WCBA HONORS 40 YEAR MEMBERS**

**Dave Grundy, Emcee**

Each December, Washoe County Bar Association honors members who will have been in practice for 40 years in 2019. This year's honorees, listed to the right, were admitted to the State Bar of Nevada in 1979 and have been active members of Washoe County Bar for at least 10 years.

This year, Dave Grundy, will be our emcee for the program. We are also pleased to welcome our newest members along with their mentors. Please join us on December 12th at 12 noon at Harrah's to congratulate our honorees.

In 1979 Jimmy Carter was President; the average cost of a new house was \$58,100 (up from \$54,800 in 1978); the median household income was \$17,500; the cost of gas was 86 cents a gallon; and a Sony Walkman cost \$200. Major news stories included Three Mile Island Nuclear Accident; China instituted the one child per family rule; quiz game Trivial Pursuit launched; Pink Floyd released "The Wall"; and for the first time in history, a woman Margaret Thatcher, was elected Prime Minister in the UK.

### **2019 Honorees**

Robert Angres  
Robert Armstrong  
Raymond Badger  
Bruce Beesley



J. Douglas Clark  
Richard Cornell  
Victor Drakulich  
Robert Fahrendorf  
Lewis Feldman  
Richard Fleischer  
Jim Giudici  
Richard Glasson  
Scott Glogovac  
Neil Grad  
Barbara Gruenewald  
Timothy Hay  
Dean Heidrich  
Richard Hill  
David Hornbeck

Kevin Karp  
Jonathan King  
Edward Lemons  
Paul Malikowski  
W. Douglass Maupin  
Ann Morgan  
G. Barton Mowry  
Honorable Shelly O'Neill  
Mike Pavlakis  
Alan Smith  
James Walsh  
Geoffrey White  
Joan Wright  
Randolph Wright  
Robin Wright

# APPELLATE BRIEFS

By Debbie Leonard, McDonald Carano

## SUPREME COURT CONSIDERS RULE CHANGE TO ELIMINATE BRIEFING IN APPEALS FROM DISMISSALS AND SUMMARY JUDGMENT ORDERS

On October 10, 2018, the Nevada Supreme Court issued an order seeking public comment on proposed changes to the Nevada Rules of Appellate Procedure that could have profound effects on appellate practice in the state. Justices Hardesty and Stiglich filed a petition to adopt a new NRAP 3F that would allow for summary proceedings in certain civil appeals. Specifically, appeals from final judgments that grant NRCP 12(b) (2), 12(b)(5) and 56 motions would be submitted without briefs or oral argument “unless the court otherwise orders.”

Once the appeal is docketed in the Supreme Court and an appendix filed, the appellate court would look only to the briefs before the district court when considering the appeal. The losing party below would have no opportunity on appeal to brief the perceived errors in the district court’s order.

Many written comments on the proposed new rule were submitted by individual practitioners, the Appellate Litigation Section, a Boyd School of Law professor and the Nevada Justice Association. The Court held a public hearing on the petition on November 5, 2018, at which additional comments were presented.

Justice Hardesty opened the public hearing by explaining the goal of the proposed rule change: to speed up the time for disposition of appeals, a matter that is of continuing concern to the bench, the bar and litigants. It is no secret that the appellate courts have a tremendous caseload, which continues to grow. On the whole, even with many cases being routed to the Court of Appeals, the time for disposition of civil appeals has not improved markedly.

The comments in favor of the

proposed rule change ubiquitously cited the need to expedite appeals. Business litigants, the proponents argued, seek faster results at lower cost. In addition to the legal fees incurred to prepare appellate briefs, there is a business cost to delay.

Additionally, those in favor of the rule change noted that the NRAP already provides for summary consideration in appeals from venue changes, criminal fast track and child custody cases and bar disciplinary matters. As a result, they argued, what the rule change proposes is not unprecedented. One proponent noted that the docketing statement will still provide the appellant an opportunity to carefully craft the statement of the issues to identify the district court’s errors.

The comments in opposition to the rule change far exceeded those in favor. The primary concern raised by the opponents was due process. As the opponents noted, the movants below (generally defendants) get more

opportunity to brief dispositive motions (by filing a motion and reply versus the opposition filed by the plaintiff). They characterized this as putting an appellant at a three-to-one disadvantage when appealing a case-ending order. Not only is this inequitable, the opponents argued, but it would undermine the public’s confidence in the judicial process if litigants don’t have an opportunity to be heard anew on appeal.

The opponents also pointed out that the rule change decreases the opportunities for appellate advocacy on what tend to be important legal issues. The justices often emphasize the importance of retaining an appellate practitioner to handle, or at least consult on, an appeal. The proposed rule change, they noted, raises the importance of advocacy and briefing in the district court while diminishing the importance of appellate advocacy before the courts that are actually making law for Nevada. Nuanced issues of first impression often cannot be developed

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well enough in the trial court. And with summary disposition on appeal, there is no opportunity for appellate lawyers to discuss the errors made by the district court. The net effect, the opponents posited, would be to shift the balance of power to the district court.

All commenters agreed that everyone wants greater expediency in appeals, but some of the opponents pointed out that the proposed amendments could have unanticipated consequences that actually stymie the judicial process. They cited the likelihood that more motions for reconsideration would be filed in the district courts, as litigants try to make a record of what they perceive to be the district court's errors. Similarly, the losing party to an appeal will be more likely to file petitions for rehearing and en banc reconsideration because that would be their only opportunity for appellate briefing. In sum, the opponents argued, the rule change may slow down the very process it seeks to speed up.

Although the comments generally

did not propose any specific alternatives, the suggestion was made to convene a committee to brainstorm ways to help achieve the stated goal while ensuring that any rule changes are carefully tailored to avoid unintended consequences.

The Court took the matter under submission. At the time of this writing, no decision has been rendered. Those who are interested in following the proposed amendments can do so on the Court's website under ADKT 501.

*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 and 2018 editions. She is also a mediator and Nevada Supreme*



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**Learn more about this program at the upcoming FREE information session on Wednesday, January 16, 2019 at 5:30 p.m., UNR, Redfield Campus.**



# APPEAL?

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