

**Appellate Motion Practice:
 10 Most Common Missteps, Mistakes and Misunderstandings**

Motions in appellate practice can be a crucial component of a successful appeal. To effectively utilize the advantages of motion practice in front of Nevada’s appellate courts, litigators need to know the do’s and don’ts of how to make and oppose motions. However, motion practice is not for the faint-hearted with its extensive rules, complex procedures, and detailed requirements. Based on more than 15 years of experience, Litigation and Appellate Partner [Amanda Yen](#) prepared a list of the 10 most common missteps, mistakes, and misunderstandings she frequently sees occurring in motion practice in front of Nevada’s high courts.



Amanda also shares her extensive expertise in the Motion Practice Chapter that she authored in the [Nevada Appellate Practice Manual](#) published by the Appellate Litigation Section of the State Bar of Nevada. Amanda’s chapter covers the procedural requirements, the contents of motions, and supporting documentation. She also describes the special requirements for more than a dozen types of motions and explains the disposition of motions in terms of the authority of the court of appeals, a single justice or judge, delegation to the clerk, and summary disposition. Amanda’s Motion Practice Chapter is a comprehensive step-by-step guide for current motion practitioners as well as those who are joining this specialty area of law.

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Motion Practice Problem	Motion Practice Rules to Know and Follow
Overall approach – failure to follow best practices	Draft motions that are clear, concise, and persuasive with sentences that are short, simple, and straightforward. Strategically select issues that truly matter, do not file every motion just because you can, and limit the bases for relief to those that mean the most. Prioritize a limited number of key messages and restrain from raising every plausible point. Argue motions in a civil, respectful, and professional manner by sticking to the facts and the law and pointing out the opponent’s weaknesses or errors without making personal or character attacks.
Page limitations – exceeding limits and not filing appropriate motion to request over-length	Motions and responses to motions may not exceed 10 pages (excluding exhibits and supporting documents) absent a court order permitting or directing otherwise. Replies in support of a motion may not exceed 5 pages. Although not specifically allowed, appellate courts may grant motions to file an over-length motion, opposition, or reply, but such motions would be granted only upon a showing of diligence and good cause. The motion must be filed on or before the due date; be accompanied by a declaration stating reasons for the motion and the number of additional pages, words or lines of text requested; and be accompanied by a certification as to the line or word count and a single copy of the document the applicant proposes to file.

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Reply in support of motion – including barred content and missing due date	The moving party may file a reply to any response but must not present new matters that do not relate to the response. A reply in support of a motion must be filed within five days of service of the opposition.
Motion to dismiss on procedural errors – ignoring likely reasons for denial	A motion to dismiss an appeal based on a non-jurisdictional procedural dereliction is unlikely to be granted if the defect has been cured and there is no prejudice to the other parties.
Emergency motions – not complying with certification, notification, and jurisdiction requirements	Emergency motions must be supported by a certification that court relief is needed in less than 14 days to avoid irreparable harm. Prior to filing, the moving party must make “every practicable effort” to notify the clerk and serve opposing counsel “at the earliest possible time.” A motion not filed at the earliest possible time may be summarily denied by the appellate court. To the extent the district court retains jurisdiction over the subject matter of an emergency motion, the appellate court will generally require that the motion initially be made to the district court. If the relief sought was available in the district court, the emergency motion filed in the appellate court must state whether all grounds advanced in support of the motion were first submitted to the district court and, if not, why the motion should not be denied by the appellate court.
Extension of time – exceeding telephonic limits and failure to meet requirements for 30-day extensions	A party may, on or before the due date, request by telephone to the clerk a single 14-day extension for performing any act except the filing of a notice of appeal. Only one telephonic extension request may be made for each act. A litigant needing more than 14 days, or who has already obtained a telephonic extension, must file a motion for an extension demonstrating extraordinary and compelling circumstances why a further extension is necessary. The parties may stipulate to extend the time to file any brief up to a total of 30 days beyond the due date. If a longer or subsequent extension is requested, or if the opposing party’s stipulation for a 30-day extension cannot be obtained, a motion is required. A motion for an extension of time beyond 30 days is not favored and will not be granted absent a showing of extraordinary circumstances and extreme need.
Motions for stay pending appeal – failing to meet justification for stay	An appellant seeking a stay pending appeal must first move in the district court. A motion for stay in the appellate court must either show that (1) seeking a stay in the district court would be impracticable or (2) the district court denied the stay or otherwise failed to afford the requested relief (state grounds for denial).
Motions to modify orders or judgments on appeal – failure to employ <i>Huneycutt</i> remand	After an appeal of a final order or judgment has been taken, the district court is divested of jurisdiction except for collateral matters (e.g., attorney fees and costs). If the parties (or the district court) seek to modify a final order or judgment that is on appeal, they must request a limited remand from the appellate court in a procedure referred to as a “Huneycutt remand” that was established in <i>Huneycutt v. Huneycutt</i> , 94 Nev. 79, 80, 575 P.2d 585, 585–86 (1978). Once an appeal has been perfected, a party seeking to alter, vacate or otherwise modify the order or judgment that is on appeal must file in the district court a motion for relief from that order or judgment.

Motion Practice Problem	Motion Practice Rules to Know and Follow
<p><i>Disqualification of justice or judge</i> – missing deadlines and lack of supporting information</p>	<p>A party seeking to disqualify a judge or justice must file a motion within 60 days of when the appeal is docketed. Absent good cause, an untimely motion will be deemed a waiver of the right to object to a justice’s or judge’s participation in a case. A motion to disqualify must state each ground upon which disqualification is sought, including the facts alleged, and supporting legal argument with citation to legal authority. All facts must be supported by sworn affidavit or reference to the specific page and line where support for the fact appears in the record.</p>
<p><i>Summary disposition</i> – misunderstanding a request for reconsideration</p>	<p>A motion for a procedural order may be acted upon by the appellate courts at any time without awaiting a response, subject to a request for reconsideration. A timely opposition filed to an already granted (in whole or in part) motion does not act as a request for reconsideration. A separate motion requesting that relief must be filed. Because the appellate court may grant a motion for procedural order without affording other parties the opportunity to respond, prompt preparation of a response to a procedural motion is imperative. Do not assume that the appellate court will provide the full time period to file and serve a response prior to acting on a procedural motion</p>
