

## CHAPTER 18

### FAST-TRACK CHILD CUSTODY CASES

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#### A. PURPOSE OF CHILD CUSTODY FAST-TRACK APPEALS

- 1. History.** Nevada's appellate courts are committed to the proposition that "justice delayed is justice denied." *Dougan v. Gustaveson*, 108 Nev. 517, 523, 835 P.2d 795, 799 (1992). In recognition of this frequently cited axiom and its essential character in child custody and visitation cases, the Supreme Court adopted NRAP 3E on June 1, 2006, which provided for fast-track child custody appeals. Since adoption, NRAP 3E has been amended several times. At the time of this writing, a significant overhaul of NRAP 3E was anticipated.
- 2. Need for expedited consideration.** The administrative docket order that created the procedures for fast-track child custody appeals recited the Supreme Court's goal to "assure that cases involving child custody and visitation issues are resolved in a fair, yet expedited manner." ADKT 381, "In the Matter of Amendments to the Nevada Rules of Appellate Procedure" (April 7, 2006). Delay, according to the Supreme Court, "has a particularly burdensome effect on cases involving child custody and child visitation because delay deprives the subject children of certainty and stability in their living situations and may result in a detrimental impact on their emotional well-being." *Id.*

#### B. APPLICABILITY OF FAST-TRACK RULES

- 1. Limited application.** The fast-track rules in NRAP 3E apply only to child custody appeals and cross appeals pending before the appellate courts in which either the appellant or cross appellant is represented by counsel and where the case has been removed or exempted from the settlement program. NRAP 3E(a). Where neither the appellant nor cross-appellant is represented by counsel, a child custody appeal is relegated to the procedures set out in the pilot program for proper person appeals. NRAP 3E(a). [Cross Reference 19:XX].
- 2. Fast-track designation.** The docketing statements and case appeal statements of newly filed cases are screened by the appellate court staff to determine whether the appeal is actually a child custody case that meets the requirements of NRAP 3E(a) and therefore should be designated on a fast-track. *See, generally*, IOP 2(b)-(c).

**PRACTICE TIP:** If you feel that the appellate court staff incorrectly designated an appeal as either appropriate or inappropriate for the fast-track program, file a motion to re-designate the appeal. [Cross Reference 7:XX].

**3. Conflicts with other rules.**

- a. Conflicts with NRAP, generally.** The provisions of NRAP 3E explicitly “prevail over conflicting provisions of any other rule” in the Nevada Rules of Appellate Procedure. NRAP 3E(i).
  - b. NRAP 46(b) Inapplicable.** In fast-track child custody appeals, an unrepresented respondent must file briefs and other papers in response to a represented appellant, such that the provisions of NRAP 46(b), making such filings optional, do not apply. NRAP 3E(a).
- 3. Child-custody cases with non-custody related issues.** It is not clear how the fast-track rules apply to cases that involve other issues in addition to child custody and visitation matters. Theoretically, a party wishing to appeal multiple issues in a district court decision could seek review of custody and visitation issues through the fast-track process, while all other issues are resolved through the standard appeals process. More likely, however, a multiple-issue case designated as fast-track on the basis of child custody issues would simply use the fast-track process for resolution of all issues to avoid multiplicity of actions and potentially conflicting results. *C.f. Barelli v. Barelli*, 113 Nev. 873, 877-78, 944 P.2d 246, 248-49 (1997) (noting that the family and the general divisions of the district court have the power to address issues outside their jurisdiction if necessary to resolve the claims over which they do have subject matter jurisdiction).
- 4. Only applicable to review of district court orders.** The fast-track program is specifically limited to appeals from district court orders. *See* NRAP 3E(a). A party seeking relief from a Family Court Master’s recommendation must either file a writ petition in the appellate court or exhaust all review remedies available in the district court before proceeding on appeal. *See id.* [Cross Reference 5:XX].

**C. THE RECORD**

- 1. Appellant’s responsibility.** The party seeking review is responsible for filing the notice of appeal, case appeal statement, docketing statement, and a transcript or rough draft transcript request form. NRAP 3E(b).
- 2. Rough-draft transcripts.**

- a. **Definition.** A rough-draft transcript is a computer-generated transcript that can be prepared in a short amount of time. NRAP 3E(c)(1). The rough draft is just what it claims to be: it is not proofread, corrected, or certified to be an accurate transcript of the district court proceedings. *Id.* Rough-draft transcripts may be used to adhere to the accelerated briefing schedule in fast-track appeals. *See id.*
- b. **Requirements.** The transcript must: be printed on double-sided regular copy paper; have the words “Rough Draft Transcript” printed on the bottom of each page; be produced with a yellow cover sheet; include a concordance, indexing key words contained in the transcript; and include an acknowledgment by the court reporter or recorder that the transcript/document is a true original or copy of the rough draft transcript. NRAP 3E(c)(1).
- c. **Use of rough-draft transcripts.** NRAP 3E(c)(4).
  - i. **Responsibility for sufficiency and content.** The appealing party who elects to use rough-draft transcripts instead of final, certified transcripts is responsible for their sufficiency and content. NRAP 3E(c)(4).
  - ii. **Questions of accuracy.** If the appellate court deems there to be a substantial question regarding the accuracy of a rough-draft transcript, the court may order the production of a certified transcript to take its place. NRAP 3E(c)(4).
- d. **Protections for court reporter or recorder when rough draft transcript used.** Court reporters (or recorders) who prepare and submit rough-draft transcripts under NRAP 3E are not subject to civil, criminal, or administrative causes of action for inaccuracies unless the court reporter or recorder:
  - i. Willfully 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 video tapes inaccurately; and
  - ii. Such willful conduct proximately causes injury or damage to a party asserting the action; and

iii. That party demonstrates that appellate relief was granted or denied based upon the court reporter's or recorder's inaccuracies. NRAP 3E(h)(1).

**4. Compensation for transcript preparation.** NRAP 3E(h)(2).

- a. **Reporter entitled to compensation.** A court reporter who prepares either a certified transcript or a rough-draft transcript is entitled to 100% of the rate set out in NRS 3.370 for each page, and for costs. NRAP 3E(h)(2).
- b. **Ordering party responsible for payment.** The party who orders the transcripts must pay the reporter's fee, and no reporter is required to actually perform any service in any civil case until the fees have been paid to the reporter, or deposited with the court clerk. NRAP 3E(h)(2).
- c. **Certified transcript.** If a certified transcript is ordered after a rough-draft transcript is prepared, the ordering party must pay the court reporter an additional fee as set out in NRS 3.370. NRAP 3E(h)(2).

**4. Timing and responsibility for scope of transcripts requested.** NRAP 3E(c)(2).

- a. **Limitation on transcripts to be requested.** The appealing party is obligated to order only those portions of the proceedings reasonably and in good faith believed to be necessary to determine the appellate issues. NRAP 3E(c)(2).
- b. **Duty of parties.** The parties "have a duty" to confer and attempt to settle upon what transcripts, if any, are necessary for the appellate court's review. NRAP 3E(c)(2).
- c. **Deadline for settling upon scope of transcripts needed.** The parties must confer and determine what transcripts are necessary within 10 days of the date that the Supreme Court approves the settlement conference report indicating that the parties were unable to settle, or within 10 days of the date the case was exempted or removed from the Supreme Court Settlement Program. NRAP 3E(c)(2). [Cross Reference 5:XX].
- d. **Transcript request form.**
  - i. **Time for filing and service in district court.** Within 10 days of the date that the Supreme Court approves the settlement conference report indicating that the parties were unable to settle,

or within 10 days of the date the case was exempted or removed from the Supreme Court Settlement Program, the appealing party is required to file the transcript request form in the district court and serve copies of the form on the court reporter (or recorder) and the responding party. NRAP 3E(c)(2).

**ii. Format.** The transcript request must substantially conform to Form 3 or 11 in the appendix of forms. NRAP 3E(c)(2)(A).

**iii. Filing of proof of service in Supreme Court.** The appealing party must file proof of that service, along with 2 file-stamped copies of the transcript request form itself, with the Supreme Court clerk. NRAP 3E(c)(2)(A).

**e. Certificate that no transcript requested.**

**i. Timing.** If no transcript is requested, the appealing party must file with the Supreme Court clerk and serve the opposing party with a certificate to that effect within 10 days of the date that the Supreme Court approves the settlement conference report indicating that the parties were unable to settle, or within 10 days of the date the case was exempted or removed from the Supreme Court Settlement Program. NRAP 3E(c)(2)(A).

**ii. Format.** A certificate that no transcript is requested must substantially conform to Form 14 in the appendix of forms. NRAP 3E(c)(2)(A).

**f. Duties of reporter.**

**i. Preparation of transcript.** Within 20 days of the date a transcript is requested, the reporter (or recorder) must submit the original transcript with the district court and deliver a certified copy to both the requesting and opposing party. NRAP 3E(c)(2)(C).

**ii. Certificate filed with Supreme Court.** Within 5 days after delivering the certified copies, the court reporter (or recorder) must file with the Supreme Court clerk a certificate specifying which transcripts were delivered and when. NRAP 3E(c)(2)(C).

**iii. Format.** Form 15 in the appendix of forms is a suggested form for the reporter's certificate. NRAP 3E(c)(2)(C).

**4. No substitute for transcripts.** Transcripts, not audio or video records, are required under NRAP 3E(c)(2). Court proceedings that were audio or video recorded must be submitted in typewritten form; recordings will not be accepted in lieu of transcripts. *Id.*

**5. Supplemental requests for transcripts by responding party.** NRAP 3E(c)(3).

**a. Responding party’s right to supplement.** The respondent has the option to request supplemental portions of the transcript or rough draft transcript that were not requested by the appellant. NRAP 3E(c)(3).

**b. Time for request.** A respondent must make a supplemental request for transcripts no later than 5 days after being served with the appealing party’s transcript request. NRAP 3E(c)(3). The responding party must comply with the provisions of NRAP 3E(c)(2) in all other respects. NRAP 3E(c)(3).

**4. Required appendix.** NRAP 3E(d)(4).

**a. Parties’ joint responsibility.** The parties are required to “confer and attempt to reach an agreement concerning a possible joint appendix to be filed with the fast-track statement.” NRAP 3E(d)(4).

**b. Appellant’s appendix.** In the absence of agreement, the appellant must prepare and file an appendix with that party’s fast-track statement, and the respondent may prepare a separate appendix to be filed with that party’s fast-track response. NRAP 3E(d)(4).

**c. Compliance with NRAP 30 and 32.** The preparation and contents of appendices must comply with NRAP 30 and 32 and must be paginated sequentially. NRAP 3E(d)(4).

**D. APPEALING PARTY’S FAST-TRACK STATEMENT: NRAP 3E(d)**

**1. Who must file.** Any party who seeks review of a child custody decision (i.e. an appellant and cross-appellant) must file a fast-track statement. NRAP 3E(d)(1).

**2. Time for filing.** The statement and one copy must be filed within 40 days of the date that the Supreme Court approves the settlement conference report indicating that the parties were unable to settle, or within 40 days of the date the case was exempted or removed from the Supreme Court Settlement Program. NRAP 3E(d)(1). [Cross Reference 5:XX].

- 3. Service on respondent.** Within the time limit for filing, the filing party must serve one copy of the fast-track statement and appendix on the opposing party. NRAP 3E(d).
  - 4. Format.** The fast-track statement must substantially conform to Form 12 of the Appendix of Forms, and must not exceed 16 pages, or must contain no more than 7,267 words or 693 lines of text. NRAP 3E(d)(1); NRAP 3E(e)(2).
  - 5. Content.** The fast-track statement must contain the following (NRAP 3E(d)(1)(A)-(H)):
    - 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 those alleged error(s);
    - 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 to those appeals; and
    - h.** A routing statement regarding assignment to the Court of Appeals. The routing statement must indicate whether the matter should be assigned to the Court of Appeals or retained by the Supreme Court and include reference to the pertinent provisions of NRAP 17. To the extent sought by appellant, the routing statement must identify and explain the significance of the specific issue(s) or circumstance(s) that warrant the Supreme Court retaining the case despite its presumptive assignment to the Court of Appeals under NRAP 17. NRAP 3E(d)(1)(H).
  - 4. Citations to appendix.** Every assertion in the fast-track statement regarding matters in an appendix must cite to the specific page number(s) that supports that assertion. NRAP 3E(d)(4).
- E. RESPONDING PARTY'S FAST-TRACK RESPONSE: NRAP 3E(d)(2)**

1. **Response mandatory.** The responding party must file a fast-track response. NRAP 3E(d)(2).
2. **Time for filing.** The responding party must file the response and one copy within 20 days from the date the fast-track statement is served. NRAP 3E(d)(2).
3. **Service on appellant.** Within 20 days of service of the fast-track statement, the responding party must serve on the appealing party one copy of the response and any separate responding party's appendix. NRAP 3E(d)(2).
4. **Format.** The fast-track response must substantially conform to Form 13 in the appendix of forms and must not exceed 11 pages or must contain no more than 4,845 words or 462 lines of text. NRAP 3E(d)(2); NRAP 3E(e)(2).
5. **Content.** A fast-track response must include such additional authority and factual information as is necessary to rebut the contentions made in the fast-track statement. NRAP 3E(d)(2).
6. **Citation to appendix.** Every assertion in the fast-track response regarding matters in an appendix must cite to the specific page number(s) that supports that assertion. NRAP 3E(d)(4).

**F. POTENTIAL FAST-TRACK REPLY: NRAP 3E(e)(2)**

1. **No express authority.** No portion of NRAP 3E explicitly authorizes the filing of a reply to a fast-track statement.
2. **Implied authority.** In addressing the size limits of fast-track filings, the rule anticipates that the appellant may file a reply. *See* NRAP 3E(e)(2) (noting that “a fast-track reply or supplement is acceptable if it contains no more than 2,333 words or 216 lines of text”).

**PRACTICE TIP:** The absence of express authority for a reply could be a transcription error that derived from the drafter's use of the criminal fast-track rules as a template for the child custody fast-track rules. *See* NRAP 3C(e)(3). [Cross Reference 17:XX]. As a practical matter, appellants do file, and the appellate courts accept, fast-track reply briefs. In the absence of clear authority for a reply, however, the better practice might be to file a motion seeking leave to file the reply. [Cross Reference 7:XX].

**G. EXPANDED FAST-TRACK STATEMENT OR RESPONSE: NRAP 3E(d)(3)**

1. **Expansion by leave of court.** A party may seek leave of the appellate court to expand the length of the fast-track statement or response. NRAP 3E(d)(3).



2. **Standard for granting.** A party seeking to expand the length of the fast-track statement must demonstrate that the complexity of the case and the issues presented warrant granting the expansion. NRAP 3E(d)(3).
3. **Time for seeking expansion.** A request for expansion must be filed at least 10 days before the fast-track statement or response is otherwise due and must specify the number of additional pages requested. NRAP 3E(d)(3).

#### **H. REQUESTING EXTENSIONS: NRAP 3E(f)**

1. **Telephonic extension requests.** By telephone request, either party, or the court reporter (or recorder) may request a 5-day extension of time to file a fast-track statement, response, or transcript if more time is required than the applicable section of the rule provides. NRAP 3E(f).
2. **Clerk's authority to grant.** The Supreme Court clerk or designated deputy may, for good cause, grant extension requests by telephone or by written order. NRAP 3E(f).
3. **Subsequent extension requests.** Any subsequent request for an extension of time must be made by written motion to the appellate court. NRAP 3E(f)(3).
  - a. **Content of motion.** The motion must justify the requested extension, and must specify the exact length of the extension requested. NRAP 3E(f)(3).
  - b. **Standard for granting.** Extensions of time for the filing of fast-track statements and responses "shall be granted only upon demonstration of extreme need or merit." NRAP 3E(f)(3).
  - c. **Possibility of sanctions.** Sanctions may be imposed if a such a motion is deemed to have been brought "without reasonable grounds." NRAP 3E(f)(3). [Cross Reference 14:XX]

#### **I. FULL BRIEFING: NRAP 3E(g)**

1. **Full briefing.** The appellate court may elect to resolve the appeal based on the transcripts, fast-track statement and response, and other documents filed or direct full briefing. NRAP 3E(g)(1).
2. **Removal from fast-track.** Either party may seek leave of the appellate court to remove an appeal from the fast-track program and have full briefing. NRAP 3E(g)(2). [Cross Reference 7:XX].

- a. **Standard.** A motion that seeks the removal of an appeal from the fast-track program must demonstrate that the specific issues raised in the appeal are too complex or numerous for resolution in the fast-track program. NRAP 3E(g)(2).
- b. **Waiver by client required.** A motion that seeks removal of an appeal from the fast-track program 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. NRAP 3E(g)(2).

**10. No additional transcript request form.** If the appellate court orders an appeal to be fully briefed, the parties are not required to file transcript request forms pursuant to NRAP 9(a) unless otherwise ordered. NRAP 3E(g)(3).

- a. **Supplemental transcript preparation.** If a party's brief cites to a transcript not previously filed in the appeal, that party must cause a supplemental transcript to be prepared and filed in the district court and the appellate court pursuant to NRAP 9 within the time specified for filing the brief in the appellate court's briefing order. NRAP 3E(g)(3).
- b. **Supplemental appendix.** If a party's brief cites to documents not previously filed, that party must file and serve an appropriately documented supplemental appendix with the brief. NRAP 3E(g)(3).

**J. SANCTIONS IN FAST-TRACK APPEALS: NRAP 3E(i) [Cross Reference 14:XX]**

- 1. **Standard for imposition of sanctions.** Any party, attorney, court reporter, or court recorder who demonstrates a lack of due diligence in their respective duties under the fast-track rules may be subject to sanctions. NRAP 3E(i).
- 2. **Examples of sanctionable behavior.** Sanctionable behavior includes, but is not limited to:
  - a. Failure of an appealing party to timely file a fast-track statement;
  - b. Failure of a responding party to file a fast-track response; or

- c. A party's failure to raise material issues or arguments. NRAP 3E(i).

## **K. ASSIGNMENT**

1. **Retained by Supreme Court.** The Supreme Court will hear and decided cases that involve the termination of parental rights or NRS Chapter 432B. NRAP 17(a)(12).
2. **Presumptively assigned to Court of Appeals.** Cases that involve family law matters other than termination of parental rights or NRS Chapter 432B are presumptively assigned to the Court of Appeals. NRAP 17(b)(5). A party that believes the Supreme Court should retain a case that is presumptively assigned to the Court of Appeals should so state in the routing statement that must be included in the fast-track statement. NRAP 17(d); NRAP 3E(e)(1)(B)(ix).

## **L. TIMING OF DISPOSITIONS: NRAP 3E(g)(4)**

1. **Deadline for court's disposition.** Subject to extensions, and if the appellate court does not order full briefing, the appellate court must dispose of all fast-track child custody appeals within 90 days of the date the fast-track response is filed. NRAP 3E(g)(4).
2. **No recourse by party for delayed disposition.** There is no mechanism for a party to protest if the appellate court does not meet the deadline set forth in NRAP 3E(g)(4). No statistics are published for whether or how many cases are resolved within or outside the deadline.

## **K. ARGUMENT AND DECISIONS**

1. **Given priority.** When scheduling oral argument, the Supreme Court clerk will give priority to appeals that involve "the establishment or change of child custody or visitation of minor children, including actions seeking termination of parental rights...." IOP 4(c)(4).
2. **Pro se parties.** If either party is in proper person, the Supreme Court will not hold oral argument. NRAP 34(f)(3). [Cross Reference 11:XX].
3. **Published opinions.** Nothing in the rules indicates any preference by the appellate courts for or against the issuance of published opinions in fast-track appeals. If the issues raised in a fast-track case are ones of first impression or involve important issues of public policy, as opposed to error correction cases, a published decision is more likely. To the extent the appellate court plans to issue

a published decision, it will likely order full briefing. *See* NRAP 3E(g)(1).