

History of Nevada Court of Appeals and Appellate Tip Guide

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In 2014, the citizens of Nevada voted to create the Nevada Court of Appeals via constitutional amendment.¹ Nevada designed its appellate system as a defective, push-down model—appeals are submitted to the Nevada Supreme Court and then transferred to the Nevada Court of Appeals under NRAP 17.² Iowa, Idaho, and Mississippi have also implemented this type of model.³ The Nevada Court of Appeals presumptively handles various civil, criminal, family, and administrative law cases.⁴

In 2015, then-Governor Brian Sandoval appointed Judge Abbi Silver and Judge Jerome Tao of the Eighth Judicial District Court, and Chief Judge Michael Gibbons of the Ninth Judicial District

Court as the inaugural judges to fill the three departments on Nevada’s new intermediary court.⁵ These judges used their years of judicial and legal experience to build the foundation for an efficient system—disposing of 725 cases by opinion and order in the court’s first full fiscal year in 2016.⁶ While the court continues to thrive under the leadership of Chief Judge Gibbons, the composition of the court has changed. In 2019, then-Governor Steve Sisolak appointed Judge Bonnie A. Bulla, a former civil litigator and then-discovery commissioner for the Eighth Judicial District Court for 12 years, to the court to fill the vacancy in Department 3.⁷ In 2022, Judge Deborah Westbrook, a former employment attorney and experienced appellate deputy public defender, was elected to Department 1.⁸ Chief Judge Gibbons and Judge Bulla were also re-elected in 2022.

As the Nevada Court of Appeals continues to handle a wide range of cases, the next page has some useful tips for practitioners to consider when engaging in appellate practice.



1. Include a routing statement. Both the appellant's and respondent's briefs shall include a routing statement setting forth whether the matter must be retained by the Nevada Supreme Court or may be presumptively assigned to the Nevada Court of Appeals under NRAP 17. *See* NRAP 28(a)(5); NRAP 28(b)(2). Failure to include a routing statement may result in the brief being rejected.

2. Include all necessary documents in the appendix and arrange them in chronological order. The parties shall submit portions of the trial court record to be used on appeal for consideration. *See* NRAP 10(b). The size of the record may necessitate that the record be divided into multiple volumes. *See* NRAP 30(c)(2) ("Each volume of the appendix shall contain no more than 250 pages."). Parties shall submit their record in chronological order. *See* NRAP 30(c)(1) ("All documents included in the appendix shall be placed in chronological order by dates of filing ..."). This arrangement allows for a more efficient review of the record.

3. Address appellant's arguments in the answering brief. During the briefing stage of the appeal process, the appellant submits an opening brief, and the respondent submits an answering brief. *See* NRAP 28(a-b). A respondent should ensure that all issues raised by an appellant have been addressed. When a respondent's answering brief is silent as to one of appellant's issues on

appeal, the appellate court may elect to treat this failure to respond as a confession of error. *See* NRAP 31(c); *see also* *Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) ("We elect to treat the Chronisters' failure to respond to this argument in the three pages of argument in their answering brief as a confession of error."); *Moore v. State*, 93 Nev. 645, 647, 572 P.2d 216, 217 (1977) (noting that the prosecutor's failure to brief an issue in effect was not filing a brief and was treated as a confession of error).

4. Address respondent's arguments in the reply brief. An appellant may also file a brief in reply to the respondent's answering brief, to which the appellant may answer any new matter set forth in the opposing brief. *See* NRAP 28(c). Failure to address the respondent's arguments in the reply brief may constitute a concession that there is merit to the respondent's position. *See* *Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents' argument was not addressed in appellants' opening brief, and appellants declined to address the argument in a reply brief, "such lack of challenge ... constitutes a clear concession by appellants that there is merit in respondents' position").

5. Support arguments with legal authority. To ensure that a legal argument is thoroughly addressed by the appellate courts, a party must show support for their argument by citing relevant authority. *See* *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that

is not cogently argued or lacks the support of relevant authority); *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

6. Cite to the record. The parties' submitted briefs contain a recitation of the case's factual and procedural background, as well as the parties' legal arguments on appeal. *See* NRAP 28(a)(6)-(8). Because the records submitted by the parties are often voluminous, it is crucial that the parties cite to the record throughout their briefs. *See* NRAP 28(e)(1) ("[E]very 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."). Precise record citations allow the appellate courts to sift through the record more efficiently and develop a more complete understanding of the parties' arguments on appeal.

7. Provide an adequate record on appeal. The appellant has the burden to provide the appellate court with an adequate record for review. *See* *McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009). The appellate court will presume that the missing portion of the record supports the district court's decision. *See* *Cuzze v. Univ & Cmty. Coll. Sys. Of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (stating that the appellant is responsible for making an adequate appellate record, and when "appellant fails to include necessary documentation in the record,

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we necessarily presume that the missing portion supports the district court's decision.”).

8. Preserve appellate arguments before the district court.

The appellate courts will not consider an issue raised for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are “deemed to have been waived and will not be considered on appeal”). Similarly, the appellate courts need not consider an issue that the district court did not address. *See Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) (“The district court did not address this issue. Therefore, we need not reach the issue.”).

9. Be mindful of your time during oral argument.

At oral argument, each side, at the court's discretion, will be allowed 15 or 30 minutes for argument. *See* NRAP 34(b). The appellant opens and concludes the argument. *See* NRAP 34(c). Appellants should be mindful of their total allotted time if they plan to provide both an opening and concluding argument.

Due to the COVID-19 pandemic, the Nevada Court of Appeals saw its lowest number of filings in recent years. During the 2020 fiscal year, the Nevada Court of Appeals was assigned 1,112 cases and filed dispositions in 1,084 of its pending cases.⁹ By contrast, 797 cases were filed with the Nevada Court of Appeals during the 2021 fiscal year and the court resolved 915 cases, and during the 2022 fiscal year 619 cases were transferred to the court of appeals and 663 cases were resolved. At the end of the 2022 fiscal year, the court had 86 cases pending.¹⁰ While this downward trend in caseload coincides with the impact of the COVID-19 pandemic, Nevada's intermediary court remains committed to serving the people of Nevada as the court moves toward completing a decade since its creation.

ENDNOTES:

1. Supreme Court of Nevada, Court of Appeals, [NVCOURTS.GOV](https://nvcourts.gov), <https://nvcourts.gov/courtofappeals> (last visited Jan. 9, 2023).
2. *Id.*
3. *Id.*
4. *See* Nev. R. App. Pro. 17(b)(1-15).
5. *MyNews4.com*, *Governor Sandoval Names Inaugural Appointments to the Nevada Court of Appeals*, Dec. 17, 2014 <https://mynews4.com/news/local/governor-sandoval-names-inaugural-appointments-to-the-nevada-court-of-appeals>.
6. *Annual Report of the Nevada Judiciary*, Fiscal Year 2015, pg. 27 https://nvcourts.gov/_data/assets/pdf_file/0020/13394/2015_nevada_annual_report.pdf (last visited Jan. 9, 2023).
7. Associated Press, *Governor Names Bulla to 3-Member Nevada Court of Appeals*, 3 NEWS (Feb. 20, 2019) <https://news3lv.com/news/local/governor-names-bulla-to-3-member-nevada-court-of-appeals>.
8. Dana Gentry, *Prosecutors, Public Defenders, and Private Attorneys Share Judicial Victories*, NEV. CURRENT (Nov. 16, 2022, 6:00 AM) <https://www.nevadacurrent.com/blog/prosecutors-public-defenders-and-private-attorneys-share-judicial-victories/>.
9. *Annual Report of the Nevada Judiciary*, Fiscal Year 2022, pg. 21, https://nvcourts.gov/_data/assets/pdf_file/0015/38013/2022_Annual_Report.pdf (last visited Jan. 17, 2023).
10. *Id.*



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