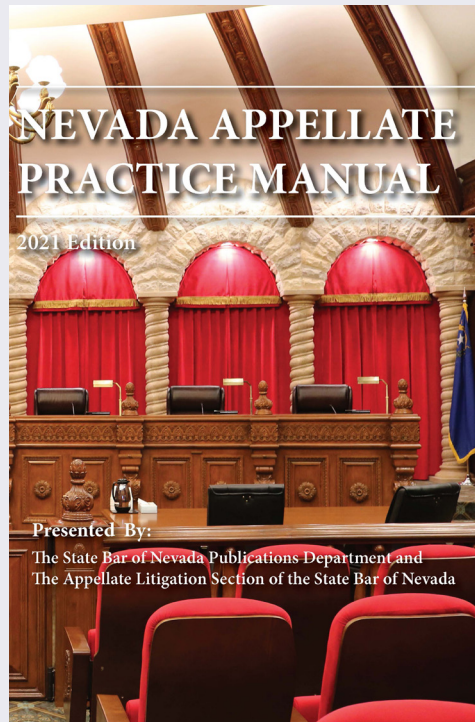


BOOK REVIEW:

Nevada Appellate Practice Manual (2021 edition)

There's something for everyone in the *Nevada Appellate Practice Manual, 2021 edition*. Whether you are a new attorney sitting down to write your very first opening brief to the Nevada Supreme Court, or a seasoned attorney trying to evaluate a client's likelihood of success on an extraordinary writ petition, this resource is the first place to turn.

As curator of *Nevada Lawyer's* Appellate Law issue, I was given a sneak peek at the updated manual and the opportunity to review it for this publication. An appellate lawyer myself, I wanted to see if the manual would enhance my own practice before the Nevada Supreme Court. It did *not* disappoint. I found myself opening the manual again and again, using it to find just the right legal authority to plug into motions and appellate briefs. And it has become my go-to resource to find quick answers for colleagues seeking appellate advice.



The *Nevada Appellate Practice Manual* is a joint publication of the State Bar of Nevada and the Appellate Litigation Section. Debbie Leonard has served as lead editor since 2016, when she oversaw the manual's relaunch. Leonard sought to make the manual user-friendly by giving each topic and subtitle a unique number that is cross-referenced in an index, so practitioners can successfully find exactly what they are looking for.

In addition to co-authoring a chapter of her own, Leonard recruited preeminent appellate attorneys and specialists to write the other chapters. The manual's authors are a veritable who's who of Nevada appellate practitioners and specialists, including (in order of appearance), Margaret Foley, Anjali D. Webster, Tracie K. Lindeman, Steven M. Silva, Micah S. Echols, Margaret Crowley, Paul C. Ray, Michael K. Wall, Amanda C. Yen, Robert Neresian, Nevada Solicitor General Heidi Parry Stern, Tami Cowden, Kerry Doyle, Joel D. Henriod, Daniel F. Polsenberg, Debbie Leonard, Seth T. Floyd, Rory T. Kay, UNLV Law Professor Anne R. Traum, Marilee Cate, and Marshal S. Willick.

More than 500 pages long, the manual offers step-by-step guidance through every stage of the appellate process, beginning with an overview of the history and operation of the appellate courts. It covers diverse topics such as: initiating an appeal, jurisdiction and appealability, settlement, writ petitions, motion practice, record preparation, standards of review, briefs, oral argument, dispositions, post-judgment issues, costs, fees, sanctions, and amicus curiae practice. It also addresses specific types of appeals, like appeals from agency determinations, criminal appeals, fast-track child custody appeals, and appeals through the Nevada Appellate Pro Bono Program. And each chapter contains relevant case citations and legal support for the concepts discussed.

If you want to know whether your client *can* appeal, you will want to look at Chapter 4: Jurisdiction and Appealability, by Echols. In addition to addressing the scope of appellate jurisdiction, Echols delves into the types of orders and judgments that are appealable across the legal spectrum. Echols' chapter addresses standing to appeal (and when parties can lose their standing), discusses the timeliness of appeals and the effect of tolling motions, and explains the types of interlocutory appeals that are permitted by rule and statute.

One of the most significant aspects of any appeal is the standard of review that the court will apply to the issues raised. In Chapter 9: Scope, Standards, and Process of Review, Parry Stern addresses the applicable standards of review, along with related topics like issue preservation, types of error, law of the case doctrine, certified questions, and mootness. For each standard of review, Parry Stern offers a definition for the standard and provides examples of issues that are reviewed under that standard in alphabetical order with case citations.

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For newer appellate attorneys, Chapters 10 and 11 will be of particular interest. In Chapter 10: Briefs, Cowden and Doyle offer practical tips on brief writing, with advice on how much detail to include in your statement of the case and how to deal with “bad facts.” In addition to identifying the mandatory requirements for opening briefs, answering briefs, and reply briefs, they offer suggestions on how to write persuasively.

Attorneys preparing to appear before the Nevada Supreme Court or Court of Appeals will want to check out Chapter 11: Oral Argument, by Henriod and Polsenberg. In addition to offering advice on how to prepare for and succeed at oral argument, Henriod and Polsenberg give examples of the types of questions commonly asked at oral argument and how best to respond. They even added a section on virtual arguments, with practice tips for appearing remotely in front of the Nevada Supreme Court and Court of Appeals during the COVID-19 pandemic.

Civil practitioners who are referred to the Supreme Court’s mandatory settlement program should check out Chapter 5: Settlement, by Crowley and Ray. Since its inception in 1997, more than half of all cases assigned to this program have settled, making the advice in this chapter particularly useful.

If you are considering filing a pretrial writ, you will want to look at Chapter 6: *Writ Petitions*, by Wall. In Chapter 6, Wall distinguishes between the different types of writ (e.g., mandamus, prohibition, certiorari), and provides numerous examples of cases where such writs were granted or denied. Wall also describes the contents of a writ and who can file a writ.

If you have ever wondered what happens after briefing and argument are complete and your case stands “submitted,” you will want to look at Chapter 12: Dispositions, by Henriod and Polsenberg. Based on the Supreme Court’s Internal Operating Procedures

(IOP), this chapter explains how the case screening process works, how the court decides whether to assign your case to a panel or the full court, the role law clerks and staff attorneys play in the review and disposition of your case, how panel membership is determined, and how long the court may take to decide your appeal.

Chapter 13: Post-Judgment Issues, by Floyd and Kay, provides a primer on what happens after the Supreme Court issues a final disposition in a case. This chapter addresses the timing and legal effect of the remittitur, including when and how the remittitur can be stayed or recalled. The chapter also addresses petitions for rehearing and en banc reconsideration, explaining when such petitions are likely to be granted and what should be included in such petitions to prevail.

Chapter 14: Cost, Fees and Sanctions, by Echols, explains when and how a prevailing party can recover costs and (on occasion) attorney fees in connection with an appeal. The chapter also addresses various grounds for sanctions, with case citations indicating when sanctions may (or may not be) warranted for failures to comply with procedural rules, dilatory conduct, and frivolous appeals. Helpful parentheticals are included to demonstrate the range and breadth of sanctions that may be imposed for varying degrees of behavior.

Chapter 15: Amicus Curiae Practice in the Appellate Courts, by Silva, is a great introduction to appellate amicus practice in Nevada. In this chapter, Silva identifies who may properly act as a “friend of the court” and describes the scope and purpose of amicus curiae briefs, along with procedure and timing for filing, and the content of such briefs.

There are also several chapters designed specifically for specialists. Attorneys practicing administrative law can turn to Leonard and Floyd’s Chapter 16: Appealing Agency Determinations, to learn how to challenge an agency decision in a contested case. This chapter covers all of the common issues a practitioner will face when petitioning for review of an agency decision (and when appealing a district court determination), including exhaustion and finality, standing, venue, the record on appeal, standards of review, stays and actions for damages.

Chapter 18: Fast-Track Child Custody Cases, by Willick, addresses the procedural rules governing such appeals, with practice tips on what to do if you believe your case was improperly designated or involves non-custody-related issues. And in Chapter 19, Traum explains how Nevada’s Appellate Pro Bono Program works and how Nevada lawyers can get involved and help indigent pro se litigants on appeal.

Chapter 17: Special Considerations for Criminal Appeals, underwent a significant overhaul since the 2018 edition. Traum and Cate made significant revisions to this chapter, adding more than 20 pages of content, including a new section addressing prejudgment appellate review in criminal cases. The chapter includes a compilation of recent extraordinary writ decisions from the Nevada Supreme Court, identifying which writs have been granted and which have been denied. If you are a criminal practitioner thinking of filing an extraordinary writ, you will find this chapter quite useful.

The *Nevada Appellate Practice Manual* (2021 edition) will be available for purchase and download on the State Bar of Nevada website at <https://nvbar.org/news-and-publications/resources-2/books-manuals-and-references> later this year. The book is priced at \$50 for the combined hardcover/PDF bundle and \$35 for the PDF alone. Members of the Appellate Litigation Section will receive a 15 percent discount on their purchase.



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