Nevada's Secret Appellate Court

BY STEVEN SILVA, ESQ.

As the story goes, on November 4, 2014, Nevada voters approved amendment of Nevada Constitution Article 6 and finally allowed the creation of a court of appeals, through enactment of Nevada Revised Statutes (NRS) Chapter 2A.[1] Finally, Nevada joined the majority of states with an appellate court between the trial courts and their state supreme court—the culmination of a multi-year effort to relieve the overwhelming appellate case load of the Nevada Supreme Court, which heard all appeals in the state. It's a good story, and it's true; the Nevada Court of Appeals has served as an invaluable tool in expediting and resolving appellate litigation this past half-decade. But there is another chapter in the story of Nevada appellate litigation, rarely told, and often misunderstood.[2]

You see, gentle reader, the real story is that, since the inception of our great state, there has secretly *always* been a court other than the Nevada Supreme Court with appellate powers: the Nevada District Court.

Although typically viewed as trial courts with original jurisdiction over most matters at law and equity, Nevada's district courts have also heard appeals from matters arising in the justice courts and such other inferior tribunals as may be established by law (e.g., municipal courts, and maybe soon Innovation Zone Courts) since 1864. These appellate matters include small claims, eviction actions, misdemeanors, and ordinary civil litigation below the jurisdiction threshold (currently $15,000). Nev. Const. art. 6 § 6(1).[3]

Final Appellate Jurisdiction

We start with jurisdiction, as we always should. The relevant district court has "final appellate jurisdiction" over matters from justice or municipal courts. *Waugh v. Casazza*, 85 Nev. 520, 458 P.2d 359 (1969); *Tripp v. City of Sparks*, 92 Nev. 362, 550 P.2d 419 (1976). As such, an appeal from a justice court to the Nevada Supreme Court or Court of Appeals is not allowed. Furthermore, no appeal is allowed from a district court's appellate decision. The introduction's "often misunderstood" line is not a quip or jibe, as there are more than 100 citations to *Waugh* from Nevada Supreme Court orders dismissing appeals from appeals.

"Final appellate jurisdiction" does not mean the appellate decision of a district court is unreviewable. It merely means that it cannot be attacked by a subsequent *appeal*. Rather, a disappointed appellate litigant must seek extraordinary relief, generally through a petition for a writ of certiorari. *See Sparks v. Bare,* 132 Nev. 426, 373 P.3d 864 (2016); *NRS* 34.020(2). As extraordinary relief, the decision to consider the matter on its merits or grant relief is discretionary with the Nevada Supreme Court or Court of Appeals. As such, although extraordinary review is available, the ordinary outcome is that the district court's appellate decision is the end of the story.

The Rules

When a district court hears a civil appeal, its proceedings are no longer governed directly by the Nevada Rules of Civil Procedure (NRCPs). Neither is a civil appeal from justice court governed directly by the Nevada Rules of Appellate Procedure (NRAP). Rather, the provisions of Justice Court Rules of Civil Procedure (JCRCPs) 72-76B control for civil matters. Meanwhile, the statutory provisions of NRS Ch. 177 and 189 largely control for criminal matters. Critically, NRAP 4's timing provisions do not apply to appeals in the district court, as NRAP 4 by its own terms sets the time for appeals "from a district court," not "to" or "in" a district court.

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For appeals from justice court civil matters, the time to appeal is set forth generally by JCRCP 72B, which provides 20 days instead of the 30 afforded by NRAP 4.[4] JCRCP 72B(a), however, specifies that the 20-day rule only applies in the absence of a statute controlling the time to appeal. Several common sources of appeals from justice court provide only 10 days to appeal. *See, e.g.,* NRS 40.380. Criminal matters generally allow only 10 days to appeal as well. NRS 5.090(1); NRS 189.010. Shorter still, an appeal from small claims requires the notice of appeal to be filed within five days from entry of the judgment. JCRCP 98. As with appeals to the Nevada Supreme Court, supreme caution must be taken with the time in which to file a notice of appeal.[5]

Once the notice of appeal has been filed, the appellant must begin assembling the record on appeal. Unless the parties stipulate or the trial court orders otherwise, the entire certified transcript of the proceeding is transmitted to the district court. JCRCP 74(a). Nevertheless, the obligation to order the transcript and record lies with the appellant. JCRCP 74(b); JCRCP 74A(a); *see also Sparks v. Bare*, 132 Nev. at 428, 373 P.3d at 866 (explaining some portions of the record are transmitted directly by the trial court, but further transcripts are the obligation of the appellant); NRS 189.030.

Where no report of the evidence exists, a civil appellant may prepare a statement of the evidence or proceedings based on recollection or other means. The statement is provided to the respondent, who has 10 days to serve objections or propose amendments. The statement with objections is submitted to the justice court for settlement and approval. The court-approved statement of the evidence is then included in the record on appeal. JCRCP 74(c). Alternately, if the parties agree on the issues to be resolved, the parties may prepare a joint statement of the case showing how the appellate issues arose and were decided. JCRCP 74(e).

Once sent over, a civil appeal in the district court utilizes provisions of the NRAP to govern the proceedings. For example, JCRCP 75A specifies that oral argument in a district court appeal shall be "reasonably consistent with NRAP 34." Likewise, JCRCP 75 adopts certain NRAP provisions governing briefs, albeit with a shorter presumptive length. JCRCP 75(b)(1) (seven pages for a printed brief). Interestingly, JCRCP 75 also specifies that briefs are not automatically required in appeals in the district court. But, when briefs are utilized, whether by court order or pursuant to local rule (*see, e.g.*, WDCR 19(4)), the failure of a respondent to file a response may be deemed as a confession of error. JCRCP 76(b).

Once the matter is briefed and argued or submitted on the record, the district court's powers on appeal are limited to traditional appellate review. JCRCP 76A specifies that no case appealed from the justice court may be tried anew in the district court. Likewise, NRS 189.050 requires a duly perfected criminal appeal to be judged on the record.

For appeals from municipal court, the rules are typically the same, as NRS 5.073(1) specifies that municipal court proceedings must generally conform to the practice and proceedings of justice courts. However, if a particular municipal court is not a "court of record," then "an appeal perfected transfers the action to the district court for a trial anew." NRS 5.073(1). Each municipality chooses whether its municipal court is a court of record, by ordinance. NRS 5.010(2); *see, e.g.,* Reno Mun. Code § 2.16.040; Fernley Mun. Code § 2.06.05.

And Now You Know the Secret

Some have said that before 2014, Nevada had a two-tier court system, with only one appellate court authorized by the pre-2014 version of Nevada Constitution Article 6. But that story depends upon a certain point of view—that of the general jurisdiction district court as the primary trial court and the Nevada Supreme Court as the only appellate court for those general jurisdiction cases. The full story is that Nevada has secretly had an appellate court tucked away in Article 6 the entire time.[6] Just a limited one. Which still makes for a pretty good story.

ENDNOTES:

1. James W. Hardesty, J. & Jordan T. Smith, *The Nevada Court of Appeals Delivers on its Promise*, Nevada Lawyer, March 2016, p.8; Anjali D. Webster, "Nevada's New Court of Appeals," *Nevada Lawyer,* January 2015, p.8.
2. Chapters, really. NRS Chs. 3, 5, 40, 177, and 189 all have provisions governing appeals to the district courts.
3. Of perhaps some interest to fans of alternate history, the unadopted Nevada Constitution of 1863 provided district courts with appellate jurisdiction to try *de novo* cases relating to minors and the estates of deceased persons. The 1863 Constitution also would have created county courts, having appellate jurisdiction over the justices' courts. The proposed judicial system of the 1863 Constitution contained provisions for municipal courts, probate courts, justices' courts, county courts (which would also serve as interim probate courts until probate courts were created), district courts, and a Nevada Supreme Court. It was, in a word, wild. *See* Andrew Marsh & Samuel Clemens (yes, that Sam Clemens), Reports of the Constitutional Convention – Territory of Nevada, 1863, pp.425-27.
4. Relatedly, practitioners should be aware that JCRCP contains post-trial motion provisions that parallel but differ from NRCP, some impacting the time to appeal. *See, e.g.*, JCRCP 50(c); JCRCP 59.
5. Great care must be taken to understand the calendaring and counting of days. *Compare* JCRCP 6, *with* NRCP 6.
6. I suppose it's never been a secret to misdemeanor prosecutors and defense attorneys. But a lot of civil litigators don't know this stuff.

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