

Office of the Nevada Attorney General



Capital Punishment Appellate Guidebook

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Introduction

What Is the Appellate Process?

The Appellate Process begins once a defendant convicted of capital murder and sentenced to death challenges their conviction. The defendant asks the court to review their conviction and/or sentence for legal error. The appellate process typically includes proceedings in both state court and federal court. The district attorney's office that prosecuted the case represents the State's interests in state court. However, in federal court, the Office of the Nevada Attorney General represents the State's interests. The defendant is typically represented at all stages by an attorney appointed by the court.

What Are the Steps of the Appellate Process?

The following is a brief explanation of the typical steps in the appellate process. This is a very simplified summary of the appellate process for a Nevada inmate. There are many variations that may occur in any given case. This summary is intended to present only the most basic view of the process. Each case is unique and may follow many different avenues prior to the completion of the process.

Part I: Trial and Direct Appeal

Where Does a Capital Murder Prosecution Begin?

A capital murder prosecution in Nevada begins when the State charges a defendant with murder and files a document called a "Notice of Intent to Seek the Death Penalty." There are several "degrees" of murder in Nevada. First-degree murder, the most serious form of murder, is the only crime in Nevada for which a defendant may receive the death penalty. The trial, which occurs in the state district court within the county where the crime(s) occurred, has two phases.

During the first phase of the trial, called the guilt phase, the jury must decide whether the State has proved that the defendant is guilty of first-degree murder "beyond a reasonable doubt."

If the jury finds the defendant guilty, the trial proceeds to the second phase, called the penalty phase, during which the jury weighs factors to determine whether the defendant should be sentenced to death, life imprisonment, or a specific period of years in prison.

What Is a Direct Appeal?

A defendant sentenced to death is entitled to an automatic appeal, or a direct appeal, to the Nevada Supreme Court, the highest court of criminal jurisdiction in Nevada. At this point, the defendant is called "the appellant," and the State is called "the respondent." The appellant's attorney files a brief, in which the attorney argues that error occurred during the trial and that the appellant's conviction and/or sentence should be reversed. The district attorney's office that prosecuted the case files the State's brief that responds to the claims in the appellant's brief. In most cases there will be an oral argument before the Nevada Supreme Court on some or all of the issues contained in the briefs. An oral argument is a discussion between the attorneys and a panel of judges focusing on the legal principles in dispute.

The Nevada Supreme Court reviews the briefs, considers the written and oral arguments advanced by each side, and issues an opinion that addresses the appellant's arguments. Based on its resolution of the appellant's claims, the court will uphold (affirm) or vacate (reverse) the conviction and/or sentence.

Can the Appellant Appeal to the United States Supreme Court?

Yes, if the Nevada Supreme Court upholds the conviction and sentence, the defendant may petition the United States Supreme Court for discretionary review. The defendant, now called "the petitioner," asks the Court to review the case by filing a petition for writ of certiorari in the United States Supreme Court in Washington, D.C. The State, at this point still represented by the district attorney and now called "the respondent," files a brief in opposition to the petition. The State argues various reasons for the United States Supreme Court to decline to review the petitioner's case. In the vast majority of cases, the Supreme Court refuses to hear the case and denies the petitioner's petition for certiorari. At this point, the defendant's direct appeal is complete.

When Is an Execution Date Set?

Once the defendant completes the mandatory direct appeal, the state district court may schedule an execution date for the defendant. However, the defendant can move to stay the execution if they intend to file a state or federal habeas petition.

Part II: State Habeas Corpus Proceedings

What Is a State Habeas Petition?

In addition to a direct appeal, a defendant sentenced to death may file a state habeas petition challenging the effectiveness of their attorney at trial and during the direct appeal. State habeas review begins when the defendant, now called “the petitioner,” files a petition for writ of habeas corpus in the state district court in which they were convicted. The petitioner argues their conviction and/or sentence is invalid under state and/or federal law. The court will appoint counsel to assist the defendant in state habeas review. The prison warden who has custody of the defendant is called “the respondent,” and answers the petition and refutes the petitioner’s claims. The warden is represented by the district attorney.

The state district court may conduct an evidentiary hearing to resolve the petitioner’s claims or arguments. At the evidentiary hearing, the parties may present evidence, including testimony of the petitioner’s previous attorneys, to help the court decide whether the petitioner’s arguments should be granted or denied. If the state district court

grants the petition, it may order a new trial and/or impose a new sentence.

Who Can Appeal a Habeas Petition?

If the state district court denies the petition, the petitioner may appeal to the Nevada Supreme Court. However, if the state district court grants any part of the petition, the State may also appeal the petition. As with the direct appeal, the parties file briefs in support of their arguments; the court may order oral argument; and the court will decide whether to grant or deny the petition.

Can the United States Supreme Court Review a State Habeas Petition?

Yes, after the Nevada Supreme Court affirms or denies the state district court’s decision regarding the state habeas petition, the parties may again seek review by the United States Supreme Court. The process for seeking discretionary review is the same as on direct appeal. The Court rarely grants review.

When Is an Execution Date Set?

Once the state habeas proceedings are concluded, the state district court may again schedule an execution date for the defendant. The defendant can move to stay execution if they intend to file a federal habeas petition.

Part III: Federal Habeas Corpus Proceedings

What is a Federal Habeas Petition?

The review of a federal habeas petition generally follows state habeas review. Once the defendant files a petition in the United States District Court, they may request appointment of counsel. Here, the defendant is once again called “the petitioner.” The prison warden who has custody of the defendant is again called “the respondent” but is now represented by the Office of the Nevada Attorney General.

In contrast to a state habeas petition in which the petitioner may argue they are entitled to relief under state or federal law, the petitioner in a federal habeas proceeding may only argue that relief should be granted due to a violation of a federal constitutional right. The federal district court may dismiss the petitioner’s arguments if the petitioner failed to comply with certain state and federal procedural requirements.

If the court does consider the merits of petitioner’s claims, the court’s review is normally limited to a determination of whether the decision of the Nevada courts to deny the petitioner’s claims was reasonable. The court may order an evidentiary

hearing to address the procedural requirements or the petitioner’s arguments in his petition.

Who Can Appeal a Federal Habeas Petition?

After the United States District Court rules on the defendant’s federal petition, either party may appeal the decision to the Ninth Circuit Court of Appeals. The defendant, now called “the appellant,” typically files a brief explaining why, in the appellant’s view, the federal district court’s denial of relief was wrong. The State, called “the appellee” and represented by the Office of the Nevada Attorney General, files a brief arguing that the district court correctly denied relief. In death penalty cases, the Ninth Circuit Court of Appeals typically requires oral argument. Afterwards, the Ninth Circuit considers the briefs, the arguments, and the record from the district court and issues a written decision either affirming or reversing the federal district court’s decision.

Can the United States Supreme Court Review a Federal Habeas Petition?

Yes, if the Ninth Circuit Court of Appeals affirms the district court’s decision, the defendant may petition the United States Supreme Court to review the case. The defendant, called “the petitioner,” files a petition for writ of certiorari in the United States Supreme Court in Washington, D.C., asking the

Court to review the case and arguing that the decision of the Ninth Circuit Court of Appeals is incorrect. The State, now called “the respondent,” files a brief in opposition, arguing that the Ninth Circuit’s decision is correct and stating that there is no reason for the Supreme Court to review the Petitioner’s case. Generally, the Supreme Court denies the defendant’s petition for writ of certiorari with a short written order.

Can a Defendant Delay Their Federal Habeas Proceedings?

Depending on the court rulings during the different phases of a federal habeas action, a defendant may be permitted to return to state court to initiate another state habeas proceeding. Such events may significantly delay the completion of the federal habeas process.

Overview of the Appellate Procedure for Capital Litigation Cases

Trial
(State District Court)

Direct Appeal
(Nevada Supreme Court, United States Supreme Court)

State Habeas Petition
(State District Court, Nevada Supreme Court, United States Supreme Court)

Federal Habeas Petition
(United States District Court, Ninth Circuit Court of Appeals, United States Supreme Court)

- *State District Court, Nevada Supreme Court – State is represented by the local prosecutor who conducted the underlying trial.*
- *United States District Court, Ninth Circuit Court of Appeals – State is represented by the Office of the Nevada Attorney General*

POST-SENTENCING VICTIM NOTIFICATION PREFERENCE FORM

Victims have the right to be informed of certain events that occur after the defendant has been convicted and sentenced. These events may occur months or years after sentencing, or perhaps not at all.

If you would like to be notified of future events in this case, please complete the victim information below and indicate your notification preferences. It is important to keep your contact information with our office up to date since these proceedings may occur months or years after the sentencing hearing.

INMATE INFORMATION

Name: _____
County of Conviction: _____
NDOC # (if known): _____

VICTIM INFORMATION

Name: _____
Address: _____

E-mail: _____
Home Phone: _____ Cell: _____
Work: _____

Please note any special considerations when contacting you:

NOTIFICATION PREFERENCES

Please check the boxes associated with your notification preferences:

- Please do not notify me unless the court grants the defendant a new trial or a new sentencing hearing.
- Please notify me of the result of any appeal or post-conviction proceeding.
- Please notify me of any oral argument at the Ninth Circuit Court of Appeals.
- Please notify me of any writ hearing at United States District Court that will include testimony.
- Other: _____

Please note that if we do not receive this form back from you, we will assume you do not want to be notified unless the defendant is granted relief in the form of a new trial or new sentencing hearing.

Please return this form to: Nevada Attorney General's Office, Attn: Post-Conviction Division, 100 N. Carson Street, Reno, NV 89701, or e-mail the form to hprocter@ag.nv.gov with the subject line "Victim Notification Form."