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### Summary of Valdez v. Cox Commc'ns Las Vegas, 130 Nev. Adv. Op. 89

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## CIVIL PROCEDURE: APPEALS FROM SEVERED CLAIMS

### **Summary**

The Court determined that: (1) under NRCP 21, when claims are severed, two separate actions exist and severed claims may be appealed before resolution of the other, non-severed claims; and (2) a final order for severed claims need not be certified under NRCP 54(b) before appeal.

### **Background**

Valdez filed a class action against VIPI, Cox Communications Las Vegas, Inc., Quality Communications, Inc.; and Sierra Communications Services, Inc., alleging failure to pay wages under Nevada and Federal law. The claims against Quality Communications were resolved. The claims against VIPI were severed in April 2013 and resolved in October 2013. However, Valdez waited to appeal challenging three interlocutory orders – two of which involve VIPI and one of which involves Cox Communications – until the claims against Sierra Communications were resolved in March 2014, which resolved all remaining claims in the original class action.

### **Discussion**

Valdez argued that he could not appeal VIPI's October 2013 order because it was never certified as final under NRCP 54(b) and because there were unresolved claims from the original class action. An order is final if it resolves severed claims regardless of unresolved unsevered claims.<sup>2</sup> Once a claim is severed it is separate from unsevered claims, and a party may appeal from a final order on the severed claim. Further, an order resolving severed claims does not need to be certified under NRCP 54(b) because two separate actions exist.<sup>3</sup> All interlocutory orders that were entered before the severance may be appealed after the final order.<sup>4</sup> Thus, because the appeal against VIPI did not occur within 30 days of the October 2013 order pursuant to NRAP 4(a)(1), it was untimely and the Court could not consider it.

### **Conclusion**

Since the VIPI order of October 2013 was final regarding the severed claim, the appeal was untimely and the Court held that it does not have jurisdiction to consider the appeal. However, the appeal against Cox Communications may proceed.

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<sup>1</sup> By Stephen Davis.

<sup>2</sup> See *Acevedo-Garcia v. Monroig*, 351 F.3d 547, 559 (1st Cir. 2003). See also *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (recognizing that “federal decisions involving the Federal Rules of Civil procedure provide persuasive authority when this court examines its rules”).

<sup>3</sup> *Acevedo-Garcia*, 351 F.3d at 559-60.

<sup>4</sup> *Consol. Generator-Nev., Inc. v. Cummins Engine Co., Inc.* 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).