

## Nevada Rules of Civil Procedure Revision Committee Summary

September 27, 2017 Meeting

The seventh meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on September 27, 2017 at 3:00 p.m. The meeting was video conferenced between the State Bar of Nevada Office in Reno and the Supreme Court conference rooms in Las Vegas and Carson City. Present in Reno were Discovery Commissioner Wesley Ayres, Graham Galloway, Bob Eisenberg, Dan Polsenberg, and Don Springmeyer. Present in Carson City were Judge Jim Wilson, Kevin Powers, and Todd Reese. Present in Las Vegas were Justice Mark Gibbons, Justice Kristina Pickering, Judge Elissa Cadish, Discovery Commissioner Bonnie Bulla, Judge Kim Wanker, Professor Tom Main, George Bochanis, Steve Morris, and Rachael Mastel.

The Committee first approved the August 16, 2017 meeting minutes.

The Committee then welcomed Judge James E. Wilson, who was recently appointed to the Committee. Judge Wilson will join the discovery; NRCP 4, 5, 6; and style subcommittees.

The Committee then discussed publicizing its work and seeking comment from practitioners. It was agreed that, unless otherwise approved by the subcommittee chair, comments on a rule being developed by a subcommittee should not be sought from the bar until the subcommittee has finished their work with the rule. This will allow the subcommittee to completely vet and develop their work and to prevent an incomplete rule from being scrutinized by the bar. After a subcommittee has presented a proposed rule to the committee, however, then the committee members are encouraged to seek comment on the rule from any desired sources. This will enable the committee to have as much input as possible when considering the Rules.

The Committee then discussed the subcommittee rule recommendations.

### 1) NRCP 68 Subcommittee

Chair: Dan Polsenberg

Members: Don Springmeyer, Prof. Thomas Main

The subcommittee reported that it left “before trial” as is because a better alternative could not be found and that they fixed the time before trial at 21 days. The subcommittee also reported that they added a section to NRCP 68(d) to clarify that a party may pay the amount of the offer within 21 days without an adverse judgment. Todd Reese suggested adding, and will draft, language to NRCP 68(f) to clarify how to calculate the penalty when multiple offers have been given. The Committee also discussed the conflict in NRCP 68 (d) between obtaining a judgment after 14 days but having 21 days to pay without entry of a judgment. The subcommittee will redraft that subsection of the rule. The Committee passed the rule to the November meeting, and the subcommittee will consider language changes to the rule.

2) Everything Else Subcommittee (All NRCP Rules not otherwise accounted for)

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

The Committee then discussed the revised proposed draft amendments to NRCP 5.2, 22, and 25 submitted by the Everything Else Subcommittee. The Committee approved the drafts of NRCP 5.2 and 22. When discussing NRCP 25, the Committee expressed concerns regarding who may file a notice of death, what the purpose of the district court noting the death on the record is, and whether the notice of death trigger a trap for the unwary with the 90 day period to substitute a person after the notice is filed. The Committee discussed whether the dismissal after 90 days should be mandatory or discretionary. The subcommittee will reconsider and redraft the rule, taking into consideration the Committee’s concerns.

3) Class and Derivative Actions Subcommittee (NRCP 23, 23.1, 23.2)

Chair: Prof. Thomas Main

Members: Dan Polsenberg, Don Springmeyer

The Class and Derivative Actions Subcommittee reported that it would present proposed rules at the next Committee meeting. (In November as the October meeting will focus on discovery.)

4) Time and Service of Process Subcommittee (NRCP 4, 4.1, 5, 6)

Chair: Judge Elissa Cadish

Members: Justice Kristina Pickering, Judge Jim Wilson; Don Springmeyer, Dan Polsenberg, Racheal Mastel, Todd Reese, Kevin Powers

The Committee then discussed the proposed draft of NRCP 5 submitted by the Time and Service of Process Subcommittee. The Committee approved NRCP 5 as proposed.

5) NRCP 12 and 56 Subcommittee (NRCP 8, 12, and 56)

Chair: Judge Elissa Cadish

Members: Justice Kristina Pickering, Judge Wanker, Prof. Thomas Main

The Committee then discussed the proposed draft of NRCP 8, 12, and 56 submitted by the NRCP 12 and 56 Subcommittee. The Advisory Committee Note added to NRCP 8 was approved. The Committee discussed the addition to NRCP 12 of the provisions for public entities, officers, and political subdivisions to answer or respond and whether they should have 45 or 60 days to or answer respond. The Committee approved the rules with a 45 day time period subject to syncing the public entities, officers, and political subdivisions provisions with NRCP 4. The Committee also discussed subsections (d) and (e) of NRCP 56, indicating that they did not alter and were consistent with existing law. The Committee approved NRCP 12 and 56 and the Advisory Committee Note proposed for NRCP 12.

6) Discovery Subcommittee (NRCP 16, 16.1, 26-37, 45)

Chair: Graham Galloway

Members: Steve Morris, Commissioner Wes Ayres, Commissioner Bonnie Bulla, Dan Polsenberg, George Bochanis, Don Springmeyer, Bill Peterson

The Committee then discussed the proposed draft amendments to NRCP 16.1, 26, 30, 34, and 35 submitted by the Discovery Subcommittee. As to Rule 35, Rachael Mastel reported that the family law bar suggested developing their own rule to address the unique problems regarding medical exams in family law. Bob Eisenberg sent the committee feedback from other practitioners on

the rule. Bob also stated that he did appreciate the work of the discovery subcommittee, but that he did not support the rule as written. His concerns are, among other things, the presence of an observer and the recording of the medical exam. Consideration of the rule was passed to the next meeting, pending further public comment on the rule and the development of a proposed alternative by Bob Eisenberg. The Committee briefly discussed NRCP 16.1, its approach to initial disclosures, and its approach to the testimony of treating physicians. The Committee also discussed whether Rule 26 should refer to NRCP 16.2 and 16.205. The Committee also briefly discussed NRCP 30 and 34, not mentioning any serious concerns. Because time remaining was short, the co-chairs advised the Committee to review the discovery rules and to be prepared to discuss them at the next meeting. This set of rules will be first on the next meeting agenda to afford sufficient time for their discussion.

A discussion was then held of issues of general concern to the Committee members.

Justice Gibbons advised the Committee that the next Committee meetings are scheduled for October 25, 2017 at 3:00 pm, and November 29, 2017 at 3:00 pm at the usual times and locations. The next Committee meeting in October will focus exclusively on discovery.

There being no further business to come before the Committee, the meeting was adjourned at 5:03 p.m.

Respectfully submitted,  
Kristina Pickering and Mark Gibbons  
Co-Chairs