

Nevada Rules of Civil Procedure Revision Committee Summary

June 20, 2018 Meeting

The sixteenth meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on June 20 at 2:00 p.m. The meeting was video conferenced between the Washoe County Bar Center in Reno, and the Supreme Court conference rooms in Las Vegas and Carson City. Present in Reno were Discovery Commissioner Wesley Ayres and Graham Galloway. Present in Carson City were Justice Mark Gibbons, Judge Jim Wilson, Kevin Powers and Todd Reese. Present in Las Vegas were Justice Kristina Pickering, Judge Elissa Cadish, Judge Kimberly Wanker, Discovery Commissioner Bonnie Bulla, Professor Thom Main, Bob Eisenberg, Don Springmeyer, Racheal Mastel, Dan Polsenberg, George Bochanis, Steve Morris and Loren Young.

The Committee first approved the May 23, 2018 meeting minutes.

The Committee then discussed revisions to the Advisory Committee Notes to Rules 16.1, 16.3, and 35, which have been previously considered. The Committee first discussed the note to Rule 16.1, and agreed with the proposed language as long as the treating physician is disclosed as a witness at the time of the initial non-retained expert disclosure 90 days before trial. Todd Reese will check and insert the correct rule reference. Commissioner Bulla moved to recommend the rule note as amended, the motion was seconded by Judge Cadish, and the Committee voted to recommend the note. As to the note to Rule 16.3, Justice Pickering moved to recommend the rule note, the motion was seconded by Gorge Bochanis, and the Committee voted to recommend the note. As to the note to rule 35, the committee discussed how a transcript of audio recording of an examination might be used at trial, and amended the last sentence of that note to state: "At trial, a party may use any portion of the transcription as permitted by the Nevada law of evidence." Commissioner Bulla moved to recommend the rule note as amended, the motion was seconded by George Bochanis, and the Committee voted to recommend the note.

The Committee then discussed revisions to Rules 60 and 71.1, which had been previously considered. As to Rule 60, the Committee agreed to generally conform the rule to FRCP 60. Rule 60(b)(5) and (6) from the federal rule are recommended, the first sentence of NRCP 60(d) is to be retained in substance, and the second sentence and NRCP 60(e) are to be deleted as superfluous. The

committee agreed upon the changes and Todd Reese will redraft the rule for the Committee's further consideration at the July meeting. As to Rule 7.1., the committee approved the revised language marking the rules as reserved and noting that eminent domain is governed by NRS Chapter 37. Judge Cadish moved to recommend the rule, the motion was seconded by Judge Wilson, and the Committee voted to recommend the rule.

The Committee then discussed the April 2018 revisions to FRCP 5, 23, 62, and 65.1. As to the amendments to Rule 5, the Committee discussed whether the term "discovery paper" in Rule 5(a)(1)(C) would adequately advise practitioners what to serve on another party. The Committee elected to retain and modify the existing NRCP 5 language to state "Any paper related to discovery" and add an advisory committee note to explain what discovery papers must be served on the opposing parties. The Committee also discussed the amendments to Rule 5(b)(2)(E). Justice Pickering prefers the previously adopted language and is concerned that the amendments as proposed will be confusing. Other Committee members believed that the proposed amendment better explained electronic service. The Committee generally accepted the remaining stylistic amendments. Kevin Powers moved to recommend the rule as amended with the new Rule 5(b)(2)(E) language, the motion was seconded by Justice Gibbons, and the Committee voted to recommend the rule. Justice Pickering voted against the rule amendment as to Rule 5(b)(2)(E).

As to Rule 23, the Rule 23 subcommittee reported that it did not recommend adopting any of the federal amendments to FRCP 23 because the Committee had previously voted to recommend the existing NRCP 23 as amended. The Committee agreed and declined to recommend further amendments to Rule 23.

As to Rule 62, the federal amendments significantly altered the rule. The Committee was concerned that the existing NRCP 62(b) language, concerning stays in post-judgment motions, was removed. The Committee agreed that more study of the motion was needed. The Committee appointed a subcommittee to study the rule, chaired by Dan Polsenberg and consisting of Bob Eisenberg, Kevin Powers, and Don Springmeyer.

As to Rule 65.1, the Committee had previously adopted the federal rule, and agreed upon adopting the federal amendments to that rule. Justice Pickering moved to recommend the rule as amended, the motion was seconded by Don Springmeyer, and the Committee voted to recommend the rule.

The Committee then discussed the revisions to Rules 28, 29, and 30 proposed by the Nevada Certified Court Reporters Board. The Committee declined to recommend the proposed edits, leaving the ultimate decision on accepting the edits to the Nevada Supreme Court. The Committee believes that any questions of statutory interpretation are best resolved by the courts or the Legislature, not this Committee. The Committee is also hesitant to narrow the scope of Rules 28, 29, and 30 as suggested, because that may adversely impact access to justice issues.

The Committee discussed the following subcommittee rule recommendations.

1) NRCP 80 Subcommittee

Chair: George Bochanis

The Committee next discussed NRCP 80. The subcommittee reported that it was not proposing changes to NRCP 80.

2) Approved Forms Subcommittee

Chair: Todd Reese

Members: Kevin Powers and Steve Morris

The Committee next discussed Rule 84 and three proposed forms, the request for waiver of service form, the waiver of service form, and the consent to service by electronic means form. The Committee agreed with deleting the remainder of the forms in favor of the forms created by the various district courts and self-help centers. The Committee requested that the advisory committee note be expanded to list where forms can be found. The Committee also discussed whether Form 3, consent to service by electronic means, was necessary, ultimately deciding to keep the form but note in the advisory committee notes that the form was not mandatory, did not need to be filed with the court, and was not necessary for general EFS use. Todd Reese moved to recommend the rule, the motion was seconded by Kevin Powers, and the Committee voted to recommend the rule.

3) Masters and Referees Subcommittee (NRCP 53 and related statutory issues re NRCP 16.3)

Chair: Justice Mark Gibbons

Members: Todd Reese, Justice Kristina Pickering

The Committee next discussed Rule 53. The subcommittee reported that the rule presented was a draft for comment by the Committee but that further work was needed. The committee discussed that masters were imposed by the family court and were stipulated to in other civil actions. The statute for masters in family court may play a role in that difference. The Committee discussed whether the rule should be left as is absent further statutory authorization. The subcommittee agreed to review and revise the rule.

4) NRCP 16.2, 16.205, 16.21, and 16.215 Subcommittee

Chair: Racheal Mastel

Members: Todd Reese, Judge Kim Wanker, Justice Mark Gibbons

The Committee next discussed research on a previously proposed NRCP 35.1 performed by the Supreme Court Library Staff. The research indicated that no other states had a similar rule for family law. The Committee suggested that the rule may be better located with the other family court rules, such as 16.21, and limited to custody evaluations. The Committee passed on this rule for reconsideration by the subcommittee.

5) Time and Service of Process Subcommittee (NRCP 4, 4.1, 5, 6, NRAP 4, 25, 26, 27, and the NECFR)

Chair: Judge Elissa Cadish

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

The Committee next discussed NRCP 4. As to the time amendments to the NRAP, Justice Gibbons advised the Committee that a separate committee would review the amendments. NRCP 4 was broken out in to 5 rules, Rules 4 through 4.4. In Rule 4.1, the Committee requested that the advisory committee note cross-reference the waiver forms. In Rule 4.4, the Committee requested that the “actual notice” provision be renamed. After further discussion, Todd Reese moved to recommend the rule as amended, the motion was seconded by Judge Cadish, Justice Pickering, Dan Polsenberg, Don Springmeyer, Racheal Mastel, and Kevin Powers, and the Committee voted to recommend the rule as amended.

6) Everything Else Subcommittee

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

Due to a lack of time, the Committee did not discuss NRCP 10, 15, 65, 66, 67, 70 and 77 and they were passed to the next meeting.

A discussion was then held of issues of general concern to the Committee members. The Justice Gibbons discussed the need to wrap up the Committee's work to meet the goal of having the new rules become effective on January 1, 2019. The Committee set a meeting for Thursday, July 26, 2018 at 2:00 p.m. The Committee agreed to discuss all remaining rules at that meeting. Prior to that meeting, as early as possible, Todd Reese will circulate the previously approved rules for final review. If time, the Committee will discuss any final edits to the rules prior to compilation of a final report. If necessary, an August meeting will be held to finalize the rules. Once complete, the final report will be posted on the website and filed in ADKT 0522 for the Nevada Supreme Court's consideration.

There being no further business to come before the Committee, the meeting was adjourned at 5:05 p.m.

Respectfully submitted,
Kristina Pickering and Mark Gibbons
Co-Chairs