

Nevada Rules of Civil Procedure Revision Committee Summary

July 26, 2018 Meeting

The seventeenth meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on July 26 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 Graham Galloway, Bill Peterson, and Bob Eisenberg. Present in Carson City were Judge Jim Wilson, Kevin Powers and Todd Reese. Present in Las Vegas were Justice Mark Gibbons, Justice Kristina Pickering, Chief Judge Linda Bell, Judge Elissa Cadish, Judge Kimberly Wanker, Discovery Commissioner Bonnie Bulla, Professor Thom Main, Don Springmeyer, Racheal Mastel, Dan Polsenberg, George Bochanis, and Steve Morris.

The Committee first approved the June 20, 2018 meeting minutes.

The Committee considered Rules 10, 15, 16, 16.1, 16.22, 16.23, 16.3, 23, 23.1, 23.2, 27, 45, 53, 54, 58, 60, 62, 65, 66, 67, 70, 77, and 80. The Committee first discussed Justice Hardesty's email recommending that scheduling orders be entered by judges, not discovery commissioners. This would require edits to Rules 16, 16.1, and 16.3. Chief Judge Linda Bell from the Eighth Judicial District commented that she appreciated Justice Hardesty's concerns about district court judges being more involved in a case from the outset of the case. She noted, however, that having Commissioner Bulla do the scheduling orders in the Eighth Judicial District gives consistency to the scheduling orders and that the Eighth Judicial District is implementing procedures to streamline the process. She also commented that removing scheduling orders from Commissioner Bulla's purview would be a sea change in the Eighth Judicial District and is an administrative change that would be difficult to implement. The Committee took no action on Justice Hardesty's email, leaving Rules 16, 16.1, and 16.3 as previously recommended and leaving further consideration of removing scheduling orders from the discovery commissioner's duties to the Supreme Court.

The Committee next considered stylistic edits to Rules 23, 23.1, and 23.2. After a brief discussion, Justice Gibbons moved to recommend the rule as edited, the motion was seconded by Don Springmeyer, and the Committee voted to recommend the rule.

The Committee next considered edits to Rule 27. After discussion, the Committee amended the rule to delete “in the judicial district where any expected adverse party resides” from the first sentence of Rule 27(a)(1). Justice Gibbons moved to recommend the rule as amended, the motion was seconded by George Bochanis, and the Committee voted to recommend the rule.

The Committee next considered edits to Rule 54. The Committee agreed that the Supreme Court should have the ability to review a district court’s certification order under Rule 54(b), but was concerned that prior Nevada law, *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 797 P.2d 978 (1990), held that the certification orders were effectively unreviewable. The Committee agreed to modify the text of the rule to expressly overturn *Mallin*, and to delete text from the Committee Note. Justice Pickering moved to recommend the rule as amended, the motion was seconded by Commissioner Bulla, and the Committee voted to recommend the rule.

The Committee next considered edits to Rule 60. After adding an “or” to Rule 60(d)(2) and deleting the last sentence of the Committee Note, Justice Pickering moved to recommend the rule as amended, the motion was seconded by Dan Polsenberg, and the Committee voted to recommend the rule.

The Committee next considered Rule 80. The Committee discussed that Rule 80 pertains to recordings in court, some of which are transcribed, but most of which are video or audio recorded by court staff. The Committee requested that the rule be amended to state that audio or video recordings may be proved by a certification by the court or the clerk of the court in which the recording was made. The Committee requested that the rule be revised and reconsidered at the next meeting.

The Committee next considered Rules 65, 66, 67, 70, and 77. After amending Rule 65 to state “actions” in Rule 65(e)(1), Justice Gibbons moved to recommend the rule as amended, the motion was seconded by Don Springmeyer, and the Committee voted to recommend the rule. After brief discussion of Rule 66, Justice Gibbons moved to recommend the rule, the motion was seconded by Justice Pickering, and the Committee voted to recommend the rule. After brief discussion of Rule 67, Justice Gibbons moved to recommend the rule, the motion was seconded by Justice Pickering, and the Committee voted to recommend the rule. After brief discussion of Rule 70, Justice Pickering moved to recommend the rule, the motion was seconded by Commissioner Bulla, and the Committee voted to recommend the rule. After amending Rule 77(c) to state that branch offices of a clerk’s office must be kept open during business hours, Justice Gibbons moved to recommend the rule as

amended, the motion was seconded by Don Springmeyer, and the Committee voted to recommend the rule.

The Committee next considered Rule 53. Todd Reese explained that the rule was revised to be more consistent with the existing NRCP 53. After discussion, Justice Gibbons moved to recommend the rule, the motion was seconded by Don Springmeyer, and the Committee voted to recommend the rule.

The Committee next considered stylistic edits to Rule 58. The Committee discussed that the federal clerks were authorized to take more action than Nevada clerks. Thus, FRCP 58(a) was largely superfluous as applied to Nevada. The Committee amended the rule to remove FRCP 58(a)(1) and to combine Rule 58(a)(2) with Rule 58(b). The Committee also amended Rule 58(c) to state that the clerk may sign judgments as authorized by these rules. 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 next considered Rules 16.22 and 16.23. The Committee amended Rule 16.23(b)(3) to remove confusion over “its”. A similar edit will be made to Rule 35. Racheal Mastel moved to recommend the rule as amended, the motion was seconded by Justice Gibbons, and the Committee voted to recommend the rule.

The Committee next considered Rule 62. The Committee first discussed Rule 62(a)(2), amending the rule to state that injunctions and receiverships are not automatically stayed, and deleting (A) and (B). The Committee then discussed the purpose of Rule 62(b), that a district court may grant a stay for postjudgment motions without requiring a bond. The Committee altered the text of 62(c) to correspond with NRAP 3A(b)(3), the appellate rule governing appeals of injunctions. The Committee then discussed when a stay with a bond takes effect, upon court approval as in the FRCP or upon filing of the bond as in the existing NRCP. The Committee was divided on this issue; some committee members preferred the stay taking effect when the bond was filed, subject to the court’s ability to increase the bond. This would provide flexibility to get an emergency stay. On the other hand, the new 30 day automatic stay should provide sufficient time for the attorneys involved to take appropriate actions to continue the stay. The rule was passed to the next meeting pending revisions to the rule.

Due to a lack of time, the Committee did not discuss NRCP 10, 15, or 45 and they were passed to the next meeting.

A discussion was then held of issues of general concern to the Committee members. Justices Gibbons and Pickering set a follow up meeting for Wednesday, August 1, 2018 at 2:00 p.m. to finish up the remainder of the rules. The Committee will discuss the necessity of any further meetings at the August meeting. Once complete, the final rules and 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 4:59 p.m.

Respectfully submitted,
Kristina Pickering and Mark Gibbons
Co-Chairs