

Nevada Rules of Civil Procedure Revision Committee Summary

May 24, 2017 Meeting

The third meeting of the Nevada Rules of Civil Procedure Revision Committee (Committee) was held on May 24, 2017 at 3:00 p.m. The meeting was video conferenced among the State Bar of Nevada Office in Reno, the Supreme Court conference room in Carson City and the Supreme Court conference room in Las Vegas. Present from Reno were Discovery Commissioner Wesley Ayres and Robert Eisenberg. Present in Carson City were Graham Galloway, Todd Reese, Kevin Powers and Justice Mark Gibbons. Present in Las Vegas were Justice Kristina Pickering, Discovery Commissioner Bonnie Bulla, Professor Thomas Main, Racheal Mastel, Daniel Polsenberg, Don Springmeyer, Steve Morris and George Bochanis.

Justices Pickering and Gibbons welcomed the two new members to the Committee, Kevin Powers and Todd Reese.

The Committee then discussed the proposed draft amendments to the NRCP submitted by the “no brainer” subcommittee consisting of Justice Kristina Pickering, Justice Mark Gibbons and Todd Reese. Racheal Mastel discussed the current language of NRCP 16.2, 16.205 and 16.21. Ms. Mastel further recommended that NRCP 16.21 be amended to make references to the recently adopted versions of NRCP 16.2 and 16.205. Ms. Mastel stated that NRCP 16.3 should cross-reference to NRCP 16.21.

Discussion then turned to NRCP 55 and NRCP 4 and whether the time period for default notice under NRCP 55 should be changed from three (3) days to seven (7) days to conform to the time period in the FRCP; the consensus was that it should. Professor Main suggested that the proposed draft of NRCP 55(b)(2) delete the reference to the term “federal statutory”; Todd Reese and Justice Pickering committed to reevaluate whether FRCP 55 pared the prior rule’s language too lean as far as damage and accounting hearings.

Robert Eisenberg had a question regarding certain terminology in proposed NRCP 61 and whether it signaled a substantive change in the rule. Justice Kristina Pickering referenced the prefatory comment stating that the rules listed in the comment have text changes that are stylistic, not substantive. Robert Eisenberg stated this addressed his concern. The committee also discussed NRCP 44, NRCP 80, and NRCP 85. Kevin Powers stated that the

proposed language of NRCP 85 should say the rules should be cited without periods. Steve Morris and George Bochanis commented that NRCP 85 should be deleted completely.

Dan Polsenberg moved to table the no brainer rules to the Committee's next meeting, which is scheduled for June 21, 2017. It was agreed that all Committee members would re-review the materials circulated by the subcommittee. At that meeting, particular attention will be paid to NRCP 1, 16.2, 16.205, 16.21, 16.215, 16.3, 44, 55, 78, 80 and 85. The other NRCPs addressed in the no-brainer subcommittee report were non-controversial.

There was a discussion to confirm membership of each subcommittee and a chairperson of the subcommittee. The members of the subcommittees and the chairpersons for the various committees were established as follows:

- 1) Judgment and Post-Judgment Rules Subcommittee (NRCP 50, 52, 54(b), 58, 59, 60, and writs)

Chair: Dan Polsenberg

Members: Robert Eisenberg, Kevin Powers, Don Springmeyer

- 2) Discovery Subcommittee (NRCP 16.1, 26-37, 45)

Chair: Graham Galloway

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

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

Chair: Prof. Thomas Main

Members: Dan Polsenberg, Don Springmeyer

- 4) Time and Service of Process Subcommittee (NRCP 4, 5, 6) (includes all e-service rules, calculation of time, and time to perform acts throughout the NRCP)

Chair: Judge Elissa Cadish

Members: Justice Kristina Pickering, Don Springmeyer, Dan Polsenberg, Todd Reese, Kevin Powers

- 5) Huneycutt Subcommittee (NRCP 62.1, NRAP 12.1, *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) and progeny)

Chair: Racheal Mastel

Members: Justice Kristina Pickering, Justice Mark Gibbons, Todd Reese, Dan Polsenberg

6) Special Masters and Receivers Subcommittee (NRCP 53 and 66)

No subcommittee established at this time

7) Approved Forms Subcommittee (NRCP 84 and forms)

Chair: Todd Reese

Members: Steve Morris, Kevin Powers

8) NRCP 16.2, 16.205, 16.21, 16.215, and 16.3 Subcommittee

Chair: Racheal Mastel

Members: Todd Reese

9) No Brainer Subcommittee (All NRCP Rules not otherwise accounted for)

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

10) Style Subcommittee (NRCP 1 and other rules as applicable)

Chair: Todd Reese

Members: Kevin Powers, Steve Morris, Prof. Thomas Main

11) NRCP 68 Subcommittee

Chair: Dan Polsenberg

Members: Don Springmeyer

12) NRCP 12 and 56 Subcommittee

Chair: Judge Elissa Cadish

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

The Committee then agreed to defer establishing a date for submission of subcommittee majority/minority reports until the Committee's next scheduled meeting on June 21, 2017.

Racheal Mastel addressed additional issues of concern in Family Court. Ms. Mastel said there is a question as to whether allegations of torts committed by one spouse against another should be litigated in Family Court in conjunction with divorce litigation. Ms. Mastel was concerned whether there would be a right to jury in family court since family court proceedings are generally equitable in nature. Justice Gibbons stated that a possible solution would be to file a separate law suit in civil court involving torts committed during marriage and this may resolve the jury entitlement issue.

Justices Pickering and Gibbons provided a brief status regarding possible revisions to NRCP 68 regarding offers of judgment. Because of the uncertainty regarding legal issues based upon the repeal of NRS 17.115, Justices Pickering and Gibbons stated that the Nevada Supreme Court would make any final decision as to whether NRCP 68 is to be revised at this time.

A discussion was then held of issues of general concern to the Committee members. Justice Gibbons advised the Committee that based upon the background noise software utilized for video conferencing by the Nevada Supreme Court, members of the Committee would not be able to participate by telephone in the event they are unable to attend from one of the location for video conferencing.

There being no further business to come before the Committee, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,
Kristina Pickering and Mark Gibbons
Co-Chairs