

## Nevada Rules of Civil Procedure Revision Committee Summary

December 20, 2017 Meeting

The tenth meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on December 20 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 Wes Ayres, Graham Galloway, Bob Eisenberg, and Bill Peterson. Present in Carson City were Justice Mark Gibbons, Justice Kristina Pickering, Judge Jim Wilson, Kevin Powers, and Todd Reese. Present in Las Vegas were Judge Elissa Cadish, Judge Kim Wanker, Discovery Commissioner Bonnie Bulla, Don Springmeyer, Racheal Mastel, and Don Polsenberg.

The Committee first approved the November 29, 2017 meeting minutes with minor edits.

The various subcommittees reported that they would attempt to have Rules 4, 6, 23.1, 23.2, the rest of the discovery rules, the judgment and post-judgment rules, NRAP 26, and NEFCR 9 for the committee's consideration at the January committee meeting. Regarding NEFCR 9, the subcommittee reported that the clerk's offices shed light on the procedure determining when electronic service is given and that the rules would need to be adjusted to reflect the procedure.

The Committee discussed the following subcommittee rule recommendations.

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

Chair: Graham Galloway

Members: Judge Jim Wilson, Steve Morris, Commissioner Wes Ayres, Commissioner Bonnie Bulla, Dan Polsenberg, George Bochanis, Don Springmeyer, Bill Peterson, and Loren Young

The Committee discussed the proposed draft amendments to NRCP 16.1, 27, 28, 29, 35, and 37 submitted by the Discovery Subcommittee. As to Rule 16.1, the subcommittee indicated that there was a majority and minority position regarding broader or more restrictive initial disclosure requirements. The committee passed this rule to the January meeting so that additional committee members could be present for the discussion.

The committee briefly discussed Rule 35, noting that three final proposals were complete and would be submitted to the Supreme Court. The co-chairs asked the proponents of the proposals to draft summary statements advocating for their proposal.

The committee also discussed Rule 37, noting the change in language in NRCP 37(a)(4) to account for documents not in compliance with Rule 34(b)(2)(E)(i). The rule was approved as written.

The committee next discussed Rules 27, 28, and 29. The discovery committee proposed to adopt the federal rules without change for use in Nevada. The committee expressed concern about whether Rule 29(b)'s language concerning "any form of discovery" would permit stipulations regarding depositions and whether that language conflicted with the existing rule or the Eighth Judicial District Court Rules. After discussion, the committee believed that there was no conflict, or that any conflict could be resolved. Justice Gibbons moved to recommend the rules as written, the motion was seconded by Justice Pickering, and the Committee voted to recommend the rules.

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

Chair: Dan Polsenberg

Members: Don Springmeyer and Professor Thomas Main

The Committee next discussed competing proposals regarding Rule 23. Dan Polsenberg proposed adopting FRCP 23, Don Springmeyer proposed retaining the existing NRCP 23 with edits, and Professor Main is agnostic on the proposals. The Committee discussed sending both proposals to the Supreme Court, but noted the new appellate procedure in FRCP 23(f). Nevada does not currently have an "appeal by permission" type of appeal and this would necessitate adopting new appellate rules. Dan Polsenberg agreed to draft two alternative proposals, one retaining the new type of permissive appeal and one with an appeal as of right. Pending the edited rules, the rule was passed to the next meeting.

## 3) NRCP 25 Subcommittee (NRCP 25 and NRAP 43)

Chair: Todd Reese

Members: Justice Kristina Pickering, Graham Galloway, George Bochanis, and Loren Young

The Committee next discussed NRCP 25 and NRAP 43. Todd Reese explained that the rule was adapted from the FRCP and the existing NRCP to give more flexibility to the district courts in dealing with a party's death and to avoid the mandatory dismissal penalty. The rule's provisions are also garnered from the NRAP and other states rules. The rule is not intended to violate due process or change probate law. Justice Pickering noted that the Rule is set for review by probate attorneys to make sure that its provisions to not conflict with probate law. Concerns were also raised regarding whether provisions of the rule permitting an action to proceed despite the party's death would conflict with Rule 17(a). The Committee passed on the rule pending review.

#### 4) Everything Else Subcommittee

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

The Committee discussed the proposed draft amendments to NRCP 38, 39, 40, 43, 44, 48, and 49 submitted by the Everything Else Subcommittee. The committee discussed edits to Rule 38, 40, and 43. The committee also discussed the passive wording of Rule 48, discussing where a jury of 8 persons was authorized. Rule 48 was passed for redrafting and research. Justice Gibbons moved to recommend the remaining rules, Judge Wilson seconded the motion, and the committee voted to recommend the rules.

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 January 17, 2018, and February 21, 2018, at 3:00 pm. The Reno location of the January meeting will be at a Washoe County District Court Room. The other locations will be at the usual locations.

There being no further business to come before the Committee, the meeting was adjourned at 4:35 p.m.

Respectfully submitted,  
Kristina Pickering and Mark Gibbons  
Co-Chairs