

1 **NRCP 30 – Proposed**
2 **(Tracks FRCP 30, limits depositions to 10 without a court**
3 **order, with minor changes to reflect Nevada law and**
4 **practice.)**

5 **Rule 30. Depositions by Oral Examination**

6 **(a) When a Deposition May Be Taken.**

7 (1) **Without Leave.** A party may, by oral questions, depose any person,
8 including a party, without leave of court except as provided in Rule 30(a)(2). The
9 deponent's attendance may be compelled by subpoena under Rule 45.

10 (2) **With Leave.** A party must obtain leave of court, and the court must
11 grant leave to the extent consistent with Rule 26(b)(1) and (2):

12 (A) if the parties have not stipulated to the deposition and:

13 (i) the deposition would result in more than 10 depositions
14 being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by
15 the third-party defendants;

16 (ii) the deponent has already been deposed in the case; or

17 (iii) the party seeks to take the deposition before the time
18 specified in Rule 26(a), unless the party certifies in the notice, with supporting facts,
19 that the deponent is expected to leave Nevada and be unavailable for examination in
20 the state after that time; or

21 (B) if the deponent is confined in prison.

22 **(b) Notice of the Deposition; Other Formal Requirements.**

23 (1) **Notice in General.** A party who wants to depose a person by oral
24 questions must give not less than 15 days written notice to every other party. The

1 notice must state the time and place of the deposition and, if known, the deponent's
2 name and address. If the name is unknown, the notice must provide a general
3 description sufficient to identify the person or the particular class or group to which
4 the person belongs.

5 **(2) Producing Documents.** If a subpoena duces tecum is to be served
6 on the deponent, the materials designated for production, as set out in the subpoena,
7 must be listed in the notice or in an attachment. The notice to a party deponent may
8 be accompanied by a request under Rule 34 to produce documents and tangible
9 things at the deposition.

10 **(3) Method of Recording.**

11 **(A) Method Stated in the Notice.** The party who notices the
12 deposition must state in the notice the method for recording the testimony. Unless
13 the court orders otherwise, testimony may be recorded by audio, audiovisual, or
14 stenographic means. The noticing party bears the recording costs. Any party may
15 arrange to transcribe a deposition.

16 **(B) Additional Method.** With prior notice to the deponent and
17 other parties, any party may designate another method for recording the testimony
18 in addition to that specified in the original notice. That party bears the expense of
19 the additional record or transcript unless the court orders otherwise.

20 **(4) By Remote Means.** The parties may stipulate—or the court may on
21 motion order—that a deposition be taken by telephone or other remote means. For
22 the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes
23 place where the deponent answers the questions.

24 **(5) Officer's Duties.**

1 (A) **Before the Deposition.** Unless the parties stipulate
2 otherwise, a deposition must be conducted before an officer appointed or designated
3 under Rule 28. The officer must begin the deposition with an on-the-record statement
4 that includes:

- 5 (i) the officer's name and business address;
- 6 (ii) the date, time, and place of the deposition;
- 7 (iii) the deponent's name;
- 8 (iv) the officer's administration of the oath or affirmation to
9 the deponent; and
- 10 (v) the identity of all persons present.

11 (B) **Conducting the Deposition; Avoiding Distortion.** If the
12 deposition is recorded nonstenographically, the officer must repeat the items in Rule
13 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The
14 deponent's and attorneys' appearance or demeanor must not be distorted through
15 recording techniques.

16 (C) **After the Deposition.** At the end of a deposition, the officer
17 must state on the record that the deposition is complete and must set out any
18 stipulations made by the attorneys about custody of the transcript or recording and
19 of the exhibits, or about any other pertinent matters.

20 (6) **Notice or Subpoena Directed to an Organization.** In its notice
21 or subpoena, a party may name as the deponent a public or private corporation, a
22 partnership, an association, a governmental agency, or other entity and must
23 describe with reasonable particularity the matters for examination. The named
24 organization must then designate one or more officers, directors, or managing agents,

1 or designate other persons who consent to testify on its behalf; and it may set out the
2 matters on which each person designated will testify. A subpoena must advise a
3 nonparty organization of its duty to make this designation. The persons designated
4 must testify about information known or reasonably available to the organization.
5 This paragraph (6) does not preclude a deposition by any other procedure allowed by
6 these rules.

7 **(c) Examination and Cross-Examination; Record of the Examination;**
8 **Objections; Written Questions.**

9 **(1) Examination and Cross-Examination.** The examination and
10 cross-examination of a deponent proceed as they would at trial under the Nevada
11 law on evidence, except NRS 47.040-NRS 47.080 and NRS 50.155. After putting the
12 deponent under oath or affirmation, the officer must record the testimony by the
13 method designated under Rule 30(b)(3)(A). The testimony must be recorded by the
14 officer personally or by a person acting in the presence and under the direction of the
15 officer.

16 **(2) Objections.** An objection at the time of the examination—whether
17 to evidence, to a party’s conduct, to the officer’s qualifications, to the manner of
18 taking the deposition, or to any other aspect of the deposition—must be noted on the
19 record, but the examination still proceeds; the testimony is taken subject to any
20 objection. An objection must be stated concisely in a nonargumentative and
21 nonsuggestive manner. A person may instruct a deponent not to answer only when
22 necessary to preserve a privilege, to enforce a limitation ordered by the court, or to
23 present a motion under Rule 30(d)(3).

1 **(3) Participating Through Written Questions.** Instead of
2 participating in the oral examination, a party may serve written questions in a sealed
3 envelope on the party noticing the deposition, who must deliver them to the officer.
4 The officer must ask the deponent those questions and record the answers verbatim.

5 **(d) Duration; Sanction; Motion to Terminate or Limit.**

6 **(1) Duration.** Unless otherwise stipulated or ordered by the court, a
7 deposition is limited to 1 day of 7 hours of testimony. The court must allow additional
8 time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent
9 or if the deponent, another person, or any other circumstance impedes or delays the
10 examination.

11 **(2) Sanction.** The court may impose an appropriate sanction—
12 including the reasonable expenses and attorney’s fees incurred by any party—on a
13 person who impedes, delays, or frustrates the fair examination of the deponent.

14 **(3) Motion to Terminate or Limit.**

15 **(A) Grounds.** At any time during a deposition, the deponent or a
16 party may move to terminate or limit it on the ground that it is being conducted in
17 bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the
18 deponent or party. The motion may be filed in the court where the action is pending
19 or, if the deposition is being conducted under an out-of-state subpoena, where the
20 deposition is being taken. If the objecting deponent or party so demands, the
21 deposition must be suspended for the time necessary to obtain an order.

22 **(B) Order.** The court may order that the deposition be terminated
23 or may limit its scope and manner as provided in Rule 26(c). If terminated, the
24 deposition may be resumed only by order of the court where the action is pending.

1 (C) **Award of Expenses.** Rule 37(a)(5) applies to the award of
2 expenses.

3 (e) **Review by the Witness; Changes.**

4 (1) **Review; Statement of Changes.** On request by the deponent or a
5 party before the deposition is completed, the deponent must be allowed 30 days after
6 being notified by the officer that the transcript or recording is available in which:

7 (A) to review the transcript or recording; and

8 (B) if there are changes in form or substance, to sign a statement
9 listing the changes and the reasons for making them.

10 (2) **Changes Indicated in the Officer's Certificate.** The officer must
11 note in the certificate prescribed by Rule 30(f)(1) whether a review was requested
12 and, if so, must attach any changes the deponent makes during the 30-day period.

13 (f) **Certification and Delivery; Exhibits; Copies of the Transcript or**
14 **Recording; Filing.**

15 (1) **Certification and Delivery.** The officer must certify in writing that
16 the witness was duly sworn and that the deposition accurately records the witness's
17 testimony. The certificate must accompany the record of the deposition. Unless the
18 court orders otherwise, the officer must seal the deposition in an envelope or package
19 bearing the title of the action and marked "Deposition of [witness's name]" and must
20 promptly send it to the attorney who arranged for the transcript or recording. The
21 attorney must store it under conditions that will protect it against loss, destruction,
22 tampering, or deterioration.

23 (2) **Documents and Tangible Things.**

1 **(A) Originals and Copies.** Documents and tangible things
2 produced for inspection during a deposition must, on a party's request, be marked for
3 identification and attached to the deposition. Any party may inspect and copy them.
4 But if the person who produced them wants to keep the originals, the person may:

5 (i) offer copies to be marked, attached to the deposition, and
6 then used as originals—after giving all parties a fair opportunity to verify the copies
7 by comparing them with the originals; or

8 (ii) give all parties a fair opportunity to inspect and copy the
9 originals after they are marked—in which event the originals may be used as if
10 attached to the deposition.

11 **(B) Order Regarding the Originals.** Any party may move for
12 an order that the originals be attached to the deposition pending final disposition of
13 the case.

14 **(3) Copies of the Transcript or Recording.** Unless otherwise
15 stipulated or ordered by the court, the officer must retain the stenographic notes of
16 a deposition taken stenographically or a copy of the recording of a deposition taken
17 by another method. When paid reasonable charges, the officer must furnish a copy
18 of the transcript or recording to any party or the deponent.

19 **(4) Notice of Filing.** A party who files the deposition must promptly
20 notify all other parties of the filing.

21 **(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses.** A
22 party who, expecting a deposition to be taken, attends in person or by an attorney
23 may recover reasonable expenses for attending, including attorney's fees, if the
24 noticing party failed to:

1 (1) attend and proceed with the deposition; or

2 (2) serve a subpoena on a nonparty deponent, who consequently did not
3 attend.

4 (h) **Expert Witness Fees.**

5 (1) A party desiring to depose any expert who is to be asked to express
6 an opinion, shall pay the reasonable and customary hourly or daily fee for the actual
7 time consumed in the examination of that expert by the party noticing the deposition.
8 If any other attending party desires to question the witness, that party shall be
9 responsible for the expert's fee for the actual time consumed in that party's
10 examination. If requested by the expert before the date of the deposition, the party
11 taking the deposition of an expert shall tender the expert's fee based on the
12 anticipated length of that party's examination of the witness. If the deposition of the
13 expert takes longer than anticipated, any party responsible for any additional fee
14 shall pay the balance of that expert's fee within 30 days of receipt of a statement
15 from the expert. Any party identifying an expert whom that party expects to call at
16 trial is responsible for any fee charged by the expert for preparing for and reviewing
17 the deposition.

18 (2) If a party desiring to take the deposition of an expert witness
19 pursuant to this subdivision deems that the hourly or daily fee of that expert for
20 providing deposition testimony is unreasonable, that party may move for an order
21 setting the compensation of that expert. This motion shall be accompanied by an
22 affidavit stating facts showing a reasonable and good faith attempt at an informal
23 resolution of any issue presented by the motion. Notice of this motion shall be given
24 to the expert. The court shall set the fee of the expert for providing deposition

1 testimony if it determines that the fee demanded by that expert is unreasonable. The
2 court may impose a sanction pursuant to Rule 37 against any party who does not
3 prevail, and in favor of any party who does prevail, on a motion to set expert witness
4 fee, providing the prevailing party has engaged in a reasonable and good faith
5 attempt at an informal resolution of any issues presented by the motion.

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7 **ADVISORY COMMITTEE NOTE—2018 AMENDMENT**

8 Subdivision (a)(2)(A)(1), like its counterpart in the Federal Rules, limits the
9 number of depositions that may be taken under this Rule to 10 per side unless the
10 parties have stipulated to, or a court order allows, more.

11 The "7 hours of testimony" specified in subdivision (d)(1) means 7 hours on the
12 record. The time taken for convenience breaks, recess for a meal, or an adjournment
13 under subdivision (d)(3) does not count as deposition time.

14 Discussion between the deponent and counsel during a convenience break shall
15 not be treated as privileged unless the break was called by counsel to preserve a
16 privilege, to enforce a limitation ordered by the court, or to present a motion under
17 subdivision (d)(3).

18 Counsel are reminded that if a break in a deposition is taken to determine
19 whether to assert a privilege, upon resumption of the deposition counsel for the
20 deponent must place on the record: (1) that a conference took place; (2) the subject of
21 the conference; and (3) the result of the conference, i.e., whether to assert privilege
22 or not. *Coyote Springs Investment, LLC, 131 Nev., Adv. Op. 18, 347 P.3d 267, 273*
23 *(2015)*.