

Nevada Rules of Civil Procedure Revision Committee Summary

July 26, 2017 Meeting

The fifth meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on July 26, 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 Las Vegas, and the Supreme Court conference room in Carson City. Present in Reno were Discovery Commissioner Wesley Ayres, Graham Galloway, Bill Peterson, Todd Reese, and Don Springmeyer. Present in Carson City were Kevin Powers and Justice Mark Gibbons. Present in Las Vegas were Justice Kristina Pickering, Discovery Commissioner Bonnie Bulla, George Bochanis, Judge Elissa Cadish, Steve Morris and Dan Polsenberg.

The Committee first approved the June 21, 2017 meeting minutes.

The Committee then discussed publicity for NRCP revision process. Justice Pickering advised the Committee that the Supreme Court's website for the Committee would soon be populated and that the State Bar would be contacted to run a notice of the Committee's work in the Nevada Lawyer and to send an email to members of the State Bar. An article written by Kristen Martini would also be running in the Writ, a Washoe County Bar publication, and in the Communiqué, a Clark County Bar publication.

The Committee then discussed the impact of the NRCP revisions on the Nevada Justice Court Rules of Civil Procedure. Many of the NRCP are adopted wholesale in the NJCRCP. Justice Gibbons will notify the Chief Justice of the concerns, with a view toward possibly appointing a committee to examine the NJCRCP in light of any changes to the NRCP.

Discussion then turned to the subcommittees and subcommittee reports and rule recommendations.

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

Chair: Graham Galloway

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

The Committee first confirmed that NRCP 16 has been assigned to the Discovery Subcommittee. The Committee then discussed the proposed draft amendments to NRCP 16.1 and 35 submitted by the Discovery Subcommittee.

As to NRCP 16.1, the subcommittee recommended that “data compilations” be changed to “electronically stored information” to be consistent with other jurisdictions. Discussion then turned to the standard appropriate for a party’s initial disclosure obligation. The subcommittee recommended changing the current broad initial disclosure requirement to a narrower requirement that the party disclose any information that the party “may use to support its claims or defenses, including for impeachment or rebuttal.” Some present offered that this was a significant change, in that a party would have no obligation to disclose information that hurts his claims or defenses, only information the party intends to use to support his litigation position or to impeach his opponent. Supporters of the change noted that affirmative discovery requests can flesh out information; the change just concerns initial disclosures. The Committee discussed that, if the change is made, the advisory committee notes should make clear what the limitations are.

The Committee also noted that initial disclosure obligations do not apply when cases are before the probate commissioner but should apply when a probate case reaches district court and discussed whether NRCP 16.1 and the NRCP need revision to make this clear. The Committee noted that NRCP 3 and 81 come into play because probate is a statutory proceeding commenced by petition.

The Committee decided that further discussion was needed and that drafter’s notes in rule 16.1 and or 81 may be warranted along with a change to NRCP 3 to include “petitions” and “applications” in NRCP3’s language. The Committee passed on this rule pending further examination by the Discovery Subcommittee and the Everything Else Subcommittee on NRCP 3 and 81.

As to NRCP 35, the Committee discussed the observer requirement and whether that person could be an interested party or an attorney. The subcommittee reported that the Audio Recording provision was new. The Committee also expressed concern about the language in NRCP 35(b)(1) and (3), which was taken directly from the FRCP counterpart, noting that the language was confusing regarding who would be requesting what from whom, and what exams must be produced. The Committee also discussed how this

rule would apply to minors and interact with other rules applicable to minors, and the Committee recommended adding to the drafter's note to address this concern. The Committee also noted that NRCP 35(a)(2)(B) allowed the court to impose conditions on the examination to protect minors. The subcommittee will reconsider the rule, make alterations, and present the rule at the August meeting.

- 2) Time and Service of Process Subcommittee (NRCP 4, 4.1, 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

Judge Cadish reported that FRCP 4.1 has been assigned to the Time and Service of Process Subcommittee for consideration.

- 3) 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

The Committee then discussed the proposed draft addition of NRCP 62.1 and NRAP 12.1 and accompanying draft committee notes submitted by the Huneycutt Subcommittee. The Committee generally approved of the rules and comment, but discussed altering language in the drafter's note regarding whether *Huneycutt* and its progeny would be overruled by the adoption of these rules, and discussed needed changes to the language of the rule reference federal courts. The subcommittee will make the alterations requested and present the rules at the August meeting.

- 4) Everything Else Subcommittee (renamed from the "No Brainer" Subcommittee) (All NRCP Rules not otherwise accounted for)

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

The Committee discussed the proposed draft amendments to NRCP 5.1, 5.2, 7, 7.1, 8, 9, and 11 submitted by the Everything Else Subcommittee. The Committee approved the recommendation to reject FRCP 5.1. The Committee considered FRCP 5.2, and advised against incorporating the Rules on Sealing and Reacting Court Records (SRCR) into Rule 5.2 because the SRCR apply more broadly than the NRCP do. The Committee approved rejecting the text of FRCP 5.2, but advised adding Rule 5.2 to the NRCP with language directing practitioners to the SRCR for rules regarding sealing and redaction. The Subcommittee will redraft NRCP 5.2 and submit it to the Committee for its consideration at the August meeting. The Committee approved NRCP 7, 7.1, and 11 as proposed. The Committee agreed with changes proposed by Racheal Mastel to Rules 7 and 8, leaving in the federal language regarding pleading the jurisdiction of the court. With that change, the Committee approved NRCP 7 and 8.

A discussion was then held of issues of general concern to the Committee members. Concern was voiced with the ambitious pace of this Committee and the scheduling conflicts occurring with the subcommittees. This issue will be revisited in August. Justice Gibbons advised the Committee that Committee meetings are scheduled for August 16, 2017 at 3:00 pm, and September 27, 2017 at 3:00 pm.

There being no further business to come before the Committee, the meeting was adjourned at 5:00 p.m.

Respectfully submitted,
Kristina Pickering and Mark Gibbons
Co-Chairs