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**NRCP 32 – Proposed**  
**(Retain Nevada rule with edits)**

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**Rule 32. Using Depositions in Court Proceedings**

**(a) Using Depositions.**

(1) **In General.** At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Nevada law on evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (8).

(2) **Impeachment and Other Uses.** Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Nevada law on evidence.

(3) **Deposition of Party, Agent, or Designee.** An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) **Unavailable Witness.** A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial or is out of the State, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness,

1 infirmity, or imprisonment;

2 (D) that the party offering the deposition could not procure the  
3 witness's attendance by subpoena; or

4 (E) on motion and notice, that exceptional circumstances make it  
5 desirable—in the interest of justice and with due regard to the importance of live  
6 testimony in open court—to permit the deposition to be used.

7 (5) **Experts.** Notwithstanding Rule 32(a)(4), a party may use for any  
8 purpose the deposition of a retained or non-retained expert witness even though the  
9 deponent is available to testify, unless otherwise ordered by the court.

10 (6) **Limitations on Use.**

11 (A) **Deposition Taken on Short Notice.** A deposition must not  
12 be used against a party who, having received less than 15 days' notice of the  
13 deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting  
14 that it not be taken or be taken at a different time or place—and this motion was still  
15 pending when the deposition was taken.

16 (B) **Unavailable Deponent; Party Could Not Obtain an**  
17 **Attorney.**

18 (i) A deposition taken without leave of court under the  
19 unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who  
20 shows that, when served with the notice, it could not, despite diligent efforts, obtain  
21 an attorney to represent it at the deposition.

22 (ii) Notwithstanding Rule 32(a)(6)(B)(i), the district court  
23 may permit a deposition to be used against a party who proceeds pro se after the  
24 deposition.

1           **(7) Using Part of a Deposition.** If a party offers in evidence only part  
2 of a deposition, an adverse party may require the offeror to introduce other parts that  
3 in fairness should be considered with the part introduced, and any party may itself  
4 introduce any other parts.

5           **(8) Substituting a Party.** Substituting a party under Rule 25 does not  
6 affect the right to use a deposition previously taken.

7           **(9) Deposition Taken in an Earlier Action.** A deposition lawfully  
8 taken and, if required, filed in any federal- or state-court action may be used in a  
9 later action involving the same subject matter between the same parties, or their  
10 representatives or successors in interest, to the same extent as if taken in the later  
11 action. A deposition previously taken may also be used as allowed by the Nevada  
12 law on evidence.

13           **(b) Objections to Admissibility.** Subject to Rules 28(b) and 32(d)(3), an  
14 objection may be made at a hearing or trial to the admission of any deposition  
15 testimony that would be inadmissible if the witness were present and testifying.

16           **(c) Form of Presentation.** Unless the court orders otherwise, a party must  
17 provide a transcript of any deposition testimony the party offers, but may provide  
18 the court with the testimony in nontranscript form as well. On any party's request,  
19 deposition testimony offered in a jury trial for any purpose other than impeachment  
20 must be presented in nontranscript form, if available, unless the court for good cause  
21 orders otherwise.

22           **(d) Waiver of Objections.**

23           **(1) To the Notice.** An objection to an error or irregularity in a  
24 deposition notice is waived unless promptly served in writing on the party giving the

1 notice.

2           **(2) To the Officer's Qualification.** An objection based on  
3 disqualification of the officer before whom a deposition is to be taken is waived if not  
4 made:

5                   (A) before the deposition begins; or

6                   (B) promptly after the basis for disqualification becomes known or,  
7 with reasonable diligence, could have been known.

8           **(3) To the Taking of the Deposition.**

9                   **(A) Objection to Competence, Relevance, or Materiality.** An  
10 objection to a deponent's competence—or to the competence, relevance, or materiality  
11 of testimony—is not waived by a failure to make the objection before or during the  
12 deposition, unless the ground for it might have been corrected at that time.

13                   **(B) Objection to an Error or Irregularity.** An objection to an  
14 error or irregularity at an oral examination is waived if:

15                           (i) it relates to the manner of taking the deposition, the form  
16 of a question or answer, the oath or affirmation, a party's conduct, or other matters  
17 that might have been corrected at that time; and

18                           (ii) it is not timely made during the deposition.

19                   **(C) Objection to a Written Question.** An objection to the form  
20 of a written question under Rule 31 is waived if not served in writing on the party  
21 submitting the question within the time for serving responsive questions or, if the  
22 question is a recross-question, within 7 days after being served with it.

23           **(4) To Completing and Returning the Deposition.** An objection to  
24 how the officer transcribed the testimony—or prepared, signed, certified, sealed,

1 endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to  
2 suppress is made promptly after the error or irregularity becomes known or, with  
3 reasonable diligence, could have been known.

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5 **ADVISORY COMMITTEE NOTE—2017 AMENDMENT**

6 The rule is generally amended to conform to the federal rule. Rule 32(a)(5)m  
7 however, is entirely new to Nevada and is not found in the analogous federal rule.  
8 Similar provision are found in other states, and this provision will reduce the expense  
9 of litigation by relieving a party from the obligation to call a given expert (e.g., a  
10 treating physician) as a witness at a trial or hearing. This provision is without  
11 prejudice to any party’s ability to subpoena or call any expert witness for attendance  
12 at trial, although a party’s right to call another party’s decertified expert would be  
13 governed by applicable Nevada case law. Rule 32(a)(6)(B) is modified from the  
14 federal rule and gives the district court the discretion to allow a transcript to be used  
15 against a pro se party. In general, parties proceeding pro se and acting as their own  
16 attorney should not receive the protection of Rule 32(a)(6)(B)(i) because they do not  
17 need time to obtain an attorney. In certain cases, however, a pro se party may  
18 initially attempt to obtain an attorney, but be forced into representing themselves  
19 due to cost or the availability of an attorney. In such circumstances, the protection  
20 of Rule 32(a)(6)(B)(i) may be warranted.