EXHIBIT A

Preface

The proposed amendments to the Nevada Rules of Civil Procedure represent a comprehensive revision of NRCP. These proposed revisions were prompted in part by the extensive substantive and stylistic updates to the Federal Rules of Civil Procedure since the last review of the NRCP. At the outset, the Advisory Committee recognized that the NRCP are, in general, based upon the FRCP. Thus, where the NRCP had previously adopted the FRCP language, the Committee recommended amending the NRCP to adopt the modernized language of the current FRCP. Where the NRCP depart from the FRCP, the Committee reviewed the FRCP to determine whether any updates to the FRCP should be adopted or whether the language in the existing NRCP should be retained or modernized. The Committee also reviewed the NRCP to identify and address any deficiencies that have arisen over time.

The Committee did not unanimously approve all of the preliminary rule drafts that follow. In certain instances, alternatives are presented for the Supreme Court's consideration. In those instances, the Committee will, in a supplemental filing, offer commentary on the distinctions between the alternatives. Certain advisory committee notes are also incomplete, and those, too, will be updated by supplemental filing. Due to the comprehensive nature of the revisions, the NRCP is presented as a complete revision of the entire NRCP. However, redlines of the proposed NRCP against the current NRCP and FRCP are attached to this petition to facilitate review.

In general, the following rules were adopted from the FRCP without change, or with minor changes adapting the rule for use in Nevada, and are stylistic changes from the prior NRCP rules.

NRCP 1, 2, 3, 7, 9, 11, 13, 18, 20, 21, 22, 28, 29, 31, 42, 43, 44, 44.1, 46, 55, 57, 61, 63, 64, 65.1, 69(a), 70, 71, 78, 82, and 86(a).

The following rules were adopted from the FRCP, but have substantive changes—either consistent with the existing Nevada rules or newly added substantive changes.

NRCP 5, 6, 7.1, 8, 10, 12, 14, 15, 16, 17, 19, 24, 27, 30, 32, 33, 34, 36, 38, 39, 40, 41, 45, 49, 50, 52, 54, 56, 59, 60, 62, 62.1, 65, 66, 77, and 80.

The following rules are specific to Nevada and were stylistically updated, in general without substantive changes.

NRCP 16.2, 16.205, 16.215, 23.1, 23.2, 48, 67, 69(b), 72 through 76A, 79, and 86(b).

Last, the following rules are specific to Nevada and have substantive changes from the existing Nevada rule (including proposed new rules).

NRCP 4, 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 16.1, 16.21, 16.22, 16.23, 16.3, 23, 25, 26, 35, 37, 47, 51, 53, 58, 68, 71.1, 81, 83, 84, 85, and the Appendix of Forms.

NEVADA RULES OF CIVIL PROCEDURE

I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 2. One Form of Action

There is one form of action—the civil action.

II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

Advisory Committee Note—2018 Amendment

As used in these rules, the term "complaint" encompasses any originating

pleading or document in a civil action, such as a complaint, a petition, an application, or a similar document.

Rule 4. Summons and Service

(a) **Summons.**

(1) **Contents.** A summons must:

(A) name the court, the county, and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend under Rule 12(a) or any other applicable rule or statute;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk;

(G) bear the court's seal; and

(H) comply with Rule 4.4(d)(2)(C) when service is made by publication.

(2) **Amendments.** The court may permit a summons to be amended.

(b) **Issuance.** On or after filing a complaint, the plaintiff must present a summons to the clerk for issuance under signature and seal. If a summons is properly presented, the clerk must issue a summons under signature and seal to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) **Service.**

(1) **In General.** Unless a defendant voluntarily appears, the plaintiff is responsible for:

(A) obtaining a waiver of service under Rule 4.1, if applicable; or

(B) having the summons and complaint served under Rules 4.2, 4.3, or 4.4 within the time allowed by Rule 4(e).

(2) **Service With a Copy of the Complaint.** A summons must be served with a copy of the complaint. The plaintiff must furnish the necessary copies to the person who makes service.

(3) **By Whom.** The summons and complaint may be served by the sheriff, or a deputy sheriff, of the county where the defendant is found or by any person who is at least 18 years old and not a party to the action.

(4) **Cumulative Service Methods.** The methods of service provided in Rules 4.2, 4.3, and 4.4 are cumulative and may be utilized with, after, or independently of any other methods of service.

(d) **Proof of Service.** Unless a defendant voluntarily appears in the action or waives or admits service, a plaintiff must file proof of service with the court stating the date, place and manner of service no later than the time permitted for the defendant to respond to the summons.

(1) **Service Within the United States.** Proof of service within Nevada or within the United States must be made by affidavit from the person who served the summons and complaint.

(2) **Service Outside the United States.** Service not within the United States must be proved as follows:

(A) If made under Rule 4.3(b)(1)(A), as provided in the applicable treaty or convention; or

(B) If made under Rule 4.3(b)(1)(B) or (C), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) **Service By Publication.** If service is made by publication, a copy of the publication must be attached to the proof of service and proof of service must be made by affidavit from:

(A) the publisher or other designated employee having knowledge of the publication; and

(B) if the summons and complaint were mailed to a person's last-known address, the individual depositing the summons and complaint in the mail.

(4) **Amendments.** The court may permit proof of service to be amended.

(5) **Failure to Make Proof of Service.** Failure to make proof of service does not affect the validity of the service.

(e) **Time Limit for Service.**

(1) **In General.** The summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule.

(2) **Dismissal.** If service of the summons and complaint is not made upon a defendant before the 120-day service period—or any extension thereof—expires, the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court's own order to show cause.

(3) **Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time before the 120-day service period—or any extension thereof—expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made.

(4) **Failure to Make Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time after the 120-day service period—or any extension thereof—expires, the court must first determine whether good cause exists for the plaintiff's failure to timely file the motion for an extension before the court considers whether good cause exists for granting an extension of the service period.

If the plaintiff shows that good cause exists for the plaintiff's failure to timely file the motion and for granting an extension of the service period, the court must extend the time for service and set a reasonable date by which service should be made.

Advisory Committee Note—2018 Amendment

Rule 4 has been revised and reorganized, preserving the core of the prior NRCP 4, adopting provisions from the federal rule and Rules 4, 4.1, and 4.2 of the Arizona Rule of Civil Procedure, and adding new provisions. Rule 4 is now broken up into Rule 4, Summons and Service, Rule 4.1, Waiving Service, Rule 4.2, Service Within Nevada, Rule 4.3, Service Outside Nevada, and Rule 4.4, Alternative Service Methods. Where the prior NRCP 4 has not been changed or has been only stylistically changed, regardless of whether the provision now resides in Rule 4 or Rules 4.1 to 4.4, the Committee intends to preserve existing Nevada caselaw interpreting those rules. As used in this rule, where appropriate the term "person" is intended to include entities, such as trusts, associations, corporations, and LLCs, as well as individuals. Personal service must be used under these rules, unless otherwise specified.

Rule 4(a) and Rule 4(b) were switched in the federal rule and the Nevada rule was conformed to the federal rule. Rule 4(a)(1), formerly NRCP 4(b), is in the federal format, but is a restatement of the first sentence in the prior NRCP 4(b) with stylistic changes. The second sentence of the prior NRCP 4(b) was moved into Rule 4.4(d)(2)(E), service by publication, with a cross-reference in Rule 4(a)(1)(H). Rule 4(a)(2) is new and is adopted from the federal rule.

Rule 4(b) is adopted from the federal rule, with changes to accommodate Nevada practice issuing a summons though an electronic filing system, and is a stylistic restatement of the prior NRCP 4(a). As used in this rule, the term "complaint" is intended to encompass any originating pleading or document for a civil action, such as a complaint, a writ petition, an application, or a similar document.

The term "plaintiff" is intended to mean the person filing the originating pleading or document, and the term "defendant" is intended to mean the party to be served.

The text of Rule 4(c)(1) and (2) was reorganized. Rule 4(c)(3) is a stylistic restatement of the prior NRCP 4(c). Rule 4(c)(4) is carried forward from the last sentence of the prior NRCP 4(e)(2). The prior NRCP 4(c)'s statement regarding subpoenas was deleted as superfluous.

The prior NRCP 4(f) is deleted as superfluous. NRS 14.065 provides for long-arm jurisdiction and Rule 4.3 governs service outside of Nevada. That a voluntary appearance is the equivalent of personal service is captured in Rules 4(c)(1) and (d), which state that, unless the defendant voluntarily appears, the plaintiff is responsible for serving a summons and the compliant or obtaining a waiver, and that a proof of service is needed unless the defendant waives or admits service or voluntarily appears. *See also Deegan v. Deegan*, 22 Nev. 185, 196-97, 37 P. 360, 361 (1894) ("[S]ervice of a [summons] is only necessary to bring the party into court. If he voluntarily appears without it, such service is unnecessary.").

Rule 4(d) replaces the prior NRCP 4(g). Rule 4(d)(1) and (3) are stylistic changes from the prior provisions in NRCP 4(g)(1)-(3). While the prior NRCP 4(g)(4) was omitted, admission of service is referenced in Rule 4(d) and a written admission of service will prove service. Rule 4(d)(2) was adopted from FRCP 4(l)(2) for international service. Rule 4(d)(4) was also adopted from FRCP 4(l)(3).

Rule 4(e) clarifies the prior NRCP 4(i). Rule 4(e)(1) makes clear that the 120-day time period is generally applicable to all civil actions. The federal rule exempting foreign service from this timeline is not adopted. Plaintiffs needing to serve defendants in foreign countries may move to extend the time in which to serve those parties and the court can extend the deadline and set a reasonable deadline for service. Rule 4(e)(2) makes clear that, if it acts on its own, the court must issue an order to show cause, giving the parties notice and an opportunity to be heard, before dismissing an action. Rule 4(e) was revised to preserve the case law in *Scrimer v.*

Eighth Judicial Dist. Court, 116 Nev. 507, 998 P.2d 1190 (2000), and *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 245 P.3d 1198 (2010), but to clarify the procedure when an untimely motion to extend the service deadline is made.

Rule 4.1. Waiving Service.

(a) **Requesting a Waiver.** An individual, entity, or association that is subject to service under Rule 4.2(a), Rule 4.2(c)(1) or (2), Rule 4.3(a)(1), Rule 4.3(a)(3)(A), or Rule 4.3(b)(1) or (3) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(1) be in writing and be addressed:

(A) to the individual defendant; or

(B) for an entity or association, to a person designated by Rule 4.2(c)(1);

(2) name the court where the complaint was filed;

(3) be accompanied by a copy of the complaint, two copies of the waiver form, Form 2 in the Appendix of Forms at the end of these Rules, and a prepaid means for returning the form;

(4) inform the defendant, using the waiver form, of the consequences of waiving and not waiving service;

(5) state the date when the request is sent;

(6) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside the United States—to return the waiver; and

(7) be sent by first-class mail or other reliable means.

(b) **Failure to Waive.** If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(1) the expenses later incurred in making service; and

(2) the reasonable expenses, including attorney fees, of any motion required to collect those service expenses.

(c) **Time to Answer After a Waiver.** A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside the United States.

(d) **Results of Filing a Waiver.** When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(e) **Jurisdiction and Venue Not Waived.** Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

Advisory Committee Note—2018 Amendment

Rule 4.1 is new and is adopted from FRCP 4(d). The waiver provisions apply to individuals, entities, and associations, wherever served. It does not apply to minors, incapacitated persons, or to state or government defendants. The waiver forms are in the Appendix of Forms at the end of these rules; Form 1, the Request to Waive Service, and Form 2, Waiver of Service of Summons. Parties should insert the party information and caption into the forms; however, the text of the request or waiver sent must be substantially similar to the text in Forms 1 and 2. A defendant waiving service under this rule does not waive any other legal defense but is granted a longer time to respond to the complaint.

Rule 4.2. Service Within Nevada

(a) **Serving an Individual.** Unless otherwise provided by these rules, service may be made on an individual:

(1) by delivering a copy of the summons and complaint to the individual personally;

(2) by leaving a copy of the summons and complaint at the individual's dwelling or usual place of abode with a person of suitable age and discretion who currently resides therein and is not an adverse party to the individual being served; or

(3) by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(b) **Serving Minors and Incapacitated Persons.**

(1) **Minors.**

(A) Unless otherwise ordered, a minor must be served by delivering a copy of the summons and complaint:

(i) if a guardian or similar fiduciary has been appointed for the minor, to the fiduciary under Rule 4.2(a), (c), or (d), as appropriate for the type of fiduciary;

(ii) if a fiduciary has not been appointed, to the minor's parent under Rule 4.2(a); or

(iii) if neither a fiduciary or a parent can be found with reasonable diligence:

(a) to an adult having the care or control of the minor under Rule 4.2(a); or

(b) to a person of suitable age and discretion with whom the minor resides.

(B) If the minor is 14 years of age or older, a copy of the summons and complaint must also be delivered to the minor.

(2) **Incapacitated Persons.**

(A) Unless otherwise ordered, an incapacitated person must be served by delivering a copy of the summons and complaint:

(i) if a guardian or similar fiduciary has been appointed for the person, to the fiduciary under Rule 4.2(a), (c), or (d), as appropriate for the type of fiduciary; or

(ii) if a fiduciary has not been appointed:

(a) to a person of suitable age and discretion with whom the incapacitated person resides;

(b) if the incapacitated person is living in a facility, to the facility under Rule 4.2(c); or

(c) to another person as provided by court order.

(B) A copy of the summons and complaint must also be delivered to the incapacitated person; but for good cause shown, the court in which the action is pending may dispense with delivery to the incapacitated person.

(c) **Serving Entities and Associations.**

(1) **Entities and Associations in Nevada.**

(A) An entity or association formed under the laws of this state, registered to do business in this state, or that has appointed a registered agent in this state, may be served by delivering a copy of the summons and complaint to:

(i) the entity's registered agent;

(ii) any officer or director of a corporation;

(iii) any partner of a general partnership;

(iv) any general partner of a limited partnership;

(v) any member of a member-managed limited-liability company;

(vi) any manager of a manager-managed limited-liability company;

(vii) any trustee of a business trust;

(viii) any officer or director of a miscellaneous organization mentioned in NRS Chapter 81;

(ix) any managing or general agent of any entity; or

(x) any other agent authorized by appointment or by law to receive service of process.

(B) If an agent is one authorized by statute and the statute so requires, a copy of the summons and complaint must also be mailed to the defendant entity or association at its last-known address.

(2) **Other Foreign Entities and Associations.** A foreign entity or association that cannot be served under Rule 4.2(c)(1) may be served by delivering a copy of the summons and complaint to an officer, director, partner, member, manager, trustee, or agent identified in Rule 4.2(c)(1) that is located within this state.

(3) **Service via the Nevada Secretary of State.**

(A) If, for any reason, service on an entity or association required to appoint a registered agent in this state or to register to do business in this state cannot be made under Rule 4.2(c)(1), then the plaintiff may seek leave of court to serve the Nevada Secretary of State in the entity's or association's stead by filing with the court an affidavit:

(i) setting forth the facts demonstrating the plaintiff's good faith attempts to locate and serve the entity or association under Rule 4.2(c)(1) or (2);

(ii) explaining the reasons why service on the entity or association cannot be had in the method provided; and

(iii) stating the last-known address of the entity or association or of any person listed in Rule 4.2(c)(1), if any.

(B) Upon court approval, service may be made by:

(i) delivering a copy of the summons and complaint to the Nevada Secretary of State or his or her deputy; and

(ii) posting a copy of the summons and complaint in the office of the clerk of the court in which such action is brought or pending.

(C) If the plaintiff is aware of the last-known address of any person listed in Rule 4.2(c)(1), the plaintiff must also mail a copy of the summons and complaint to each such person at the person's last-known address by registered or certified mail. The court may also order additional notice to be sent under Rule 4.4(b) or (c) if the plaintiff is aware of other contact information of the entity or association or of any person listed in Rule 4.2(c)(1).

(D) Unless otherwise ordered by the court, service under Rule 4.2(c)(3) may not be used as a substitute in place of serving, under Rule 4.3(a), an entity or association through a person listed in Rule 4.2(c)(1) whose address is known but who lives outside this state.

(E) The defendant entity or association must serve a responsive pleading within 21 days after the later of:

(i) the date of service on the Nevada Secretary of State and posting with the clerk of the court; or

(ii) the date of the first mailing of the summons and complaint to the last-known address of any person listed in Rule 4.2(c)(1).

(d) **Serving the State, its Public Entities and Political Subdivisions, and Their Officers and Employees.**

(1) **State of Nevada and Its Public Entities.** The State and any public entity of the State must be served by delivering a copy of the summons and complaint to:

(A) the Attorney General, or a person designated by the Attorney General to receive service of process, at the Office of the Attorney General in Carson City; and

(B) the person serving in the office of administrative head of the named public entity or an agent designated by the administrative head to receive service of process.

(2) **State Officers and Employees.** Any present or former public officer or employee of the State who is sued in his or her official capacity or his or her individual capacity for an act or omission relating to his or her public duties or employment must be served by delivering a copy of the summons and complaint to:

(A) the Attorney General, or a person designated by the Attorney General to receive service of process, at the Office of the Attorney General in Carson City; and

(B) the public officer or employee or an agent designated by him or her to receive service of process.

(3) **Political Subdivisions and Their Public Entities.** Any county, city, town or other political subdivision of the State and any public entity of such a political subdivision must be served by delivering a copy of the summons and complaint to the presiding officer of the governing body of the political subdivision or an agent designated by the presiding officer to receive service of process.

(4) **Local Officers and Employees.** Any present or former public officer or employee of any county, city, town or other political subdivision of the State or any public entity of such a political subdivision who is sued in his or her official capacity or his or her individual capacity for an act or omission relating to his or her public duties or employment must be served by delivering a copy of the summons and complaint to the public officer or employee or an agent designated by him or her to receive service of process.

(5) **Statutory Requirements.** A party suing the State, its public entities or political subdivisions, or their officers and employees must also comply with any statutory requirements for service of the summons and complaint.

(6) **Extending Time.** The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4.2(d)(1) or (2), if the party has served the Attorney General; or

(B) serve the Attorney General under Rule 4.2(d)(1) or (2), if the party has served the required person.

Advisory Committee Note—2018 Amendment

Rule 4.2(a) adopts the federal language from FRCP 4(e)(2) and is a stylistic revision of the prior NRCP 4(d)(6). The only addition to this rule is the language in Rule 4.2(a)(2) specifying that if the summons and complaint is delivered to a person of suitable age and discretion that resides with the individual being served, the person cannot be an adverse party to the individual. This expressly prohibits, for example, plaintiffs in divorce actions from serving process on themselves when they still live with their spouses and thereafter claiming that service was validly accomplished on those spouses.

Rule 4.2(b) is a restatement of the prior NRCP 4(d)(3) and (4) for service on minors and incapacitated persons with substantive changes. These sections were prepared with input from the Guardianship Commission. The 14-year age limit of the prior rule was eliminated and a "minor" is now defined by NRS Chapter 129 (generally, under 18 years of age unless emancipated). In addition to serving the person designated by Rule 4.2(b)(1)(A), a minor must also be personally served under Rule 4.2(b)(1)(B) if the minor is 14 years of age or older.

Rule 4.2(b)(2) is similarly revised for incapacitated persons. Specific to incapacitated persons, however, Rule 4.2(b)(2)(A)(ii)(c) permits the court to craft a service solution if no other listed option is available. Rule 4.2(b)(2)(B) also permits the court to dispense with service on the incapacitated person for good cause. The Committee intends service to be made on the incapacitated person if at all possible

unless completing service would place the process server in danger or would be useless. For example, service might be excused if the incapacitated person has confined himself in a house and has threatened to shoot anyone who approaches, or if the incapacitated person is in a coma or vegetative state and cannot accept service. No substantive difference is intended from the stylistic change in terminology from "incompetent" to "incapacitated."

Rule 4.2(c) has been reworded to encompass all business entities, associations, and other organizations. Rule 4.2(c)(1)(A)(i)-(viii) is a restatement of the first portion of the prior NRCP 4(d)(1). Rule 4.2(c)(1)(A)(ix) and (x), and Rule 4.2(c)(1)(B) were adopted from FRCP 4(h)(1)(B). Rule 4.2(c)(1) does not reference Rule 4.2(a); accordingly, any service upon an individual must be personal service. Service upon an entity (for example a partner that is a LLC) should be made under Rule 4.2(c). Rule 4.2(c)(2) is a restatement of the prior NRCP 4(d)(2). These rules clarify that Rule 4.2(c)(1) applies to any Nevada entity or association and any foreign entity or association that has registered to do business in Nevada or has appointed a registered agent in Nevada. Rule 4.2(c)(2) applies to foreign entities or associations generally.

Rule 4.2(c)(3) governs service on the Nevada Secretary of State when an entity or association cannot otherwise be served. Rule 4.2(c)(3)(A) is the successor to the second half of NRCP 4(d)(1), but has undergone substantive changes. Initially, service may be made on the Nevada Secretary of State only when a Nevada or foreign entity or association is required to appoint a registered agent in Nevada or to register to do business in Nevada. Requirements for licensing, appointing a registered agent, or similar registration requirements are found in NRS Chapters 14 and 75-92A. If a Nevada or foreign entity or association is required to appoint a registered agent in Nevada or to register to do business in Nevada, then the Nevada Secretary of State will have contact information for the entity or association and can send the summons and complaint to it. If an entity or association does not comply with Nevada law and

fails to appoint a registered agent or register to do business in Nevada, then service on the Nevada Secretary of State is still valid—the entity or association bears the risk that the Nevada Secretary of State will be unable to deliver the summons and complaint to it. If an entity or association is not required to appoint a registered agent or register to do business in Nevada, then the Nevada Secretary of State will have no information about that entity or association and service upon the Nevada Secretary of State in that scenario may not meet the requirements of due process. Service on the Nevada Secretary of State also now requires court approval and incorporates new alternative notice provisions in Rule 4.4(b) and (c).

Rule 4.2(d) is new, replacing the prior NRCP 4(d)(5). Rule 4.2(d) provides guidance on serving a wider variety of government entities and their officers and employees.

Rule 4.3. Service Outside Nevada

(a) **Service Outside Nevada but Within the United States.**

(1) **Serving Individuals.** A party may serve process outside Nevada, but within the United States, in the same manner as provided in Rule 4.2(a) for serving such a defendant within Nevada.

(2) **Serving Minors and Incapacitated Persons.** A party may serve process outside Nevada, but within the United States, in the same manner as provided in Rule 4.2(b) for serving such a defendant within Nevada.

(3) **Serving Entities and Associations.**

(A) A party may serve process outside Nevada, but within the United States, in the same manner as provided in Rule 4.2(c)(1) for serving such a defendant within Nevada.

(B) If service on a foreign entity or association not required to appoint a registered agent in Nevada or to register to do business in Nevada cannot be made under Rule 4.2(c)(2) or 4.3(a)(3)(A), upon court approval service may be

made by serving the Secretary of State, or other designated entity, in the state or territory under whose laws the entity or association was formed in the manner prescribed by that state's or territory's law for serving a summons or like process on such an entity or association, if that state's or territory's law provides for such service.

(4) **Serving Another State or Territory.** Service upon another state or territory, its public entities and political subdivisions, and their officers and employees may be made in the manner prescribed by that state's or territory's law for serving a summons or like process on such a defendant.

(5) **Serving the United States.** Service upon the United States and its agencies, corporations, officers, or employees may be made as provided by Rule 4 of the Federal Rules of Civil Procedure.

(6) **Authorized Persons.** Service must be made by a person who is authorized to serve process under the law of the state or territory where service is made.

(b) **Service Outside the United States.**

(1) **Serving an Individual.** Unless otherwise provided by these rules, an individual—other than a minor, an incapacitated person, or a person whose waiver has been filed—may be served at a place outside of the United States:

(A) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(i) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(ii) as the foreign authority directs in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the foreign country's law, by:

(a) delivering a copy of the summons and of the complaint to the individual personally; or

(b) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(C) by other means not prohibited by international agreement, as the court orders.

(2) **Serving a Minor or Incapacitated Person.** A minor or an incapacitated person who is outside the United States must be served in the manner prescribed by Rule 4.3(b)(1)(B)(i) or (ii), or Rule 4.3(b)(1)(C).

(3) **Serving Entities or Associations.** An entity or association that is outside the United States may be served in any manner prescribed by Rule 4.3(b)(1) for serving an individual, except personal delivery under Rule 4.3(b)(1)(B)(iii)(a).

(4) **Serving a Foreign Country or Political Subdivision.** A foreign country or a political subdivision, agency, or instrumentality thereof must be served under 28 U.S.C. § 1608.

Advisory Committee Note—2018 Amendment

Rule 4.3(a) governs service outside of Nevada but within the United States and replaces the prior NRCP 4(e)(2). Under Rules 4.3(a)(1), (2), and (3)(A), service upon individuals, minors, incapacitated persons, entities, and associations may be made in the same manner as in Rules 4.2(a), (b), and (c)(1) for service upon those entities within Nevada. Service upon a foreign entity or association may also be made under Rule 4.3(a)(3)(B). If a US state or territory in which an entity or association is formed permits service on that jurisdiction's Secretary of State, or similar service, the entity or association may be served in the manner prescribed by that state or territory.

Service upon another state or territory or its subdivisions and entities and their officers and employees must be made under that state's or territory's rules on serving its government entities.

Rule 4.3(b) governs service outside of the United States. It was adopted from FRCP 4(f), (g), (h), and (j).

Rule 4.4. Alternative Service Methods.

(a) **Statutory Service.** If a statute provides for service, the summons and complaint may be served under the circumstances and in the manner prescribed by the statute.

(b) **Court Ordered Service.**

(1) If service by one of the methods set forth in Rule 4.2, Rule 4.3(a)(1), (2), or (3), or Rule 4.4(a) proves impracticable, then service may be accomplished in such manner, prior to or instead of publication, as the court, upon motion and without notice, may direct.

(2) Any alternative method of service must comport with due process.

(3) If the court orders alternative service, the plaintiff must:

(i) make reasonable efforts to provide notice using other methods of notice under Rule 4.4(c); and

(ii) mail a copy of the summons and complaint, as well as any order of the court authorizing the alternative service method, to the defendant's last-known address.

(4) The plaintiff must provide proof of service under Rule 4(d) or as otherwise directed by the court.

(5) Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in Rule 4.4(d).

(c) **Other Methods of Notice.**

(1) The court may order a plaintiff to make reasonable efforts to provide notice of the commencement of the action to a defendant using other methods of notice whenever:

(a) the plaintiff must mail a copy of the summons and complaint to the defendant's last-known address; or

(b) the court finds that, under the circumstances of the case, the plaintiff should make reasonable efforts to provide such notice.

(2) Unless otherwise directed by the court, the plaintiff or the plaintiff's attorney may contact the defendant to provide notice of the action, except when the plaintiff or attorney would violate any statute, rule, temporary or extended protective order, or injunction by communicating with the defendant.

(3) The plaintiff must provide proof of service under Rule 4(d) or as otherwise directed by the court.

(4) Any restricted personal information required for a proof of service or other court filings must be redacted as provided by the Nevada Rules Governing Sealing and Redacting Court Records.

(d) **Service by Publication.**

(1) **Conditions for Publication.** If service cannot be made by the methods of service set forth in Rules 4.2, 4.3, or 4.4(a) and (b), the plaintiff may move the court for an order for service by publication when the defendant:

(A) cannot, after due diligence, be found; or

(B) by concealment seeks to avoid service of the summons and complaint.

(2) **Motion Seeking Publication.** A motion seeking an order for service by publication must:

(A) through pleadings or other evidence establish that:

(i) a cause of action exists against the defendant who is to be served; and

(ii) the defendant is a necessary or proper party to the action;

(B) provide affidavits, declarations, or other evidence setting forth specific facts demonstrating that due diligence was undertaken to locate and serve the defendant personally;

(C) provide the proposed language of the summons to be used in the publication, briefly summarizing the claims asserted and the relief sought and including any special statutory requirements; and

(D) suggest the newspaper(s) or other periodical(s) in which the summons should be published that are reasonably calculated to give the defendant actual notice of the proceedings.

(3) **Information Required When Defendant Cannot Be Found.** In addition to the information set forth in Rule 4.4(d)(2), if publication is sought based on the fact that the defendant cannot be found, the motion seeking an order for service by publication must contain affidavits, declarations, or other evidence establishing the following information:

(A) the defendant's last-known address;

(B) the dates during which the defendant resided at that location;

(C) confirmation that the defendant's last-known address is, to the best of the plaintiff's knowledge, the last place that the defendant resided;

(D) confirmation that the defendant no longer resides at the last-known address;

(E) confirmation that the plaintiff is unaware of any other address at which the defendant has resided since that time, or at which the defendant can be found; and

(F) specific facts demonstrating the efforts that the plaintiff has made to locate the defendant.

(4) **Property.**

(A) In addition to the circumstances in Rule 4.4(d)(1) supporting service by publication, the court may order service by publication as a substitute for personal service of process in the actions listed in Rule 4.4(d)(4)(B) if a defendant:

(i) resides in the United States and has been absent from this state for at least two years;

(ii) resides in a foreign country and has been absent from the United States for at least six months;

(iii) is an unknown heir or devisee of a deceased person; or

(iv) is an unknown owner of real or personal property.

(B) Rule 4.4(d)(4) applies only to the following actions involving real or personal property located within Nevada:

(i) actions for the enforcement of mechanics' liens or other liens against real or personal property;

(ii) actions for foreclosure of mortgages and deeds of trust;

(iii) actions for the establishment of title to real estate;

(iv) actions to exclude the defendant from any interest in real or personal property; and

(v) any other action for the enforcement, establishment, or determination of any right, claim, or demand, actual or contingent, to or against any real or personal property.

(C) Service by publication on an unknown heir, devisee, or property owner may only be used when the unknown heir, devisee, or property owner must be a party to the action under Rule 19(b).

(D) A plaintiff proceeding under Rule 4.4(d)(4) must provide the information required by Rule 4.4(d)(2) and (3), as applicable, in addition to providing affidavits, declarations, or other evidence establishing the facts necessary to satisfy the requirements of Rule 4.4(d)(4).

(5) **The Order for Service by Publication.**

(A) In the order for service by publication, the court must direct publication to be made in one or more newspaper(s) or other periodical(s) published in Nevada, in the state, territory, or foreign country where the defendant is believed to be located, or in any combination of locations. The court's designated locations must be reasonably calculated to give the defendant actual notice of the proceedings. The service must be published at least once a week for a period of four weeks.

(B) If publication is ordered and the plaintiff is aware of the defendant's last-known address, the plaintiff must also mail a copy of the summons and complaint to the defendant's last-known address. The court may also order notice be sent under Rule 4.4(c).

(C) Service by publication is complete four weeks from the later of:

(i) the date of the first publication; or

(ii) the mailing of the summons and complaint, if mailing is ordered.

Advisory Committee Note—2018 Amendment

Rule 4.4(a) is carried forward from the prior NRCP 4(e)(3), with stylistic changes. Rule 4.4(b) is new, adopted from its counterpart in Rule 4.1(k) of the Arizona Rules of Civil Procedure. This rule permits the court to fashion a method of service that, in the court's judgment, will comport with due process. This rule is intended to be used when no other service method is available and is meant to be considered contemporaneously with publication, so that if any alternatives other than publication exist, they can be pursued prior to publication.

Rule 4.4(c) is new. It permits a court to order the plaintiff to make reasonable efforts to provide notice of the action to the defendant, regardless of the other service methods that may be used. In this modern era of electronic communication, a plaintiff may communicate with a defendant electronically, and thus know the defendant's phone number, email address, or social media accounts, but be unaware

of the defendant's current physical address. In such a situation, a plaintiff should not be permitted to send notice to the defendant's last-known address while blithely ignoring other reliable means of contacting the defendant. The rule does not specify any particular means of communication so that notice via non-technological methods of communication or future technologies will also satisfy the rule. This rule is intended to work in conjunction with publication, Rule 4.4(d), and service on the secretary of state, Rule 4.2(c)(3), when those rules require the summons and complaint to be sent to a defendant's last-known address. The notice requirement in this rule does not constitute service by itself, unless the plaintiff's provision of notice complies with another service method.

Rule 4.4(d), publication, is substantively altered from the prior NRCP 4(e)(1). Service by publication may now be used when the defendant cannot be found or where the defendant seeks to avoid service of the summons and complaint. The prior NRCP 4(e)(1) also provided for service by publication on a defendant that resides outside this state. However, except for service by publication under Rule 4.4(d)(4), which concerns property within this state, service by publication on a defendant that resides outside this state, merely because the defendant resides out of state, may not comport with due process. Instead, an out-of-state defendant should be served under Rules 4(i) or (j). However, if an out-of-state defendant cannot be found or avoids service, service by publication under this rule is appropriate.

Rule 4.4(d)(2) governs the information provided to the court in a motion for service by publication. The motion must include affidavits providing a detailed explanation of the actions taken to attempt to serve the defendant. Rule 4(d)(4) governs service by publication concerning real and personal property in this state. Given the State's interest in resolving disputes concerning real or personal property located within this state, service by publication may be used for a defendant who has been absent from Nevada for the times specified when that party's presence is necessary for the action to be adjudicated.

Rule 4.4(d)(5) governs the order for publication. When ordering publication, the court must designate the locations for publication and order any other steps to be taken to effect service that, in the court's opinion, are calculated to satisfy due process. This may include publication in locations outside of Nevada or outside of the United States. The new rule adds "or other periodical(s)" to the rule to permit the court to authorize the summons in a periodical other than a newspaper, including an online periodical, if reasonably calculated to give actual notice of the action to the defendant.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) **Service: When Required.**

(1) **In General.** Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) any paper relating to discovery required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) **If a Party Fails to Appear.** No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(b) **Service: How Made.**

(1) **Serving an Attorney.** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) **Service in General.** A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) submitting it to a court's electronic-filing system for electronic service under NEFCR 9 or sending it by other electronic means that the person consented to in writing—in which events service is complete upon submission or sending, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) **Using Court Facilities.** If a court has established an electronic filing system under the NEFCR through which service may be effected, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).

(4) **Proof of service.** Proof of service may be made by certificate, acknowledgment, or other proof satisfactory to the court. Proof of service should accompany the filing or be filed in a reasonable time thereafter. Failure to make proof of service does not affect the validity of service.

(c) **Serving Numerous Defendants.**

(1) **In General.** If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) **Notifying Parties.** A copy of every such order must be served on the parties as the court directs.

(d) **Filing.**

(1) **Required Filings.** Any paper after the complaint that is required to be served must be filed no later than a reasonable time after service. But disclosures under Rule 16.1 and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) **Nonelectronic Filing.** A paper not filed electronically is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) **Electronic Filing, Signing, or Verification.** A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the NEFCR. A paper filed electronically is a written paper for purposes of these rules.

(4) **Acceptance by the Clerk.** The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

Advisory Committee Note—2018 Amendment

Rule 5 is generally conformed to FRCP 5. The reference in prior NRCP 5(a), "paper relating to discovery," is retained to direct practitioners' attention to the types of discovery documents that must be served on the opposing parties, which include discovery documents directed to third parties such as deposition notices under Rule 30, requests for inspections under Rule 34, and subpoenas directed to a third party under Rule 45.

The provisions of Rule 5 relating to electronic filing and service have been edited to reflect Nevada rules (such as the NEFCR) and practice. Rule 5(b)(4) retains the provisions requiring a proof of service to be attached to an electronic filing. NEFCR 9 bases the time to respond to a document served through an electronic filing system on the date stated in the proof of service.

Rule 5.1. Reserved

Rule 5.2. Reserved

Advisory Committee Note—2018 Amendment

The procedures for privacy protection in Nevada are located in the Rules Governing Sealing and Redacting Court Records.

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that

does not specify a method of computing time.

(1) **Period Stated in Days or a Longer Unit.** When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) **Period Stated in Hours.** When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) **Inaccessibility of the Clerk's Office.** Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) **"Last Day" Defined.** Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing under the Nevada Electronic Filing and

Conversion Rules, at 11:59 p.m. in the court's local time; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) **"Next Day" Defined.** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) **"Legal Holiday" Defined.** "Legal holiday" means any day set aside as a legal holiday by NRS 236.015.

(b) **Extending Time.**

(1) **In General.** When an act may or must be done within a specified time:

(A) the parties may obtain an extension of time by stipulation if approved by the court, provided that the stipulation is submitted to the court before the original time or its extension expires; or

(B) the court may, for good cause, extend the time:

(1) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(2) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) **Exceptions.** A court must not extend the time to act under Rule 50(b) and (c)(2), 52(b), 59(b), (d), and (e), and 60(b), and must not extend the time after it has expired under Rule 54(d)(2).

(c) **Motions, Notices of Hearing, and Affidavits.**

(1) **In General.** A written motion and notice of the hearing must be served at least 21 days before the time specified for the hearing, with the following exceptions:

(A) when the motion may be heard ex parte;

(B) when these rules or the local rules provide otherwise; or

(C) when a court order—which a party may, for good cause, apply for ex parte—sets a different time.

(2) **Supporting Affidavit.** Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.

(d) **Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

Advisory Committee Note—2018 Amendment

The federal time calculations in FRCP 6(a) have been adopted for time calculations in Nevada. The time-computation provisions apply only when a time period must be computed, not when a fixed time to act is set. Rule 6(a)(1) addresses the computation of time periods stated in days, weeks, months, or years. The directive to "count every day" is relevant only if the period is stated in days (not weeks, months or years).

Under Rule 6(a)(1), all deadlines stated in days are computed in the same way. To compensate for the shortening of time periods previously expressed as less than 11 days by the directive to count intermediate Saturdays, Sundays, and legal holidays, many of those periods have been lengthened. In general, periods of time of 5 days or less were lengthened to 7 days, and periods of time between 6 and 15 days were set to 14 days. Time periods of 16 to 20 days were set to 21 days, and periods longer than 30 days were retained without change. The use of 7, 14, and 21-day periods enables "day-of-the-week" counting; for example, if a motion was filed and served on Wednesday with 7 days to respond, the opposition would be due the following Wednesday, absent the application of rules providing for additional time to

respond.

Rule 6(a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the NRCP, but some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings. Rule 6(a)(6) is different from the federal rule and reflects Nevada's state holidays specified in NRS 236.015. Statutory and rule-based timelines subject to this rule may not be changed concurrently with this rule. If a reduction in the times to respond under those statutes and rules results, an extension of time may be warranted to prevent prejudice.

Rule 6(b) adopts the federal rule, with modifications. The parties' ability to stipulate to an extension of time, subject to court order, has been retained from the prior NRCP 6(b). The requirement that a court may extend the time to act for good cause has been adopted from the federal rule. The prior NRCP 6(b) provided that the court could extend the time to act for cause; this for cause and the only other for cause in the prior NRCP 33 have been eliminated in favor of good cause. If another rule provides for a method of extending time, the court or the parties may extend the time to act as provided in that rule.

Rule 6(c), formerly NRCP 6(d), is conformed to FRCP 6(c), with reference to Nevada's local rules. The local rules govern motion practice in general and may provide, for example, larger periods of time in which to file motions, specific procedures governing motion practice, or procedures to request a hearing or to submit a motion without a hearing.

The 3 days provided in Rule 6(d), formerly NRCP 6(e), are added after calculating the time to act in Rule 6(a). The NRCP and the local rules previously provided for an additional 3 days to act after electronic service, while the NRAP did not. The additional 3 days to act after electronic service has been eliminated to harmonize these rules.

In conjunction with eliminating the 3 days to act after electronic service, the

Nevada Electronic Filing and Conversion Rules have been amended to require electronic service upon other parties when a filing party submits a document to the electronic filing system, rather than after clerk approval and actual filing. The Second and Eighth Judicial District Court Clerks have confirmed that their efiling systems are capable of instantaneous service upon submission of a document by the filing party. Although the clerks retain the prerogative of reviewing a submitted document and accepting it for filing or rejecting it if it violates the court rules, this process should not delay simultaneous submission and service of a document. Requiring simultaneous submission and service avoids unnecessary delay while documents "sit in the queue" awaiting the clerks' attention. When the clerks subsequently accepts or rejects an electronically submitted document, the clerk must promptly notify all parties.

As the advisory committee notes to the FRCP note, the FRCP were amended

> in 2001 to provide for service by electronic means. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow 3 added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. These concerns have been substantially alleviated by advances in technology and in widespread skill in using electronic transmission.
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> Diminution of the concerns that prompted the decision to allow the 3 added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting the 7-, 14-, 21-, and 28-day periods that allow 'day-of-the-week' counting. Adding 3 days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

These comments apply equally to the 2018 revisions to the NRCP.

Eliminating the 3 days for documents submitted electronically brings the NRCP into conformity with the NRAP and the 2016 amendments to the FRCP. These changes will require revision of Part VIII of the Eighth Judicial District Court Rules and, in all probability, the rules governing hearing dates in notices of motion. These changes may also require revision of other local and statewide rules. The work of amending the EDCR is beyond the scope of this committee's work. Revisions to the NEFCR to bring them into harmony with the proposed elimination of 3 days for e-service are proposed at the same time as the revisions to the NRCP.

Consent to and use of electronic filing and service remains governed by local courts and the NRFCR. If electronic service after business hours, or just before or during a weekend or holiday, results in a practical reduction of the time available to respond, an extension of time may be warranted to prevent prejudice.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) **Pleadings.** Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

(b) **Motions and Other Papers.**

(1) **In General.** A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

(C) state the relief sought.

(2) **Form.** The rules governing captions, signing, and other matters of form in pleadings apply to motions and other papers.

Rule 7.1. Disclosure Statement

(a) **Who Must File; Contents.** A nongovernmental party, except for a natural person, must file a disclosure statement that:

(1) identifies any parent entity and any publicly held entity owning 10% or more of the party's stock or other ownership interest; or

(2) states that there is no such entity.

(b) **Time to File; Supplemental Filing.** A party must:

(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and

(2) promptly file a supplemental statement if any required information changes.

Advisory Committee Note—2018 Amendment

Rule 7.1 is similar to its federal counterpart, except that this rule is applicable to any nongovernmental party other than an individual natural person. The local rules control whether an original must be filed and how many copies are required.

Rule 8. General Rules of Pleading

(a) **Claim for Relief.** A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief;

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief; and

(4) if the pleader seeks more than $15,000 in monetary damages, the demand for relief must request damages "in excess of $15,000" without further specification of the amount.

(b) **Defenses; Admissions and Denials.**

(1) **In General.** In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) **Denials—Responding to the Substance.** A denial must fairly respond to the substance of the allegation.

(3) **General and Specific Denials.** A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) **Denying Part of an Allegation.** A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) **Lacking Knowledge or Information.** A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) **Effect of Failing to Deny.** An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) **Affirmative Defenses.**

(1) **In General.** In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

(A) accord and satisfaction;

(B) arbitration and award;

(C) assumption of risk;

(D) contributory negligence;

(E) discharge in bankruptcy;

(F) duress;

(G) estoppel;

(H) failure of consideration;

(I) fraud;

(J) illegality;

(K) injury by fellow servant;

(L) laches;

(M) license;

(N) payment;

(O) release;

(P) res judicata;

(Q) statute of frauds;

(R) statute of limitations; and

(S) waiver.

(2) **Mistaken Designation.** If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) **Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.**

(1) **In General.** Each allegation must be simple, concise, and direct. No

technical form is required.

(2) **Alternative Statements of a Claim or Defense.** A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) **Inconsistent Claims or Defenses.** A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) **Construing Pleadings.** Pleadings must be construed so as to do justice.

Advisory Committee Note—2018 Amendment

Rule 8 is amended to conform to FRCP 8, with the addition of the Nevada requirements for pleading monetary damages in Rule 8(a)(4) and discharge in bankruptcy as an affirmative defense. The Committee has also adopted the federal requirement in Rule 8(a)(1) to state the grounds for the court's jurisdiction; this does not change the jurisdiction of the various Nevada courts. The previous references in Rule 8 to the applicability of Rule 11 were deleted as duplicative because Rule 11 is applicable by its own terms. As noted in the Advisory Committee Note to Rule 12, by adopting the text of FRCP 8 the Committee does not intend any change to existing Nevada caselaw regarding pleading standards, and leaves to judicial development whether Nevada should adopt the plausibility analysis in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009), and *Bell Atlantic Co. v. Twombly*, 550 U.S. 544, 565-66 (2007).

Rule 9. Pleading Special Matters

(a) **Capacity or Authority to Sue; Legal Existence.**

(1) **In General.** Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) **Raising Those Issues.** To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) **Fraud or Mistake; Conditions of Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) **Conditions Precedent.** In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) **Official Document or Act.** In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) **Time and Place.** An allegation of time or place is material when testing the sufficiency of a pleading.

(g) **Special Damages.** If an item of special damage is claimed, it must be specifically stated.

Rule 10. Form of Pleadings

(a) **Caption; Names of Parties.** Every pleading must have a caption with the court's name, the county, a title, a case number, and a Rule 7(a) designation. The

caption of the complaint must name all the parties; the caption of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) **Paragraphs; Separate Statements.** A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) **Adoption by Reference; Exhibits.** A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) **Using a Fictitious Name to Identify a Defendant.** If the name of a defendant is unknown to the pleader, the defendant may be designated by any name. When the defendant's true name is discovered, the pleader should promptly substitute the actual defendant for a fictitious party.

Advisory Committee Note—2018 Amendment

Rule 10 is generally conformed to FRCP 10, except that the Nevada-specific provisions in Rule 10(a) relating to captions of pleadings and the naming of fictitious defendants are retained, with the provision permitting fictitious-party pleading being moved from prior NRCP 10(a) to new Rule 10(d). The Federal Rules do not have a provision that expressly permits a pleader to name a fictitious defendant. Moving the fictitious-party provision in the NRCP from Rule 10(a) and Rule 10(d) represents a stylistic, not a substantive change, and is not intended to change existing Nevada law governing substitution of an actual defendant for one who was fictitiously named. *See Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 881, 822 P.2d 1100, 1106 (1991) ("[T]he effective utilization of Rule 10[(d)]

requires: (1) pleading fictitious or doe defendants in the caption of the complaint; (2) pleading the basis for naming defendants by other than their true identity, and clearly specifying the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based; and (3) exercising reasonable diligence in ascertaining the true identity of the intended defendants and promptly moving to amend the complaint in order to substitute the actual for the fictional.").

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) **Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) **Sanctions.**

(1) **In General.** If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) **Motion for Sanctions.** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for presenting or opposing the motion.

(3) **On the Court's Initiative.** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) **Nature of a Sanction.** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective

deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) **Limitations on Monetary Sanctions.** The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) **Requirements for an Order.** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) **Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 16.1, 16.2, 16.205, and 26 through 37. Sanctions for refusal to make discovery are governed by Rules 26(g) and 37.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) **Time to Serve a Responsive Pleading.**

(1) **In General.** Unless another time is specified by this rule or a statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if the defendant has timely waived service under Rule 4.1, within 60 days after the request for a waiver was sent, or within 90 days after the request for a waiver was sent to the defendant outside of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) **The State, Its Public Entities and Political Subdivisions, and Their Officers and Employees.** Unless another time is specified by Rule 12(a)(3) or a statute, the following parties must serve an answer to a complaint, counterclaim, or crossclaim within 45 days after service on the party or service on the Attorney General, whichever date of service is later:

(A) the State of Nevada and any public entity of the State of Nevada;

(B) any county, city, town or other political subdivision of the State of Nevada and any public entity of such a political subdivision; and

(C) in any action brought against a public officer or employee relating to his or her public duties or employment, any present or former public officer or employee of the State of Nevada; any public entity of the State of Nevada; any county, city, town or other political subdivision of the State of Nevada; or any public entity of such a political subdivision.

(3) **Effect of a Motion.** Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) **How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) insufficient process;

(4) insufficient service of process;

(5) failure to state a claim upon which relief can be granted; and

(6) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) **Result of Presenting Matters Outside the Pleadings.** If, on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) **Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or

within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) **Motion to Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) **Joining Motions.**

(1) **Right to Join.** A motion under this rule may be joined with any other motion allowed by this rule.

(2) **Limitation on Further Motions.** Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) **Waiving and Preserving Certain Defenses.**

(1) **When Some Are Waived.** A party waives any defense listed in Rule 12(b)(2)–(4) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) **When to Raise Others.** Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) **Lack of Subject-Matter Jurisdiction.** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) **Hearing Before Trial.** If a party so moves, any defense listed in Rule 12(b)(1)-(6)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Advisory Committee Note—2018 Amendment

The Committee considered but rejected the suggestion that improper venue be added to Rule 12(b) to track FRCP 12(b)(3). As explained in the Advisory Committee Note to the 1952 NRCP, "The federal defense of improper venue is deleted, since improper venue is not a defense under state practice, but is a ground for change of venue. Practice as to change of venue will not be affected by this rule. Motion therefore may be made, or will be waived, apart from the requirements of Rule 12(h)." *See* NRS Chapter 13, in particular, NRS 13.050, which requires the demand for change of venue be made "before the time for answer expires."

Rule 12(b)(5) tracks FRCP 12(b)(6). As noted in the Advisory Committee Note to Rule 8, by adopting the text of the federal rule the Committee does not intend any change to existing Nevada case law regarding pleading standards, and leaves to judicial development whether Nevada should adopt the plausibility analysis in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009), and *Bell Atlantic Co. v. Twombly,* 550 U.S. 544, 565-66 (2007).

Rule 13. Counterclaim and Crossclaim

(a) **Compulsory Counterclaim.**

(1) **In General.** A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) **Exceptions.** The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) **Permissive Counterclaim.** A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) **Relief Sought in a Counterclaim.** A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) **Counterclaim Against the State.** These rules do not expand the right to assert a counterclaim—or to claim a credit—against the State, its political subdivisions, their agencies and entities, or any current or former officer or employee thereof.

(e) **Counterclaim Maturing or Acquired After Pleading.** The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) **Abrogated.**

(g) **Crossclaim Against a Coparty.** A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or

occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) **Joining Additional Parties.** Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) **Separate Trials; Separate Judgments.** If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

Advisory Committee Note—2018 Amendment

Rule 13 is generally conformed to FRCP 13. Consistent with FRCP 13, the prior NRCP 13(f) is abrogated as duplicative; an amendment to a pleading to add a counterclaim may be made under Rule 15.

Rule 14. Third-Party Practice

(a) **When a Defending Party May Bring in a Third Party.**

(1) **Timing of the Summons and Complaint.** A defending party may, as third-party plaintiff, file a third-party complaint against a nonparty, the third-party defendant, who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave to file the third-party complaint if it files the third-party complaint more than 14 days after serving its original answer. A summons, the complaint, and the third-party complaint must be served on the third-party defendant, or service must be waived, under Rule 4.

(2) **Third-Party Defendant's Claims and Defenses.** After being served or waiving service, the third-party defendant:

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against a defendant or another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) **Plaintiff's Claims Against a Third-Party Defendant.** The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) **Defendant's Claims Against a Third-Party Defendant.** A defendant may assert against the third-party defendant any crossclaim under Rule 13(g).

(5) **Motion to Strike, Sever, or Try Separately.** Any party may move to strike the third-party claim, to sever it, or to try it separately.

(6) **Third-Party Defendant's Claim Against a Nonparty.** A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) **When a Plaintiff May Bring in a Third Party.** When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

Advisory Committee Note—2018 Amendment

Rule 14 is generally conformed to FRCP 14. The modifications to Rule 14(a)(2)(B) and Rule 14(a)(4) permit defendants and third-party defendants to bring crossclaims against each other as "coparties" under Rule 13(g).

Rule 15. Amended and Supplemental Pleadings

(a) **Amendments Before Trial.**

(1) **Amending as a Matter of Course.** A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) **Other Amendments.** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) **Time to Respond.** Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) **Amendments During and After Trial.**

(1) **Based on an Objection at Trial.** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) **For Issues Tried by Consent.** When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment— to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) **Relation Back of Amendments.** An amendment to a pleading relates back to the date of the original pleading when:

(1) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(2) the amendment changes a party or the naming of a party against whom a claim is asserted, if Rule 15(c)(1) is satisfied and if, within the period provided by Rule 4(e) for serving the summons and complaint, the party to be brought in by amendment:

(A) received such notice of the action that it will not be prejudiced in defending on the merits; and

(B) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(d) **Supplemental Pleadings.** On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Advisory Committee Note—2018 Amendment

The amendments conform Rule 15 to FRCP 15. In particular, NRCP 15(c)(2) is adopted from FRCP 15(c)(1)(C). Rule 15(c) governs relation-back of amendments generally, while replacing a named party for a fictitiously named party is governed by Rule 10(d). The express provision in NRCP 10 for pleading fictitious defendants, which the FRCP do not include, avoids the problem that has arisen in federal cases attempting to apply FRCP 15(c)(1)(C) to fictitious defendants. While Rule 15(c) and Rule 10(d) are distinct tests, if a fictitious-party replacement does not meet the Rule 10(d) test, it may be treated as an amendment to add a party under Rule 15 if the standards in Rule 15 are met.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) **Pretrial Conferences; Objectives.** In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating the settlement of the case.

(b) **Scheduling and Planning.**

(1) **Scheduling Order.** Except in categories of actions exempted by local rule, the court or a discovery commissioner must, after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone conference, or other suitable means, enter a scheduling order.

(2) **Time to Issue.** The court or discovery commissioner must issue the scheduling order as soon as practicable, but unless the court or discovery

commissioner finds good cause for delay, the court or discovery commissioner must issue it within 60 days after:

(A) a Rule 16.1 case conference report has been filed; or

(B) the court or discovery commissioner waives the requirement of a case conference report under Rule 16.1(f).

(3) **Contents of the Order.**

(A) **Required Contents.** The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) **Permitted Contents.** The scheduling order may:

(i) provide for disclosure, discovery, or preservation of electronically stored information;

(ii) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(iii) set dates for pretrial conferences, a final pretrial conference, and for trial; and

(iv) include any other appropriate matters.

(4) **Modifying a Schedule.** A schedule may be modified by the court or discovery commissioner for good cause.

(c) **Attendance and Subjects to Be Discussed at Pretrial Conferences.**

(1) **Attendance.** A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) **Matters for Consideration.** At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under NRS 47.060 and NRS 50.275;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

(F) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(G) referring matters to a discovery commissioner or a master;

(H) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;

(I) determining the form and content of the pretrial order;

(J) disposing of pending motions;

(K) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(L) ordering a separate trial under Rule 42(b) of a claim, counterclaim, cross-claim, third-party claim, or particular issue;

(M) establishing a reasonable limit on the time allowed to present evidence; and

(N) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) **Pretrial Orders.** After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) **Final Pretrial Conference and Orders.** The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) **Sanctions.**

(1) **In General.** On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(1)(A)(ii)–(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) **Imposing Fees and Costs.** Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Advisory Committee Note—2018 Amendment

Rule 16 is amended to conform to FRCP 16, with some exceptions. Except as noted, the amendments are stylistic and do not change the substance of the rule.

Rule 16(b)(1) continues to omit the reference in FRCP 16(b)(1)(A) to FRCP 26(f). The deadline for entry of the scheduling order in Rule 16(b)(2) differs from the federal rule and is calculated from the filing of the case conference report required by Rule 16.1 rather than from the filing of the complaint. In Rule 16(b)(3)(B), Nevada

has not adopted sections (i), (ii), or (iv) from the federal rule and the remaining sections have been renumbered.

The amended Rule 16(c) is conformed to the federal rule, except that Nevada has not adopted FRCP 16(c)(2)(F) and (N). The remaining sections of the rule have been renumbered.

Rule 16.1. Mandatory Pretrial Discovery Requirements

(a) **Required Disclosures.**

(1) **Initial Disclosure.**

(A) **In General.** Except as exempted by Rule 16.1(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, including for impeachment or rebuttal, and, unless privileged or protected from disclosure, any audio and/or visual record, report, or witness statement concerning the incident that gives rise to the lawsuit;

(iii) when personal injury is in issue, the identity of the relevant medical provider(s) so that the opposing party may prepare an appropriate medical authorization(s) for signature to obtain medical records;

(iv) a computation of each category of damages claimed by the disclosing party—who must make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on

the nature and extent of injuries suffered; and

(v) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment and any disclaimer or limitation of coverage or reservation of rights under any such insurance agreement.

(B) **Proceedings Exempt from Initial Disclosure.** The following proceedings are exempt from initial disclosure:

(i) an action within the original, exclusive jurisdiction of family courts, irrespective of whether the court actually has a separate family court or division;

(ii) an action filed under Title 12 or 13 of the Nevada Revised Statutes;

(iii) an appeal from a court of limited jurisdiction;

(iv) an action for review on an administrative record;

(v) a forfeiture action in rem arising from a statute;

(vi) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(vii) an action to enforce or quash an administrative summons or subpoena;

(viii) a proceeding ancillary to a proceeding in another court;

(ix) an action to enforce an arbitration award; and

(x) any other action that is not brought against a specific individual or entity.

(C) **Time for Initial Disclosures—In General.** A party must make the initial disclosures at or within 14 days after the parties' Rule 16.1(b) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this

action and states the objection in the Rule 16.1(c) case conference report. In ruling on the objection, the court must determine what disclosure, if any, are to be made and must set the time for disclosure.

(D) **Time for Initial Disclosures—For Parties Served or Joined Later.** A party that is first served or otherwise joined after the Rule 16.1(b) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) **Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) **Disclosure of Expert Testimony.**

(A) **In General.** In addition to the disclosures required by Rule 16.1(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under NRS 50.275, 50.285 and 50.305.

(B) **Witnesses Who Must Provide a Written Report.** Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous ten years;

(v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) **Witnesses Who Do Not Provide a Written Report.** Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under NRS 50.275, 50.285 and 50.305;

(ii) a summary of the facts and opinions to which the witness is expected to testify;

(iii) the qualifications of that witness to present evidence under NRS 50.275, 50.285 and 50.305, which may be satisfied by the production of a resume or curriculum vitae; and

(iv) the compensation of the witness for providing testimony at deposition and trial, which is satisfied by production of a fee schedule.

(D) **Treating Physicians.**

(i) **Status.** A treating physician who is retained or specially employed to provide expert testimony in the case, or whose duties as the party's employee regularly involve giving expert testimony on behalf of the party, must provide a written report under Rule 16.1(a)(2)(B). Otherwise, a treating physician may be deposed or called to testify without any requirement for a written report. A treating physician is not required to submit an expert report under Rule 16.1(a)(2)(B) merely because the physician's testimony may discuss ancillary treatment that is not contained within his or her medical chart, as long as the content of such testimony is properly disclosed as otherwise required under Rule 16.1(a)(2)(C)(i).

(ii) **Change in Status.** A treating physician will be deemed a retained expert witness subject to the written report requirement of Rule 16.1(a)(2)(B) if the party is asking the treating physician to provide opinions outside the course and scope of the treatment provided to the party. However, a treating physician is not a retained expert merely because:

(a) the patient was referred to the physician by an attorney for treatment;

(b) the witness will opine about diagnosis, prognosis, or causation of the patient's injuries; or

(c) the witness reviews documents outside his or her medical chart in the course of providing treatment or defending that treatment.

(iii) **Disclosure.** The disclosure regarding a nonretained treating physician must include the information identified in Rule 16.1(a)(2)(C), to the extent practicable. In that regard, appropriate disclosure may include that the witness will testify in accordance with his or her medical chart, even if some records contained therein were prepared by another healthcare provider.

(E) **Time to Disclose Expert Testimony.**

(i) A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order otherwise, the disclosures must be made:

(a) at least 90 days before the discovery cut-off date; or

(b) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 16.1(a)(2)(B), (C), or (D), within 30 days after the other party's disclosure.

(ii) The disclosure deadline under Rule 16.1(a)(2)(E)(i)(b) does not apply to any party's witness whose purpose is to contradict a portion of another party's case in chief that should have been expected and anticipated by the disclosing party, or to present any opinions outside of the scope of another party's

disclosure.

(F) **Supplementing the Disclosure.**

(i) **In General.** The parties must supplement these disclosures when required under Rule 26(e).

(ii) **Non-Retained Experts.** A non-retained expert, who is not identified at the time the expert disclosures are due, may be subsequently disclosed in accordance with Rule 26(e). In general, the disclosing party must move to reopen the discovery deadlines or otherwise seek leave of court in order to supplementally disclose a non-retained expert. However, supplementation may be made without first moving to reopen the expert disclosure deadlines or otherwise seeking leave of court, if such disclosure is made:

(a) in accordance with Rule 16.1(a)(2)(B),

(b) within a reasonable time after the non-retained expert's opinions become known to the disclosing party, and

(c) not later than 21 days before the close of discovery.

(3) **Pretrial Disclosures.**

(A) **In General.** In addition to the disclosures required by Rule 16.1(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial, including impeachment and rebuttal evidence:

(i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present, those witnesses who have been subpoenaed for trial, and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit,

including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) **Time for Pretrial Disclosures; Objections.**

(i) Unless the court orders otherwise, these disclosures must be made at least 30 days before trial.

(ii) Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections:

(a) any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 16.1(a)(3)(A)(ii); and

(b) any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 16.1(a)(3)(A)(iii).

(iii) An objection not so made—except for one under NRS 48.025 and 48.035—is waived unless excused by the court for good cause.

(4) **Form of Disclosures.** Unless the court orders otherwise, all disclosures under Rule 16.1(a) must be in writing, signed, and served.

(b) **Early Case Conference; Discovery Plan.** Except as otherwise stated in this rule, all parties who have filed a pleading in the action must participate in an early case conference.

(1) **Exceptions.** Parties are not required to participate in an early case conference if:

(A) the case is exempt from the initial disclosure requirements of Rule 16.1(a)(1);

(B) the case is subject to arbitration under Rule 3(A) of the Nevada Arbitration Rules (NAR) and an exemption from arbitration under NAR 5 has been requested but not decided by the court or the commissioner appointed under NAR 2(c);

(C) the case is in the court annexed arbitration program;

(D) the case has been through arbitration and the parties have

requested a trial de novo under the NAR;

(E) the case is in the short trial program; or

(F) the court has entered an order excusing compliance with this requirement.

(2) **Timing.**

(A) **In General.** The early case conference must be held within 30 days after service of an answer by the first answering defendant. All parties who have served initial pleadings must participate in the first case conference. If a new party serves its initial pleading after the first case conference, a supplemental case conference must be held within 30 days after service by any party of a written request for a supplemental conference; otherwise, a supplemental case conference is not required.

(B) **Continuances.** The parties may agree to continue the time for the early case conference or a supplemental case conference for an additional period of not more than 90 days. The court, for good cause shown, may also continue the time for any case conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time for the early case conference involving a particular defendant to a date more than 180 days after service of the first answer by that defendant.

(3) **Attendance.** A party may attend the case conference in person or by using audio transmission equipment that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons participating. The court may order the parties or attorneys to attend the conference in person.

(4) **Responsibilities.**

(A) **Scheduling.** Unless the parties agree or the court orders otherwise, plaintiff is responsible for designating the time and place of each conference.

(B) **Content.** At each conference, the parties must do the following:

(i) consider the nature and basis of their claims and defenses;

(ii) disclose the names of each relevant medical provider to the person or persons' whose injury is in issue and provide an appropriate signed authorization for each provider, unless an authorization has been given under Rule 16.1(a)(1)(A)(iii), above;

(iii) consider the possibilities for a prompt settlement or resolution of the case;

(iv) make or arrange for the disclosures required by Rule 16.1(a)(1);

(v) discuss any issues about preserving discoverable information; and

(vi) develop a proposed discovery plan.

(C) **Discovery Plan.** The discovery plan must state the parties' views and proposals on:

(i) what changes should be made in the timing, form, or requirement for disclosures under Rule 16.1(a), including a statement as to when disclosures under Rule 16.1(a)(1) were made or will be made;

(ii) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(iii) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(iv) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on as procedure to assert

these claims after production—whether to ask the court to include their agreement in an order;

(v) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(vi) any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c); and

(vii) an estimated time for trial.

(c) **Case Conference Report.**

(1) **In General.**

(A) **Joint or Individual Report.** Within 30 days after each case conference, the parties must file a joint case conference report or, if the parties are unable to agree upon the contents of a joint report, each party must serve and file an individual case conference report.

(B) **After Supplemental Case Conference.** After a supplemental case conference, the parties must supplement, but need not repeat, the contents of prior reports. Notwithstanding the filing of a supplemental case conference report, deadlines set forth in an existing scheduling order remain in effect unless the court or discovery commissioner modifies the discovery deadlines.

(C) **After Court-Annexed Arbitration.** Unless otherwise ordered by the court or the discovery commissioner, parties to any case wherein a timely trial de novo request has been filed subsequent to arbitration need not hold a further in-person conference, but must file a joint case conference report under Rule 16.1(c) within 60 days from the date of the de novo filing, said report to be prepared by the party requesting the trial de novo.

(2) **Content.** Whether the report is filed jointly or individually, it must contain:

(A) a brief description of the nature of the action and each claim for relief or defense;

(B) a proposed plan and schedule of any additional discovery under Rule 16.1(b)(4)(C);

(C) a written list of names exchanged under Rule 16.1(a)(1)(A)(i);

(D) a written list of all documents provided at or as a result of the case conference under Rule 16.1(a)(1)(A)(ii);

(E) a calendar date on which discovery will close;

(F) a calendar date, not later than 90 days before the close of discovery, beyond which the parties are precluded from filing motions to amend the pleadings or to add parties unless by court order;

(G) a calendar date by which the parties will make expert disclosures under Rule 16.1(a)(2), with initial disclosures to be made not later than 90 days before the discovery cut-off date and rebuttal disclosures to be made not later than 30 days after the initial disclosure of experts;

(H) a calendar date, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed;

(I) an estimate of the time required for trial; and

(J) a statement as to whether or not a jury demand has been filed.

(3) **Objections.** Within 7 days after service of any case conference report, any other party may file a response in which it objects to all or a part of the report or adding any other matter which is necessary to properly reflect the proceedings that occurred at the case conference.

(d) **Automatic Referral of Discovery Disputes.** Where available or unless otherwise ordered by the court, all discovery disputes (except those presented at the pretrial conference or trial) must first be heard by the discovery commissioner under Rule 16.3.

(e) **Failure or Refusal to Participate in Pretrial Discovery; Sanctions.**

(1) **Untimely Case Conference.** If the conference described in Rule 16.1(b) is not held within 180 days after service of an answer by a defendant, the case

may be dismissed as to that defendant upon motion or on the court's own initiative, without prejudice, unless there are compelling and extraordinary circumstances for a continuance beyond this period. This provision does not apply to a defendant who serves its answer after the first case conference, unless a party has served a written request for a supplemental conference in accordance with Rule 16.1(b)(2)(A).

(2) **Untimely Case Conference Report.** If the plaintiff does not file a case conference report within 240 days after service of an answer by a defendant, the case may be dismissed as to that defendant upon motion or on the court's own initiative, without prejudice. This provision does not apply to a defendant who serves its answer after the first case conference, unless a party has served a written request for a supplemental conference in accordance with Rule 16.1(b)(2)(A).

(3) **Other Grounds for Sanctions.** If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered under Rule 16.3, the court, upon motion or upon its own initiative, should impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(A) any of the sanctions available under Rule 37(b)(1) and Rule 37(f); or

(B) an order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged under Rule 16.1(a).

(f) **Complex Litigation.** In a potentially difficult or protracted action that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, the court may, upon motion and for good cause shown, waive any or all of the requirements of this rule. If the court waives all the requirements of this rule, it must also order a conference under Rule 16 to be conducted by the court or the discovery commissioner.

(g) **Self-Represented Litigants.** The requirements of this rule apply to any

self-represented party.

Advisory Committee Note—2018 Amendment

Rule 16.1(a) is amended to conform to the style and language found in the analogous federal rule, with two significant exceptions. The initial disclosure requirement regarding witnesses in Rule 16.1(a)(1)(A)(i) has not changed, and is therefore broader than the current federal requirement. The requirement in Rule 16.1(a)(1)(A)(ii) partially adopts the federal language by requiring that a party disclose materials that it may use to support its claims or defenses. However, the disclosure requirement also includes any audio and/or visual record, report, or witness statement concerning the incident that gives rise to the lawsuit. The initial disclosure requirement of a "report" under Rule 16.1(a)(1)(A)(ii) is to be liberally interpreted to include, but not be limited to: incident reports; records; logs and summaries; maintenance records; prior repair and inspection records and receipts; sweep logs; and any written summaries of such documents. It is intended that documents identified or produced under Rule 16.1(a)(1)(A)(ii) include those that are prepared or exist at or near the time of the subject incident. The reasonable time required for production of such documents will depend on the facts and circumstances of each case. If privilege is raised as a defense to disclosure, a privilege log must be prepared and produced.

Disclosure of impeachment and rebuttal material remains part of each party's initial disclosure obligations—specifically, as to witnesses likely to have discoverable information, and materials a party intends to use or intends to use if the need arises. If a party believes that the initial disclosure of specific impeachment or rebuttal material that it may use is not appropriate (e.g., a surveillance recording prepared by the party's attorney or insurance company representative), then at the early case conference it must inform opposing parties about the nature of that material, object to its disclosure under Rule 16.1(a)(1), and subsequently state that objection in the

case conference report. The court will thereafter determine the extent to which that material must be disclosed. Otherwise, all impeachment and rebuttal information that a party may use must be provided with that party's initial disclosures.

Determining whether a party may use specific material for impeachment or rebuttal may not always be practicable at the time initial disclosures are due. Sometimes, the intention to use a witness or document will not be formed until additional information about an opposing party's claims or defenses is received during the discovery process. Nevertheless, when a party realizes that it may use that material (e.g., a document that may be used to question an opposing party during a deposition, or to support a motion or opposition thereto), it must promptly supplement its initial disclosures and provide the material to all other parties.

Rule 16.1(a)(1)(iii) is new. An "appropriate" authorization must comply with the federal Health Insurance Portability and Accountability Act, commonly referred to as HIPAA.

Rule 16.1(a)(1)(B) includes a list of case types that are exempt from the initial disclosure requirements, most of which require no elaboration. Practitioners are reminded that domestic matters are subject to the mandatory disclosure requirements of Rule 16.2 and Rule 16.205. Probate proceedings are exempted from these requirements as an initial matter; but under NRS 155.170 and 180, courts remain free to apply these provisions as they deem appropriate.

Rule 16.1(a)(2) adopts the federal rule requirement that the report of a retained expert witness disclose "the facts or data considered by the witness" in forming his or her opinions. The prior language—"the data or other information considered by the witness"—has been construed broadly by most federal courts to include drafts of expert reports and virtually any communications between counsel and the expert. The new language is intended to avoid that result.

Rule 16.1(a)(2)(C) requires the disclosure of more information than the analogous federal provision. In addition, guidance concerning the disclosure of

treating physicians as nonretained testifying expert witnesses previously was provided in commentary to this rule. Rule 16.1(a)(2)(C) essentially shifts those provisions from commentary into this rule. As appropriate, these provisions may be applied to other types of non-retained experts by analogy.

Rule 16.1(a)(2)(E) has been revised to include cases in which simultaneous disclosure of expert testimony may not be appropriate. In such a case, if the parties are unable to stipulate to the timing of such disclosures, either or both may seek a court order to schedule the disclosures of each expert.

An initial expert may also serve as a rebuttal expert and offer rebuttal opinions as long as those opinions are disclosed at the time of the rebuttal expert disclosure, or as a required supplement in accordance with Rule 26.1(e)(2).

A treating physician's opinions need not be formed at the exact time of the treatment, so long as the physician's opinions are formed from the physician's medical chart and those medical records received by the physician from other health care providers in the regular course of treatment, and the treating physician is properly disclosed as a witness at the time of the initial non-retained expert disclosure under Rule 16.1(a)(2).

Unlike its federal counterpart, Rule 16.1(a)(3)(A)(i) retains the requirement that a party's pretrial disclosures identify those witnesses who have been subpoenaed for trial.

Rule 16.1(b) is reorganized in the style of the federal rules. Rule 16.1(b)(1) is new and it specifies the circumstances when a case conference is not required. Rule 16.1(b)(2) contains new provisions addressing the timing of supplemental case conferences. Rule 16.1(b)(3) makes clear that parties are not required to attend a case conference in person, although the court can order attendance. Rule 16.1(b)(4) includes the federal requirements that parties discuss and address issues pertaining to the preservation of discoverable information, including electronically stored information, and issues pertaining to privilege and work-product claims (e.g.,

inadvertent disclosure).

The changes in Rule 16.1(c) are stylistic. The report and recommendation, objection, response, and review sections of the prior NRCP 16.1(d) have been moved into Rule 16.3. The changes to Rule 16.1(e) are stylistic, and Rule 16.1(g) has been reworded for enhanced clarity.

Rule 16.2. Mandatory Prejudgment Discovery Requirements in Domestic Relations Matters (Not Including Paternity or Custody Actions Between Unmarried Persons)

(a) **Applicability.** This rule replaces Rule 16.1 in all divorce, annulment, separate maintenance, and dissolution of domestic partnership actions. Nothing in this rule precludes a party from conducting discovery under other of these rules.

(b) **Exemptions.**

(1) Either party may file a motion for exemption from all or a part of this rule.

(2) The court may, sua sponte at the case management conference, exempt all or any portion of a case from application of this rule, in whole or in part, upon a finding of good cause, so long as the exemption is contained in an order of the court. Without limiting the foregoing, good cause may include any case where the parties have negligible assets and debts together with no minor children of the parties.

(c) **Financial Disclosure Forms.**

(1) **General Financial Disclosure Form.** In all actions governed by this rule, each party must complete, file, and serve a General Financial Disclosure Form (GFDF) within 30 days of service of the summons and complaint, unless a Detailed Financial Disclosure Form (DFDF) is required in accordance with Rule 16.2(c)(2) or the court orders the parties, at the case management conference, to complete the DFDF.

(2) **Detailed Financial Disclosure Form.**

(A) The plaintiff, concurrently with the filing of the complaint, or the defendant, concurrently with the filing of the answer, but no later than 14 days after the filing of the answer, may file a "Request to Opt-in to Detailed Financial Disclosure Form and Complex Litigation Procedure" certifying that:

(i) either party's individual gross income, or the combined gross income of the parties, is more than $250,000 per year; or

(ii) either party is self-employed or the owner, partner, managing or majority shareholder, or managing or majority member of a business; or

(iii) the combined gross value of the assets owned by either party individually or in combination is more than $1,000,000.

(B) Within 45 days of service of a Request to Opt-in, each party must file the DFDF unless otherwise ordered by the court or stipulated by the parties.

(C) If a Request to Opt-in is filed, the case is subject to the following complex divorce litigation procedure. Each party must prepare a complex divorce litigation plan that must be filed and served as part of the early case conference report. The plan must include, in addition to the requirements of Rule 16.2(j), any and all proposals concerning the time, manner, and place for needed discovery, proposed conferences and anticipated hearings with the court, and any other special arrangements focused on prompt settlement, trial, or resolution of the case.

(d) **Mandatory Initial Disclosures.**

(1) **Initial Disclosure Requirements.**

(A) Concurrently with the filing of the financial disclosure form, each party must, without awaiting a discovery request, serve upon the other party

written and signed disclosures containing the information listed in Rule 16.2(d)(2) and (3).

(B) A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because:

(i) the party has not fully completed an investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made the required disclosures.

(C) For each item set forth in Rule 16.2(d)(3), if the disclosing party is not in possession of the documents, the disclosing party must identify each such asset or debt that exists and disclose where information pertaining to each asset or debt may be found. If no such asset or debt exists, the disclosing party must specifically so state.

(2) **Evidence Supporting Financial Disclosure Form.** For each line item on the GFDF or DFDF, if not already evidenced by the other initial disclosures required herein, a party must provide the financial statement(s), document(s), receipt(s), or other information or evidence relied upon to support the figure represented on the form. If no documentary evidence exists, a party must provide an explanation in writing of how the figure was calculated.

(3) **Evidence of Property, Income, and Earnings as to Both Parties.**

(A) **Bank and Investment Statements.** A party must provide copies of all monthly or periodic bank, checking, savings, brokerage, investment, cryptocurrency and security account statements in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure.

(B) **Credit Card and Debt Statements.** A party must provide copies of credit card statements and debt statements for all parties for all months for the period commencing 6 months prior to the service of the summons and complaint through the date of disclosure.

(C) **Real Property.** A party must provide copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price, and encumbrances of all real property owned by any party.

(D) **Property Debts.** A party must provide copies of all monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.

(E) **Loan Applications.** A party must provide copies of all loan applications that a party has signed within 12 months prior to the service of the summons and complaint through the date of the disclosure.

(F) **Promissory Notes.** A party must provide copies of all promissory notes under which a party either owes money or is entitled to receive money.

(G) **Deposits.** A party must provide copies of all documents evidencing money held in escrow or by individuals or entities for the benefit of either party.

(H) **Receivables.** A party must provide copies of all documents evidencing loans or monies due to either party from individuals or entities.

(I) **Retirement and Other Assets.** A party must provide copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option, and annuity balances, including individual retirement accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.

(J) **Insurance.** A party must provide copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.

(K) **Insurance Policies.** A party must provide copies of all policy statements and evidence of costs of premiums for health and life insurance policies covering either party or any child of the relationship.

(L) **Values.** A party must provide copies of all documents that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure, including any documents that the party may rely upon in placing a value on any item of real or personal property (i.e., appraisals, estimates, or official value guides).

(M) **Tax Returns.** A party must provide copies of all personal and business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business

interest for the last 5 completed calendar or fiscal years with respect to any business or entity in which any party has or had an interest within the past 12 months.

(N) **Proof of Income.** A party must provide proof of income of the party from all sources, specifically including W-2, 1099, and K-1 forms, for the past 2 completed calendar years, and year-to-date income information (paycheck stubs, etc.) for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure.

(O) **Personalty.** A party must provide a list of all items of personal property with an individual value exceeding $200, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, coins, stamp collections, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item.

(P) **Exhibits.** A party must provide a copy of every other document or exhibit, including summaries of other evidence, that a party expects to offer as evidence at trial in any manner.

(e) **Additional Discovery and Disclosures.**

(1) **Obtaining Discovery.** Any party may obtain discovery by one or more methods provided in Rules 26 through 36, commencing 30 days after service of the summons and complaint.

(2) **Additional Discovery.** Nothing in the minimum requirements of this rule provides a basis for objecting to relevant additional discovery in accordance with these rules.

(3) **Disclosure of Expert Witness and Testimony.**

(A) A party must disclose the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305. These disclosures must be made within 90 days after the initial financial disclosure form

is required to be filed and served under Rule 16.2(c) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 21 days after the disclosure made by the other party. The parties must supplement these disclosures when required under Rule 26(e)(1).

(B) Except as otherwise stipulated or directed by the court, a party who retains or specially employs a witness to provide expert testimony in the case, or whose duties as an employee of the party regularly involve giving expert testimony, must deliver to the opposing party a written report prepared and signed by the witness within 60 days of the close of discovery. The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the expert reports or relieve a party of the duty to prepare a written report in an appropriate case. The report must contain a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, and the qualifications of the witness.

(4) **Nonexpert Witness.** A party must disclose the name and, if known, the address and telephone number of each individual who has information or knowledge relevant to the value of assets or debts or to the claims or defenses set forth in the pleadings, or who may be called as a witness, at any stage of the proceedings, including for impeachment or rebuttal, identifying the subjects of the information and a brief description of the testimony for which the individual may be called. Absent a court order or written stipulation of the parties, a party must not be allowed to call a witness at trial who has not been disclosed at least 45 days before trial.

(5) **Authorizations for Discovery.** If a party believes it necessary to obtain information within the categories under Rule 16.2(d)(3) from an individual or entity not a party to the action, the party seeking the information may present to the other party a form of authorization, permitting release, disclosure, and

production of the information. The party who was requested to sign the authorization must do so within 14 days of receipt of the authorization form. If the party who was requested to sign the authorization refuses to sign the authorization without good cause, a motion to compel may be filed. If the court or discovery commissioner finds that the objecting party is without legitimate factual or legal objection to the signing of the authorization, a motion to compel must be granted and the objecting party must be made to pay reasonable attorney fees and costs.

(f) **Continuing Duty to Supplement and Disclose.** The duty described in this rule is a continuing duty, and each party must make additional or amended disclosures whenever new or different information is discovered or revealed. Such additional or amended disclosures, including corrections to a party's financial disclosure form, must be made not more than 14 days after the party acquires additional information or otherwise learns that in some material respect the party's disclosure is incomplete or incorrect. However, if a hearing, deposition, case management conference, or other calendared event is scheduled less than 14 days from the discovery date, then the update must be filed and served within 24 hours of the discovery of new information.

(g) **Failure to File or Serve Financial Disclosure Form or to Produce Required Disclosures.**

(1) If a party fails to timely file or serve the appropriate financial disclosure form required by this rule, or the required information and disclosures under this rule, the court must impose an appropriate sanction upon the party, the party's attorney, or both, unless specific affirmative findings of fact are made that the violating party has proven:

(A) either good cause for the failure by a preponderance of the evidence or that the violating party would experience an undue hardship if the penalty is applied; and

(B) that other means fully compensate the nonviolating party for any losses, delays, and expenses suffered as a result of the violation.

(2) Sanctions may include an order finding the violating party in civil contempt of court, an order requiring the violating party to timely file and serve the disclosures, to pay the opposing party's reasonable expenses, including attorney fees and costs incurred as a result of the failure, and any other sanction the court deems just and proper.

(3) Sanctions may additionally include an order refusing to allow the violating party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence, and/or any other sanction the court deems just and proper. These discretionary sanctions are authorized for repeat or egregious violations.

(h) **Failure to Include an Asset or Liability or Accurately Report Income.**

(1) If a party intentionally fails to disclose a material asset or liability or to accurately report income, the court must impose an appropriate sanction upon the party or the party's attorney, or both, if the other party establishes by a preponderance of the evidence that there is not good cause for the failure.

(2) Sanctions may include an order finding the violating party in civil contempt of court, an award of reasonable attorney fees and costs to the nonviolating party, and any other sanction the court deems just and proper.

(3) Sanctions may include an order awarding the omitted asset to the opposing party as his or her separate property or making another form of unequal division of community property, and/or any other sanction the court deems just and proper. These discretionary sanctions are encouraged for repeat or egregious violations.

(i) **Objections to Authenticity or Genuineness.** Any objection to the authenticity or genuineness of documents is to be made in writing within 21 days of

the date the receiving party receives them. Absent such an objection, the documents must be presumed authentic and genuine and may not be excluded from evidence on these grounds.

(j) **Case Management Conferences.**

(1) **Attendance at Early Case Conference.** Within 45 days after service of an answer, the parties and the attorneys for the parties must confer for the purpose of complying with Rule 16.2(d). The plaintiff may designate the time and place of each meeting, which must be held in the county where the action was filed, unless the parties agree upon a different location. The parties may submit a stipulation and order to continue the time for the case conference for an additional period of not more than 60 days, which the court may, for good cause shown, enter. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the answer. The time for holding a case conference with respect to a defendant who has filed a motion under Rule 12(b)(2)-(4) is tolled until entry of an order denying the motion.

(2) **Early Case Conference Report.** Within 14 days after each case conference, but not later than 7 days prior to the scheduled case management conference, the parties must file a joint early case conference report, or if the parties are unable to agree upon the contents of a joint report, each party must serve and file an early case conference report, which, either as a joint or individual report, must contain:

(A) a statement of jurisdiction;

(B) a brief description of the nature of the action and each claim for relief or defense;

(C) if custody is at issue in the case, a proposed custodial timeshare and a proposed holiday, special day, and vacation schedule;

(D) a written list of all documents provided at or as a result of the case conference, together with any objection that the document is not authentic or

genuine. The failure to state any objection to the authenticity or genuineness of a document constitutes a waiver of such objection at a subsequent hearing or trial. For good cause, the court may permit the withdrawal of a waiver and the assertion of an objection;

(E) a written list of all documents not provided under Rule 16.2(d), together with the explanation as to why each document was not provided;

(F) for each issue in the case, a statement of what information and/or documents are needed, along with a proposed plan and schedule of any additional discovery;

(G) a list of the property (including pets, vehicles, real estate, retirement accounts, pensions, etc.) that each litigant seeks to be awarded in this action;

(H) the list of witnesses exchanged in accordance with Rule 16.2(e)(3) and (4);

(I) identification of each specific issue preventing immediate global resolution of the case along with a description of what action is necessary to resolve each issue identified;

(J) a litigation budget; and

(K) proposed trial dates.

(3) **Attendance at Case Management Conference.** The court must conduct a case management conference with counsel and the parties within 90 days after the filing of the answer. The court, for good cause shown, may continue the time for the case management conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 120 days after filing of the answer.

(A) At the case management conference, the court, counsel, and the parties must:

(i) confer and consider the nature and basis of the claims and defenses, the possibilities for a prompt settlement or resolution of the case, and whether orders should be entered setting the case for settlement conference and/or for trial;

(ii) make or arrange for the disclosures required under this rule and to develop a discovery plan, which may include limitations on discovery or changes in the timing of discovery requirements required in this rule; and

(iii) recite stipulated terms on the record under local rules.

(B) The court should also:

(i) enter interim orders sufficient to keep the peace and allow the case to progress;

(ii) for matters that are claimed to be in contest, give direction as to which party will have which burden of proof;

(iii) discuss the litigation budget and its funding; and

(iv) enter a scheduling order.

(C) In the event a party fails to attend the case management conference and the court believes that some or any actions cannot be taken in the absence of the missing party, the court must reschedule the case management conference and may order the nonappearing party to pay the complying party's attorney fees incurred to appear at the case management conference.

(4) **Case Management Order.**

(A) Within 30 days after the case management conference, the court must enter an order that contains:

(i) a brief description of the nature of the action;

(ii) the stipulations of the parties, if any;

(iii) any interim orders made by the court, including those pertaining to discovery and burdens of proof;

(iv) any changes to the timelines of this rule as stipulated by the parties and/or ordered by the court;

(v) a deadline on which discovery will close;

(vi) a deadline beyond which the parties will be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(vii) a deadline by which dispositive motions must be filed; and

(viii) any other orders the court deems necessary during the pendency of the action, including interim custody, child support, maintenance, and NRS 125.040 orders.

(B) If the court orders one of the parties to prepare the foregoing case management order, that party must submit the order to the other party for signature within 14 days after the case management conference. The order must be submitted to the court for entry within 21 days after the case management conference.

(k) **Automatic Referral of Discovery Disputes.** Where available and unless otherwise directed by the court, all discovery disputes made upon written motion must first be heard by the discovery commissioner under Rule 16.3.

Rule 16.205. Mandatory Prejudgment Discovery Requirements in Paternity and Custody Matters

(a) **Applicability.** This rule replaces Rules 16.1, and 16.2 in all paternity and custody actions between unmarried parties. Nothing in this rule precludes a party from conducting discovery under other of these rules.

(b) **Exemptions.**

(1) Either party may file a motion for exemption from all or a part of this rule.

(2) The court may, sua sponte at the case management conference, exempt all or any portion of a case from application of this rule, in whole or in part, upon a finding of good cause, so long as the exemption is contained in an order of the court.

(c) **Financial Disclosure Forms.**

(1) **General Financial Disclosure Form.** In all actions governed by this rule, each party must complete, file, and serve the cover sheet, income schedule and expense schedule of the General Financial Disclosure Form (GFDF) within 30 days of service of the summons and complaint, unless a Detailed Financial Disclosure Form (DFDF) is required in accordance with Rule 16.205(c)(2) or the court orders the parties at the case management conference to complete the DFDF.

(2) **Detailed Financial Disclosure Form.**

(A) The plaintiff, concurrently with the filing of the complaint, or the defendant, concurrently with the filing of the answer, but no later than 14 days after the filing of the answer, may file a "Request to Opt-in to Detailed Financial Disclosure Form and Complex Litigation Procedure" certifying that:

(i) either party's individual gross income, or the combined gross income of the parties, is more than $250,000 per year; or

(ii) either party is self-employed or the owner, partner, managing or majority shareholder, or managing or majority member of a business.

(B) Within 45 days of service of a Request to Opt-in, each party must file the DFDF unless otherwise ordered by the court or stipulated by the parties.

(C) If a Request to Opt-in is filed, the case is subject to the following complex divorce litigation procedure. Each party must prepare a complex divorce litigation plan that must be filed and served as part of the early case conference report. The plan must include, in addition to the requirements of Rule 16.205(j), any and all proposals concerning the time, manner, and place for needed

discovery, proposed conferences and anticipated hearings with the court, and any other special arrangements focused on prompt settlement, trial, or resolution of the case.

(d) **Mandatory Initial Disclosures.**

(1) **Initial Disclosure Requirements.**

(A) Concurrently with the filing of the financial disclosure form, each party must, without awaiting a discovery request, serve upon the other party written and signed disclosures containing the information listed in Rule 16.205(d)(2) and (3).

(B) A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because:

(i) the party has not fully completed an investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made the required disclosures.

(C) For each item set forth in Rule 16.205(d)(3), if the disclosing party is not in possession of the documents, the disclosing party must identify each such asset or debt that exists and disclose where information pertaining to each asset or debt may be found. If no such asset or debt exists, the disclosing party must specifically so state.

(2) **Evidence Supporting Financial Disclosure Form.** For each line item on the GFDF or DFDF, if not already evidenced by the other initial disclosures required herein, a party must provide the financial statement(s), document(s), receipt(s), or other information or evidence relied upon to support the figure represented on the form. If no documentary evidence exists, a party must provide an explanation in writing of how the figure was calculated.

(3) **Evidence of Income and Earnings as to Both Parties.**

(A) **Bank, Investment, and Other Periodic Statements.** A party must provide copies of all monthly or periodic bank, checking, savings, brokerage, investment, cryptocurrency, security account, or other statements evidencing income from interest, dividends, royalties, distributions, or any other income for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure.

(B) **Insurance Policies.** A party must provide copies of all policy statements and evidence of costs of premiums for health and life insurance policies covering either party or any child of the relationship.

(C) **Tax Returns.** A party must provide copies of all personal and business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last 3 completed calendar or fiscal years with respect to any business or entity in which any party has or had an interest within the past 12 months.

(D) **Proof of Income.** A party must provide proof of income of the party from all sources, specifically including W-2, 1099, and K-1 forms, for the past 2 completed calendar years, and year-to-date income information (paycheck stubs, etc.) for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure.

(E) **Exhibits.** A party must provide a copy of every other document or exhibit, including summaries of other evidence, that a party expects to offer as evidence at trial in any manner.

(e) **Additional Discovery and Disclosures.**

(1) **Obtaining Discovery.** Any party may obtain discovery by one or more methods provided in Rules 26 through 36, commencing 30 days after service of the summons and complaint.

(2) **Additional Discovery.** Nothing in the minimum requirements of this rule provides a basis for objecting to relevant additional discovery in accordance with these rules.

(3) **Disclosure of Expert Witness and Testimony.**

(A) A party must disclose the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305. These disclosures must be made within 90 days after the initial financial disclosure form is required to be filed and served under Rule 16.205(c) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 21 days after the disclosure made by the other party. The parties must supplement these disclosures when required under Rule 26(e)(1).

(B) Except as otherwise stipulated or directed by the court, a party who retains or specially employs a witness to provide expert testimony in the case, or whose duties as an employee of the party regularly involve giving expert testimony, must deliver to the opposing party a written report prepared and signed by the witness within 60 days of the close of discovery. The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the expert reports or relieve a party of the duty to prepare a written report in an appropriate case. The report must contain a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, and the qualifications of the witness.

(4) **Nonexpert Witness.** A party must disclose the name and, if known, the address and telephone number of each individual who has information or knowledge relevant to the claims or defenses set forth in the pleadings, or who may be called as a witness, at any stage of the proceedings, including for impeachment or rebuttal, identifying the subjects of the information and a brief

description of the testimony for which the individual may be called. Absent a court order or written stipulation of the parties, a party must not be allowed to call a witness at trial who has not been disclosed at least 45 days before trial.

(5) **Authorizations for Discovery.** If a party believes it necessary to obtain information within the categories under Rule 16.205(d)(3) from an individual or entity not a party to the action, the party seeking the information may present to the other party a form of authorization, permitting release, disclosure, and production of the information. The party who was requested to sign the authorization must do so within 14 days of receipt of the authorization form. If the party who was requested to sign the authorization refuses to sign the authorization without good cause, a motion to compel may be filed. If the court or discovery commissioner finds that the objecting party is without legitimate factual or legal objection to the signing of the authorization, a motion to compel must be granted and the objecting party must be made to pay reasonable attorney fees and costs.

(f) **Continuing Duty to Supplement and Disclose.** The duty described in this rule is a continuing duty, and each party must make additional or amended disclosures whenever new or different information is discovered or revealed. Such additional or amended disclosures, including corrections to a party's financial disclosure form, must be made not more than 14 days after the party acquires additional information or otherwise learns that in some material respect the party's disclosure is incomplete or incorrect. However, if a hearing, deposition, case management conference, or other calendared event is scheduled less than 14 days from the discovery date, then the update must be filed and served within 24 hours of the discovery of new information.

(g) **Failure to File or Serve Financial Disclosure Form or to Produce Required Disclosures.**

(1) If a party fails to timely file or serve the appropriate financial disclosure form required by this rule, or the required information and disclosures under this rule, the court must impose an appropriate sanction upon the party, the party's attorney, or both, unless specific affirmative findings of fact are made that the violating party has proven:

(A) either good cause for the failure by a preponderance of the evidence or that the violating party would experience an undue hardship if the penalty is applied; and

(B) that other means fully compensate the nonviolating party for any losses, delays, and expenses suffered as a result of the violation.

(2) Sanctions may include an order finding the violating party in civil contempt of court, an order requiring the violating party to timely file and serve the disclosures, to pay the opposing party's reasonable expenses, including attorney fees and costs incurred as a result of the failure, and any other sanction the court deems just and proper.

(3) Sanctions may additionally include an order refusing to allow the violating party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence, and/or any other sanction the court deems just and proper. These discretionary sanctions are authorized for repeat or egregious violations.

(h) **Failure to Accurately Report Income.**

(1) If a party intentionally fails to accurately report income, the court must impose an appropriate sanction upon the party or the party's attorney, or both, if the other party establishes by a preponderance of the evidence that there is not good cause for the failure.

(2) Sanctions may include an order finding the violating party in civil contempt of court, an award of reasonable attorney fees and costs to the nonviolating party, and any other sanction the court deems just and proper.

(3) These discretionary sanctions are encouraged for repeat or egregious violations.

(i) **Objections to Authenticity or Genuineness.** Any objection to the authenticity or genuineness of documents is to be made in writing within 21 days of the date the receiving party receives them. Absent such an objection, the documents must be presumed authentic and genuine and may not be excluded from evidence on these grounds.

(j) **Case Management Conferences.**

(1) **Attendance at Early Case Conference.** Within 45 days after service of an answer, the parties and the attorneys for the parties must confer for the purpose of complying with Rule 16.205(d). The plaintiff may designate the time and place of each meeting, which must be held in the county where the action was filed, unless the parties agree upon a different location. The parties may submit a stipulation and order to continue the time for the case conference for an additional period of not more than 60 days, which the court may, for good cause shown, enter. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the answer. The time for holding a case conference with respect to a defendant who has filed a motion under Rule 12(b)(2)-(4) is tolled until entry of an order denying the motion.

(2) **Early Case Conference Report.** Within 14 days after each case conference, but not later than 7 days prior to the scheduled case management conference, the parties must file a joint early case conference report, or if the parties are unable to agree upon the contents of a joint report, each party must serve and file an early case conference report, which, either as a joint or individual report, must contain:

(A) a statement of jurisdiction;

(B) a brief description of the nature of the action and each claim for relief or defense;

(C) a proposed custodial timeshare and a proposed holiday, special day, and vacation schedule;

(D) a written list of all documents provided at or as a result of the case conference, together with any objection that the document is not authentic or genuine. The failure to state any objection to the authenticity or genuineness of a document constitutes a waiver of such objection at a subsequent hearing or trial. For good cause, the court may permit the withdrawal of a waiver and the assertion of an objection;

(E) a written list of all documents not provided under Rule 16.205(d), together with the explanation as to why each document was not provided;

(F) for each issue in the case, a statement of what information and/or documents are needed, along with a proposed plan and schedule of any additional discovery;

(G) the list of witnesses exchanged in accordance with Rule 16.205(e)(3) and (4);

(H) identification of each specific issue preventing immediate global resolution of the case along with a description of what action is necessary to resolve each issue identified;

(I) a litigation budget; and

(J) proposed trial dates.

(3) **Attendance at Case Management Conference.** The court must conduct a case management conference with counsel and the parties within 90 days after the filing of the answer. The court, for good cause shown, may continue the time for the case management conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 120 days after filing of the answer.

(A) At the case management conference, the court, counsel, and the parties must:

(i) confer and consider the nature and basis of the claims and defenses, the possibilities for a prompt settlement or resolution of the case, and whether orders should be entered setting the case for settlement conference and/or for trial;

(ii) make or arrange for the disclosures required under this rule and to develop a discovery plan, which may include limitations on discovery or changes in the timing of discovery requirements required in this rule; and

(iii) recite stipulated terms on the record under local rules.

(B) The court should also:

(i) enter interim orders sufficient to keep the peace and allow the case to progress;

(ii) for matters that are claimed to be in contest, give direction as to which party will have which burden of proof;

(iii) discuss the litigation budget and its funding, and

(iv) enter a scheduling order.

(C) In the event a party fails to attend the case management conference and the court believes that some or any actions cannot be taken in the absence of the missing party, the court must reschedule the case management conference and may order the nonappearing party to pay the complying party's attorney fees incurred to appear at the case management conference.

(4) **Case Management Order.**

(A) Within 30 days after the case management conference, the court must enter an order that contains:

(i) a brief description of the nature of the action;

(ii) the stipulations of the parties, if any;

(iii) any interim orders made by the court, including those pertaining to discovery and burdens of proof;

(iv) any changes to the timelines of this rule as stipulated by the parties and/or ordered by the court;

(v) a deadline on which discovery will close;

(vi) a deadline beyond which the parties will be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(vii) a deadline by which dispositive motions must be filed; and

(viii) any other orders the court deems necessary during the pendency of the action, including interim custody and child support orders.

(B) If the court orders one of the parties to prepare the foregoing case management order, that party must submit the order to the other party for signature within 14 days after the case management conference. The order must be submitted to the court for entry within 21 days after the case management conference.

(k) **Automatic Referral of Discovery Disputes.** Where available and unless otherwise directed by the court, all discovery disputes made upon written motion must first be heard by the discovery commissioner under Rule 16.3.

Rule 16.21. Postjudgment Discovery in Domestic Relations Matters

(a) Except as provided by this rule, parties must not conduct discovery in a postjudgment domestic relations matter.

(b) Parties may conduct discovery in postjudgment domestic relations matters when:

(1) a court orders an evidentiary hearing in a postjudgment custody matter; or

(2) a court, for good cause, orders postjudgment discovery.

(c) Postjudgment discovery is governed by Rule 16.2, Rule 16.205 for paternity or custody matters, or as otherwise directed by the court.

Advisory Committee Note—2018 Amendment

Rule 16.21 is amended to permit postjudgment discovery in certain situations. Rule 16.21(b)(1) automatically permits discovery under Rule 16.205 upon a court's entry of a postjudgment order setting an evidentiary hearing in a custody matter. Rule 16.21(b)(2) permits postjudgment discovery in any action if ordered by the court. The court may order discovery upon a party's motion or on its own.

Rule 16.215. Child Witnesses in Custody Proceedings

(a) **In General.** A court must use these procedures and considerations in child custody proceedings. When determining the scope of a child's participation in custody proceedings, the court should find a balance between protecting the child, the statutory duty to consider the wishes of the child, and the probative value of the child's input while ensuring to all parties their due process rights to challenge evidence relied upon by the court in making custody decisions.

(b) **Definitions.**

(1) **"Alternative Method."** As used in this rule, "alternative method" is defined as prescribed in NRS 50.520.

(2) **"Child Witness."** As used in this rule, "child witness" is defined as prescribed in NRS 50.530.

(3) **"Third-Party Outsourced Provider."** As used in this rule, "third-party outsourced provider" means any third party ordered by the court to interview or examine a child outside of the presence of the court for the purpose of eliciting information from the child for the court.

(c) **Procedure.**

(1) **Identifying Witnesses.** A party must identify and disclose any potential child witness whom they intend to call as a witness during the case either:

(A) at the time of the case management conference/early case

evaluation; or

(B) by filing a Notice of Child Witness if the determination to call a child witness is made subsequent to the case management conference/early case evaluation.

(2) **Notice of Child Witness.** A notice of child witness must be filed no later than 60 days prior to the hearing in which a child may be called as a witness unless otherwise ordered by the court. Such notice must detail the scope of the child's intended testimony and provide an explanation as to why the child's testimony would aid the trier of fact under the circumstances of the case. Any party filing a notice of child witness must also deliver a courtesy copy of the notice to the court.

(3) **Testimony by Alternative Methods.** In the event that a party desires to perpetuate the testimony of a child witness through an alternate method, he or she must file a Motion to Permit Child Testimony Through Alternate Means, under the Uniform Child Witness Testimony by Alternative Methods Act contained in NRS 50.500 et seq., at the same time as the notice of child witness, or no later than 60 days prior to the hearing in which the child may be called as a witness or 14 days after the timely filing of a notice of child witness, whichever period last expires, unless otherwise ordered by the court. The court may also issue an order to show cause why a child witness should not testify by alternative means, or address the issue at any case management conference.

(d) **Alternative Methods.**

(1) **Available Alternative Methods.** If the court determines under NRS 50.580 that an alternative method of testimony is necessary, the court must consider the following alternative methods, in addition to any other alternative methods the court considers appropriate under the Uniform Child Witness Testimony by Alternative Methods Act contained in NRS 50.500 et seq.

(A) In the event all parties are represented by counsel, the court may:

(i) interview the child witness outside of the presence of the parties, with the parties' counsel present;

(ii) interview the child witness outside of the presence of the parties, with the parties' counsel simultaneously viewing the interview via an electronic method; or

(iii) allow the parties' counsel to question the child witness in the presence of the court without the parties present.

(B) Regardless of whether the parties are represented by counsel, the court may:

(i) interview the child witness with no parties present, but may allow the parties to simultaneously view the interview via an electronic method if the court determines that the viewing is not contrary to the child's best interest; or

(ii) have the child witness interviewed by a third-party outsource provider.

(2) **Alternative Method Considerations.** In determining which alternative method should be utilized in any particular case, the court should balance the necessity of taking the child witness's testimony in the courtroom with parents and attorneys present with the need to create an environment in which the child can be open and honest. In each case in which a child witness's testimony will be taken, the court should consider:

(A) where the testimony will be taken, including the possibility of closing the courtroom to the public or hearing from the child witness on the record in chambers;

(B) who should be present when the testimony is taken, such as both parties and their attorneys, only the attorneys when both parties are represented, the child witness's attorney and parents, or only a court reporter;

(C) how the child will be questioned, including whether only the court will pose questions that the parties have submitted, whether attorneys or

parties will be permitted to cross-examine the child witness, or whether a child advocate or expert in child development will ask the questions in the presence of the court and the court reporter, with or without the parties; and

(D) whether it will be possible to provide an electronic method so that testimony taken in chambers may be heard simultaneously by the parents and their attorneys in the courtroom.

(3) **Protections for Child Witness.** In taking testimony from a child witness, the court must take special care to protect the child witness from harassment or embarrassment and to restrict the unnecessary repetition of questions. The interviewer must also take special care to ensure that questions are stated in a form that is appropriate given the witness's age or cognitive level. The interviewer must inform the child witness in an age-appropriate manner about the limitations on confidentiality and that the information provided to the court will be on the record and provided to the parties in the case. In the process of listening to and inviting the child witness's input, the interviewer may allow, but should not require, the child witness to state a preference regarding custody or visitation and should, in an age-appropriate manner, provide information about the process by which the court will make a decision.

(e) **Due Process Rights.** Any alternative method must afford all parties a right to participate in the questioning of the child witness, which, at a minimum, must include an opportunity to submit potential questions or areas of inquiry to the court or other interviewer prior to the interview of the child witness.

(f) **Preservation of Record.** Any alternative method of testimony ordered by the court must be preserved by audio or audio and visual recording to ensure that such testimony is available for review for future proceedings.

(g) **Review of Record.** Any party may review the audio or audio and visual recording of testimony procured from a child by an alternate method upon written motion to the court or stipulation of the parties, unless the court finds by clear and

convincing evidence that review by a party would pose a risk of substantial harm to the child involved.

(h) **Stipulation.** The court may deviate from any of the provisions of this rule upon stipulation of the parties. The judicial districts of this state should promulgate a uniform canvass to be provided to litigants to ensure that they are aware of their rights to a full and fair opportunity for examination or cross-examination of a child witness prior to entering into any stipulation that would permit the interview or examination of a minor child by an alternative method and/or third-party outsourced provider.

(i) **Retention of Recordings.** Original recordings of child interviews must be retained by the interviewer for a period of 7 years from the date of their recording, or until 6 months after the child witness emancipates, whichever is later, unless otherwise ordered by the court.

Rule 16.22. Custody Evaluations

(a) **Applicability; Motion; Notice.**

(1) This rule governs custody evaluations in family law actions.

(2) Upon motion, or on its own, and after notice to all parties, a court may for good cause order a custody evaluation.

(3) The court may specify the individuals to be examined or permit the examiner to do so.

(b) **Order.**

(1) **In General.** The order must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(2) **Examiner; Location**. The examiner must be suitably licensed or certified. The examination must take place in an appropriate professional setting and in the judicial district in which the case is pending, unless the court orders the

examination to occur in a different location.

(3) **Persons Examined.** The court may require a party to produce for examination a person who is in the party's custody or under the party's legal control.

(4) **Costs**. The court may assign the cost of the examination in its discretion and may redistribute those costs as appropriate.

(5) **Modification.** The court, for good cause, may alter the provisions of this rule.

(c) **Recording.** A custody evaluation may only be recorded by the examiner, who must inform the parties if the examiner elects to record the examination. The examiner must keep the recording confidential. On motion, and for good cause, the court may order that a copy of the recording, if made, be provided to the court and placed under seal, be provided to the parties subject to appropriate restrictions upon its release and use, or both.

(d) **Observers**. The parties may not have an observer present at a custody evaluation.

(e) **Examiner's Report**.

(1) **Providing the Report to the Court.** A custody evaluation report must be provided to the court and placed under seal. The court must notify all parties when it receives the report. Any party may review the report in court.

(2) **Providing the Report to the Parties' Attorneys.** A parties' attorney may obtain a copy of the report, which the attorney must keep confidential and may not disseminate without court order. The attorney's client may review the report in the attorney's possession, but the attorney must not provide a copy to his or her client.

(3) **Dissemination of the Report.** On motion, and for good cause, the court may permit dissemination of the report, which must include appropriate restrictions on its release and use.

(4) **Contents**. The examiner's report must be in writing and must set

out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(5) **Request by the Moving Party**. After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from any party, like reports of all earlier or later examinations of the same condition, which are in the possession of that party. But those reports need not be delivered by a party with custody or control of the person examined if the party shows that it could not obtain them. Any reports in the care or custody of a court, as specified in this rule, must be sought from that court. The grant of either review or receipt of those reports is subject to the court's discretion and the conditions in this rule.

(6) **Scope**. This rule does not preclude obtaining an examiner's report or deposing an examiner under other rules, unless excluded by this rule.

(f) **Stipulations.** The parties may, by stipulation approved by the court, agree upon the custody evaluation, the conditions or limitations of the evaluation, and the examiner. This rule applies to any examinations agreed to by stipulation, unless the court approves a stipulation stating otherwise.

Advisory Committee Note—2018 Amendment

TBD.

Rule 16.23. Examinations of Minors

(a) **Applicability; Motion; Notice.**

(1) This rule governs a physical or mental evaluation of a minor in family law actions.

(2) When ordering a physical or mental evaluation of a minor, the court may proceed under this rule or NRCP 35. The court's order must state the court's reasoning for proceeding under either rule and must include findings as to the best interests of the child.

(3) Upon motion and after notice to all parties and the person to be examined, a court may for good cause order an examination of a minor's mental or physical condition.

(b) **Order.** The order must comply with Rule 16.22(b).

(c) **Recording.** In a motion requesting an examination or an opposition thereto, the parties may request that an examination be audio or video recorded. When considering whether to approve a recording, the court may appoint a guardian ad litem for the minor child, hold a hearing, or both. The court may grant a request to record the examination if making the recording is in the child's best interest. Any recording must be provided to the court and placed under seal. On motion, and for good cause, the court may permit dissemination of the recording, which must include appropriate restrictions on its release and use.

(d) **Observers**.

(1) **In General.** In a motion requesting an examination or an opposition thereto, the parties may request that an observer be present at the examination. When considering whether to approve a request for an observer, the court may appoint a guardian ad litem for the minor child, hold a hearing, or both. The court may grant a request for an observer if the observer's presence is in the child's best interest and would not compromise the examination. The observer may not be any party, any party's attorney, or anyone employed by the party or their attorney. If the minor child is of sufficient age and maturity, the court may consider the child's preference in choosing the observer. The court must approve the specific observer prior to the examination, and that person must not in any way interfere with, obstruct, or participate in the examination.

(2) **Parents.** If ordered by the court, the parents of a minor may observe a physical examination, but may not interfere with, obstruct, or participate in the examination.

(e) **Examiner's Report**. The examiner's report and access to it must comply

with Rule 16.22(e)(1) and (3)-(6).

(f) **Stipulations.** Any stipulation for a minor's examination must comply with Rule 16.22(f).

Advisory Committee Note—2018 Amendment

TBD.

Rule 16.3. Discovery Commissioners

(a) **Appointment and Compensation.** A judicial district may appoint one or more discovery commissioners to serve at the pleasure of the court. In multi-judge judicial districts, appointment must be by the concurrence of a majority of all judges in the judicial district. The compensation of a discovery commissioner must not be taxed against the parties, but when fixed by the court must be paid out of appropriations made for the expenses of the judicial district.

(b) **Powers.**

(1) A discovery commissioner may administer oaths and affirmations.

(2) As directed by the court, or as authorized by these rules or local rules, a discovery commissioner may:

(A) preside at case conferences;

(B) preside at discovery resolution conferences;

(C) preside over discovery motions;

(D) preside at any other proceeding or conference in furtherance of the discovery commissioner's duties;

(E) regulate all proceedings before the discovery commissioner;

(F) enter scheduling orders; and

(G) take any other action necessary or proper for the efficient performance of discovery commissioner's duties.

(2) If agreed by the parties or ordered by the court, a discovery

commissioner also may conduct settlement conferences.

(c) **Report and Recommendation; Objections.**

(1) **Report and Recommendation.** After a discovery motion or other contested matter is heard by or submitted to a discovery commissioner, the discovery commissioner must prepare a report with the discovery commissioner's recommendations for a resolution of each unresolved dispute. The discovery commissioner may direct counsel to prepare the report. The discovery commissioner must file the report with the court and serve a copy of it on each party.

(2) **Objections.** Within 14 days after being served with a report, any party may file and serve written objections to the recommendations. Written authorities may be filed with an objection, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within 7 days after being served with the objections.

(3) **Review.** Upon receipt of a discovery commissioner's report, any objections, and any response, the court may:

(A) affirm, reverse, or modify the discovery commissioner's ruling without a hearing;

(B) set the matter for a hearing; or

(C) remand the matter to the discovery commissioner for reconsideration or further action.

Advisory Committee Note—2018 Amendment

Rule 16.3(a) and (b) are restated from the former NRCP 16.3, making clear that discovery commissioners may hear discovery motions. Rule 16.3(c) is relocated here from the former NRCP 16.1(d)(2), NRCP 16.2(j)(2), and NRCP 16.205(j)(2). A court reviews a discovery commissioner's report and recommendation de novo. However, an objecting party may not raise new arguments in support of an objection that could have been raised before the discovery commissioner but were not. *See*

Valley Health System, LLC v. Eighth Judicial District Court, 127 Nev. 167, 173, 252 P.3d 676, 680 (2011).

IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) **Real Party in Interest.**

(1) **Designation in General.** An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) **Action in the Name of the State for Another's Use or Benefit.** When a statute so provides, an action for another's use or benefit must be brought in the name of the State.

(3) **Joinder of the Real Party in Interest.** The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) **Capacity to Sue or Be Sued.** Capacity to sue or be sued is determined as follows:

(1) for an individual, including one acting in a representative capacity, by the law of this state;

(2) for a corporation, by the law under which it was organized, unless the law of this state provides otherwise; and

(3) for all other parties, by the law of this state.

(c) **Minor or Incapacitated Person.**

(1) **With a Representative.** The following representatives may sue or defend on behalf of a minor or an incapacitated person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) **Without a Representative.** A minor or an incapacitated person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incapacitated person who is unrepresented in an action.

(d) **Public Officer's Title and Name.** A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

Advisory Committee Note—2018 Amendment

Rule 17 is generally conformed to FRCP 17, except that Rule 17(b) is Nevada specific. Nevada law will determine a party's capacity to sue or be sued, except where this rule, choice of law, or other applicable principles provide otherwise. Rule 17(d) was moved into this rule from the prior NRCP 25(d)(2).

Rule 18. Joinder of Claims

(a) **In General.** A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) **Joinder of Contingent Claims.** A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

Rule 19. Required Joinder of Parties

(a) **Persons Required to Be Joined if Feasible.**

(1) **Required Party.** A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) **Joinder by Court Order.** If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(b) **When Joinder Is Not Feasible.** If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) **Pleading the Reasons for Nonjoinder.** When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) **Exception for Class Actions.** This rule is subject to Rule 23.

Advisory Committee Note—2018 Amendment

Rule 19 was generally conformed to FRCP 19. FRCP 19(a)(3) was not adopted and is not applicable in Nevada. Persons joined in an action in Nevada retain any rights they may have to move to change the venue under NRS Chapter 13 or to move to dismiss under forum nonconveniens.

Rule 20. Permissive Joinder of Parties

(a) **Persons Who May Join or Be Joined.**

(1) **Plaintiffs.** Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) **Defendants.** Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) **Extent of Relief.** Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) **Protective Measures.** The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

Rule 22. Interpleader

(a) **Grounds.**

(1) **By a Plaintiff.** Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) **By a Defendant.** A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) **Relation to Other Rules and Statutes.** This rule supplements—and does not limit—the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to—and does not supersede or limit—the remedy provided by any Nevada statute providing for interpleader. These rules apply to any action brought under statutory interpleader provisions, except as otherwise provided by Rule 81.

Rule 23. Class Actions

(a) **Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) **Aggregation.** The representative parties may aggregate the value of the

individual claims of all potential class members to establish district court jurisdiction over a class action.

(c) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of Rule 23(a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the difficulties likely to be encountered in the management of

a class action.

(d) **Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.**

(1) As soon as practicable after the commencement of an action brought as a class action, the court must determine by order whether it is to be so maintained. The order may be conditional, and may be altered or amended before the decision on the merits.

(2) When determining whether an action may be maintained as a class action, the representative party's rejection of an offer made under Rule 68 or other offer of compromise that offers to resolve less than all of the class claims asserted by or against the representative party has no impact on the representative party's ability to satisfy the requirements of Rule 23(a)(4). When the representative party is unable or unwilling to continue as the class representative, the court must permit class members an opportunity to substitute themselves as the class representative except in cases where the representative party has been sued.

(3) In any class action maintained under Rule 23(c)(3), the court should direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must advise each member that:

(A) the court will exclude the member from the class if the member so requests by a specified date;

(B) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(C) any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel.

(4) The judgment in an action maintained as a class action under Rule 23(c)(1) or (2), whether or not favorable to the class, must include and describe those whom the court finds to be members of the class. The judgment in an action

maintained as a class action under Rule 23(c)(3), whether or not favorable to the class, must include and specify or describe those to whom the notice provided in Rule 23(d)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class. In either case, the provisions of this rule should then be construed and applied accordingly.

(e) **Orders in Conduct of Actions.**

(1) When conducting actions to which this rule applies, the court may make appropriate orders:

(A) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(B) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given to some or all of the members in such manner as the court may direct:

(i) of any step in the action;

(ii) of the proposed extent of the judgment;

(iii) of the opportunity of members to signify whether they consider the representation fair and adequate;

(iv) to intervene and present claims or defenses; or

(v) to otherwise to come into the action;

(C) imposing conditions on the representative parties or on interveners;

(D) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(E) dealing with similar procedural matters.

(2) The orders may be combined with an order under Rule 16, and may be altered or amended.

(f) **Dismissal or Compromise.** A class action must not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise must be given to all members of the class in such manner as the court directs.

Advisory Committee Note—2018 Amendment

TBD.

Rule 23.1. Derivative Actions By Shareholders

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint must be verified and must allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint must also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action may not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise must be given to shareholders or members in such manner as the court directs.

Rule 23.2. Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(e), and the procedure for dismissal or compromise of the action must correspond with the procedure in Rule 23(f).

Rule 24. Intervention

(a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a state or federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) **Permissive Intervention.**

(1) **In General.** On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a state or federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) **By a Government Officer or Agency.** On timely motion, the court may permit a state or federal governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) **Delay or Prejudice.** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) **Notice and Pleading Required.** A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Advisory Committee Note—2018 Amendment

Rule 24 is amended to conform to the federal rule, including the addition of Rule 24(b)(2), which was not in the prior Nevada rule.

Rule 25. Substitution of Parties

(a) **Death.**

(1) **Notice of Death.** Upon a party's death, any party or a decedent's attorneys, successors, or representatives may file a notice of the death. If claims by or against the decedent are not extinguished or continued among the parties, any notice of death served on the decedent's successors or representatives must indicate that the court may dismiss the decedent's claims or strike the decedent's answer if the successors or representatives do not make a motion to substitute or take other

action to continue to prosecute the action within 180 days after service of the notice of death.

(2) **Dismissal if the Claim Is Extinguished.** If a party dies and the claims are extinguished, the court must, on motion, dismiss the claims by or against the decedent.

(3) **Continuation Among the Remaining Parties.** If a party dies and the party's claims survive only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. Upon a finding that the claims so survive, the court must dismiss the decedent from the action.

(4) **Substitution if the Claim Is Not Extinguished.**

(A) If a party dies and the claims are not extinguished or continued among the parties, the action does not abate and, unless otherwise ordered by the court, the remaining parties must continue to prosecute the action in accordance with these rules and any court orders entered prior to the decedent's death. The parties or the decedent's attorneys, successors, or representatives may make any appropriate motion, and the court may issue any appropriate order or direct any appropriate proceeding, to ensure the continuation of the action and the proper administration of justice in the case. Such a motion, order, or proceeding may include:

(i) substituting the proper party;

(ii) appointing a special administrator or guardian ad litem;

(iii) permitting the remaining parties to continue the action with the decedent's name in the caption as if the death had not occurred; or

(iv) if the decedent was protected by insurance, permitting the action to proceed solely by or against the decedent's insurance carrier.

(B) If the decedent's successors or representatives take no action to continue to prosecute the action within 180 days after service of a notice of death that complied with Rule 25(a)(1), the court may, on motion or on its own order to

show cause, dismiss the claims by or against the decedent or strike the decedent's answer.

(5) **Service.** A notice of death, a motion to substitute, or any other motion made under Rule 25(a) must be served on the parties and the decedent's attorneys, successors, and representatives. Service on the parties must be made as provided in Rule 5 and on nonparties as provided in Rule 4.

(b) **Incapacitated Persons.** If a party becomes incapacitated, the court may, on motion, permit the action to be continued by or against the party's representative. If no such motion is made within a reasonable time, the incapacitated person's representative, the other parties, or the court may proceed under Rule 25(a)(4). Any motions or orders must be served as provided in Rule 25(a)(5).

(c) **Transfer of Interest.** If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(5).

(d) **Public Officers; Death or Separation from Office.** An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings must be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

Advisory Committee Note—2018 Amendment

Rule 25(a) is amended to avoid the mandatory dismissal of a decedent's claim, to encompass the death of a defendant, and to provide the court, the remaining parties, and the decedent's attorneys, successors, and representatives flexibility when dealing with a party's death. The prior mandatory dismissal provision is now

discretionary with the court after 180 days instead of 90 days. The new rule clarifies that the action should continue among the other parties to the action after one party's death, and not cease to be prosecuted. The alternatives to substitution that the new rule provides are incorporated from the prior rule, NRAP 43, and other states' rules and statutes. Such alternatives are examples of appropriate actions, and the court may take other appropriate action to continue the prosecution of the action or to achieve the proper administration of justice. These provisions, including the court's ability to permit the remaining parties to continue the action with the decedent's name in the caption as if the death had not occurred, do not authorize orders or proceedings in violation of due process or contrary to probate law.

Rule 25(a) is intended to work in harmony with NRS 7.075. An attorney should not be sanctioned under NRS 7.075(2) for failing to file a motion for substitution if (a) no substitution is warranted, or (b) the remaining parties, the decedent's successors or representatives, or the court proceed under Rule 25(a) in a manner not involving substitution.

Rule 25(b) was amended to provide the same flexibility to the court and the parties when a party becomes incapacitated and that party's representative is not substituted. Rule 25(c) and (d) are conformed to the corresponding federal rules. The former NRCP 25(d)(2) was moved to Rule 17(d).

V. DISCLOSURES AND DISCOVERY

Rule 26. General Provisions Governing Discovery

(a) **Discovery Methods.** At any time after the filing of a joint case conference report, or not sooner than 10 days after a party has filed a separate case conference report, or upon order by the court or discovery commissioner, any party who has complied with Rule 16.1(a)(1), 16.2, or 16.205 may obtain discovery by any means permitted by these rules.

(b) **Discovery Scope and Limits.** Unless otherwise limited by order of the

court in accordance with these rules, the scope of discovery is as follows:

(1) **Scope.** Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) **Limitations.**

(A) **Frequency.** The court may alter the limits in these rules on the number of depositions and interrogatories, the length of depositions under Rule 30 or the number of requests under Rule 36.

(B) **Electronically Stored Information.** A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery, including costs of complying with the court's order.

(C) **When Required.** On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

(3) **Trial Preparation: Materials.**

(A) **Documents and Tangible Things.** Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) **Protection Against Disclosure.** If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) **Previous Statement.** Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(4) **Trial Preparation: Experts.**

(A) **Deposition of an Expert Who May Testify.** A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under Rules 16.1(a)(2)(B), 16.2(e)(3), or 16.205(e)(3) the deposition may not be conducted until after the report is provided.

(B) **Trial-Preparation Protection for Draft Reports or Disclosures.** Rule 26(b)(3) protects drafts of any report or disclosure required under Rules 16.1(a), 16.2(d) and (e), 16.205(d) and (e), or 26(b)(1) regardless of the form in which the draft is recorded.

(C) **Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.** Rule 26(b)(3) protects communications between the party's attorney and any witness required to provide a report under Rules 16.1(a), 16.2(d) and (e), or 16.205(d) and (e) regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) **Expert Employed Only for Trial Preparation.** Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other

means.

(5) **Claiming Privilege or Protecting Trial Preparation Materials.**

(A) **Information Withheld.** When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) **Information Produced.** If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) **Protective Orders.**

(1) **In General.** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to an out-of-state deposition, in the court for the judicial district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance,

embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) **Ordering Discovery.** If a motion for a protective order is wholly or partially denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) **Awarding Expenses.** Rule 37(a)(5) applies to the award of expenses.

(d) **Sequence of Discovery.** Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(1) methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery

(e) **Supplementing Disclosures and Responses.**

(1) **In General.** A party who has made a disclosure under Rules 16.1, 16.2, 16.205—or responded to a request for discovery with a disclosure or response—is under a duty to timely supplement or correct the disclosure or response to include information thereafter acquired if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) **Expert Witness.** With respect to testimony of an expert from whom a report is required under Rules 16.1(a)(2)(B), 16.2(e)(3), or 16.205(e)(3) the duty extends both to information contained in the report and to information provided through a deposition of the expert. Any additions or other changes to this information must be disclosed by the time the party's disclosures under Rules 16.1(a)(3), 16.2(f), or 16.205(f) are due.

(f) **Form of Responses.** Answers and objections to interrogatories or requests for production must identify and quote each interrogatory or request for production in full immediately preceding the statement of any answer or objections thereto. Answers, denials, and objections to requests for admission must identify and quote each request for admission in full immediately preceding the statement of any answer, denial, or objection thereto.

(g) **Signing of Disclosures, Discovery Requests, Responses, and Objections.**

(1) **Signature Required; Effect of Signature.** Every disclosure and report made under Rules 16.1, 16.2, and 16.205, other than reports prepared and signed by an expert witness, and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name—or by the party personally, if unrepresented—and must, when available, state the signer's physical and e-mail addresses, and telephone number. By signing, an attorney or

party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) **Failure to Sign.** Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) **Sanction for Improper Certification.** If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

(h) **Demand for Prior Discovery.** Whenever a party makes a written demand for disclosures or discovery which took place prior to the time the party became a party to the action, whether under Rule 16.1 or Rule 26, each party who has previously made disclosures or responded to a request for admission or production or answered interrogatories must make available to the demanding party the document(s) in which the disclosures and responses to discovery are contained

for inspection and copying, or furnish the demanding party a list identifying each such document by title. Upon further demand from the demanding party, at the expense of the demanding party, the recipient of such demand must furnish a copy of any listed discovery disclosure or response specified in the demand or, in the case of document disclosure or request for production, must make available for inspection by the demanding party all documents and things previously produced. Further, each party who has taken a deposition must make a copy of the transcript thereof available to the demanding party at its expense.

Advisory Committee Note—2018 Amendment

TBD.

Rule 27. Depositions to Perpetuate Testimony

(a) **Before an Action is Filed.**

(1) **Petition.** A person who wants to perpetuate testimony—including his or her own—about any matter cognizable in any court within the United States may file a verified petition in district court. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a court within the United States but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) **Notice and Service.** At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the state, or service may be waived, in the manner provided in Rules 4, 4.1, 4.2, 4.3, or 4.4. The court must appoint an attorney to represent persons who were not served in the manner provided in Rules 4.2, 4.3, or 4.4(a) or (b), did not waive or admit service, and did not appear at the hearing, and to cross-examine the deponent if the person is not otherwise represented. If any expected adverse party is a minor or is incapacitated, Rule 17(c) applies.

(3) **Order and Examination.** If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) **Using the Deposition.** A deposition to perpetuate testimony may be used in Nevada under Rule 32(a) in any later-filed action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible under Nevada law of evidence.

(b) **Pending Appeal.**

(1) **In General.** The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) **Motion.** The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) **Court Order.** If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending action.

(c) **Reserved.**

Advisory Committee Note—2018 Amendment

Rule 27 is generally conformed to FRCP 27, with modifications adapting it for use in Nevada. FRCP 27(c) has never been adopted for use in Nevada.

Rule 28. Persons Before Whom Depositions May Be Taken

(a) **Within the United States.**

(1) **In General.** Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(2) **Definition of "Officer."** The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) **In a Foreign Country.**

(1) **In General.** A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) **Issuing a Letter of Request or a Commission.** A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) **Form of a Request, Notice, or Commission.** When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) **Letter of Request—Admitting Evidence.** Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within Nevada.

(c) **Disqualification.** A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.

Rule 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified—but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

Rule 30. Depositions by Oral Examination

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

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

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

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

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

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

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

(B) if the deponent is confined in prison.

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

(1) **Notice in General.** A party who wants to depose a person by oral questions must give not less than 14 days written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

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

(3) **Method of Recording**.

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

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

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

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

(A) **Before the Deposition.** Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated

under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

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

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

(6) **Notice or Subpoena Directed to an Organization.** In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) to review the transcript or recording; and

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

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

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

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

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

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

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

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

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

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

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

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

(1) attend and proceed with the deposition; or

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

(h) **Expert Witness Fees.**

(1) **In General.**

(A) A party desiring to depose any expert who is to be asked to express an opinion, must pay the reasonable and customary hourly or daily fee for the actual time consumed in the examination of that expert by the party noticing the deposition.

(B) If any other attending party desires to question the witness, that party is responsible for the expert's fee for the actual time consumed in that party's examination.

(2) **Advance Request; Balance Due.**

(A) If requested by the expert before the date of the deposition, the party taking the deposition of an expert must tender the expert's fee based on the anticipated length of that party's examination of the witness.

(B) If the deposition of the expert takes longer than anticipated, any party responsible for any additional fee must pay the balance of that expert's fee within 30 days of receipt of an invoice from the expert.

(3) **Preparation; Review of Transcript.** Any party identifying an expert whom the party expects to call at trial is responsible for any fee charged by the expert for preparing for the deposition and reviewing the deposition transcript.

(4) **Objections.**

(A) **Motion; Contents; Notice.** If a party deems that an expert's hourly or daily fee for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion must be accompanied by an affidavit stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. Notice of this motion must be given to the expert.

(B) **Court Determination of Expert Fee.** If the court determines that the fee demanded by the expert is unreasonable, the court must set the fee of the expert for providing deposition testimony.

(C) **Sanctions.** The court may impose a sanction under Rule 37 against any party who does not prevail, and in favor of any party who does prevail, on a motion to set expert witness fee, provided the prevailing party has engaged in a reasonable and good faith attempt at an informal resolution of any issues presented by the motion.

Advisory Committee Note—2018 Amendment

Rule 30 is conformed to FRCP 30, with Nevada modifications. Rule 30(a)(2)(A)(1), like its counterpart in the Federal Rules, limits the number of depositions that may be taken under this Rule to 10 per side unless the parties have stipulated to, or a court order allows, more.

The "7 hours of testimony" specified in Rule 30(d)(1) means 7 hours on the record. The time taken for convenience breaks, recess for a meal, or an adjournment under Rule 30(d)(3) does not count as deposition time.

Discussion between the deponent and counsel during a convenience break is not treated as privileged unless the break was called by counsel to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

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

Rule 30(h) is retained from the prior NRCP 30(h), but has been stylistically revised.

Rule 31. Depositions by Written Questions

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

(1) **Without Leave.** A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

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

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

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

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

(iii) the party seeks to take a deposition before the time specified in Rule 26(a); or

(B) if the deponent is confined in prison.

(3) **Service; Required Notice.** A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or

descriptive title and the address of the officer before whom the deposition will be taken.

(4) **Questions Directed to an Organization.** A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) **Questions from Other Parties.** Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) **Delivery to the Officer; Officer's Duties.** The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) **Notice of Completion or Filing.**

(1) **Completion.** The party who noticed the deposition must notify all other parties when it is completed.

(2) **Filing.** A party who files the deposition must promptly notify all other parties of the filing.

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 Nevada law of 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 Nevada law of 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, infirmity, or imprisonment;

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

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

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

(6) **Limitations on Use.**

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

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

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

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

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

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

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

(b) **Objections to Admissibility.** Subject to Rules 28(b) and 32(d)(3), an

objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

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

(d) **Waiver of Objections.**

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

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

(A) before the deposition begins; or

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

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

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

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

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

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

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

(4) **To Completing and Returning the Deposition.** An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Advisory Committee Note—2018 Amendment

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

Rule 33. Interrogatories to Parties

(a) **In General.**

(1) **Number.** Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 40 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) **Scope.** An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) **Answers and Objections.**

(1) **Responding Party.** The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) **Time to Respond.** The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) **Answering Each Interrogatory.** Each interrogatory must be set out, and, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) **Objections.** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(5) **Signature.** The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) **Use.** An answer to an interrogatory may be used to the extent allowed by Nevada law of evidence.

(d) **Option to Produce Business Records.** If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Advisory Committee Note—2018 Amendment

Rule 33 is conformed to FRCP 33, while preserving in Rule 33(a)(1) Nevada practice as to the number of interrogatories and in Rule 33(b)(4) the applicability of Rule 37 to unfounded objections and failure to answer.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, For Inspection and Other Purposes

(a) **In General.** A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) **Procedure.**

(1) **Contents of the Request.** The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) **Responses and Objections.**

(A) **Time to Respond.** The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated under Rule 29 or be ordered by the court.

(B) **Responding to Each Item.** For each item or category, the response must either state that inspection and related activities will be permitted as requested or state the ground for objecting to the request, with specificity, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in

the request or another reasonable time specified in the response.

(C) **Objections.** An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) **Responding to Request for Production of Electronically Stored Information.** The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) **Producing the Documents or Electronically Stored Information.** Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) a party must produce documents as they are kept in the usual course of business unless that form of production would make it unreasonably burdensome for the discovering party to correlate the documents being produced with the categories in its request for production. In such a case the producing party must specify the records in sufficient detail to permit the discovering party to locate the documents that are responsive to the categories in the request for production. Otherwise, the producing party must organize and label them to correspond to the categories in the request;

(ii) if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) a party need not produce the same electronically stored information in more than one form.

(c) **Nonparties.** As provided in Rule 45, a nonparty may be compelled to produce documents, electronically stored information and tangible things or to permit an inspection.

(d) **Expenses of Copying Documents and/or Producing Electronically Stored Information.** Unless the court orders otherwise, the party requesting production under this rule must pay the responding party the reasonable cost of copying documents. If the responding party produces electronically stored information by a media storage device, the requesting party must pay the reasonable cost of the device.

Advisory Committee Note—2018 Amendment

Rule 34 is conformed to FRCP 34 with Nevada specific alterations in Rule 34(b)(2)(E)(i). Rule 34(d) is retained from the prior Nevada rule.

Rule 35. Physical and Mental Examinations (ALTERNATE 1)

(a) **Order for Examination.**

(1) **In General.** The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

(2) **Motion and Notice; Contents of the Order.**

(A) The order may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) The order must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it. The examination must take place in an appropriate professional setting and in the judicial district in which the case is pending, unless a different location is agreed to by the parties or ordered by the court.

(3) **Recording the Examination.** The party against whom the order was issued may, at that party's expense, have the examination audio recorded. The

examiner may also have the examination audio recorded at his or her expense. If the party against whom the order is issued elects to audio record the examination, the party must advise the examiner of the recording prior to commencement of the examination. If the examiner elects to audio record the examination, the examiner must advise of the recording prior to the examination. Any party may obtain a copy of any audio recording by making a written request for the recording.

(4) **Observing the Examination.** Unless otherwise ordered by the court or discovery commissioner for good cause, the party against whom the order was issued may have one observer present for the examination, except that the observer may not be the party's attorney, or anyone employed by the party or the party's attorney. An observer must not in any way interfere, obstruct, or participate in the examination.

(b) **Examiner's Report.**

(1) **Request by the Party or Person Examined.** Unless otherwise ordered by the court or discovery commissioner for good cause, the party who moved for the examination must provide, upon a request by the party against whom the examination order was issued or by the person examined, a copy of the examiner's report within 30 days of the examination or by the date of the applicable expert disclosure deadline, whichever occurs first.

(2) **Contents.** The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) **Request by the Moving Party.** After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) **Waiver of Privilege.** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy,—concerning testimony about all examinations of the same condition.

(5) **Failure to Deliver a Report.** The court on motion may order—on just terms—that a party deliver the report of an examination. If the report(s) is not provided, the court may exclude the examiner's testimony at trial.

(6) **Scope.** Rule 35(b) applies also to an examinations made by the parties' agreement, unless the agreement states otherwise. Rule 35 does not preclude obtaining an examiner's report or deposing an examiner under other rules.

Advisory Committee Note—2018 Amendment

Rule 35(a)(1) permits an examination. Rule 35(a)(2)(B) directs that the examination must take place in the judicial district where the case is pending unless otherwise stipulated by the parties or ordered by the Court. The examination must be performed by a person licensed or provisionally licensed or certified in Nevada and take place in a professional medical office or setting. A hotel room or attorney's office will not suffice. Rule 35(a)(3) permits the audio recording of an examination without leave of court. As permitted by the rule, either party may transcribe the audio recording of the examination. It is envisioned that the primary purpose of such transcription would be to address by motion any irregularity that occurred during the examination. At trial, a party may use any portion of the transcription as permitted by Nevada law of evidence. Rule 35(a)(4) allows the person being examined to have an observer present during the examination unless otherwise ordered upon a showing of good cause. In cases involving minors, conservators and or guardians, the notice requirements and who may obtain a copy of the report is governed by the law applicable to minors, conservators and guardians. If a report is confidential, then obtaining a copy may require an order from the court. If an examination is required

as part of a child custody evaluation, a parent as an observer may not be appropriate. The examiner may have a member of the examiner's staff present during the examination if it is necessary in order for the examiner to comply with accepted standards of care or reasonable office procedures.

The report required by Rule 35(b) may only contain opinions concerning the physical or mental condition in controversy for which the examiner is qualified to render an opinion.

The disclosure deadline for the report in Rule 35(b)(1) contemplates that, for the vast majority of cases, the examiner's report will be required to be disclosed at the time of the initial expert disclosure deadline, if that deadline is within 30 days of the examination. There may be rare circumstances that would justify a rebuttal Rule 35 examination. Any report prepared of from a rebuttal examination must be timely disclosed by the rebuttal expert disclosure deadline or within 30 days of the examination, whichever occurs first. If the expert disclosure deadlines have passed, a party seeking a Rule 35 examination must move to reopen the applicable expert disclosure deadlines unless otherwise stipulated in writing by the parties. In order to reopen an expert disclosure deadline, the moving party must demonstrate excusable neglect or changed circumstances, such as where there has been an unanticipated change in a party's physical or mental condition.

Rule 35. Physical and Mental Examinations (ALTERNATE 2)

(a) **Order for Examination.**

(1) **In General.** The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

(2) **Motion and Notice; Contents of the Order.**

(A) The order may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) The order must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it. The examination must take place in an appropriate professional setting in the judicial district in which the case is pending, unless otherwise agreed by the parties or ordered by the court.

(3) **Recording the Examination.** The party against whom the order is being requested may seek a condition in the order, upon a showing of good cause, allowing that party to audio record the examination at that party's expense. The examiner may also have the examination audio recorded at his or her expense. If the party against whom the order is issued is allowed to audio record the examination, the party must advise the examiner of the recording prior to commencement of the examination. If the examiner elects to audio record the examination, the examiner must advise of the recording prior to the examination. Any party may obtain a copy of any audio recording by making a written request for the recording.

(4) **Observing the Examination.** The party against whom the order is being requested may seek a condition in the order, upon a showing of good cause, allowing that party to have one observer present for the examination, except that the observer may not be the party's attorney, or anyone employed by the party or the party's attorney. Such an observer must not in any way interfere, obstruct, or participate in the examination, and may only observe the examination, except as otherwise specified in the order. In the event the party against whom the order was issued is a minor, the minor is permitted to have a parent or legal guardian observe the examination without leave of court.

(b) **Examiner's Report.**

(1) **Request by the Party or Person Examined.** Unless otherwise ordered by the court or discovery commissioner for good cause, the party who moved

for the examination must provide, upon a request by the party against whom the examination order was issued or by the person examined, a copy of the examiner's report within 30 days of the examination or by the date of the applicable expert disclosure deadline, whichever occurs first.

(2) **Contents.** The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) **Request by the Moving Party.** After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) **Waiver of Privilege.** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) **Failure to Deliver a Report.** The court on motion may order—on just terms—that a party deliver the report of an examination. If the report(s) is not provided, the court may exclude the examiner's testimony at trial.

(6) **Scope.** Rule 35(b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. Rule 35 does not preclude obtaining an examiner's report or deposing an examiner under other rules.

Advisory Committee Note—2018 Amendment

TBD.

Rule 35. Physical and Mental Examinations (ALTERNATE 3)

(a) **Order for Examination.**

(1) **In General.** The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

(2) **Motion and Notice; Contents of the Order.**

(A) The order may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) The order must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it. The examination must take place in an appropriate professional setting in the judicial district in which the case is pending, unless otherwise agreed by the parties or ordered by the court.

(3) **Recording the Examination.** The party against whom the order was issued may, at that party's expense, have the examination audio recorded. The examiner may also have the examination audio recorded at his or her expense. If the party against whom the order is issued is allowed to audio record the examination, the party must advise the examiner of the recording prior to commencement of the examination. If the examiner elects to audio record the examination, the examiner must advise of the recording prior to the examination. Any party may obtain a copy of any audio recording by making a written request for the recording.

(4) **Observing the Examination.** The party against whom the order is being requested may seek a condition in the order, upon a showing of good cause, allowing that party to have one observer present for the examination, except that the observer may not be the party's attorney, or anyone employed by the party or the party's attorney. Such an observer must not in any way interfere, obstruct, or participate in the examination, and may only observe the examination, except as

otherwise specified in the order. In the event the party against whom the order was issued is a minor, the minor is permitted to have a parent or legal guardian observe the examination without leave of court.

(b) **Examiner's Report.**

(1) **Request by the Party or Person Examined.** Unless otherwise ordered by the court or discovery commissioner for good cause, the party who moved for the examination must provide, upon a request by the party against whom the examination order was issued or by the person examined, a copy of the examiner's report within 30 days of the examination or by the date of the applicable expert disclosure deadline, whichever occurs first.

(2) **Contents.** The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) **Request by the Moving Party.** After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) **Waiver of Privilege.** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) **Failure to Deliver a Report.** The court on motion may order—on just terms—that a party deliver the report of an examination. If the report(s) is not provided, the court may exclude the examiner's testimony at trial.

(6) **Scope.** Rule 35(b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. Rule 35 does not preclude obtaining an examiner's report or deposing an examiner under other rules.

Advisory Committee Note—2018 Amendment

TBD.

Rule 36. Requests for Admission

(a) **Scope and Procedure.**

(1) **Scope.** A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) **Form; Copy of a Document.** Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) **Time to Respond; Effect of Not Responding.** A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) **Answer.** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer

must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) **Objections.** The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) **Motion Regarding the Sufficiency of an Answer or Objection.** The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(7) **Limitations on Number of Requests.**

(A) No party may serve upon any other single party to an action more than 40 requests for admission under Rule 36(a)(1)(A) without obtaining:

(i) a written stipulation under Rule 29 of the party to which the additional requests are directed; or

(ii) upon a showing of good cause, a court order granting leave to serve a specific number of additional requests.

(B) Subparts of requests count as separate requests. There is no limitation on requests for admission relating to the genuineness of documents under Rule 36(a)(1)(B).

(b) **Effect of an Admission; Withdrawing or Amending It.** A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(d)-(e), the court may permit withdrawal or amendment if it would promote the presentation of

the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Advisory Committee Note—2018 Amendment

Rule 36 is conformed to FRCP 36, while preserving the prior NRCP 36(c) as Rule 36(a)(7).

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) **Motion for an Order Compelling Disclosure or Discovery.**

(1) **In General.** On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) **Appropriate Court.** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) **Specific Motions.**

(A) **To Compel Disclosure.** If a party fails to make a disclosure required by Rules 16.1(a), 16.2(d), or 16.205(d), any other party may move to compel disclosure and for appropriate sanctions.

(B) **To Compel a Discovery Response.** A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule

30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

(C) **Related to a Deposition.** When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) **Evasive or Incomplete Disclosure, Answer, or Response.** For purposes of Rule 37(a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond. A party's production of documents that is not in compliance with Rule 34(b)(2)(E)(i) may also be treated as a failure to produce documents.

(5) **Payment of Expenses; Protective Orders.**

(A) **If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).** If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) **If the Motion Is Denied.** If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) **If the Motion Is Granted in Part and Denied in Part.** If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) **Failure to Comply with a Court Order.**

(1) **Sanctions.**

(A) **For Not Obeying a Discovery Order.** If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rules 35 or 37(a), the court may issue further just orders that may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) **For Not Producing a Person for Examination.** If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(1)(A), unless the disobedient party shows that it cannot produce the other person.

(C) **Payment of Expenses.** Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) **Failure to Disclose, to Supplement an Earlier Response, or to Admit.**

(1) **Failure to Disclose or Supplement.** If a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), Rule 16.2(d) or (e), Rule 16.205(d) or (e), or Rule 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(1)(A).

(2) **Failure to Admit.** If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the

matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) **Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.**

(1) **In General.**

(A) **Motion; Grounds for Sanctions.** The court, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4)—fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) **Certification.** A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) **Unacceptable Excuse for Failing to Act.** A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) **Types of Sanctions.** Sanctions may include any of the orders listed

in Rule 37(b). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) **Failure to Preserve Electronically Stored Information.** If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

(f) **Failure to Participate in Framing a Discovery Plan.** If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 16.1(b), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

Advisory Committee Note—2018 Amendment

TBD.

VI. TRIALS

Rule 38. Right to a Jury Trial; Demand

(a) **Right Preserved.** The right of trial by jury as declared by the Constitution of the State or as given by a statute of the State is preserved to the parties inviolate.

(b) **Demand; Deposit of Jurors' Fees.** On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—at any time after the commencement of the action and not later than the time of the entry of the order first setting the case for trial;

(2) filing the demand in accordance with Rule 5(d); and

(3) unless the local rules provide otherwise, when a party files a demand, the party must deposit with the court clerk an amount of money equal to the fees to be paid the trial jurors for their services for the first day of trial.

(c) **Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) **Waiver; Withdrawal.**

(1) A party's failure to properly file and serve a demand constitutes the party's waiver of a jury trial.

(2) A proper demand for a jury trial may be withdrawn only if the parties consent, or by court order for good cause upon such terms and conditions as the court may fix.

Advisory Committee Note—2018 Amendment

Rule 38 is largely conformed to the federal rule except in Rule 38(b)(1) and (3), and (d)(2); the provisions specifying jury demand timing, deposit of jury fees, and withdraw of the demand by court order. The listed differences are retained from the prior NRCP 38.

Rule 39. Trial by Jury or by the Court

(a) **By Jury.** When a jury trial has been demanded under Rule 38, the action must be designated as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no right to a jury trial.

(b) **By the Court.** Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any or all issues for which a jury might have been demanded.

(c) **Advisory Jury; Jury Trial by Consent.** In an action not triable of right by a jury, the court, on motion:

(1) may try any issue with an advisory jury; or,

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right.

Advisory Committee Note—2018 Amendment

Rule 39 is conformed to the federal rule, but the rule retains the Nevada distinctions in Rule 39(c).

Rule 40. Scheduling of Cases for Trial

The judicial districts must provide by rule for scheduling trials. Courts must give priority to actions entitled to priority by statute.

Rule 41. Dismissal of Actions (ALTERNATE 1)

(a) **Voluntary Dismissal: Effect Thereof.**

(1) **By the Plaintiff.**

(A) **Without a Court Order.** Subject to Rules 23(f), 23.1, 23.2, and 66 and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) **Effect.** Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(C) **Filing Fees.** Unless otherwise stipulated, the plaintiff must repay the defendant's filing fees.

(2) **By Order of Court; Effect.** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under Rule 41(a)(2) is without prejudice.

(b) **Involuntary Dismissal: Effect.** If the plaintiff fails to comply with these rules or a court order, a defendant may move to dismiss the action or any claim

against the defendant. Unless the dismissal order or an applicable statute provides otherwise, a dismissal under Rule 41(b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

(c) **Dismissing a Counterclaim, Cross-Claim, or Third-Party Claim.** This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) **Costs of a Previously Dismissed Action.** If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

(e) **Dismissal for Want of Prosecution.**

(1) **Procedure.** When the time periods in this rule have expired:

(A) any party may move to dismiss an action for lack of prosecution; or

(B) a court may, on its own, issue an order to show cause why an action should not be dismissed for lack of prosecution. After briefing, the court may hold a hearing or take the matter under submission, as provided by local rules on motion practice.

(2) **Dismissing an Action Prior to Trial.**

(A) A court may dismiss an action for want of prosecution if a plaintiff fails to bring an action to trial within 2 years after the action was filed.

(B) A court must dismiss an action for want of prosecution if a plaintiff has failed to bring the action to trial within 5 years after the action was filed.

(3) **Dismissing an Action After a New Trial is Granted.** A court must dismiss an action for want of prosecution if a plaintiff fails to bring an action to trial within 3 years after the entry of an order granting a new trial.

(4) **Dismissing an Action After an Appeal.**

(A) If a party appealed an order granting a new trial and the order is affirmed, a court must dismiss an action for want of prosecution if the plaintiff failed to bring the action to trial within 3 years after the remittitur was filed in the trial court.

(B) If a party appealed a judgment and the judgment was reversed on appeal and remanded for a new trial, a court must dismiss an action for want of prosecution if the plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.

(5) **Time Extension.** The parties may stipulate in writing that the time in which to prosecute an action may be extended. If two time periods requiring mandatory dismissal apply, the longer time period controls.

(6) **Dismissal with Prejudice.** A dismissal under Rule 41(e) is a bar to another action upon the same claim for relief against the same defendants unless the court provides otherwise in its order dismissing the action.

Advisory Committee Note—2018 Amendment

Rule 41 largely conforms to its federal counterpart, but the rule retains the Nevada-specific provisions in Rule 41(a)(1)(C) and Rule 41(e). The reorganization of Rule 41(e) is stylistic and not intended to abrogate existing case law interpreting it. Rule 41(e)(5) clarifies that if two time periods requiring mandatory dismissal apply, the longer time period applies.

Rule 41. Dismissal of Actions (ALTERNATE 2)

(a) **Voluntary Dismissal: Effect Thereof.**

(1) **By the Plaintiff.**

(A) **Without a Court Order.** Subject to Rules 23(f), 23.1, 23.2, and 66 and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) **Effect.** Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(C) **Filing Fees.** Unless otherwise stipulated, the plaintiff must repay the defendant's filing fees.

(2) **By Order of Court; Effect.** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under Rule 41(a)(2) is without prejudice.

(b) **Involuntary Dismissal: Effect.** If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against the defendant. Unless the dismissal order or an applicable statute provides otherwise, a dismissal under Rule 41(b) and any dismissal not under

this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

(c) **Dismissing a Counterclaim, Cross-Claim, or Third-Party Claim.** This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) **Costs of a Previously Dismissed Action.** If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

Advisory Committee Note—2018 Amendment

Rule 41 largely conforms to its federal counterpart, including adopting the federal rule on failure to prosecute. The rule retains the Nevada-specific provisions in Rule 41(a)(1)(C).

Rule 42. Consolidation; Separate Trials

(a) **Consolidation.** If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) **Separate Trials.** For convenience, to avoid prejudice, or to expedite and

economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any right to a jury trial.

Rule 43. Taking Testimony

(a) **In Open Court.** At trial, the witnesses' testimony must be taken in open court unless provided otherwise by applicable law. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) **Affirmation Instead of an Oath.** When these rules require an oath, a solemn affirmation suffices.

(c) **Evidence on a Motion.** When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) **Interpreter.** The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

Advisory Committee Note—2018 Amendment

Rule 43 is generally conformed to the federal rule. Rule 43(d) is intended to work in harmony with NRS Chapters 1 and 50, and any other state law governing interpreters.

Rule 44. Proving an Official Record

(a) **Means of Proving.**

(1) **Domestic Record.** Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United

States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) **Foreign Record.**

(A) **In General.** Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) **Final Certification of Genuineness.** A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) **Other Means of Proof.** If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) **Lack of a Record.** A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with Rule 44(a)(2)(C)(ii).

(c) **Other Proof.** A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law.

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible as evidence. The court's determination must be treated as a ruling on a question of law.

Rule 45. Subpoena

(a) **In General.**

(1) **Form and Contents.**

(A) **Requirements—In General.** Every subpoena must:

(i) state the court from which it is issued;

(ii) state the title and case number of the action and the name and address of the party or attorney responsible for issuing the subpoena;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(c) and (d).

(B) **Command to Attend a Deposition—Notice of the Recording Method.** A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) **Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.** A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) **Command to Produce; Included Obligations.** A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) **Issuing Court.** A subpoena must issue from the court where the action is pending.

(3) **Issued by Whom**. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.

(4) **Prior Notice to Parties; Objections.**

(i) **Notice to Other Parties Before Service.** If the subpoena commands the production of documents, electronically stored information, or

tangible things or the inspection of premises before trial, then at least 7 days before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party to permit a party to object to the subpoena during that time.

(ii) **Party Objections.** An objecting party may serve objections to the subpoena and must file a motion for a protective order under Rule 26(c) within 7 days after being served with notice and a copy of the subpoena. If a party serves objections or files a motion for a protective order, the subpoena may not be served until the court issuing the subpoena has ruled on the objections.

(b) **Service.**

(1) **By Whom and How; Tendering Fees.** Any person who is at least 18 years old and not a party may serve a subpoena, as appropriate under Rule 4.2 or 4.3. If the subpoena requires that person's attendance, the serving party must tender the fee for one day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the State or any of its officers or agencies.

(2) **Service in Nevada.** Subject to the provisions of Rule 45(c)(3)(A)(ii), a subpoena may be served at any place within the state.

(3) **Service in Another State or Territory.** A subpoena may be served in another state or territory of the United States as provided by the law of that state or territory.

(4) **Service in a Foreign Country.** A subpoena may be served in a foreign country as provided by the law of that country.

(5) **Service of a Subpoena from Another State or Territory in Nevada.** A subpoena issued by a court in another state or territory of the United States that is directed to a person in Nevada must be presented to the clerk of the district court in the county in which discovery is sought to be conducted. A subpoena issued under NRS Chapter 53 may be served under this rule.

(6) **Proof of Service.** Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) **Protection of Persons Subject to Subpoena.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court where the subpoena was issued must enforce this duty and may impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.**

(i) A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(ii) If documents, electronically stored information, or tangible things are produced to the party that issued the subpoena without an appearance at the place of production, the party receiving such materials must promptly copy or electronically reproduce the documents or information, photograph any tangible items not subject to copying, and serve these items on every other party. The party issuing the subpoena may also serve a statement of the reasonable cost of copying, reproducing, and/or photographing, which the recipient must promptly pay. If a party disputes the cost, then the court, on motion, must determine the reasonable cost of copying the documents or information, or photographing the tangible items.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection, or a person claiming a proprietary interest in the subpoenaed documents, tangible things, or place to be inspected, may serve on

the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The person making the objection must serve it before the earlier of the time specified for compliance or 14 days after the subpoena is served on the party or person. If an objection is made:

(i) the party serving the subpoena is not entitled to inspect and copy the materials or tangible things or to inspect the premises except by order of the court issuing the subpoena;

(ii) on notice to the parties and the objecting and commanded persons, the serving party may move the court that issued the subpoena for an order compelling production or inspection; and

(iii) an order compelling production or inspection must protect the person commanded to produce documents or tangible things or to permit inspection from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court that issued a subpoena must quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, unless the person is commanded to attend trial within Nevada;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to an undue burden.

(B) **When Permitted.** On timely motion, the court that issued a subpoena may quash or modify the subpoena if it requires disclosing:

(i) a trade secret or other confidential research, development, or commercial information; or

(ii) an un-retained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order an appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) **Duties in Responding to Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt; Costs.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court that

issued the subpoena. In connection with a motion to compel brought under Rule 45(c)(2)(B), the court may consider the provisions of Rule 37(a)(5) in awarding the prevailing party reasonable expenses incurred in making or opposing the motion.

Advisory Committee Note—2018 Amendment

Rule 45 is generally conformed to FRCP 45. Rule 45(a)(4) is new. Rule 45(a)(4)(i) adopts a modified form of FRCP 45(a)(4), but requires at least 7 days' notice to the other parties prior to serving a subpoena on the person to whom it is directed. Within that 7 day period, a party objecting to the subpoena may serve objections on all parties to preclude service of the subpoena, and must also file a motion for a protective order. Rule 45(b) clarifies how extra-jurisdictional subpoenas should be served. Rule 45(c)(2)(a)(ii) is new. It encourages prompt disclosure of materials received in response to a subpoena so that the litigation can continue, while preserving the parties' ability to dispute the costs of disclosing the materials. Rule 45(e) clarifies that a court considering a motion to compel may award Rule 37 sanctions.

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

Rule 47. Selecting Jurors

(a) **Examination of Jurors.** The court must conduct the examination of prospective jurors and must permit such supplemental examination by counsel as it deems proper.

(b) **Challenges to Jurors.** Peremptory challenges to jurors and challenges for cause are governed by NRS Chapter 16.

(c) **Alternate Jurors.**

(1) In addition to the regular jury, the court may direct that alternate jurors be called and impaneled to sit. Alternate jurors in the order in which they are called must replace jurors who become or are found to be unable or disqualified to perform their duties. Alternate jurors must be drawn in the same manner, must have the same qualifications, must be subject to the same examination and challenges, must take the same oath, and must have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror may replace a regular juror during trial or after the jury retires to consider its verdict. If an alternate juror replaces a regular juror after the jury has retired to deliberate, the court must recall the jury, seat the alternate, and resubmit the case to the jury. Alternate jurors must be discharged when the regular jury is discharged.

(2) Each side is entitled to one additional peremptory challenge for every two alternate jurors that are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the regular peremptory challenges allowed by law must not be used against an alternate juror.

Advisory Committee Note—2018 Amendment

The previous Nevada rule was retained, with an added cross-reference to the NRS provisions governing challenges to jurors. Rule 47(c), formerly Rule 47(b), retains the provision for alternate jurors, whereas the federal rule was amended in 1991 to abolish alternate jurors. The rule has been amended to allow alternate jurors to replace regular jurors during jury deliberation, consistent with NRS Chapter 16. Rule 47 should be interpreted in harmony with NRS Chapter 16. The Nevada rule does not incorporate FRCP 47(c).

Rule 48. Number of Jurors

A jury must consist of eight persons, unless the parties consent to a lesser number but not less than four.

Advisory Committee Note—2018 Amendment

The prior NRCP 48 was retained and revised. Rule 48 should be read in harmony with NRS 16.030 and the short trial rules governing the number of jurors. FRCP 48(b) and (c) were not incorporated as the matters contained therein are addressed by Article 1, Section 3 of the Nevada Constitution and NRS 16.190 respectively.

Rule 49. Special Verdict; General Verdict and Questions

(a) **Special Verdict.**

(1) **In General.** The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) **Instructions.** The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) **Issues Not Submitted.** A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the

court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) **General Verdict with Answers to Written Questions.**

(1) **In General.** The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) **Verdict and Answers Consistent.** When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) **Answers Inconsistent with the Verdict.** When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) **Answers Inconsistent with Each Other and the Verdict.** When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court may:

(A) direct the jury to further consider its answers and verdict; or

(B) order a new trial.

Advisory Committee Note—2018 Amendment

Rule 49 is amended to conform to the federal rule, but retains permissive language in Rule 49(b)(4), consistent with the prior NRCP 49(b).

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) **Judgment as a Matter of Law.**

(1) **In General.** If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) **Motion.** A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) **Renewing the Motion After Trial; Alternative Motion for a New Trial.** If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after service of written notice of entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. The time for filing the motion cannot be extended under Rule 6(b). In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) **Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.**

(1) **In General.** If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) **Effect of a Conditional Ruling.** Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) **Time for a Losing Party's New-Trial Motion.** Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after service of written notice of entry of judgment. The time for filing the motion cannot be extended under Rule 6(b).

(e) **Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal.** If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

Advisory Committee Note—2018 Amendment

TBD.

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

(a) **Requests.**

(1) **Before or at the Close of the Evidence.** At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and

furnish to every other party written requests for the jury instructions it wants the court to give.

(2) **After the Close of the Evidence.** After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(3) **Format; Citation.** The written requests must be in the format directed by the court. If a party relies on any statute, rule, case law, or other legal authority to support a requested instruction, the party must cite each legal authority or provide a copy of it.

(b) **Settling Instructions.**

(1) The court must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury.

(2) The court must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered.

(3) The court and the parties must make a record of the instructions that were proposed, that the court rejected or modified, and that the court gave to the jury. If the court modifies an instruction, the court must clearly indicate how the instruction was modified.

(c) **Objections.**

(1) **How to Make.** A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection. If a party relies on any statute, rule, case law, or other legal authority to object to a requested instruction, the party must cite each legal authority or provide a copy of it.

(2) **When to Make.** An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) **Giving Instructions.**

(1) The court must instruct the jury before the parties' closing arguments to the jury.

(2) The court may also give the jury further instructions that may become necessary by reason of the argument.

(3) The final instructions given to the jury must be bound together in the order given and the court must sign the last instruction. The court must provide the original instructions or a copy of them to the jury.

(4) After the jury has reached a verdict and been discharged, the originals and copies of all given instructions must be made part of the trial court record.

(e) **Assigning Error; Plain Error.**

(1) **Assigning Error.** A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

(2) **Plain Error.** A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(e)(1) if the error affects substantial rights.

(f) **Scope.**

(1) **Preliminary Instructions.** Nothing in this rule prevents a party from requesting, or a court from giving, preliminary instructions to the jury. A request for preliminary jury instructions must be made at any reasonable time that the court orders. If preliminary instructions are requested or given, the court and the parties must comply with Rules 51(a)(3), 51(b), and 51(d)(4), as applicable.

(2) **Other Instructions.** This rule governs instructions to the trial jury on the law that governs the verdict. Other instructions, including instructions to a venire and cautionary or limiting instructions delivered in immediate response to events at trial, are not within the scope of this rule.

Advisory Committee Note—2018 Amendment

Rule 51 has been revised. These rules on jury instructions should be read in conjunction with the jury instruction requirements in NRS Chapter 16.

Rule 51(a) governs requests for instructions. Rules 51(a)(1) and (2) mirror FRCP 51(a). Rule 51(a)(3) retains existing Nevada law from the prior NRCP 51(a)(1).

Rule 51(b)(1) and (2) track the federal rule. Rule 51(b)(3) is modified from the prior Nevada rule for refusing to give and modifying instructions. Specific words and actions are not necessary, but the court and the parties should make a record of all instructions that the court or the parties propose, that the court modifies or rejects, and that are ultimately given to the jury. The parties must be permitted to make a record of any objections to, or arguments concerning, the jury instructions.

Rule 51(c) conforms to the federal rule, except the second sentence in Rule 51(c)(1) is retained from the prior NRCP 51(a)(1).

Rule 51(d) is revised from the prior Nevada rule. Rule 51(d)(1)-(3) amend the prior NRCP 51(b)(2) and (3). The court must give jury instructions prior to closing argument. At least one copy of the jury instructions must be given to the jury. Rule 51(d)(4) tracks the requirements in the prior NRCP 51(b)(2).

Rule 51(e) conforms to FRCP 51(d).

Rule 51(f) is unique to Nevada. Rule 51(f)(1) is new and expressly authorizes giving preliminary jury instructions. The Committee contemplates that preliminary instructions will generally be given before trial, but the rule provides the court with the flexibility of, in an appropriate case, giving instructions after opening statement or the start of evidence. Rule 51(f)(2) corresponds to the prior NRCP 51(e). The provision mirrors language in the advisory committee notes to the 2003 amendments to the federal rule.

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) **Findings and Conclusions.**

(1) **In General.** In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) **For an Interlocutory Injunction.** In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) **For a Motion.** The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) **Effect of a Master's Findings.** A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) **Questioning the Evidentiary Support.** A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) **Setting Aside the Findings.** Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) **Amended or Additional Findings.** On a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The time for filing the motion cannot be extended under Rule 6(b). The motion may accompany a motion for a new trial under Rule 59.

(c) **Judgment on Partial Findings.** If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

Rule 53. Masters

(a) **In General.**

(1) **Nomenclature.** As used in these rules the word "master" includes a master, referee, auditor, examiner, and assessor.

(2) **Scope.** Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) address pretrial or posttrial matters that cannot be effectively and timely addressed by an available judge; or

(C) in actions or on issues to be decided without a jury, hold trial proceedings and recommend findings of fact, conclusions of law, and a judgment if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages.

(3) **Possible Expense or Delay.** In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) **Appointing a Master.**

(1) **Stipulation.** By stipulation approved by the court, the parties may agree to have a master appointed. The stipulation may specify how the master's findings of fact will be reviewed or whether the findings will be final and not reviewable.

(2) **Motion.** Any party may move to have a master appointed, or the court may issue an order to show cause.

(3) **Objections.** Any party may object to a master's appointment on one or more of the following grounds:

(A) a want of any of the qualifications prescribed by statute to render a person competent as a juror;

(B) consanguinity or affinity within the third degree to either party;

(C) standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party;

(D) having served as a juror or been a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause;

(E) interest on the part of such person in the event of the action, or in the main question involved in the action;

(F) having formed or expressed an unqualified opinion or belief as to the merits of the actions; or

(G) the existence of a state of mind in such person evincing enmity against or bias to either party.

(4) **Disqualification.**

(A) A master must file with the court an affidavit disclosing whether there is any ground for his or her disqualification under Rule 2.11 of the Revised Nevada Code of Judicial Conduct.

(B) If a ground is disclosed, the master must be disqualified unless the parties, with the court's approval, waive the master's disqualification.

(c) **Order Appointing a Master.**

(1) **Mandatory Provisions.** The appointing order must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(d);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the method of filing the record, other procedures, and any criteria for the master's findings and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(2) **Optional Provisions.** The appointing order may:

(A) direct the master to report only upon particular issues or to perform particular acts;

(C) direct the master to receive and report evidence only;

(D) specify the time and place for beginning and closing the hearings; and

(E) specify the time in which the master must file his report and recommendations.

(3) **Service on the Master.** Unless otherwise ordered by the court, the moving party must serve the appointment order on the master.

(4) **Amending.** The order may be amended at any time after notice to the parties and an opportunity to be heard.

(d) **Master's Authority.**

(1) **In General.**

(A) Unless the appointing order directs otherwise, a master may:

(i) regulate all proceedings;

(ii) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(iii) exercise the appointing court's power to compel, take, and record evidence, including the issuance of subpoenas as provided in Rule 45.

(B) When a party requests, a master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43(c) and statutes for a court sitting without a jury.

(2) **Diligence.**

(A) The master must proceed with all reasonable diligence.

(B) The master must set a time and place for the first meeting of the parties or their attorneys to be held within 21 days after the date of the order appointing the master and must notify the parties or their attorneys.

(C) If a party fails to appear at the appointed time and place, the master may proceed ex parte or adjourn the proceedings to a future day, giving notice to the absent party.

(D) Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make a report.

(3) **Statement of Accounts.**

(A) When matters of accounting are before a master, the master may:

(i) prescribe the form in which the accounts must be submitted; or

(ii) require or receive in evidence a statement by a certified public accountant who is called as a witness.

(B) Upon objection to the items submitted or a showing that the form insufficient, the master may:

(i) require a different form of statement to be furnished; or

(ii) hold an evidentiary hearing and receive evidence concerning the accounts; or

(iii) require written interrogatories; or

(iv) receive evidence concerning the accounts in any other manner that the master directs.

(e) **Masters' Reports and Recommendations.**

(1) **In General.** Unless ordered otherwise, a master must:

(A) prepare a report and recommendations upon the matters submitted to the master in accordance with the appointing order;

(B) if required to make findings of fact and conclusions of law, set them forth in the report and recommendation;

(C) promptly file the report and recommendation;

(D) file with the report and recommendation the original exhibits and a transcript of the proceedings and evidence; and

(E) serve a copy of the report and recommendation on each party.

(2) **Sanctions.** The master's report and recommendations may recommend sanctions or a party or a nonparty under the applicable rules.

(3) **Draft Report.** Before filing a report and recommendations, a master may submit a draft to counsel for all parties to obtain their suggestions.

(f) **Action on the Master's Order, Report, or Recommendations.**

(1) **Time to Object or Move to Adopt or Modify.**

(A) A party may file and serve objections to—or a motion to adopt or modify—the master's report and recommendations no later than 14 days after the report is served.

(B) If objections are filed, any other party may file and serve a reply within 7 days after being served with the objections.

(C) If no party files objections or a motion, the court may adopt the master's report and recommendations without a hearing.

(D) The court may set different times to move, object, or respond.

(2) **Court Review.**

(A) Unless the parties have otherwise stipulated under Rule 53(b)(1), upon receipt of a master's report and any motions, objections, and replies, the court may:

(i) adopt, reverse, or modify the master's ruling without a hearing;

(ii) set the matter for a hearing; or

(iii) remand the matter to the master for reconsideration or further action.

(B) If the parties have stipulated how a master's findings of fact should be reviewed or that the findings should be final, the court must apply the parties' stipulation to the findings of fact.

(g) **Compensation.**

(1) **Basis and Terms of Compensation.** The basis and terms of a master's compensation must be fixed by the court in the appointing order and must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(2) **Allocating Costs.** The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(3) **Amending Compensation.** The court may change the basis and terms of the master's compensation upon motion or by issuing an order to show cause.

(4) **Enforcing Payment.** The master may not retain the master's report as security for the master's compensation. If a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(h) **Standing Masters.**

(1) By local rule approved by the Nevada Supreme Court or as authorized by the Nevada Revised Statutes, a judicial district may appoint a master to whom multiple matters may be referred.

(2) Unless otherwise specified by rule or statute, the master has the powers of a master under Rule 53(d). The master must issue a report and recommendation under Rule 53(e) that may be reviewed under Rule 53(f).

(3) The master's compensation must be fixed by the judicial district and paid out of appropriations made for the expenses of the judicial district.

Advisory Committee Note—2018 Amendment

Rule 53 has been revised. The revisions retain much of the prior NRCP 53 and incorporate provisions from FRCP 53.

VII. JUDGMENT

Rule 54. Judgments; Attorney Fees (ALTERNATE 1)

(a) **Definition; Form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include a recital of pleadings, a master's report, or a record of prior proceedings.

(b) **Judgment on Multiple Claims or Involving Multiple Parties.** When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) **Demand for Judgment; Relief to Be Granted.** A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings, except that where the prayer is for unspecified damages under Rule 8(a)(4) the court must determine the amount of the judgment. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded such relief in its pleadings.

(d) **Attorney Fees.**

(1) **Reserved.**

(2) **Attorney Fees.**

(A) **Claim to Be by Motion.** A claim for attorney fees must be made by motion. The court may decide a post-judgment motion for attorney fees despite the existence of a pending appeal from the underlying final judgment.

(B) **Timing and Contents of the Motion.** Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 21 days after notice of entry of judgment is served;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it;

(iv) disclose, if the court so orders, the non-privileged financial terms of any agreement about fees for the services for which the claim is made; and

(v) be supported by:

(a) counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable;

(b) documentation concerning the amount of fees claimed; and

(c) points and authorities addressing the appropriate factors to be considered by the court in deciding the motion.

(C) **Extensions of Time.** The court may not extend the time for filing the motion after the time has expired.

(D) **Exceptions.** Rules 54(d)(2)(A) and (B) do not apply to claims for attorney fees as sanctions or when the applicable substantive law requires attorney fees to be proved at trial as an element of damages.

Advisory Committee Note—2018 Amendment

As amended, Rule 54(a) and (b) now conform to their federal counterparts. From 2004 to 2018, Nevada Rule 54(b) departed from Federal Rule 54(b) in that it only permitted certification of judgments eliminating one or more parties, not claims. The 2018 amendments add the reference to claims back into the rule, thus permitting the court to direct entry of a final judgment when one or more, but fewer than all, claims are resolved. The court has discretion in deciding whether to grant Rule 54(b) certification; however, given the strong policy against piecemeal review, an order granting Rule 54(b) certification should provide detailed facts and reasoning demonstrating why interlocutory review is appropriate. An appellate court may review whether a judgment was properly certified under this Rule.

Rule 54(c) tracks the federal rule except for the Nevada-specific language regarding the amount of damages.

Rule 54(d) largely retains the prior Nevada rule. It omits Federal Rule 54(d)'s reference to costs, which are governed by statutes contained in NRS Chapter 18. Rule 54(d)(2)(B)(iv) is new and modeled on the federal rule, but modified to limit the required disclosure to financial terms.

Rule 54. Judgments; Attorney Fees (ALTERNATE 2)

(a) **Definition; Form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include a recital of pleadings, a master's report, or a record of prior proceedings.

(b) **Judgment on Multiple Claims or Involving Multiple Parties.** When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. An appellate court may review whether a judgment was properly certified under this Rule. Otherwise, any order or other decision, however designated, that adjudicates

fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) **Demand for Judgment; Relief to Be Granted.** A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings, except that where the prayer is for unspecified damages under Rule 8(a)(4) the court must determine the amount of the judgment. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded such relief in its pleadings.

(d) **Attorney Fees.**

(1) **Reserved.**

(2) **Attorney Fees.**

(A) **Claim to Be by Motion.** A claim for attorney fees must be made by motion. The court may decide a post-judgment motion for attorney fees despite the existence of a pending appeal from the underlying final judgment.

(B) **Timing and Contents of the Motion.** Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 21 days after notice of entry of judgment is served;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it;

(iv) disclose, if the court so orders, the non-privileged financial terms of any agreement about fees for the services for which the claim is made; and

(v) be supported by:

(a) counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable;

(b) documentation concerning the amount of fees claimed; and

(c) points and authorities addressing the appropriate factors to be considered by the court in deciding the motion.

(C) **Extensions of Time.** The court may not extend the time for filing the motion after the time has expired.

(D) **Exceptions.** Rules 54(d)(2)(A) and (B) do not apply to claims for attorney fees as sanctions or when the applicable substantive law requires attorney fees to be proved at trial as an element of damages.

Advisory Committee Note—2018 Amendment

As amended, Rule 54(a) and (b) now conform to their federal counterparts. From 2004 to 2018, Nevada Rule 54(b) departed from Federal Rule 54(b) in that it only permitted certification of judgments eliminating one or more parties, not claims. The 2018 amendments add the reference to claims back into the rule, thus permitting the court to direct entry of a final judgment when one or more, but fewer than all, claims are resolved.

Rule 54(c) tracks the federal rule except for the Nevada-specific language regarding the amount of damages.

Rule 54(d) largely retains the prior Nevada rule. It omits Federal Rule 54(d)'s reference to costs, which are governed by statutes contained in NRS Chapter 18. Rule 54(d)(2)(B)(iv) is new and modeled on the federal rule, but modified to limit the required disclosure to financial terms.

Rule 55. Default; Default Judgment

(a) **Entering a Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) **Entering a Default Judgment.**

(1) **By the Clerk.** If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incapacitated person.

(2) **By the Court.** In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incapacitated person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) **Setting Aside a Default or a Default Judgment.** The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) **Default Judgment Damages.** In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) **Judgment against the State.** A default judgment may be entered against the State, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

Advisory Committee Note—2018 Amendment

Rule 55 is conformed to the federal rule, but Rule 55(d) retains the cross-reference to Rule 54(c) in prior state and federal versions of Rule 55.

Rule 56. Summary Judgment

(a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state the reasons for granting or denying the motion in its written order.

(b) **Time to File a Motion.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) **Procedures.**

(1) **Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) **Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) **Materials Not Cited.** The court need consider only the cited materials, but it may consider other materials in the record.

(4) **Affidavits or Declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Advisory Committee Note—2018 Amendment

Rule 56 is conformed to FRCP 56 and the Committee generally approves of the explanatory notes thereunder. The word "shall" is retained in Rule 56(a) consistent with the Committee Notes to the 2010 Amendments to FRCP 56. Changes to the Nevada Rule do not abrogate *Wood v. Safeway*, 121 Nev. 724 (2005), and its progeny.

Adoption of new Rule 56(d) is consistent with the prescription of *Choy v. Ameristar*, 127 Nev. 870 (2011), which requires an affidavit explaining why a continuance of the summary judgment motion to conduct further discovery is necessary.

The judicial discretion afforded under new Rule 56(e) is intended to ensure fairness in the individual case, and should not be used to excuse inadequate motion practice.

Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under NRS Chapter 30 or any other state law. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory judgment action.

Rule 58. Entering Judgment (ALTERNATE 1)

(a) **Separate Document.** Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b)

(2) to amend or make additional findings under Rule 52(b)

(3) for attorney fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(b) **Entering Judgment.**

(1) Subject to Rule 54(b) and except as provided in Rule 55(b)(1), all judgments must be approved and signed by the court and filed with the clerk.

(2) The court should designate a party to serve notice of entry of judgment on the other parties under Rule 58(f).

(c) **When Judgment Entered.** The filing with the clerk of a judgment, signed by the court, or by the clerk, as the case may be, constitutes the entry of the judgment, and no judgment is effective for any purpose until it is entered. The entry of the judgment may not be delayed for the taxing of costs.

(d) **Judgment Roll.** The judgment, as signed and filed, constitutes the judgment roll.

(e) **Request for Entry.** A party may request that judgment be set out in a separate document as required by Rule 58(a).

(f) **Notice of Entry of Judgment.**

(1) Within 14 days after entry of a judgment or an order, a party designated by the court under Rule 58(b)(2) must serve written notice of such entry, together with a copy of the judgment or order, upon each party who is not in default for failure to appear and must file the notice of entry with the clerk of the court. Any other party, or the court in family law cases, may also serve and file a notice of such entry. Service must be made as provided in Rule 5(b).

(2) Failure to serve notice of entry does not affect the validity of the judgment, but the judgment may not be executed upon until notice of its entry is served.

Advisory Committee Note—2018 Amendment

Rule 58 has been revised. Rules 58(a) and (e) were adopted from FRCP 58(a) and (d), respectively. Except for default judgments under NRCP 55(b)(1), Nevada requires the court, not the clerk, to sign the judgment. This makes unnecessary to distinguish between clerk- and court-signed judgments, as FRCP 58(b)(1) and (2) do. Therefore, NRCP 58(a)(1) and (2) were consolidated with the former NRCP 58(b) and relocated to Rule 58(b)(1). Rule 58(b)(2) retains the last sentence of the prior NRCP 58(a). Rules 58(c) and (d), and Rule 58(f) (formerly Rule 58(e)) were retained from the prior NRCP 58 with stylistic changes.

Rule 58. Entering Judgment (ALTERNATE 2)

(a) **Entering Judgment.**

(1) Subject to Rule 54(b) and except as provided in Rule 55(b)(1), all judgments must be approved and signed by the court and filed with the clerk.

(2) The court should designate a party to serve notice of entry of judgment on the other parties under Rule 58(e).

(b) **Reserved.**

(c) **When Judgment Entered.** The filing with the clerk of a judgment signed by the court, or by the clerk when authorized by these rules, constitutes the entry of the judgment, and no judgment is effective for any purpose until it is entered. The entry of the judgment may not be delayed for the taxing of costs.

(d) **Judgment Roll.** The judgment, as signed and filed, constitutes the judgment roll.

(e) **Notice of Entry of Judgment.**

(1) Within 14 days after entry of a judgment or an order, a party designated by the court under Rule 58(a)(2) must serve written notice of such entry, together with a copy of the judgment or order, upon each party who is not in default for failure to appear and must file the notice of entry with the clerk of the court. Any other party, or the court in family law cases, may also serve and file a notice of such entry. Service must be made as provided in Rule 5(b).

(2) Failure to serve notice of entry does not affect the validity of the judgment, but the judgment may not be executed upon until notice of its entry is served.

Advisory Committee Note—2018 Amendment

Rule 58 has been revised. Except for default judgments under NRCP 55(b)(1), Nevada requires the court, not the clerk, to sign the judgment. This makes unnecessary to distinguish between clerk-and court-signed judgments, as FRCP 58(b)(1) and (2) do. Therefore, NRCP 58(a)(1) and (2) were consolidated with the former NRCP 58(b) and relocated to Rule 58(a)(1). Rule 58(a)(2) and Rules 58(c), (d), and (e) were retained from the prior NRCP 58 with stylistic changes.

Rule 59. New trials; Amendment of Judgments

(a) **In General.**

(1) **Grounds for New Trial.** The court may, on motion, grant a new trial on all or some of the issues—and to any party—for any of the following causes or grounds materially affecting the substantial rights of the party making the motion:

(A) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial;

(B) Misconduct of the jury or prevailing party;

(C) Accident or surprise which ordinary prudence could not have guarded against;

(D) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) Manifest disregard by the jury of the instructions of the court;

(F) Excessive damages appearing to have been given under the influence of passion or prejudice; or

(G) Error in law occurring at the trial and objected to by the party making the motion.

(2) **Further Action After a Nonjury Trial.** On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) **Time to File a Motion for a New Trial.** A motion for a new trial must be filed no later than 28 days after service of written notice of entry of judgment.

(c) **Time to Serve Affidavits.** When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after

being served to file opposing affidavits. The court may permit reply affidavits.

(d) **New Trial on the Court's Initiative or for Reasons Not in the Motion.** No later 28 days after service of written notice of entry of judgment, the court, on its own, may issue an order to show cause why a new trial should not be granted for any reason that would justify granting one on a party's motion. After giving the parties notice and the opportunity to be heard, the court may grant a party's timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment.

(f) **No Extensions of Time.** The 28-day time periods specified in this rule cannot be extended under Rule 6(b).

Advisory Committee Note—2018 Amendment

TBD..

Rule 60. Relief From a Judgment or Order

(a) **Corrections Based on Clerical Mistakes; Oversights and Omissions**. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **Grounds for Relief from a Final Judgment, Order, or Proceeding**. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or misconduct by an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) **Timing and Effect of the Motion.**

(1) **Timing**. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.

(d) **Other Powers to Grant Relief.** This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) upon motion filed within 6 months after notice of entry of a default judgment is served, set aside the default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service, signed a waiver of service, or otherwise waived service; or

(3) set aside a judgment for fraud upon the court.

(e) **Bills and Writs Abolished.** The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita

querela.

Advisory Committee Note—2018 Amendment

Rule 60 is generally conformed to FRCP 60, including extending the time limit for filing a Rule 60(b)(1)-(3) motion from 6 months to a year and adopting FRCP 60(b)(6) as Rule 60(b)(6). Rule 60(d)(2) is altered from the federal rule to preserve the first sentence of the prior NRCP 60(c); FRCP 60(d)(2) itself is not applicable in Nevada. The remaining portion of the prior NRCP 60(c) and the prior NRCP 60(d) are eliminated as superfluous.

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) **Automatic Stay; Exceptions for Injunctions and Receiverships.**

(1) **In General.** Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after service of written notice of its entry, unless the court orders otherwise.

(2) **Exceptions for Injunctions and Receiverships.** An interlocutory or final judgment in an action for an injunction or a receivership is not automatically stayed, unless the court orders otherwise.

(b) **Stay Pending the Disposition of Certain Postjudgment Motions.** On appropriate terms for the opposing party's security, the court may stay execution on

a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

(c) **Injunction Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants or refuses to grant, or dissolves or refuses to dissolve, an injunction, the court may stay, suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) **Stay Pending an Appeal by Bond or Other Security.** If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

(e) **Stay Without Bond on Appeal by the State or Agency or Officer thereof.** When an appeal is taken by the State or by any county, city, or town within the State, or an officer or agency thereof and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security is required from the appellant.

(f) **Reserved.**

(g) **Appellate Court's Power Not Limited.** This rule does not limit the power of an appellate court or one of its judges or justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) **Stay with Multiple Claims or Parties.** A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

Advisory Committee Note—2018 Amendment

The revisions to Rule 62 are both stylistic and substantive. Rule 62(a) retains the automatic stay provisions and exceptions in prior NRCP 62(a) but updates the language and, tracking the 2018 amendments to FRCP 62(a), extends the automatic stay provided by NRCP 62(a)(1) from 10 to 30 days. The changes to NRCP 62(b) and (c) are stylistic.

Formerly, NRCP 62(d) provided that a stay of money judgment became effective on filing the supersedeas bond. As amended, NRCP 62(d) mirrors FRCP 62(d) and provides the stay takes effect when the court approves the bond.

Rule 62(e) retains the prior NRCP 62(e). Rules 62(g) and (h) were stylistically updated consistent with FRCP 62(g) and (h).

Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

(a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the appellate court remands for that purpose or that the motion raises a substantial issue.

(b) **Notice to the Appellate Court.** The movant must promptly notify the clerk of the supreme court under NRAP 12A if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) **Remand.** The district court may decide the motion if the appellate court remands for that purpose.

Advisory Committee Note—2018 Amendment

This new rule corresponds to NRAP 12A and is modeled on FRCP 62.1 (2009). Like its federal counterpart, Rule 62.1 does not attempt to define the circumstances in which a pending appeal limits or defeats the district court's authority to act. *See* FRCP 62.1 advisory committee's note to 2009 amendment. Rather, these rules provide the procedure to follow when a party seeks relief in the district court from an order or judgment the district court has lost jurisdiction over due to a pending appeal of the order or judgment. NRCP 62.1 and NRAP 12A restate and do not abrogate *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), and its progeny.

Rule 63. Judge's Inability to Proceed

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

VIII. PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizing a Person or Property

(a) **Remedies—In General.** At the commencement of and throughout an action, every remedy is available that, under state law, provides for seizing a person

or property to secure satisfaction of the potential judgment.

(b) **Specific Kinds of Remedies.** The remedies available under this rule include the following:

(1) arrest;

(2) attachment;

(3) garnishment;

(4) replevin;

(5) sequestration; and

(6) other corresponding or equivalent remedies.

Rule 65. Injunctions and Restraining Orders

(a) **Preliminary Injunction.**

(1) **Notice.** The court may issue a preliminary injunction only on notice to the adverse party.

(2) **Consolidating the Hearing with the Trial on the Merits.** Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) **Temporary Restraining Order.**

(1) **Issuing Without Notice.** The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) **Contents; Expiration.** Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) **Expediting the Preliminary-Injunction Hearing.** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) **Motion to Dissolve.** On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) **Security.** The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The State, its officers, and its agencies are not required to give security.

(d) **Contents and Scope of Every Injunction and Restraining Order.**

(1) **Contents.** Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) **Persons Bound.** The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) **Applicability.**

(1) **When Inapplicable.** This rule is not applicable to actions for divorce, alimony, separate maintenance or custody of children. In such actions, the court may make prohibitive or mandatory orders, with or without notice or bond, as may be just.

(2) **Other Laws Not Modified.** These rules supplement and do not modify statutory injunction provisions.

Advisory Committee Note—2018 Amendment

Rule 65(a)–(d) are conformed to FRCP 65. Rule 65(e) is Nevada-specific. Rule 65(e)(1) retains the language of the prior NRCP 65(f), pertaining to family law matters. Rule 65(e)(2) confirms that this rule supplements and does not supplant the statutory injunction provisions in NRS Chapter 33 and elsewhere in the NRS.

Rule 65.1. Proceedings Against a Security Provider

Whenever these rules require or allow a party to give security, and security is given with one or more security providers, each provider submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service

of any papers that affect its liability on the security. The security provider's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly send a copy of each to every security provider whose address is known.

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. An action in which a receiver has been appointed may be dismissed only by court order.

Rule 67. Deposit in Court

(a) **Depositing Property.**

(1) In an action in which any part of the relief sought is a money judgment, the disposition of a sum of money, or the disposition of any other deliverable thing, a party, upon notice to every other party and by leave of court, may deposit with the court all or any part of the money or thing.

(2) When a party admits having possession or control of any money or other deliverable thing, which, being the subject of litigation, is held by the party as trustee for another party, or which belongs or is due to another party, on motion the court may order all or any part of the money or thing to be deposited with the court.

(b) **Custodian; Investment of Funds.**

(1) Unless ordered otherwise, the deposited money or thing must be held by the clerk of the court.

(2) The court may order that:

(i) money deposited with the court be deposited in an interest-bearing account or invested in a court-approved interest-bearing instrument, subject to withdrawal, in whole or in part, at any time thereafter upon order of the court, or

(ii) money or a thing held in trust for a party be delivered to that

party, upon such conditions as may be just, subject to the further direction of the court.

Advisory Committee Note—2018 Amendment

Rule 67 was stylistically revised from the prior NRCP 67.

Rule 68. Offers of Judgment

(a) **The Offer.** At any time more than 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest and, if attorney fees are permitted by law or contract, attorney fees.

(b) **Apportioned Conditional Offers.** An apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed.

(c) **Joint Unapportioned Offers.**

(1) **Multiple Offerors.** A joint offer may be made by multiple offerors.

(2) **Offers to Multiple Defendants.** An offer made to multiple defendants will invoke the penalties of this rule only if:

(A) there is a single common theory of liability against all the offeree defendants, such as where the liability of some is entirely derivative of the others or where the liability of all is derivative of common acts by another, and

(B) the same entity, person or group is authorized to decide whether to settle the claims against the offerees.

(3) **Offers to Multiple Plaintiffs.** An offer made to multiple plaintiffs will invoke the penalties of this rule only if:

(A) the damages claimed by all the offeree plaintiffs are solely

derivative, such as that the damages claimed by some offerees are entirely derivative of an injury to the others or that the damages claimed by all offerees are derivative of an injury to another, and

(B) the same entity, person or group is authorized to decide whether to settle the claims of the offerees.

(d) **Acceptance of the Offer and Dismissal or Entry of Judgment.**

(1) Within 14 days after service of the offer, the offeree may accept the offer by serving written notice that the offer is accepted.

(2) The offeree may, within 21 days after service of written notice that the offer is accepted, pay the amount of the offer and obtain a dismissal of the claim, rather than entry of a judgment.

(3) At any time after 21 days after service of written notice that the offer is accepted, either party may file the offer and notice of acceptance together with proof of service. The clerk must then enter judgment accordingly. The court must allow costs in accordance with NRS 18.110 unless the terms of the offer preclude a separate award of costs. Any judgment entered under this section must be expressly designated a compromise settlement.

(e) **Failure to Accept Offer.** If the offer is not accepted within 14 days after service, it will be considered rejected by the offeree and deemed withdrawn by the offeror. Evidence of the offer is not admissible except in a proceeding to determine costs, expenses, and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. A subsequent offer will not extinguish prior offers. With offers to multiple offerees, each offeree may serve a separate acceptance of the apportioned offer, but if the offer is not accepted by all offerees, the action will proceed as to all. Any offeree who fails to accept the offer may be subject to the penalties of this rule.

(f) **Penalties for Rejection of Offer.** If the offeree rejects an offer and fails to obtain a more favorable judgment,

(1) the offeree cannot recover any costs, expenses or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

(2) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

(3) **Multiple Offers.** The penalties in this rule run from the date of service of the earliest rejected offer for which the offeree failed to obtain a more favorable judgment.

(g) **How Costs, Expenses, Interest, and Attorney Fees Are Considered.** To invoke the penalties of this rule, the court must determine if the offeree failed to obtain a more favorable judgment. Where the offer provided that costs, expenses, interest and, if attorney fees are permitted by law or contract, attorney fees, would be added by the court, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs, expenses, interest and, if attorney fees are permitted by law or contract, attorney fees. Where a party made an offer in a set amount which precluded a separate award of costs, expenses, interest and, if attorney fees are permitted by law or contract, attorney fees, the court must compare the amount of the offer together with the offeree's pre-offer taxable costs, expenses, interest and, if attorney fees are permitted by law or contract, attorney fees, with the principal amount of the judgment.

(h) **Offers After Determination of Liability.** When the liability of one party to another has been determined by verdict, order or judgment, but the amount

or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which has the same effect as an offer made before trial if it is served within a reasonable time not less than 14 days prior to the commencement of hearings to determine the amount or extent of liability.

Advisory Committee Note—2018 Amendment

The prior NRCP 68 was retained and amended. Rule 68(e) is amended to provide that the offer contemplated in Rule 68(f) is the offer earliest in time that is more favorable than the judgment. The existence of any subsequent offer, whether more or less favorable, does not change the penalty for rejecting the relevant offer. This amendment changes the approach to multiple settlement offers that is prescribed by *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022 (2006). Experience under *Albios* suggests that parties are reluctant to make subsequent settlement offers when the penalty for rejecting a favorable offer applies only to the last offer of judgment. The Committee intends to encourage more settlement offers with this new approach.

Rule 69. Execution

(a) **In General.**

(1) **Money Judgment; Applicable Procedure.** A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with these rules and state law.

(2) **Obtaining Discovery.** In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by state law.

(b) **Service of Notice of Entry Required Prior to Execution.** Service of written notice of entry of a judgment must be made in accordance with Rule 58(e) before execution upon the judgment.

Advisory Committee Note—2018 Amendment

Rule 69(a) is amended to conform to the federal rule. Rule 69(b) retains the language of the former NRCP 69(b).

Rule 70. Enforcing a Judgment for a Specific Act

(a) **Party's Failure to Act; Ordering Another to Act.** If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) **Vesting Title.** If the real or personal property is within the State, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) **Obtaining a Writ of Attachment or Sequestration.** On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) **Obtaining a Writ of Execution or Assistance.** On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) **Holding in Contempt.** The court may also hold the disobedient party in contempt.

Advisory Committee Note—2018 Amendment

Rule 70 is generally conformed to FRCP 70. The rule complements Nevada statutes addressing attachment, execution, and contempt contained in NRS Chapters 21, 22, and 31.

Rule 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

Rule 71.1. Reserved

Advisory Committee Note—2018 Amendment

NRS Chapter 37 addresses eminent domain, making it unnecessary to adopt FRCP 71.1.

IX. APPEALS

[Rules 72 to 76A, inclusive, were abrogated and replaced by Nevada Rules of Appellate Procedure, effective July 1, 1973.]

X. DISTRICT COURTS AND CLERKS

Rule 77. Conducting Business; Clerk's Authority

(a) **When Court Is Open.** Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) **Place for Trial and Other Proceedings.** Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom, but a private trial may be had as provided by statute. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or

other court official, or anywhere inside or outside the judicial district. But no hearing—other than one ex parte—may be conducted outside the State unless all the affected parties consent.

(c) **Clerk's Office Hours; Clerk's Orders.**

(1) **Hours.** Every clerk's office and branch office must be open—with a clerk or deputy on duty—during business hours every day except Saturdays, Sundays, and legal holidays.

(2) **Orders.** Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may:

(A) issue process;

(B) enter a default;

(C) enter a default judgment under Rule 55(b)(1); and

(D) act on any other matter that does not require the court's action.

(d) **Reserved.**

Advisory Committee Note—2018 Amendment

Rule 77 is generally conformed to FRCP 77. Consistent with the prior NRCP 77, the provision regarding statutory private trials is retained, *see, e.g.*, NRS 125.080 (private trials for divorce), and the second sentences of FRCP 77(c)(1) and FRCP 77(d) were not adopted. Rule 77(c)(1) was amended to clarify that in jurisdictions with more than one clerk's office, the main office and all branch offices must remain open during business hours.

Rule 78. Hearing Motions; Submission on Briefs

(a) **Providing a Regular Schedule for Oral Hearings.** A court may establish regular times and places for oral hearings on motions.

(b) **Providing for Submission on Briefs.** By rule or order, a court may provide for submitting and determining motions on briefs, without oral hearings.

Rule 79. Reserved

Advisory Committee Note—2018 Amendment

FRCP 79 is inapplicable in Nevada because Nevada has different statutes and procedure regarding court records.

Rule 80. Transcript or Recording of Testimony as Evidence

If recorded or stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by:

(a) a transcript certified by the person who stenographically reported it; or

(b) an audio or video recording certified by the court in which the recording was made.

Advisory Committee Note—2018 Amendment

Rule 80(a) is adapted from FRCP 80 for stenographic transcripts and Rule 80(b) was added for court recordings made by the court. The certification required by "the court" in Rule 80(b) may be made by the judge or any court employee who operates the recording equipment; e.g., the court clerk, judicial assistant, law clerk, recorder, bailiff, or any other employee. This rule does not foreclose the use of a transcript of a certified recording; however, the Committee left the admissibility of a transcript of a recording to be considered by the court under the Nevada law of evidence.

XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Remanded Actions

(a) **To What Proceedings Applicable.** These rules do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute.

(b) **Reserved.**

(c) **Remanded Actions.** A plaintiff whose action is removed from state to federal court and thereafter remanded must file and serve written notice of entry of the remand order. No default may be taken against a defendant in the remanded action until 14 days after service of notice of entry of the remand order. Within that time, a defendant may answer or respond as it might have done had the action not been removed.

(d) **Reserved.**

Advisory Committee Note—2018 Amendment

Rule 81(a) retains the first sentence of the prior NRCP 81(a). The second sentence from the prior NRCP 81(a) previously stated: "Where the applicable statute provides for procedure under the former statutes governing civil actions, such procedure shall be in accordance with these rules." This sentence was deleted as superfluous because it does not appear that any remaining pre-1955 Nevada statute references the former statutes governing civil actions. The third sentence from the prior NRCP 81(a) previously stated: "Appeals from a district court to the Supreme Court of Nevada, and applications for extraordinary writs in the Supreme Court are governed by the Nevada Rules of Appellate Procedure." This sentence was added in 1973 when NRCP 72 through 76A were deleted from these rules and the Nevada Rules of Appellate Procedure were adopted. Practitioners are now sufficiently familiar with the NRAP and which sets of rules govern district court and appellate procedure; accordingly, the third sentence was deleted as superfluous. Rule 81(c) was stylistically revised.

Rule 82. Jurisdiction and Venue Unaffected

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.

Rule 83. Rules by District Courts; Judge's Directives

(a) **Local Rules and District Court Rules.**

(1) **Local Rules.** A judicial district may make and amend rules governing practice therein by submitting the proposed rules, approved by a majority of its district judges, to the Supreme Court for its review and approval. A local rule must be consistent with—but not duplicate—these rules. Unless otherwise ordered by the Supreme Court, a new or amended local rule takes effect 60 days after it is approved by the Supreme Court.

(2) **Reference.** The local rules of practice and the District Court Rules are referred to collectively in these rules as the local rules.

(3) **Requirements of Form.** A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

(b) **Procedure When There Is No Controlling Law.** In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

Advisory Committee Notes—2018 Amendment

Rule 83(a)(1) retains the substance of the first two sentences of the prior NRCP 83 with stylistic amendments. Rule 83(a)(2) is new and is provided for clarity. Rule 83(a)(3) is also new, adopted from FRCP 83(a)(2). Rule 83(b) retains the last sentence of the prior NRCP 83.

Rule 84. Forms

The forms contained in the Appendix of Forms are authorized for use in Nevada courts.

Advisory Committee Note—2018 Amendment

Rule 84 is revised to reflect that the forms in the Appendix of Forms are generally applicable in Nevada. The majority of the former forms have been abrogated as superfluous. As noted in the comments to FRCP 84, there are many excellent alternative sources for forms, including the websites of many judicial districts and many local non-profit organizations. Several of these sources are listed in the Introductory Statement to the Appendix of Forms. The amendment of Rule 84 and the abrogation the prior forms does not alter existing pleading standards or otherwise change the requirements of Rule 8.

Rule 85. Citation

These rules may be cited as NRCP.

Rule 86. Effective Dates

(a) **In General.** These rules and any amendments take effect on the date specified by the Supreme Court. They govern all proceedings:

(1) in actions commenced after the effective date; and

(2) in actions then pending, unless:

(A) the Supreme Court specifies otherwise, or

(B) the court determines that applying them in a particular action would not be feasible or would work an injustice.

(b) **Effective Date of Amendments.** The Nevada Rules of Civil Procedure became effective January 1, 1953. Subsequent amendments have been as follows:

(1) Amendment of Rules 5(b) and (d), effective January 4, 1954.

(2) Amendment of Rules 11 and 45(d)(1), effective May 15, 1954.

(3) Amendment of Rule 51, effective February 15, 1955.

(4) Amendment of Rules 3, 75(b), and 75(g), effective October 1, 1959.

(5) Amendment of Rules 38(b), 38(d), 65(b), 73(c), and 73(d), effective September 1, 1960.

(6) Amendment of Rules 4(d)(2), 5(a), 5(b), 6(a), 6(b), 7(a), 13(a), 14(a), 15(d), 24(c), 25(a)(1), 25(d), 26(e), 28(b), 30(f)(1), 41(b), 41(e), 47(a), 48, 50(a), 50(b), 50(c), 50(d), 52(b), 54(b), 56(c), 56(e), 59(a), 62(h), 77(c), 86, Forms 22-A and 22-B, 27, 30, 31 and 32, effective March 16, 1964.

(7) Amendment of Rule 86 and Form 31, effective April 15, 1964.

(8) Amendment of Rules 73(c), 73(d)(1) and 86, effective September 15, 1965.

(9) Amendment of Rules 4(b), 5(a), 8(a), 12(b), 12(g), 12(h), 13(h), 14(a), 17(a), 18(a), 19, 20(a), 23, 23.1, 23.2, 24(a), 26, 29, 30, 31, 32, 33, 34, 35, 36, 37(a), 37(b), 37(c), 37(d), 41(a), 41(b), 42(b), 43(f), 44(a), 44(b), 44(c), 44.1, 45(d)(1), 47(b), 50(b), 53(b), 54(c), 65(a), 65(b), 65(c), 65.1, 68, 69(a), 77(e), 86(b), and Form 24, effective September 27, 1971.

(10) Amendment of Rules 6 and 81, effective July 1, 1973; the abrogation of Rules 72, 73, 74, 75, 76, 76A and Form 27, effective July 1, 1973.

(11) Amendment of Rules 1, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 16.1, 17, 18, 19, 20, 22, 23, 23.1, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 44, 44.1, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 62, 63, 64, 65, 65.1, 67, 69, 71, 77, 78, 81 and 83 and Forms 3, 19, 31 and the Introductory Statement to the Appendix of Forms, effective January 1, 2005, and the adoption of new Form 33.

(12) Adoption of Rules 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 62.1, and 71.1, the amendment of all other Rules and the Introductory Statement to the Appendix of Forms, the abrogation of the prior Forms, and the adoption of Forms 1, 2, and 3, effective January 1, 2019.

APPENDIX OF FORMS

Introductory Statement

1. The majority of the former forms were abrogated. There are many excellent alternative sources for forms specific to the various judicial districts. These include:

The State of Nevada Self-Help Center

http://selfhelp.nvcourts.gov/forms

First Judicial District Court Forms

http://carson.org/government/departments-a-f/courts/district-court-clerk/district-court-forms

Second Judicial District Court Forms

https://www.washoecourts.com/Main/FormsAndPackets

Eighth Judicial District Court Forms

http://www.clarkcountycourts.us/self-help-centers/

Ninth Judicial District Court Forms

https://douglasdistrictcourt.com/forms/

Clark County Law Library

http://www.clarkcountynv.gov/lawlibrary/Pages/LegalForms.aspx

Washoe County Law Library

https://www.washoecourts.com/LawLibrary/SelfHelp

Nevada Supreme Court Law Library

https://nvcourts.gov/Law_Library/Representing_Yourself/

There are also many excellent sources for legal assistance.

Lawyer Referral and Information Service

https://www.nvbar.org/lawyerreferral/lawyer-referral-information-service/public-1/

Nevada State Bar

http://www.nvbar.org/

Nevada Attorney General

http://ag.nv.gov/

V.A.R.N. – Volunteer Attorneys for Rural Nevadans

http://www.varn.org/newsite/resources/self-help-court-forms/

Nevada Legal Services

https://nlslaw.net/get-legal-help/helpful-links/

The Legal Aid Center of Southern Nevada

https://www.lacsn.org/

Washoe Legal Services

https://washoelegalservices.org/

2. Forms 1 and 2 were adopted from FRCP 4 for use in Nevada for requesting a waiver of service, and subsequently waiving service. Under Rule 4, use of these forms to request a waiver of service, or to waive service, is mandatory. In place of the "(Attorney or Plaintiff Information)" or "(Caption)" statements in forms 1 and 2 an attorney or pro se litigant should insert the attorney information and caption required by local rules. For example, in the district courts by DCR 12, FJDCR 19, WDCR 10, EDCR 7.20, 10JDCR 16, or other local court rules, or in the appellate courts by NRAP 27 and 32.

3. Form 3, Consent to Service by Electronic Means (former form 33), was retained as useful. Form 3 is provided for use between parties when consenting to electronic service under Rule 5(b)(2)(E); however, the use of Form 3 for that purpose is not required. In general, the form should be sent to the opposing party(ies) and need not be filed with the court unless the court orders otherwise. Form 3 need not be used for electronic service through court's electronic-filing system (EFS) under NEFCR 9; registered EFS users are deemed to have consented to service through the EFS under NEFCR 9(c). Form 3 may, however, be used under NEFCR 9(c)(2) to consent to service though an EFS for a party that is not authorized to register with the EFS. If

Form 3 is used for this purpose and filed with a court, the filer should include the "Attorney or Plaintiff Information" or "Caption" indicated in Forms 1 and 2 and referenced in section 2 of the Introductory Statement.

Form 1. Rule 4 Request to Waive Service

(Attorney or Plaintiff Information)

(Caption)

Rule 4 Notice of a Lawsuit and Request to Waive Service of Summons.

To (name the defendant or — if the defendant is a corporation, partnership, or association — name an officer or agent authorized to receive service):

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is enclosed with this letter.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons

will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Your Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4.1(a) and (b) of the Nevada Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. Such a defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property. If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

I certify that this request is being sent to you on the date below.

Date: _____

_____
(Signature of the attorney or unrepresented party)

_____
(Printed name)

_____
(Address)

_____
(E-mail address)

_____
(Telephone number)

Form 2: Rule 4 Waiver of Service of Summons

(Attorney or Plaintiff Information)

(Caption)

Rule 4 Waiver of Service of Summons.

To (name the plaintiff's attorney or the unrepresented plaintiff):

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to

the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

_____
(Signature of the attorney or unrepresented party)

_____
(Printed name)

_____
(Address)

_____
(E-mail address)

_____
(Telephone number)

Form 3. Consent to Service by Electronic Means Under Rule 5

The undersigned party hereby consents to service of documents under Rule 5 by electronic means as designated below in accordance with Rule 5(b)(2)(E).

Party name(s):

_____

_____

Documents served by electronic means must be transmitted to the following person(s):

_____

_____

Facsimile transmission to the following facsimile number(s):

_____

_____

Electronic mail to the following e-mail address(es):

_____

_____

Attachments to e-mail must be in the following format(s):

_____

_____

Other electronic means (specify how the documents must be transmitted)

_____

_____

_____

_____

The undersigned party also acknowledges that this consent does not require service by the specified means unless the serving party elects to serve by that means.

Dated this _____ day of _____, 20_____.

Signed: _____,
Attorney for Consenting Party
Or Consenting Party

Address: _____

Telephone: _____

Fax number: _____

E-mail address: _____