

## Nevada Rules of Civil Procedure Revision Committee Summary

August 16, 2017 Meeting

The sixth meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on August 16, 2017 at 3:00 p.m. The meeting was video conferenced between the State Bar of Nevada Office in Reno and the Supreme Court conference room in Las Vegas, until the videoconferencing failed, then proceeded by teleconference. Present in Reno were Discovery Commissioner Wesley Ayres, Bob Eisenberg, Todd Reese, and Kevin Powers. Present in Las Vegas were Justice Mark Gibbons, Justice Kristina Pickering, Judge Elissa Cadish, Discovery Commissioner Bonnie Bulla, Professor Tom Main, George Bochanis, Steve Morris, Dan Polsenberg, Don Springmeyer and Rachael Mastel.

The Committee first approved the July 26, 2017 meeting minutes.

The Committee then discussed the subcommittee rule recommendations.

- 1) Everything Else Subcommittee (renamed from the “No Brainer” Subcommittee) (All NRCP Rules not otherwise accounted for)

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

The Committee then discussed the proposed draft amendments to NRCP 13, 14, 17, 19, 20, 22, and 25 submitted by the Everything Else Subcommittee. The Committee discussed proposed language changes to NRCP 13(d), regarding counterclaims against the state, suggested by Kevin Powers to specify additional persons or government entities, or whether such language should be more general with an explanatory Drafter’s Note, and noted that similar issues are pending as to other rules, including NRCP 12. The Committee passed on NRCP 13 so that the subcommittee could consider the issue as it pertains to other rules as well and redraft the text or comment if appropriate. The Committee also discussed whether the “serve a summons and complaint” language in NRCP 14(a)(1) was limiting, considering the waiver procedures proposed for adoption in NRCP 4. The Committee passed on NRCP 14 so that the subcommittee could consider the issue and offer revisions to the rule. The Committee approved NRCP 17, with edits to make “State law” lowercase. The Committee approved NRCP 19, with the adding the subcommittee’s notes to the committee, regarding the origin of certain subsections, in a Drafter’s Note.

NRCP 20 was approved, with discussion of whether a definition of “person” was needed or a Drafter’s Note should be added. The subcommittee will consider this issue. The Committee passed on NRCP 22 so that the subcommittee could consider whether reference to statutory interpleader should be retained and to redraft the rule. The Committee passed on NRCP 25, expressing concerns of when the 90 day period to substitute a person after a party’s death or dismiss the case would be triggered and whether the district court had discretion to note the death on the record if a notice of death was not filed. Bob Eisenberg recommended that the word “action” be changed to “claims” so that the entire action would not have to be dismissed upon one party’s death. The subcommittee will consider whether to redraft the rule or to further explain how the rule would work.

2) Huneycutt Subcommittee (NRCP 62.1, NRAP 12.1, *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) and progeny)

Chair: Racheal Mastel

Members: Justice Kristina Pickering, Justice Mark Gibbons, Todd Reese, Dan Polsenberg

The Committee then discussed the proposed draft addition of NRCP 62.1 and NRAP 12.1 submitted by the Huneycutt Subcommittee. The Committee approved the rules, but with specified edits to change court of appeals to appellate court in the comment to Rule 62.1, and to fix the grammar in a sentence in the comment to NRAP 12.1. With the approval of these two rules and the comments to them, this subcommittee’s work has finished.

3) NRCP 68 Subcommittee

Chair: Dan Polsenberg

Members: Don Springmeyer, Prof. Thomas Main

The Committee then discussed the proposed draft submitted by the NRCP 68 Subcommittee. The consensus was that the draft represents a major improvement to existing Rule 68. The Committee noted that several substantive changes were being proposed and recommended that a Drafter’s Note be added to the rule to explain the changes. The Committee also discussed how “before trial” was defined, how far in advance of trial the offer of judgment mechanism should end (10, 14, 28 or 30 days), and which offers were to be considered in the penalty phase when multiple offers were given.

The Committee passed the rule to the next meeting, and the subcommittee will consider language changes to the rule.

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

Chair: Graham Galloway

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

The Committee then discussed the proposed draft amendments to NRCP 16.1, 26, and 35 submitted by the Discovery Subcommittee. As to Rule 35, Rachael Mastel requested time to get feedback on the rule from family law practitioners and to consider whether the Committee should develop a family law specific version of Rule 35. Bob Eisenberg also asked for time to distribute the proposed rule to various practitioners and to get feedback on the rule. Consideration of the rule was passed to the next meeting.

Because time remaining was short, the co-chairs advised the Committee to review Rules 16.1 and 26 and to be prepared to discuss them at the next meeting. Commissioner Ayres circulated an email before the meeting setting out the policy issues that have divided the subcommittee, a copy of which is attached to these minutes, which Committee members are encouraged to review in preparing to discuss these rules.

A discussion was then held of issues of general concern to the Committee members. The Committee discussed whether cut-off time/procedures should be developed for agendas for the Committee meetings so that the Committee members had time to consider the rules being proposed prior to the meeting. Committee members were also asked to come to the September meeting prepared to discuss a weekend session to discuss all recommended rule changes before forwarding them to the supreme court for its consideration.

Last, the Committee discussed and agreed to use a date protocol in naming word documents being circulated before the meeting to make it easier to track the versions being discussed. A subcommittee should submit a proposed rule or comment to the Committee via word document. The word document should be named with the rule or rules being proposed, then a date. For example, the name of a circulated NRCP 68 draft should be "NRCP 68 (8-9-17)". If someone offers revisions or comments to a draft, the person should add his or her initials

to the draft and circulate that draft to the committee. For example, if Justice Pickering made edits to the proposed NRCP 68 draft, she would circulate a document titled “NRCP 68 (8-9-17) [KP]”. If Don Springmeyer then made edits to the draft that Justice Pickering edited, he would circulate a document titled “NRCP 68 (8-9-17) [KP][DS]”. If the Committee passes a rule to the next session and a subcommittee reconsiders the rule and submits a new draft to the Committee for the following meeting, then the new draft should be titled with the new date. For example, the NRCP 68 subcommittee would submit a new draft entitled “NRCP 68 (9-10-17)”.

Justice Gibbons advised the Committee that a Committee meeting is scheduled for September 27, 2017 at 3:00 pm, and that the co-chairs will be scheduling further meetings.

There being no further business to come before the Committee, the meeting was adjourned at 5:03 p.m.

Respectfully submitted,  
Kristina Pickering and Mark Gibbons  
Co-Chairs

## Reese, Todd

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**From:** Ayres, Wes  
**Sent:** Tuesday, August 15, 2017 4:31 PM  
**To:**

**Cc:**  
**Subject:** NRCP 16.1  
**Attachments:** Proposed NRCP 16.1 with Edits (8-15-17).docx

Committee Members:

The NRCP Subcommittee on Discovery Rules is unable to make a specific recommendation regarding the scope of the parties' initial disclosure requirements. Essentially, the subcommittee believes that two points need to be resolved by the full committee before specific language can be included: (1) whether disclosure should extend to material that will be used solely for impeachment or rebuttal; and (2) whether disclosure should extend to material that the disclosing party may use in the case or, more broadly, material that any party may use.

The language currently used in NRCP 16.1(a)(1) requires the initial disclosure of witnesses and documents/ESI/things that are "discoverable under Rule 26(b), including for impeachment or rebuttal." The subcommittee has discussed five other options that would limit disclosure to:

- (1) Material that the disclosing party may use, including for impeachment or rebuttal;
- (2) Material that the disclosing party may use, unless the use would be solely for impeachment or rebuttal;
- (3) Material that any party may use, including for impeachment or rebuttal;
- (4) Material that any party may use, unless the use would be solely for impeachment or rebuttal; and
- (5) Material that any party may use, unless the use would be solely for impeachment or rebuttal, in which case disclosure would be limited to material the disclosing party may use.

The subcommittee requests that these points be discussed at the full committee's August meeting. Once the full committee provides guidance on these "philosophical" questions, specific language addressing initial disclosure obligations can be drafted. The subcommittee's most recent edited draft is attached.

Wes