

Nevada Rules of Civil Procedure Revision Committee Summary

January 17, 2018 Meeting

The eleventh meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on January 17 at 3:00 p.m. The meeting was video conferenced between the Washoe County Court conference room in Reno and the Supreme Court conference rooms in Las Vegas and Carson City. Present in Reno were Discovery Commissioner Wes Ayres and Bill Peterson. Present in Carson City were Justice Mark Gibbons, Kevin Powers, and Todd Reese. Present in Las Vegas were Justice Kristina Pickering, Judge Elissa Cadish, Judge Kim Wanker, Discovery Commissioner Bonnie Bulla, Don Springmeyer, Racheal Mastel, Dan Polsenberg, Professor Thom Main, George Bochanis, and Steve Morris.

The Committee first approved the December 20, 2017 meeting minutes.

The Committee then discussed NRCP 1, 61, 72-76A, 78, 80, and 85 for summary approval. The Committee approved rules 1, 61, 72-76A, and 78 without much discussion. The Committee passed on rule 80, referring it to a new subcommittee to examine the use of stenographic reporting, video recording and related transcription services in depositions and in the court room. The Committee was concerned that the rule be synched with discovery and evidence rules, NRS 3.380 regarding sound recordings, and current practice with video recording and transcript preparation. George Bochanis was appointed to chair the subcommittee and he will pick two or more committee members to serve with him on the subcommittee. The Committee discussed edits to Rule 85 and passed the rule as amended to read "These rules may be cited as NRCP."

The Committee discussed the creation of a new subcommittee to review NRCP 16.1(d) and NRCP 16.3, regarding discovery commissioners and a court's review of their findings, to be chaired by Commissioners Bulla and Ayres. The Committee also noted that Justice Gibbons would be added to the NRCP 16.2, 16.205, 16.21, and 16.215 Subcommittee.

The Committee discussed the following subcommittee rule recommendations.

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

Chair: Graham Galloway

Members: Judge Jim Wilson, Steve Morris, Commissioner Wes Ayres, Commissioner Bonnie Bulla, Dan Polsenberg, George Bochanis, Don Springmeyer, Bill Peterson, and Loren Young

The Committee discussed the proposed draft amendments to NRCP 16.1, 31, 32, 33, and 36 submitted by the Discovery Subcommittee. Rule 32 was passed to the next meeting. The Committee first discussed rules 31, 33, and 36, noting that Rule 33(c) should be edited from “rules of evidence” to “Nevada law of evidence.” With that change, Steve Morris moved to recommend the rules, the motion was seconded by Don Springmeyer, and the Committee voted to recommend the rules. The Committee then discussed Rule 16.1, affirming Commissioner Ayres’ opposition to initial disclosure portion in Rule 16.1(a)(1)(A)(i) and (ii)—Commissioner Ayres favors broader initial disclosure requirements. The Committee otherwise agreed upon the changes to Rule 16.1. Commissioner Bulla moved to recommend the rules, the motion was seconded by Steve Morris, and the Committee voted to recommend the rule.

2) Class and Derivative Actions Subcommittee (NRCP 23, 23.1, 23.2)

Chair: Dan Polsenberg

Members: Don Springmeyer and Professor Thomas Main

The Committee next discussed the status of NRCP 23, 23.1, and 23.2, and passed these to the next meeting.

3) NRCP 25 Subcommittee (NRCP 25 and NRAP 43)

Chair: Todd Reese

Members: Justice Kristina Pickering, Graham Galloway, George Bochanis, and Loren Young

The Committee next discussed NRCP 25 and NRAP 43. This rule was significantly rewritten to give more flexibility to the district courts in dealing with a party’s death and to avoid the mandatory dismissal penalty. The rule’s provisions are garnered from the FRCP, the NRAP and other states rules. The Committee sought comment from probate attorney on the Rule’s provisions.

Comments from those attorneys indicated that the Rule's provisions would not conflict with probate law. The probate attorneys agreed that a 90 day time frame was too short but suggested a 120 day time frame rather than 180, to synch with existing probate timelines. The Committee agreed that, if probate was involved, probate timelines should be complied with. The Committee noted, however, that as the rule also contemplated non-probate solutions, a 180-day time frame was preferable. George Bochanis moved to recommend the rules, the motion was seconded by Todd Reese, and the Committee voted to recommend the rules. The subcommittee and the Committee did not propose any changes to NRAP 43, believing it to provide the appellate courts with sufficient flexibility to address a party's death as stated.

4) Time and Service of Process Subcommittee (NRCP 4, 4.1, 5, 6)

Chair: Judge Elissa Cadish

Members: Justice Kristina Pickering, Judge Jim Wilson; Don Springmeyer, Dan Polsenberg, Racheal Mastel, Todd Reese, Kevin Powers

The Committee then discussed the proposed draft of NRCP 6, NRAP 26, and NEFCR 9 submitted by the time and service of process subcommittee. The Committee discussed the electronic filing systems and process whereby a filing party submits a document for e-filing, the document is then held in a queue for review by the relevant clerks' office, and once reviewed and if approved, the document is then filed and electronic service is sent upon filing. The Committee expressed concern over what constituted compliance with the relevant time to act by the filing party, especially when a document was submitted, then rejected by a clerk's office, then remedied by the filing party. The Committee's concern was how jurisdictional or statute of limitation issues would be addressed. The Committee also expressed concern over the clerks' offices review of the documents, and questioned whether the documents should be filed (and service sent), and then any problems with the filing addressed later. The Committee also discussed whether the existing proof of service requirements could accommodate service sent at a later date, and from what date the opposing party should calculate it's time to respond to an electronically filed document. The Committee also considered the separate forms of electronic service, via the court's system or via agreement, and agreed that the rule should address each type of service. The Committee

passed on the rule for the subcommittee's further revision and discussion with the clerks' offices that use electronic filing.

5) Everything Else Subcommittee

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

The Committee discussed the proposed draft amendments to NRCP 41 and 48 submitted by the Everything Else Subcommittee. As to NRCP 48, the committee approved the draft, but removed the last comma. Justice Pickering moved to recommend the rule, the motion was seconded by Judge Cadish, and the Committee voted to recommend the rule. As to Rule 41, the Committee agreed to alter Rule 41(a)(1)(B) to accommodate stipulations by the parties, to retain notice to the parties in Rule 41(e), to restructure Rule 41(e) to reflect the flow of litigation, and to add headings to Rule 41(e)(4) and (5). The Committee passed this rule to the next meeting so that the subcommittee could make revisions.

6) Judgment and Post-Judgment Rules Subcommittee (NRCP 50, 52, 54(b),* 58, 59, 60)

Chair Dan Polsenberg

Members: Robert Eisenberg, Kevin Powers, Don Springmeyer, Bill Peterson.

The committee discussed NRCP 50, 52, 54(b), 58, 59, and 60 submitted by the judgment and post-judgment rules subcommittee. The Committee first discussed NRCP 50, discussing timelines running from notice of entry of judgment versus entry of judgment, when to move for judgment as a matter of law under Rule 50(a)(2), after the close of evidence or at any time before the case is submitted to the jury, and how to move for judgment as a matter of law in a bench trial, NRCP 52(c). Dan Polsenberg moved to recommend the rule, the motion was seconded by Judge Cadish, and the Committee voted to recommend the rule, adopting the federal rule with the exception of the Nevada notice of entry of judgment provision. As to Rules 52 and 54(b), the committee noted that there is a split in authority in the federal courts as to the appellate court's ability to reject a certification as improper or whether the appellate court must hear a certified question. Dan Polsenberg moved to recommend the rules, the motion was seconded by Judge Cadish, and the

Committee voted to recommend the rules, adopting the federal rule with the exception of the Nevada notice of entry of judgment provision in Rule 52. The Committee also discussed Rule 58, proposing to adopt the federal rule, but keep the Nevada distinctions regarding action by the clerk in NRCP 58(a)(1) and (2), and a motion for attorney fees not having a tolling effect. As time was short, however, the Committee passed Rules 58, 59, and 60 to the next meeting.

A discussion was then held of issues of general concern to the Committee members. Justice Gibbons advised the Committee that the next Committee meeting is scheduled for February 21, 2018, at 3:00 pm. The Reno location of the January meeting will be at the Norther Nevada Bar Center once again.

There being no further business to come before the Committee, the meeting was adjourned at 5:25 p.m.

Respectfully submitted,
Kristina Pickering and Mark Gibbons
Co-Chairs