

1 **NRCP 6 – Proposed**
2 **(Adopt federal rule with edits)**

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

4 (a) **Computing Time.** The following rules apply in computing any time
5 period specified in these rules, in any local rule or court order, or in any statute
6 that does not specify a method of computing time.

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

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

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

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

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

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

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

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

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

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

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

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

9 (A) for electronic filing under the Nevada Electronic Filing and
10 Conversion Rules, at 11:59 p.m. in the court’s local time; and

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

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

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

18 (b) **Extending Time.**

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

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

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

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

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

5 (2) **Exceptions.** A court must not extend the time to act under NRCP
6 50(b) and (c)(2), 52(b), 59(b), (d), and (e), and 60(b), and must not extend the time
7 after it has expired under NRCP 54(d).

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

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

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

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

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

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

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

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1 ADVISORY COMMITTEE NOTE—2017 AMENDMENT

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

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

19 NRCP 6(a)(2) addresses the computation of time periods that are stated in
20 hours. No such deadline currently appears in the NRCP, but some statutes contain
21 deadlines stated in hours, as do some court orders issued in expedited proceedings.
22 NRCP 6(a)(6) is different from the federal rule and reflects Nevada’s state holidays
23 specified in NRS 236.015. Statutory and rule-based timelines subject to this rule
24 may not be changed concurrently with this rule. If a reduction in the times to

1 respond under those statutes and rules results, an extension of time may be
2 warranted to prevent prejudice.

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

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

16 The 3 days provided in NRCP 6(d), formerly NRCP 6(e), are added after
17 calculating the time to act in NRCP 6(a). The NRCP and the local rules previously
18 provided for an additional 3 days to act after electronic service, while the NRAP did
19 not. The advisory committee has confirmed with the Second and Eighth Judicial
20 Court Clerks that their efileing systems are capable of instantaneous service upon
21 submission by the filing party of the document to the system and are prepared to
22 make that change; although the clerk retains the prerogative of reviewing a
23 submitted document and rejecting it for filing if it violates the court rules, see
24 WDCR 10(10), this process should not delay simultaneous submission and service

1 of a document. If the clerk rejects an electronically submitted document, the clerk
2 must promptly notify all parties.

3 Eliminating the 3 days for documents submitted electronically brings the
4 NRCP into conformity with the NRAP and the 2016 amendments to the FRCP.
5 This change will require revision of Part VIII of the Eighth Judicial District Court
6 Rules and, in all probability, the rules governing hearing dates in notices of motion.
7 As the advisory committee notes to the FRCP note, the FRCP were amended

8 in 2001 to provide for service by electronic means. Although
9 electronic transmission seemed virtually instantaneous even
10 then, electronic service was included in the modes of service
11 that allow 3 added days to act after being served. There were
12 concerns that the transmission might be delayed for some
13 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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15 Diminution of the concerns that prompted the decision to
16 allow the 3 added days for electronic transmission is not the
17 only reason for discarding this indulgence. Many rules have
18 been changed to ease the task of computing time by adopting
19 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.

20 These comments apply equally to the 2018 revisions proposed to the NRCP.
21 Eliminating the 3 additional days for e-filing service and requiring the clerks to
22 calibrate their systems to provide for simultaneous submission and service, even in
23 advance of filing, also avoids unnecessary delay while documents “sit in the queue.”

1 The work of amending the EDCR is beyond the scope of this committee's work.
2 Revisions to the NEFCR to bring them into harmony with the proposed elimination
3 of 3 days for e-service are proposed with this submission.

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1 **NRCP 6 – Proposed**
2 **(Subcommittee notes to the Committee)**

3 NRCP 6(a)

4 (1) The counting method in FRCP 6 was kept in its entirety, except for the
5 last day section, which references electronic filing, and the holiday section, which
6 was edited to reflect Nevada holidays. The adoption of this counting method
7 applies to statutory deadlines and will shorten the time to perform certain acts in
8 statute, potentially to the prejudice of the parties. The first opportunity to change
9 the times to act in statutes, however, will not be until the next legislative session,
10 and it is unclear if the Legislature will comprehensively change the statutory
11 timelines to correspond with the altered method of computing time. Similarly, the
12 district court rules, local rules, and the NJCRCP may not be changed
13 contemporaneously with the NRCP. The current draft rule provides guidance in
14 the Advisory Committee Note that extensions of time in such situations may be
15 warranted to prevent prejudice.

16 NRCP 6(b)

17 (2) The existing NRCP permits extending time by stipulation filed with the
18 court. The FRCP does not have this provision. The existing NRCP provision was
19 added into the federal rule. The existing NRCP permits extending time for cause
20 by the court. The FRCP permits extending time for good cause. The existing
21 NRCP provision was retained. The existing NRCP says that the court “may at any
22 time in its discretion” extend the time. This is not in the federal rule and appears
23 to be redundant, and was eliminated.

1 (3) The existing NRCP states after the text of NRCP 6(b)(3) “except under
2 the conditions stated in those rules.” However, there do not appear to be any
3 conditions in those rules permitting the extension of time, so this was deleted.
4 NRCP 54(d) was added to NRCP 6(b)(3) as the time in NRCP 54(d)(2)(B) may not
5 be extended after it has expired.

6 NRCP 6(c)

7 (4) NRCP 6(c) generated substantial debate and competing proposals. The
8 debate grows out of the fact that each of the judicial districts has its own local rules
9 governing motion hearing and briefing practice, with DCR 13 adding more variety
10 to the mix. While uniform rules governing hearing and briefing on motions might
11 be helpful, local practices vary according to the unique needs and histories of the
12 local district courts involved. Amending the local rules and DCR to provide a single
13 statewide standard exceeds this committee’s charter and could delay its work.
14 Therefore, the subcommittee recommends the NRCP 6(c) attached, with one
15 question open: Should motions be required to be filed not later than 14 or 21 days
16 before a hearing, and should responding affidavits be due 7 or 14 days before a
17 hearing?

18 Despite the local variations, there is value in adopting a version of
19 NRCP 6(c) because it sets presumptive minimum limits on how close lawyers can
20 get to a hearing with a motion and the affidavits offered to support or oppose the
21 motion. The idea is to establish a soft norm with deviations permitted by local rule
22 or court order. Attached for purposes of preserving work product and showing how
23 an integrated motion hearing and briefing rule might look is an alternative NRCP
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1 6(c), though, for the reasons noted above, the subcommittee does not recommend
2 forwarding this version to the supreme court.

3 (5) In NRCP 6(c)(1)(B), a provision is added in enabling the district court
4 to, by rule, alter the time period.

5 NRCP 6(d)

6 (6) The federal rule was retained, which does not allow for an additional 3
7 days after electronic service. The federal courts changed this rule in 2016, for the
8 reasons stated in the advisory note.

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