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**NRCP 17 – Proposed
(Adopt federal rule with edits)**

TITLE 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 ~~United States~~ for Another's Use or Benefit.** When a ~~federal~~-statute so provides, an action for another's use or benefit must be brought in the name of the ~~United States~~.

(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

1 substitution, the action proceeds as if it had been originally commenced by the real
2 party in interest.

3 (b) **Capacity to Sue or Be Sued.** Capacity to sue or be sued is determined
4 as follows:

5 (1) for an individual, including one who is not acting in a representative
6 capacity, by the law of this state~~the individual's domicile~~;

7 (2) for a corporation, by the law under which it was organized, unless the
8 law of this state provides otherwise; and

9 (3) for all other parties, by the law of ~~the~~ this state ~~where the court is~~
10 ~~located, except that:~~

11 ~~————— (A) a partnership or other unincorporated association with no such~~
12 ~~capacity under that state's law may sue or be sued in its common name to enforce a~~
13 ~~substantive right existing under the United States Constitution or laws; and~~

14 ~~————— (B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver~~
15 ~~appointed by a United States court to sue or be sued in a United States court.~~

16 (c) **Minor or Incompetent Person.**

17 (1) **With a Representative.** The following representatives may sue or
18 defend on behalf of a minor or an incompetent person:

19 (A) a general guardian;

20 (B) a committee;

21 (C) a conservator; or

22 (D) a like fiduciary.

23 (2) **Without a Representative.** A minor or an incompetent person who
24 does not have a duly appointed representative may sue by a next friend or by a

1 guardian ad litem. The court must appoint a guardian ad litem—or issue another
2 appropriate order—to protect a minor or incompetent person who is unrepresented
3 in an action.

4 (d) **Public Officer’s Title and Name.** A public officer who sues or is sued in
5 an official capacity may be designated by official title rather than by name, but the
6 court may order that the officer’s name be added.

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8 ADVISORY COMMITTEE NOTE—2017 AMENDMENT

9 NRCP 17(d) was moved into this rule from NRCP 25(d)(2). This rule adopts the
10 text of FRCP 17, except that NRCP 17(b) is Nevada specific. Nevada law will
11 determine a party’s capacity to sue or be sued, except where this rule, choice of law,
12 or other applicable principles provide otherwise.

1 **NRCP 17 – Proposed**
2 **(Subcommittee notes to the Committee)**

3 (1) FRCP 17(d) was moved here from FRCP 25(d)(2).

4 (2) FRCP 17(b) was edited to remove inapplicable federal provisions and to reflect
5 the existing NRCP 17(b).

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