

Nevada Rules of Civil Procedure Revision Committee Summary

April 12, 2017 Meeting

The second meeting of the Nevada Rules of Civil Procedure Revision Committee (Committee) was held on April 12, 2017 at 3:00 p.m. The meeting was video conferenced between the State Bar of Nevada Office in Reno and the Supreme Court courtroom in Las Vegas. Present from Reno were Discovery Commissioner Wesley Ayres, Robert Eisenberg, Graham Galloway and Supreme Court Staff Attorney Todd Reese. Present in Las Vegas were Justice Kristina Pickering, Justice Mark Gibbons, Judge Elissa Cadish, Judge Kimberly Wanker, Discovery Commissioner Bonnie Bulla, Professor Thomas Main, Racheal Mastel, Daniel Polsenberg, and Don Springmeyer.

Justices Pickering and Gibbons advised the Committee through a handout that they had divided all of the Nevada Rules of Civil Procedure into three categories for revisions: (1) Substantive Work Needed, (2) Lean Toward FRCP Revisions and (3) Adopt FRCP Language Revisions, If Applicable; Otherwise Leave As Is. The justices requested the Committee to review these categories before the next Committee meeting and advise if they disagree with the assignment of specific rules to the category set forth above.

Justice Gibbons next discussed NRCP 68 and noted that NRS 17.115 relating to offers of judgment had been repealed in 2015. Justice Pickering asked whether research had been done on availability of attorney fees not provided for by statute or contract and whether some statutory authority is needed. Dan Polsenberg and Don Springmeyer agreed to draft revisions to NRCP 68 to attempt to simplify it, but retain the right of a plaintiff or defendant to make an offer of judgment. Commissioner Bulla noted that U.S. District Judge Andrew Gordon had concerns about ambiguous wording in certain sections of NRCP 68. Racheal Mastel agreed to suggest language regarding family law issues.

The Committee then reviewed and discussed the proposed language and commentary change to NRCP 26(b) drafted by Commissioners Ayres and Bulla regarding the discovery standard and proportionality. Commissioners Ayres and Bulla presented their reasoning for the suggested language changes. Various Committee members made comments about the proposed changes. Justices Pickering and Gibbons continued discussion of NRCP 26(b) to the next Committee meeting to give the Committee members an opportunity to propose written edits to the draft rule and commentary.

A discussion was then held about forming sub-committees to propose revisions to the following rules:

- 1) Dan Polsenberg and Bob Eisenberg: Rules 50, 52, 54(b), 58 and 59;
- 2) Steve Morris and Don Springmeyer: Rules 16, 16.1, 26, 30, 37 and 45 with Commissioners Ayres and Bulla also providing input;
- 3) Dan Polsenberg and Don Springmeyer: Rules 23, 23.1 and 23.2;
- 4) George Bochanis, Graham Galloway and Commissioners Ayres and Bulla: Rule 35;
- 5) Justice Pickering, Judge Cadish, Professor Main and Don Springmeyer: Rules 4, 5 and 6.

In addition Racheal Mastel will provide input on rules of concern for family law attorneys. The sub-committees are requested to draft one set of suggested edits for these rules. Todd Reese is available to assist.

Justices Gibbons and Pickering next advised the Committee that future meeting dates for the Committee have been picked as follows:

- 1) Wednesday, May 24th at 3:00 p.m.;
- 2) Wednesday, June 21st at 3:00 p.m.;
- 3) Wednesday, July 26th at 3:00 p.m.;
- 4) Wednesday, August 16th at 3:00 p.m.

All meetings will be video-conferenced between the State Bar of Nevada Office in Reno and the Nevada Supreme Court building in Las Vegas. The justices understand that Committee members may not be able to attend on some of these dates because of business or personal commitments. However, the goal of the Committee is to submit a draft of the proposed rules changes, with majority and minority recommendations, to the Supreme Court by October 2, 2017.

The meeting was subsequently adjourned at 4:30 p.m.

Respectfully submitted,
Kristina Pickering and Mark Gibbons
Co-Chairs