

Nevada Rules of Civil Procedure Revision Committee Summary

February 21, 2018 Meeting

The twelfth meeting of the Nevada Rules of Civil Procedure Committee (Committee) was held on February 21 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, Bob Eisenberg, Graham Galloway, 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, Discovery Commissioner Bonnie Bulla, Don Springmeyer, Racheal Mastel, Dan Polsenberg, Professor Thom Main, George Bochanis, Loren Young, and Steve Morris.

The Committee first approved the January 17, 2018 meeting minutes, as amended.

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 NRCP 16 and 32. Rule 32 was passed to the next meeting. The Committee briefly discussed Rule 16, which governs pre-trial conferences noting that Rule 16 is not a discovery-related rule. Justice Gibbons agreed and the Rule was assigned to the Everything Else subcommittee to evaluate with input from the district court judges.

2) 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 Rule 50 and 52, briefly discussing and approving the proposed edits to the previously passed rule regarding extending the time to file the motions and timing references to Rule 6. Rule 54(b) was approved at the last meeting.

The Committee then discussed Rule 58. The subcommittee proposed adding the separate judgement requirement from the federal rule, but retaining the Nevada distinction regarding action by the clerk and rejecting FRCP 58(e). Todd Reese objected to the separate judgment requirement noting that it would add another requirement before an appeal could be made, that it was not needed to start the time to appeal running because the time to appeal in Nevada was based on the notice of entry of the order, and that Nevada had case law regarding what constituted an appealable final judgment. Don Springmeyer defended the rule, arguing that a separate judgment requirement would clear up confusion regarding whether a judgment had been entered, that any findings of fact and conclusions of law were not necessary for enforcing a judgment, and that parties could agree to waive the entry of a separate judgment. Racheal Mastel raised concerns about how a separate judgment requirement would be handled in family court. After discussion, the Committee passed this rule to the next meeting to obtain comment from the Supreme Court Clerk's Office, family law practitioners, and others regarding the separate judgment requirement.

The Committee next discussed Rules 59 and 60. The text from the existing NRCP 59(d) regarding a court ordering "a new trial for any reason that would justify granting one on a party's motion" was restored to the proposed rule. With that, Justice Gibbons moved to recommend the rules as amended, the motion was seconded by Justice Pickering, and the Committee voted to recommend the rules.

3) 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. The subcommittee indicated that it had no changes to Rules 23.1 and 23.2. Justice Pickering moved to recommend the rules, the motion was seconded by Don Springmeyer, and the Committee voted to recommend the existing Nevada version of Rules 23.1 and 23.2 without change. As to Rule 23, Dan Polsenberg withdrew his support for the federal version and supports retaining the Nevada version. Don Springmeyer and Kevin Powers noted that Don's proposal for Rule 23 contained added text from the federal rule, and the Committee agreed to recirculate Don's proposal and consider it and any other proposed changes to Rule 23 at the next meeting.

4) Everything Else Subcommittee

Chair: Justice Kristina Pickering

Members: Justice Mark Gibbons, Todd Reese

The Committee discussed the proposed draft amendments to NRCP 41, 51, 54, 55, 62, 65, 66, 67, 70, 77, and 79 circulated by the Everything Else Subcommittee. As to NRCP 41, the Committee grammatically amended several provisions of the draft. Dan Polsenberg suggested eliminating the mandatory 5-year dismissal rule. The Committee discussed the proposal, but did not reach a conclusion. The Committee approved the rule draft as written, but tabled the discussion on the 5-year rule until the next meeting.

The Committee next discussed Rule 51. The Committee was critical of portions of the existing Nevada rule included in Rule 51(a), (b) and (e), finding the detailed requirements of the how many copies were to be filed with the court and how the court was to reject or modify jury instructions to be outdated and not consistent with current practice. The Committee tabled further discussion of the rule, requesting that the subcommittee modify several of the provisions to make it clear that the court and the parties must make a record of the jury instructions proposed, modified, or rejected, but that specific words or procedures need not be used or followed. The Committee specifically rejected a mandate that all discussions concerning jury instructions occur on the record.

The Committee next discussed Rule 54, where the Committee expressed concern about importing the provision from federal law in rule 54(d)(2)(B)(iv) allowing a fee agreement to be disclosed. The Committee

does not object to disclosing the financial terms of the agreement, but does not want the disclosure of the entire agreement. The Committee returned the rule to the subcommittee to make this clear.

The Committee next reviewed the proposed Rule 55. The Committee found that the proposed adoption of the federal language was stylistic and did not alter the substance of the existing NRCP 55. Justice Pickering moved to recommend the rule, the motion was seconded by Dan Polsenberg, and the Committee voted to recommend the rule. Due to time concerns, rules 62 through 79 were not considered and were passed to the next meeting.

A discussion was then held of issues of general concern to the Committee members. Justice Pickering outlined that, in finalizing proposed rules, the Committee should prepare redlines showing how the recommended rule compares, first, to the existing NRCP and, second, to FRCP. This will facilitate public and Supreme Court review of the recommended rules.

Justice Gibbons advised the Committee that the next Committee meeting is scheduled for March 14, 2018, at 3:00 pm at the usual locations. Justice Gibbons advised the Committee that the Las Vegas location for the April meeting would be moved, either to the court room at the Supreme Court building or to the State Bar Offices.

There being no further business to come before the Committee, the meeting was adjourned at 5:10 p.m.

Respectfully submitted,
Kristina Pickering and Mark Gibbons
Co-Chairs