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ELIZABETH A. BROWN  
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BY *[Signature]*  
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October 7, 2019

Elizabeth A. Brown  
Clerk of the Supreme Court  
201 S. Carson Street  
Carson City, NV 89701

VIA Email: nvscclerk@nvcourts.nv.gov

*Re: Comment Regarding the Supplemental Report*

Dear Ms. Brown:

I am writing in my capacity as Co-Chair of the Rules Subcommittee, a standing subcommittee of the Nevada Supreme Court permanent Guardianship Commission.

On January 2, 2019, Justice James Hardesty filed the Supplement to First Interim Report of the Guardianship Commission recommending the adoption of certain rules for guardianship drafted by the Rules Subcommittee and submitted to the Guardianship Commission for review and recommendation for adoption by the Nevada Supreme Court. Thereafter, on September 18, 2019, the Nevada Supreme Court filed its Order Scheduling Public Hearing and Requesting Public Comment. This correspondence now follows.

Exhibit "A" to the Supplement to First Interim Report of the Guardianship Commission sets forth Rule 7 regarding Noticing. Subsequent to the Guardianship Commission's recommendation for adoption of Rule 7 by the Nevada Supreme Court, the Nevada Supreme Court adopted revisions to NRCP 6 which sets forth applicable rules in computing time, to include noticing. As such, Rule 7 as drafted by the Rules Subcommittee and recommended for adoption by the Guardianship Commission conflicts with the provisions of revised NRCP 6, and following review and recommendation by Elizabeth Brickfield, Esq., author of Rule 7, the Co-Chairs of the Rules Subcommittee agreed that Rule 7 is unnecessary and should not be adopted by the Nevada Supreme Court. See, Nevada Supreme Court permanent Guardianship Commission, September 23, 2019 Meeting Materials, Agenda Item 6(b), *enclosed*.

Accordingly, the Co-Chairs of the Rules Subcommittee recommend that the Nevada Supreme Court decline to adopt Rule 7 as set forth in Exhibit "A" to the Supplement to First Interim Report of the Guardianship Commission, filed January 2, 2019.

Sincerely,

*[Signature]*  
DANIA REID  
Deputy District Attorney

Enclosures

CC: Sharon Coates, Executive Assistant II, Supreme Court of Nevada  
John Michaelson, Esquire  
Elizabeth Brickfield, Esquire



**AGENDA ITEM 6(b)**

**Update From Elizabeth Brickfield, Dania Reid,  
and John Michaelson re Noticing Rule in Light of  
Amendments to NRCP 6**

Email Request from John Michaelson & Dania Reid regarding Guardianship Noticing Rule:

Hello Elizabeth:

We hope this email finds you well. Recently, the Nevada Supreme Court approved revisions to NRCP Rule 6 addressing computing time (attached). In that regard, Mallory Nelson inquired whether your draft rule No. 9 addressing noticing should be revisited for consistency with the newly revised NRCP Rule 6. After consultation with Justice Hardesty, it was determined that the Rules Subcommittee co-chairs should request of you the following:

- (1) Review existing draft rule No. 9 (noticing) to determine whether it remains valid as drafted;
- (2) If draft rule No. 9 (noticing) requires revisions based on the newly revised NRCP Rule 6, please complete the revisions for submission to the Rules Subcommittee and subsequently to the full Guardianship Commission for a vote.

It is anticipated that the outstanding rule drafts, including No. 9 (noticing) as it currently written will be scheduled for public hearing and public comment period during the month of April, therefore if your review and any necessary revisions can be completed in time for submission to and voting by the Rules Subcommittee and Guardianship Commission in March, your efforts in that regard will be greatly appreciated.

Thank you, and please let us know if you have any questions or concerns.

- Dania & John

Email response from Elizabeth Brickfield:

In analyzing this issue, I reviewed the Amended NRCP 6 and Chapter 159, specifically the statutes with notice provisions. Chapter 159 does not specify a method of computing time, so the default would be the amended NRCP 6. The Chapter 159 notice provisions generally refer to 10 day periods for notice. For example NRS 159.034 2(a) requires notice to be mailed 10 days prior to the hearing.

NRS 159.0523 and NRS 159.0525, - the temporary guardianship statutes, require a hearing to extend the temporary guardianship to be held within 10 days.

First, it appears to me under Amended NRCP 6, any change to extend time periods in guardianship could best occur by a statutory change.

Second, it would be confusing and judicially inefficient, to use different methodologies to compute time periods for guardianship and non-guardianship process and procedures with such confusion benefitting no one.

However, the NRCP 6 method for computing time can be problematic for third parties whose notice of a petition would be consistent with statute if it was mailed within 10 days of a hearing and we are using calendar and not business days, except for the final day. Given that the legislative intent has been to ensure greater communications with a broader range of family members as well as the protected person, NRCP 6 effectively shortens the time period for a family member – whether locally located or living further away geographically – to learn about and object to the imposition of a temporary guardianship or the taking of actions by a guardian.

It also imposes more strain on the hearing officers, because a hearing to extend a temporary guardianship would have to occur even more quickly than they do now. I recognize that all of this will be accommodated by the court system. However, most troubling to me is the concept of differing ways to compute time and I think we need to be consistent. Having said that, already adopted Guardianship Rule 9 is unnecessary and I suggest that we not go forward with it.

Elizabeth Brickfield

Noticing [formerly designated as draft rule 9 and approved by the guardianship Commission on November 2, 2018]

Except as otherwise specially provided in these rules, in computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run must not be included.

(a) The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a non-judicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a non-judicial day, or, when the act to be done is the filing of a paper in court or the mailing of a notice, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. The County Clerk shall memorialize and maintain in a written log all such inaccessible days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and non-judicial days must be excluded in the computation.

(b) If any day on which an act required to be done by any one of these rules falls on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding judicial day.

(c) whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, a motion for a new trial, a motion to vacate judgment pursuant to NRCP 59 or a notice of appeal, and the notice or paper is served upon the party by mail, either U.S. Mail or court authorized electronic mail, or by electronic means, three (3) days must be added to the prescribed period.

Rule 5 generally conforms to FRCP 5. It retains former NRCP 5(a)'s reference to a "paper relating to discovery" to remind practitioners of the need to serve discovery documents on other parties, including deposition notices under Rule 30, requests for inspections under Rule 34, and subpoenas directed to a third party under Rule 45.

The amendments to Rule 5 relating to electronic filing and service reflect Nevada rules (such as the NEFCR) and practice. Rule 5(b)(4) retains the provisions requiring a proof of service to be attached to an electronic filing; the April 2018 amendments to the federal rule eliminating the proof of service for electronic filing are not adopted. NEFCR 9 bases the time to respond to a document served through an electronic filing system on the date stated in the proof of service.

**Rule 5.1. Reserved**

**Rule 5.2. Reserved**

**Advisory Committee Note—2019 Amendment**

The procedures for privacy protection in Nevada are located in the Rules Governing Sealing and Redacting Court Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) for electronic filing under the NEFCR, at 11:59 p.m. in the court's local time; and

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

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

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

**(b) Extending Time.**

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

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

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

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

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

(2) **Exceptions.** A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(c)(1), and must not extend the time after it has expired under Rule 54(d)(2).

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

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

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

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



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

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

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

#### **Advisory Committee Note—2019 Amendment**

**Subsection (a).** Rule 6(a) represents a major change in calculating time deadlines. It adopts the federal time-computation provisions in FRCP 6(a). Under Rule 6(a)(1), all deadlines stated in days are computed the same way, regardless of how long or short the period is. This simplifies time computation and facilitates “day-of-the-week” counting, but it has required revision to time deadlines stated elsewhere in the NRCP. To compensate for the shortening of time periods previously expressed as less than 11 days by the directive to count intermediate Saturdays, Sundays, and legal holidays, many of the periods have been lengthened. In general, former periods of 5 or fewer days are lengthened to 7 days, while time periods between 6 and 15 days are now set to 14 days. Time periods of 16 to 20 days were set to 21 days, and periods longer than 30 days were retained without change. The use of 7-, 14-, and 21-day periods enables “day-of-the-week” counting; for example, if a motion was filed and served on Wednesday with 7 days to

respond, the opposition would be due the following Wednesday. Statutory- and rule-based time periods subject to this rule may not be changed concurrently with this rule. If a reduction in the times to respond under those statutes and rules results, an extension of time may be warranted to prevent prejudice.

**Subsection (b).** Rule 6(b) addresses extensions of time. While it borrows language from its federal rule counterpart, the rule retains Nevada-specific provisions governing stipulations for extension of time, subject to court approval. Rule 6(b) provides the court may extend the time to act "for good cause." If another rule provides a method for extending time, such as Rule 29 for stipulations about discovery, the court or the parties may extend time as provided in that rule.

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

**Subsection (d).** Rule 6(d) limits the instances in which three additional days will be added to a time calculation to instances in which service is accomplished by mail, by leaving it with the clerk, or in cases involving express consent.

In all other respects, the 2019 amendments to the NRCP and the companion amendments to the Nevada Electronic Filing and Conversion Rules (NEFCR) and the NRAP eliminate the former inconsistent provisions for adding three days for electronic service. These amendments also require the simultaneous filing and service of documents on submission to a court's electronic filing system. The Committee recognizes this will require local rule

amendments and changes to existing electronic filing systems. However, the Committee agrees with the following advisory committee notes to the 2016 amendments to FRCP 6, which explain that the FRCP were amended

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

Requiring simultaneous filing and service of documents submitted to an electronic filing system will take advantage of the speed of electronic communication and reduce litigation delays. If electronic service after business hours, or just before or during a weekend or holiday, results in a practical reduction of the time available to respond, an extension of time may be warranted to prevent prejudice. Consent to and use of electronic filing and service remain governed by local courts and the NEFCR.