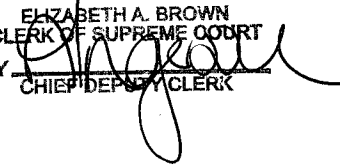


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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

Re: Proposed Amendments to Nevada Rules of Civil Procedure (ADKT 0522)

Dear Chief Justice Douglas:

On behalf of the Litigation Section of the State Bar of Nevada ("Litigation Section"), we submit the following comments and concerns regarding the proposed amendments to the Nevada Rules of Civil Procedure. A representative of the Litigation Section participated in some of the meetings of the State Bar Board of Governors Taskforce ("Taskforce") that reviewed the proposed amendments and agrees with many of the recommendations of the Taskforce. These comments are filed solely on behalf of the Litigation Section.

NRCP 6. Computing and Extending Time.

The Litigation section agrees with the Taskforce's suggestion to revise Rule 6(b)(1)(a) consistent with Rule 29(b), which allows for discovery stipulations without the need for court approval so long as the stipulation does not interfere with the time set for completing discovery, for hearing a motion, or for trial. The Litigation Section agrees with the proposed revision to the rule as follows:

(A) The parties may stipulate to an extension of time without court approval so long as the extension will not interfere with the time set for completing discovery, completing briefing of a motion before a hearing, hearing a motion, trial, or any other court-ordered deadline. Otherwise, the parties may obtain an extension of time by stipulation if approved by the court, provided the stipulation is submitted to the court before the original time or its extension expires;

NRCP 16.1. Mandatory Pretrial Discovery Requirements.

The Litigation Section agrees with the Taskforce's recommendation to revise the proposed amendments to Rule 16.1(a)(1)(A)(iii) and Rule 16.1(c).

Rule 16.1(a)(1)(A)(iii). The Litigation Section agrees with the Taskforce's recommendation that the rule be clarified to require the identity of all medical providers *who have treated the party's injury* (as opposed to using the term "relevant medical providers"), be disclosed so that the opposing party may prepare appropriate medical authorizations for signature to obtain medical records.

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Rule 16.1(c). The Litigation Section agrees with the Taskforce's recommendation to include a provision in this section providing the Discovery Commissioner with authority to shorten or extend time to hear motions.

NRCP 32. Using Depositions in Court Proceedings.

Rule 32(a)(5). The Litigation Section echoes the concern of the Taskforce related to proposed Rule 32(a)(5), which would allow a party to use a deposition of a retained or non-retained expert witness, even if available to testify, for any purpose, unless otherwise ordered by the court. The rule does not explain in what circumstances it would be appropriate for the court to order the witness to appear to testify. Proposed Rule 32(a)(5) is not consistent with either Nevada's current rules, or with the Federal Rules of Civil Procedure. Although the proposed rule is intended to reduce costs and expenses, the Litigation Section believes the rule, as currently drafted, is problematic, and recommends either clarifying the rule or removing it.

Rule 35. Physical and Mental Examinations.

The Litigation Section has reviewed the three competing rule proposals, and recommends adoption of Alternate 1 of the Rule, which permits audio recording of an ordered medical examination, and one observer for the party against whom the order was issued, absent an order to the contrary. This proposed rule appears to be most fair to both the party against whom the order was issued, as well as the party who requested the order.

Rule 38. Right to a Jury Trial.

The Litigation Section agrees with the Taskforce's suggestion to add clarification to NRCP 38(d)(1) that a jury demand filed by a party inures to the benefit of all parties, and that a demand for a jury trial may only be withdrawn if all parties consent or the court for good cause orders the demand withdrawn. This proposed revision is intended to make clearer what is required when a co-defendant demands a jury trial and then later wishes to withdraw the demand. In such a situation, the defendant must receive the approval of not only the plaintiff, but also any other co-defendants to withdraw the jury demand.

NRCP 41. Dismissal of Actions.

The Litigation Section has reviewed the two competing proposals and recommends adoption of Alternate 1, as it provides a more detailed explanation of the procedure.

NRCP 45. Subpoena.

Rule 45(a)(4)(i). The Litigation Section notes that this proposed amendment is not consistent with the Nevada Rules as they currently exist, or with the Federal Rules. The proposed rule requires a party serving a subpoena on a non-party to provide seven days' notice of its intent to serve the subpoena on the other parties before service of the subpoena. The Litigation Section expresses concern regarding the additional notice requirements before serving a subpoena, which could create delays in the discovery process. Additionally, the proposed rule will create

inconsistency between how subpoenas must be served in state court in Nevada versus in federal court in Nevada. The Litigation Section suggests the rule be revised consistent with its federal counterpart.

NRCP 54. Judgments; Attorney Fees.

The Litigation Section has reviewed the two competing proposed versions of the rule, and recommends Alternate 1, which appears to be more consistent with Nevada practice.

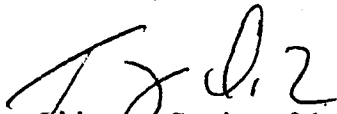
NRCP 58. Entering Judgment.

The Litigation Section has reviewed the two competing proposed versions of the rule, and recommends Alternate 1, as it is clearer.

NRCP 60(c)(1).

The Litigation Section notes its concern with the proposed amendment to Rule 60(b) which would lengthen the time to file a Rule 60(b) motion from 6 months to one year. While the proposed amendment is consistent with its federal counterpart, it seems unnecessary and may lead to belated attempts to obtain relief from a judgment.

Very truly yours,



Litigation Section of the State Bar of Nevada

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