LEGAL AID CENTER
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October 12, 2018

Elizabeth Brown
Clerk of the Supreme Court
Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701

Re: Rules Amendments
In re Cmtee. to Update & Revise the Nev. R. of Civ. P., ADKT. 0522

Dear Ms. Brown:

We welcome the opportunity to comment on the amendments proposed by the Nevada Rules of Civil Procedure Committee (Committee) to the Nevada Rules of Civil Procedure (NRCP), Nevada Rules of Appellate Procedure (NRAP), and the Nevada Electronic Filing and Conversion Rules (NEFCR). We applaud the Committee's efforts recognizing that its mission was challenging.

Our comments are focused on the impact the proposed rules changes may have on the multitude of unrepresented parties navigating the legal system without the assistance of counsel, proposed protected persons, and for consumers who are sued in collection cases.

A. Rule 4.2

Due process is assured by requiring personal service of initial pleadings on "incapacitated" persons, especially in guardianship cases. We do not support proposed Rule 4.2's exceptions to service upon an incapacitated person. We also do not support the comment to the rule addressing service upon an incapacitated person.

Proposed NRCP 4.2(b)(2), in part, states:

> (A) *Unless otherwise ordered,* an incapacitated person must be served by delivering a copy of the summons and complaint:
>
> ...
>
> (B) A copy of the summons and complaint must also be delivered to the incapacitated person*; but for good cause shown*, the court in which the action is pending may dispense with delivery to the incapacitated person.

(Emphasis added)

Unscrupulous parties could try to avoid serving a proposed protected person or alleged incapacitated person in the hopes of obtaining a guardianship order or other relief without the person's knowledge for purposes of financial exploitation under the proposed rule. By the time such motives are discovered, the damage may already be done and the remedies available through NRS 159.346 could themselves

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be rendered "useless" due to theft or waste of the protected person's assets.

Requiring the initial pleading and summons, the citation and petition for guardianship cases, should always be required to be personally served on the proposed protected person, without exception. Such a bright line rule promotes both judicial economy and due process, offering one more layer of protection for vulnerable citizens. The rule does not promote due process and is ripe for abuse. It should only be adopted if it is made clear that service of process should always be effected upon the incapacitated person.

Further, the proposed Advisory Committee Note to Rule 4.2 states that service should be made on incapacitated persons "if at all possible unless completing service would place the process server in danger *or would be useless.*" (Emphasis added). Allowing parties or their counsel to argue that service would be "useless" in support of obtaining a waiver of personal service for a protected person or in a guardianship proceeding on a proposed protected person who has not yet been adjudged incapacitated is problematic. One of the most oft litigated issues in contested guardianship cases is whether the proposed protected person is indeed "incapacitated" under NRS 159.019. Since Rule 4 concerns the initial pleading stages of the case, no finding has been made as to whether the proposed protected person is indeed incapacitated in guardianship matters. In other civil cases, the court should not be placed in a position where it has to determine capacity of a party without the benefit of someone to represent the defendant in such a proceeding if the alleged incapacitated person has not yet been found incapacitated. At the service stage, the application would be most likely made ex parte without anyone to argue against the relief sought. Without an adversarial process, the court would only have the plaintiff's version of events to make a finding of "good cause" to conclude the service would be "useless." This, we believe, would offend general notions of due process and should be eliminated.

The second example of good cause in the proposed Advisory Committee Note is a situation where "completing service would place the process server in danger." In guardianship cases, this seems like an exceedingly rare occurrence (if it exists at all). The example appears more exaggerated than real. The rule is ripe for abuse and does not address scenarios where a person who is not alleged or adjudged to be incapacitated might place a process server in danger. We do not support the comment nor the ability for a plaintiff to avoid the requirements of service on this basis.

B. Rule 4.4

Providing alternate service methods is a welcome and much needed addition from the perspective of a self-represented litigant. The Clark County Family Law Self-Help Center assists roughly 50,000 self-represented litigants per year, and service is a problem for many. Self-represented litigant plaintiffs often have some form of communication with a defendant, but do not have a known address to have them personally served. Service by publication is the current backup method of

service when defendants cannot be personally served, even though it has little practical value.

Proposed Rule 4.4, while allowing for alternate service methods, still depends heavily on publication as a means of service. Subsections (c) and (d) provide wonderful options for situations where the defendant can be contacted but not personally served. However, the rule as written and the advisory note accompanying it state that alternate service "is meant to be considered contemporaneously with publication" and that alternate service methods "can be pursued prior to publication." This means that publication will still be mandatory in all cases where defendant cannot be personally served causing increase costs for the plaintiff without an appreciable benefit.

The legal community generally recognizes the futility of publication, as it is time-consuming, expensive, and extremely unlikely to provide notice of the proceedings to a defendant. The federal rules have deleted publication entirely from Rule 4, and other states have employed the use of court-based legal notice websites, courthouse posting, or service by email or certified mail instead. Those are ideally better service solutions, but if Nevada wants to employ publication, it should be reserved only for cases where it is truly the only potential means of providing notice to an absent Defendant.

To that end, we propose amending the rule to clarify that publication is needed only where it is the method most likely to provide notice to a defendant who cannot be found. Proposed changes are attached as Exhibit 1.

C. Rule 32

The Committee proposes to deviate from the adoption of FRCP 32(a)(6)(B) to the detriment of self-represented litigants. The Committee adds an exception to the general prohibition against the use of a deposition against a party who demonstrates that it was unable to obtain counsel to represent them at the deposition despite the exercise of diligence. The Advisory Committee Note explains, "Rule 32(a)(6)(B) is modified from the federal rule and gives the court the discretion to allow a transcript to be used against a pro se party. In general, parties proceeding pro se and acting as their own attorney should not receive the protection of Rule 32(a)(6)(B)(i) because they do not need time to obtain an attorney. In certain cases, however, a pro se party may initially attempt to obtain an attorney, but be forced into representing themselves due to cost or the availability of an attorney. In such circumstances, the protection of Rule 32(a)(6)(B)(i) may be warranted."

We do not support the exception.

The exception is premised on the assumption that a self-represented litigant is acting as their own attorney. We know, however, that even though a self-represented litigant may proceed on their own, they do not have the legal training or intimacy with the rules of evidence and procedure as an attorney does. We do not see why a self-represented litigant should be treated differently than any other

party who may proceed with counsel. We urge the Court to reject the proposed amendment.

D. Rule 35

We support alternate 1 because it strikes a reasonable balance regarding observers and places the burden on the party seeking the exam to show good cause why an observer should not be present.

E. Amendments to Address Consumer Debt

A number of jurisdictions have updated their rules to address the growing amount of consumer debt cases. In 2014, New York adopted changes specifically to address consumer debt collection cases. Most recently, in 2018, Massachusetts adopted new rules that take effect next year. The most encompassing revisions were made by the New Mexico Supreme Court to its rules in 2016. We urge Nevada to follow suit.

According to the *Annual Report of the Nevada Judiciary for Fiscal Year 2017*, collection of accounts saw 1,555 new filings. Annual Rep. Nev. J. FY 2017, Appx., Table B2-2, p. 28. The data shows that these cases rarely proceed to trial. Only 6 cases were disposed of at a bench or jury trial. These data reveal the need to ensure that the district courts and litigants have the information they need up front to determine these claims without awaiting the need to engage in costly discovery further increasing the potential debt.

In order to protect consumers, we urge the adoption of amendments to Rules 9 and 17, and the adoption of a new Rule 55.1 for consumer debt cases. Our proposed amendments are attached as Exhibit 2.

F. Appeals from Courts of Limited Jurisdiction

NRCP 72 to 76A were abrogated and replaced by NRAP as of July 1, 1973. Since then, the rules have been reserved under the heading of "Appeals." The Committee recommended retaining the current version of these rules. The Committee's January 17, 2018 meeting minutes reveal that the decision was made ". . . without much discussion."

A litigant to a district court case who appeals a matter from the district court to the Supreme Court can review NRAP for procedural guidance. However, the procedural rules that govern appeals from justice court to district court are currently found in the Justice Court Rules of Civil Procedure (JCRCP) 72 to 76A, and 98 to 100. The inclusion of the appeals procedure from justice court to the district court is more appropriately placed in the NRCP, rather than the JCRCP, because these procedural rules dictate how the district court should manage the appeal. Additionally, the filing of an appeal should divest the justice court of jurisdiction, but that fact is not made clear in the current rules. The removal of the rules from JCRCP would require further revision by the justice courts to harmonize their local rules with the proposed NRCP.

We propose abrogating Justice Court Rules of Civil Procedure 72 to 76, and 98 to 100, and incorporating their substance with revisions into NRCP 72 to 76 as set forth in Exhibit 3.

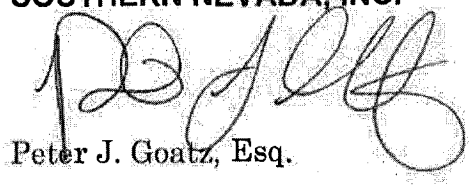
G. Comments to NEFCR E-Signature Rule 11

The language of NEFCR 11(b)(1) currently provides that all documents signed under penalty of perjury have to be an "original" signature, which must be scanned to be reproduced with the electronic filing submission. The language of this rule creates a barrier to access for self-represented filers from submitting electronic signatures because NRS 53.045 allows litigants to sign most filings under penalty of perjury. The current Tyler Guide & File interviews our self-help centers use to assist self-represented litigants with their filings. Over 4,500 interviews have been completed in 2018. One of the survey questions at the end of the guide and file interview asks, "Currently, you have to print your forms and file them at the courthouse. If you were given the choice, how would you prefer to turn in your forms?" 74.9% of respondents answered electronically, through the program, and only 25.1% responded in person, at the courthouse. We believe our suggested amendment to NEFCR 11(b)(1) will promote users' access to justice.

We encourage removing documents signed "under penalty of perjury" from the requirement that a wet signature must be scanned and submitted with a filing. Providing for this exclusion would allow self-represented filers increased access to justice by allowing them to submit electronic signatures and more conveniently electronically file their documents. Our proposal is attached as Exhibit 4.

Very Truly Yours,

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.



Peter J. Goatz, Esq.

EXHIBIT 1

Rule 4.4. Alternative Service Methods.

(a) **Statutory Service.** If a statute provides for service, the summons and complaint may be served under the circumstances and in the manner prescribed by the statute.

(b) **Court Ordered Service.**

(1) If service by one of the methods set forth in Rule 4.2, Rule 4.3(a)(1), (2), or (3), or Rule 4.4(a) proves impracticable, then service may be accomplished in such manner~~, prior to or instead of publication,~~ as the court, upon motion and without notice, may direct.

(2) Any alternative method of service must comport with due process.

(3) If the court orders alternative service, the plaintiff must:

(i) make reasonable efforts to provide notice using other methods of notice under Rule 4.4(c); and

(ii) mail a copy of the summons and complaint, as well as any order of the court authorizing the alternative service method, to the defendant's last known address.

(4) The plaintiff must provide proof of service under Rule 4(d) or as otherwise directed by the court.

(5) Service by publication ~~may be employed only under the circumstances, and in accordance with the procedures~~, as specified in Rule 4.4(d)~~.~~ shall not be employed unless the court determines it is the method most likely to provide actual notice to the defendant.

(c) **Other Methods of Notice.**

(1) The court may order a plaintiff to make reasonable efforts to provide notice of the commencement of the action to a defendant using other methods of notice whenever~~:~~

~~(a) the plaintiff must mail a copy of the summons and complaint to the defendant's last known address; or~~

~~(b)~~ the court finds that, under the circumstances of the case, the plaintiff should make reasonable efforts to provide such notice.

(2) Unless otherwise directed by the court, the plaintiff or the plaintiff's attorney may contact the defendant to provide notice of the action, except when the plaintiff or attorney would violate any statute, rule, temporary or extended protective order, or injunction by communicating with the defendant.

(3) The plaintiff must provide proof of service under Rule 4(d) or as otherwise directed by the court.

(4) Any restricted personal information required for a proof service or other court filings must be redacted as provided by the Nevada Rules Governing Sealing and Redacting Court Records.

(d) **Service by Publication.**

(1) Conditions for Publication. If service cannot be made by the methods of service set forth in Rules 4.2, 4.3, or 4.4(a) and (b), the plaintiff may move the court for an order for service by publication when the defendant~~:~~

~~(A)~~ cannot, after due diligence, be found~~; or~~

~~(B) by concealment seeks to avoid service of the summons and complaint.~~

(2) **Motion Seeking Publication.** A motion seeking an order for service by publication must:

(A) through pleadings or other evidence establish that:

(i) a cause of action exists against the defendant who is to be served; and
(ii) the defendant is a necessary or proper party to the action;

(B) provide affidavits, declarations, or other evidence ~~setting forth specific facts demonstrating that due diligence was undertaken to locate and serve the defendant personally;~~ establishing the following information:

(i) the defendant's last-known address;
(ii) the dates during which the defendant resided at that location;
(iii) confirmation that the defendant's last-known address is, to the best of the plaintiffs knowledge, the last place that the defendant resided;
(iv) confirmation that the defendant no longer resides at the last known address;
(v) confirmation that the plaintiff is unaware of any other address at which the defendant has resided since that time, or at which the defendant can be found; and
(vi) specific facts demonstrating the efforts that the plaintiff has made to locate the defendant.

(C) provide the proposed language of the summons to be used in the publication, briefly summarizing the claims asserted and the relief sought and including any special statutory requirements; and

(D) suggest the newspaper(s) or other periodical(s) in which the summons should be published that are reasonably calculated to give the defendant actual notice of the proceedings.

~~(3) **Information Required When Defendant Cannot Be Found.** In addition to the information set forth in Rule 4.4(d)(2), if publication is sought based on the fact that the defendant cannot be found, the motion seeking an order for service by publication must contain affidavits, declarations, or other evidence establishing the following information:~~

~~(A) the defendant's last-known address;~~
~~(B) the dates during which the defendant resided at that location;~~
~~(C) confirmation that the defendant's last-known address is, to the best of the plaintiffs knowledge, the last place that the defendant resided;~~
~~(D) confirmation that the defendant no longer resides at the last known address;~~
~~(E) confirmation that the plaintiff is unaware of any other address at which the defendant has resided since that time, or at which the defendant can be found; and~~
~~(F) specific facts demonstrating the efforts that the plaintiff has made to locate the defendant.~~

(3) ~~(4)~~ **Property.** ***(no changes requested)***

(4) ~~(5)~~ **The Order for Service by Publication.**

(A) In the order for service by publication, the court must direct publication to be made in one or more newspaper(s) or other periodical(s) published in Nevada, in the state, territory, or foreign country where the defendant is believed to be located, or in any combination of locations. The court's designated locations must be reasonably calculated to give the defendant actual notice of the proceedings. The service must be published at least once a week for a period of four weeks.

(B) If publication is ordered and the plaintiff is aware of the defendant's last-known address, the plaintiff must also mail a copy of the summons and complaint to the

defendant's last-known address. The court may also order notice be sent under Rule 4.4(c).

(C) Service by publication is complete four weeks from the later of:

(i) the date of the first publication; or

(ii) the mailing of the summons and complaint, if mailing is ordered.

EXHIBIT 2

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(h) **Copy to be served.** When any instrument of writing on which the action or defense is founded is referred to in the pleadings, the original or a copy of the instrument shall be served with the pleading, if within the power or control of the party wishing to use the same. A copy of the instrument of writing need not be filed with the district court.

(j) **Consumer Debt Claims.**

(1) **Definitions.** As used in these rules, the following definitions apply:

(A) "Consumer Debt" means a debt arising out of a transaction in which the money, property, insurance, or services that are the subject of the original transaction are primarily for personal, family, or household purposes. A Consumer Debt claim does not include loans secured by real property.

(B) "Original creditor" means the person or entity first owed the debt.

(2) **Applicability.** The pleading of a party, acting in the ordinary course of business, whose cause of action is to collect a Consumer Debt must comply with this Rule and Rule 17(e).

(3) **Special Requirements.** In any action asserting a cause of action to collect a Consumer Debt, the party must file simultaneously with the complaint the affidavits, documentation, and certification provided for in subdivisions (A) – (E) of this rule, which must also be served on the defendant with the complaint.

(A) Affidavit regarding debt. An affidavit disclosing the following information with particularity:

(i) The name, position, and employer of the affiant;

(ii) The name of the current owner of the debt;

(iii) The name of the original creditor, including the name under which the original creditor did business with the defendant, if different;

(iv) For debt arising from a credit card sponsored or co-sponsored by a retailer, the name of the sponsoring or co-sponsoring retailer;

(v) The last four digits of the account number(s) assigned by the original creditor;

(vi) The amount and date of the defendant's last payment, if any, or a representation by the affiant that no payment has been made;

(vii) The date of default or charge-off;

(viii) The amount of the debt on the date of default or charge-off;

(ix) For the portion of the debt incurred after the date of default or charge-off,

an itemization of the debt (broken down by principal, interest, fees, or other charges) and the method of calculating such principal, interest, fees, or other charges;

(x) A chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the original creditor; and

(xi) An attestation that the affiant personally reviewed records sufficient to establish the information requested in this subdivision (j)(3)(A).

(B) Affidavit providing documentation of debt. An affidavit with legible copies of documents establishing the existence, amount, and terms and conditions applicable to the debt, including:

(i) A document provided to the defendant before the date of default or charge-off demonstrating the defendant incurred the debt and the amount owed;

(ii) Documents establishing the terms and conditions applicable to the debt;

(ii) The written document, if any, signed by the defendant evidencing the defendant's agreement to the terms and conditions described in the documents in (3)(B)(i) or, if a signed copy of such document is not within the possession, custody, or control of the plaintiff, documents evidencing the defendant's acceptance of such terms and conditions (which may include the most recent monthly statement reflecting a purchase, payment, or balance transfer authorized by the defendant before the date of default or charge-off); and

(iv) Each bill of sale, assignment, or other document evidencing the transfer of ownership of the debt, beginning with the original creditor. Such documentation must include a specific reference to the defendant or the defendant's account number.

(C) Affidavit regarding address verification. An affidavit stating that the defendant's residential address has been verified within three months prior to the commencement of the action by at least one of the following methods:

(i) That, based on reasonable inquiry, the applicable limitations period has not expired. Receipt of correspondence from the defendant with that return address or other verification from the defendant within the three-month period that such address is current;

(ii) Certified mail receipt signed by the defendant with that address within the three-month period; or

(iii) Sending a letter by first-class mail to that address for the defendant that has not been returned to sender by the postal service, and verifying the same address as current using a paid subscriber-based commercial online database and, if available, either a municipal record, such as a street list or tax records, or a state

motor vehicle registry.

The affidavit shall describe the verification method(s) used and the date(s) of the verification. If any database or municipal or state record(s) used shows more than one address for the defendant during the last 12 months, the plaintiff shall state the basis for selecting the address(es) to be used for service. Documents reflecting such verification shall be attached.

(D) Statute of limitations certification. A certification from the plaintiff or counsel for the plaintiff stating:

(i) That, based on reasonable inquiry, the applicable limitations period has not expired. Whether the terms and conditions applicable to the debt included a choice of law or limitations provision, and, if so, what such provision(s) stated;

(ii) The statute or other law establishing the limitations period, if any; and

(iii) That, based on reasonable inquiry, the applicable limitations period has not expired.

Rule 17

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(e) **Consumer Debt Claims.** Collection agencies as defined by NRS 649.010 may take assignments of Consumer Debt claims in their own names as real parties in interest for the purpose of billing and collection and bringing suit; provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency pleads specific facts in its initial pleading demonstrating that it is the real party in interest and of their license number with the State of Nevada.

(New Rule)

Rule 55.1

(a) Applicability. In addition to the requirements of Rule 55, the provisions of this rule shall apply to the entry of default for failure to appear or otherwise defend and to the entry of judgment after default in all actions subject to the requirements of Rule 9(j).

(b) Default.

(1) Affidavit required. When requesting a default, or upon request of the clerk for the purpose of entering a default, counsel for the plaintiff shall sign, serve, and file an affidavit stating that (i) counsel has personally reviewed the documentation filed and served pursuant to Rule 8.1; (ii) the documentation meets all requirements of Rule 9(j)(A)-(D) (with any exceptions specifically stated); and (iii) the documentation establishes the plaintiff's entitlement to judgment in the amount claimed by the plaintiff. A self-represented plaintiff shall sign, serve, and file an affidavit with the same content. In entering a default, the clerk may rely upon the affidavit.

(2) Non-entry of default. If the plaintiff has not complied with the requirements of Rule 9(j) and subdivision (b)(1) of this rule, the clerk shall not enter a default against the defendant and shall so notify the parties. The court shall dismiss the complaint without prejudice on or after the 30th day after the date of notice by the clerk unless the plaintiff shows cause, with notice to the defendant, why the complaint should not be dismissed.

(c) Judgment. No default judgment against the defendant shall enter unless the clerk (if under Rule 55(b)(1)) or court (if under Rule 55(b)(2)) determines that the documentation filed and served by the plaintiff as required by Rule 9(j)(A)-(D) and the affidavit pursuant to subdivision (b)(1) of this rule establish the plaintiff's entitlement to judgment in the amount claimed by the plaintiff. In entering a default judgment, the clerk or court may rely upon the affidavit pursuant to subdivision (b)(1) of this rule.

(d) Service. The plaintiff's request for entry of default judgment must be served on the defendant in accordance with Rule 5(b). The plaintiff must file proof of service of the request with the clerk or court. If service is to be made by mailing the request to the defendant's residential address, the plaintiff shall, within three months prior to the request, reverify the defendant's current residential address and shall file a new address verification affidavit pursuant to Rule 9(j)(C).

EXHIBIT 3

(New Rules)

~~IX. APPEALS~~

~~[Rules 72 to 76A, inclusive, were abrogated and replaced by Nevada Rules of Appellate Procedure, effective July 1, 1973.]~~

IX. SMALL CLAIMS, SUMMARY EVICTION, AND CIVIL APPEALS FROM JUSTICE COURTS

RULE 72. APPEALS — SMALL CLAIMS

(a) Notice of Appeal. *A party may appeal from the judgment entered against them by the justice court to the district court within 7 days from the filing of the judgment by filing a notice of appeal with the justice court. The filing of a notice of appeal divests the justice court of jurisdiction. The district court may request from a party any items it feels is necessary for appellate review, including a copy of court recordings if it deems the Findings of Fact and Conclusions of Law are insufficient to make an appellate determination.*

(b) Bond on Appeal. *The notice of appeal mentioned in subsection (a) must be accompanied by an appeal bond. Any appealing party must pay the cost bond of $250.00. An appealing party may post an additional bond in the amount of the judgment, including costs awarded in the judgment, to stay execution on the judgment until the appeal is determined. The appeal bond may be in the form of a cash bond, a formal surety bond, or an informal surety bond. After an appeal bond is filed, the other party may raise, for determination by the district court, objections to the bond or to sufficiency of the surety.*

RULE 73. APPEALS—SUMMARY EVICTIONS

A landlord or tenant may appeal an order for summary eviction entered under NRS 40.380 and 40.385 by filing a notice of appeal with the justice court within 10 judicial days of the filing of the summary eviction order and by posting the requisite bond. The district court may request from a party any items it feels is necessary for appellate review, including a copy of court recordings.

RULE 74. CIVIL APPEAL — HOW TAKEN

(a) Filing the Notice of Appeal. *An appeal of a civil action permitted by law from a justice court to the district court must be taken by filing a notice of appeal with the clerk or justice of the justice court within 21 days of the written entry of judgment or order, unless otherwise provided by law. The filing of the notice of appeal must be accompanied with payment of the filing fees prescribed by NRS 4.060 for the justice*

courts. A judgment or order is entered within the meaning of this subdivision when it is signed by the justice or by the clerk, as the case may be, filed, and served, either by mail or electronic means, to the adverse party. If a timely notice of appeal is filed by a party, any other party may file and serve a notice of appeal within 14 days of the date on which the first notice of appeal was served, or within the time otherwise prescribed by this subdivision, whichever period last expires. The filing of the notice of appeal divests the justice court of jurisdiction to hear any substantive matters on the case.

(b) Joint or Consolidated Appeals. *If two or more persons are entitled to appeal from a judgment or order of a justice court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the district court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.*

(c) Content of the Notice of Appeal. *The notice of appeal must specify the party or parties taking the appeal; must designate the judgment, order or part thereof appealed from; and must name the court to which the appeal is taken.*

(d) Service of the Notice of Appeal. *The appellant must serve the notice of appeal by mailing a copy thereof to counsel of record of each party other than appellant or, if a party is not represented by counsel, to the party at the party's last known address. There must be noted on each copy served the date on which the notice of appeal was filed. Service must be sufficient notwithstanding the death of a party or the party's counsel. There must be noted in the proof of service the names of the parties to whom copies have been mailed with the date of mailing. The clerk must note in the register of actions the names of the parties to whom are mailed the copies, with the date of filing.*

RULE 75. STANDING TO APPEAL; APPEALABLE DETERMINATIONS

(a) Aggrieved Party May Appeal. *Any appealable judgment or order in a civil action or proceeding entered by the justice court may be appealed from and reviewed as prescribed by these rules, and not otherwise. Any party aggrieved may appeal, with or without first moving for a new trial, and the district court may consider errors of law and the sufficiency of the evidence, and may remand for a new trial whether or not a motion for new trial has been made.*

(b) Appealable Determinations. *An appeal may be taken:*

(1) From a final judgment in an action or proceeding commenced in the justice court in which the judgment is rendered.

(2) From an order granting or refusing a new trial, or dissolving or refusing to dissolve an attachment, or changing or refusing to change the place of trial, and from any special order made after final judgment except an order granting a motion to set aside a default judgment under Rule 60(b)(1).

(3) From an interlocutory judgment, order or decree made or entered in actions to redeem personal property from a mortgage thereof or lien thereon, determining such right to redeem and directing an accounting, and from an interlocutory judgment in actions for partition which determines the rights and interests of the respective parties and directs partition, sale or division to be made.

(c) Venue. *If an order granting or refusing to grant a motion to change the place of trial of an action or proceeding is not directly appealed from within 21 days, there must be no appeal therefrom on appeal from the judgment in the action or proceeding or otherwise, and on demand or motion of either party to an action or proceeding the court or justice making the order changing or refusing to change the place of trial of an action or proceeding must make an order staying the trial of the action or proceeding until the time to appeal from such order, changing or refusing to change the place of trial, must have lapsed; or if an appeal from such order is taken, until such appeal must, in the district court, or in some other manner, be legally determined.*

(d) Summary Judgment. *No appeal may be taken from an order of a justice court denying a motion for summary judgment; however such an order may be reviewed by the district court in an original proceeding in mandamus when from the record it appears that it is the duty of the justice court to enter summary judgment.*

RULE 75A. BOND FOR COSTS ON APPEAL

Unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking which includes security for the payment of costs on appeal, in civil cases a bond for costs on appeal or equivalent security must be filed by the appellant in the justice court with the notice of appeal; but security must not be required of an appellant who is not subject to costs. The bond or equivalent security must be in the sum or value of $250 unless the justice court fixes a different amount. A bond for costs on appeal must have sufficient surety, and it or any equivalent security must be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the district court may direct if the judgment is modified. If a bond or equivalent security in the sum or value of $250 is given, no approval thereof is necessary. After a bond for costs on appeal is filed, a respondent may raise for determination by the district court–objections to the form of the bond or to the sufficiency of the surety. The provisions of Rule 75B apply to a surety bond upon a bond given pursuant to this rule.

RULE 75B. STAY ON APPEAL — SUPERSEDEAS BOND

(a) Supersedeas Bond; When Required. *Whenever an appellant desires a stay on appeal, the person may file a bond for supersedeas, as provided in this rule.*

(1) If the appeal be from a judgment or order directing the payment of money, the bond must be conditioned for the satisfaction of the judgment in full together with costs and interest if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs and interests as the district court may adjudge and award, and that if the appellant does not make such payment within 30 days after the filing of affirmance of the judgment in whole or part, in the district court, judgment may be entered, on motion of the respondent, in the respondent's favor against the surety or sureties for such amount, together with the interest that may be due thereon, and the costs which may be awarded against the appellant upon the appeal. When the judgment is for the recovery of money not otherwise secured, the amount of the bond must be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal and interest, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond.

If the appeal be from an order dissolving or refusing to dissolve an attachment, the bond must be in the sum of the value of the property attached and conditioned that if the order appealed from, or any part thereof, be affirmed, the appellant must pay to the opposing party, on such appeal, all damages and costs caused by the appellant by reason of such appeal and the stay of execution thereon.

(2) If the judgment or order appealed from direct the assignment or delivery of documents, or personal property, the things required to be assigned or delivered must be assigned and placed in the custody of such officer or receiver as the court may appoint, and the bond must be in such amount as the court may direct, to the effect that the appellant will, if the judgment or order appealed from, or any part thereof, be affirmed, pay to the opposing party on such appeal all damages and costs caused by the appellant by reason of such appeal and the stay of execution thereon. In lieu of the assignment and delivery, and of the bond herein provided for, the appellant may enter into a bond, in such amount as the court may direct, to the effect that if the judgment or order, or any part thereof, be affirmed, the appellant will obey the order and pay to the opposing party on such appeal all damages and costs caused by reason of said appeal and the stay of execution thereon.

(3) If the judgment or order appealed from directs the execution of a conveyance or other instrument, the instrument must be executed and deposited with the clerk of the court with whom the judgment or order is entered to abide by the judgment of the district court, and the bond must be in such amount as the court may direct, to the effect that the appellant will, if the judgment or order appealed from, or any party thereof, be affirmed, pay to the opposing party on such appeal all damages

and costs caused by the appellant by reason of such appeal and the stay of execution thereon.

(4) In cases involving an appeal by the defendant of the issuance of a permanent writ of restitution in a formal unlawful detainer proceeding, such appeal must not stay the execution of the judgment or writ, unless the provisions of NRS 40.380 have been satisfied.

Whenever an appeal is perfected, and a bond given as provided by paragraphs (1), (2), (3) and (4) of this rule, it must stay all further proceedings in the lower court, upon the judgment or order appealed from or upon matters embraced therein, except as hereinafter specified. However, the lower court may proceed upon any other matter included in the action or proceeding and not affected by the judgment or order appealed from. The district court may in its discretion dispense with or limit the security required by (1), (2), (3) and (4) above, when an appellant is an executor, administrator, trustee, or other person acting in another's right.

In cases not provided for in (1), (2), (3) or (4) above, the giving of an appeal bond, under the provisions of Rule 73, must stay proceedings in the lower court upon the judgment or order appealed from, except that where it directs the same of perishable property, the lower court may order the property to be sold and the proceeds thereof to be deposited to abide by the judgment of the district court, and except where the district court may otherwise direct upon such terms as it may in its discretion impose.

(b) Supersedeas Bond: Form and Effect. *Any bonds required by these rules may be in one instrument or several at the option of the giver.*

In every case where, under the provisions of these rules, a bond is required, such bond may be executed on the part of the appellant by at least two qualified and sufficient sureties, stating their place of residence and occupation, or by a bonding or surety company authorized and qualified to do business in the State of Nevada.

Where the bond is executed by such a bonding or surety company, no affidavit as to the sufficiency of such surety need accompany the bond. Otherwise, the bond must be of no effect unless it be accompanied by the affidavit of personal sureties that they are each a resident and householder or freeholder within the State and that they are each worth the amount specified therein over and above their just debts and liabilities, exclusive of property exempt from execution; they may state in their affidavit that they are severally worth amounts less than that expressed in the bond, if the whole amount be equivalent to that of two qualified and sufficient sureties. Each such affidavit must be accompanied by a financial statement.

The adverse party may except to the sufficiency of the sureties within 5 days after the filing of the bond, and, unless they or other sureties justify before the justice within 10 days thereafter, upon notice to the adverse party, to the amount stated in their affidavits, the appeal must be regarded as if no such bond had been given.

In all cases where a bond is required by these rules, a deposit in the lower court of the amount of the judgment appealed from and such additional amount as may be specified by the justice of the court by which the judgment was rendered, must be

equivalent to filing the bond, and in all cases the bond or deposit may be waived by the written consent of the appellee filed in said action or proceeding.

When a proper bond to stay proceedings is filed, it must stay further proceedings except as otherwise above provided, and if an execution or other order must have been issued to the sheriff, coroner, or elisor, the person must return the same, with the cause therefor, and his or her proceedings thereunder, upon receiving from the clerk or justice a notice of the stay of proceedings.

RULE 75C. BONDS — MISCELLANEOUS PROVISIONS

(a) Failure to File or Insufficiency of Bond. *If a bond for costs on appeal or a supersedeas bond is not filed within the time specified, the appeal will be subject to such sanctions as deemed appropriate by the district court. Application for leave to file a sufficient bond may be made only in the district court.*

(b) Judgment Against Surety. *By entering into an appeal or supersedeas bond given pursuant to Rule 73 or 73A, the surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the district court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who must forthwith mail copies to the surety if the surety's address is known.*

RULE 76. THE RECORD ON APPEAL

(a) Record on Appeal. *Within 7 days of the filing of the notice of appeal, the justice, or clerk if so delegated, must certify the record is complete and transmit the record to the district court. The record must consist of:*

(1) All pleadings,to include the complaint, all answers, counterclaims, cross-claims, third-party claims, replies, and all amendments to the same;
(2) All stipulations of the parties;
(3) All pretrial orders;
(4) All exhibits received in evidence and duly marked by the justice or clerk;
(5) All jury instructions, verdict, and judgment from a jury trial;
(6) All findings of fact and conclusions of law with direction for entry of judgment thereon;
(7) All written opinions, orders, or memoranda of decisions; and
(8) Notice of appeal

(b) Transcript.

(1) Party Request. Inclusion of a transcript in the record is not required at the time of the notice of appeal; however, a party may request a transcript by filing a transcript request with the district court clerk and serving it on the clerk of the lower court and on all parties to the appeal within 14 days from the date the appeal is docketed under Rule 76A. The party making the request is responsible for making arrangements with the court reporter who reported the case, or a transcriptionist in the case of electronic recording, to prepare the transcript and bear the cost of the same. Upon receiving the transcript, the party requesting the transcript must file a copy of the transcript with the clerk of the district court within 30 calendar days from the date of service of the transcript request, unless an extension or another date has been set by the district court. A party who has been granted in forma pauperis status need not serve the transcript request on the court reporter or recorder. The district court will review any completed transcript request forms submitted by parties granted in forma pauperis status and determine which transcripts, if any, must be prepared and must issue an order directing the preparation of any necessary transcripts.

(2) District Court Ordered. Upon receipt of the record on appeal, the district court may order the appellant to provide a transcript of the relevant proceedings in the justice court should the district court feel the transcript of the proceeding is necessary for determination of the appellate issues and one has not been included in the record by the appellant. Should the district court order the preparation and inclusion of a transcript, the appellant is responsible for securing the transcript in accordance with the provisions of subsection (1).

(3) The appellant must furnish each party appearing separately, or their counsel, a copy of such transcript.

(c) Correction or Modification of the Record. *If any difference arises as to whether the record truly discloses what occurred in the justice court, the difference must be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the justice court, either before or after the record is transmitted to the district court, or the district court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record must be presented to the justice court before the record is transmitted or the district court after the record is transmitted.*

(d) ***Several Appeals.*** *When more than one appeal is taken from the same judgment, a single record on appeal must be prepared containing all the matter designated or agreed by the parties, without duplication.*

(e) ***Transmission of the Record.*** *Upon filing of the notice of appeal, the appellant must pay to the clerk or justice of the justice court the filing fees prescribed by NRS 4.060 for the justice courts and NRS 19.013 for district courts, and the clerk must, when the record is complete, forward the appeal record for docketing in district court, together with a sum sufficient for the filing fee. If an appellant is authorized to prosecute the appeal without pre-payment of fees, the clerk must forward the appeal record for docketing in district court when the record is complete.*

RULE 76A. DOCKETING THE APPEAL: FILING OF THE RECORD IN DISTRICT COURT

Upon receiving the copies of the notice of appeal and the record from the lower court clerk under Rule 76(e), the clerk of the district court must docket the appeal, file the record, and immediately notify all parties of the docketing and filing dates.

EXHIBIT 4

Nevada Electronic Filing and Conversion Rule 11. Signatures and authenticity of documents.

(b) *Documents ~~under penalty of perjury or~~ requiring signature of notary public.*

(1) Documents required by law to include a ~~signature under penalty of perjury, or the~~ signature of a notary public~~,~~ may be submitted electronically, provided that the ~~declarant or~~ notary public has signed a printed form of the document. The printed document bearing the original signatures must be scanned and electronically submitted for filing in a format that accurately reproduces the original signatures and contents of the document.

(2) By electronically filing the document, the electronic filer attests that the documents and signatures are authentic.