ADKT 522 – Redline of 12/31/18 NRCP against FRCP

FILED

FEB 04 2019

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

19-05238

EXHIBIT A

AMENDMENT TO THE NEVADA RULES OF CIVIL PROCEDURE ~~FOR THE UNITED STATES DISTRICT COURTS~~

~~TITLE~~ Advisory Committee Note—2019 Amendments Preface

The 2019 amendments to the Nevada Rules of Civil Procedure are comprehensive. Modeled in part on the 2018 version of the Federal Rules of Civil Procedure, the 2019 amendments restyle the rules and modernize their text to make them more easily understood. Although modeled on the FRCP, the amendments retain and add certain Nevada-specific provisions. The stylistic changes are not intended to affect the substance of the former rules.

The 2019 amendments to the NRCP affect and will require review and revision of other court rules. Because the amendments respecting filing, service, and time calculation directly impact the Nevada Electronic Filing and Conversion Rules and certain of the Nevada Rules of Appellate Procedure, amendments to those rules have been adopted to harmonize them with the NRCP. The job of reviewing and amending the District Court Rules and individual local rules, such as the Second and Eighth Judicial District Court Rules, to bring them into conformity with the 2019 amendments to the NRCP, NEFCR, and NRAP remains.

I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the ~~United States~~ district courts, except as stated in Rule 81. They should be

construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 2. One Form of Action

There is one form of action—the civil action.

~~TITLE~~ II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

Advisory Committee Note—2019 Amendment

As used in these rules, "complaint" includes a petition or other document that initiates a civil action.

Rule 4. Summons and Service

~~**Rule 4.1. Serving Other Process**~~

~~(a~~ (a) **Summons.**

(1) **Contents.** A summons must:

(A) name the court, the county, and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend under Rule 12(a) or any other applicable rule or statute;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk;

(G) bear the court's seal; and

(H) comply with Rule 4.4(c)(2)(C) when service is made by publication.

(2) **Amendments.** The court may permit a summons to be amended.

(b) **Issuance.** On or after filing a complaint, the plaintiff must present a summons to the clerk for issuance under signature and seal. If a summons is properly presented, the clerk must issue a summons under signature and seal to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) **Service.**

(1) **In General.** ~~Process—other~~ Unless a defendant voluntarily appears, the plaintiff is responsible for:

(A) obtaining a waiver of service under Rule 4.1, if applicable; or

(B) having the summons and complaint served under Rule 4.2, 4.3, or 4.4 within the time allowed by Rule 4(e).

(2) **Service With a Copy of the Complaint.** A summons must be served with a copy of the complaint. The plaintiff must furnish the necessary copies to the person who makes service.

(3) **By Whom.** The summons and complaint may be served by the sheriff, or a deputy sheriff, of the county where the defendant is found or by any person who is at least 18 years old and not a party to the action.

(4) **Cumulative Service Methods.** The methods of service provided in Rules 4.2, 4.3, and 4.4 are cumulative and may be utilized with, after, or independently of any other methods of service.

(d) **Proof of Service.** Unless a defendant voluntarily appears or waives or admits service, a plaintiff must file proof of service with the court stating the date, place, and manner of service no later than ~~a summons under Rule 4 or a subpoena under Rule 45 must be served by a~~the time permitted for the defendant to respond to the summons.

(1) **Service Within the United States** ~~marshal or deputy marshal or by a person specially~~. Proof of service within Nevada or within the United States must be made by affidavit from the person who served the summons and complaint.

(2) **Service Outside the United States.** Service not within the United States must be proved as follows:

(A) if made under Rule 4.3(b)(1)(A), as provided in the applicable treaty or convention; or

(B) if made under Rule 4.3(b)(1)(B) or (C), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) **Service by Publication.** If service is made by publication, a copy of the publication must be attached to the proof of service, and proof of service must be made by affidavit from:

(A) the publisher or other designated employee having knowledge of the publication; and

(B) if the summons and complaint were mailed to a person's last-known address, the individual depositing the summons and complaint in the mail.

(4) **Amendments.** The court may permit proof of service to be amended.

(5) **Failure to Make Proof of Service.** Failure to make proof of service does not affect the validity of the service.

(e) **Time Limit for Service.**

(1) **In General.** The summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule.

(2) **Dismissal.** If service of the summons and complaint is not made upon a defendant before the 120-day service period—or any extension thereof—expires, the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court's own order to show cause.

(3) **Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time before the 120-day service period—or any extension thereof—expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made.

(4) **Failure to Make Timely Motion to Extend Time.** If a plaintiff files a motion for an extension of time after the 120-day service period—or any extension thereof—expires, the court must first determine whether good cause exists for the plaintiff's failure to timely file the motion for an extension before the court considers whether good cause exists for granting an extension of the service period. If the plaintiff shows that good cause exists for the plaintiff's failure to timely file the motion and for granting an extension

of the service period, the court must extend the time for service and set a reasonable date by which service should be made.

Advisory Committee Note—2019 Amendment

Rule 4 is revised and reorganized, preserving the core of former NRCP 4, incorporating provisions from the federal rule and Rules 4, 4.1, and 4.2 of the Arizona Rules of Civil Procedure, and adding new provisions. The amendments break up former NRCP 4 into Rule 4, Summons and Service; Rule 4.1, Waiving Service; Rule 4.2, Service Within Nevada; Rule 4.3, Service Outside Nevada; and Rule 4.4, Alternative Service Methods.

Subsection (a). Rule 4(a)(1) restates the first sentence in former NRCP 4(b) with stylistic changes. The second sentence of former NRCP 4(b) is moved into Rule 4.4(c)(2)(C), service by publication, with a cross-reference in Rule 4(a)(1)(H). Rule 4(a)(2) is new and is incorporated from the federal rule.

Subsection (b). Rule 4(b) makes stylistic changes to former NRCP 4(a). It borrows language from its federal rule counterpart, with changes to accommodate Nevada practice.

Subsection (c). Rule 4(c)(1) states the service requirements. Rule 4(c)(2) restates the first two sentences of former NRCP 4(d). Rule 4(c)(3) is a stylistic restatement of the former NRCP 4(c). Rule 4(c)(4) is carried forward from the last sentence of the former NRCP 4(e)(2).

Subsection (d). Rule 4(d) incorporates former NRCP 4(g), with stylistic revisions. Rule 4(d)(2), addressing international service, and Rule 4(d)(4), addressing amendment of proof of service, are new and drawn from FRCP 4(l)(2) and (3), respectively.

Subsection (e). Rule 4(e) revises former NRCP 4(i) to clarify that the 120-day period for accomplishing service generally applies to all civil actions.

Rule 4(e) does not incorporate the federal exemption for foreign service. A plaintiff needing to serve a defendant in a foreign country may move to extend the time for service; if appropriate, the court can extend the deadline and set a reasonable deadline for service. Rule 4(e)(2) makes clear that, if the court acts on its own, it must issue an order to show cause giving the parties notice and an opportunity to be heard before dismissing an action for failure to make service.

Rule 4.1. Waiving Service

(a) **Requesting a Waiver.** An individual, entity, or association that is subject to service under Rule 4.2(a), 4.2(c)(1) or (2), 4.3(a)(1) or (3), or 4.3(b)(1) or (3) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(1) be in writing and be addressed:

(A) to the individual defendant; or

(B) for an entity or association, to a person designated by Rule 4.2(c)(1);

(2) name the court where the complaint was filed;

(3) be accompanied by a copy of the complaint, two copies of the waiver form, Form 2 in the Appendix of Forms or its substantial equivalent, and a prepaid means for returning the form;

(4) inform the defendant, using the waiver form, of the consequences of waiving and not waiving service;

(5) state the date when the request is sent;

(6) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside the United States—to return the waiver; and

(7) be sent by first-class mail or other reliable means.

(b) **Reserved.**

(c) **Time to Answer After a Waiver.** A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside the United States.

(d) **Results of Filing a Waiver.** When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(e) **Jurisdiction and Venue Not Waived.** Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

Advisory Committee Note—2019 Amendment

Rule 4.1 is new and mirrors FRCP 4(d), minus FRCP 4(d)(2)'s penalty provision. The waiver provisions apply to individuals, entities, and associations, wherever served, but do not apply to minors, incapacitated persons, or government defendants. The Appendix of Forms at the end of these rules includes Form 1, a Request to Waive Service of Summons; and Form 2, Waiver of Service of Summons. Use of the forms is not mandatory, but if the forms are not used the text of the request or waiver sent must be substantially similar to the text in Forms 1 and 2 to be valid.

Rule 4.2. Service Within Nevada

(a) **Serving an Individual.** Unless otherwise provided by these rules, service may be made on an individual:

(1) by delivering a copy of the summons and complaint to the individual personally;

(2) by leaving a copy of the summons and complaint at the individual's dwelling or usual place of abode with a person of suitable age and discretion who currently resides therein and is not an adverse party to the individual being served; or

(3) by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(b) **Serving Minors and Incapacitated Persons.**

(1) **Minors.** A minor must be served by delivering a copy of the summons and complaint:

(A) if the minor is 14 years of age or older, to the minor; and

(B) to one of the following persons:

(i) if a guardian or similar fiduciary has been appointed for ~~that purpose. It may be served anywhere within the territorial limits of the state where the district court~~the minor, to the fiduciary under Rule 4.2(a), (c), or (d), as appropriate for the type of fiduciary;

(ii) if a fiduciary has not been appointed, to the minor's parent under Rule 4.2(a); or

(iii) if neither a fiduciary nor a parent can be found with reasonable diligence:

(a) to an adult having the care or control of the minor under Rule 4.2(a); or

(b) to a person of suitable age and discretion with whom the minor resides.

(2) **Incapacitated Persons.** An incapacitated person must be served by delivering a copy of the summons and complaint:

(A) to the incapacitated person; and

(B) to one of the following persons:

(i) if a guardian or similar fiduciary has been appointed for the incapacitated person, to the fiduciary under Rule 4.2(a), (c), or (d), as appropriate for the type of fiduciary; or

(ii) if a fiduciary has not been appointed:

(a) to a person of suitable age and discretion with whom the incapacitated person resides;

(b) if the incapacitated person is living in a facility, to the facility under Rule 4.2, as appropriate for the type of facility; or

(c) to another person as provided by court order.

(c) **Serving Entities and Associations.**

(1) **Entities and Associations in Nevada.**

(A) An entity or association that is formed under the laws of this state, is registered to do business in this state, or has appointed a registered agent in this state, may be served by delivering a copy of the summons and complaint to:

(i) the registered agent of the entity or association;

(ii) any officer or director of a corporation;

(iii) any partner of a general partnership;

(iv) any general partner of a limited partnership;

(v) any member of a member-managed limited-liability company;

(vi) any manager of a manager-managed limited-liability company;

(vii) any trustee of a business trust;

(viii) any officer or director of a miscellaneous organization mentioned in NRS Chapter 81;

(ix) any managing or general agent of any entity or association; or

(x) any other agent authorized by appointment or by law to receive service of process.

(B) If an agent is one authorized by statute and the statute so requires, a copy of the summons and complaint must also be mailed to the defendant entity or association at its last-known address.

(2) **Other Foreign Entities and Associations.** A foreign entity or association that cannot be served under Rule 4.2(c)(1) may be served by delivering a copy of the summons and complaint to any officer, director, partner, member, manager, trustee, or agent identified in Rule 4.2(c)(1) that is located within this state.

(3) **Service via the Nevada Secretary of State.**

(A) If, for any reason, service on an entity or association required to appoint a registered agent in this state or to register to do business in this state cannot be made under Rule 4.2(c)(1) or (2), then the plaintiff may seek leave of court to serve the Nevada Secretary of State in the entity's or association's stead by filing with the court an affidavit:

(i) setting forth the facts demonstrating the plaintiff's good faith attempts to locate and serve the entity or association;

(ii) explaining the reasons why service on the entity or association cannot be made; and

(iii) stating the last-known address of the entity or association or of any person listed in Rule 4.2(c)(1), if any.

(B) Upon court approval, service may be made by:

(i) delivering a copy of the summons and complaint to the Nevada Secretary of State or his or her deputy; and

(ii) posting a copy of the summons and complaint in the office of the clerk of the court in which such action is brought or pending.

(C) If the plaintiff is aware of the last-known address of any person listed in Rule 4.2(c)(1), the plaintiff must also mail a copy of the summons and complaint to each such person at the person's last-known address by registered or certified mail. The court may also order additional notice to be sent under Rule 4.4(d) if the plaintiff is aware of other contact information of the entity or association or of any person listed in Rule 4.2(c)(1).

(D) Unless otherwise ordered by the court, service under Rule 4.2(c)(3) may not be used as a substitute in place of serving, under Rule 4.3(a), an entity or association through a person listed in Rule 4.2(c)(1) whose address is known but who lives outside this state.

(E) The defendant entity or association must serve a responsive pleading within 21 days after the later of:

(i) the date of service on the Nevada Secretary of State and posting with the clerk of the court; or

(ii) the date of the first mailing of the summons and complaint to the last-known address of any person listed in Rule 4.2(c)(1).

(d) **Serving the State of Nevada, Its Public Entities and Political Subdivisions, and Their Officers and Employees.**

(1) **The State and Its Public Entities.** The State and any public entity of the State must be served by delivering a copy of the summons and complaint to:

(A) the Attorney General, or a person designated by the Attorney General to receive service of process, at the Office of the Attorney General in Carson City; and

(B) the person serving in the office of administrative head of the named public entity, or an agent designated by the administrative head to receive service of process.

(2) **State Officers and Employees.** Any current or former public officer or employee of the State who is sued in his or her official capacity or his or her individual capacity for an act or omission relating to his or her public duties or employment must be served by delivering a copy of the summons and complaint to:

(A) the Attorney General, or a person designated by the Attorney General to receive service of process, at the Office of the Attorney General in Carson City; and

(B) the current or former public officer or employee, or an agent designated by him or her to receive service of process.

(3) **Political Subdivisions and Their Public Entities.** Any county, city, town, or other political subdivision of the State, and any public entity of such a political subdivision, must be served by delivering a copy of the summons and complaint to the presiding officer of the governing body of the political subdivision, or an agent designated by the presiding officer to receive service of process.

(4) **Local Officers and Employees.** Any current or former public officer or employee of any county, city, town, or other political subdivision of the State, or any public entity of such a political subdivision, who is sued in his or her official capacity or his or her individual capacity for an act or omission relating to his or her public duties or employment must be

served by delivering a copy of the summons and complaint to the current of former public officer or employee, or an agent designated by him or her to receive service of process.

(5) **Statutory Requirements.** A party suing the State, its public entities or political subdivisions, or their current or former officers and employees must also comply with any statutory requirements for service of the summons and complaint.

(6) **Extending Time.** The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4.2(d)(1) or (2), if the party has served the Attorney General; or

(B) serve the Attorney General under Rule 4.2(d)(1) or (2), if the party has served the required person.

Advisory Committee Note—2019 Amendment

Subsection (a). Rule 4.2(a) restyles NRCP 4(d)(6) to track FRCP 4(e)(2). Rule 4.2(a)(2) specifies that a summons and complaint may not be delivered to a person of suitable age and discretion who resides with the individual being served if the person is a party to the litigation adverse to the individual being served. This makes unavailing the practice of having a plaintiff in a divorce action accept service on behalf of the spouse with whom he or she still resides.

Subsection (b). Rule 4.2(b) amends former NRCP 4(d)(3) and (4) for service on minors and incapacitated persons. NRS Chapter 129 generally defines a "minor" to be a person under 18 years of age unless emancipated. To serve a minor who is 14 years of age or older, Rule 4.2(b)(1)(A) requires

personal service of the summons and complaint on the minor and, also, service on the person designated by Rule 4.2(b)(1)(B).

Rule 4.2(b)(2) similarly amends the procedure for serving an incapacitated person. The rule requires personal service of the summons and complaint on the incapacitated person and, in addition, service of the summons and complaint on the incapacitated person's guardian or fiduciary, if one has been appointed, or other person specified in the rule. Rule 4.2(b)(2) only applies when the person being served has already been declared incapacitated under applicable law; service on a person not yet declared incapacitated should be made under Rule 4.2(a). The change in terminology from "incompetent" to "incapacitated" is stylistic, not substantive.

Subsection (c). The amendments to Rule 4.2(c) encompass all business entities, associations, and other organizations. Rule 4.2(c)(1) generally restates former NRCP 4(d)(1), but also incorporates provisions from FRCP 4(h)(1)(B). Rule 4.2(c)(1) applies to any Nevada entity or association and any foreign entity or association that has registered to do business in Nevada or has appointed a registered agent in Nevada. Rule 4.2(c)(2) applies to foreign entities or associations generally.

Rule 4.2(c)(3) revises the second half of former NRCP 4(d)(1) and governs service on the Nevada Secretary of State when an entity or association cannot otherwise be served. Secretary of State service only applies when a Nevada or foreign entity or association is required by law to appoint a registered agent in Nevada or to register to do business in Nevada. Service on the Nevada Secretary of State now requires court approval and incorporates new alternative notice provisions in Rule 4.4(d).

Subsection (d). Rule 4.2(d) amends former NRCP 4(d)(5) and addresses service on government entities and their officers and employees.

Waiver of service under Rule 4.1 does not apply to government entities and persons subject to service under Rule 4.2(d).

Rule ~~and, if authorized by a federal statute, beyond~~**4.3. Service Outside Nevada**

(a) **Service Outside Nevada but Within the United States.**

(1) **Serving Individuals.** A party may serve process outside Nevada, but within the United States, in the same manner as provided in Rule 4.2(a) for serving such a defendant within Nevada, or as prescribed by the law of the place where the defendant is served.

(2) **Serving Minors and Incapacitated Persons.** A party may serve process outside Nevada, but within the United States, in the same manner as provided in Rule 4.2(b) for serving such a defendant within Nevada.

(3) **Serving Entities and Associations.** A party may serve process outside Nevada, but within the United States, in the same manner as provided in Rule 4.2(c)(1) for serving such a defendant within Nevada, or as prescribed by the law of the place where the defendant is served.

(4) **Serving Another State or Territory.** Service upon another state or territory, its public entities and political subdivisions, and their officers and employees may be made in the manner prescribed by that state's or territory's law for serving a summons or like process on such a defendant.

(5) **Serving the United States.** Service upon the United States and its agencies, corporations, officers, or employees may be made as provided by Rule 4 of the Federal Rules of Civil Procedure.

(6) **Authorized Persons.** Service must be made by a person who is authorized to serve process under the law of the state or territory where service is made.

(b) **Service Outside the United States.**

(1) **Serving an Individual.** Unless otherwise provided by these rules, an individual—other than a minor, an incapacitated person, or a person whose waiver has been filed—may be served at a place outside of the United States:

(A) by any internationally agreed means of service that is reasonably calculated to give notice, such as those ~~limits. Proof of service must be made under Rule 4(l).~~authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

~~(b) ENFORCING ORDERS: COMMITTING FOR CIVIL CONTEMPT. An order committing a person for civil contempt of a decree or injunction issued to enforce federal law may be served and enforced in any district. Any other order in a civil contempt proceeding may be served only in the state where the issuing court is located or elsewhere in the United States within 100 miles from where the order was issued.~~

(B) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(i) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(ii) as the foreign authority directs in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the foreign country's law, by:

(a) delivering a copy of the summons and of the complaint to the individual personally; or

(b) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(C) by other means not prohibited by international agreement, as the court orders.

(2) **Serving a Minor or Incapacitated Person.** A minor or an incapacitated person who is outside the United States must be served in the manner prescribed by Rule 4.3(b)(1)(B)(i) or (ii), or 4.3(b)(1)(C).

(3) **Serving Entities or Associations.** An entity or association that is outside the United States may be served in any manner prescribed by Rule 4.3(b)(1) for serving an individual, except personal delivery under Rule 4.3(b)(1)(B)(iii)(a).

(4) **Serving a Foreign Country or Political Subdivision.** A foreign country or a political subdivision, agency, or instrumentality thereof must be served under 28 U.S.C. § 1608.

Advisory Committee Note—2019 Amendment

Rule 4.3(a) governs service outside Nevada but within the United States and amends former NRCP 4(e)(2). Rule 4.3(b) governs service outside of the United States and is drawn from FRCP 4(f), (g), (h), and (j).

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 a party demonstrates that the service methods provided in Rules 4.2, 4.3, and 4.4(a) are impracticable, the court may, upon motion and without notice to the person being served, direct that service be accomplished through any alternative service method.

(2) A motion seeking an order for alternative service must:

(A) provide affidavits, declarations, or other evidence setting forth specific facts demonstrating:

(i) the due diligence that was undertaken to locate and serve the defendant; and

(ii) the defendant's known, or last-known, contact information, including the defendant's address, phone numbers, email addresses, social media accounts, or any other information used to communicate with the defendant; and

(B) state the proposed alternative service method and why it comports with due process.

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

(A) make reasonable efforts to provide additional notice under Rule 4.4(d); and

(B) 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) A plaintiff may serve a defendant by publication only if the requirements of Rule 4.4(c) are met and the procedures for publication are followed.

(c) **Service by Publication.** If a party demonstrates that the service methods provided in Rules 4.2, 4.3, and 4.4(a) and (b) are impracticable, the court may, upon motion and without notice to the person being served, direct that service be made by publication.

(1) **Conditions for Publication.** Service by publication may only be ordered when the defendant:

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

(B) by concealment seeks to avoid service of the summons and complaint; or

(C) is an absent or unknown person in an action involving real or personal property under Rule 4.4(c)(3).

(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 the efforts that the plaintiff made to locate and serve 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;

(D) suggest one or more newspapers or other periodicals in which the summons should be published that are reasonably calculated to give the defendant actual notice of the proceedings; and

(E) if publication is sought based on the fact that the defendant cannot be found, provide affidavits, declarations, or other evidence establishing the following information:

(i) the defendant's last-known address;

(ii) the dates during which the defendant resided at that location; and

(iii) 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.

(3) **Service by Publication Concerning Property Located Within Nevada.**

(A) The court may order service by publication in the actions listed in Rule 4.4(c)(3)(B) if a defendant:

(i) resides in the United States and has been absent from this state for at least two years;

(ii) resides in a foreign country and has been absent from the United States for at least six months;

(iii) is an unknown heir or devisee of a deceased person; or

(iv) is an unknown owner of real or personal property.

(B) Rule 4.4(c)(3) applies only to the following actions involving real or personal property located within Nevada:

(i) actions for the enforcement of mechanics' liens or other liens against real or personal property;

(ii) actions for foreclosure of mortgages and deeds of trust;

(iii) actions for the establishment of title to real estate;

(iv) actions to exclude the defendant from any interest in real or personal property; and

(v) any other action for the enforcement, establishment, or determination of any right, claim, or demand, actual or contingent, to or against any real or personal property.

(C) Service by publication on an unknown heir, devisee, or property owner may only be used when the unknown heir, devisee, or property owner must be a party to the action under Rule 19(b).

(D) A plaintiff proceeding under Rule 4.4(c)(3) must provide the information required by Rule 4.4(c)(2), as applicable, in addition to providing affidavits, declarations, or other evidence establishing the facts necessary to satisfy the requirements of Rule 4.4(c)(3).

(4) **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 newspapers or other periodicals 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 that additional notice be sent under Rule 4.4(d).

(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.

(d) **Additional Methods of Notice.**

(1) In addition to any other service method, the court may order a plaintiff to make reasonable efforts to provide additional notice of the commencement of the action to a defendant using other methods of notice, including certified mail, telephone, voice message, email, social media, or any other method of communication.

(2) Unless otherwise ordered, 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 notice in the same manner as proof of service under Rule 4(d), or as otherwise directed by the court.

Advisory Committee Note—2019 Amendment

Subsection (a). Rule 4.4(a) incorporates former NRCP 4(e)(3).

Subsection (b). Modeled on Rule 4.1(k) of the Arizona Rules of Civil Procedure, Rule 4.4(b) is new and authorizes the court to fashion a method of service consistent with due process when no other available service method remains besides publication, which should only be used as a last resort.

Subsection (c). Rule 4.4(c), publication, amends former NRCP 4(e)(1). Rule 4.4(c)(2) specifies the requirements for a motion seeking publication. The motion must contain specific facts demonstrating the plaintiff's efforts to find and serve the defendant; general allegations that a defendant cannot be found are insufficient to warrant publication. Rule 4.4(c)(3) governs service by publication concerning real and personal property in this state. In general, persons outside the state must be served under Rule 4.3. Given the State's interest in resolving disputes concerning real or personal property located

within this state, however, service by publication may be used for the specified defendant when that party's presence is necessary for the action to be adjudicated. Rule 4.4(c)(4) governs the order for publication. When ordering publication, the court must designate the locations for publication and order any other steps to be taken to effect service that, in the court's opinion, are calculated to satisfy due process. This may include publication in locations outside of Nevada or outside of the United States. The new rule adds "or other periodicals" to the rule to permit the court to authorize the summons in a periodical other than a newspaper, including an online periodical.

Subsection (d). Rule 4.4(d) is new and permits the court to order the plaintiff to make reasonable efforts to provide actual notice of the action to the defendant. In this modern era of electronic communication, a plaintiff may communicate with a defendant electronically, and thus know how to contact the defendant by phone, email address, social media, or other methods, but be unaware of the defendant's current physical address. In this situation, a plaintiff should not be permitted to mail notice to a defendant's long-outdated last-known address while ignoring other reliable means of providing actual notice. The rule does not specify any particular method of communication, recognizing that notice via nontechnological methods of communication or future technologies may both be used, depending on the individual case. This rule is intended to work in conjunction with other service rules that require the summons and complaint to be mailed to a defendant's last-known address. Notice given under Rule 4.4(d) does not constitute service by itself, unless the notice provided complies with another service method.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) **Service: When Required.**

(1) **In General.** Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) ~~a~~any paper relating to discovery ~~paper~~ required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, ~~or~~ offer of judgment, or any similar paper.

(2) **If a Party Fails to Appear.** No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

~~(3) *Seizing Property.* If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.~~

(b) **Service: How Made.**

(1) **Serving an Attorney.** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) **Service in General.** A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) ~~sending~~submitting it to ~~a registered user by filing it with~~ the court's electronic- filing system, if established under the NEFCR, for electronic service under NEFCR 9 or sending it by other electronic means that the person consented to in writing—in ~~either of~~ which events ~~services~~service is complete upon ~~filing~~submission or sending, but is not effective if the ~~filer or sender~~serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) **Using Court Facilities.** If the court has established an electronic filing system under the NEFCR through which service may be effected, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).

(4) **Proof of service.** Proof of service may be made by certificate, acknowledgment, or other proof satisfactory to the court. Proof of service should accompany the filing or be filed in a reasonable time thereafter. Failure to make proof of service does not affect the validity of service.

(c) **Serving Numerous Defendants.**

(1) **In General.** If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) **Notifying Parties.** A copy of every such order must be served on the parties as the court directs.

(d) **Filing.**

(1) **Required Filings**~~; *Certificate of Service.*~~

~~(A) *Papers after the Complaint.*~~. Any paper after the complaint that is required to be served must be filed no later than a reasonable time after service. But disclosures under Rule ~~26(a)(1) or (2)~~16.1 and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

~~(B) *Certificate of Service.* No certificate of service is required when a paper is served by filing it with the court's electronic filing system. When a paper that is required to be served is served by other means:~~

~~(i) if the paper is filed, a certificate of service must be filed with it or within a reasonable time after service; and~~

~~(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by court order or by local rule.~~

(2) **Nonelectronic Filing.** A paper not filed electronically is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) **Electronic Filing ~~*and*~~, Signing.**

~~(A) **By a Represented Person—Generally Required; Exceptions.** A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the~~ **, or Verification.** The court ~~for good cause or is allowed or required~~may, by local rule~~.~~

~~(B) **By an Unrepresented Person—When Allowed or Required.** A person not represented by an attorney:~~

~~(i) may file electronically only if allowed by court order or by local rule; and~~

~~(ii) may be required~~, allow papers to ~~file electronically only by court order, or by a local rule that includes reasonable exceptions.~~

~~(C) **Signing.** A filing made through a person's~~ be filed, signed, or verified by electronic~~filing account and authorized by that person, together~~ means that are consistent with ~~that person's name on a signature block, constitutes the person's signature.~~

~~(D) **Same as a Written Paper.**~~ any technical standards established by the NEFCR. A paper filed electronically is a written paper for purposes of these rules.

(4) **Acceptance by the Clerk.** The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

~~**Rule 5.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention**~~

~~(a) NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:~~

~~(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:~~

~~(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or~~

~~(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and~~

~~(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.~~

~~(b) CERTIFICATION BY THE COURT. The court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.~~

~~(c) INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.~~

~~(d) NO FORFEITURE. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.~~

~~**Rule 5.2. Privacy Protection For Filings Made with the Court**~~

~~(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:~~

~~(1) the last four digits of the social-security number and taxpayer-identification number;~~

~~(2) the year of the individual's birth;~~

~~(3) the minor's initials; and~~

~~(4) the last four digits of the financial-account number.~~

~~(b) EXEMPTIONS FROM THE REDACTIONS REQUIREMENT.~~

Advisory Committee Note—2019 Amendment

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 ~~midnight~~11:59 p.m. in the court's local time ~~zone~~; 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.

~~(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial~~

~~Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;~~

~~(B) any day declared a holiday by the President or Congress; and~~

~~(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.~~

(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:

~~(A~~ (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

~~(B~~ (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(~~b~~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 ~~14~~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 ~~set a different time~~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).

~~TITLE~~ **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.
>
> ***
>
> 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.

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) **Pleadings.** Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

(b) **Motions and Other Papers.**

(1) **In General.** A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

(C) state the relief sought.

(2) **Form.** The rules governing captions, signing, and other matters of form in pleadings apply to motions and other papers.

Advisory Committee Note—2019 Amendment

As used in these rules, "complaint" includes a petition or other document that initiates a civil action.

Rule 7.1. Disclosure Statement

(a) **Who Must File; Contents.** A nongovernmental ~~corporate~~ party, except for a natural person, must file ~~2 copies of~~ a disclosure statement that:

(1) identifies any parent ~~corporation~~entity and any publicly held ~~corporation~~entity owning 10% or more of ~~its~~the party's stock~~;~~ or other ownership interest; or

(2) states that there is no such ~~corporation~~entity.

(b) **Time to File; Supplemental Filing.** A party must:

(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and

(2) promptly file a supplemental statement if any required information changes.

Advisory Committee Note—2019 Amendment

Rule 7.1 is similar to its federal counterpart, except that this rule applies to any nongovernmental party other than an individual natural person.

Rule 8. General Rules of Pleading

(a) **Claim for Relief.** A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief;~~ and~~

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.~~ ~~; and

(4) if the pleader seeks more than $15,000 in monetary damages, the demand for relief may request damages "in excess of $15,000" without

further specification of the amount.

(b) **Defenses; Admissions and Denials.**

(1) **In General.** In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) **Denials—Responding to the Substance.** A denial must fairly respond to the substance of the allegation.

(3) **General and Specific Denials.** A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) **Denying Part of an Allegation.** A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) **Lacking Knowledge or Information.** A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) **Effect of Failing to Deny.** An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) **Affirmative Defenses.**

(1) **In General.** In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- (A) accord and satisfaction;
- (B) arbitration and award;
- (C) assumption of risk;
- (D) contributory negligence;
- (E) discharge in bankruptcy;
- (F) duress;
- (G) estoppel;
- (H) failure of consideration;
- (I) fraud;
- (J) illegality;
- (K) injury by fellow servant;
- (L) laches;
- (M) license;
- (N) payment;
- (O) release;
- (P) res judicata;
- (Q) statute of frauds;
- (R) statute of limitations; and
- (S) waiver.

(2) **Mistaken Designation.** If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) **Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.**

(1) **In General.** Each allegation must be simple, concise, and direct. No technical form is required.

(2) **Alternative Statements of a Claim or Defense.** A party may set out ~~2~~two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) **Inconsistent Claims or Defenses.** A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) **Construing Pleadings.** Pleadings must be construed so as to do justice.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 8 to FRCP 8, with the addition of the Nevada-specific provisions respecting claims for damages in excess of $15,000 in Rule 8(a)(4) and discharge in bankruptcy as an affirmative defense. FRCP 8(a)(1)'s jurisdictional statement requirement is incorporated into Rule 8(a)(1) but this does not affect the jurisdiction of the various Nevada courts. Former NRCP 8's references to NRCP 11 are deleted as unnecessary.

Rule 9. Pleading Special Matters

(a) **Capacity or Authority to Sue; Legal Existence.**

(1) **In General.** Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) **Raising Those Issues.** To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) **Fraud or Mistake; Conditions of Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) **Conditions Precedent.** In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) **Official Document or Act.** In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) **Time and Place.** An allegation of time or place is material when testing the sufficiency of a pleading.

(g) **Special Damages.** If an item of special damage is claimed, it must be specifically stated.

~~(h) ADMIRALTY OR MARITIME CLAIM.~~

~~(1) *How Designated.* If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental~~

~~Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.~~

~~(2) *Designation for Appeal.* A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. § 1292(a)(3).~~

Rule 10. Form of Pleadings

(a) **Caption; Names of Parties.** Every pleading must have a caption with the court's name, the county, a title, a ~~file~~case number, and a Rule 7(a) designation. The ~~title~~caption of the complaint must name all the parties; the ~~title~~caption of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) **Paragraphs; Separate Statements.** A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) **Adoption by Reference; Exhibits.** A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) **Using a Fictitious Name to Identify a Defendant.** If the name of a defendant is unknown to the pleader, the defendant may be designated by any name. When the defendant's true name is discovered, the pleader should promptly substitute the actual defendant for a fictitious party.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 10 to FRCP 10, except that Rule 10 retains the Nevada-specific provisions relating to captions of pleadings and permitting a party to name fictitious defendants. The federal rules do not have a provision permitting a pleader to name a fictitious defendant. The amendment moves the fictitious-party provision from former NRCP 10(a) to Rule 10(d). This move represents a stylistic, not a substantive, change to existing Nevada law.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) **Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, ~~e-mail~~email address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) **Sanctions.**

(1) **In General.** If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) **Motion for Sanctions.** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including ~~attorney's~~attorney fees, incurred for presenting or opposing the motion.

(3) **On the Court's Initiative.** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) **Nature of a Sanction.** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable ~~attorney's~~attorney fees and other expenses directly resulting from the violation.

(5) **Limitations on Monetary Sanctions.** The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) **Requirements for an Order.** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) **Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules ~~26 through~~16.1, 16.2, 16.205, 26 through 37, and 45(a)(4). Sanctions for improper discovery or refusal to make or allow discovery are governed by Rules 26(g) and 37.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) **Time to Serve a Responsive Pleading.**

(1) **In General.** Unless another time is specified by Rule 4.2(c)(3)(E), this rule, or a ~~federal~~ statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if ~~it~~ the defendant has timely waived service under Rule 4~~(d)~~,.1, within 60 days after the request for a waiver was sent, or within 90 days after ~~it~~the request for a waiver was sent to the defendant outside ~~any judicial district~~ of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) ~~*United States*~~**The State of Nevada, Its Public Entities and** ~~*Its Agencies,*~~**Political Subdivisions, and Their Officers**~~, or~~ **and Employees** ~~*Sued in an Official Capacity*~~. The United States, . Unless another time is specified by Rule 12(a ~~United States agency,~~)(3) or a ~~United States officer or employee sued only in an official capacity~~ statute, the following parties must serve an answer to a complaint, counterclaim, or crossclaim within ~~60~~45 days after service on the ~~United States attorney.~~party, or if required service on the Attorney General, whichever date of service is later:

~~(3) *United States Officers*~~ (A) the State and any public entity of the State;

(B) any county, city, town or ~~*Employees Sued in an Individual Capacity.* A United States~~other political subdivision of the State, and any public entity of such a political subdivision; and

(C) any current or former public officer or employee of the State, any public entity of the State, any county, city, town or other political subdivision of the State, or any public entity of such a political subdivision, who is sued in ~~an~~his or her official capacity or his or her individual capacity for an act or omission ~~occurring in connection with~~relating to his or her public duties ~~performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later~~or employment.

(43) **Effect of a Motion.** Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) **How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) ~~improper venue~~insufficient process;

(4) insufficient ~~process;~~

~~(5) insufficient~~ service of process;

(~~6~~5) failure to state a claim upon which relief can be granted; and

(~~7~~6) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) **Result of Presenting Matters Outside the Pleadings.** If, on a motion under Rule 12(b)(~~6~~5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) **Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) **Motion to Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) **Joining Motions.**

(1) **Right to Join.** A motion under this rule may be joined with any other motion allowed by this rule.

(2) **Limitation on Further Motions.** Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) **Waiving and Preserving Certain Defenses.**

(1) **When Some Are Waived.** A party waives any defense listed in Rule 12(b)(2)~~-(5)~~-(4) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) **When to Raise Others.** Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) **Lack of Subject-Matter Jurisdiction.** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) **Hearing Before Trial.** If a party so moves, any defense listed in Rule 12(b)(1)-(~~7~~6)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Advisory Committee Note—2019 Amendment

The Committee considered but rejected the suggestion that improper venue be added to Rule 12(b) to track FRCP 12(b)(3). As explained in the advisory committee note to Rule 12 of the 1953 NRCP, "The federal defense of improper venue is deleted, since improper venue is not a defense under state practice, but is a ground for change of venue. Practice as to change of venue will not be affected by this rule. Motion therefor may be made, or will be waived, apart from the requirements of Rule 12(h)." *See* NRS Chapter 13, in particular, NRS 13.050, which requires the demand for change of venue be made "before the time for answer expires."

Rule 12(b)(5) mirrors FRCP 12(b)(6). Incorporating the text of the federal rule does not signal an intent to change existing Nevada pleading standards.

Rule 13. Counterclaim and Crossclaim

(a) **Compulsory Counterclaim.**

(1) **In General.** A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) **Exceptions.** The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) **Permissive Counterclaim.** A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) **Relief Sought in a Counterclaim.** A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) **Counterclaim Against the ~~UNITED STATES.~~State.** These rules do not expand the right to assert a counterclaim—or to claim a credit—against the ~~United States~~State, its political subdivisions, their agencies and entities, or ~~a United States~~any current or former officer or ~~agency~~employee thereof.

(e) **Counterclaim Maturing or Acquired After Pleading.** The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) ~~[~~**Abrogated.**~~]~~.

(g) **Crossclaim Against a Coparty.** A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action

or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) **Joining Additional Parties.** Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) **Separate Trials; Separate Judgments.** If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

Advisory Committee Note—2019 Amendment

Consistent with FRCP 13, former NRCP 13(f) is deleted as duplicative; an amendment to a pleading to add a counterclaim may be made under Rule 15.

Rule 14. Third-Party Practice

(a) **When a Defending Party May Bring in a Third Party.**

(1) **Timing of the Summons and Complaint.** A defending party may, as third-party plaintiff, ~~serve~~file a ~~summons and~~third-party complaint ~~on~~against a nonparty, the third-party defendant, who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave to file the third-party complaint if it files the third-party complaint more than 14 days after serving its original answer. A summons, the complaint, and the third-party complaint must be served on the third-party defendant, or service must be waived.

(2) **Third-Party Defendant's Claims and Defenses.** ~~The person~~After being served ~~with~~or waiving service, the ~~summons and~~ third-party ~~complaint the "third-party defendant"~~defendant:

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against a defendant or another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) **Plaintiff's Claims Against a Third-Party Defendant.** The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

~~(4~~ (4) **Defendant's Claims Against a Third-Party Defendant.** A defendant may assert against the third-party defendant any crossclaim under Rule 13(g).

(5) **Motion to Strike, Sever, or Try Separately.** Any party may move to strike the third-party claim, to sever it, or to try it separately.

(~~5~~6) **Third-Party Defendant's Claim Against a Nonparty.** A third-party defendant may proceed under this rule against a nonparty who is

or may be liable to the third-party defendant for all or part of any claim against it.

~~(6) *Third-Party Complaint In Rem.* If it is within the admiralty or maritime jurisdiction, a third-party complaint may be in rem. In that event, a reference in this rule to the "summons" includes the warrant of arrest, and a reference to the defendant or third-party plaintiff includes, when appropriate, a person who asserts a right under Supplemental Rule C(6)(a)(i) in the property arrested.~~

(b) **When a Plaintiff May Bring in a Third Party.** When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

~~(c) ADMIRALTY OR MARITIME CLAIM.~~

~~(1) *Scope of Impleader.* If a plaintiff asserts an admiralty or maritime claim under Rule 9(h), the defendant or a person who asserts a right under Supplemental Rule C(6)(a)(i) may, as a third-party plaintiff, bring in a third-party defendant who may be wholly or partly liable either to the plaintiff or to the third-party plaintiff for remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences.~~

~~(2) *Defending Against a Demand for Judgment for the Plaintiff.* The third-party plaintiff may demand judgment in the plaintiff's favor against the third-party defendant. In that event, the third-party defendant must defend under Rule 12 against the plaintiff's claim as well as the third-party plaintiff's claim; and the action proceeds as if the plaintiff had sued both the third-party defendant and the third-party plaintiff.~~

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 14 to FRCP 14. The modifications to Rules 14(a)(2)(B) and 14(a)(4) permit defendants and third-party defendants to bring crossclaims against each other as "coparties" under Rule 13(g).

Rule 15. Amended and Supplemental Pleadings

(a) **Amendments Before Trial.**

(1) **Amending as a Matter of Course.** A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) **Other Amendments.** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) **Time to Respond.** Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) **Amendments During and After Trial.**

(1) **Based on an Objection at Trial.** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's

action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) **For Issues Tried by Consent.** When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) **Relation Back of Amendments.** An amendment to a pleading relates back to the date of the original pleading when:

~~(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:~~

~~(A) the law that provides the applicable statute of limitations allows relation back;~~

~~(B~~ (1) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

~~(C~~(2) the amendment changes ~~the~~a party or the naming of ~~the~~a party against whom a claim is asserted, if Rule 15(c)(1)~~(B)~~ is satisfied and if, within the period provided by Rule 4(~~me~~) for serving the summons and complaint, the party to be brought in by amendment:

~~(i~~(A) received such notice of the action that it will not be prejudiced in defending on the merits; and

~~(ii~~(B) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

~~(2) *Notice to the United States.* When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.~~

(d) **Supplemental Pleadings.** On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Advisory Committee Note—2019 Amendment

Rule 15(a)(1) tracks FRCP 15(a)(1) and permits a plaintiff to amend as a matter of course later than former NRCP 15(a) allowed. Rule 15(c)(2) incorporates text from FRCP 15(c)(1)(C). Rule 15(c) governs relation-back of amendments generally, while Rule 10(d) governs replacing a named party for a fictitiously named party. The express provision Rule 10(d) makes for pleading fictitious defendants, which the FRCP does not have, avoids the problem that has arisen in federal cases attempting to apply FRCP 15(c)(1)(C) to fictitious defendants. While Rule 15(c) and Rule 10(d) are distinct tests, if a fictitious-party replacement does not meet the Rule 10(d) test, it may be treated as an amendment to add a party under Rule 15 if the standards in Rule 15 are met.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) ~~PURPOSES OF A~~ **Pretrial** ~~CONFERENCE~~**Conferences; Objectives.** In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating settlement.

(b) **Scheduling and Planning.**

(1) **Scheduling Order.** Except in categories of actions exempted by local rule, the ~~district judge or a magistrate judge when authorized by local rule~~ court must ~~issue a scheduling order:~~

~~(A) after receiving the parties' report under Rule 26(f); or~~

~~(B)~~, after consulting with the ~~parties'~~ attorneys for the parties and any unrepresented parties ~~at~~by a scheduling conference, case conference, telephone conference, or other suitable means, enter a scheduling order.

(2) **Time to Issue.** The ~~judge~~court must issue the scheduling order as soon as practicable, but unless the ~~judge~~court finds good cause for delay, the ~~judge~~court must issue it within ~~the earlier of 90 days after any defendant has been served with the complaint or~~ 60 days after ~~any defendant has appeared.~~:

(A) a Rule 16.1 case conference report has been filed; or

(B) the court waives the requirement of a case conference report under Rule 16.1(f).

(3) **Contents of the Order.**

(A) **Required Contents.** The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) **Permitted Contents.** The scheduling order may:

~~(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);~~

~~(ii) modify the extent of discovery;~~

~~(iii~~ (i) provide for disclosure, discovery, or preservation of electronically stored information;

~~(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;~~

~~(v~~ (ii) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(~~vi~~iii) set dates for pretrial conferences, a final pretrial conference, and for trial; and

(~~vii~~iv) include any other appropriate matters.

(4) **Modifying a Schedule.** A schedule may be modified ~~only~~by the court for good cause ~~and with the judge's consent~~.

(c) **Attendance and** ~~MATTERS FOR CONSIDERATION~~**Subjects to Be Discussed at** ~~A~~ **Pretrial** ~~CONFERENCE~~**Conferences.**

(1) **Attendance.** A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If

appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) **Matters for Consideration.** At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under ~~Federal Rule of Evidence 702~~NRS 47.060 and NRS 50.275;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

~~(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;~~

~~(G~~ (F) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(~~H~~G) referring matters to a ~~magistrate judge~~discovery commissioner or a master;

(~~I~~H) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;

(~~J~~I) determining the form and content of the pretrial order;

(~~K~~J) disposing of pending motions;

(~~L~~K) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(~~M~~L) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;

~~(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);~~

~~(O~~ (M) establishing a reasonable limit on the time allowed to present evidence; and

(~~P~~N) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) **Pretrial Orders.** After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) **Final Pretrial Conference and Orders.** The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) **Sanctions.**

(1) **In General.** On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(~~2)(A)(ii) (vii~~1), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) **Imposing Fees and Costs.** Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including ~~attorney's~~attorney fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Advisory Committee Note—2019 Amendment

Rule 16 parallels FRCP 16, with some Nevada-specific variations. Except as noted, the amendments are stylistic, not substantive.

Subsection (b). Rule 16(b)(1) continues to omit the reference in FRCP 16(b)(1)(A) to FRCP 26(f). The deadline for entry of the scheduling order in Rule 16(b)(2) differs from the federal rule and is calculated from the filing of the case conference report required by Rule 16.1 rather than from the filing of the complaint. As amended, Rule16(b) requires the district court judge to enter the scheduling order. Rule 16(b)(3)(B) omits sections (i), (ii), and (iv) from its federal counterpart and renumbers the remaining sections.

Subsection (c). Rule 16(c) conforms to the federal rule, except that Nevada has not adopted FRCP 16(c)(2)(F) and (N). The remaining sections of the rule have been renumbered.

Rule 16.1. Mandatory Pretrial Discovery Requirements

(a) **Required Disclosures.**

(1) **Initial Disclosure.**

(A) **In General.** Except as exempted by Rule 16.1(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, including for impeachment or rebuttal, and, unless privileged or protected from disclosure, any record, report, or witness statement, in any form, concerning the incident that gives rise to the lawsuit;

(iii) when personal injury is in issue, the identity of each relevant medical provider so that the opposing party may prepare an appropriate medical authorization for signature to obtain medical records from each provider;

(iv) a computation of each category of damages claimed by the disclosing party—who must make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(v) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment and any disclaimer or

limitation of coverage or reservation of rights under any such insurance agreement.

(B) **Proceedings Exempt From Initial Disclosure.** The following proceedings are exempt from initial disclosure:

(i) an action within the original, exclusive jurisdiction of the family court, irrespective of whether the district court actually has a separate family court or division;

(ii) an action filed under NRS Title 12 or 13;

(iii) an appeal from a court of limited jurisdiction;

(iv) an action for review on an administrative record;

(v) a forfeiture action in rem arising from a statute;

(vi) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(vii) an action to enforce or quash an administrative summons or subpoena;

(viii) a proceeding ancillary to a proceeding in another court;

(ix) an action to enforce an arbitration award; and

(x) any other action that is not brought against a specific individual or entity.

(C) **Time for Initial Disclosures—In General.** A party must make the initial disclosures at or within 14 days after the parties' Rule 16.1(b) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the Rule 16.1(c) case conference report. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) **Time for Initial Disclosures—For Parties Served or Joined Later.** A party that is first served or otherwise joined after the Rule 16.1(b) conference must make the initial disclosures within 30 days after filing an answer or a motion under Rule 12, unless a different time is set by stipulation or court order.

(E) **Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) **Disclosure of Expert Testimony.**

(A) **In General.** In addition to the disclosures required by Rule 16.1(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under NRS 50.275, 50.285, and 50.305.

(B) **Witnesses Who Must Provide a Written Report.** Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express, and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or

support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous ten years;

(v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) **Witnesses Who Do Not Provide a Written Report.** Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under NRS 50.275, 50.285, and 50.305;

(ii) a summary of the facts and opinions to which the witness is expected to testify;

(iii) the qualifications of that witness to present evidence under NRS 50.275, 50.285, and 50.305, which may be satisfied by the production of a résumé or curriculum vitae; and

(iv) the compensation of the witness for providing testimony at deposition and trial, which is satisfied by production of a fee schedule.

(D) **Treating Physicians.**

(i) **Status.** A treating physician who is retained or specially employed to provide expert testimony in the case, or whose duties as the party's employee regularly involve giving expert testimony on behalf of the party, must provide a written report under Rule 16.1(a)(2)(B). Otherwise, a treating physician who is properly disclosed under Rule 16.1(a)(2)(C) may be

deposed or called to testify without providing a written report. A treating physician is not required to provide a written report under Rule 16.1(a)(2)(B) solely because the physician's testimony may discuss ancillary treatment, or the diagnosis, prognosis, or causation of the patient's injuries, that is not contained within the physician's medical chart, as long as the content of such testimony is properly disclosed under Rule 16.1(a)(2)(C)(i)-(iv).

(ii) **Change in Status.** A treating physician will be deemed a retained expert witness subject to the written report requirement of Rule 16.1(a)(2)(B) if the party is asking the treating physician to provide opinions outside the course and scope of the treatment provided to the patient.

(iii) **Disclosure.** The disclosure regarding a non-retained treating physician must include the information identified in Rule 16.1(a)(2)(C), to the extent practicable. In that regard, appropriate disclosure may include that the physician will testify in accordance with his or her medical chart, even if some records contained therein were prepared by another healthcare provider.

(E) **Time to Disclose Expert Testimony.**

(i) A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order otherwise, the disclosures must be made:

(a) at least 90 days before the discovery cut-off date; or

(b) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 16.1(a)(2)(B), (C), or (D), within 30 days after the other party's disclosure.

(ii) The disclosure deadline under Rule 16.1(a)(2)(E)(i)(b) does not apply to any party's witness whose purpose is to

contradict a portion of another party's case in chief that should have been expected and anticipated by the disclosing party, or to present any opinions outside of the scope of another party's disclosure.

(F) **Supplementing the Disclosure.**

(i) **In General.** The parties must supplement these disclosures when required under Rule 26(e).

(ii) **Non-Retained Experts.** A non-retained expert, who is not identified at the time the expert disclosures are due, may be subsequently disclosed in accordance with Rule 26(e). In general, the disclosing party must move to reopen the discovery deadlines or otherwise seek leave of court in order to supplementally disclose a non-retained expert. However, supplementation may be made without first moving to reopen the expert disclosure deadlines or otherwise seeking leave of court, if such disclosure is made:

(a) in accordance with Rule 16.1(a)(2)(C);

(b) within a reasonable time after the non-retained expert's opinions become known to the disclosing party; and

(c) not later than 21 days before the close of discovery.

(3) **Pretrial Disclosures.**

(A) **In General.** In addition to the disclosures required by Rule 16.1(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial, including impeachment and rebuttal evidence:

(i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present, those witnesses who have been subpoenaed for

trial, and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) **Time for Pretrial Disclosures; Objections.**

(i) Unless the court orders otherwise, these disclosures must be made at least 30 days before trial.

(ii) Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections:

(a) any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 16.1(a)(3)(A)(ii); and

(b) any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 16.1(a)(3)(A)(iii).

(iii) An objection not so made—except for one under NRS 48.025 and 48.035—is waived unless excused by the court for good cause.

(4) **Form of Disclosures.** Unless the court orders otherwise, all disclosures under Rule ~~TITLE~~ 16.1(a) must be in writing, signed, and served.

(b) **Early Case Conference; Discovery Plan.** Except as otherwise stated in this rule, all parties who have filed a pleading in the action must participate in an early case conference.

(1) **Exceptions.** Parties are not required to participate in an early case conference if:

(A) the case is exempt from the initial disclosure requirements under Rule 16.1(a)(1)(B);

(B) the case is subject to arbitration under Rule 3(A) of the Nevada Arbitration Rules (NAR) and an exemption from arbitration under NAR 5 has been requested but not decided by the court or the commissioner appointed under NAR 2(c);

(C) the case is in the court-annexed arbitration program;

(D) the case has been through arbitration and the parties have requested a trial de novo under the NAR;

(E) the case is in the short trial program; or

(F) the court has entered an order excusing compliance with this requirement.

(2) **Timing.**

(A) **In General.** The early case conference must be held within 30 days after service of an answer by the first answering defendant. All parties who have served initial pleadings must participate in the first case conference. If a new party serves its initial pleading after the first case conference, a supplemental case conference must be held within 30 days after service by any party of a written request for a supplemental conference; otherwise, a supplemental case conference is not required.

(B) **Continuances.** The parties may agree to continue the time for the early case conference or a supplemental case conference for an additional period of not more than 90 days. The court, for good cause shown, may also continue the time for any case conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time for the early case conference involving a particular defendant to a date more than 180 days after service of the first answer by that defendant.

(3) **Attendance.** A party may attend the case conference in person or by using audio or audiovisual transmission equipment that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons participating. The court may order the parties or attorneys to attend the conference in person.

(4) **Responsibilities.**

(A) **Scheduling.** Unless the parties agree or the court orders otherwise, the plaintiff is responsible for designating the time and place of each conference.

(B) **Content.** At each conference, the parties must do the following:

(i) consider the nature and basis of their claims and defenses;

(ii) consider the possibilities for a prompt settlement or resolution of the case;

(iii) make or arrange for the disclosures required by Rule 16.1(a)(1);

(iv) disclose the name of each relevant medical provider for each person whose injury is in issue and provide an appropriate signed medical authorization to obtain medical records from each provider, unless an authorization has been given under Rule 16.1(a)(1)(A)(iii);

(v) discuss any issues about preserving and producing discoverable information, including electronically stored information;

(vi) discuss any issues concerning disclosure of trade secrets or other confidential information and whether the parties agree on the need for and form of a confidentiality order or if a motion for a protective order under Rule 26(c) will be necessary to resolve such issues; and

(vii) develop a proposed discovery plan under Rule 16.1(b)(4)(C).

(C) **Discovery Plan.** The discovery plan must state the parties' views and proposals on:

(i) what changes should be made in the timing, form, or requirement for disclosures under Rule 16.1(a), including a statement as to when disclosures under Rule 16.1(a)(1) were made or will be made;

(ii) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(iii) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(iv) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order;

(v) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(vi) any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c); and

(vii) an estimated time for trial.

(c) **Case Conference Report.**

(1) **In General.**

(A) **Joint or Individual Report.** Within 30 days after each case conference, the parties must file a joint case conference report, or if

the parties are unable to agree upon the contents of a joint report, each party must serve and file an individual case conference report.

(B) **After Supplemental Case Conference.** After a supplemental case conference, the parties must supplement, but need not repeat, the contents of former reports. Notwithstanding the filing of a supplemental case conference report, deadlines set forth in an existing scheduling order remain in effect unless the court modifies the discovery deadlines.

(C) **After Court-Annexed Arbitration.** Unless otherwise ordered by the court, parties to any case in which a timely request for a trial de novo is filed after arbitration need not hold a further in-person conference, but must file a joint case conference report within 60 days from the date that the request for trial de novo is filed. The report must be prepared by the party filing the request for the trial de novo, unless otherwise stipulated or ordered.

(2) **Content.** Whether a case conference report is filed jointly or individually, it must contain:

(A) a brief description of the nature of the action and each claim for relief or defense;

(B) a brief statement of whether the parties did or did not consider settlement and whether settlement of the case may be possible;

(C) a proposed plan and schedule of any additional discovery under Rule 16.1(b)(4)(C);

(D) a written list of names exchanged under Rule 16.1(a)(1)(A)(i);

(E) a written list of all documents provided at or as a result of the case conference under Rule 16.1(a)(1)(A)(ii);

(F) a written list of the medical providers identified under

Rule 16.1(a)(1)(A)(iii);

(G) a statement of the damages computations disclosed under Rule 16.1(a)(1)(A)(iv);

(H) a written list of the insurance agreements disclosed under Rule 16.1(a)(1)(A)(v);

(I) a written list of experts disclosed under Rule 16.1(a)(2), and a statement indicating whether the identified experts will provide or have provided expert reports;

(J) a statement identifying any issues about preserving discoverable information;

(K) a statement identifying any issues about trade secrets or other confidential information, and whether the parties have agreed upon a confidentiality order or whether a Rule 26(c) motion for a protective order will be made;

(L) a calendar date on which discovery will close;

(M) a calendar date, not later than 90 days before the close of discovery, beyond which the parties are precluded from filing motions to amend the pleadings or to add parties unless by court order;

(N) a calendar date by which the parties will make expert disclosures under Rule 16.1(a)(2), with initial disclosures to be made not later than 90 days before the discovery cut-off date and rebuttal disclosures to be made not later than 30 days after the initial disclosure of experts;

(O) a calendar date, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed;

(P) an estimate of the time required for trial; and

(Q) a statement as to whether a jury demand has been filed.

(3) **Objections.** Within 7 days after service of any case conference

report, any other party may file a response in which it objects to all or a part of the report or adds any other matter that is necessary to properly reflect the proceedings that occurred at the case conference.

(d) **Automatic Referral of Discovery Disputes.** Where available or unless otherwise ordered by the court, all discovery disputes (except those presented at the pretrial conference or trial) must first be heard by the discovery commissioner under Rule 16.3.

(e) **Failure or Refusal to Participate in Pretrial Discovery; Sanctions.**

(1) **Untimely Case Conference.** If the conference described in Rule 16.1(b) is not held within 180 days after service of an answer by a defendant, the court, on motion or on its own, may dismiss the case as to that defendant, without prejudice, unless there are compelling and extraordinary circumstances for a continuance beyond this period. This provision does not apply to a defendant who serves its answer after the first case conference, unless a party has served a written request for a supplemental conference in accordance with Rule 16.1(b)(2)(A).

(2) **Untimely Case Conference Report.** If the plaintiff does not file a case conference report within 240 days after service of an answer by a defendant, the court, on motion or on its own, may dismiss the case as to that defendant, without prejudice. This provision does not apply to a defendant who serves its answer after the first case conference, unless a party has served a written request for a supplemental conference in accordance with Rule 16.1(b)(2)(A).

(3) **Other Grounds for Sanctions.** If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered under Rule 16.3, the court, on motion or

on its own, should impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(A) any of the sanctions available under Rules 37(b) and 37(f); or

(B) an order prohibiting the use of any witness, document, or tangible thing that should have been disclosed, produced, exhibited, or exchanged under Rule 16.1(a).

(f) **Complex Litigation.** In a potentially difficult or protracted action that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, the court may, upon motion and for good cause shown, waive any or all of the requirements of this rule. If the court waives all the requirements of this rule, it must also order a conference under Rule 16 to be conducted by the court.

(g) **Self-Represented Litigants.** The requirements of this rule apply to any self-represented party.

Advisory Committee Note—2019 Amendment

Subsection (a). Rule 16.1(a) borrows language but differs in key respects from its federal counterpart, FRCP 26(a). Rule 16.1(a)(1)(A)(i) retains Nevada's initial disclosure requirement as to witnesses, which is broader than the federal rule in that it reaches witnesses with knowledge relevant to impeachment or rebuttal. Rule 16.1(a)(1)(A)(ii) incorporates language from the federal rule requiring that a party disclose materials that it may use to support its claims or defenses. However, the disclosure requirement also includes any record, report, or witness statement in any form, including audio or audiovisual form, concerning the incident that gives rise to the lawsuit. The

initial disclosure requirement of a "record" or "report" under Rule 16.1(a)(1)(A)(ii) includes but is not limited to: incident reports, records, logs and summaries, maintenance records, former repair and inspection records and receipts, sweep logs, and any written summaries of such documents. Documents identified or produced under Rule 16.1(a)(1)(A)(ii) should include those that are prepared or exist at or near the time of the subject incident. The reasonable time required for production of such documents will depend on the facts and circumstances of each case. A party who seeks to avoid disclosure based on privilege must provide a privilege log.

Rule 16.1(a)(1)(A)(iii) is new. An "appropriate" authorization must comply with the federal Health Insurance Portability and Accountability Act, or HIPAA.

Rule 16.1(a)(1)(B) includes a list of case types that are exempt from the initial disclosure requirements. Family law actions are subject to the mandatory disclosure requirements of Rule 16.2 and Rule 16.205. Probate proceedings are exempted from these requirements as an initial matter; but under NRS 155.170 and 155.180, courts remain free to apply these provisions as they deem appropriate.

Rule 16.1(a)(2) incorporates the federal rule requirement that the report of a retained expert witness disclose "the facts or data considered by the witness" in forming his or her opinions. The former language—"the data or other information considered by the witness"—has been construed broadly by most federal courts to include drafts of expert reports and virtually any communications between counsel and the expert. The new language avoids that result. The 2019 amendments do not abrogate the 2012 drafter's notes to Rule 16.1.

Rule 16.1(a)(2)(E) has been revised to include cases in which

simultaneous disclosure of expert testimony may not be appropriate. In such a case, if the parties are unable to stipulate to the timing of such disclosures, either or both may seek a court order to schedule the disclosures of each expert.

An initial expert may also serve as a rebuttal expert and offer rebuttal opinions so long as those opinions are disclosed at the time of the rebuttal expert disclosure, or as a required supplement in accordance with Rule 26(e)(2).

Unlike its federal counterpart, Rule 16.1(a)(3)(A)(i) retains the requirement that a party's pretrial disclosures identify those witnesses who have been subpoenaed for trial.

Subsection (b). The amendments reorganize Rule 16.1(b) in the style of the federal rules. Rule 16.1(b)(1) is new, and it specifies the circumstances when a case conference is not required. Rule 16.1(b)(2) contains new provisions addressing the timing of supplemental case conferences. Rule 16.1(b)(3) makes clear that parties are not required to attend a case conference in person, although the court can order attendance. Rule 16.1(b)(4) includes the federal requirements that parties discuss and address issues pertaining to the preservation of discoverable information, including electronically stored information, and issues pertaining to privilege and work-product claims (e.g., inadvertent disclosure).

Subsections (c), (d), (e), and (g). The changes in Rules 16.1(c) and 16.1(e) are stylistic. The amendments relocate the report and recommendation, objection, response, and review sections of the former NRCP 16.1(d) into Rule 16.3. Rule 16.1(g) has been reworded for enhanced clarity.

Drafter's Notes—2012 Amendment

[Subsection (a)(2)(C)] specifies the information that must be included in a disclosure of expert witnesses who are not otherwise required to provide detailed written reports. A treating physician is not a retained expert merely because the patient was referred to the physician by an attorney for treatment. These comments may be applied to other types of non-retained experts by analogy. In the context of a treating physician, appropriate disclosure may include that the witness will testify in accordance with his or her medical chart, even if some records contained therein were prepared by another healthcare provider. A treating physician is not a retained expert merely because the witness will opine about diagnosis, prognosis, or causation of the patient's injuries, or because the witness reviews documents outside his or her medical chart in the course of providing treatment or defending that treatment. However, any opinions and any facts or documents supporting those opinions must be disclosed in accordance with [subsection (a)(2)(C)].

Rule 16.2. Mandatory Prejudgment Discovery Requirements in Family Law Actions (Not Including Paternity or Custody Actions Between Unmarried Persons)

(a) **Applicability.** This rule replaces Rule 16.1 in all divorce, annulment, separate maintenance, and dissolution of domestic partnership actions. Nothing in this rule precludes a party from conducting discovery under any other of these rules.

(b) **Exemptions.**

(1) Either party may file a motion for exemption from all or a part of this rule.

(2) The court may, sua sponte at the case management conference, exempt all or any portion of a case from application of this rule, in whole or in

part, upon a finding of good cause, so long as the exemption is contained in an order of the court. Without limiting the foregoing, good cause may include any case where the parties have negligible assets and debts together with no minor children of the parties.

(c) **Financial Disclosure Forms.**

(1) **General Financial Disclosure Form.** In all actions governed by this rule, each party must complete, file, and serve a General Financial Disclosure Form (GFDF), Form 4 in the Appendix of Forms, within 30 days of service of the summons and complaint, unless a Detailed Financial Disclosure Form (DFDF), Form 5 in the Appendix of Forms, is required in accordance with Rule 16.2(c)(2) or the court orders the parties, at the case management conference, to complete the DFDF.

(2) **Detailed Financial Disclosure Form.**

(A) The plaintiff, concurrently with the filing of the complaint, or the defendant, concurrently with the filing of the answer, but no later than 14 days after the filing of the answer, may file a Request to Opt-in to Detailed Financial Disclosure Form and Complex Litigation Procedure, Form 6 in the Appendix of Forms, certifying that:

(i) either party's individual gross income, or the combined gross income of the parties, is more than $250,000 per year; or

(ii) either party is self-employed or the owner, partner, managing or majority shareholder, or managing or majority member of a business; or

(iii) the combined gross value of the assets owned by either party individually or in combination is more than $1,000,000.

(B) Within 45 days of service of a Request to Opt-in, each party must file the DFDF unless otherwise ordered by the court or stipulated

by the parties.

(C) If a Request to Opt-in is filed, the case is subject to the following complex divorce litigation procedure. Each party must prepare a complex divorce litigation plan that must be filed and served as part of the early case conference report. The plan must include, in addition to the requirements of Rule 16.2(j), any and all proposals concerning the time, manner, and place for needed discovery, proposed conferences and anticipated hearings with the court, and any other special arrangements focused on prompt settlement, trial, or resolution of the case.

(d) **Mandatory Initial Disclosures.**

(1) **Initial Disclosure Requirements.**

(A) Concurrently with the filing of the financial disclosure form, each party must, without awaiting a discovery request, serve upon the other party written and signed disclosures containing the information listed in Rule 16.2(d)(2) and (3).

(B) A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because:

(i) the party has not fully completed an investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made the required disclosures.

(C) For each item set forth in Rule 16.2(d)(3), if the disclosing party is not in possession of the documents, the disclosing party must identify each such asset or debt that exists and disclose where information pertaining

to each asset or debt may be found. If no such asset or debt exists, the disclosing party must specifically so state.

(2) **Evidence Supporting Financial Disclosure Form.** For each line item on the GFDF or DFDF, if not already evidenced by the other initial disclosures required herein, a party must provide the financial statement(s), document(s), receipt(s), or other information or evidence relied upon to support the figure represented on the form. If no documentary evidence exists, a party must provide an explanation in writing of how the figure was calculated.

(3) **Evidence of Property, Income, and Earnings as to Both Parties.**

(A) **Bank and Investment Statements.** A party must provide copies of all monthly or periodic bank, checking, savings, brokerage, investment, cryptocurrency, and security account statements in which any party has or had an interest for the period commencing 6 months before the service of the summons and complaint through the date of the disclosure.

(B) **Credit Card and Debt Statements.** A party must provide copies of credit card statements and debt statements for all parties for all months for the period commencing 6 months before the service of the summons and complaint through the date of disclosure.

(C) **Real Property.** A party must provide copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price, and encumbrances of all real property owned by any party.

(D) **Property Debts.** A party must provide copies of all monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real

property and personal property in which the party has or had an interest for the period commencing 6 months before the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.

(E) **Loan Applications.** A party must provide copies of all loan applications that a party has signed within 12 months before the service of the summons and complaint through the date of the disclosure.

(F) **Promissory Notes.** A party must provide copies of all promissory notes under which a party either owes money or is entitled to receive money.

(G) **Deposits.** A party must provide copies of all documents evidencing money held in escrow or by individuals or entities for the benefit of either party.

(H) **Receivables.** A party must provide copies of all documents evidencing loans or monies due to either party from individuals or entities.

(I) **Retirement and Other Assets.** A party must provide copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option, and annuity balances, including individual retirement accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing 6 months before the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.

(J) **Insurance.** A party must provide copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has or had an interest for the period commencing 6 months before the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.

(K) **Insurance Policies.** A party must provide copies of all policy statements and evidence of costs of premiums for health and life insurance policies covering either party or any child of the relationship.

(L) **Values.** A party must provide copies of all documents that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for the period commencing 6 months before the service of the summons and complaint through the date of the disclosure, including any documents that the party may rely upon in placing a value on any item of real or personal property (i.e., appraisals, estimates, or official value guides).

(M) **Tax Returns.** A party must provide copies of all personal and business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last 5 completed calendar or fiscal years with respect to any business or entity in which any party has or had an interest within the past 12 months.

(N) **Proof of Income.** A party must provide proof of income of the party from all sources, specifically including W-2, 1099, and K-1 forms, for the past 2 completed calendar years, and year-to-date income information

(paycheck stubs, etc.) for the period commencing 6 months before the service of the summons and complaint through the date of the disclosure.

(O) **Personalty.** A party must provide a list of all items of personal property with an individual value exceeding $200, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, coins, stamp collections, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item.

(P) **Exhibits.** A party must provide a copy of every other document or exhibit, including summaries of other evidence, that a party expects to offer as evidence at trial in any manner.

(e) **Additional Discovery and Disclosures.**

(1) **Obtaining Discovery.** Any party may obtain discovery by one or more methods provided in Rules 26 through 36, commencing 30 days after service of the summons and complaint.

(2) **Additional Discovery.** Nothing in the minimum requirements of this rule provides a basis for objecting to relevant additional discovery in accordance with these rules.

(3) **Disclosure of Expert Witness and Testimony.**

(A) A party must disclose the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305. These disclosures must be made within 90 days after the initial financial disclosure form is required to be filed and served under Rule 16.2(c) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 21 days after the disclosure made by the other party. The parties must supplement these disclosures when required under Rule 26(e)(1).

(B) Except as otherwise stipulated or directed by the court, a party who retains or specially employs a witness to provide expert testimony in the case, or whose duties as an employee of the party regularly involve giving expert testimony, must deliver to the opposing party a written report prepared and signed by the witness within 60 days of the close of discovery. The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the expert reports or relieve a party of the duty to prepare a written report in an appropriate case. The report must contain a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, and the qualifications of the witness.

(4) **Nonexpert Witness.** A party must disclose the name and, if known, the address and telephone number of each individual who has information or knowledge relevant to the value of assets or debts or to the claims or defenses set forth in the pleadings, or who may be called as a witness, at any stage of the proceedings, including for impeachment or rebuttal, identifying the subjects of the information and a brief description of the testimony for which the individual may be called. Absent a court order or written stipulation of the parties, a party must not be allowed to call a witness at trial who has not been disclosed at least 45 days before trial.

(5) **Authorizations for Discovery.** If a party believes it necessary to obtain information within the categories under Rule 16.2(d)(3) from an individual or entity not a party to the action, the party seeking the information may present to the other party a form of authorization, permitting release, disclosure, and production of the information. The party who was requested to sign the authorization must do so within 14 days of receipt of the

authorization form. If the party who was requested to sign the authorization refuses to sign the authorization without good cause, a motion to compel may be filed. If the court or discovery commissioner finds that the objecting party is without legitimate factual or legal objection to the signing of the authorization, a motion to compel must be granted and the objecting party must be made to pay reasonable attorney fees and costs.

(f) **Continuing Duty to Supplement and Disclose.** The duty described in this rule is a continuing duty, and each party must make additional or amended disclosures whenever new or different information is discovered or revealed. Such additional or amended disclosures, including corrections to a party's financial disclosure form, must be made not more than 14 days after the party acquires additional information or otherwise learns that in some material respect the party's disclosure is incomplete or incorrect. However, if a hearing, deposition, case management conference, or other calendared event is scheduled less than 14 days from the discovery date, then the update must be filed and served within 24 hours of the discovery of new information.

(g) **Failure to File or Serve Financial Disclosure Form or to Produce Required Disclosures.**

(1) If a party fails to timely file or serve the appropriate financial disclosure form required by this rule, or the required information and disclosures under this rule, the court must impose an appropriate sanction upon the party, the party's attorney, or both, unless specific affirmative findings of fact are made that the violating party has proven:

(A) either good cause for the failure by a preponderance of the evidence or that the violating party would experience an undue hardship if the penalty is applied; and

(B) that other means fully compensate the nonviolating party for any losses, delays, and expenses suffered as a result of the violation.

(2) Sanctions may include an order finding the violating party in civil contempt of court, an order requiring the violating party to timely file and serve the disclosures, to pay the opposing party's reasonable expenses, including attorney fees and costs incurred as a result of the failure, and any other sanction the court deems just and proper.

(3) Sanctions may additionally include an order refusing to allow the violating party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence, and/or any other sanction the court deems just and proper. These discretionary sanctions are encouraged for repeat or egregious violations.

(h) **Failure to Include an Asset or Liability or Accurately Report Income.**

(1) If a party intentionally fails to disclose a material asset or liability or to accurately report income, the court must impose an appropriate sanction upon the party or the party's attorney, or both, if the other party establishes by a preponderance of the evidence that there is not good cause for the failure.

(2) Sanctions may include an order finding the violating party in civil contempt of court, an award of reasonable attorney fees and costs to the nonviolating party, and any other sanction the court deems just and proper.

(3) Sanctions may include an order awarding the omitted asset to the opposing party as his or her separate property or making another form of unequal division of community property, and/or any other sanction the court deems just and proper. These discretionary sanctions are encouraged for repeat or egregious violations.

(i) **Objections to Authenticity or Genuineness.** Any objection to the authenticity or genuineness of documents must be made in writing within 21 days of the date the receiving party receives them. Absent such an objection, the documents must be presumed authentic and genuine and may not be excluded from evidence on these grounds.

(j) **Case Management Conferences.**

(1) **Attendance at Early Case Conference.** Within 45 days after service of an answer, the parties and the attorneys for the parties must confer for the purpose of complying with Rule 16.2(d). The plaintiff may designate the time and place of each meeting, which must be held in the county where the action was filed, unless the parties agree upon a different location. The parties may submit a stipulation and order to continue the time for the case conference for an additional period of not more than 60 days, which the court may, for good cause shown, enter. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the answer. The time for holding a case conference with respect to a defendant who has filed a motion under Rule 12(b)(2)-(4) is tolled until entry of an order denying the motion.

(2) **Early Case Conference Report.** Within 14 days after each case conference, but not later than 7 days before the scheduled case management conference, the parties must file a joint early case conference report, or if the parties are unable to agree upon the contents of a joint report, each party must serve and file an early case conference report, which, either as a joint or individual report, must contain:

(A) a statement of jurisdiction;

(B) a brief description of the nature of the action and each claim for relief or defense;

(C) if custody is at issue in the case, a proposed custodial timeshare and a proposed holiday, special day, and vacation schedule;

(D) a written list of all documents provided at or as a result of the case conference, together with any objection that the document is not authentic or genuine. The failure to state any objection to the authenticity or genuineness of a document constitutes a waiver of such objection at a subsequent hearing or trial. For good cause, the court may permit the withdrawal of a waiver and the assertion of an objection;

(E) a written list of all documents not provided under Rule 16.2(d), together with the explanation as to why each document was not provided;

(F) for each issue in the case, a statement of what information and/or documents are needed, along with a proposed plan and schedule of any additional discovery;

(G) a list of the property (including pets, vehicles, real estate, retirement accounts, pensions, etc.) that each litigant seeks to be awarded in this action;

(H) the list of witnesses exchanged in accordance with Rule 16.2(e)(3) and (4);

(I) identification of each specific issue preventing immediate global resolution of the case along with a description of what action is necessary to resolve each issue identified;

(J) a litigation budget; and

(K) proposed trial dates.

(3) **Attendance at Case Management Conference.** The court must conduct a case management conference with counsel and the parties within 90 days after the filing of the answer. The court, for good cause shown,

may continue the time for the case management conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 120 days after filing of the answer.

(A) At the case management conference, the court, counsel, and the parties must:

(i) confer and consider the nature and basis of the claims and defenses, the possibilities for a prompt settlement or resolution of the case, and whether orders should be entered setting the case for settlement conference and/or for trial;

(ii) make or arrange for the disclosures required under this rule and to develop a discovery plan, which may include limitations on discovery or changes in the timing of discovery requirements required in this rule; and

(iii) recite stipulated terms on the record under local rules.

(B) The court should also:

(i) enter interim orders sufficient to keep the peace and allow the case to progress;

(ii) for matters that are claimed to be in contest, give direction as to which party will have which burden of proof;

(iii) discuss the litigation budget and its funding; and

(iv) enter a scheduling order.

(C) In the event a party fails to attend the case management conference and the court believes that some or any actions cannot be taken in the absence of the missing party, the court must reschedule the case management conference and may order the nonappearing party to pay the

complying party's attorney fees incurred to appear at the case management conference.

(4) **Case Management Order.**

(A) Within 30 days after the case management conference, the court must enter an order that contains:

(i) a brief description of the nature of the action;

(ii) the stipulations of the parties, if any;

(iii) any interim orders made by the court, including those pertaining to discovery and burdens of proof;

(iv) any changes to the timelines of this rule as stipulated by the parties and/or ordered by the court;

(v) a deadline on which discovery will close;

(vi) a deadline beyond which the parties will be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(vii) a deadline by which dispositive motions must be filed; and

(viii) any other orders the court deems necessary during the pendency of the action, including interim custody, child support, maintenance, and NRS 125.040 orders.

(B) If the court orders one of the parties to prepare the foregoing case management order, that party must submit the order to the other party for signature within 14 days after the case management conference. The order must be submitted to the court for entry within 21 days after the case management conference.

(k) **Automatic Referral of Discovery Disputes.** Where available and unless otherwise directed by the court, all discovery disputes made upon

written motion must first be heard by the discovery commissioner under Rule 16.3.

Rule 16.205. Mandatory Prejudgment Discovery Requirements in Paternity or Custody Actions Between Unmarried Persons

(a) **Applicability.** This rule replaces Rules 16.1 and 16.2 in all paternity and custody actions between unmarried parties. Nothing in this rule precludes a party from conducting discovery under any other of these rules.

(b) **Exemptions.**

(1) Either party may file a motion for exemption from all or a part of this rule.

(2) The court may, sua sponte at the case management conference, exempt all or any portion of a case from application of this rule, in whole or in part, upon a finding of good cause, so long as the exemption is contained in an order of the court.

(c) **Financial Disclosure Forms.**

(1) **General Financial Disclosure Form.** In all actions governed by this rule, each party must complete, file, and serve the cover sheet, income schedule and expense schedule of the General Financial Disclosure Form (GFDF), Form 4 in the Appendix of Forms, within 30 days of service of the summons and complaint, unless a Detailed Financial Disclosure Form (DFDF), Form 5 in the Appendix of Forms, is required in accordance with Rule 16.205(c)(2) or the court orders the parties at the case management conference to complete the DFDF.

(2) **Detailed Financial Disclosure Form.**

(A) The plaintiff, concurrently with the filing of the complaint, or the defendant, concurrently with the filing of the answer, but no

later than 14 days after the filing of the answer, may file a Request to Opt-in to Detailed Financial Disclosure Form and Complex Litigation Procedure, Form 6 in the Appendix of Forms, certifying that:

(i) either party's individual gross income, or the combined gross income of the parties, is more than $250,000 per year; or

(ii) either party is self-employed or the owner, partner, managing or majority shareholder, or managing or majority member of a business.

(B) Within 45 days of service of a Request to Opt-in, each party must file the DFDF unless otherwise ordered by the court or stipulated by the parties.

(C) If a Request to Opt-in is filed, the case is subject to the following complex divorce litigation procedure. Each party must prepare a complex divorce litigation plan that must be filed and served as part of the early case conference report. The plan must include, in addition to the requirements of Rule 16.205(j), any and all proposals concerning the time, manner, and place for needed discovery, proposed conferences and anticipated hearings with the court, and any other special arrangements focused on prompt settlement, trial, or resolution of the case.

(d) **Mandatory Initial Disclosures.**

(1) **Initial Disclosure Requirements.**

(A) Concurrently with the filing of the financial disclosure form, each party must, without awaiting a discovery request, serve upon the other party written and signed disclosures containing the information listed in Rule 16.205(d)(2) and (3).

(B) A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because:

(i) the party has not fully completed an investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made the required disclosures.

(C) For each item set forth in Rule 16.205(d)(3), if the disclosing party is not in possession of the documents, the disclosing party must identify each such asset or debt that exists and disclose where information pertaining to each asset or debt may be found. If no such asset or debt exists, the disclosing party must specifically so state.

(2) **Evidence Supporting Financial Disclosure Form.** For each line item on the GFDF or DFDF, if not already evidenced by the other initial disclosures required herein, a party must provide the financial statement(s), document(s), receipt(s), or other information or evidence relied upon to support the figure represented on the form. If no documentary evidence exists, a party must provide an explanation in writing of how the figure was calculated.

(3) **Evidence of Income and Earnings as to Both Parties.**

(A) **Bank, Investment, and Other Periodic Statements.** A party must provide copies of all monthly or periodic bank, checking, savings, brokerage, investment, cryptocurrency, security account, or other statements evidencing income from interest, dividends, royalties,

distributions, or any other income for the period commencing 6 months before the service of the summons and complaint through the date of the disclosure.

(B) **Insurance Policies.** A party must provide copies of all policy statements and evidence of costs of premiums for health and life insurance policies covering either party or any child of the relationship.

(C) **Tax Returns.** A party must provide copies of all personal and business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last 3 completed calendar or fiscal years with respect to any business or entity in which any party has or had an interest within the past 12 months.

(D) **Proof of Income.** A party must provide proof of income of the party from all sources, specifically including W-2, 1099, and K-1 forms, for the past 2 completed calendar years, and year-to-date income information (paycheck stubs, etc.) for the period commencing 6 months before the service of the summons and complaint through the date of the disclosure.

(E) **Exhibits.** A party must provide a copy of every other document or exhibit, including summaries of other evidence, that a party expects to offer as evidence at trial in any manner.

(e) **Additional Discovery and Disclosures.**

(1) **Obtaining Discovery.** Any party may obtain discovery by one or more methods provided in Rules 26 through 36, commencing 30 days after service of the summons and complaint.

(2) **Additional Discovery.** Nothing in the minimum requirements of this rule provides a basis for objecting to relevant additional discovery in accordance with these rules.

(3) **Disclosure of Expert Witness and Testimony.**

(A) A party must disclose the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305. These disclosures must be made within 90 days after the initial financial disclosure form is required to be filed and served under Rule 16.205(c) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 21 days after the disclosure made by the other party. The parties must supplement these disclosures when required under Rule 26(e)(1).

(B) Except as otherwise stipulated or directed by the court, a party who retains or specially employs a witness to provide expert testimony in the case, or whose duties as an employee of the party regularly involve giving expert testimony, must deliver to the opposing party a written report prepared and signed by the witness within 60 days of the close of discovery. The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the expert reports or relieve a party of the duty to prepare a written report in an appropriate case. The report must contain a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, and the qualifications of the witness.

(4) **Nonexpert Witness.** A party must disclose the name and, if known, the address and telephone number of each individual who has information or knowledge relevant to the claims or defenses set forth in the pleadings, or who may be called as a witness, at any stage of the proceedings, including for impeachment or rebuttal, identifying the subjects of the information and a brief description of the testimony for which the individual may be called. Absent a court order or written stipulation of the parties, a party

must not be allowed to call a witness at trial who has not been disclosed at least 45 days before trial.

(5) **Authorizations for Discovery.** If a party believes it necessary to obtain information within the categories under Rule 16.205(d)(3) from an individual or entity not a party to the action, the party seeking the information may present to the other party a form of authorization, permitting release, disclosure, and production of the information. The party who was requested to sign the authorization must do so within 14 days of receipt of the authorization form. If the party who was requested to sign the authorization refuses to sign the authorization without good cause, a motion to compel may be filed. If the court or discovery commissioner finds that the objecting party is without legitimate factual or legal objection to the signing of the authorization, a motion to compel must be granted and the objecting party must be made to pay reasonable attorney fees and costs.

(f) **Continuing Duty to Supplement and Disclose.** The duty described in this rule is a continuing duty, and each party must make additional or amended disclosures whenever new or different information is discovered or revealed. Such additional or amended disclosures, including corrections to a party's financial disclosure form, must be made not more than 14 days after the party acquires additional information or otherwise learns that in some material respect the party's disclosure is incomplete or incorrect. However, if a hearing, deposition, case management conference, or other calendared event is scheduled less than 14 days from the discovery date, then the update must be filed and served within 24 hours of the discovery of new information.

(g) **Failure to File or Serve Financial Disclosure Form or to Produce Required Disclosures.**

(1) If a party fails to timely file or serve the appropriate financial disclosure form required by this rule, or the required information and disclosures under this rule, the court must impose an appropriate sanction upon the party, the party's attorney, or both, unless specific affirmative findings of fact are made that the violating party has proven:

(A) either good cause for the failure by a preponderance of the evidence or that the violating party would experience an undue hardship if the penalty is applied; and

(B) that other means fully compensate the nonviolating party for any losses, delays, and expenses suffered as a result of the violation.

(2) Sanctions may include an order finding the violating party in civil contempt of court, an order requiring the violating party to timely file and serve the disclosures, to pay the opposing party's reasonable expenses, including attorney fees and costs incurred as a result of the failure, and any other sanction the court deems just and proper.

(3) Sanctions may additionally include an order refusing to allow the violating party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence, and/or any other sanction the court deems just and proper. These discretionary sanctions are encouraged for repeat or egregious violations.

(h) **Failure to Accurately Report Income.**

(1) If a party intentionally fails to accurately report income, the court must impose an appropriate sanction upon the party or the party's attorney, or both, if the other party establishes by a preponderance of the evidence that there is not good cause for the failure.

(2) Sanctions may include an order finding the violating party in civil contempt of court, an award of reasonable attorney fees and costs to the nonviolating party, and any other sanction the court deems just and proper.

(3) These discretionary sanctions are encouraged for repeat or egregious violations.

(i) **Objections to Authenticity or Genuineness.** Any objection to the authenticity or genuineness of documents must be made in writing within 21 days of the date the receiving party receives them. Absent such an objection, the documents must be presumed authentic and genuine and may not be excluded from evidence on these grounds.

(j) **Case Management Conferences.**

(1) **Attendance at Early Case Conference.** Within 45 days after service of an answer, the parties and the attorneys for the parties must confer for the purpose of complying with Rule 16.205(d). The plaintiff may designate the time and place of each meeting, which must be held in the county where the action was filed, unless the parties agree upon a different location. The parties may submit a stipulation and order to continue the time for the case conference for an additional period of not more than 60 days, which the court may, for good cause shown, enter. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the answer. The time for holding a case conference with respect to a defendant who has filed a motion under Rule 12(b)(2)-(4) is tolled until entry of an order denying the motion.

(2) **Early Case Conference Report.** Within 14 days after each case conference, but not later than 7 days before the scheduled case management conference, the parties must file a joint early case conference report, or if the parties are unable to agree upon the contents of a joint report,

each party must serve and file an early case conference report, which, either as a joint or individual report, must contain:

(A) a statement of jurisdiction;

(B) a brief description of the nature of the action and each claim for relief or defense;

(C) a proposed custodial timeshare and a proposed holiday, special day, and vacation schedule;

(D) a written list of all documents provided at or as a result of the case conference, together with any objection that the document is not authentic or genuine. The failure to state any objection to the authenticity or genuineness of a document constitutes a waiver of such objection at a subsequent hearing or trial. For good cause, the court may permit the withdrawal of a waiver and the assertion of an objection;

(E) a written list of all documents not provided under Rule 16.205(d), together with the explanation as to why each document was not provided;

(F) for each issue in the case, a statement of what information and/or documents are needed, along with a proposed plan and schedule of any additional discovery;

(G) the list of witnesses exchanged in accordance with Rule 16.205(e)(3) and (4);

(H) identification of each specific issue preventing immediate global resolution of the case along with a description of what action is necessary to resolve each issue identified;

(I) a litigation budget; and

(J) proposed trial dates.

(3) **Attendance at Case Management Conference.** The court

must conduct a case management conference with counsel and the parties within 90 days after the filing of the answer. The court, for good cause shown, may continue the time for the case management conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 120 days after filing of the answer.

(A) At the case management conference, the court, counsel, and the parties must:

(i) confer and consider the nature and basis of the claims and defenses, the possibilities for a prompt settlement or resolution of the case, and whether orders should be entered setting the case for settlement conference and/or for trial;

(ii) make or arrange for the disclosures required under this rule and to develop a discovery plan, which may include limitations on discovery or changes in the timing of discovery requirements required in this rule; and

(iii) recite stipulated terms on the record under local rules.

(B) The court should also:

(i) enter interim orders sufficient to keep the peace and allow the case to progress;

(ii) for matters that are claimed to be in contest, give direction as to which party will have which burden of proof;

(iii) discuss the litigation budget and its funding; and

(iv) enter a scheduling order.

(C) In the event a party fails to attend the case management conference and the court believes that some or any actions cannot be taken in the absence of the missing party, the court must reschedule the case

management conference and may order the nonappearing party to pay the complying party's attorney fees incurred to appear at the case management conference.

(4) **Case Management Order.**

(A) Within 30 days after the case management conference, the court must enter an order that contains:

(i) a brief description of the nature of the action;

(ii) the stipulations of the parties, if any;

(iii) any interim orders made by the court, including those pertaining to discovery and burdens of proof;

(iv) any changes to the timelines of this rule as stipulated by the parties and/or ordered by the court;

(v) a deadline on which discovery will close;

(vi) a deadline beyond which the parties will be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(vii) a deadline by which dispositive motions must be filed; and

(viii) any other orders the court deems necessary during the pendency of the action, including interim custody and child support orders.

(B) If the court orders one of the parties to prepare the foregoing case management order, that party must submit the order to the other party for signature within 14 days after the case management conference. The order must be submitted to the court for entry within 21 days after the case management conference.

(k) **Automatic Referral of Discovery Disputes.** Where available and unless otherwise directed by the court, all discovery disputes made upon written motion must first be heard by the discovery commissioner under Rule 16.3.

Rule 16.21. Postjudgment Discovery in Family Law Actions

(a) Except as provided by this rule, parties must not conduct postjudgment discovery in a family law action.

(b) Parties may conduct postjudgment discovery in family law actions when:

(1) the court orders an evidentiary hearing in a postjudgment custody matter; or

(2) on motion or on its own, the court, for good cause, orders postjudgment discovery.

(c) Postjudgment discovery is governed by Rule 16.2, by Rule 16.205 for paternity or custody matters, or as otherwise directed by the court.

Advisory Committee Note—2019 Amendment

The amendments to Rule 16.21 permit postjudgment discovery in certain situations. Rule 16.21(b)(1) automatically permits discovery under Rule 16.205 upon the court's entry of a postjudgment order setting an evidentiary hearing in a custody action. Rule 16.21(b)(2) permits postjudgment discovery in any action if ordered by the court.

Rule 16.215. Child Witnesses in Custody Proceedings

(a) **In General.** The court must use these procedures and considerations in child custody proceedings. When determining the scope of a

child's participation in custody proceedings, the court should find a balance between protecting the child, the statutory duty to consider the wishes of the child, and the probative value of the child's input while ensuring to all parties their due process rights to challenge evidence relied upon by the court in making custody decisions.

(b) **Definitions.**

(1) **"Alternative Method."** As used in this rule, "alternative method" is defined as prescribed in NRS 50.520.

(2) **"Child Witness."** As used in this rule, "child witness" is defined as prescribed in NRS 50.530.

(3) **"Third-Party Outsourced Provider."** As used in this rule, "third-party outsourced provider" means any third party ordered by the court to interview or examine a child outside of the presence of the court for the purpose of eliciting information from the child for the court.

(c) **Procedure.**

(1) **Identifying Witnesses.** A party must identify and disclose any potential child witness whom the party intends to call as a witness during the case:

(A) at the time of the case management conference/early case evaluation; or

(B) by filing a Notice of Child Witness if the determination to call a child witness is made after the case management conference/early case evaluation.

(2) **Notice of Child Witness.** A notice of child witness must be filed no later than 60 days before the hearing in which a child may be called as a witness unless otherwise ordered by the court. Such notice must detail the scope of the child witness's intended testimony and provide an explanation as

to why the child witness's testimony would aid the trier of fact under the circumstances of the case. Any party filing a notice of child witness must also deliver a courtesy copy of the notice to the court.

(3) **Testimony by Alternative Methods.** If a party desires to perpetuate the testimony of a child witness by an alternative method, the party must file a Motion to Permit Child Testimony by Alternative Methods, under the Uniform Child Witness Testimony by Alternative Methods Act contained in NRS 50.500 *et seq.*, at the same time as the notice of child witness, or no later than 60 days before the hearing in which the child witness may be called to testify or 14 days after the timely filing of a notice of child witness, whichever period last expires, unless otherwise ordered by the court. The court may also issue an order to show cause why a child witness should not testify by an alternative method or address the issue at any case management conference.

(d) **Alternative Methods.**

(1) **Available Alternative Methods.** If the court determines under NRS 50.580 that an alternative method of testimony is necessary, the court must consider the following alternative methods, in addition to any other alternative methods the court considers appropriate under the Uniform Child Witness Testimony by Alternative Methods Act contained in NRS 50.500 *et seq.*

(A) If all parties are represented by counsel, the court may:

(i) interview the child witness outside of the presence of the parties, with the parties' counsel present;

(ii) interview the child witness outside of the presence of the parties, with the parties' counsel simultaneously viewing the interview via an electronic method; or

(iii) allow the parties' counsel to question the child

witness in the presence of the court without the parties present.

(B) Regardless of whether the parties are represented by counsel, the court may:

(i) interview the child witness with no parties present, but allow the parties to simultaneously view the interview via an electronic method if the court determines that the viewing is not contrary to the child's best interest; or

(ii) have the child witness interviewed by a third-party outsourced provider.

(2) **Alternative Method Considerations.** In determining which alternative method should be utilized in any particular case, the court should balance the necessity of taking the child witness's testimony in the courtroom with the parties and attorneys present with the need to create an environment in which the child witness can be open and honest. In each case in which a child witness's testimony will be taken, the court should consider:

(A) where the testimony will be taken, including the possibility of closing the courtroom to the public or hearing from the child witness on the record in chambers;

(B) who should be present when the testimony is taken, such as both parties and their attorneys, only the attorneys when both parties are represented by counsel, the child witness's attorney and the parties, or only a court reporter;

(C) how the child witness will be questioned, including whether only the court will pose questions that the parties have submitted, whether the parties or their attorneys will be permitted to cross-examine the child witness, or whether a child advocate or expert in child development will ask the questions in the presence of the court and the court reporter, with or

without the parties or their attorneys; and

(D) whether it will be possible to provide an electronic method so that testimony taken in chambers may be heard simultaneously by the parties and their attorneys in the courtroom.

(3) **Protections for Child Witness.** In taking testimony from a child witness, the court must take special care to protect the child witness from harassment or embarrassment and to restrict the unnecessary repetition of questions. The interviewer must also take special care to ensure that questions are stated in a form that is appropriate given the child witness's age or cognitive level. The interviewer must inform the child witness in an age-appropriate manner about the limitations on confidentiality and that the information provided to the court will be on the record and provided to the parties in the case. In the process of listening to and inviting the child witness's input, the interviewer may allow, but should not require, the child witness to state a preference regarding custody or visitation and should, in an age-appropriate manner, provide information about the process by which the court will make a decision.

(e) **Due Process Rights.** Any alternative method must afford all parties a right to participate in the questioning of the child witness, which, at a minimum, must include an opportunity to submit potential questions or areas of inquiry to the court or other interviewer before the interview of the child witness.

(f) **Preservation of Record.** Any alternative method of testimony ordered by the court must be preserved by audio or audiovisual recording to ensure that such testimony is available for review for future proceedings.

(g) **Review of Record.** Any party may review the audio or audiovisual recording of testimony procured from a child witness by an alternative method

upon written motion to the court or stipulation of the parties, unless the court finds by clear and convincing evidence that review by a party would pose a risk of substantial harm to the child witness.

(h) **Stipulation.** The court may deviate from any of the provisions of this rule upon stipulation of the parties. The judicial districts of this state should promulgate a uniform canvass to be provided to the parties to ensure that they are aware of their rights to a full and fair opportunity for examination or cross-examination of a child witness before entering into any stipulation that would permit the interview or examination of a child witness by an alternative method, including a third-party outsourced provider.

(i) **Retention of Recordings.** Original recordings of an interview or examination of a child witness must be retained by the interviewer for a period of 7 years from the date of their recording, or until 6 months after the child witness emancipates, whichever is later, unless otherwise ordered by the court.

Rule 16.22. Custody Evaluations in Family Law Actions

(a) **Applicability; Motion; Notice.**

(1) This rule governs custody evaluations in family law actions.

(2) On motion or on its own, and after notice to all parties, the court may for good cause order a custody evaluation.

(3) The court may specify the individuals to be examined or permit the examiner to do so.

(b) **Order.**

(1) **In General.** The order must specify the time, place, manner, conditions, and scope of the examination, as well as each examiner who will perform it.

(2) **Examiner; Location.** An examiner must be suitably licensed

or certified. The examination must take place in an appropriate professional setting and in the judicial district in which the case is pending, unless the court orders the examination to occur in a different location.

(3) **Persons Examined.** The court may require a party to produce for examination a person who is in the party's custody or under the party's legal control.

(4) **Costs.** The court may assign the cost of the examination to one or more parties and may redistribute those costs as appropriate.

(5) **Modification.** The court, for good cause, may alter the provisions of this rule.

(c) **Recording.** A custody evaluation may be recorded only by the examiner, who must inform the parties if the examiner elects to record the examination. The examiner must keep the recording confidential. On motion, and for good cause, the court may order that a copy of the recording be provided to the court and placed under seal, be provided to the parties subject to appropriate restrictions upon its release and use, or both.

(d) **Observers.** The parties may not have an observer present at a custody evaluation.

(e) **Examiner's Report.**

(1) **Providing the Report to the Court.** The examiner must provide a custody evaluation report to the court, and the report must be placed under seal. The court must notify all parties when it receives the report. A party and the party's attorney may review the report in court, but may not obtain a copy of the report except under Rules 16.22(e)(2) or (3).

(2) **Providing the Report to the Parties' Attorneys.** A party's attorney may obtain a copy of the report, which the attorney must keep confidential and may not distribute without a court order under Rule

16.22(e)(3). The party may review the report if it is obtained by the party's attorney, but the report must remain in the attorney's possession and the attorney must not provide a copy of the report to the party without a court order under Rule 16.22(e)(3).

(3) **Distribution of the Report.** On motion, and for good cause, the court may permit distribution of the report, which must include appropriate restrictions on its release and use.

(4) **Contents.** The report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(5) **Request by the Moving Party.** After the examiner provides the report to the court, the party who moved for the examination may request—and is entitled to receive—from any party, like reports of all earlier or later examinations of the same condition, which are in the possession of that party. But those reports need not be delivered by a party with custody or control of the person examined if the party shows that it cannot obtain them. Any reports in the care or custody of a court, as specified in this rule, must be sought from that court. The grant of either review or receipt of those reports is subject to the court's discretion and the conditions in this rule.

(6) **Scope.** This rule does not preclude obtaining an examiner's report or deposing an examiner under other rules, unless excluded by this rule.

(f) **Stipulations.** The parties may, by stipulation approved by the court, agree upon the custody evaluation, the conditions or limitations of the evaluation, and the examiner. This rule applies to any examinations agreed to by stipulation, unless the court approves a stipulation stating otherwise.

Advisory Committee Note—2019 Amendment

Rule 16.22 is new and provides procedures for custody evaluations in family law actions.

Rule 16.23. Physical and Mental Examinations of Minors in Family Law Actions

(a) **Applicability; Motion; Notice.**

(1) This rule governs a physical or mental examination of a minor in family law actions.

(2) When ordering a physical or mental examination of a minor, the court may proceed under this rule or Rule 35. The court's order must state the court's reasoning for proceeding under either rule and must include findings as to the best interests of the child.

(3) Upon motion and after notice to all parties and, if the minor is 14 years of age or older, to the minor to be examined, a court may for good cause order an examination of a minor's mental or physical condition.

(b) **Order.** The provisions of Rule 16.22(b) apply to orders under this rule.

(c) **Recording.** In a motion requesting an examination or an opposition thereto, the parties may request that an examination be recorded by audio or audiovisual means. When considering whether to approve a recording, the court may appoint a guardian ad litem for the minor, hold a hearing, or both. The court may grant a request to record the examination if making the recording is in the child's best interest. Any recording must be provided to the court and placed under seal. On motion, and for good cause, the court may permit distribution of the recording, which must include appropriate restrictions on its release and use.

(d) **Observers.**

(1) **In General.** In a motion requesting an examination or an opposition thereto, the parties may request that an observer be present at the examination. When considering whether to approve a request for an observer, the court may appoint a guardian ad litem for the minor, hold a hearing, or both. The court may grant a request for an observer if the observer's presence is in the child's best interest and would not compromise the examination. The observer may not be a party, a party's attorney, or anyone employed by a party or a party's attorney. If the minor is of sufficient age and maturity, the court may consider the child's preference in choosing the observer. The court must approve the observer before the examination, and the observer must not in any way interfere with, obstruct, or participate in the examination.

(2) **Parents.** If ordered by the court, the parents or guardian of a minor may observe a physical examination, but may not interfere with, obstruct, or participate in the examination.

(e) **Examiner's Report.** The examiner's report and access to it must comply with Rule 16.22(e)(1) and (3)-(6).

(f) **Stipulations.** Any stipulation for a minor's examination must comply with Rule 16.22(f).

Advisory Committee Note—2019 Amendment

Rule 16.23 is new and provides alternative procedures to Rule 35 for mental or physical examinations of minors in family law actions.

Rule 16.3. Discovery Commissioners

(a) **Appointment and Compensation.** A judicial district may appoint one or more discovery commissioners to serve at the pleasure of the court. In multi-judge judicial districts, appointment must be by the concurrence of a

majority of all judges in the judicial district. The compensation of a discovery commissioner must not be taxed against the parties but, when fixed by the court, must be paid out of appropriations made for the expenses of the judicial district.

(b) **Powers.**

(1) A discovery commissioner may administer oaths and affirmations.

(2) As directed by the court, or as authorized by these rules or local rules, a discovery commissioner may:

(A) preside at discovery resolution conferences;

(B) preside over discovery motions;

(C) preside at any other proceeding or conference in furtherance of the discovery commissioner's duties;

(D) regulate all proceedings before the discovery commissioner; and

(E) take any other action necessary or proper for the efficient performance of the discovery commissioner's duties.

(3) If agreed by the parties or ordered by the court, a discovery commissioner also may conduct settlement conferences.

(c) **Report and Recommendation; Objections.**

(1) **Report and Recommendation.** After a discovery motion or other contested matter is heard by or submitted to a discovery commissioner, the discovery commissioner must prepare a report with the discovery commissioner's recommendations for a resolution of each unresolved dispute. The discovery commissioner may direct counsel to prepare the report. The discovery commissioner must file the report with the court and serve a copy of it on each party.

(2) **Objections.** Within 14 days after being served with a report, any party may file and serve written objections to the recommendations. Written authorities may be filed with an objection but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within 7 days after being served with the objections.

(3) **Review.** Upon receipt of a discovery commissioner's report, any objections, and any response, the court may:

(A) affirm, reverse, or modify the discovery commissioner's ruling without a hearing;

(B) set the matter for a hearing; or

(C) remand the matter to the discovery commissioner for reconsideration or further action.

Advisory Committee Note—2019 Amendment

The amendments generally restate Rule 16.3(a) and (b) from the former NRCP 16.3. The amendments make clear that discovery commissioners may hear discovery motions, but also require the district court to conduct case conferences and issue scheduling orders. Rule 16.3(c) relocates the text of the former NRCP 16.1(d)(2), NRCP 16.2(j)(2), and NRCP 16.205(j)(2) into this rule. The court reviews a discovery commissioner's report and recommendation de novo. However, an objecting party may not raise new arguments in support of an objection that could have been raised before the discovery commissioner but were not. *See Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 173, 252 P.3d 676, 680 (2011).

IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) **Real Party in Interest.**

(1) **Designation in General.** An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) **Action in the Name of the ~~*United States*~~State of Nevada for Another's Use or Benefit.** When a ~~federal~~ statute so provides, an action for another's use or benefit must be brought in the name of the ~~United States~~State.

(3) **Joinder of the Real Party in Interest.** The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) **Capacity to Sue or Be Sued.** Capacity to sue or be sued is determined as follows:

(1) for an individual ~~who is not~~, including one acting in a representative capacity, by the law of ~~the individual's domicile~~this state;

(2) for a corporation, by the law under which it was organized, unless the law of this state provides otherwise; and

(3) for all other parties, by the law of ~~the state where the court is located, except that:~~this state.

~~(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and~~

~~(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.~~

(c) **Minor or ~~INCOMPETENT~~Incapacitated Person.**

(1) **With a Representative.** The following representatives may sue or defend on behalf of a minor or an ~~incompetent~~incapacitated person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) **Without a Representative.** A minor or an ~~incompetent~~incapacitated person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or ~~incompetent~~incapacitated person who is ~~unrepresented~~not represented in an action.

(d) **Public Officer's Title and Name.** A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 17 to FRCP 17. Rule 17(b) is Nevada specific—Nevada law will determine a party's capacity to sue or be sued, except where this rule, choice of law, or other applicable principles provide otherwise. Rule 17(d) relocates the former NRCP 25(d)(2) into this rule.

Rule 18. Joinder of Claims

(a) **In General.** A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) **Joinder of Contingent Claims.** A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

Rule 19. Required Joinder of Parties

(a) **Persons Required to Be Joined if Feasible.**

(1) **Required Party.** A person who is subject to service of process and whose joinder will not deprive the court of ~~subjectmatter~~subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) **Joinder by Court Order.** If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

~~(3) *Venue.* If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.~~

(b) **When Joinder Is Not Feasible.** If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) **Pleading the Reasons for Nonjoinder.** When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) **Exception for Class Actions.** This rule is subject to Rule 23.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 19 to FRCP 19. Persons joined in an action in Nevada retain any rights they may have to move to change the venue under NRS Chapter 13 or to move to dismiss under forum non conveniens.

Rule 20. Permissive Joinder of Parties

(a) **Persons Who May Join or Be Joined.**

(1) **Plaintiffs.** Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) **Defendants.** ~~Persons as well as a vessel, cargo, or other property subject to admiralty process in rem~~ Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) **Extent of Relief.** Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) **Protective Measures.** The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

Rule 22. Interpleader

(a) **Grounds.**

(1) **By a Plaintiff.** Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) **By a Defendant.** A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) **Relation to Other Rules and Statutes.** This rule supplements—and does not limit—the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to—and does not supersede or limit—the remedy provided by ~~28 U.S.C. §§ 1335, 1397, and 2361. An action under those statutes must be conducted under these rules~~any Nevada statute authorizing interpleader. These rules apply to any action brought under statutory interpleader provisions, except as otherwise provided by Rule 81.

Rule 23. Class Actions

(a) **Prerequisites~~.~~ to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all ~~members~~ only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) ~~TYPES~~**Aggregation.** The representative parties may aggregate the value of ~~CLASS ACTIONS. A~~the individual claims of all potential class members to establish district court jurisdiction over a class action.

(c) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of Rule 23(a) ~~is~~are satisfied, and ~~if~~in addition:

(1) ~~prosecuting~~the prosecution of separate actions by or against individual ~~class~~ members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual ~~class~~ members of the class that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual ~~class~~ members of the class that~~,~~ would as a practical matter~~, would~~ be dispositive of the interests of the other members not parties to the ~~individual~~ adjudications or ~~would~~ substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds ~~that apply~~ generally applicable to the class, ~~so that~~ thereby making appropriate final injunctive relief or corresponding declaratory relief ~~is appropriate respecting~~with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to ~~class~~the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for ~~fairly~~the fair and ~~efficiently adjudicating~~efficient adjudication of the controversy. The matters pertinent to ~~these~~the findings include:

(A) the interest of members of the class ~~members' interests~~ in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already ~~begun~~commenced by or against members of the class ~~members;~~;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the ~~likely~~ difficulties likely to be encountered in ~~managing~~ the management of a class action.

(c) ~~CERTIFICATION~~d) **Determination by Order Whether Class Action to Be Maintained; Notice ~~TO CLASS MEMBERS~~; Judgment; ~~ISSUES CLASSES; SUBCLASSES~~Actions Conducted Partially as Class Actions.**

(1) ~~*Certification Order.*~~

~~(A) *Time to Issue.* At an early~~ As soon as practicable ~~time~~ after ~~a person sues or is sued~~the commencement of an action brought as a class ~~representative~~action, the court must determine by order whether ~~to certify the action as a class action~~it is to be so maintained. The order may be conditional, and may be altered or amended before the decision on the merits.

~~(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).~~

~~(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before final judgment.~~

~~(2) *Notice.*~~

~~(A) *For (b)(1) or (b)(2) Classes.* For~~ (2) When determining whether an action may be maintained as a class action, the representative party's rejection of an offer made under Rule 68 or other offer of compromise that offers to resolve less than all of the class claims asserted by or against the representative party has no impact on the representative party's ability to satisfy the requirements of Rule 23(a)(4). When the representative party is unable or unwilling to continue as the class representative, the court must permit class members an opportunity to substitute a class representative meeting the requirements of Rule 23(a)(4), except in cases where the representative party has been sued.

(3) In any class ~~certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.~~

(B) *For (b)(3) Classes.* For any class certifiedaction maintained under Rule 23(bc)(3) or upon ordering notice under Rule 23(c)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)), the court mustshould direct to classthe members of the class the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood languageThe notice must advise each member that:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that (A) the court will exclude the member from the class anyif the member whoso requests exclusion;by a specified date;

(viB) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on, whether favorable or not, will include all members under Rule 23(c)(3).who do not request exclusion; and

(3) *Judgment.* Whether or not favorable to the class, (C) any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel.

(4) The judgment in an action maintained as a class action must:

~~(A) for any class certified~~ under Rule 23(~~b~~c)(1) or (~~b~~)(2), whether or not favorable to the class, must include and describe those whom the court finds to be ~~class~~ members~~; and~~

~~(B) for any~~ of the class ~~certified~~. The judgment in an action maintained as a class action under Rule 23(~~b~~c)(3), whether or not favorable to the class, must include and specify or describe those to whom the ~~Rule 23(c)(2)~~ notice provided in Rule 23(d)(3) was directed, and who have not requested exclusion, and whom the court finds to be ~~class~~ members of the class.

(~~4) *Particular Issues.*~~ 5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues~~.~~

~~(5) *Subclasses.* When appropriate,~~ , or a class may be divided into subclasses ~~that are~~and each subclass treated as a class ~~under this rule.~~

~~(d) CONDUCTING THE ACTION.~~

~~(1)~~ . In ~~*General.* In~~either case, the provisions of this rule should then be construed and applied accordingly.

(e) **Orders in Conduct of Actions.**

(1) When conducting ~~an action under~~actions to which this rule applies, the court may ~~issue~~make appropriate orders ~~that:~~:

(A) ~~determine~~determining the course of proceedings or ~~prescribe~~prescribing measures to prevent undue repetition or complication in ~~presenting~~ the presentation of evidence or argument;

(B) ~~require to protect class~~ requiring, for the protection of the members ~~and fairly~~of the class or otherwise for the fair conduct of the action~~ giving appropriate~~, that notice be given to some or all ~~class~~of the members ~~of~~in such manner as the court may direct:

(i) of any step in the action;

(ii) of the proposed extent of the judgment;~~ or~~

(iii) of the ~~members'~~ opportunity of members to signify whether they consider the representation fair and adequate~~,~~;

(iv) to intervene and present claims or defenses~~,~~; or

(v) to otherwise to come into the action;

(C) ~~impose~~imposing conditions on the representative parties or on intervenors;

(D) ~~require~~requiring that the pleadings be amended to eliminate therefrom allegations ~~about~~as to representation of absent persons and that the action proceed accordingly; ~~or~~

(E) ~~deal~~dealing with similar procedural matters.

~~(2) *Combining and Amending Orders.* An order under Rule 23(d)(1) may be altered or amended from time to time and~~ (2) The orders may be combined with an order under Rule 16, and may be altered or amended.

~~(e) SETTLEMENT, VOLUNTARY~~ (f) **Dismissal~~,~~ or Compromise.** ~~The claims, issues, or defenses of a certified class or a class proposed to be certified for purposes of settlement may be settled, voluntarily~~ A class action must not be dismissed~~,~~ or compromised ~~only with~~without the ~~court's~~ approval~~.~~ ~~The following procedures apply to a~~ of the court, and notice of the proposed ~~settlement, voluntary~~ dismissal~~,~~ or compromise~~:~~

~~(1) Notice to the Class.~~

~~(A) Information That Parties Must Provide to the Court. The parties~~ must ~~provide the court with information sufficient to enable it to determine whether to give notice~~ be given to all members of the ~~proposal to the~~ class~~.~~

~~(B) Grounds for a Decision to Give Notice. The court must direct notice~~ in ~~a reasonable~~such manner ~~to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that~~as

the court ~~will likely be able to:~~directs.

~~(i) approve the proposal under~~

Advisory Committee Note—2019 Amendment

The amendments retain Rule 23~~(e)(2);~~ and

~~(ii) certify the class for purposes of judgment on the proposal.~~

~~(2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:~~

~~(A) the class representatives and class counsel have adequately represented the class;~~

~~(B) the proposal was negotiated at arm's length;~~

~~(C) the relief provided for the class is adequate, taking into account:~~

~~(i) the costs, risks, and delay of trial and appeal;~~

~~(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;~~

~~(iii) the terms of any proposed award of attorney's fees, including timing of payment; and~~

~~(iv) any agreement required to be identified under Rule 23(e)(3); and~~

~~(D) the proposal treats class members equitably relative to each other.~~

~~(3) Identifying Agreements. The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.~~

~~(4) New Opportunity to Be Excluded. If the class action was previously certified under~~ add Rule 23(b)~~(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.~~

~~(5) Class-Member Objections.~~

~~(A) In General. Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.~~

~~(B) Court Approval Required for Payment in Connection with an Objection. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:~~

~~(i) forgoing or withdrawing an objection, or~~

~~(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.~~

~~(C) Procedure for Approval After an Appeal. If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.~~

~~(f) APPEALS. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal~~

~~with the circuit clerk within 14 days after the order is entered, or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal does not stay proceedings in~~) and (d)(2). Rule 23(b) permits aggregation of the value of class members' claims to reach the district court ~~unless the district judge or the court of appeals so orders.~~

~~(g) CLASS COUNSEL.~~

~~(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:~~

~~(A) must consider:~~

~~(i) the work counsel has done in identifying or investigating potential claims in the action;~~

~~(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;~~

~~(iii) counsel's knowledge of the applicable law; and~~

~~(iv) the resources that counsel will commit to representing the class;~~

~~(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;~~

~~(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;~~

~~(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and~~

~~(E) may make further orders in connection with the appointment.~~

~~(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.~~

~~(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.~~

~~(4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class.~~

~~(h) ATTORNEY'S FEES AND NONTAXABLE COSTS. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:~~

~~(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.~~

~~(2) A class member, or a party from whom payment is sought, may object to the motion.~~

~~(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).~~

~~(4) The court may refer issues related to the~~threshold jurisdictional amount ~~of the award to a special master or a magistrate judge, as provided in Rule 54(~~, and Rule 23(d)(2)~~(D).~~) permits substituting a class representative when a representative

party is unable or unwilling to continue as the class representative.

Rule 23.1. Derivative Actions by Shareholders

~~(a) PREREQUISITES. This rule applies when~~ In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association ~~bring a derivative action to enforce a right that,~~ the corporation or association ~~may properly assert but has~~having failed to enforce. ~~The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.~~

~~(b) PLEADING REQUIREMENTS. The~~ a right that may properly be asserted by it, the complaint must be verified and must~~:~~

~~(1)~~ allege that the plaintiff was a shareholder or member at the time of the transaction ~~complained of~~of which the plaintiff complains, or that the plaintiff's share or membership ~~later~~thereafter devolved on ~~it~~ the plaintiff by operation of law~~;~~

~~(2)~~. The complaint must also allege ~~that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and~~

~~(3) state~~ with particularity~~:~~

~~(A)~~ the efforts, if any ~~effort~~, made by the plaintiff to obtain the ~~desired~~ action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members~~;~~, and

~~(B)~~ the reasons for ~~not obtaining~~the plaintiff's failure to obtain the action or for not making the effort.

~~(c) SETTLEMENT, DISMISSAL, AND COMPROMISE. A derivative action may be settled, voluntarily~~ The derivative action may not be maintained if it

appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action may not be dismissed~~,~~ or compromised ~~only with~~without the ~~court's~~ approval~~. Notice~~ of ~~a~~the court, and notice of the proposed ~~settlement, voluntary~~ dismissal~~,~~ or compromise must be given to shareholders or members in ~~the~~such manner ~~that~~as the court ~~orders~~directs.

Rule 23.2. Actions Relating to Unincorporated Associations

~~This rule applies to an~~ An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties~~. The action~~ may be maintained only if it appears that ~~those~~the representative parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(~~d~~e), and the procedure for ~~settlement, voluntary~~ dismissal~~,~~ or compromise of the action must correspond with the procedure in Rule 23(e~~f~~).

Rule 24. Intervention

(a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a state or federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) **Permissive Intervention.**

(1) **In General.** On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a state or federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) **By a Government Officer or Agency.** On timely motion, the court may permit a ~~federal~~state or ~~state~~federal governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) **Delay or Prejudice.** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) **Notice and Pleading Required.** A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Advisory Committee Note—2019 Amendment

The amendments conform Rule 24 to FRCP 24, including the addition of Rule 24(b)(2), which was not in the former Nevada rule. Intervention by government agencies under the specified conditions should enable the relevant issues to be resolved in a single action.

Rule 25. Substitution of Parties

(a) **Death.**

(1) **Substitution if the Claim Is Not Extinguished.** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within ~~90~~180 days after service of a statement noting the death, the ~~action~~claims by or against the decedent must be dismissed.

(2) **Continuation Among the Remaining Parties.** After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) **Service.** A motion to substitute~~, together with a notice of hearing,~~ must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. ~~Service may be made in any judicial district.~~

(b) ~~INCOMPETENCY.~~**Incapacitated Persons.** If a party becomes ~~incompetent~~incapacitated, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) **Transfer of Interest.** If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) **Public Officers; Death or Separation ~~from~~From Office.** An action does not abate when a public officer who is a party in an official capacity

dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

~~TITLE~~ **Advisory Committee Note—2019 Amendment**

The amendments generally conform Rule 25 to FRCP 25.

Subsection (a). Rule 25(a) works in conjunction with NRS 7.075, which requires an attorney whose client dies to file a notice of death and a motion for substitution within 90 days after the death. Under Rule 25(a)(1), any party or the decedent's successor or representative has 180 days after service of a notice of death or a statement noting the death in which to file a motion for substitution. Although Rule 25(a)(1) changes the time to file the motion for substitution from 90 to 180 days after service of a statement noting a party's death, it otherwise generally tracks FRCP 25(a)(1). As with FRCP 6(b) and 25(a)(1), a motion for substitution under Rule 25(a)(1) is not among the motions Rule 6(b)(2) excludes from its extension-of-time provisions. The district court thus has discretion, under Rule 6(b)(1), to enlarge the time to file a motion to substitute, despite the use of the word "must" in NRCP 25(a)(1). *See* 7C Charles Alan Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil* § 1955, at 681-84 (3d. ed. 2007) (noting that, despite the use of "must" in FRCP 25(a), "[d]ismissal is not mandatory" when a party cannot file a motion for substitution within the allotted time; under FRCP 6, "the court may extend the period for substitution if a request is made before" the period expires and "also may allow substitution on motion made after expiration of the

[substitution] period on a showing that the failure to act earlier was the result of excusable neglect, although an extension of time also may be refused if the court find the reasons for the delay to be inexcusable"). The remaining parties may also seek to continue the action in a manner not involving substitution of the decedent's successor or representative.

Subsections (b), (c), and (d). The amendments conform Rules 25(b), (c), and (d) to the corresponding federal rule. Former NRCP 25(d)(2) is moved to Rule 17(d).

V. DISCLOSURES AND DISCOVERY

Rule 26. ~~Duty to Disclose;~~ **General Provisions Governing Discovery**

~~(a) Required Disclosures.~~

~~(1) Initial Disclosure.~~

~~(A) In General.~~ Except as ~~exempted by Rule 26~~ (a)~~(1)(B)~~) **Discovery Methods.** At any time after the filing of a joint case conference report, or ~~as otherwise stipulated~~not sooner than 14 days after a party has filed a separate case conference report, or ~~ordered~~upon order by the court~~, a party must, without awaiting a~~ or discovery ~~request, provide to the other parties:~~

~~(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information along with the subjects of that information that the disclosing~~ commissioner, any party who has complied with Rule 16.1(a)(1), 16.2, or 16.205 may ~~use to support its claims or defenses, unless the use would be solely for impeachment;~~

~~(ii) a copy or a description by category and location of all documents, electronically stored information, and tangible things that~~

~~the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;~~

~~(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and~~

~~(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.~~

~~(B) *Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:~~

~~(i) an action for review on an administrative record;~~

~~(ii) a forfeiture action in rem arising from a federal statute;~~

~~(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;~~

~~(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;~~

~~(v) an action to enforce or quash an administrative summons or subpoena;~~

~~(vi) an action by the United States to recover benefit payments;~~

~~(vii) an action by the United States to collect on a student loan guaranteed by the United States;~~

~~(viii) a proceeding ancillary to a proceeding in another court; and~~

~~(ix) an action to enforce an arbitration award.~~

~~(C) **Time for Initial Disclosures—In General.** A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed~~obtain discovery ~~plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.~~

~~(D) **Time for Initial Disclosures—For Parties Served or Joined Later.** A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.~~

~~(E) **Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.~~

~~(2) **Disclosure of Expert Testimony.**~~

~~(A) **In General.** In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.~~

~~(B) **Witnesses Who Must Provide a Written**~~

Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) **Witnesses Who Do Not Provide a Written Report.** Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) *Time to Disclose Expert Testimony.* A party must make by any means permitted by these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures

~~must be made:~~rules.

~~(i) at least 90 days before the date set for trial or for the case to be ready for trial; or~~

~~(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.~~

~~(E) *Supplementing the Disclosure.* The parties must supplement these disclosures when required under Rule 26(e).~~

~~(3) **Pretrial Disclosures.**~~

~~(A) *In General.* In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:~~

~~(i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;~~

~~(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and~~

~~(iii) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.~~

~~(B) **Time for Pretrial Disclosures; Objections.** Unless the~~

~~court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any~~

~~objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made except for one under Federal Rule of Evidence 402 or 403 is waived unless excused by the court for good cause.~~

~~(4) **Form of Disclosures.** Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.~~

(b) **Discovery Scope and Limits.**

(1) **Scope** ~~*in General*~~**.** Unless otherwise limited by order of the court ~~order~~in accordance with these rules, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's ~~claim~~claims or ~~defense~~defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) **Limitations** ~~*on Frequency and Extent*~~**.**

(A) ~~*When Permitted.* By order, the~~**Frequency.** The court may alter the limits in these rules on the number of depositions and interrogatories ~~or on~~, the length of depositions under Rule 30~~. By order or local rule, the court may also limit~~ , or the number of requests under Rule 36.

(B) ~~*Specific Limitations on*~~ **Electronically Stored Information.** A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a

protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery, including costs of complying with the court's order.

(C) **When Required.** On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

(3) **Trial Preparation: Materials.**

(A) **Documents and Tangible Things.** Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) **Protection Against Disclosure.** If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) **Previous Statement.** Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(4) **Trial Preparation: Experts.**

(A) **Deposition of an Expert Who May Testify.** A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If ~~Rule 26(a)(2)(B) requires~~ a report from the expert~~,~~ is required under Rule 16.1(a)(2)(B), 16.2(e)(3), or 16.205(e)(3), the deposition may not be conducted ~~only~~until after the report is provided.

(B) **Trial-Preparation Protection for Draft Reports or Disclosures.** ~~Rules~~Rule 26(b)(3)~~(A) and (B) protect~~) protects drafts of any report or disclosure required under Rule ~~26~~16.1(a)~~(~~(), 16.2(d) or (e), 16.205(d) or (e), or 26(b)(1), regardless of the form in which the draft is recorded.

(C) **Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.** ~~Rules~~Rule 26(b)(3)~~(A) and (B) protect~~) protects communications between the party's

attorney and any witness required to provide a report under Rule ~~26~~16.1(a)~~()~~, 16.2~~(B~~(d) or (e), or 16.205(d) or (e), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) **Expert Employed Only for Trial Preparation.** Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

~~(E) *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:~~

~~(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and~~

~~(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.~~

(5) **Claiming Privilege or Protecting Trial-_Preparation Materials.**

(A) **Information Withheld.** When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) **Information Produced.** If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) **Protective Orders.**

(1) **In General.** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to ~~a~~an out-of-state deposition, in the court for the judicial district where the deposition will be taken. The motion must include a certification that the movant has in good

faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) **Ordering Discovery.** If a motion for a protective order is wholly or ~~partly~~partially denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) **Awarding Expenses.** Rule 37(a)(5) applies to the award of expenses.

(d) ~~TIMING AND~~ **Sequence of Discovery.**

~~(1) *Timing.* A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.~~

~~(2) *Early Rule 34 Requests.*~~

~~(A) *Time to Deliver.* More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered:~~

~~(i) to that party by any other party, and~~

~~(ii) by that party to any plaintiff or to any other party that has been served.~~

~~(B) *When Considered Served.* The request is considered to have been served at the first Rule 26(f) conference.~~

~~(3) *Sequence.*~~ Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

~~(A)~~(1) methods of discovery may be used in any sequence; and

~~(B)~~(2) discovery by one party does not require any other party to delay its discovery.

(e) ~~SUPPLEMENTAL~~**Supplementing Disclosures and Responses.**

(1) **In General.** A party who has made a disclosure under Rule ~~26(a)~~ 16.1, 16.2, or ~~who has~~16.205 ~~or~~ responded to ~~an interrogatory,~~a request for ~~production, or request for admission must supplement or correct its~~ discovery with a disclosure or response~~:~~

~~(A) in~~ is under a duty to timely ~~manner~~supplement or correct the disclosure or response to include information thereafter acquired if the party learns that in some material respect the ~~disclosure or response~~ information disclosed is incomplete or incorrect~~,~~ and if the additional or

corrective information has not otherwise been made known to the other parties during the discovery process or in writing~~; or~~.

~~(B) as ordered by the court.~~

(2) **Expert Witness.** ~~For~~ With respect to testimony of an expert ~~whose~~from whom a report ~~must be disclosed~~is required under Rule ~~26~~16.1(a)(2)(B), 16.2(e)(3), or 16.205(e)(3), the ~~party's~~ duty ~~to supplement~~ extends both to information ~~included~~contained in the report and to information ~~given during the expert's~~ provided through a deposition~~.~~ of the expert. Any additions or other changes to this information must be disclosed by the time the party's ~~pretrial~~ disclosures under Rule ~~26~~16.1(a)(3), 16.2(f), or 16.205(f) are due.

~~(f) CONFERENCE OF THE PARTIES; PLANNING FOR DISCOVERY.~~

~~(1) *Conference Timing.* Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).~~

~~(2) *Conference Content; Parties' Responsibilities.* In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.~~

~~(3) *Discovery Plan.* A discovery plan must state the parties' views and proposals on:~~

~~(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;~~

~~(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;~~

~~(C) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;~~

~~(D) any issues about claims of privilege or of protection as trial-preparation materials, including if the parties agree on a procedure to assert these claims after production whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;~~

~~(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and~~

~~(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).~~

~~(4) *Expedited Schedule.* If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule:~~

~~(A) require the parties' conference to occur less than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b); and~~

~~(B) require the written report outlining the discovery plan to be filed less than 14 days after the parties' conference, or excuse the parties~~

~~from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.~~

(f) **Form of Responses.** Answers and objections to interrogatories or requests for production must identify and quote each interrogatory or request for production in full immediately preceding the statement of any answer or objections thereto. Answers, denials, and objections to requests for admission must identify and quote each request for admission in full immediately preceding the statement of any answer, denial, or objection thereto.

(g) **Signing of Disclosures ~~AND~~, Discovery Requests, Responses, and Objections.**

(1) **Signature Required; Effect of Signature.** Every disclosure and report made under ~~Rule 26(a)~~(Rules 16.1~~) or (a)(3)~~, 16.2, and 16.205, other than reports prepared and signed by an expert witness, and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name—or by the party personally, if ~~unrepresented~~self-represented—and must, when available, state the signer's ~~address,~~physical and email ~~address~~addresses, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as

to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) **Failure to Sign.** Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) **Sanction for Improper Certification.** If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including ~~attorney's~~attorney fees, caused by the violation.

(h) **Demand for Prior Discovery.** If a party makes a written demand for disclosures or discovery that took place before the demanding party became a party to the action, whether under Rule 16.1 or 26, each party who has previously made disclosures or responded to a request for admission or production or answered interrogatories must make available to the demanding party each document in which the disclosures and responses to discovery are contained for inspection and copying, or furnish the demanding party a list identifying each such document by title. Upon further demand from the demanding party, at the expense of the demanding party, the recipient of such demand must furnish a copy of any listed discovery disclosure or response specified in the demand or, in the case of document disclosure or request for

production, must make available for inspection by the demanding party all documents and things previously produced. Further, each party who has taken a deposition must make a copy of the transcript available to the demanding party at its expense.

Advisory Committee Note—2019 Amendment

Subsection (a). The amendments retain the former NRCP 26(a), with stylistic revisions. The majority of FRCP 26(a) is subsumed by the initial disclosure requirements located in Rules 16.1, 16.2, and 16.205.

Subsection (b). Rule 26(b) redefines the scope of allowable discovery consistent with the proportionate discovery provision in FRCP 26(b). As amended, Rule 26(b)(1) requires that discovery seek information "relevant to any party's claims or defenses and proportional needs of the case," departing from the past scope of "relevant to the subject matter involved in the pending action." This change allows the district court to eliminate redundant or disproportionate discovery and reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry.

Rule 27. Depositions to Perpetuate Testimony

(a) **Before an Action Is Filed.**

(1) **Petition.** A person who wants to perpetuate testimony—including his or her own—about any matter cognizable in ~~a~~ any court within the United States ~~court~~ may file a verified petition in ~~the~~ district court ~~for the district where any expected adverse party resides~~. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a court within the United States ~~court~~ but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) **Notice and Service.** At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the ~~district or~~ state, or service may be waived, in the manner provided in Rule 4~~. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication~~, 4.1, 4.2, 4.3, or ~~otherwise~~4.4. The court must appoint an attorney to represent ~~persons~~any expected adverse party who was not served in the manner provided in Rule 4.2, 4.3, or 4.4(a) or (b), did not waive or admit service, and did not appear at the hearing, and to cross-examine the deponent if an ~~unserved person~~expected adverse party is not otherwise represented. If any expected adverse party is a minor or is ~~incompetent~~incapacitated, Rule 17(c) applies.

(3) **Order and Examination.** If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an

order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) **Using the Deposition.** A deposition to perpetuate testimony may be used in Nevada under Rule 32(a) in any later-filed ~~district court~~ action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible ~~in~~ under Nevada law of evidence ~~in the courts of the state where it was taken~~.

(b) **Pending Appeal.**

(1) **In General.** The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) **Motion.** The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) **Court Order.** If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34

and 35. The depositions may be taken and used as any other deposition taken in a pending ~~district court~~ action.

~~(c) PERPETUATION BY AN ACTION. This rule does not limit a court's power to entertain an action to perpetuate testimony.~~

(c) **Reserved.**

Rule 28. Persons Before Whom Depositions May Be Taken

(a) **Within the United States.**

(1) **In General.** Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(2) **Definition of "Officer."** The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) **In a Foreign Country.**

(1) **In General.** A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) **Issuing a Letter of Request or a Commission.** A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) **Form of a Request, Notice, or Commission.** When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) **Letter of Request—Admitting Evidence.** Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within ~~the United States~~Nevada.

(c) **Disqualification.** A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.

Rule 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified—but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

Rule 30. Depositions by Oral Examination

(a) **When a Deposition May Be Taken.**

(1) **Without Leave.** A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) **With Leave.** A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants, not counting any deposition that is solely a custodian-of-records deposition;

(ii) the deponent has already been deposed in the case; or

~~(ii) the deponent has already been deposed in the case; or~~

(iii) the party seeks to take the deposition before the time specified in Rule 26(~~d~~a), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave ~~the United States~~Nevada and be unavailable for examination in ~~this country~~the state after that time; or

(B) if the deponent is confined in prison.

(b) **Notice of the Deposition; Other Formal Requirements.**

(1) **Notice in General.** A party who wants to depose a person by oral questions must give ~~reasonable~~not less than 14 days' written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) **Producing Documents.** If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) **Method of Recording.**

(A) **Method Stated in the Notice.** The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) **Additional Method.** With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) **By Remote Means.** The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote

means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)~~(1)~~, the deposition takes place where the deponent answers the questions.

(5) **Officer's Duties.**

(A) **Before the Deposition.** Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) **Conducting the Deposition; Avoiding Distortion.** If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)~~-()~~-(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) **After the Deposition.** At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) **Notice or Subpoena Directed to an Organization.** In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more

officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. ~~This paragraph~~ (Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) **Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.**

(1) **Examination and Cross-Examination.** The examination and cross-examination of a deponent proceed as they would at trial under ~~the Federal Rules~~Nevada law of ~~Evidence~~evidence, except ~~Rules 103~~NRS 47.040-47.080 and ~~615~~NRS 50.155. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) **Objections.** An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) **Participating Through Written Questions.** Instead of participating in the oral examination, a party may serve written questions in

a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) **Duration; Sanction; Motion to Terminate or Limit.**

(1) **Duration.** Unless otherwise stipulated or ordered by the court, a deposition is limited to ~~one~~1 day of 7 hours of testimony. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) **Sanction.** The court may impose an appropriate sanction—including the reasonable expenses and ~~attorney's~~attorney fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) **Motion to Terminate or Limit.**

(A) **Grounds.** At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or, if the deposition is being conducted under an out-of-state subpoena, where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) **Order.** The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) **Award of Expenses.** Rule 37(a)(5) applies to the award of expenses.

(e) **Review by the Witness; Changes.**

(1) **Review; Statement of Changes.** On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) **Changes Indicated in the Officer's Certificate.** The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) **Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.**

(1) **Certification and Delivery.** The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "["Deposition of [witness's name]"]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) **Documents and Tangible Things.**

(A) **Originals and Copies.** Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(B) **Order Regarding the Originals.** Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) **Copies of the Transcript or Recording.** Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) **Notice of Filing.** A party who files the deposition must promptly notify all other parties of the filing.

(g) **Failure to Attend a Deposition or Serve a Subpoena; Expenses.** A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including ~~attorney's~~attorney fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(h) **Expert Witness Fees.**

(1) **In General.**

(A) A party desiring to depose any expert who is to be asked to express an opinion must pay the reasonable and customary hourly or daily fee for the actual time consumed in the examination of that expert by the party noticing the deposition.

(B) If any other attending party desires to question the witness, that party is responsible for the expert's fee for the actual time consumed in that party's examination.

(2) **Advance Request; Balance Due.**

(A) If requested by the expert before the date of the deposition, the party taking the deposition of an expert must tender the expert's fee based on the anticipated length of that party's examination of the witness.

(B) If the deposition of the expert takes longer than anticipated, any party responsible for any additional fee must pay the balance of that expert's fee within 30 days of receipt of an invoice from the expert.

(3) **Preparation; Review of Transcript.** Any party identifying an expert whom the party expects to call at trial is responsible for any fee charged by the expert for preparing for the deposition and reviewing the deposition transcript.

(4) **Objections.**

(A) **Motion; Contents; Notice.** If a party deems that an expert's hourly or daily fee for providing deposition testimony is unreasonable,

that party may move for an order setting the compensation of that expert. This motion must be accompanied by an affidavit stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. Notice of this motion must be given to the expert.

(B) **Court Determination of Expert Fee.** If the court determines that the fee demanded by the expert is unreasonable, the court must set the fee of the expert for providing deposition testimony.

(C) **Sanctions.** The court may impose a sanction under Rule 37 against any party who does not prevail, and in favor of any party who does prevail, on a motion to set expert witness fee, provided the prevailing party has engaged in a reasonable and good faith attempt at an informal resolution of any issues presented by the motion.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 30 to FRCP 30, but retain NRCP 30(h), which governs fees associated with expert depositions. Consistent with the federal rule, Rule 30(a)(2)(A)(i) now limits the parties to 10 depositions per side absent stipulation or court order. The Nevada rule, however, does not count depositions of custodians of records toward the 10-deposition limit per side.

The "7 hours of testimony" specified in Rule 30(d)(1) means 7 hours on the record. The time taken for convenience breaks, recess for a meal, or an adjournment under Rule 30(d)(3) does not count as deposition time.

Discussion between the deponent and counsel during a convenience break is not privileged unless counsel called the break to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3). After a privilege-assessment break, counsel for the deponent must

place on the record: (1) that a conference took place; (2) the subject of the conference; and (3) the result of the conference, i.e., whether to assert privilege or not. *Coyote Springs Inv., LLC v. Eighth Judicial Dist. Court*, 131 Nev. 140, 149, 347 P.3d 267, 273 (2015).

If a deposition is recorded by audio or audiovisual means and is later transcribed, any dispute regarding the accuracy of the transcription or of multiple competing transcriptions should be resolved by the court or discovery commissioner.

Rule 31. Depositions by Written Questions

(a) **When a Deposition May Be Taken.**

(1) **Without Leave.** A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) **With Leave.** A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants, not counting any deposition that is solely a custodian-of-records deposition;

~~(ii) the deponent has already been deposed in the case; or~~

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take a deposition before the time specified in Rule 26(~~d~~a); or

(B) if the deponent is confined in prison.

(3) **Service; Required Notice.** A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) **Questions Directed to an Organization.** A public or private corporation, a partnership, an association, ~~or~~ a governmental agency, or other entity may be deposed by written questions in accordance with Rule 30(b)(6).

(5) **Questions ~~from~~From Other Parties.** Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) **Delivery to the Officer; Officer's Duties.** The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) **Notice of Completion or Filing.**

(1) **Completion.** The party who noticed the deposition must notify all other parties when it is completed.

(2) **Filing.** A party who files the deposition must promptly notify all other parties of the filing.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 31 to FRCP 31. Consistent with the federal rule, Rule 31(a)(2)(A)(i) now limits the number of depositions that may be taken to 10 per side absent stipulation or court order. The Nevada rule, however, does not count depositions of custodians of records toward the 10-deposition limit per side.

Rule 32. Using Depositions in Court Proceedings

(a) **Using Depositions.**_

(1) **In General.** At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under ~~the Federal Rules~~Nevada law of ~~Evidence~~evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (8).

(2) **Impeachment and Other Uses.** Any party may use a deposition to contradict or impeach the testimony given by the deponent as a

witness, or for any other purpose allowed by ~~the Federal Rules~~Nevada law of ~~Evidence~~evidence.

(3) **Deposition of Party, Agent, or Designee.** An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) **Unavailable Witness.** A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial or is ~~outside~~out of the ~~United States~~state, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.

(5) **Limitations on Use.**

(A) **Deposition Taken on Short Notice.** A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

(B) **Unavailable Deponent; Party Could Not Obtain an Attorney.**-

(i) A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(ii) Notwithstanding Rule 32(a)(5)(B)(i), the court may permit a deposition to be used against a party who proceeds pro se after the deposition.

(6) **Using Part of a Deposition.** If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) **Substituting a Party.** Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) **Deposition Taken in an Earlier Action.** A deposition lawfully taken and, if required, filed in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by ~~the Federal Rules~~Nevada law of ~~Evidence~~evidence.

(b) **Objections to Admissibility.** Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) **Form of Presentation.** Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose

other than impeachment must be presented in nontranscript form, if available, unless the court for good cause orders otherwise.

(d) **Waiver of Objections.**

(1) **To the Notice.** An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) **To the Officer's Qualification.** An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) **To the Taking of the Deposition.**

(A) **Objection to Competence, Relevance, or Materiality.** An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) **Objection to an Error or Irregularity.** An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) **Objection to a Written Question.** An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive

questions or, if the question is a recross-question, within 7 days after being served with it.

(4) **To Completing and Returning the Deposition.** An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 32 to FRCP 32. Rules 32(a)(5)(A) and (B)(i) are incorporated from the federal rule. Rule 32(a)(5)(B) is modified from the federal rule and gives the court the discretion to allow a transcript to be used against a party proceeding pro se. In general, a party representing himself or herself does not need the protection of Rule 32(a)(5)(B)(i) because the party does not need time to obtain an attorney. If a party initially attempts to obtain an attorney, but eventually proceeds pro se, then the protection of Rule 32(a)(5)(B)(i) may be warranted.

If a deposition is recorded by audio or audiovisual means and is later transcribed, any dispute regarding the accuracy of the transcription or of multiple competing transcriptions should be resolved by the court or discovery commissioner.

Rule 33. Interrogatories to Parties

(a) **In General.**

(1) **Number.** Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than ~~25~~40 written

interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) **Scope.** An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) **Answers and Objections.**

(1) **Responding Party.** The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, ~~or~~ a governmental agency, or other entity, by any officer or agent, who must furnish the information available to the party.

(2) **Time to Respond.** The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) **Answering Each Interrogatory.** Each interrogatory must be set out, and, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) **Objections.** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. The interrogating party may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(5) **Signature.** The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) **Use.** An answer to an interrogatory may be used to the extent allowed by ~~the Federal Rules~~Nevada law of ~~Evidence~~evidence.

(d) **Option to Produce Business Records.** If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Advisory Committee Note—2019 Amendment

Rule 33 resembles FRCP 33 but preserves Nevada's 40-interrogatory limit in Rule 33(a)(1) and in Rule 33(b)(4) specifies that Rule 37 applies to unfounded objections and failures to answer.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering ~~onto~~Onto Land, for Inspection and Other Purposes

(a) **In General.** A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) **Procedure.**

(1) **Contents of the Request.** The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) **Responses and Objections.**

(A) ~~)~~ **Time to Respond.** The party to whom the request is directed must respond in writing within 30 days after being served ~~or if the request was delivered under Rule 26(d)(2) within 30 days after the parties' first Rule 26(f) conference.~~. A shorter or longer time may be stipulated ~~to~~ under

Rule 29 or be ordered by the court.

(B)) **Responding to Each Item.** For each item or category, the response must either state that inspection and related activities will be permitted as requested or state ~~with specificity~~ the ~~grounds~~ground for objecting to the request, with specificity, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C)) **Objections.** An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) **Responding to a Request for Production of Electronically Stored Information.** The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) **Producing the Documents or Electronically Stored Information.** Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) ~~A~~a party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request~~;~~. If producing the documents as they are kept in the usual course of business would make it unreasonably burdensome for the requesting party to correlate the documents being produced with the categories in its request for production, the responding party must (a) specify

the records in sufficient detail to permit the requesting party to locate the documents that are responsive to the categories in the request for production, or (b) organize and label the records to correspond to the categories in the request;

(ii) ~~If~~if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) ~~A~~a party need not produce the same electronically stored information in more than one form.

(c) **Nonparties.** As provided in Rule 45, a nonparty may be compelled to produce documents, electronically stored information, and tangible things or to permit an inspection.

(d) **Expenses of Copying Documents and/or Producing Electronically Stored Information.** Unless the court orders otherwise, the requesting party must pay the responding party the reasonable cost of copying documents. If the responding party produces electronically stored information by a media storage device, the requesting party must pay the reasonable cost of the device.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 34 to FRCP 34. The new provisions in Rule 34(b)(2)(E)(i) address a production of documents in the form kept in the usual course of business, often electronically, that is wholly unrelated to the document requests. If it would be unreasonably burdensome for the requesting party to correlate the documents, the requesting party can request that the responding party specify the correlation. The identification of responsive documents may be assisted by the use of Bates numbering. Rule

34(d) retains the former Nevada rule with provisions added to address electronically stored information.

Rule 35. Physical and Mental Examinations

~~**Rule 35. Physical and Mental Examinations (ALTERNATE 1)**~~

(a) **Order for ~~AN~~ Examination.**

~~(1) **In General.** The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.~~

~~(2) **Motion and Notice; Contents of the Order.** The order:~~

~~(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and~~

~~(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.~~

~~(b) **Examiner's Report.**~~

~~(1) **Request by the Party or Person Examined.** The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.~~

~~(2) **Contents.** The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.~~

~~(3) **Request by the Moving Party.** After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.~~

~~(4) **Waiver of Privilege.** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.~~

~~(5) **Failure to Deliver a Report.** The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.~~

~~(6) **Scope.** This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.~~

~~Rule 35. Physical and Mental Examinations (ALTERNATE 2)~~

~~(a) **Order for** AN **Examination.**~~

(1) **In General.** The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably

licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in ~~its~~the party's custody or under ~~its~~the party's legal control.

(2) **Motion and Notice; Contents of the Order.**

(A) The order:

~~(A)~~ may be made only on motion for good cause and on notice to all parties and the person to be examined~~; and~~.

(B) The order must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it. The examination must take place in an appropriate professional setting in the judicial district in which the action is pending, unless otherwise agreed by the parties or ordered by the court.

(3) **Recording the Examination.** On request of a party or the examiner, the court may, for good cause shown, require as a condition of the examination that the examination be audio recorded. The party or examiner who requests the audio recording must arrange and pay for the recording and provide a copy of the recording on written request. The examiner and all persons present must be notified before the examination begins that it is being recorded.

(4) **Observers at the Examination.** The party against whom an examination is sought may request as a condition of the examination to have an observer present at the examination. When making the request, the party must identify the observer and state his or her relationship to the party being examined. The observer may not be the party's attorney or anyone employed by the party or the party's attorney.

(A) The party may have one observer present for the examination, unless:

(i) the examination is a neuropsychological, psychological, or psychiatric examination; or

(ii) the court orders otherwise for good cause shown.

(B) The party may not have any observer present for a neuropsychological, psychological, or psychiatric examination, unless the court orders otherwise for good cause shown.

(C) An observer must not in any way interfere, obstruct, or participate in the examination.

(b) **Examiner's Report.**

(1) **Request by the Party or Person Examined.** ~~The~~Unless otherwise ordered by the court or discovery commissioner for good cause, the party who moved for the examination must, ~~on~~upon a request~~, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made~~ by the party against whom the examination order was issued ~~or by the person examined.~~

~~(2) **Contents.** The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.~~

~~(3) **Request by the Moving Party.** After delivering the reports, the party who moved for the examination may request and is entitled to receive from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.~~

~~(4) **Waiver of Privilege.** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives~~

~~any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.~~

~~(5) **Failure to Deliver a Report.** The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.~~

~~(6) **Scope.** This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.~~

~~**Rule 35. Physical and Mental Examinations**~~

~~(a) **Order for** AN **Examination.**~~

~~(1) **In General.** The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.~~

~~(2) **Motion and Notice; Contents of the Order.** The order:~~

~~(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and~~

~~(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.~~

~~(b) **Examiner's Report.**~~

~~(1) **Request by the Party or Person Examined.** The party who moved for the examination must, on request, deliver to the requester a copy of~~

~~the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined~~, provide a copy of the examiner's report within 30 days of the examination or by the date of the applicable expert disclosure deadline, whichever occurs first.

(2) **Contents.** The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) **Request by the Moving Party.** After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) **Waiver of Privilege.** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) **Failure to Deliver a Report.** The court on motion may order—on just terms—that a party deliver the report of an examination. If the report(s) is not provided, the court may exclude the examiner's testimony at trial.

(6) **Scope.** ~~This subdivision~~ Rule 35(b) also applies ~~also~~ to an examination made by the parties' agreement, unless the agreement states otherwise. ~~This subdivision~~Rule 35(b) does not preclude obtaining an examiner's report or deposing an examiner under other rules.

Advisory Committee Note—2019 Amendment

Subsection (a). Rule 35(a) expressly addresses audio recording and attendance by an observer at court-ordered physical and mental examinations. A court may for good cause shown direct that an examination be audio recorded. A generalized fear that the examiner might distort or inaccurately report what occurs at the examination is not sufficient to establish good cause to audio record the examination. In addition, a party whose examination is ordered may have an observer present, typically a family member or trusted companion, provided the party identifies the observer and his or her relationship to the party in time for that information to be included in the order for the examination. Psychological and neuropsychological examinations raise subtler questions of influence and confidential and proprietary testing materials that make it appropriate to condition the attendance of an observer on court permission, to be granted for good cause shown. In either event, the observer should not be the attorney or employed by the attorney for the party against whom the request for examination is made, and the observer may not disrupt or participate in the examination. A party requesting an audio recording or an observer should request such a condition when making or opposing a motion for an examination or at a hearing on the motion.

Subsection (b). A Rule 35(b) report should contain opinions concerning the physical or mental condition in controversy for which the examiner is qualified to render an opinion. The disclosure deadlines contemplate that the report will be provided by the initial expert disclosure deadline, assuming that deadline is within 30 days of the examination. There may be rare circumstances that would justify a rebuttal Rule 35 examination. Any report prepared from a rebuttal examination must be timely disclosed by the rebuttal

expert disclosure deadline or within 30 days of the examination, whichever occurs first. If the expert disclosure deadlines have passed, a party seeking a Rule 35 examination must move to reopen the applicable expert disclosure deadlines unless otherwise stipulated in writing by the parties. To reopen an expert disclosure deadline, the moving party must demonstrate excusable neglect or changed circumstances, such as where there has been an unanticipated change in a party's physical or mental condition.

Rule 36. Requests for Admission

(a) **Scope and Procedure.**

(1) **Scope.** A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) **Form; Copy of a Document.** Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) **Time to Respond; Effect of Not Responding.** A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) **Answer.** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) **Objections.** The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) **Motion Regarding the Sufficiency of an Answer or Objection.** The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(7) **Limitations on Number of Requests.**

(A) No party may serve upon any other single party to an action more than 40 requests for admission under Rule 36(a)(1)(A) without obtaining:

(i) a written stipulation under Rule 29 of the party to which the additional requests are directed; or

(ii) upon a showing of good cause, a court order granting leave to serve a specific number of additional requests.

(B) Subparts of requests count as separate requests. There is no limitation on requests for admission relating to the genuineness of documents under Rule 36(a)(1)(B).

(b) **Effect of an Admission; Withdrawing or Amending It.** A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(d)-(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) **Motion for an Order Compelling Disclosure or Discovery.**

(1) **In General.** On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) **Appropriate Court.** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) **Specific Motions.**

(A) **To Compel Disclosure.** If a party fails to make a

disclosure required by Rule ~~26~~16.1(a), 16.2(d), or 16.205(d), any other party may move to compel disclosure and for appropriate sanctions.

(B) **To Compel a Discovery Response.** A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

(C) **Related to a Deposition.** When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) **Evasive or Incomplete Disclosure, Answer, or Response.** For purposes of ~~this subdivision~~ Rule 37(a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond. A party's production of documents that is not in compliance with Rule 34(b)(2)(E)(i) may also be treated as a failure to produce documents.

(5) **Payment of Expenses; Protective Orders.**

(A) **If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).** If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the

court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including ~~attorney's~~attorney fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) **If the Motion Is Denied.** If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including ~~attorney's~~attorney fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) **If the Motion Is Granted in Part and Denied in Part.** If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) **Sanctions for Failure to Comply ~~with~~With a Court Order.**

(1) ~~*Sanctions Sought in the District Where the Deposition Is Taken.* If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be~~

~~treated as contempt of court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.~~

~~(2) *Sanctions Sought in the District Where the Action Is Pending.*~~

~~(A)~~ **For Not Obeying a Discovery Order.** If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule ~~26(f),~~ 35~~,~~ or 37(a), the court ~~where the action is pending~~ may issue further just orders~~.~~ ~~They~~ that may include the following:

~~(i~~(A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

~~(ii~~(B) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

~~(iii~~(C) striking pleadings in whole or in part;

~~(iv~~(D) staying further proceedings until the order is obeyed;

~~(v~~(E) dismissing the action or proceeding in whole or in part;

~~(vi~~(F) rendering a default judgment against the disobedient party; or

~~(vii~~(G) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

~~(B~~(2) **For Not Producing a Person for Examination.** If

a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(~~2)(A)(i) (vi~~1), unless the disobedient party shows that it cannot produce the other person.

~~(C~~(3) **Payment of Expenses.** Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including ~~attorney's~~attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) **Failure to Disclose, to Supplement an Earlier Response, or to Admit.**

(1) **Failure to Disclose or Supplement.** If a party fails to provide information or identify a witness as required by Rule ~~26~~16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including ~~attorney's~~attorney fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(~~2)(A)(i) (vi~~1).

(2) **Failure to Admit.** If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who

failed to admit pay the reasonable expenses, including ~~attorney's~~attorney fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) **Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.**

(1) **In General.**

(A) **Motion; Grounds for Sanctions.** The court ~~where the action is pending~~ may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4)—fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) **Certification.** A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) **Unacceptable Excuse for Failing to Act.** A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

~~26(c).~~

(3) **Types of Sanctions.** Sanctions may include any of the orders listed in Rule 37(b)(~~2)(A)(i) (vi~~1). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including ~~attorney's~~attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) **Failure to Preserve Electronically Stored Information.** If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

(f) **Failure to Participate in Framing a Discovery Plan.** If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule ~~26(f~~16.1(b), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including ~~attorney's~~attorney fees, caused by the failure.

~~TITLE~~ VI. TRIALS

Rule 38. Right to a Jury Trial; Demand

(a) **Right Preserved.** The right of trial by jury as declared by the ~~Seventh Amendment to the Constitution~~ state constitution or as ~~provided~~given by a ~~federal~~state statute—is preserved to the parties inviolate.

(b) **Demand; Deposit of Jurors' Fees.** On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading~~—no later than 14 days~~at any time after the ~~last pleading directed to the issue is served~~;commencement of the action and not later than the time of the entry of the order first setting the case for trial;

(2) filing the demand in accordance with Rule 5(d~~).~~); and

(3) unless the local rules provide otherwise, depositing with the court clerk an amount of money equal to the fees to be paid the trial jurors for their services for the first day of trial.

(c) **Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) **Waiver; Withdrawal.** ~~A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.~~

~~(e) ADMIRALTY~~ (1) A party's failure to properly file and ~~MARITIME CLAIMS. These rules do not create~~serve a ~~right to~~ demand constitutes the party's waiver of a jury trial ~~on issues in~~.

(2) A proper demand for a ~~claim that is an admiralty~~jury trial may be withdrawn only if the parties consent, or ~~maritime claim under~~ by court order for good cause upon such terms and conditions as the court may fix.

Advisory Committee Note—2019 Amendment

Rule 38 differs from its federal counterpart in Rule 38(b)(1) and (3) and in 38(d)(2), which address jury-demand timing, deposit of jury fees, and withdrawal of a jury demand on consent or by court order, as did former NRCP 38.

Rule 39. Trial by Jury or by the Court

(a) ~~WHEN A DEMAND IS MADE.~~**By Jury.** When a jury trial has been demanded under Rule 38, the action must be designated ~~on the docket~~ as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no ~~federal~~ right to a jury trial.

(b) ~~WHEN NO DEMAND IS MADE~~**By the Court.** Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any ~~issue~~or all issues for which a jury might have been demanded.

(c) **Advisory Jury; Jury Trial by Consent.** In an action not triable of right by a jury, the court, on motion ~~or on its own~~:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right~~, unless the action is against the United States and a federal statute provides for a nonjury trial~~.

Advisory Committee Note—2019 Amendment

Rule 39 tracks FRCP 39 but retains Nevada-specific advisory-jury provisions.

Rule 40. Scheduling of Cases for Trial

~~Each court~~ The judicial districts must provide by local rule for scheduling trials. The court must give priority to actions entitled to priority by ~~a federal~~ statute.

Rule 41. Dismissal of Actions ~~(ALTERNATE 1)~~

(a) **Voluntary Dismissal: Effect Thereof.**

(1) **By the Plaintiff.**

(A) **Without a Court Order.** Subject to Rules 23(e~~f~~), 23.1(~~c~~),, 23.2, 66, and ~~66 and~~ any applicable ~~federal~~ statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) **Effect.** Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously

dismissed any ~~federalor~~federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

~~(2) **By Court *Order*; Effect.** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.~~

~~(b) **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.~~

~~(c) **Dismissing a Counterclaim,** CROSSCLAIM**, or Third-Party Claim.** This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:~~

~~(1) before a responsive pleading is served; or~~

~~(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.~~

~~(d) **Costs of a Previously Dismissed Action.** If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:~~

~~(1) may order the plaintiff to pay all or part of the costs of that previous action; and~~

~~(2) may stay the proceedings until the plaintiff has complied.~~

~~**Rule 41. Dismissal of Actions (ALTERNATE 2)**~~

~~(a) **Voluntary Dismissal.**~~

~~(1) **By the Plaintiff.**~~

~~(A) **Without a Court Order.** Subject to Rules 23(e), 23.1(e), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:~~

~~(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or~~

~~(ii) a stipulation of dismissal signed by all parties who have appeared.~~

~~(B) **Effect.** Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal or state court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.~~

~~(2) **By Court** *Order*~~ (C) **Filing Fees.** Unless otherwise stipulated, the plaintiff must repay the defendant's filing fees.

(2) **By Order of Court; Effect.** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under ~~this paragraph~~ (Rule 41(a)(2) is without prejudice.

(b) **Involuntary Dismissal~~;~~ Effect.** If the plaintiff fails ~~to prosecute or~~ to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against ~~it.~~the defendant. Unless the dismissal order ~~states~~or an applicable statute provides otherwise, a dismissal under ~~this subdivision~~ Rule 41(b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

(c) **Dismissing a Counterclaim, Crossclaim, or Third-Party Claim.** This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) **Costs of a Previously Dismissed Action.** If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

(e) **Dismissal for Want of Prosecution.**

(1) **Procedure.** When the time periods in this rule have expired:

(A) any party may move to dismiss an action for lack of prosecution; or

(B) the court may, on its own, issue an order to show cause why an action should not be dismissed for lack of prosecution. After briefing,

the court may hold a hearing or take the matter under submission, as provided by local rules on motion practice.

(2) **Dismissing an Action Before Trial.**

(A) The court may dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 2 years after the action was filed.

(B) The court must dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 5 years after the action was filed.

(3) **Dismissing an Action After a New Trial is Granted.** The court must dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the entry of an order granting a new trial.

(4) **Dismissing an Action After an Appeal.**

(A) If a party appeals an order granting a new trial and the order is affirmed, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.

(B) If a party appeals a judgment and the judgment is reversed on appeal and remanded for a new trial, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.

(5) **Extending Time; Computing Time.** The parties may stipulate in writing to extend the time in which to prosecute an action. If two time periods requiring mandatory dismissal apply, the longer time period controls.

(6) **Dismissal With Prejudice.** A dismissal under Rule 41(e) is a bar to another action upon the same claim for relief against the same defendants unless the court provides otherwise in its order dismissing the action.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rules 41(a), (b), (c), and (d) to their federal counterparts, but retain Nevada-specific provisions in Rule 41(a)(1)(C), respecting reimbursement of filing fees, and Rule 41(e), addressing dismissals for non-prosecution. The reorganization of Rule 41(e) is stylistic and not intended to change existing caselaw interpreting former NRCP 41(e). Rule 41(e)(5) is new and clarifies that if two time periods requiring mandatory dismissal apply, the longer period controls.

Rule 42. Consolidation; Separate Trials

(a) **Consolidation.** If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) **Separate Trials.** For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any ~~federal~~ right to a jury trial.

Rule 43. Taking Testimony

(a) **In Open Court.** At trial, the witnesses' testimony must be taken in open court unless ~~a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise.~~provided otherwise by applicable law. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) **Affirmation Instead of an Oath.** When these rules require an oath, a solemn affirmation suffices.

(c) **Evidence on a Motion.** When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) **Interpreter.** The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 43 to the federal rule. Rule 43(d) should work in harmony with NRS Chapters 1 and 50 and any other state law governing interpreters.

Rule 44. Proving an Official Record

(a) **Means of Proving.**

(1) **Domestic Record.** Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) **Foreign Record.**

(A) **In General.** Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) **Final Certification of Genuineness.** A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) **Other Means of Proof.** If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) **Lack of a Record.** A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with Rule 44(a)(2)(C)(ii).

(c) **Other Proof.** A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law.

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible ~~under the Federal Rules of Evidence.~~as evidence. The court's determination must be treated as a ruling on a question of law.

Rule 45. Subpoena

(a) **In General.**

(1) **Form and Contents.**

(A) **Requirements—In General.** Every subpoena must:

(i) state the court from which it is issued;

(ii) state the title and case number of the action and ~~its civil action number;~~the name and address of the party or attorney responsible for issuing the subpoena;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(~~d~~c) and (ed).

(B) **Command to Attend a Deposition—Notice of the Recording Method.** A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) **Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.** A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) **Command to Produce; Included Obligations.** A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) **Issuing Court.** A subpoena must issue from the court where the action is pending.

(3) **Issued by Whom.** The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete

it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.

~~(4~~ (4) **Prior Notice to Parties; Party Objections.**

(A) **Notice to Other Parties Before Service.** If the subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, then at least 7 days before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party to permit a party to object to and seek issuance of a protective order against the subpoena during that time.

(B) **Party Objections.**

(i) A party who receives notice under Rule 45(a)(4)(A) that another party intends to serve a subpoena duces tecum on a third party that will require disclosure of privileged, confidential or other protected matter, to which no exception or waiver applies, may object to the subpoena by filing and serving written objections to the subpoena and a motion for a protective order.

(ii) To invoke the protections of this rule, the objecting party must file and serve written objections to the subpoena and a motion for a protective order under Rule 26(c) within 7 days after being served with notice and a copy of the subpoena under Rule 45(a)(4)(A);

(iii) In the objections and the motion, the party must specifically state the party's objections to each command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises and demonstrate a basis for asserting that the command will require disclosure of privileged, confidential, or other protected matter and

establish that no exception or waiver applies and that the objecting party is entitled to assert the claim of privilege or other protection against disclosure.

(iv) If the party objects based upon privilege, confidentiality, or other protection and timely files and serves objections and a motion for a protective order, the subpoena may not be served, unless revised to eliminate the objected-to commands, until the court that issued the subpoena has ruled on the objections and motion.

(v) The objections and motion practice are subject to the provisions of Rules 26(c) and (g) and 37(a)(5).

(b) **Service.**

(1) **By Whom and How; Tendering Fees.** Any person who is at least 18 years old and not a party may serve a subpoena~~. Serving a subpoena requires delivering a copy to the named person and, if~~, as appropriate under Rule 4.2 or 4.3. If the subpoena requires that person's attendance, ~~tendering~~the serving party must tender the ~~fees~~fee for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the ~~United States~~State or any of its officers or agencies.

(2) **Service in** ~~*the United States.*~~ **Nevada.** Subject to the provisions of Rule 45(c)(3)(A)(ii), a subpoena may be served at any place within the ~~United States~~state.

(3) **Service in Another State or Territory.** A subpoena may be served in another state or territory of the United States as provided by the law of that state or territory.

(4) **Service in a Foreign Country.** ~~28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is~~ A subpoena may be served in a foreign country~~,~~ as provided by the law of that country.

~~(4~~ (5) **Service of a Subpoena From Another State or Territory in Nevada.** A subpoena issued by a court in another state or territory of the United States that is directed to a person in Nevada must be presented to the clerk of the district court in the county in which discovery is sought to be conducted. A subpoena issued under NRS Chapter 53 may be served under this rule.

(6) **Proof of Service.** Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) ~~PLACE~~**Protection of** ~~COMPLIANCE.~~

~~(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:~~

~~(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or~~

~~(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person~~

~~(i) is a party or a party's officer; or~~

~~(ii) is commanded to attend a trial and would not incur substantial expense.~~

~~(2) *For Other Discovery.* A subpoena may command:~~

~~(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and~~

~~(B) inspection of premises at the premises to be inspected.~~

~~(d) PROTECTING A PERSON~~**Persons Subject to** ~~A~~ **Subpoena**~~; ENFORCEMENT~~**.**

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court ~~for~~that issued the ~~district where compliance is required~~subpoena must enforce this duty and may impose an appropriate sanction—which may include lost earnings and reasonable ~~attorney's~~attorney fees—on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.**

(i) A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(ii) If documents, electronically stored information, or tangible things are produced to the party that issued the subpoena without an appearance at the place of production, that party must, unless otherwise stipulated by the parties or ordered by the court, promptly copy or electronically reproduce the documents or information, photograph any tangible items not subject to copying, and serve these items on every other party. The party that issued the subpoena may also serve a statement of the reasonable cost of copying, reproducing, or photographing, which a party receiving the copies, reproductions, or photographs must promptly pay. If a party disputes the cost, then the court, on motion, must determine the reasonable cost of copying the documents or information, or photographing the tangible items.

(B) **Objections.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit

the inspection of premises, ~~need not appear in~~ or a person ~~at~~ claiming a proprietary interest in the ~~place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.~~

~~(B) **Objections.** A person commanded to produce~~subpoenaed documents ~~or~~, information, tangible things, or premises to ~~permit inspection~~be inspected, may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The person making the objection must ~~be served~~serve it before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made~~, the following rules apply~~:

(i) ~~At any time,~~ the party serving the subpoena is not entitled to inspect, copy, test, or sample the materials or tangible things or to inspect the premises except by order of the court that issued the subpoena;

(ii) on notice to the parties, the objecting person, and the person commanded ~~person~~to produce or permit inspection, the party serving ~~party~~the subpoena may move the court ~~for the district where compliance is required~~that issued the subpoena for an order compelling production or inspection~~.~~; and

~~(ii) These acts may be required only as directed in~~iii) if the court enters an order~~, and~~ compelling production or inspection, the order must protect ~~a~~the person ~~who is neither a party nor a party's officer~~commanded to produce or permit inspection from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court ~~for the district where compliance is required~~ that issued a subpoena must quash or modify ~~a~~the subpoena ~~that~~if it:

(i) fails to allow ~~a~~ reasonable time ~~to comply~~for compliance;

(ii) requires a person to ~~comply beyond~~travel to a place more than 100 miles from the ~~geographical limits specified~~place where that person resides, is employed, or regularly transacts business in ~~Rule 45(c);~~person, unless the person is commanded to attend trial within Nevada;

(iii) requires disclosure of privileged or other protected matter~~, if~~ and no exception or waiver applies; or

(iv) subjects a person to an undue burden.

(B) **When Permitted.** ~~To protect a person subject to or affected by~~On timely motion, the court that issued a subpoena~~, the court for the district where compliance is required~~ may~~, on motion,~~ quash or modify the subpoena if it requires~~:~~

~~(i)~~ disclosing~~:~~

(i) a trade secret or other confidential research, development, or commercial information; or

(ii) ~~disclosing an unretained~~a non-retained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(~~d~~c)(3)(B), the court may, instead of quashing or modifying a subpoena, order an appearance or production under specified conditions if the party serving ~~party~~the subpoena:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(ed) **Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such

sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for ~~the district where compliance is required for~~ a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

~~(f) TRANSFERRING A SUBPOENA-RELATED MOTION. When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject~~ (e) **Contempt; Costs.** Failure by any person without

adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court that issued the subpoena. In connection with a motion for a protective order brought under Rule 26(c), a motion to compel brought under Rule 45(c)(2)(B), or a motion to quash or modify the subpoena brought under Rule 45(c)(3), the court may consider the provisions of Rule 37(a)(5) in awarding the prevailing person reasonable expenses incurred in making or opposing the motion.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 45 to FRCP 45. Rule 45(a)(4) is new and adopts a modified form of FRCP 45(a)(4). Rule 45(a)(4)(A) requires at least 7 days' notice to the other parties before serving a subpoena on the person to whom it is directed. A timely objection and a motion for a protective order asserting that the subpoena calls for disclosure of privileged, confidential, or other protected matter stays service of the subpoena until the court rules on the objection and motion. Objections and a motion for protective order not based on privilege, confidentiality or other recognized protection from disclosure such as the work product doctrine do not automatically stay service of the subpoena; the objecting party in that instance must apply to the court for relief as with any other motion under Rule 26(c).

Rule 45(c)(2)(A)(ii) is also new. It encourages prompt disclosure of materials received in response to a subpoena so that the litigation can continue, while preserving the parties' ability to dispute the costs of disclosing the materials. Rule 45(e) clarifies that a court considering a subpoena-related motion for a protective order, motion to compel, or motion to quash or modify may award Rule 37 sanctions.

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

Rule 47. Selecting Jurors

(a) ~~EXAMINING~~ **Examination of Jurors.** The court ~~may permit~~must conduct the ~~parties or their attorneys to examine~~examination of prospective jurors ~~or may itself do so. If the court examines the jurors,~~and must permit such supplemental examination by counsel as it ~~must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers~~deems proper.

(b) ~~Peremptory~~ **Challenges to Jurors.** The court must allow ~~the number of~~ peremptory challenges and challenges for cause as provided ~~by 28 U.S.C. § 1870~~in NRS Chapter 16.

(c) ~~EXCUSING a JUROR. During trial or~~

~~**Rule 48. Number of Jurors; Verdict; Polling**~~

~~(a) NUMBER OF~~ **Alternate Jurors.** ~~A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c).~~

~~(b) VERDICT. Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.~~

~~(c) POLLING. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the~~

~~number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.~~

(1) In addition to the regular jury, the court may direct that alternate jurors be called and impaneled to sit. Alternate jurors in the order in which they are called must replace jurors who become or are found to be unable or disqualified to perform their duties. Alternate jurors must be drawn in the same manner; have the same qualifications; be subject to the same examination and challenges; take the same oath; and have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror may replace a regular juror during trial or after the jury retires to consider its verdict. If an alternate juror replaces a regular juror after the jury has retired to deliberate, the court must recall the jury, seat the alternate, and resubmit the case to the jury. Alternate jurors must be discharged when the regular jury is discharged.

(2) Each side is entitled to one additional peremptory challenge for every two alternate jurors that are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the regular peremptory challenges allowed by law must not be used against an alternate juror.

Advisory Committee Note—2019 Amendment

The amendments retain the former Nevada rule, adding a cross-reference in Rule 47(b) to NRS Chapter 16, which addresses juror challenges. Rule 47(c) allows alternate jurors to replace regular jurors during jury deliberation, consistent with NRS Chapter 16.

Rule 48. Number of Jurors

A jury must consist of eight persons, unless the parties stipulate to a different number—but a jury may not consist of fewer than four members.

Advisory Committee Note—2019 Amendment

Rule 48 coordinates with NRS 16.030 and the Nevada Short Trial Rules on the number of jurors. Article 1, Section 3 of the Nevada Constitution and NRS 16.190 address non-unanimous verdicts and polling, making it unnecessary to incorporate FRCP 48(b) and (c).

Rule 49. Special Verdict; General Verdict and Questions

(a) **Special Verdict.**

(1) **In General.** The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) **Instructions.** The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) **Issues Not Submitted.** A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a

finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) **General Verdict ~~with~~With Answers to Written Questions.**

(1) **In General.** The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) **Verdict and Answers Consistent.** When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) **Answers Inconsistent ~~with~~With the Verdict.** When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) **Answers Inconsistent ~~with~~With Each Other and the Verdict.** When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court ~~must direct the jury to further consider its answers and verdict, or must order a new trial.~~may:

(A) direct the jury to further consider its answers and verdict; or

(B) order a new trial.

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) **Judgment as a Matter of Law.**

(1) **In General.** If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) **Motion.** A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) **Renewing the Motion After Trial; Alternative Motion for a New Trial.** If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after ~~the~~service of written notice of entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. The time for filing the motion cannot be extended under Rule 6(b). In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) **Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.**

(1) **In General.** If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) **Effect of a Conditional Ruling.** Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) **Time for a Losing Party's New-Trial Motion.** Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after ~~the~~ service of written notice of entry of ~~the~~ judgment. The time for filing the motion cannot be extended under Rule 6(b).

(e) **Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal.** If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be

granted, or direct the entry of judgment.

Advisory Committee Note—2019 Amendment

Consistent with FRCP 50, Rule 50 extends the time periods in former Rule 50(b) and (d) to 28 days. Rule 50(a)(2) permits a motion for judgment as a matter of law at any time before the case is submitted to the jury, instead of at the close of the opposing party's evidence or at the close of the case.

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

(a) **Requests.**

(1) **Before or at the Close of the Evidence.** At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.

(2) **After the Close of the Evidence.** After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(3) **Format; Citation.** The written requests must be in the format directed by the court. If a party relies on any statute, rule, caselaw, or other legal authority to support a requested instruction, the party must cite or provide a copy of the authority.

(b) **Settling Instructions.** ~~The court:~~

(1) The court must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury ~~and before final jury arguments;~~.

(2) The court must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered~~; and~~.

~~(3) may instruct the jury at any time before the jury is discharged.~~

(3) The court and the parties must make a record of the instructions that were proposed, that the court rejected or modified, and that the court gave to the jury. If the court modifies an instruction, the court must clearly indicate how the instruction was modified.

(c) **Objections.**

(1) **How to Make.** A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection. If a party relies on any statute, rule, caselaw, or other legal authority to object to a requested instruction, the party must cite or provide a copy of the authority.

(2) **When to Make.** An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) **Giving Instructions.**

(1) The court must instruct the jury before the parties' closing arguments.

(2) The court may also give the jury further instructions that may become necessary by reason of the parties' closing arguments.

(3) The final instructions given to the jury must be bound together in the order given and the court must sign the last instruction. The court must provide the original instructions or a copy of them to the jury.

(4) After the jury has reached a verdict and been discharged, the originals and copies of all given instructions must be made part of the trial court record.

(e) **Assigning Error; Plain Error.**

(1) **Assigning Error.** A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

(2) **Plain Error.** A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(~~d~~e)(1) if the error affects substantial rights.

(f) **Scope.**

(1) **Preliminary Instructions.** Nothing in this rule prevents a party from requesting, or the court from giving, preliminary instructions to the jury. A request for preliminary instructions must be made at any reasonable time that the court orders. If preliminary instructions are requested or given, the court and the parties must comply with Rules 51(a)(3), 51(b), and 51(d)(4), as applicable.

(2) **Other Instructions.** This rule governs instructions to the jury on the law that governs the verdict. Other instructions, including

instructions to a venire and cautionary or limiting instructions delivered in immediate response to events at trial, are outside the scope of this rule.

Advisory Committee Note—2019 Amendment

The amendments reorganize Rule 51, preserving portions of former NRCP 51 and incorporating provisions from FRCP 51. NRS Chapter 16 also addresses jury instructions.

Subsection (b). Rule 51(b)(3) restates former NRCP 51(b)(2) as to modifying or refusing to give proposed instructions. Specific words and actions are not necessary, but the court and the parties should make a record of all instructions that the court or the parties propose, that the court modifies or rejects, and that the jury is given. The parties must be permitted to make a record of any objections to, or arguments concerning, the jury instructions.

Subsection (c). Rule 51(c) conforms to the federal rule, except the second sentence in Rule 51(c)(1) is retained from former NRCP 51(a)(1).

Subsection (d). Rule 51(d)(1) retains the requirement from former NRCP 51(b)(3) that the court must give jury instructions before closing arguments. At least one copy of the jury instructions must be given to the jury.

Subsection (e). Rule 51(e) conforms to FRCP 51(d).

Subsection (f). Rule 51(f)(1) is new and authorizes giving preliminary jury instructions. It contemplates that the court will give preliminary instructions before opening statements but affords the court the flexibility to do so later if appropriate. Rule 51(f)(2) corresponds to former NRCP 51(e). The provision mirrors language in the advisory committee notes to the 2003 amendments to the federal rule.

Rule 52. Findings and Conclusions by the Court; Judgment on Partial

Findings

(a) **Findings and Conclusions.**

(1) **In General.** In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) **For an Interlocutory Injunction.** In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) **For a Motion.** The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion. The court should, however, state on the record the reasons for granting or denying a motion.

(4) **Effect of a Master's Findings.** A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) **Questioning the Evidentiary Support.** A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) **Setting Aside the Findings.** Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) **Amended or Additional Findings.** On a party's motion filed no later than 28 days after ~~the~~service of written notice of entry of judgment, the

court may amend its findings—or make additional findings—and may amend the judgment accordingly. The time for filing the motion cannot be extended under Rule 6(b). The motion may accompany a motion for a new trial under Rule 59.

(c) **Judgment on Partial Findings.** If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

Rule 53. Masters

(a) ~~APPOINTMENT~~**In General.**

~~(1~~ (1) **Nomenclature.** As used in these rules, the word "master" includes a master, referee, auditor, examiner, and assessor.

(2) **Scope.** Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) address pretrial or posttrial matters that cannot be effectively and timely addressed by an available judge; or

(C) in actions or on issues to be decided without a jury, hold trial proceedings and ~~make or~~ recommend findings of fact ~~on issues to be decided without a jury~~, conclusions of law, and a judgment, if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages~~; or~~.

~~(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.~~

~~(2) *Disqualification.* A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. § 455, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.~~

(3) **Possible Expense or Delay.** In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) ~~ORDER~~ **Appointing a Master.**

(1) ~~*Notice.* Before appointing a master,~~**Stipulation.** By stipulation approved by the court ~~must give~~, the parties ~~notice and an opportunity~~may agree to ~~be heard.~~ have a master appointed. The stipulation may specify how the master's findings of fact will be reviewed or whether the findings will be final and not reviewable.

(2) **Motion.** Any party may ~~suggest candidates for~~ move to have a master appointed, or the court may issue an order to show cause.

(3) **Objections.** Any party may object to a master's appointment~~.~~ on one or more of the following grounds:

~~(~~(A) a want of any of the qualifications prescribed by statute to render a person competent as a juror;

(B) consanguinity or affinity within the third degree to any party;

(C) standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to any party, or being a member of the family of any party, or a partner in business with any party, or being security on any bond or obligation for any party;

(D) having served as a juror or been a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause;

(E) interest on the part of such person in the event of the action or in the main question involved in the action;

(F) having formed or expressed an unqualified opinion or belief as to the merits of the actions; or

(G) the existence of a state of mind in such person evincing enmity against or bias to any party.

(4) **Disqualification.**

(A) A master must file with the court an affidavit disclosing whether there is any ground for his or her disqualification under Rule 2) ~~*Contents.*~~.11 of the Revised Nevada Code of Judicial Conduct.

(B) If a ground is disclosed, the master must be disqualified unless the parties, with the court's approval, waive the master's disqualification.

(c) **Order Appointing a Master.**

(1) **Mandatory Provisions.** The appointing order must ~~direct the master to proceed with all reasonable diligence and must~~ state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(ed);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and ~~standards~~any criteria for ~~reviewing~~ the master's ~~orders,~~ findings~~,~~ and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(~~3) *Issuing*~~2) **Optional Provisions.** The ~~court~~ appointing order may ~~issue~~:

(A) direct the ~~order~~ master to report only ~~after~~:upon particular issues or to perform particular acts;

~~(A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455; and~~

~~(B) if a ground is disclosed,~~ (B) direct the master to receive and report evidence only;

(C) specify the ~~parties, with~~time and place for beginning and closing the ~~court's approval, waive~~hearings; and

(D) specify the ~~disqualification.~~time in which the master must file his or her report and recommendations.

(3) **Service on the Master.** Unless otherwise ordered by the court, the moving party must serve the appointment order on the master.

(4) **Amending.** The order may be amended at any time after notice to the parties and an opportunity to be heard.

(ed) **Master's Authority.**

(1) **In General.**-

(A) Unless the appointing order directs otherwise, a master may:

~~(A~~ (i) regulate all proceedings;

~~(B~~ (ii) take all appropriate measures to perform the assigned duties fairly and efficiently; and

~~(C) if conducting an evidentiary hearing,~~

(iii) exercise the appointing court's power to compel, take, and record evidence, including the issuance of subpoenas as provided in Rule 45.

(B) When a party requests, a master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43(c) and statutes for a court sitting without a jury.

(2) **Diligence.**

(A) The master must proceed with all reasonable diligence.

(B) The master must set a time and place for the first meeting of the parties or their attorneys to be held within 21 days after the date of the order appointing the master and must notify the parties or their attorneys.

(C) If a party fails to appear at the appointed time and place, the master may proceed ex parte or adjourn the proceedings to a future day, giving notice to the absent party.

(D) Any party, on notice to the other parties and the master, may apply to the court for an order requiring the master to speed the proceedings and to make a report.

(3) **Statement of Accounts.**

(A) When matters of accounting are before a master, the master may:

(i) prescribe the form in which the accounts must be submitted; or

(ii) require or receive in evidence a statement by a certified public accountant who is called as a witness.

(B) Upon objection to the items submitted or a showing that the form is insufficient, the master may:

(i) require a different form of statement to be furnished;

(ii) hold an evidentiary hearing and receive evidence concerning the accounts;

(iii) require written interrogatories; or

(iv) receive evidence concerning the accounts in any other manner that the master directs.

(e) **Master's Report and Recommendations.**

(1) **In General.** Unless ordered otherwise, a master must:

(A) prepare a report and recommendations upon the matters submitted to the master in accordance with the appointing order;

(B) if required to make findings of fact and conclusions of law, set them forth in the report and recommendations;

(C) promptly file the report and recommendations;

(D) file with the report and recommendations the original exhibits and a transcript of the proceedings and evidence; and

(E) serve a copy of the report and recommendations on each party.

(2) **Sanctions.** ~~The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and~~The master's report and

recommendations may recommend ~~a contempt sanction against a party and~~ sanctions ~~against~~for a party or a nonparty~~.~~ under the applicable rules.

~~(d) MASTER'S ORDERS. A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.~~

~~(e) MASTER'S REPORTS. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.~~

(3) **Draft Report.** Before filing a report and recommendations, a master may submit a draft to counsel for all parties to obtain their suggestions.

(f) Action on the Master's Order, Report, or Recommendations.

~~(1) *Opportunity for a Hearing; Action in General.* In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.~~

~~(2)~~ (1) **Time to Object or Move to Adopt or Modify.**~~-~~

(A) A party may file and serve objections to—or a motion to adopt or modify—the master's ~~order,~~ report~~, or~~ and recommendations no later than ~~21~~14 days after ~~a copy~~the report is served~~, unless the court sets a different time.~~.

~~(3) *Reviewing Factual Findings.* The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:~~

~~(A) the~~ (B) If objections are filed, any other party may file and serve a response within 7 days after being served with the objections.

(C) If no party files objections or a motion, the court may adopt the master's report and recommendations without a hearing.

(D) The court may set different times to move, object, or respond.

(2) **Court Review.**

(A) Unless the parties have otherwise stipulated under Rule 53(b)(1), upon receipt of a master's report and any motions, objections, and replies, the court may:

(i) adopt, reverse, or modify the master's ruling without a hearing;

(ii) set the matter for a hearing; or

(iii) remand the matter to the master for reconsideration or further action.

(B) If the parties have stipulated how a master's findings ~~will~~of fact should be reviewed ~~for clear error; or~~

~~(B)~~ or that the findings ~~of a master appointed under Rule 53(a)(1)(A) or (C) will~~should be final~~.~~

~~(4) *Reviewing Legal Conclusions.* The~~, the court must ~~decide de novo all objections to conclusions of law made or recommended by a master~~apply the parties' stipulation to the findings of fact.

~~(5) *Reviewing Procedural Matters.* Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.~~

(g) **Compensation.**

(1) ~~*Fixing*~~**Basis and Terms of Compensation.** ~~Before or after judgment, the court must fix the~~The basis and terms of a master's compensation ~~on~~must be fixed by the ~~basis and terms stated~~court in the

appointing order~~, but the court may set a new basis and terms after giving notice and an opportunity to be heard.~~

~~(2) *Payment.* The compensation~~ and must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(~~3~~2) **Allocating ~~*Payment*~~Costs.** The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

~~(h) APPOINTING A MAGISTRATE JUDGE. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule~~

~~TITLE~~ (3) **Amending Compensation.** The court may change the basis and terms of the master's compensation upon motion or by issuing an order to show cause.

(4) **Enforcing Payment.** The master may not retain the master's report as security for the master's compensation. If a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(h) **Standing Masters.**

(1) By local rule authorized by the Nevada Supreme Court or as authorized by the Nevada Revised Statutes, a judicial district may appoint a master to whom multiple matters may be referred.

(2) Unless otherwise specified by rule or statute, the master has the powers of a master under Rule 53(d). The master must issue a report and recommendations under Rule 53(e) that may be reviewed under Rule 53(f).

(3) The master's compensation must be fixed by the judicial district and paid out of appropriations made for the expenses of the judicial district.

Advisory Committee Note—2019 Amendment

The amendments retain much of the former NRCP 53 and incorporate provisions from FRCP 53. Rule 53(h) clarifies the procedure for establishing standing masters.

VII. JUDGMENT

Rule 54. ~~Judgment; Costs~~Judgments; Attorney Fees

(a) **Definition; Form.** ~~"Judgment"~~"Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) **Judgment on Multiple Claims or Involving Multiple Parties.** When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. ~~Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.~~

(c) **Demand for Judgment; Relief to Be Granted.** A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) COSTS; ATTORNEY'S **Fees.**

(1) *Costs Other Than Attorney's Fees.* Unless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney's fees – should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

(2) *Attorney's* **Fees.**

(A) **Claim to Be by Motion.** A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) **Timing and Contents of the Motion.** Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) *Proceedings.* Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) *Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney's fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.

(E) **Exceptions.** Subparagraphs (A) (D) do not apply to claims for fees and expenses as sanctions for violating these rules

TITLE VII. JUDGMENT

Rule 54. Judgment; Costs

(a) **Definition; Form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) **Judgment on Multiple Claims or Involving Multiple Parties.** When an action presents more than one claim for relief — whether as a claim, counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to

any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) **Demand for Judgment; Relief to Be Granted.** A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings~~.~~, except that if the prayer is for unspecified damages under Rule 8(a)(4), the court must determine the amount of the judgment. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded ~~that~~such relief in its pleadings.

(d) ~~COSTS; ATTORNEY'S~~**Attorney Fees.**

~~(1) *Costs Other Than Attorney's Fees.* Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.~~

(1) **Reserved.**

(2) ~~*Attorney's*~~**Attorney Fees.**

(A) **Claim to Be by Motion.** A claim for ~~attorney's fees and related nontaxable expenses~~attorney fees must be made by motion ~~unless the substantive law requires those fees to be proved at trial as an element of damages~~. The court may decide a postjudgment motion for attorney fees despite the existence of a pending appeal from the underlying final judgment.

(B) **Timing and Contents of the Motion.** Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than ~~14~~21 days after ~~the~~ written notice of entry of judgment~~;~~ is served;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; ~~and~~

(iv) disclose, if the court so orders, the nonprivileged financial terms of any agreement about fees for the services for which the claim is made.; and

~~(C) *Proceedings.* Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).~~

~~(D) *Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney's fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.~~

~~(E)~~ (v) be supported by:

(a) counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable;

(b) documentation concerning the amount of fees claimed; and

(c) points and authorities addressing the appropriate factors to be considered by the court in deciding the motion.

(C) **Extensions of Time.** The court may not extend the time for filing the motion after the time has expired.

(D) **Exceptions.** ~~Subparagraphs (Rules 54(d)(2)(A) (D)~~ and (B) do not apply to claims for attorney fees ~~and expenses~~ as sanctions ~~for violating these rules~~or when the applicable substantive law requires attorney fees to be proved at trial as an element of damages.

Advisory Committee Note—2019 Amendment

Subsection (b). From 2004 to 2019, NRCP 54(b) departed from FRCP 54(b), only permitting certification of a judgment to allow an interlocutory appeal if it eliminated one or more parties, not one or more claims. The 2019 amendments add the reference to claims back into the rule, restoring the district court's authority to direct entry of final judgment when one or more, but fewer than all, claims are resolved. The court has discretion in deciding whether to grant Rule 54(b) certification; given the strong policy against piecemeal review, an order granting Rule 54(b) certification should detail the facts and reasoning that make interlocutory review appropriate. An appellate court may review whether a judgment was properly certified under this rule.

Subsection (d). Rule 54(d)(2)(B)(iv) is new. While drawn from the federal rule, it limits the required disclosure about the agreement for services to nonprivileged financial terms.

Rule 55. Default; Default Judgment

(a) **Entering a Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) **Entering a Default Judgment.**

(1) **By the Clerk.** If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an ~~incompetent~~incapacitated person.

(2) **By the Court.** In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or ~~incompetent~~incapacitated person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any ~~federal~~ statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) **Setting Aside a Default or a Default Judgment.** The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) **Default Judgment Damages.** In all cases, a judgment by default is subject to the limitations of Rule 54(c).

(e) **Default Judgment Against the ~~UNITED STATES.~~State.** A default judgment may be entered against the ~~United States~~State, its officers, or its

agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

Advisory Committee Note—2019 Amendment

Rule 55 is conformed to the federal rule, but Rule 55(d) retains the cross-reference to Rule 54(c) in former state and federal versions of Rule 55.

Rule 56. Summary Judgment

(a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) **Time to File a Motion.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) **Procedures.**

(1) **Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) **Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) **Materials Not Cited.** The court need consider only the cited materials, but it may consider other materials in the record.

(4) **Affidavits or Declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including ~~attorney's~~attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Advisory Committee Note—2019 Amendment

Subsection (a). Rule 56(a) retains the word "shall" consistent with the advisory committee notes to the 2010 amendments to FRCP 56 to preserve *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005), and its progeny.

Subsection (d). Rule 56(d) modernizes the text of former NRCP 56(f) consistent with FRCP 56(d). The changes are stylistic and do not affect *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 265 P.3d 698 (2011), which requires an affidavit to justify a request for a continuance of the summary judgment

proceeding to conduct further discovery.

Subsection (e). The judicial discretion afforded under new Rule 56(e) ensures fairness in the individual case; it should not excuse inadequate motion practice.

Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under ~~28 U.S.C. § 2201.~~NRS Chapter 30 or other state law. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

Rule 58. Entering Judgment

~~(a) **Separate Document.** Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:~~

~~(1) for judgment under Rule 50(b);~~

~~(2) to amend or make additional findings under Rule 52(b);~~

~~(3) for attorney's fees under Rule 54;~~

~~(4) for a new trial, or to alter or amend the judgment, under Rule 59; or~~

~~(5) for relief under Rule 60.~~

(a) **Reserved.**

(b) **Entering Judgment.**

(1) ~~*Without the Court's Direction.*~~ Subject to Rule 54(b) and ~~unless~~ except as provided in Rule 55(b)(1), all judgments must be approved and signed by the court ~~orders otherwise, the clerk must, without awaiting the court's~~

direction, promptly prepare, sign, and enterfiled with the judgment when:clerk.

(A) the jury returns a general verdict;

(B) the (2) The court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) *Court's Approval Required.* Subjectshould designate a party to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) the jury returns a special verdict or a general verdict with answers toserve written questions; or

(B) the court grants other relief not described in this subdivision (b).

(c) TIME OF ENTRY. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) **Request for Entry.** A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) COST OR FEE AWARDS. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court

~~may act before a~~ notice of ~~appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under~~ entry of judgment on the other parties under Rule 58(e).

~~Rule 58. Entering~~ (c) **When Judgment**

~~(a) SEPARATE DOCUMENT. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:~~

~~(1) for judgment under Rule 50(b);~~

~~(2) to amend or make additional findings under Rule 52(b);~~

~~(3) for attorney's fees under Rule 54;~~

~~(4) for a new trial, or to alter or amend the judgment, under Rule 59; or~~

~~(5) for relief under Rule 60.~~

~~(b) ENTERING JUDGMENT.~~

~~(1) *Without the Court's Direction.* Subject to Rule 54(b) and unless the court orders otherwise,~~ **Entered.** The filing with the clerk ~~must, without awaiting the court's direction, promptly prepare, sign, and enter the~~ of a judgment ~~when:~~

~~(A) the jury returns a general verdict;~~

~~(B)~~ signed by the court ~~awards only costs,~~ or ~~a sum certain; or~~

~~(C) the court denies all relief.~~

~~(2) *Court's Approval Required.* Subject to Rule 54(b), the court must promptly approve the form of the judgment, which~~by the clerk ~~must promptly enter,~~ when:

~~(A) the jury returns a special verdict or a general verdict with answers to written questions; or~~

~~(B) the court grants other relief not described in this subdivision (b).~~

~~(c) TIME OF ENTRY. For purposes of~~ authorized by these rules, ~~judgment is entered at the following times:~~

~~(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or~~

~~(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:~~

~~(A) it is set out in a separate document; or~~

~~(B) 150 days have run from~~constitutes the entry ~~in~~of the ~~civil docket.~~

~~(d) REQUEST FOR ENTRY. A party may request that~~ judgment ~~be set out in a separate document as required by Rule 58(a).~~

~~(e) COST OR FEE AWARDS. Ordinarily, the~~, and no judgment is effective for any purpose until it is entered. The entry of the judgment may not be delayed~~, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion~~ for the taxing of costs.

~~**Rule 59. New Trial; Altering or Amending a**~~ (d) **Judgment Roll.** The judgment, as signed and filed, constitutes the judgment roll.

(e) **Notice of Entry of Judgment.**

(1) Within 14 days after entry of a judgment or an order, a party designated by the court under Rule 58(b)(2) must serve written notice of such entry, together with a copy of the judgment or order, upon each party who is not in default for failure to appear and must file the notice of entry with the clerk of the court. Any other party, or the court in family law cases, may also serve and file a written notice of such entry. Service must be made as provided in Rule 5(b).

(2) Failure to serve written notice of entry does not affect the validity of the judgment, but the judgment may not be executed upon until notice of its entry is served.

Advisory Committee Note—2019 Amendment

Rule 58 restyles but does not change the substance of former NRCP 58. It retains the Nevada-specific provision requiring service of written notice of entry of judgment and does not incorporate the separate-document requirement stated in FRCP 58(a).

Rule 59. New trials; Amendment of Judgments

(a) **In General.**

(1) **Grounds for New Trial.** The court may, on motion, grant a new trial on all or some of the issues—and to any party—~~as follows:~~

~~(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or~~

~~(B) after a nonjury trial,~~ for any ~~reason for which a rehearing has heretofore been granted in a suit in equity in federal court.~~of the following causes or grounds materially affecting the substantial rights of the moving party:

(A) irregularity in the proceedings of the court, jury, master,

or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;

(B) misconduct of the jury or prevailing party;

(C) accident or surprise that ordinary prudence could not have guarded against;

(D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion or prejudice; or

(G) error in law occurring at the trial and objected to by the party making the motion.

(2) **Further Action After a Nonjury Trial.** ~~After~~On a ~~nonjury trial, the court may, on~~ motion for a new trial~~,~~ in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ~~ones~~findings and conclusions, and direct the entry of a new judgment.

(b) **Time to File a Motion for a New Trial.** A motion for a new trial must be filed no later than 28 days after ~~the~~service of written notice of entry of judgment.

(c) **Time to Serve Affidavits.** When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) **New Trial on the Court's Initiative or for Reasons Not in the**

Motion. No later than 28 days after ~~the~~service of written notice of entry of judgment, the court, on its own, may issue an order to show cause why a new trial should not be granted for any reason that would justify granting one on a party's motion. After giving the parties notice and ~~an~~the opportunity to be heard, the court may grant a party's timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after ~~the~~service of written notice of entry of ~~the~~ judgment.

(f) **No Extensions of Time.** The 28-day time periods specified in this rule cannot be extended under Rule 6(b).

Advisory Committee Note—2019 Amendment

Subsection (a). Rule 59(a) is restyled but retains the Nevada-specific provisions respecting bases for granting a new trial.

Subsections (b), (d), and (e). The amendments adopt the federal 28-day deadlines in Rules 59(b) and (e) and incorporate the provisions respecting court-initiated new trials from FRCP 59(d) into NRCP 59(d).

Rule 60. Relief ~~from~~From a Judgment or Order

(a) **Corrections Based on Clerical Mistakes; Oversights and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while

it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **Grounds for Relief ~~from~~From a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) **Timing and Effect of the Motion.**

(1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than ~~a year~~6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order ~~or the date of the proceeding~~., whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.

(d) **Other Powers to Grant Relief.** This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a

judgment, order, or proceeding;

(2) ~~grant relief under 28 U.S.C. § 1655 to~~upon motion filed within 6 months after written notice of entry of a default judgment is served, set aside the default judgment against a defendant who was not personally ~~notified of~~ served with a summons and complaint and who has not appeared in the action~~;~~, admitted service, signed a waiver of service, or otherwise waived service; or

(3) set aside a judgment for fraud ~~on~~upon the court.

(e) **Bills and Writs Abolished.** The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Advisory Committee Note—2019 Amendment

The amendments generally conform Rule 60 to FRCP 60, including incorporating FRCP 60(b)(6) as Rule 60(b)(6). The Rule 60(c) time limit for filing a Rule 60(b)(1)-(3) motion, however, remains at 6 months consistent with the former Nevada rule. Rule 60(d)(2) preserves the first sentence of former NRCP 60(c) respecting default judgments. The amendments eliminate the remaining portion of former NRCP 60(c) and former NRCP 60(d) as superfluous.

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) **Automatic Stay.**~~;~~ **Exceptions for Injunctions and Receiverships.**

(1) **In General.** Except as ~~provided~~stated in ~~Rule 62(c) and (d),~~this rule, no execution may issue on a judgment~~ and~~, nor may proceedings be taken to enforce it~~ are stayed for~~, until 30 days have passed after service of written notice of its entry, unless the court orders otherwise.

~~(b) STAY BY BOND OR OTHER SECURITY. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.~~

~~(c) STAY OF AN INJUNCTION, RECEIVERSHIP, OR PATENT ACCOUNTING ORDER. Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:~~

~~(1) an~~ (2) **Exceptions for Injunctions and Receiverships.** An interlocutory or final judgment in an action for an injunction or a receivership~~; or~~ is not automatically stayed, unless the court orders otherwise.

~~(2)~~ (b) **Stay Pending the Disposition of Certain Postjudgment Motions.** On appropriate terms for the opposing party's security, the court may stay execution on a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order ~~that directs an accounting in an action for patent infringement~~.

(~~d~~c) **Injunction Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants~~, continues, modifies,~~ or refuses~~,~~ to grant, or dissolves~~,~~ or refuses to dissolve ~~or modify~~, an injunction, the court may stay, suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. ~~If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:~~

~~(1) by that court sitting in open session; or~~

~~(2) by the assent of all its judges, as evidenced by their signatures.~~

(d) **Stay Pending an Appeal.**

(1) **By Supersedeas Bond.** If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.

(2) **By Other Bond or Security.** If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

(e) **Stay Without Bond on ~~an~~ Appeal by the ~~United States~~State of Nevada, Its ~~Officers~~Political Subdivisions, or ~~Its~~Their Agencies~~. The court must not require a~~ or Officers.** When an appeal is taken by the State

or by any county, city, town, or other political subdivision of the State, or an officer or agency thereof, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security is required from the appellant ~~when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government~~.

~~(f) STAY IN FAVOR OF A JUDGMENT DEBTOR UNDER STATE LAW. If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.~~

(f) **Reserved.**

(g) **Appellate Court's Power Not Limited.** This rule does not limit the power of ~~the~~an appellate court or one of its judges or justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) **Stay ~~with~~With Multiple Claims or Parties.** A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

Advisory Committee Note—2019 Amendment

Subsection (a). Rule 62(a) retains the automatic stay provisions and exceptions in former NRCP 62(a) but updates the language and, tracking the 2018 amendments to FRCP 62(a), extends the automatic stay provided by Rule 62(a)(1) from 10 to 30 days.

Subsection (b). Rule 62(b) retains the language concerning postjudgment motions from the pre-April 2018 federal rule.

Subsection (d). Rule 62(d) adopts provisions from both former NRCP 62(d), which is consistent with the pre-2018 FRCP 62(d), and the 2018 amendments to FRCP 62(b). Rule 62(d)(1) provides for a stay effective on filing of a supersedeas bond. Rule 62(d)(2) is patterned after the 2018 amendments to FRCP 62(b) and provides that, as an alternative to a supersedeas bond, a stay pending appeal may be obtained through a court-approved bond or other security, or a combination of both; a stay under Rule 62(d)(2) takes effect when the court approves the security.

Rule 62.1. Indicative Ruling on a Motion for Relief That ~~is~~Is Barred by a Pending Appeal

(a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the appellate court ~~of appeals~~ remands for that purpose or that the motion raises a substantial issue.

(b) **Notice to the Appellate Court ~~OF APPEALS~~.** The movant must promptly notify the ~~circuit~~ clerk of the supreme court under ~~Federal Rule of Appellate Procedure 12.1~~NRAP 12A if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) **Remand.** The district court may decide the motion if the appellate court ~~of appeals~~ remands for that purpose.

Advisory Committee Note—2019 Amendment

This new rule is modeled on FRCP 62.1 and works in conjunction with new NRAP 12A. Like its federal counterpart, Rule 62.1 does not attempt to define the circumstances in which a pending appeal limits or defeats the district court's authority to act. *See* FRCP 62.1 advisory committee's note (2009 amendment). Rather, these rules provide the procedure to follow when a party seeks relief in the district court from an order or judgment that the district court has lost jurisdiction over due to a pending appeal of the order or judgment, consistent with *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), and its progeny.

Rule 63. Judge's Inability to Proceed

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness. But if such successor judge cannot perform those duties because the successor judge did not preside at the trial or for any other reason, the successor judge may, in that judge's discretion, grant a new trial.

~~TITLE~~ VIII. PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizing a Person or Property

(a) **Remedies** ~~UNDER STATE LAW~~**—In General.** At the commencement of and throughout an action, every remedy is available that, under ~~the law of~~

~~the~~ state ~~where the court is located~~law, provides for seizing a person or property to secure satisfaction of the potential judgment. ~~But a federal statute governs to the extent it applies.~~

(b) **Specific Kinds of Remedies.** The remedies available under this rule include the following~~—however designated and regardless of whether state procedure requires an independent action~~:

- ~~•~~(1) arrest;
- ~~•~~(2) attachment;
- ~~•~~(3) garnishment;
- ~~•~~(4) replevin;
- ~~•~~(5) sequestration; and
- ~~•~~(6) other corresponding or equivalent remedies.

Rule 65. Injunctions and Restraining Orders

(a) **Preliminary Injunction.**

(1) **Notice.** The court may issue a preliminary injunction only on notice to the adverse party.

(2) **Consolidating the Hearing ~~with~~With the Trial on the Merits.** Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) **Temporary Restraining Order.**

(1) **Issuing Without Notice.** The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) **Contents; Expiration.** Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) **Expediting the Preliminary-Injunction Hearing.** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) **Motion to Dissolve.** On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) **Security.** The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The ~~United States~~State, its officers, and its agencies are not required to give security.

(d) **Contents and Scope of Every Injunction and Restraining Order.**

(1) **Contents.** Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) **Persons Bound.** The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) **Applicability.**

(1) **When Inapplicable.** This rule is not applicable to actions for divorce, alimony, separate maintenance, or custody of children. In such actions, the court may make prohibitive or mandatory orders, with or without notice or bond, as may be just.

(2) **Other Laws Not Modified.** These rules supplement and do not modify ~~the following:~~statutory injunction provisions.

~~(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;~~

~~(2) 28 U.S.C. § 2361, which relates to preliminary injunctions in actions of interpleader or in the nature of interpleader; or~~

~~(3) 28 U.S.C. § 2284, which relates to actions that must be heard and decided by a three-judge district court.~~

~~(f) COPYRIGHT IMPOUNDMENT. This rule applies to copyright impoundment proceedings.~~

Advisory Committee Note—2019 Amendment

Rules 65(a)-(d) are conformed to FRCP 65, with edits adapting the rule for use in Nevada. Rule 65(e) is Nevada-specific. Rule 65(e)(1) retains the language of the former NRCP 65(f), pertaining to family law actions. Rule 65(e)(2) confirms that this rule supplements and does not supplant the statutory injunction provisions in NRS Chapter 33 and elsewhere in the NRS.

Rule 65.1. Proceedings Against a Security Provider

Whenever these rules ~~(including the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions)~~ require or allow a party to give security, and security is given with one or more security providers, each provider submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the security. The security provider's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly send a copy of each to every security provider whose address is known.

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. ~~But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule.~~ An action in which a receiver has been appointed may be dismissed only by court order.

Rule 67. Deposit ~~into~~in Court

(a) **Depositing Property.** ~~If~~

(1) In an action in which any part of the relief sought is a money judgment, the disposition of a sum of money, or the disposition of ~~a sum of money or some~~ any other deliverable thing, a party ~~on~~, upon notice to every other party and by leave of court, may deposit with the court all or any part of the money or thing~~, whether or not that~~.

(2) When a party ~~claims any of it. The depositing party must deliver to the clerk a copy~~admits having possession or control of ~~the order permitting deposit.~~any money or other deliverable thing, which, being the subject of litigation, is held by the party as trustee for another party, or which belongs or is due to another party, on motion, the court may order all or any part of the money or thing to be deposited with the court.

(b) ~~INVESTING AND WITHDRAWING~~**Custodian; Investment of Funds.** ~~Money paid into court under this rule must be~~

(1) Unless ordered otherwise, the deposited ~~and withdrawn in accordance~~money or thing must be held by the clerk of the court.

(2) The court may order that:

(A) money deposited with ~~28 U.S.C. §§ 2041 and 2042 and any like statute. The money must~~the court be deposited in an interest-bearing

account or invested in a court-approved, interest-bearing instrument, subject to withdrawal, in whole or in part, at any time thereafter upon order of the court; or

(B) money or a thing held in trust for a party be delivered to that party, upon such conditions as may be just, subject to the further direction of the court.

Rule 68. ~~Offer~~Offers of Judgment

(a) ~~MAKING AN OFFER; JUDGMENT ON AN ACCEPTED~~**The Offer.** At ~~least 14~~any time more than 21 days before ~~the date set for~~ trial, ~~a~~any party ~~defending against a claim~~ may serve ~~on an opposing party~~ an offer in writing to allow judgment ~~on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves~~to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees.

(b) **Apportioned Conditional Offers.** An apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed.

(c) **Joint Unapportioned Offers.**

(1) **Multiple Offerors.** A joint offer may be made by multiple offerors.

(2) **Offers to Multiple Defendants.** An offer made to multiple defendants will invoke the penalties of this rule only if:

(A) there is a single common theory of liability against all the offeree defendants, such as where the liability of some is entirely derivative

of the others or where the liability of all is derivative of common acts by another; and

(B) the same entity, person, or group is authorized to decide whether to settle the claims against the offerees.

(3) **Offers to Multiple Plaintiffs.** An offer made to multiple plaintiffs will invoke the penalties of this rule only if:

(A) the damages claimed by all the offeree plaintiffs are solely derivative, such as where the damages claimed by some offerees are entirely derivative of an injury to the others or where the damages claimed by all offerees are derivative of an injury to another; and

(B) the same entity, person, or group is authorized to decide whether to settle the claims of the offerees.

(d) **Acceptance of the Offer and Dismissal or Entry of Judgment.**

(1) Within 14 days after service of the offer, the offeree may accept the offer by serving written notice ~~accepting~~that the offer is accepted.

(2) Within 21 days after service of written notice that the offer is accepted, the obligated party may pay the amount of the offer and obtain dismissal of the claims, rather than entry of a judgment.

(3) If the claims are not dismissed, at any time after 21 days after service of written notice that the offer is accepted, either party may ~~then~~ file the offer and notice of acceptance~~, plus~~ together with proof of service. The clerk must then enter judgment~~.~~ accordingly. The court must allow costs in accordance with NRS 18.110 unless the terms of the offer preclude a separate award of costs. Any judgment entered under this section must be expressly designated a compromise settlement.

~~(b) UNACCEPTED~~e) **Failure to Accept Offer.** ~~An unaccepted~~If the offer is not accepted within 14 days after service, it will be considered rejected by

the offeree and deemed withdrawn~~, but it does not preclude a later offer.~~ by the offeror. Evidence of ~~an unaccepted~~the offer is not admissible except in a proceeding to determine costs, expenses, and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. With offers to multiple offerees, each offeree may serve a separate acceptance of the apportioned offer, but if the offer is not accepted by all offerees, the action will proceed as to all. Any offeree who fails to accept the offer may be subject to the penalties of this rule.

(~~e~~) (f) **Penalties for Rejection of Offer.**

(1) **In General.** If the offeree rejects an offer and fails to obtain a more favorable judgment:

(A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

(B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

(2) **Multiple Offers.** The penalties in this rule run from the date of service of the earliest rejected offer for which the offeree failed to obtain a more favorable judgment.

(g) **How Costs, Expenses, Interest, and Attorney Fees Are**

Considered. To invoke the penalties of this rule, the court must determine if the offeree failed to obtain a more favorable judgment. If the offer provided that costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees, would be added by the court, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees. If a party made an offer in a set amount that precluded a separate award of costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees, the court must compare the amount of the offer, together with the offeree's pre-offer taxable costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees, with the principal amount of the judgment.

(h) **Offers After Determination of Liability** ~~IS DETERMINED.~~. When ~~one party's~~the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party ~~held~~adjudged liable may make an offer of judgment~~. It must be~~, which has the same effect as an offer made before trial if it is served within a reasonable time ~~but at least~~ not less than 14 days before the ~~date set for a hearing~~commencement of hearings to determine the amount or extent of liability.

~~(d) PAYING COSTS AFTER AN UNACCEPTED OFFER. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.~~

Advisory Committee Note—2019 Amendment

The amendments retain much of former NRCP 68. But as amended Rule 68(f)(2) now provides that, when multiple offers are given, the penalties in Rule

68(f)(1) run from the offer earliest in time that is more favorable than the judgment. The existence of any subsequent offer, whether more or less favorable, does not change the penalty for rejecting the relevant offer. This amendment changes the approach to multiple settlement offers that is prescribed by *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022 (2006). Experience under *Albios* suggests that parties are reluctant to make subsequent settlement offers when the penalty for rejecting a favorable offer applies only to the last offer of judgment. The revisions should encourage settlement.

Rule 69. Execution

(a) **In General.**

(1) **Money Judgment; Applicable Procedure.** A money judgment

is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with ~~the procedure of the state where the court is located, but a federal statute governs to the extent it applies~~these rules and state law.

(2) **Obtaining Discovery.** In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by ~~the procedure of the state where the court is located.~~state law.

~~(b) AGAINST CERTAIN PUBLIC OFFICERS. When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. §~~

~~2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. § 118, the judgment must be satisfied as those statutes provide.~~

(b) **Service of Written Notice of Entry Required Before Execution.** Service of written notice of entry of a judgment must be made in accordance with Rule 58(e) before execution upon the judgment.

Advisory Committee Note—2019 Amendment

Rule 69 modernizes the language of former NRCP 69 and complements NRS Chapter 21.

Rule 70. Enforcing a Judgment for a Specific Act

(a) **Party's Failure to Act; Ordering Another to Act.** If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) **Vesting Title.** If the real or personal property is within ~~the district~~this state, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) **Obtaining a Writ of Attachment or Sequestration.** On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) **Obtaining a Writ of Execution or Assistance.** On application by a party who obtains a judgment or order for possession, the clerk must issue a

writ of execution or assistance.

(e) **Holding in Contempt.** The court may also hold the disobedient party in contempt.

Advisory Committee Note—2019 Amendment

Rule 70 complements Nevada statutes addressing attachment, execution, and contempt contained in NRS Chapters 21, 22, and 31.

Rule 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

~~TITLE IX. SPECIAL PROCEEDINGS~~

Rule 71.1. ~~Condemning Real or Personal Property~~Reserved

~~(a) APPLICABILITY OF OTHER~~

Advisory Committee Note—2019 Amendment

NRS Chapter 37 addresses eminent domain, making it unnecessary to adopt FRCP 71.1.

~~IX. RULES. These rules govern proceedings to condemn real and personal property by~~

~~TITLE~~ **APPEALS**

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

X. DISTRICT COURTS AND CLERKS~~: CONDUCTING BUSINESS; ISSUING ORDERS~~

Rule 77. Conducting Business; Clerk's Authority~~; Notice of an Order or Judgment~~

(a) **When Court Is Open.** Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) **Place for Trial and Other Proceedings.** Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom~~.~~, but a private trial may be had as provided by statute. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, ~~and~~or anywhere inside or outside the judicial district. But no hearing—other than one ex parte—may be conducted outside ~~the district~~this state unless all the affected parties consent.

(c) **Clerk's Office Hours; Clerk's Orders.**

(1) **Hours.** ~~The~~Every clerk's office and branch office must be open—with a clerk or deputy on duty—~~must be open~~ during business hours every day except Saturdays, Sundays, and legal holidays. ~~But a court may, by local rule or order, require that the office be open for specified hours on Saturday or a particular legal holiday other than one listed in Rule 6(a)(6)(A).~~

(2) **Orders.** Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may:

(A) issue process;

(B) enter a default;

(C) enter a default judgment under Rule 55(b)(1); and

(D) act on any other matter that does not require the court's action.

~~(d) SERVING NOTICE OF AN ORDER OR JUDGMENT.~~

~~(1) *Service.* Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).~~

~~(2) *Time to Appeal Not Affected by Lack of Notice.* Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure (4)(a).~~

(d) **Reserved.**

Advisory Committee Note—2019 Amendment

The amendments to Rule 77(c)(1) clarify that in jurisdictions with more than one clerk's office, the main office and all branch offices must remain open during business hours.

Rule 78. Hearing Motions; Submission on Briefs

(a) **Providing a Regular Schedule for Oral Hearings.** A court may establish regular times and places for oral hearings on motions.

(b) **Providing for Submission on Briefs.** By rule or order, ~~the~~a court may provide for submitting and determining motions on briefs, without oral hearings.

Rule 79. ~~Records Kept by the Clerk~~Reserved

~~(a) CIVIL DOCKET.~~

~~(1) *In General.* The clerk must keep a record known as the "civil docket" in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the~~

~~Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.~~

~~(2) *Items to be Entered.* The following items must be marked with the file number and entered chronologically in the docket:~~

~~(A) papers filed with the clerk;~~

~~(B) process issued, and proofs of service or other returns showing execution; and~~

~~(C) appearances, orders, verdicts, and judgments.~~

~~(3) *Contents of Entries; Jury Trial Demanded.* Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. When a jury trial has been properly demanded or ordered, the clerk must enter the word "jury" in the docket.~~

~~(b) CIVIL JUDGMENTS AND ORDERS. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.~~

~~(c) INDEXES; CALENDARS. Under the court's direction, the clerk must:~~

~~(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and~~

~~(2) prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.~~

~~(d) OTHER RECORDS. The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.~~

Rule 80. ~~Stenographic~~ Transcript or Recording of Testimony as Evidence

If recorded or stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by ~~a transcript certified by the person who reported it.~~:

~~TITLE~~ (a) a transcript certified by the person who stenographically reported it; or

(b) an audio or audiovisual recording certified by the court in which the recording was made.

Advisory Committee Note—2019 Amendment

The amendments to Rule 80(a) retain former NRCP 80(c)'s provision for stenographic transcripts and add Rule 80(b) to govern audio or audiovisual recordings made by the court. The judge or any court employee who operates the recording equipment (e.g., the court clerk, judicial assistant, law clerk, recorder, bailiff, or any other employee) may make the certification required by "the court" in Rule 80(b). Nevada's law of evidence governs the admissibility of a transcript of a certified recording.

XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; ~~Removed~~Remanded Actions

(a) ~~Applicability to Particular~~**To What Proceedings**~~.~~

~~(1) *Prize Proceedings.*~~ **Applicable.** These rules do not ~~apply to prize proceedings in admiralty governed by 10 U.S.C. §§ 7651–7681.~~

~~(2) *Bankruptcy.* These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.~~

~~(3) *Citizenship.* These rules apply to proceedings for admission to citizenship to the extent that the~~ govern procedure and practice in ~~those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. § 1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.~~

~~(4) *Special Writs.* These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:~~

~~(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and~~

~~(B) has previously conformed to the practice in civil actions.~~

~~(5) *Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal statute, except~~any special statutory proceeding insofar as ~~otherwise provided by statute, by local rule, or by court order in the proceedings.~~

~~(6) *Other Proceedings.* These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures:~~

~~(A) 7 U.S.C. §§ 292, 499g(c), for reviewing an order of the Secretary of Agriculture;~~

~~(B) 9 U.S.C., relating to arbitration;~~

~~(C) 15 U.S.C. § 522, for reviewing an order of the Secretary of the Interior;~~

~~(D) 15 U.S.C. § 715d(c), for reviewing an order denying a certificate of clearance;~~

~~(E) 29 U.S.C. §§ 159, 160, for enforcing an order of the National Labor Relations Board;~~

~~(F) 33 U.S.C. §§ 918, 921, for enforcing or reviewing a compensation order under the Longshore and Harbor Workers' Compensation Act; and~~

~~(G) 45 U.S.C. § 159, for reviewing an arbitration award in a railway labor dispute.~~

~~(b) SCIRE FACIAS AND MANDAMUS. The writs of scire facias and mandamus~~they are ~~abolished. Relief previously available through them may be obtained by appropriate action~~ inconsistent or ~~motion under these rules.~~in conflict with the procedure and practice provided by the applicable statute.

(b) **Reserved.**

(c) ~~REMOVED~~**Remanded Actions.**

~~(1) *Applicability.* These rules apply to a civil~~ A plaintiff whose action ~~after it~~ is removed from ~~a~~ state ~~court.~~

~~(2) *Further Pleading.* After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal~~to federal court and thereafter remanded must ~~answer or present other defenses or objections under these rules within the longest of these periods:~~

~~(A) 21 days after receiving through service or otherwise a copy of the initial pleading stating the claim for relief;~~

~~(B) 21 days after being served with the summons for an initial pleading on~~ file ~~at the time of service; or~~

~~(C) 7 days after the~~and serve written notice of ~~removal is filed.~~

~~(3) *Demand for a Jury Trial.*~~

~~(A) *As Affected by State Law.* A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal. If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.~~

~~(B) *Under Rule 38.* If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within~~entry of the remand order. No default may be taken against a defendant in the remanded action until 14 days after~~:~~

~~(i) it files a~~ service of written notice of ~~removal; or~~entry of the remand order. Within that time, a defendant may move or plead as it might have done had the action not been removed.

~~(ii) it is served with a notice of removal filed by another party.~~

(d) ~~LAW APPLICABLE~~**Reserved.**

~~(1) *"State Law" Defined.* When these rules refer to state law, the term "law" includes the state's statutes and the state's judicial decisions.~~

~~(2) *"State" Defined.* The term "state" includes, where appropriate, the District of Columbia and any United States commonwealth or territory.~~

~~(3) *"Federal Statute" Defined in the District of Columbia.* In the United States District Court for the District of Columbia, the term "federal statute" includes any Act of Congress that applies locally to the District.~~

Advisory Committee Note—2019 Amendment

The amendments delete the second and third sentences of former NRCP 81(a) as no longer needed and make stylistic revisions to NRCP 81(c).

Rule 82. Jurisdiction and Venue Unaffected

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. ~~An admiralty or maritime claim under Rule 9(h) is governed by 28 U.S.C. § 1390.~~

Rule 83. Rules by District Courts; Judge's Directives

(a) **Local Rules~~.~~ and District Court Rules.**

(1) ~~*In General.* After giving public notice and an opportunity for comment, a~~ **Local Rules.** A judicial district ~~court, acting~~may make and amend rules governing practice therein by submitting the proposed rules, approved by a majority of its district judges, ~~may adopt and amend rules governing~~ to the Nevada Supreme Court for its ~~practice.~~review and approval. A local rule must be consistent with—but not duplicate—~~federal statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A~~ these rules. Unless otherwise ordered by the Supreme Court, a new or amended local rule takes effect ~~on the date specified~~60 days after it is

approved by the ~~district court and remains in effect unless amended by~~ Supreme Court.

(2) **Reference.** The local rules of practice and the ~~court or abrogated by~~District Court Rules are referred to collectively in these rules as the ~~judicial council of the circuit. Copies of rules and amendments must, on their adoption, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public~~local rules.

~~(2) *Requirement*~~3) **Requirements of Form.** A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

(b) **Procedure When There Is No Controlling Law.** ~~A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and the district's local rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement~~In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

Rule 84. ~~[Abrogated (Apr. 29, 2015, eff. Dec.~~ Forms

The forms contained in the Appendix of Forms are authorized for use in Nevada courts.

Advisory Committee Note—2019 Amendment

The amendments delete the general-practice forms previously appended to the NRCP. In their place, the introduction to Appendix of Forms lists some

of the on-line, self-help, and other resources available to practitioners and self-represented parties. As amended, the Appendix of Forms includes forms addressing waiver of service under Rule 4.1, ~~2015).]~~consent to electronic service, and financial disclosures in family court. The elimination of the general-practice forms does not alter existing pleading standards or otherwise change the requirements of Rule 8.

Rule 85. ~~Title~~Citation

These rules may be cited as ~~the Federal Rules of Civil Procedure~~NRCP.

Rule 86. Effective Dates

(a) **In General.** These rules and any amendments take effect ~~at~~on the ~~time~~date specified by the Supreme Court~~, subject to 28 U.S.C. § 2074.~~. They govern~~:~~

~~(1)~~ all proceedings~~:~~

(1) in ~~an action~~actions commenced after ~~their~~the effective date; and

(2) ~~proceedings after that date~~ in ~~an action~~actions then pending, unless:

(A) the Supreme Court specifies otherwise~~;~~, or

(B) the court determines that applying them in a particular action would not be ~~infeasible~~feasible or would work an injustice.

(b) ~~DECEMBER 1, 2007~~ **Effective Date of Amendments.** ~~If any provision in~~ The Nevada Rules ~~1 5.1, 6 73, or 77 86 conflicts with another law, priority in time for the purpose of 28 U.S.C. § 2072(b) is not affected by the~~ of Civil Procedure became effective January 1, 1953. Subsequent

amendments ~~taking effect on December~~have been as follows:

(1) Amendment of Rules 5(b) and (d), effective January 4, 1954.

(2) Amendment of Rules 11 and 45(d)(1), effective May 15, 1954.

(3) Amendment of Rule 51, effective February 15, 1955.

(4) Amendment of Rules 3, 75(b), and 75(g), effective October 1, ~~2007~~1959.

(5) Amendment of Rules 38(b), 38(d), 65(b), 73(c), and 73(d), effective September 1, 1960.

(6) Amendment of Rules 4(d)(2), 5(a), 5(b), 6(a), 6(b), 7(a), 13(a), 14(a), 15(d), 24(c), 25(a)(1), 25(d), 26(e), 28(b), 30(f)(1), 41(b), 41(e), 47(a), 48, 50(a), 50(b), 50(c), 50(d), 52(b), 54(b), 56(c), 56(e), 59(a), 62(h), 77(c), 86, Forms 22-A and 22-B, 27, 30, 31, and 32, effective March 16, 1964.

(7) Amendment of Rule 86 and Form 31, effective April 15, 1964.

(8) Amendment of Rules 73(c), 73(d)(1), and 86, effective September 15, 1965.

(9) Amendment of Rules 4(b), 5(a), 8(a), 12(b), 12(g), 12(h), 13(h), 14(a), 17(a), 18(a), 19, 20(a), 23, 23.1, 23.2, 24(a), 26, 29, 30, 31, 32, 33, 34, 35, 36, 37(a), 37(b), 37(c), 37(d), 41(a), 41(b), 42(b), 43(f), 44(a), 44(b), 44(c), 44.1, 45(d)(1), 47(b), 50(b), 53(b), 54(c), 65(a), 65(b), 65(c), 65.1, 68, 69(a), 77(e), 86(b), and Form 24, effective September 27, 1971.

(10) Amendment of Rules 6 and 81, effective July 1, 1973; the abrogation of Rules 72, 73, 74, 75, 76, 76A, and Form 27, effective July 1, 1973.

(11) Amendment of Rules 1, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 16.1, 17, 18, 19, 20, 22, 23, 23.1, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 44, 44.1, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 62, 63, 64, 65, 65.1, 67, 69, 71, 77, 78, 81, and 83 and Forms 3, 19, 31, and the Introductory Statement to the Appendix of Forms, effective January 1, 2005,

and the adoption of new Form 33.

(12) Adoption of Rules 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 62.1, and 71.1, the amendment of all other rules and the introduction to the Appendix of Forms, the deletion of the former forms, and the adoption of Forms 1 through 6, effective March 1, 2019.

APPENDIX OF FORMS

Introduction

1. The 2019 NRCP amendments delete the general-practice forms previously appended to the NRCP. Current sources of forms available to practitioners and parties include:

The State of Nevada Self-Help Center
http://selfhelp.nvcourts.gov/forms
First Judicial District Court Forms
http://carson.org/government/departments-a-f/courts/district-court-clerk/district-court-forms
Second Judicial District Court Forms
https://www.washoecourts.com/Main/FormsAndPackets
Eighth Judicial District Court Forms
http://www.clarkcountycourts.us/self-help-centers/
Ninth Judicial District Court Forms
https://douglasdistrictcourt.com/forms/
Clark County Law Library
http://www.clarkcountynv.gov/lawlibrary/Pages/LegalForms.aspx
Washoe County Law Library
https://www.washoecourts.com/LawLibrary/SelfHelp
Nevada Supreme Court Law Library
https://nvcourts.gov/Law_Library/Representing_Yourself/

Sources for legal assistance include:

Lawyer Referral and Information Service

https://www.nvbar.org/lawyerreferral/lawyer-referral-information-service/public-1/

Nevada State Bar

http://www.nvbar.org/

Nevada Attorney General

http://ag.nv.gov/

V.A.R.N. – Volunteer Attorneys for Rural Nevadans

http://www.varn.org/newsite/resources/self-help-court-forms/

Nevada Legal Services

https://nlslaw.net/get-legal-help/helpful-links/

The Legal Aid Center of Southern Nevada

https://www.lacsn.org/

Washoe Legal Services

https://washoelegalservices.org/

2. Forms 1 and 2 are patterned on the waiver of service forms appended to FRCP 4, but are modified for use in Nevada. When preparing Forms 1 and 2, in the places on the forms that require "Attorney or Plaintiff Information" and "Caption," an attorney or self-represented litigant should insert the attorney or plaintiff information and caption required by local rules. For example, in the district courts these requirements are located in DCR 12, FJDCR 19, WDCR 10, EDCR 7.20, 10JDCR 16, and other local court rules, and in the appellate courts in NRAP 27 and 32.

3. Form 3, Consent to Service by Electronic Means (former Form 33), provides a form to establish consent to electronic service among parties outside

of an EFS under Rule 5(b)(2)(E). In general, the form should not be filed with the court. A party that is not authorized to register with an EFS may, however, use Form 3 under NEFCR 9(c)(2) to consent to electronic service though the EFS. In that case, it should be filed with the court with the required attorney, party, and caption information.

4. Forms 4, 5, and 6 are provided for use with Rules 16.2 and 16.205 in family law actions.

Form 1. Rule 4.1 Request to Waive Service of Summons

(Attorney or Plaintiff Information)

(Caption)

Notice of a Lawsuit and Request to Waive Service of Summons under Rule 4.1 of the Nevada Rules of Civil Procedure

To (name the defendant or—if the defendant is a corporation, partnership, association, or other entity—name an officer or agent authorized to receive service):

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is enclosed with this letter.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons and complaint by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (give at least 30 days or at least 60 days if the defendant is outside the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The lawsuit will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you, and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you.

Your Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4.1(a) of the Nevada Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. You have a duty to cooperate in saving unnecessary expenses even if you believe that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property. If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 of the Nevada Rules of Civil Procedure on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond to the complaint than if a summons had been served.

I certify that this request is being sent to you on the date below.

Date: _____

_____
(Signature of the attorney or self-represented party)

_____
(Printed name)

_____
(Address)

_____
(Email address)

_____
(Telephone number)

Form 2. Rule 4.1 Waiver of Service of Summons

(Attorney or Plaintiff Information)

(Caption)

Waiver of Service of Summons
under Rule 4.1 of the Nevada Rules of Civil Procedure

To (name the plaintiff's attorney or the self-represented plaintiff):

I have received your request to waive service of a summons in this lawsuit along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons

and complaint in this lawsuit.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the lawsuit, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 of the Nevada Rules of Civil Procedure within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

_____
(Signature of the attorney or unrepresented party)

_____
(Printed name)

_____
(Address)

_____
(Email address)

_____
(Telephone number)

Form 3. Consent to Service by Electronic Means Under Rule 5

The undersigned party hereby consents to service of documents by electronic means as designated below in accordance with Rule 5(b)(2)(E) of the Nevada Rules of Civil Procedure.

Party name(s):

_____

_____

Documents served by electronic means must be transmitted to the following person(s):

_____

_____

Facsimile transmission to the following facsimile number(s):

_____

_____

Electronic mail to the following email address(es):

_____

_____

Attachments to email must be in the following format(s):

_____

_____

Other electronic means (specify how the documents must be transmitted)

_____

The undersigned party also acknowledges that this consent does not require service by the specified means unless the serving party elects to serve by that means.

Dated this _____ day of _____, 20____.

Signed: _____

Attorney for Consenting Party
or Consenting Party

Address: _____

Telephone: _____

Fax number: _____

Email address: _____