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Via Email To: nvscclerk@nvcourts.nv.gov

July 7, 2020

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson St.
Carson City, Nevada 89701

FILED

JUL 07 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
SENEF DEPUTY CLERK

Re: **Repeal of NRCP 41(e)**

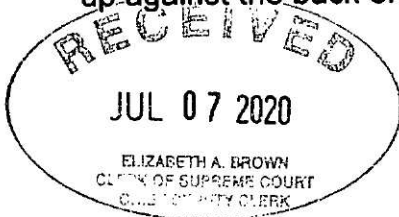
Dear Ms. Brown:

Please accept this letter as our support of the repeal of NRCP 41(e). Nevada has a strong public policy for hearing cases on their merits and we believe this rule, in today's world, jeopardizes that public policy.

NRCP 41(e) places the burden solely on the plaintiff to bring a case to trial within five years. This presumes that any case not brought to trial within five years must be due to a lack of diligence on the part of the plaintiff. This presumption ignores the fact that there are many reasons why cases get delayed for years, one of which is delay caused by the conduct of a defendant. If the defendant were to delay progression of the case to trial, there is no consequence to the defendant but rather the benefit of having the case dismissed. In other words, defendants benefit by delay while plaintiffs suffer the harshest of consequences. A rule with this disparate impact upon the parties is, respectfully, flawed.

More importantly, the Rule ignores the fact that in today's world and in our growing community, many delays are due to the courts' dockets being simply overwhelmed. In the Eighth Judicial District, civil cases generally get placed on a five-week stack along with numerous other cases. It is rare that a case gets tried on the first stack even if the parties are ready for trial. Even before the Covid-19 situation, cases which were ready for trial but continued were often not reset for trial for a very long time.

Former Justice Michael Cherry advocated for the repeal of NRCP 41(e) in his 2011 dissenting opinion in Maduka v. Eighth Judicial Dist. Court, 2011 Nev. Unpub. LEXIS 1703 (Sept. 19, 2011). Justice Cherry noted that "the five-year rule simply no longer works in Clark County." Justice Cherry referred to the 2010 Annual Report of the Nevada Judiciary, which noted that 95,690 non-traffic cases were filed in the Eighth Judicial District in 2010. Id. Justice Cherry argued that it is often the number of cases that leads to delays, not the litigants, and that many cases do not receive trial dates until they are effectively running up against the back end of the five-year period. Id. at 11.



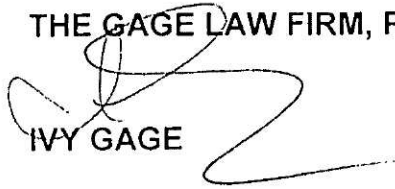
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The problem has only gotten worse over time. According to the 2019 Annual Report of the Nevada Judiciary, 102,780 non-traffic cases were filed in the Eighth Judicial District Court. This growth, even without considering the Covid-19 delays, supports the repeal of NRCP 41(e).

Thank you for your consideration of our position.

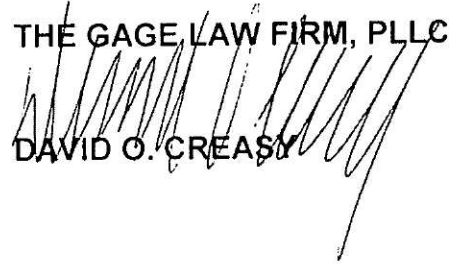
Very truly yours,

THE GAGE LAW FIRM, PLLC



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DAVID O. CREASY