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July 13, 2020

Via First Class Mail and Email

Elizabeth A. Brown, Clerk of the Supreme Court

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FILED

JUL 13 2020

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

RE: ADKT 0560 (Revisions to NRCP 41(e))

Dear Clerk Brown,

Please accept this Response to Mr. Hejmanowski's Supplemental Comments filed on July 8, 2020.

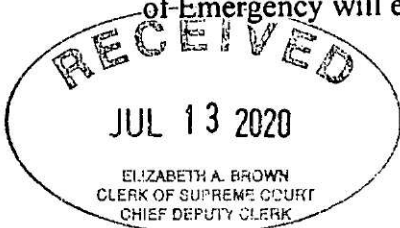
Mr. Hejmanowski proposes an idea to amend Rule 41(e) which would not count the days from the day before Governor Sisolak declared a State of Emergency to "a date fixed by the Nevada Supreme Court" and the measure would remain in effect for 90 days after the Court deems the State of Emergency to be concluded.

I believe that this is problematic for several reasons.

First, the proposal conflates the Governor's State of Emergency with when the Court determines no State of Emergency exists. Why is that? If anything, the Court should use the beginning and ending of the Governor's Declaration be the guideposts.

Second, the problem still exists that just because the State of Emergency ends, does not mean the backlog ends. For example, as Covid issues continue to increase here in the State, we may very well have a backlog of civil jury trials for a year or more even when the "State of Emergency" is ended. The proposal does not take this into account.

If the Court is not going to withdraw the Rule or amend it to include impossibility or impracticability type of language, then perhaps the Rule could take cases that were still in litigation and filed on or before March 12, 2017 but not afterwards, not subject to Rule 41(e). However, for those cases filed after March 12, 2017 through March 12, 2018, the Rule would be amended to Six Years. I used three years before the State of Emergency because three years is when the five-year rule generally starts coming into the picture. I then give one additional year to those that are exactly three years back. Of course, there still could be a problem here since no one knows when the State of Emergency will end nor when the backlog of cases will cease.



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Yet, it does take away any "counting of days" issues and limit the affected cases to those who may have a five-year problem because of Covid. It would keep the five-year rule intact for cases filed afterwards; but would still recognize the Covid problem for a very limited number of cases and simply extend the Rule by one year for those cases.

To be clear, I am not backing off my previous suggestions in my letter of July 10, 2020 to withdraw the Rule completely or add in impossibility and impracticability. These are better ways to deal with the problem and would provide the Courts the ability to properly manage the dockets and would also take away the unknown. They also take care of the problem with backlog problem. So, I believe it is best to either withdraw the Rule in its entirety or at least add in impossibility and impracticability based upon a showing of good cause.

Finally, I completely agree with Mr. Hejmanowski that the Court needs a new Rule giving it emergency powers to take any action regarding the Rules. Perhaps it could be subject to a majority vote of the Justices.

Respectfully submitted,

MURDOCK & ASSOCIATES, CHTD.



Robert E. Murdock, Esq.

REM/vam