



July 13, 2020

Via E-Mail

Elizabeth A. Brown
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FILED

JUL 14 2020

ELIZABETH A. BROWN
 CLERK OF SUPREME COURT
 BY *E. Brown*
 CHIEF DEPUTY CLERK

Re: NRCP 41(e) Repeal

Dear Ms. Brown:

We are writing in support for the repeal of NRCP 41(e). Nevada has a strong public policy of hearing cases on the merits. *Yochum v. Davis*, 98 Nev. 484, 487 (1982). NRCP 41(e) is in conflict with that rule and can result in harsh consequences for plaintiffs even when delays are beyond their control.

NRCP 41(e) places the burden solely on the plaintiff to bring a case to trial within five years. Requiring dismissal 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. The Rule ignores the fact that the defendant can cause delay. There is no similar penalty for a defendant who delays a case being prosecuted and it is the plaintiff who suffers where a defendant causes delay. Under the current rule, the Court has no power to extend the deadline without the agreement of the very defendant who sought to delay.

More importantly, the Rule also ignores that many delays in cases are due to the courts' overwhelming dockets. In the Eighth Judicial District, cases generally get placed on a five-week stack with numerous other cases. It is rare that a case gets tried on the first stack on which it is set, even if the parties are ready for trial. This was a problem even before Covid-19 delayed civil jury trials.

Repeal of the Rule 41(e) is not novel. In 2011, in a dissenting opinion in *Maduka v. Eighth Judicial Dist. Court*, 2011 Nev. Unpub. LEXIS 1703 (Sept. 19, 2011), Justice Michael Cherry (ret.) advocated for the repeal of NRCP 41(e) because "the five-year rule simply no longer works in Clark County. *Id.* at *10. 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 in many cases it is 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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Presently, the problem has not gotten any better—even without Covid-19 delays. According to the 2019 Annual Report of the Nevada Judiciary, 102,780 non-traffic cases were filed in the Eighth Judicial District Court. Plaintiffs have no control over the courts' dockets, or the number of cases filed. Yet, it is the plaintiffs who are penalized if the courts' docket delays a case and a proper stipulation is not entered. We are in support of repeal of the Rule to prevent dismissal where delays are outside the control of the plaintiff.

Very truly yours,

GANZ & HAUF


MARJORIE HAUF, ESQ.