

FILED

JUL 14 2020

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

CALDER B. GABROY, LTD.
1810 East Sahara Avenue, Suite 582
Las Vegas, Nevada 89104
Tel. 702.728.5708
Fax. 702.207.2199

Calder B. Gabroy, Esq.*
*Licensed in Nevada

calder@caldergabroy.com

July 14, 2020

Via Electronic nvscclerk@nvcourts.nv.gov

THE SUPREME COURT OF THE STATE OF NEVADA

Attn: Elizabeth A. Brown, Clerk of the Supreme Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702
Tel. No. 775.684.1600
Facsimile No. 775.684.1601

Re: Public Comment – In the Matter of the Amendment of Rule 41(e) of the Nevada Rules of Civil Procedure, ADKT 0560

To Elizabeth A. Brown, Clerk of the Nevada Supreme Court:

In response to the Nevada Supreme Court’s invitation for written public comment regarding the *Petition* to amend Nevada Rules of Civil Procedure, (“NRCP”) Rule 41, the undersigned joins petitioners, the bar, and the public to support amendments to Rule 41 as proposed. As it stands, our NRCP are modeled¹ in part and based upon the Federal Rules of Civil Procedure (“FRCP”), adhering to Nevada state law while looking at federal jurisprudence for guidance, when needed.² FRCP 41 provides a suitable model to illustrate an appropriate degree of regulation, without including Nevada’s time-specific mandatory dismissal provisions for want of prosecution should a plaintiff fail to bring plaintiff’s action to trial within five years. NRCP 41(e) should be amended as petitioned to provide our courts with flexibility and judicial discretion

¹ See generally, *Advisory Committee Notes, 2019, Preface* (“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.”).

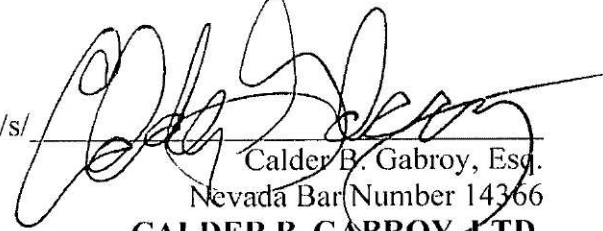
² See generally, *Higgs v. State*, 125 Nev. 1043, 17, 222 P.3d 648, 658, 126 Nev. 1, 17, 2010 WL 152168 (2010). (“We see nothing unclear about our decision to adhere to state law, while looking at federal jurisprudence for guidance—when needed.”).

RECEIVED
JUL 14 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

20-25845

necessary to handle the business of the court, and fairly administer justice.³ The bright line rule for mandatory dismissal as currently read in NRCP 41(e) fails to afford necessary judicial discretion to allow our courts to prioritize cases pending before the courts, and the mandatory dismissal provisions should be abolished. Case management systems in Nevada generally reflect when cases have been pending for twenty-four to thirty-six months, at which time the Court should allow the parties to show good cause or excusable neglect before the Court orders dismissal for non-prosecution. Parties should have opportunity to have their day in court, without the consequence of involuntarily and mandatory dismissal provisions. NRCP 41(e) should be amended to permit time necessary for a plaintiff to bring an action to trial, allow for judicial discretion, and in consideration of the current circumstances, including the COVID-19 pandemic and the busy dockets and large caseloads of our courts.⁴ NRCP 41(e) should incorporate exceptions into the rule to allow for judicial discretion in cases where the current rule makes bringing the action to trial impossible, impracticable, or futile. NRCP 41 amendments as petitioned to remove the mandatory dismissal provisions in NRCP 41(e) is in line with the majority of jurisdictions with law providing for *discretionary* non-prosecution dismissals,⁵ instead of an absolute time bar. The rule amendments as petitioned should be adopted.

RESPECTFULLY SUBMITTED,

/s/ 
Calder B. Gabroy, Esq.
Nevada Bar Number 14366
CALDER B. GABROY, LTD.

³ See generally, *Galloway v. Truesdell*, 83 Nev. 13, 23, 422 P.2d 237, 244 (1967).

⁴ See generally, Administrative Office of the Courts, *Annual Report of the Nevada Judiciary Fiscal Year 2019 Appendix Tables* (June 27, 2020), https://nvcourts.gov/Supreme/Reports/Annual_Reports/2019_Annual_Report/2019_Annual_Report_Appendix/

⁵ See, e.g., *1981 Amendment Reporter's Notes, Vt. R. Civ. P. 41* ("it cannot be assumed that the passage of time alone shows lack of progress and inaction if the court has never reached the case and placed it on the trial list."), *See also, 2019 Amendment Reporters Notes, Vt. R. Civ. P. 41* ("Former Rule 41(b)(1)(i), providing for involuntary dismissal of an action on a trial list that has been pending more than two years, has been deleted.").