

To: Supreme Court Clerk
Subject: RE: Comment to ADKT 607 - In the Matter of the Amendment of the Nevada Justice Court Rules of Civil Procedure

FILED

MAR 12 2024

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

Good morning,

We are writing to comment on ADKT 607 – In the Matter of the Amendment of the Nevada Justice Court Rules of Civil Procedure, which is out for comment until March 12, 2024.

Rule 45

As proposed, there is an inconsistency between Rules 45(a)(4)(A) and (B), which could lead to the deadline for a party to object to another party's subpoena falling after the date the subpoena is permitted to be served on the person to whom it is directed.

Rule 45(a)(4)A says, "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." [Emphasis added.]

Rule 45(a)(4)(B)(ii) says, "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)." [Emphasis added.]

The issue arises because although both Rules on their face state a 7-day deadline, only the deadline stated in Rule 45(a)(4)(B)(ii) is subject to the time provisions of Rule 6(d). Pursuant to Rule 6(d), when a party is served with notice of a subpoena under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (by other means consented to), 3 additional calendar days are added to the deadline for that party to object to the subpoena.

The 7-day deadline in Rule 45(a)(4)A is not subject to Rule 6(d), and thus would be calculated by simply counting back 7 calendar days from the date that party intends to serve the subpoena on the person to whom the subpoena is directed. If the party serving the notice of subpoena serves the other parties with the notice of subpoena by mail, for example, on the 7th day before the date they intend to serve the subpoena, the deadline for the party served by mail to object to the subpoena will not fall until 3 *days after* the date the subpoena may be served on person to whom it is directed.

To resolve this issue, the deadline in Rule 45(a)(4)A needs to be revised to account for the extra time provided by Rule 6(d). For example, it might be revised to say, "If the subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, then at least 8 days before it is served on the person to whom it is directed (*plus additional time if served by method set forth in Rule 6(d)*), 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."

Rule 68

Similar to Rule 45, as proposed there is a discrepancy between Rule 68(d)(1) and (h) that could lead to the deadline for a party to accept an offer of judgment falling *after* the date of the hearing to determine the amount or extent of liability.

Rule 68(d)(1) says, "Within 14 days after service of the offer, the offeree may accept the offer by serving a written notice that the offer is accepted." [Emphasis added.]

Rule 68(h) provides, "When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which has the same effect as an offer made before trial if it is served within a reasonable time not less than 14 days before the commencement of hearings to determine the amount or extent of liability." [Emphasis added.]

If a party were to serve an offer of judgment by mail, the deadline to accept the offer would be 14 days + 3 days after the date of service, pursuant to Rule 68(d)(1) and 6(d) – 3 days *after* the date of the hearing.

To resolve this issue, either a shorter period of time must be stated specifically to accept an offer served before the hearing to determine the amount or extent of liability, or the deadline stated in Rule 68(h) to serve the offer must be lengthened, perhaps to same period for offers before trial in Rule 68(a), "more than 21 days."

Rule 72A

The 30-day deadline stated in proposed Rule 72A(b)(4) is ambiguous in that it does not state a triggering event for the period to begin. It says only, an appeal may be taken from "[a]n order changing or refusing to change the place of trial only when a notice of appeal from the order is filed within 30 days." [Emphasis added.]

Is the triggering event for this 30-day period the date of entry of the order? Is it the date service of the order or the date of the order itself? In order to avoid any confusion, we respectfully request that the court further revise Rule 72A(b)(4) to add the triggering event.

Thank you for your time and consideration.

Sincerely,

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