

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF RULES OF
PROCEDURE TO GOVERN
PROCEEDINGS IN THE FAMILY
COURTS.

ADKT No. 388

FILED

DEC 28 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER AMENDING THE NEVADA RULES OF CIVIL PROCEDURE

WHEREAS, on August 24, 2005, the Nevada Supreme Court ordered that a committee be created for the purposes of developing rules of procedure to govern proceedings in family court and making recommendations on other issues related to proceedings in family court and designated the Honorable A. William Maupin, Chief Justice, as chair of the committee; and

WHEREAS, on January 18, 2006, pursuant to the committee's recommendation, this court suspended Rule 16.1 of the Nevada Rules of Civil Procedure, as amended effective January 1, 2005, and reinstated the former version of Nevada Rule of Civil Procedure 16.1 with respect to all proceedings in the Family Divisions of the Second and Eighth Judicial District Courts and in all domestic relations cases in the judicial districts without a family division; and

WHEREAS, the committee thereafter met to draft rules to govern prejudgment and postjudgment discovery in domestic relations

matters and, on November 28, 2007, submitted recommendations that this court adopt new rules, to be designated as Nevada Rules of Civil Procedure 16.2 and 16.21, to govern prejudgment and postjudgment discovery in domestic relations matters; and

WHEREAS, this court considered the committee's recommendations at a public hearing on December 3, 2007; and

WHEREAS, it appears to this court that amendment of the Nevada Rules of Civil Procedure is warranted, accordingly,

IT IS HEREBY ORDERED that Rule 11, 16.2, 26, and 37 of the Nevada Rules of Civil Procedure shall be amended and that new Rules 16.2 and 16.21 of the Nevada Rules of Civil Procedure shall be adopted and that these rules shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that new Rule 16.2 shall be amended effective January 1, 2009, and shall thereafter read as set forth in Exhibit B.

IT IS FURTHER ORDERED that the amended rules set forth in Exhibit A shall become effective July 1, 2008, and that the amended rule set forth in Exhibit B shall become effective January 1, 2009. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and

dissemination of order shall be conclusive evidence of the adoption and publication of the foregoing amended rules.

Dated this 28th day of December, 2007.

Maupin, C.J.
Maupin

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Committee Members
Administrative Office of the Courts

EXHIBIT A

AMENDMENTS TO NEVADA RULES OF CIVIL PROCEDURE

RULE 11. SIGNING OF PLEADINGS

* * * *

(d) Applicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 16.1, 16.2, and 26 through 37. Sanctions for refusal to make discovery are governed by Rules 26(g) and 37.

* * * *

RULE 16.2. MANDATORY PREJUDGMENT DISCOVERY REQUIREMENTS IN DOMESTIC RELATIONS MATTERS [Effective July 1, 2008, until January 1, 2009]

(a) Required Disclosures.

(1) Financial Disclosure. *In divorce, annulment or separate maintenance actions, a party must complete the court-approved Financial Disclosure Form. In custody matters between unmarried parties where paternity is established, a party must complete the cover sheet, the "personal income schedule" and the "business income/expense schedule" portions of the court-approved Financial Disclosure Form. A party must file and serve the completed Financial Disclosure Form no later than 45 days after service of the summons and complaint.*

(A) Failure to file or serve. *If a party fails to timely file or serve the financial disclosure form required by this rule, the court shall impose an appropriate sanction upon the party or the party's attorney, or both, unless the*

party establishes by clear and convincing evidence that there is good cause for the failure. After notice and a hearing, the court shall impose appropriate sanctions in regard to the failure(s) as are just, including the following:

(i) An order treating the party's failure as a contempt of court;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(iii) An order requiring the party failing to timely file or serve the disclosure to pay the opposing party's reasonable expenses, including attorney's fees and costs, caused by the failure.

(B) Failure to include an asset or liability. If a party intentionally fails to include a material asset or liability in the party's financial disclosure form, the court, after notice and hearing, may impose an appropriate sanction, including but not limited to the following:

(i) An order awarding the omitted asset to the opposing party as his or her separate property or making another form of unequal division of community property;

(ii) An order treating the party's failure as a contempt of court; or

(iii) An order requiring the party failing to make the disclosure to pay the other party's or

opposing party's reasonable expenses, including attorney's fees and costs, related to the omitted items.

(C) Duty to supplement. *A party must supplement or correct the party's financial disclosure form within 10 judicial days after the party acquires additional information or otherwise learns that in some material respect the party's disclosure is incomplete or incorrect. If the supplemental disclosure includes an asset, liability, income, or expense omitted from the party's prior disclosure(s), the supplemental disclosure shall include an explanation as to why the item was omitted.*

(D) Obtaining discovery. *Any party may obtain discovery by one or more of the methods provided in Rules 26-36 within 30 days after service of the summons and complaint.*

(2) Other Initial Disclosures. *Except in proceedings exempted or to the extent otherwise stipulated in writing or directed by order, a party must, without awaiting a discovery request, provide to other parties:*

(A) *The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information; and*

(B) *A copy of, or a description by category and location of, all documents, data compilations, and tangible things*

that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b).

These disclosures must be made within 45 days after service of the summons and complaint. A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because the party has not fully completed an investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made the required disclosures.

(3) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraphs (1) and (2), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305. These disclosures must be made within 90 days after the financial disclosures are required to be filed and served under Rule 16.2(a)(1) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (3)(B), within 60 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under Rule 26(e)(1).

(B) Except as otherwise stipulated or directed by the court, a party who retains or specially employs a witness to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert

testimony, shall deliver to the opposing party a written report prepared and signed by the witness, within 60 days before trial. The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the experts' reports or relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years.

(4) Pretrial Disclosures. *In addition to the disclosures required by Rule 16.2(a)(1), (2) and (3), a party must provide to other parties the following information regarding the evidence that the party may present at trial, including impeachment and rebuttal evidence:*

(A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present, those witnesses who have been subpoenaed for trial, and those whom the party may call if the need arises;

(B) *The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and*

(C) *An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.*

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve a list disclosing: (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under NRS 48.025 and 48.035, shall be deemed waived unless excused by the court for good cause shown.

(5) Form of Disclosures. *Unless the court orders otherwise, all disclosures under Rules 16.2(a)(1) through (4) must be made in writing, signed, and served.*

(b) Case Management Conference.

(1) Attendance at Case Management Conference.

(A) In judicial districts that do not include a county whose population is 100,000 or more, the district court shall conduct a case management conference with counsel and the parties. The district

court shall conduct the case management conference within 60 days after service of the summons and complaint.

(B) In judicial districts that include a county whose population is 100,000 or more, the district court shall conduct a case management conference with counsel and the parties if the estimated gross value of the marital estate exceeds \$500,000. In these cases, the case management conference shall be conducted within 60 days after service of the summons and complaint. The district court may change by local rule the threshold value requirement that triggers a mandatory case management conference in a judicial district that is subject to this paragraph. In all other matters commenced in the larger districts, the district court shall have the discretion to conduct case management conferences.

At the case management conference, the court, counsel, and the parties shall meet in person to confer and consider the nature and basis of the claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a) of this rule and to develop a discovery plan pursuant to subdivision (b)(2). At least 5 days before the case management conference, counsel for the parties shall confer to resolve as many of the matters as possible which are to be addressed at the case management conference. The court, in its discretion and for good cause shown, may continue the time

for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the summons and complaint.

(2) Planning for Discovery. At the case management conference, the court and parties shall develop a discovery plan which shall address:

(A) What changes should be made in the timing, form, or requirement for disclosures under Rule 16.2(a), including a statement as to when disclosures under Rule 16.2(a)(1) were made or will be made;

(B) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(C) What changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(D) Any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c); and

(E) Any orders that should be entered setting the case for settlement conference and/or for trial.

(c) Case Management Order. Within 30 days after the case management conference, the court must enter an order that contains:

(1) A brief description of the nature of the action and each claim for relief or defense;

(2) *A proposed plan and schedule of any additional discovery pursuant to subdivision (b)(2) of this rule;*

(3) *A written list of names exchanged pursuant to subdivision (a)(2)(A) of this rule;*

(4) *A written list of all documents provided at or as a result of the case conference pursuant to subdivision (a)(2)(B) of this rule;*

(5) *A deadline on which discovery will close;*

(6) *A deadline, not later than 90 days before the close of discovery, beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;*

(7) *A deadline by which the parties will make expert disclosures pursuant to subdivision (a)(3), with initial disclosures to be made not later than is specified in subdivision (a)(3) of this rule and rebuttal disclosures to be made not later than 60 days after the initial disclosure of experts;*

(8) *A deadline, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed.*

(d) Meet and Confer Requirements; Scheduling Order.

(1) **Meeting.** *Except in cases governed by subdivision (b)(1) of this rule, within 60 days after service of the summons and complaint, the parties and their attorneys shall meet in person to confer and consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a) of this rule and to develop a discovery plan*

pursuant to subdivision (b)(2) of this rule. The attorney for the plaintiff shall designate the time and place of the meeting, which must be held in the county where the action was filed, unless the parties agree upon a different location. The attorneys may agree to continue the time for the case conference for an additional period of not more than 30 days. The court, in its discretion and for good cause shown, may also continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the summons and complaint.

(2) Case Conference Report. Within 30 days after the meeting under subdivision (d)(1) of this rule, the parties must file a joint case conference report or, if the parties are unable to agree upon the contents of a joint report, each party must serve and file a case conference report which, either as a joint or individual report, must contain:

(A) A brief description of the nature of the action and each claim for relief or defense;

(B) A proposed plan and schedule of any additional discovery pursuant to subdivision (b)(2) of this rule;

(C) A written list of names exchanged pursuant to subdivision (a)(2)(A) of this rule;

(D) A written list of all documents provided at or as a result of the case conference pursuant to subdivision (a)(2)(B) of this rule;

(E) A deadline on which discovery will close;

(F) A deadline, not later than 90 days before the close of discovery, beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(G) A deadline by which the parties will make expert disclosures pursuant to subdivision (a)(3), with initial disclosures to be made not later than is specified in subdivision (a)(3) of this rule and rebuttal disclosures to be made not later than 60 days after the initial disclosure of experts;

(H) A deadline, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed.

*(3) **Scheduling Order.** Within 30 days after the filing of the case conference report under subdivision (d)(2), the court shall comply with Rule 16(b).*

(e) Discovery Disputes.

(1) Where available or unless otherwise ordered by the court, all discovery disputes (except those presented at the pretrial conference, early case management conference or trial) must first be heard by the discovery commissioner.

(2) Following each discovery motion before a discovery commissioner, the commissioner must prepare and file a report with the commissioner's recommendations for a resolution of each unresolved dispute. The commissioner may direct counsel to prepare the report. The clerk of the court shall forthwith serve a copy of the report on all parties. Within 5 days after being served

with a copy, any party may serve and file written objections to the recommendations. Written authorities may be filed with an objection, but are not mandatory.

(3) Upon receipt of a discovery commissioner's report and any objections thereto, the court may affirm, reverse or modify the commissioner's ruling, set the matter for a hearing, or remand the matter to the commissioner for further action, if necessary.

(f) Failure or Refusal to Participate in Pretrial Discovery; Sanctions. *If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection (e) of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:*

(1) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f);

(2) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.2(a).

(g) Proper Person Litigants. *When a party is not represented by an attorney, the party must comply with this rule.*

(h) Exemptions. *Upon finding compelling circumstances, a court may exempt all or any portion of a case from application of this rule, in whole or in part.*

***RULE 16.21 POSTJUDGMENT DISCOVERY IN DOMESTIC
RELATIONS MATTERS***

Unless the court orders otherwise, parties are prohibited from conducting discovery in postjudgment domestic relations matters. For good cause shown, however, a court may order postjudgment discovery.

RULE [16.2]16.3. DISCOVERY COMMISSIONERS

(a) Appointment and Compensation. The court may appoint one or more discovery commissioners to serve at the pleasure of the court. In multi-judge districts, appointment shall be by the concurrence of a majority of all the judges of such district. The compensation of a discovery commissioner may not be taxed against the parties, but when fixed by the court must be paid out of appropriations made for the expenses of the district court.

(b) Powers and Duties. As directed by the court, a discovery commissioner may enter scheduling orders pursuant to Rule 16(b) and preside at the case conferences and discovery resolution conferences required by Rule 16.1 or 16.2. A discovery commissioner also may conduct settlement conferences pursuant to an agreement by the parties or an order of the district court. The discovery commissioner has and shall exercise the power to administer oaths and affirmations, to regulate all proceedings in every conference before him, and to do all acts and take all measures necessary or proper for the efficient performance of his duties.

* * * *

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

* * * *

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

* * * *

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under Rule 16.1(a)(2)(B) or 16.2(a)(3), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and (ii) with respect to discovery obtained under subdivision (b)(4)(B) of this rule, the court shall require the party seeking discovery to pay

the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

* * * *

(e) Supplementation of Disclosures and Responses. A party who has made a disclosure under Rule 16.1 *or* 16.2 or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired, if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under Rule 16.1(a) *or* 16.2(a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under Rule 16.1(a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 16.1(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production or request for admission, if the party learns that the response is in some material respect incomplete or incorrect and if the additional or

corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

* * * *

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1) Every disclosure and report made pursuant to Rules 16.1(a)(1), 16.1(a)(3), **[and]** 16.1(c), 16.2(a)(2), 16.2(a)(4), and 16.2(d) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection, is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass, obscure, equivocate or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection was made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

* * * *

RULE 37. FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY; SANCTIONS

(a) Motion for Order Compelling Disclosure or Discovery.

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being, or is to be, taken.

(2) Motion.

(A) If a party fails to make a disclosure required by Rule 16.1(a) or 16.2(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or

attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or Incomplete Disclosure, Answer or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer or response is to be treated as a failure to disclose, answer or respond.

(4) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the

moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) Sanctions—Deponent. If a deponent fails to be sworn or to answer a question after being directed to do so by the court the failure may be considered a contempt of court.

(2) Sanctions—Party. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rules 16, **[and]** 16.1, *and* 16.2 the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be

taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

* * * *

(f) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the development and submission of a proposed discovery plan as required by Rule 16.1(b)(2) *or* 16.2, the court may, after opportunity for hearing, require such party or party's attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

EXHIBIT B

AMENDMENTS TO RULE 16.2 OF THE NEVADA RULES OF CIVIL PROCEDURE EFFECTIVE JANUARY 1, 2009

RULE 16.2. MANDATORY PREJUDGMENT DISCOVERY REQUIREMENTS IN DOMESTIC RELATIONS MATTERS [Effective January 1, 2009]

(a) Required Disclosures.

(1) Financial Disclosure. In divorce, annulment or separate maintenance actions, a party must complete the court-approved Financial Disclosure Form. In custody matters between unmarried parties where paternity is established, a party must complete the cover sheet, the “personal income schedule” and the “business income/expense schedule” portions of the court-approved Financial Disclosure Form. A party must file and serve the completed Financial Disclosure Form no later than 45 days after service of the summons and complaint.

(A) Failure to file or serve. If a party fails to timely file or serve the financial disclosure form required by this rule, the court shall impose an appropriate sanction upon the party or the party’s attorney, or both, unless the party establishes by clear and convincing evidence that there is good cause for the failure. After notice and a hearing, the court shall impose appropriate sanctions in regard to the failure(s) as are just, including the following:

(i) An order treating the party’s failure as a contempt of court;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(iii) An order requiring the party failing to timely file or serve the disclosure to pay the opposing party's reasonable expenses, including attorney's fees and costs, caused by the failure.

(B) Failure to include an asset or liability. If a party intentionally fails to include a material asset or liability in the party's financial disclosure form, the court, after notice and hearing, may impose an appropriate sanction, including but not limited to the following:

(i) An order awarding the omitted asset to the opposing party as his or her separate property or making another form of unequal division of community property;

(ii) An order treating the party's failure as a contempt of court; or

(iii) An order requiring the party failing to make the disclosure to pay the other party's or opposing party's reasonable expenses, including attorney's fees and costs, related to the omitted items.

(C) Duty to supplement. A party must supplement or correct the party's financial disclosure form within 10 judicial days after the party acquires additional

information or otherwise learns that in some material respect the party's disclosure is incomplete or incorrect. If the supplemental disclosure includes an asset, liability, income, or expense omitted from the party's prior disclosure(s), the supplemental disclosure shall include an explanation as to why the item was omitted.

(D) Obtaining discovery. Any party may obtain discovery by one or more of the methods provided in Rules 26-36 within 30 days after service of the summons and complaint.

(2) Other Initial Disclosures. Except in proceedings exempted or to the extent otherwise stipulated in writing or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information; and

(B) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b).

These disclosures must be made within 45 days after service of the summons and complaint. A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures

because the party has not fully completed an investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made the required disclosures.

(3) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraphs (1) and (2), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305. These disclosures must be made within 90 days after the financial disclosures are required to be filed and served under Rule 16.2(a)(1) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (3)(B), within 60 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under Rule 26(e)(1).

(B) Except as otherwise stipulated or directed by the court, a party who retains or specially employs a witness to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, shall deliver to the opposing party a written report prepared and signed by the witness, within 60 days before trial. The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the experts' reports or relieve a party of the duty to prepare a written report in an appropriate case.

The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years.

(4) Pretrial Disclosures. In addition to the disclosures required by Rule 16.2(a)(1), (2) and (3), a party must provide to other parties the following information regarding the evidence that the party may present at trial, including impeachment and rebuttal evidence:

(A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present, those witnesses who have been subpoenaed for trial, and those whom the party may call if the need arises;

(B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) An appropriate identification of each document or other exhibit, including summaries of other evidence,

separately identifying those which the party expects to offer and those which the party may offer if the need arises. Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve a list disclosing: (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under NRS 48.025 and 48.035, shall be deemed waived unless excused by the court for good cause shown.

(5) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rules 16.2(a)(1) through (4) must be made in writing, signed, and served.

(b) Case Management Conference.

(1) Attendance at Case Management Conference.

~~[(A) In judicial districts that do not include a county whose population is 100,000 or more, the]~~ *The* district court shall conduct a case management conference with counsel and the parties~~]. The district court shall conduct the case management conference]~~ within 60 days after service of the summons and complaint.

~~[(B) In judicial districts that include a county whose population is 100,000 or more, the]~~

~~district court shall conduct a case management conference with counsel and the parties if the estimated gross value of the marital estate exceeds \$500,000. In these cases, the case management conference shall be conducted within 60 days after service of the summons and complaint. The district court may change by local rule the threshold value requirement that triggers a mandatory case management conference in a judicial district that is subject to this paragraph. In all other matters commenced in the larger districts, the district court shall have the discretion to conduct case management conferences.]~~

At the case management conference, the court, counsel, and the parties shall meet in person to confer and consider the nature and basis of the claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a) of this rule and to develop a discovery plan pursuant to subdivision (b)(2). At least 5 days before the case management conference, counsel for the parties shall confer to resolve as many of the matters as possible which are to be addressed at the case management conference. The court, in its discretion and for good cause shown, may continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties

may extend the time to a day more than 90 days after service of the summons and complaint.

(2) Planning for Discovery. At the case management conference, the court and parties shall develop a discovery plan which shall address:

(A) What changes should be made in the timing, form, or requirement for disclosures under Rule 16.2(a), including a statement as to when disclosures under Rule 16.2(a)(1) were made or will be made;

(B) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(C) What changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(D) Any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c); and

(E) Any orders that should be entered setting the case for settlement conference and/or for trial.

(c) Case Management Order. Within 30 days after the case management conference, the court must enter an order that contains:

(1) A brief description of the nature of the action and each claim for relief or defense;

(2) A proposed plan and schedule of any additional discovery pursuant to subdivision (b)(2) of this rule;

(3) A written list of names exchanged pursuant to subdivision (a)(2)(A) of this rule;

(4) A written list of all documents provided at or as a result of the case conference pursuant to subdivision (a)(2)(B) of this rule;

(5) A deadline on which discovery will close;

(6) A deadline, not later than 90 days before the close of discovery, beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(7) A deadline by which the parties will make expert disclosures pursuant to subdivision (a)(3), with initial disclosures to be made not later than is specified in subdivision (a)(3) of this rule and rebuttal disclosures to be made not later than 60 days after the initial disclosure of experts;

(8) A deadline, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed.

~~[(d) Meet and Confer Requirements; Scheduling Order.~~

~~(1) Meeting. Except in cases governed by subdivision (b)(1) of this rule, within 60 days after service of the summons and complaint, the parties and their attorneys shall meet in person to confer and consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a) of this rule and to develop a discovery plan pursuant to subdivision (b)(2) of this rule. The attorney~~

~~for the plaintiff shall designate the time and place of the meeting, which must be held in the county where the action was filed, unless the parties agree upon a different location. The attorneys may agree to continue the time for the case conference for an additional period of not more than 30 days. The court, in its discretion and for good cause shown, may also continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the summons and complaint.~~

~~—— (2) Case Conference Report. Within 30 days after the meeting under subdivision (d)(1) of this rule, the parties must file a joint case conference report or, if the parties are unable to agree upon the contents of a joint report, each party must serve and file a case conference report which, either as a joint or individual report, must contain:~~

~~—— (A) A brief description of the nature of the action and each claim for relief or defense;~~

~~—— (B) A proposed plan and schedule of any additional discovery pursuant to subdivision (b)(2) of this rule;~~

~~—— (C) A written list of names exchanged pursuant to subdivision (a)(2)(A) of this rule;~~

~~—— (D) A written list of all documents provided at or as a result of the case conference pursuant to subdivision (a)(2)(B) of this rule;~~

~~—— (E) A deadline on which discovery will close;~~

~~—— (F) A deadline, not later than 90 days before the close of discovery, beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;~~

~~—— (G) A deadline by which the parties will make expert disclosures pursuant to subdivision (a)(3), with initial disclosures to be made not later than is specified in subdivision (a)(3) of this rule and rebuttal disclosures to be made not later than 60 days after the initial disclosure of experts;~~

~~—— (H) A deadline, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed.~~

~~—— (3) Scheduling Order. Within 30 days after the filing of the case conference report under subdivision (d)(2), the court shall comply with Rule 16(b).]~~

~~[(e)](d) Discovery Disputes.~~

(1) Where available or unless otherwise ordered by the court, all discovery disputes (except those presented at the pretrial conference, early case management conference or trial) must first be heard by the discovery commissioner.

(2) Following each discovery motion before a discovery commissioner, the commissioner must prepare and file a report with the commissioner's recommendations for a resolution of each unresolved dispute. The commissioner may direct counsel to prepare the report. The clerk of the court shall forthwith serve a

copy of the report on all parties. Within 5 days after being served with a copy, any party may serve and file written objections to the recommendations. Written authorities may be filed with an objection, but are not mandatory.

(3) Upon receipt of a discovery commissioner's report and any objections thereto, the court may affirm, reverse or modify the commissioner's ruling, set the matter for a hearing, or remand the matter to the commissioner for further action, if necessary.

~~[(f)](e) Failure or Refusal to Participate in Pretrial Discovery; Sanctions.~~ If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection ~~[(e)](d)~~ of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(1) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f);

(2) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.2(a).

~~[(g)](f) Proper Person Litigants.~~ When a party is not represented by an attorney, the party must comply with this rule.

~~[(h)](g) Exemptions.~~ Upon finding compelling circumstances, a court may exempt all or any portion of a case from application of this rule, in whole or in part.