

An Overview of the 2019 NRCP Amendments

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Hon. Kristina Pickering, Supreme Court Justice
Todd E. Reese, Deputy District Attorney

Introduction

- This is a general overview of the changes to the NRCP.
- The amendments are a comprehensive revision of the NRCP.
- The **only** rule not amended was Rule 3.
- As a rule of thumb, any time you need to take action governed by the NRCP, double check that the applicable rule has not changed.
- Only the NRCP, NRAP, and Nevada Electronic Filing and Conversion Rules (NEFCR) were amended—other rules are, or will be, undergoing revision.

Effective Date

- The amended NRCP are effective NOW!
- The amended NRCP became effective March 1, 2019, and apply to pending cases.

Committee Overview

- The Nevada Supreme Court appointed the NRCPC Committee in February 2017.
- The Committee met every month until August 2018, when it submitted draft rules to the Nevada Supreme Court.
- After public notice, comments, and a hearing, the Supreme Court adopted most, but not all, of the Committee's recommendations.
- All Committee agendas and minutes are posted and available on the Administrative Office of the Court's website. The filings are available in ADKT 0522. Redlines against the prior NRCPC and against current FRCP also on the website and in ADKT 522.

Committee Overview

- AOC Website:
 - [https://nvcourts.gov/AOC/Committees and Commissions/NRCP/Overview/](https://nvcourts.gov/AOC/Committees%20and%20Commissions/NRCP/Overview/)
- Nevada Supreme Court Website:
 - <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=42567>

Committee Overview

- Committee approach:
 - First, the Committee compared the NRCPP to current FRCP. Where the NRCPP tracked an earlier version of the FRCP, the Committee recommended updating the language to match the modern FRCP language. Many of these changes are stylistic, not substantive.
 - Second, where the NRCPP departed from the FRCP, the Committee evaluated whether to retain or revise the NRCPP distinctions, and whether to update the NRCPP language.
 - And third, the Committee reviewed the NRCPP to identify and remedy any deficiencies and any areas that needed new rules.

Interpretation Assistance

- For assistance interpreting the amended rules, see:
 - The Advisory Committee Notes.
 - The corresponding federal rule, if the federal rule is the basis for the Nevada rule.
 - Interpretation of the former NRCP, if the rule is not based on the federal rules.
 - The Committee did not intend to change prior case law if the Rule was only updated stylistically.

Rule 4. Service of Process

- Completely revised.
- Broken into 5 rules, Rule 4 through Rule 4.4.
 - Rule 4—Contents, Issuance, Proof of Service, Timing
 - Rule 4.1—Waiver of Service.
 - Rule 4.2 – Service in Nevada on (b) minors and incapacitated persons, (c) corporations, and (d) government entities.
 - Rule 4.3 – Service outside of Nevada (in US and foreign country).
 - Rule 4.4 – New provisions for court ordered service, publication, and notice.

Rule 4.1. Waiver of Service

- Modeled on FRCP 4(d).
- Waiver of service for individuals and corporate entities.
- If applicable, party has a duty to waive, or may be required to pay costs of service of process.
- **WAIVER DOES NOT APPLY TO GOVERNMENT DEFENDANTS**
 - (or to minors or incapacitated persons)
 - Government defendants are still generally entitled to 45 days to respond under NRCP 12(a)(2).
- Waiving service of process does **not** waive any defenses or objections to personal jurisdiction or venue.
- Waiver forms are in the NRCP appendix, and a defendant waiving service gets 60 days to respond to the complaint.

Rule 4.2. Service Within Nevada

- Rule 4.2 restates the traditional methods of service.
- Rule 4.2(b) revises service on minors and incapacitated persons.
- Rule 4.2(c) revises service on business entities and associations.
- Rule 4.2(d) expands service on Government entities:
 - For the State, or a State Officer or Employee, service must be made on both the agency, or officer or employee, and on the Attorney General in Carson City.
 - For local governments, or local officers and employees, service must be made on the presiding officer of the body, or on the officer or employee (and not on an attorney).

Rule 4.3. Service Outside of Nevada

- Service outside of Nevada, but within the United States.
 - May generally serve a defendant as the defendant may be served within Nevada.
- Service in a foreign country.
 - Specific service rules.

Rule 4.4. Alternative Service

- New provision for service by court order.
 - Allows the court to craft an alternative means of service, if service by the normal rules is “impractical,” and the alternative means comports with due process
 - Requires a motion and affidavits setting forth specific facts showing due diligence, among other things.
- Service by publication is revised.
- New provision permitting court to order plaintiff to, in addition other service methods, make reasonable efforts to provide actual notice to the defendant.
 - Actual notice may be given by email, phone, text message, social media, or any other court ordered method.
 - This notice, by itself, **does not** constitute service.

NRCP 5/NEFCR/efiling

- Rule 5 no longer contains the specific requirements for consenting to electronic service.
 - Under the NEFCR, registering for electronic filing is consent to electronic service via the efiling system.
 - Consent to other electronic service must still be in writing.
- Consideration of Rule 5 led to revising the NEFCR.
 - The NRCP, NRAP, and certain of the EDCR differed in adding, or not adding, 3 days for electronic service.
 - Clerk review before filing and service lead to delays between submission and filing/service.

NEFCR/efiling (continued)

- The revised NEFCR adopt the federal approach to efilng:
 - Filing and service happen simultaneously with and nearly instantaneously upon submission.
 - Clerk review takes place after filing and service.
 - NRAP 16(c) and NRCP 6(d) synched; no 3-day extension of time for electronic service.

Rule 6. Computing and Extending Time

- Rule 6(a) modeled on federal method of counting time.
 - Old method: 10 days or less count only court days.
 - New method: count all days (incl. weekends and holidays).
- Purpose is to simplify calculating time periods.
 - 7-day time periods to enable “day-of-the-week” counting.
- Times adjusted in the NRCP, NRAP, and NEFCR:
 - 5-day periods were changed to 7 days;
 - 10- and 15-day periods were changed to 14 days;
 - 20-day periods were changed to 21 days; and
 - periods 28 days and longer were left alone.

Rule 6 (continued)

- Although times in the NRCPP and NRAP were changed, the local rules, many of which allow 10 days to oppose and 5 to reply, were not changed.
- End Result: the time to oppose/reply got shorter (at least temporarily).
- The time to file post-judgment motions in NRCPP 50(b), 52, and 59, was extended from 10 days to 28 days.

Rule 6 (continued)

- Committee and Court recognize the timing problem:
 - Advisory Committee Note recognizes that time extensions should be given whenever prejudice results.
 - The Nevada Supreme Court has ordered all of the judicial districts to revise the local rules to, among other things, sync the time frames—proposed revisions to be submitted by June 30, 2019.
 - This problem exists in statute as well, but this is up to the Legislature to fix.

NRCPP 8. Pleading

NRCPP 12. Defenses and Objections

- NRCPP 8(a)(1) now requires a jurisdictional statement (a “short and plain statement of the grounds for the court's jurisdiction”). This is generally directed at Justice Courts, family law, and specialty courts, and does not disturb any court’s jurisdiction.
- Although NRCPP 8 and NRCPP 12(b)(5) adopt federal language, the Advisory Committee Note explains: “Incorporating the text of the federal rule does not signal an intent to change existing Nevada pleading standards.”

NRCP 13. Counterclaim and Crossclaim.

NRCP 14. Third-Party Practice.

- The former NRCP 13(f) was deleted, consistent with the federal rule. Amendments to add counterclaims should be made under Rule 15.
- NRCP 14 generally conforms to the federal rule, but Rules 14(a)(2)(B) and 14(a)(4) were amended to permit defendants and third-party defendants to bring crossclaims against each other as “coparties” under Rule 13(g).

NRCP 10. Form of Pleadings.

NRCP 15. Amendments.

- NRCP 10(d) retains the provisions, formerly in NRCP 10(a) permitting a party to name fictitious defendants.
- NRCP 15(a)(1) broadens the time to amend as a matter of course: either 21 days after serving the pleading, or 21 days after service of a responsive pleading or Rule 12(b), (e), or (f) motions.
- NRCP 15(c) adopts FRCP provisions for relation back.
 - Per the Advisory Committee Note, “While Rule 15(c) and Rule 10(d) are distinct tests, if a fictitious-party replacement does not meet the Rule 10(d) test, it may be treated as an amendment to add a party under Rule 15 if the standards in Rule 15 are met.”

Rule 16.3. Discovery Commissioners

Rule 17. Parties; Capacity

- NRCP 16.3(c) relocates the text of the former NRCP 16.1(d)(2), NRCP 16.2(j)(2), and NRCP 16.205(j)(2) into Rule 16.3.
- The amended NRCP 17(d) now includes the provisions of former NRCP 25(d)(2) (“A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.”).

Rule 23. Class Actions

- NRCP 23(b) is new and permits aggregation of class claims to meeting district court jurisdiction thresholds.
- NRCP 23(d)(4) is added from the federal rule, and governs the effect of offers of judgment under NRCP 68 rejected by the representative party, and the representative party's inability to proceed as class representative.

Rule 24. Intervention

- The NRCPP now incorporates the government intervention provisions from FRCP 24(b)(2):
 - “(2) **By a Government Officer or Agency.** On timely motion, the court may permit a state or federal governmental officer or agency to intervene if a party’s claim or defense is based on:
 - (A) a statute or executive order administered by the officer or agency; or
 - (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.”
- State vs. local: Local was not intended to be excluded.

Discovery (Part 1)

(NRCPP 16.1, 26-37, and 45)

- NRCPP 16.1 was revised.
 - NRCPP 16.1(a)(1)(A)(ii) initial disclosure: “a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, including for impeachment or rebuttal, and, unless privileged or protected from disclosure, any record, report, or witness statement, in any form, concerning the incident that gives rise to the lawsuit.”
 - For personal injury, the identity of each relevant medical provider is required to be disclosed.
 - The rule expressly includes ESI and records, reports, or witness statements in any form.
 - The amendments added provisions regarding experts that are in the corresponding federal rule (FRCP 26(a)) and that were in the former advisory committee note.

Discovery (Part 2)

- NRCP 26(b)(1) adopts the federal proportionality requirement.
 - Old rule: “any matter, not privileged, which is relevant to the subject matter involved in the pending action.”
 - New Rule: “any nonprivileged matter that is relevant to any party’s claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.”
- NRCP 30 and 31 now permit 10 depositions per side, not counting custodian-of-record depositions.

Discovery (Part 3)

- Family law: new Rule 16.22 (procedures for custody evaluations) and Rule 16.23 (alternative to Rule 35 for mental or physical examinations of minors).
- Rule 45 – new rules for subpoenas:
 - NRCP 45(a)(4) requires 7 days prior notice to parties before serving a subpoena.
 - NRCP 45(c)(2)(a)(ii) requires prompt production to parties of materials received in response to the subpoena, and provides for recovering costs of that production.
- These are high-level comments – see the Nevada Appeal article or CLE presented by Judge Bonnie Bulla and Discovery Commissioner Wes Ayres for more info.

NRCP 41. Dismissal of Actions

NRCP 51. Instructions to the Jury; Objections; Preserving a Claim of Error

- NRCP 41 retains the Nevada-specific provisions in Rule 41(a)(1)(C), regarding reimbursement of filing fees. NRCP 41(e) is reorganized, but not substantively changed.
- NRCP 51, jury instructions, was reorganized but not intended to have significant substantive changes, except for Rule 51(f)(1), which permits preliminary jury instructions.

Rule 54. Judgments; Attorney Fees

- Rule 54(b) now corresponds to the federal rule and permits certification of claims, in addition to certification of parties:
 - “ . . . the court may direct entry of a final judgment as to one or more, but fewer than all, **claims or parties** only if the court expressly determines that there is no just reason for delay.” (emphasis added.)
- As the Advisory Committee Note explains, an appellate court is not forced to take an appeal under NRCP 54(b), and may review whether the certification was proper.

Rule 56. Summary Judgment

- Generally conforms to FRCP 56.
- The amended NRCP 56(c) removes the provision requiring each party to file a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue.
- But this requirement is still found in several local rules, which the parties are required to follow if it does not conflict with the NRCP, and parties must still properly support all assertions of fact.

Rule 60. Relief From a Judgment or Order

- NRCP 60(b)(6) is new and permits the court to grant relief under Rule 60(b) for “any other reason that justifies relief.”
- NRCP 60(c) retains the 6 month time frame.
- The former NRCP 60(c) and (d) were deleted as superfluous or consolidated into the new NRCP 60(d)(2).

NRCPP 62. Stay of Proceedings to Enforce a Judgment

- NRCPP 62(a) now provides for an automatic 30 day stay (28 days to seek post-judgment relief in NRCPP 50, 52, and 59).
- NRCPP 62(e) retains the provisions governing stays on appeal without bond by government defendants and does not change existing Nevada case law.

NRCPP 62.1. Indicative Ruling on a Motion for Relief That Is Barred by a Pending Appeal

- New rule modeled on FRCP 62.1 that works in conjunction with new NRAP 12A, which is modeled on FRAP 12.1.
- The rules provide the procedure to follow when a party seeks relief in the district court from an order or judgment that the district court has lost jurisdiction over due to a pending appeal of the order or judgment.
- Replace, but intended to be consistent with Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978), and its progeny.

Rule 68. Offers of Judgment

- Rule 68(a) incorporates the presumption that an offer of judgment resolves the entire action, costs and attorney fees included, unless otherwise specified.
- Rule 68(f)(2): “Multiple Offers. The penalties in this rule run from the date of service of the earliest rejected offer for which the offeree failed to obtain a more favorable judgment.”
 - This alters the result from Albion v. Horizon Communities, Inc., 122 Nev. 409, 132 P.3d 1022 (2006).
 - Multiple settlement offers remain valid for purposes of shifting attorney fees awards.
 - If offers of 20k, 40k, and 60k, and the offeree obtains a 15k judgment, the penalties run from the date of the 20k offer.
 - If offers of 100k, 50k, and 150k, and the offeree obtains a 75k judgment, the penalties run from the date of the 100k offer.

And Finally

Rule 85. Citation

- “These rules may be cited as NRCP.” The authorized method of citing the rules is “NRCP”; no need to use the Bluebook-approved citation (Nev. R. Civ. P.) in Nevada courts.