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RULES POLICIES

# Overview of the 2019 Amendments to the Nevada Rules of Civil Procedure

BY MARK GIBBONS, CHIEF JUSTICE OF THE NEVADA SUPREME COURT; KRISTINA PICKERING, NEVADA SUPREME COURT JUSTICE; AND TODD E. REESE, DEPUTY DISTRICT ATTORNEY FOR CARSON CITY

In February 2017, in ADKT 0522, the Nevada Supreme Court established a committee to review and propose amendments to the Nevada Rules of Civil Procedure (NRCP).<sup>1</sup> The appointment of the NRCP Committee was prompted in part by the length of time since the last review of the NRCP and the extensive substantive and stylistic updates to the Federal Rules of Civil Procedure (FRCP), on which the majority of the NRCP are based. The committee consisted of co-chairs Justice Mark Gibbons and Justice Kristina Pickering; Justice Elissa Cadish, Judge Bonnie Bulla, Judge Kimberly Wanker and Judge James Wilson; Discovery Commissioner Wes Ayres; Professor Thomas Main; and attorneys George Bochanis, Bob Eisenberg, Graham Galloway, Racheal Mastel, Steve Morris, Bill Peterson, Dan Polsenberg, Kevin Powers, Todd Reese, Don Springmeyer and Loren Young.

At its first meeting, the committee recognized that the NRCP is, in general, based upon the FRCP, and initially considered the federal revisions to the corresponding federal rules. Where a Nevada rule previously incorporated the text of corresponding federal rule, the committee recommended updating the Nevada rule by incorporating the modernized federal rule, with edits where necessary to adapt the rule for use in Nevada or to preserve Nevada distinctions. Where a Nevada rule departed from the corresponding federal rule, the committee reviewed the corresponding federal rule to determine whether any modern updates to the federal rule should be incorporated, and reviewed whether the language in the existing Nevada rule should be retained or modernized. The committee also reviewed the Nevada rules to identify and address deficiencies that have arisen over time and areas that need new rules.

The committee met once a month from March 2017 to August 2018.<sup>2</sup> It submitted recommendations to the Nevada Supreme Court, and the court held public hearings to receive input on the rules.<sup>3</sup> The amendments to the NRCP that the court ultimately adopted represent a comprehensive revision of NRCP.<sup>4</sup>

In general, the following rules incorporate the corresponding federal rule,

either without changes or by adapting the rule for Nevada use – all of which are stylistic: NRCP 1, 2, 3, 7, 9, 11, 13, 18, 20, 21, 22, 28, 29, 31, 42, 43, 44, 44.1, 46, 55, 57, 61, 63, 64, 65.1, 69(a), 70, 71, 78, 82 and 86(a). The following rules incorporate the corresponding federal rule, but these rules have substantive changes from the FRCP—many changes are consistent with the existing Nevada rules that contain substantive differences from the federal rules: NRCP 5, 6, 7.1, 8, 10, 12, 14, 15, 16, 17, 19, 24, 25, 27, 30, 32, 33, 34, 36, 38, 39, 40, 41, 45, 49, 50, 52, 54, 56, 59, 60, 62, 62.1, 65, 66, 77 and 80. The following rules are specific to Nevada and the amendments are stylistic updates, in general without substantive change: NRCP 16.2, 16.205, 16.215, 23.1, 23.2, 48, 67, 69(b), 72 through 76A, 79 and 86(b). And finally, the following rules are specific to Nevada and the amendments contain substantive changes from the former Nevada rule—some are new rules: NRCP 4, 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 16.1, 16.21, 16.22, 16.23, 16.3, 23, 26, 35, 37, 47, 51, 53, 58, 68, 71.1, 81, 83, 84, 85 and the Appendix of Forms. Where the rules were only stylistically updated, the committee did not intend to supplant any Nevada case law interpreting the rules.

## Major Updates and New Rules

The amendments to NRCP 6(a), governing time calculation, incorporate the federal method of counting time. The former NRCP omitted weekends and holidays when counting time periods fewer than 11 days. The corresponding federal rule counts every day. Consistent with the federal rule, the amendments also revised NRCP time periods to multiples of seven-day periods to reflect the new time counting method and to permit “day of the week” counting. For example,

- Five-day periods were changed to seven 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.

So that the Nevada Rules of Appellate Procedure (NRAP) did not conflict with the NRCP, amendments to NRAP 26(a) and to the NRAP time periods also incorporate the federal time counting method.

Related amendments changed the time periods for post-judgment motions in NRCP 50, 52 and 59 from 10 days to 28 days consistent with the federal rules. The amendments also lengthened the time period for automatic stays of judgment in NRCP 62(a) from 10 days to 30 days to permit the parties to make the post-judgment motions.

The committee and Nevada Supreme Court recognized that changing the method of counting time, without changing the time periods, may result in shortened time periods — especially for the time periods of 10 days and fewer. Practically speaking, however, it was impossible to change every rule, beyond the NRCP, NRAP and the Nevada Electronic Filing and Conversion Rules (NEFCR), to account for the change in counting time. The committee and court acknowledged this in two ways. First, the Advisory Committee Note to Rule 6 encourages judges to liberally grant

extensions of time when a shortened time period results in prejudice. Second, the Nevada Supreme Court issued an order on February 28, 2019, in ADKT 0522 ordering the district courts to update and conform the local rules to the amended NRCP, NRAP and NEFCR by June 30, 2019. Thus, where the issue exists, parties should be able to obtain relief, and the issue should be resolved in the coming months.

Next, the amendments overhauled the efilings rules. Former NRCP 6(e) provided an additional three days to respond after electronic service, while NRAP 26(c) did not. This created a trap for the unwary that the amendments eliminate. Also of concern, the former efilings process — submission, clerk review, then filing and service — eliminated the benefits of instantaneous efilings. To address these concerns, the Nevada Supreme Court amended the NEFCR and relevant provisions of the NRCP to eliminate the

additional three days to respond after efilings and incorporate the federal efilings approach — filing and service immediately upon submission of a document, with clerk review post-filing. These changes should streamline efilings and avoid needless delay.

The discovery rules, NRCP 16.1-37 and 45, were also

revised. Although Judge Bulla’s and Discovery Commissioner Ayres’ article more thoroughly addresses the changes to the discovery rules, this article would be remiss in not mentioning that the amendments revised initial disclosures in NRCP 16.1(a)(1)(A)(ii), and the scope of discovery in NRCP 26(b)(1), which now incorporates proportionality and corresponds to the federal rule. The committee and court also made significant amendments throughout NRCP 16.1 and to NRCP 16.3, 30, 31, 35 and 45. The amendments also modify NRCP 16 and 16.3 to require district court judges to conduct scheduling conferences. For family court, two new rules were added, 16.22 and 16.23, addressing custody evaluations and mental and physical examinations of minors.

The amendments extensively overhauled NRCP 4, which was divided into NRCP 4, 4.1, 4.2, 4.3 and 4.4. NRCP 4 corresponds with the former NRCP 4(a), (b), (c), (g) and (i). NRCP 4.1, waiving service, is new and incorporates FRCP 4(d). NRCP 4.2 retained much of the former NRCP 4, but the amendments revise the rules for service on minors and incapacitated persons, NRCP 4.2(b), secretary of state service on entities and associations, NRCP 4.2(c)(3), and government entities, NRCP 4.2(d). Rule 4.3 governs out-of-state and international service. NRCP 4.4(b) is new and allows a court to craft a service method where other service methods are impracticable. Service under NRCP 4.4(b) must be considered before publication under NRCP 4.4(c). NRCP 4.4(d) is also new and allows a court to order the plaintiff to provide additional notice of the action to the defendant in situations where the plaintiff communicates with the defendant via phone, email, or social media, but does not know the defendant’s actual address.

New rules NRCP 62.1 and NRAP 12A operate in tandem to address indicative rulings and restate *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), and its progeny. These rules incorporate FRCP 62.1 and Rule 12.1 of the Federal Rules of Appellate Procedure.

## Other Rule Updates and Amendments Worth Mentioning

Ultimately, detailing all of the rule changes would take much more space than is available here, but the following rule changes deserve mention:

The amendments conformed NRCP 8 and 12 to the corresponding federal rules with Nevada modifications; however, the committee took no position on whether the plausibility analysis developed by the U.S. Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) and *Bell Atlantic Co. v. Twombly*, 550 U.S. 544, 565-66 (2007) should be applied in Nevada. NRCP 10(d) retains Nevada’s fictitious-party practice, but NRCP 15(c), governing relation back of amendments, now incorporates parts of federal law. The amendments modify class actions in NRCP 23 to permit the aggregation of claims to

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satisfy the jurisdictional amount required for an action to proceed in district court. NRCP 24 now permits intervention by government officers or agencies, consistent with FRCP 24.

The updated NRCP 25 conforms to the corresponding federal rule, with several edits to mitigate the mandatory dismissal of a decedent's claims and give the decedent's attorneys, successors and representatives flexibility when dealing with a party's death. The mandatory dismissal provision is changed to 180 days instead of 90 days and applies to claims instead of the action, and once a motion to substitute is filed, substitution, dismissal or other appropriate action is within the district court's discretion.

NRCP 54(b) now applies to claims as well as parties, corresponding with FRCP 54(b). Thus, the district court can direct entry of a final judgment when one or more, but fewer than all, claims are resolved, in addition to directing entry of final judgment when the rights and liabilities of one or more, but fewer than all, parties are resolved. The amendments to NRCP 60(b) incorporate FRCP 60(b) (6) as new NRCP 60(b)(6), which enables courts to provide relief in the rare case when it is justified and NRCP 60(b)(1) through (5) do not apply. The amendments to NRCP 68 alter the result in *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022 (2006); multiple settlement offers now remain valid for purposes of shifting attorney fees awards.

Finally, the amendments abrogated most of the forms. There are many available options for self-help forms, which illustrate the drafting of pleadings and motions more effectively than examples attached to the NRCP.

Although this is a very brief synopsis of the 2019 Amendments to the NRCP,

we hope that it assists in understanding and applying the amendments. Further assistance in interpreting the rules can be found in the Advisory Committee

Notes to the individual NRCP; the corresponding federal rule, if the federal rule is the basis for the Nevada rule; prior interpretation of the former NRCP, if the rule incorporates only stylistic changes; and where mentioned in the Advisory Committee Notes, from the Arizona Rules of Civil Procedure. **NL**

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thereto, and redlines against the former NRCP and the FRCP can be found in the ADKT 0522 docket: <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=42567>,

or at: [https://nvcourts.gov/AOC/Committees\\_and\\_Commissions/NRCP/Adopted\\_Rules\\_and\\_Redlines/](https://nvcourts.gov/AOC/Committees_and_Commissions/NRCP/Adopted_Rules_and_Redlines/).



**CHIEF JUSTICE MARK GIBBONS** was elected to the Nevada Supreme Court in 2002 and has served as Chief Justice in 2008, 2014 and 2019. He served as a district court judge in the Eighth Judicial District from 1996 to 2003, serving as the presiding judge of the civil division in 1998 and being elected as chief judge in 2001. He received his Juris Doctor at Loyola University School of Law in Los Angeles and had a long career as a private attorney specializing in real estate related litigation prior to serving in the judiciary.



**JUSTICE KRISTINA PICKERING** grew up in northern Nevada. After graduating from Yale with honors, she attended law school at Georgetown University and the University of California, Davis, King Hall School of Law. Justice Pickering began her career as law clerk for U.S. District Judge Bruce R. Thompson in Reno. In private practice, she handled complex civil litigation at both the trial and appellate level. She was elected to the Nevada Supreme Court in 2008 and 2014.



**TODD E. REESE** serves as a deputy district attorney for Carson City, and previously served as a staff attorney for the Nevada Supreme Court. He graduated from Southwestern Law School in Los Angeles, and clerked for the Honorable Robert E. Rose and for the Honorable Michael A. Cherry. He previously practiced at the Dyer Lawrence Law Firm in Carson City and at Mitchell Silberberg & Knupp in Los Angeles.

1. Order Establishing Committee, ADKT 0522 (February 10, 2017), found at <http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=42567&csIID=42567&deLinkId=587386&sireDocumentNumber=17-04815>
2. The committee's agendas may be found at <https://nvcourts.gov/AOC/Templates/Documents.aspx?folderID=23813>. The Committee's minutes may be found at <https://nvcourts.gov/AOC/Templates/Documents.aspx?folderID=23812>. The Committee's working drafts may be found at <https://nvcourts.gov/AOC/Templates/Documents.aspx?folderID=23814>.
3. See Petition, ADKT 0522 (August 17, 2018), found at <http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=42567&csIID=42567&deLinkId=665358&sireDocumentNumber=18-31981>; Order Scheduling Public Hearing and Requesting Public Comment, ADKT 0522 (August 17, 2018), found at <http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=42567&csIID=42567&deLinkId=665377&sireDocumentNumber=18-32000>.
4. See Order, ADKT 0522 (December 31, 2018), found at <http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=42567&csIID=42567&deLinkId=665377&sireDocumentNumber=18-32000>. The order, the adopted rules and errata