

YOUNG LAWYERS

BY SCOTT LACHMAN, ESQ.



THE RESERVED RULE: Rule 79 on Electronic Signatures

If you didn't know already, you are now aware after reading the first 31 pages of the June 2019 issue of *Nevada Lawyer* that the Nevada Rules of Civil Procedure were recently amended. The advisory committee reserved a few rules for later — in particular Rule 79. Now I admit, I have no clue why the committee reserved this rule or several others, but what I do know is this: electronic signatures should be treated as original signatures throughout Nevada state district courts on all documents with some minor exceptions. Rule 79 will save time and money, facilitate the administration of justice and reduce air pollution by eliminating the need to run around town gathering signatures.

EDCR 8.07 and WDCR 10(5)(b)

The Second and Eighth Judicial District Courts came close to making Rule 79 a reality. Both Eighth District Court Rules (EDCR) 8.07 and Washoe District Court Rules (WDCR) 10(5)(b) allow for electronic signatures when documents are filed in the respective county's e-filing system. However, original wet-ink signatures are required if documents include multiple signatories (e.g., stipulations, joint case conference reports, joint pretrial memorandum, etc.).

The one exception is WDCR 10(5)(b)(3), which allows electronic signatures on filed documents in criminal cases requiring the signature of all parties. Rule 11(c) of the Nevada Electronic Filing and Conversion Rules echoes the local rules when filing documents with multiple signatures.

Let's say you need an extra two weeks to file an opposition to a summary judgment in a case involving five parties. This necessitates sending a runner to four law offices — hopefully all counsel reside in the same city — and waiting several days to finally collect four different signatures before filing the stipulation. Now let's say you are submitting an order in Clark County, which is required to be submitted within 10 days after being notified of the court under EDCR 7.21; then your 10 days are really seven days, if you account for multiple trips to opposing counsel's office to obtain their signatures as to form and content. While EDCR 8.07, WDCR 10(5)(b) and NEFCR Rule 11(c) keep our runners busy, these rules increase the cost of litigation and slow down resolution of cases.

LR IC 5-1

The advisory committee should mirror Rule 79 after the District Court for the District of Nevada's LR IC 5-1. The rule defines an electronic signature either in the form of “/s/ [name]” or a facsimile of a handwritten signature. I recommend chopping off the second part of the definition, because fax machines will eventually — hopefully sooner rather than later — be phased out of everyday legal practice. The rest of LR IC 5-1 is spot on. The rule goes on to state that “[a] filer's electronic signature

in the signature block of an electronic document constitutes a signature for all purposes under applicable rules, statutes, or court orders.” Unlike EDCR 8.07 and WDCR 10(5)(b), this rule allows electronic signatures for *all documents* as long as the filer maintains a document (e.g., an email) consenting to the use of another party's consent. LR IC 5-1 is as simple as sending an email asking for permission to use opposing counsel's e-signature and opposing counsel responding “yes.” This is an easy process that avoids the need to marshal signatures.

NEVADA RULES OF PROFESSIONAL CONDUCT

Rule 3.2 of the Nevada Rules of Professional Conduct states that lawyers shall not knowingly make a false statement to the court. A false statement to the court would likely encompass a lawyer using another lawyer's signature on a document without consent. Violating Rule 3.2 by e-forging another lawyer's signature would put you in hot water with the court and could land you in the Bar Counsel Report following this article. It would be surprising for a lawyer to e-forge another attorney's signature given the duty of candor to the court and general duties to opposing counsel.

NRS 719 AND NRS 439.592

The Nevada Legislature adopted the Uniform Electronic Transaction Act, giving credence to electronic signatures in business, commercial and governmental affairs in Nevada much like the Electronic Signatures in Global and National Commerce did with respect to e-signatures in interstate

and foreign commerce. The legislature also passed rules regarding electronic signatures relating to health information. Multi-million dollar contracts, important government records and health records can be approved by e-signature, but as things stand today, my stipulation for a two-week extension or even my order where opposing counsel is signing off as to form and content requires a wet-ink signature. The only exception is a stipulation or order in a criminal case in Washoe County.

EXCEPTIONS

Every good rule has some exceptions. For instance, NRS 719 makes exceptions for wills and trusts, and NRS 439.592 makes an often-used exception: “except as otherwise prohibited by federal law.” Rule 79 is no different. A possible exception for Rule 79 is found in Nevada Electronic Filing and Conversion Rule (NEFCR) 11(b) for documents requiring the signature of a notary public: “Documents required by law to include the signature of a notary public may be submitted electronically, provided that the notary public has signed a printed form of the document. The printed document bearing the original signatures must be scanned and submitted for filing in a format that accurately reproduces the original signatures and contents of the document.” A similarly worded exception can be located in EDCR 8.07. Other exceptions to Rule 79 could include cases involving pro se parties or family law issues, or stipulations dismissing a party from a case with prejudice.

MARKED WITH AN /S/

If you are old-school and like to see your John Hancock at the end of your well-written motion, then Rule 79 is not for you. If you are a runner who enjoys traveling great distances to collect signatures (and making friends with receptionists), then Rule 79 is definitely not for you. But for the rest of us, Rule 79 makes doing law in Nevada simpler, cheaper, and as a bonus, will help our environment. I encourage the advisory committee and the Nevada Supreme Court to remove “reserved” from Rule 79 and make e-signatures universal in Nevada state courts, with an exception or two. **NL**

SCOTT LACHMAN is a consumer finance and appellate attorney at Akerman LLP. He is chair of the Young Lawyers Section and prefers to use his e-signature on documents. He previously clerked for then-Chief Justice Michael A. Cherry of the Nevada Supreme Court. He has been recognized by the American Bar Association as a “Top 40 Young Lawyer” and by the State Bar of Nevada as the “Young Lawyer of the Year.”

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The State Bar of Nevada Board of Governors and the Access to Justice Commission extend a special thanks to the following attorneys who generously accepted cases through the Legal Aid Center of Southern Nevada, Washoe Legal Services, Nevada Legal Services and Volunteer Attorneys for Rural Nevadans, and those who donated their time to work at events like Ask-A-Lawyer and Lawyer in the Library.

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