

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF CREATING A  
COMMITTEE TO UPDATE AND  
REVISE THE NEVADA RULES OF  
CIVIL PROCEDURE.

ADKT 522  
**FILED**

JAN 25 2019

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

*ORDER FURTHER AMENDING CERTAIN NEVADA RULES OF CIVIL  
PROCEDURE*

WHEREAS, on December 31, 2018, this court entered an order amending the Nevada Rules of Civil Procedure, the Nevada Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules.

WHEREAS, Rule 4.1 of the amended Nevada Rules of Civil Procedure, its associated advisory committee note, and Form 1 require further amendment; accordingly,

IT IS HEREBY ORDERED that Rule 4.1 of the Nevada Rules of Civil Procedure and its associated comment are amended to read as set forth in Exhibit A.

IT IS HEREBY FURTHER ORDERED that Form 1 in the Appendix to the Nevada Rules of Civil Procedure is amended to read as set forth in Exhibit B.

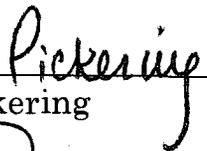
IT IS FURTHER ORDERED that pursuant to NRS 2.120(2), these amendments shall be effective 60 days from the date of this order.<sup>1</sup> The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication

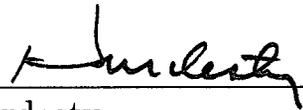
<sup>1</sup> The changes this order makes to Rule 4.1, its comment, and to Form 1 are shown in the redlined documents attached as Exhibit C.

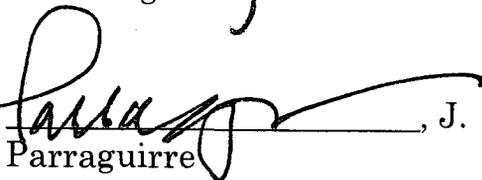
of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments. We note that effective date for all other rules and forms amended by this court's December 31, 2018, order remains March 1, 2019.

Dated this 25<sup>th</sup> day of January 2019.

  
\_\_\_\_\_, C.J.  
Gibbons

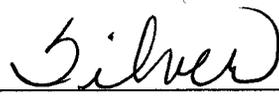
  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Silver

cc: Richard Pocker, President, State Bar of Nevada  
Kimberly Farmer, Executive Director, State Bar of Nevada  
All District Court Judges  
All Court of Appeal Judges  
Clark County Bar Association  
Washoe County Bar Association  
First Judicial District Bar Association  
Administrative Office of the Courts

## EXHIBIT A

### Rule 4.1. Waiving Service

(a) **Requesting a Waiver.** An individual, entity, or association that is subject to service under Rule 4.2(a), 4.2(c)(1) or (2), 4.3(a)(1) or (3), or 4.3(b)(1) or (3) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(1) be in writing and be addressed:

(A) to the individual defendant; or

(B) for an entity or association, to a person designated by Rule 4.2(c)(1);

(2) name the court where the complaint was filed;

(3) be accompanied by a copy of the complaint, two copies of the waiver form, Form 2 in the Appendix of Forms or its substantial equivalent, and a prepaid means for returning the form;

(4) inform the defendant, using the waiver form, of the consequences of waiving and not waiving service;

(5) state the date when the request is sent;

(6) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside the United States—to return the waiver; and

(7) be sent by first-class mail or other reliable means.

(b) **Failure to Waive.** If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(1) the expenses later incurred in making service; and  
(2) the reasonable expenses, including attorney fees, of any motion required to collect those service expenses.

(c) **Time to Answer After a Waiver.** A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside the United States.

(d) **Results of Filing a Waiver.** When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(e) **Jurisdiction and Venue Not Waived.** Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

#### **Advisory Committee Note—2019 Amendment**

Rule 4.1 is new and mirrors FRCP 4(d). The waiver provisions apply to individuals, entities, and associations, wherever served, but do not apply to minors, incapacitated persons, or government defendants. The Appendix of Forms at the end of these rules includes Form 1, a Request to Waive Service of Summons; and Form 2, Waiver of Service of Summons. Use of the forms is not mandatory, but if the forms are not used the text of the request or waiver sent must be substantially similar to the text in Forms 1 and 2 to be valid.

## **EXHIBIT B**

### **Form 1. Rule 4.1 Request to Waive Service of Summons**

(Attorney or Plaintiff Information)

(Caption)

#### **Notice of a Lawsuit and Request to Waive Service of Summons under Rule 4.1 of the Nevada Rules of Civil Procedure**

To (name the defendant or—if the defendant is a corporation, partnership, association, or other entity—name an officer or agent authorized to receive service):

#### **Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is enclosed with this letter.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons and complaint by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (give at least 30 days or at least 60 days if the defendant is outside the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

### What happens next?

If you return the signed waiver, I will file it with the court. The lawsuit will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you, and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

### Your Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4.1(a) of the Nevada Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. You have a duty to cooperate in saving unnecessary expenses even if you believe that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 of the Nevada Rules of Civil Procedure on the plaintiff and file a copy with the court. By signing and

returning the waiver form, you are allowed more time to respond to the complaint than if a summons had been served.

I certify that this request is being sent to you on the date below.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of the attorney or self-represented party)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Email address)

\_\_\_\_\_  
(Telephone number)

## EXHIBIT C

### Rule 4.1. Waiving Service

(a) **Requesting a Waiver.** An individual, entity, or association that is subject to service under Rule 4.2(a), 4.2(c)(1) or (2), 4.3(a)(1) or (3), or 4.3(b)(1) or (3) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

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(5) state the date when the request is sent;

(6) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside the United States—to return the waiver; and

(7) be sent by first-class mail or other reliable means.

—(b) **Reserved.**

(b) Failure to Waive. If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(1) the expenses later incurred in making service; and

(2) the reasonable expenses, including attorney fees, of any motion required to collect those service expenses.

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#### **Advisory Committee Note—2019 Amendment**

Rule 4.1 is new and mirrors FRCP 4(d), ~~minus FRCP 4(d)(2)'s penalty provision.~~ The waiver provisions apply to individuals, entities, and associations, wherever served, but do not apply to minors, incapacitated persons, or government defendants. The Appendix of Forms at the end of these rules includes Form 1, a Request to Waive Service of Summons; and Form 2, Waiver of Service of Summons. Use of the forms is not mandatory, but if the forms are not used the text of the request or waiver sent must be substantially similar to the text in Forms 1 and 2 to be valid.

## **Form 1. Rule 4.1 Request to Waive Service of Summons**

(Attorney or Plaintiff Information)

(Caption)

### **Notice of a Lawsuit and Request to Waive Service of Summons** **under Rule 4.1 of the Nevada Rules of Civil Procedure**

To (name the defendant or—if the defendant is a corporation, partnership, association, or other entity—name an officer or agent authorized to receive service):

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 of the Nevada Rules of Civil Procedure on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond to the complaint than if a summons had been served.

I certify that this request is being sent to you on the date below.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of the attorney or self-represented party)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Email address)

\_\_\_\_\_  
(Telephone number)