

The Rules of the Game: Comprehensive Amendments to the Nevada Rules of Civil Procedure

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If you haven't done so already, it is time to revise the standard language in your briefs, modify your calendaring system, and re-evaluate your discovery and settlement strategies. Since March 1, 2019, the effective date of the Nevada Supreme Court's amendments to the Nevada Rules of Civil Procedure (NRCP), civil practitioners in Nevada have been playing by a different set of rules — literally. The exhaustive changes largely mimic the Federal Rules of Civil Procedure (FRCP), while retaining and adding Nevada-specific provisions.¹ The court made at least minor changes to most rules, while completely overhauling others.

The following is a summary of the most notable amendments to the NRCP, but is by no means an exhaustive list. *Every practitioner should carefully review the amended rules, as the comprehensive amendments impact every civil case in Nevada's trial courts.*

SERVICE

A Carrot and a Stick

Though personal service is still a means of effectuating service of process, the amendments have added the federal

waiver of service rule. Rule 4.1 now permits a plaintiff to request, in writing, that a defendant waive formal service of process. In exchange, the defendant will have 60 days, calculated from the date the waiver request was sent, to respond to the complaint. Should the defendant refuse to waive service without good cause, the district court *must* require the defendant to pay the reasonable costs and fees the plaintiff incurred effecting service and moving to collect the same.



A Practical Approach to Service

Noting that service by publication should only be used as a last resort, Rule 4.4 permits the district court (upon adequate motion), to direct service by alternative methods. The approved alternative methods include "certified mail, telephone, voice message, email, social media, or any other method of communication" where the same comport with due process. NRCP 4.4(d)(1).

DISCOVERY

Proportionality

Rule 26 wholly adopts the federal standard, which allows discovery that is proportional to the needs of the case. This means the scope and extent of discovery must be proportional to the following characteristics of the case: the importance of the issues; the amount in controversy; the parties' resources and relative access to relevant information; the importance of the information sought; and the burden or expense of the discovery, among others.



Depositions

Rule 30 allows each party up to 10 depositions (not counting custodian of record depositions) without leave of the court, and more with leave. It also limits the deposing party to seven hours of testimony *on the record*. The notes explain that Rule 30 embraces the *Coyote Springs Inv., LLC v. Eighth Judicial Dist.* Court decision (holding the attorney-client privilege does not attach to conversations during a convenience break in a deposition unless the break is for the purpose of preserving a privilege, enforcing an ordered limitation or seeking a protective order).

A party issuing a subpoena duces tecum requesting documents must provide all parties with seven days notice of its *intention* to serve the subpoena. NRCP 45(a)(4). The advanced notice is designed

to give parties an opportunity to object and obtain a protective order *before the subpoena is served*. A timely objection and motion for protective order based on privilege or confidentiality stays

service of the subpoena until a court rules on the motion.

Written Discovery

Rule 34 contains a special carve-out for producing large quantities of documents in response to a request for production. If correlating responsive documents or

electronically stored information (ESI) to a specific request is unreasonably burdensome, the responding party can either specify the records in enough detail to allow the requesting party to locate them by category, or organize and label the records to correspond to the requests.

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Boilerplate objections are no longer allowed, as is made clear by the amendments to Rule 34. Rule 34(b)(2)(B) requires that when objecting to a request, one must “state the ground for objecting to the request, *with specificity*, including the reasons.”²² By creating meaningful disincentives to the use of boilerplate objections, courts are using the Rule 34 amendments to strike at the core of the culture of discovery paranoia that has made boilerplate objections so pervasive.²³

Recorded Examinations

Rule 35 allows the court to order an audio recording of physical and mental examinations for good cause. The person being examined may also bring an observer (as long as the observer is not the attorney or anyone employed by the attorney representing him or her) to the examination.

About Those Numbers

There is no limit to the number of requests for production of documents a party may make, so long as the requests are proportional to the needs of the case. NRCP 34; NRCP 26. Rule 36(a)(7) now limits a party to 40 requests for admission. Parties may still propound 40 interrogatories. NRCP 33.

EVERYONE'S FAVORITE – RULE 16.1

There are substantial changes to Rule 16.1. Rule 16.1(b), which permits parties to attend an early case conference (ECC) by audio or audiovisual technology, is sure to be met by cheers. That's right, *you are no longer required to conduct an ECC in person!* But don't cut that phone call or Skype session too short — in addition to the former topics, parties are now required to discuss the need for confidentiality or protective orders, the preservation and storage of ESI, and disclose the name of medical providers in injury cases (and must provide signed authorizations to obtain records from those providers).

If a party intends to use ESI to support its claims, defenses or for impeachment purposes, it must disclose the same as part of its initial disclosures. NRCP 16.1(a)(1)(A)(i).

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Under Rule 16.1(a)(2), drafts and correspondence between an expert and counsel are *not* subject to disclosure; the expert report must contain “the facts or data considered by the witness in forming opinions.”

THE WHOOSHING SOUND OF DEADLINES ...⁴

Rule 6 may cause a bit of confusion at first, but will inevitably simplify practice for attorneys and staff alike, incorporating the FRCP’s method of computing time by periods in multiples of seven days (in other words — weeks). FRCP 6. Gone are the days of figuring out whether to count weekends or holidays or whether to add three days for electronic service. All deadlines are now calculated in calendar days, no matter the length of time allowed. NRCP 6(a)(1). But for those of us who regularly rely on those extra three days permitted for electronic service (and really, who doesn’t

use electronic service?), fear not — most time periods have been extended to account for this change. The chart below generally applies to all time periods:

Former amount of time	New amount of time allowed
5 days or fewer	7 days
6-15 days	14 days
16-20 days	21 days

Where former Rule 14 gave 10 days to file a third-party complaint without otherwise obtaining leave from the court, the amended rule gives 14 days. Responding to a complaint? NRCP 4.2(c)(3) gives you 21 days instead of the 20 days under the old rule. And, if you are responding to an amended complaint, you now have 14 days rather than the 10 days once allowed.

OFFERS OF JUDGMENT

The new Rule 68 has the goal of promoting the liberal use of offers of judgment and, ultimately, promoting settlement. Parties are no longer at a disadvantage for serving multiple offers of judgment, as Rule 68 calculates the period from which one can recover attorney’s fees from the date of the *earliest offer of judgment that is better than the result obtained at trial*. In other words, if a party served an offer of judgment one year before trial, and then another offer one month before trial, it can still recover fees from the date of the first offer if it beat that offer at trial. Rule 68 abrogates *Albios v. Horizon Communities* regarding the treatment of multiple offers.

Further, and in accordance with the time computation changes discussed above, offers of judgment must now be served more than 21 days before trial. The receiving party now has 14 days after service within which to accept the offer.

HONORABLE MENTION

Jurisdictional Statement: Rule 8(a)(1) now requires that complaints contain an FRCP 8(a)(1)-style “short and plain statement of the grounds for the court’s jurisdiction.”

Motion for New Trial: The deadline to file a motion for a new trial is now 28 days after notice of entry of the judgment. NRCP 50(b).

Doe and Roe Pleadings: Rule 10(d) maintains the Nevada practice of suing fictitiously named defendants and later amending the complaint once the defendant’s true identity is known.

Subpoenas: Once a non-party produces documents responsive to a subpoena duces tecum, Rule 45(c)(2)(A)(11) requires prompt disclosure of the documents *to all parties*.

While we believe this summary hits the highlights, it barely scratches the surface of the significant changes to the Nevada Rules of Civil Procedure. If you take anything away from this article, let it be our suggestion that you closely review the new amendments. And please, let’s all play by the rules. **NL**

1. Advisory Committee Note — 2019 Amendments Preface.
2. Emphasis added.
3. *The Sedona Conference Federal Rule of Civil Procedure 34(b)(2) Primer: Practice Pointers for Responding to Discovery Requests*, The Sedona Conference Journal (2018).
4. “I love deadlines. I love the whooshing noise they make as they go by.” Douglas Adams, *The Salmon of Doubt*.

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