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NEVADA RULES OF CIVIL PROCEDURE

ADOPTED
BY THE
SUPREME COURT OF NEVADA

Effective January 1, 1953
and Including
Rules Current Through December 1, 2008

PREFACE

The 1951 legislature authorized the Nevada Supreme Court to Prescribe rules to regulate civil practice and procedure. Existing statutes were deemed rules of court, to remain in effect Until superseded. 1951 L., p. 44. [See NRS 2.120.]

The court appointed an Advisory Committee, consisting of the undersigned, to submit a draft of rules. A tentative draft, based primarily upon the federal rules, was prepared, and through the courtesy of West Publishing Company, was published and distributed to the Bar prior to the 1952 State Bar Meeting held at Las Vegas, March 27-29, 1952. At that meeting the rules were discussed and explained by Mr. Thompson of the Committee, and in federal application by the Honorable Leon R. Yankwich, Chief Judge of the United States District Court for the Southern District of California.

By order of April 1, 1952, the court invited submission to the committee of proposed modifications, such modifications to be submitted on or before June 4, 1952. Comments and proposals were submitted and discussed with their sponsors, and, in many instances, adopted. The Committee's final recommendation was thereafter submitted to the court, discussed with the court in meeting, and adopted by the court.

ADVISORY COMMITTEE TO THE SUPREME COURT OF
NEVADA, ON RULES OF CIVIL PROCEDURE

John S. Belford
Richard W. Blakey
William J. Forman
Leslie B. Gray
Harold V. Harris
Royal A. Stewart
Lester D. Summerfield
Bruce R. Thompson
Prince A. Hawkins, Chairman

ENABLING ACT

[Chapter 40, Statutes of Nevada 1951; now NRS 2.120]

AN ACT relating to rules of civil practice and procedure, and authorizing the supreme court to prescribe such rules for all courts.

(Approved February 28, 1951)

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. The supreme court of Nevada, by rules adopted and published from time to time, shall regulate original and appellate civil practice and procedure, including, without limitation, pleadings, motions, writs, notices and forms of process, in judicial proceedings in all courts of the state, for the purpose of simplifying the same and of promoting the speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge or modify any substantive right and shall not be inconsistent with the constitution of the State of Nevada.

Section 2. All statutes regulating original or appellate civil practice or procedure, including, without limitation, pleadings, motions, writs, notices and forms of process, in effect or taking effect at the time this act takes effect, shall be deemed to be rules of court, and shall remain in effect, until modified or superseded by rules adopted and published pursuant to this act. Such rules shall take effect on such date as the supreme court shall specify, but not in any event until sixty days after adoption and publication.

ORDER ADOPTING RULES OF CIVIL PROCEDURE

IT IS HEREBY ORDERED, pursuant to the foregoing enabling act and to the matters recited in the foregoing preface, that the annexed rules be and the same hereby are adopted for the regulation of original and appellate civil practice and procedure in judicial proceedings in the district courts of the State of Nevada, and the forms annexed thereto approved; that the same shall be effective on January 1, 1953; that publication thereof be made by the mailing of a printed copy by the clerk of this court to each member of the State Bar of Nevada according to the clerk's official list of membership of such Bar (which will include all district judges and district attorneys), and that the certificate of the clerk of this court as to such mailing, not less than sixty days prior to January 1, 1953, shall be conclusive evidence of the adoption and publication of said rules in accordance with the provisions of said enabling act.

IT IS FURTHER ORDERED that copies be provided by the clerk of this court to each county clerk in the state and to the clerk of the United States District Court for the District of Nevada, and to each member of the 1951 and 1953 legislatures and to the State Library and each county law library.

Dated: August 29, 1952.

BY THE COURT

MILTON B. BADT
Chief Justice

EDGAR EATHER
CHARLES M. MERRILL
Associate Justices

FOREWORD

The vesting of the rule-making power in the Supreme Court by the Forty-Fifth Legislature (1951) was well-advised and forward-looking legislation. It was supported by the entire Judiciary Committee of the assembly comprising Wm. G. Coulthard, J. F. McElroy, J. K. Houssels, Farrell L. Seevers, Harold Anderson, A. Primeaux, C. C. Boak, Frank E. Walters and Edward D. Carville, and by the entire Judiciary Committee of the senate comprising Fred C. Horlacher, John H. Murray, Forest B. Lovelock, John E. Robbins and B.

Mahlon Brown. It provided the authority under which, by adoption of simplified rules of practice and procedure, the Supreme Court could greatly improve the administration of justice in the state. The adoption of the rules of civil procedure for the district courts, including appellate practice and procedure for review by this court, constitutes perhaps the state's most important advancement of the administration of justice in civil cases. These rules were drafted by an Advisory Committee appointed by the court, after mature deliberation. Despite our roster of able and public spirited attorneys throughout the entire state, it became necessary to appoint a committee of attorneys all residing in the same city so as to permit weekly meetings of that committee and interim meetings of various subcommittees for initial consideration and reports of various parts of the rules.

For its diligent and untiring work in the preparation and presentation of both the tentative draft and the final draft of the rules of civil procedure, we accord to that committee the appreciation of this court, of the district courts and of the bar of the State of Nevada. That committee comprised Prince A. Hawkins, Chairman, John S. Belford, Richard W. Blakey, William J. Forman, Leslie B. Gray, Harold V. Harris, Royal A. Stewart, Lester D. Summerfield and Bruce R. Thompson, all of Reno.

To those attorneys and district judges throughout the state who, by personal conferences, telephone calls and correspondence with members of the committee and with members of the court, made valuable suggestions, many of which have been written into the final draft, the court likewise expresses its thanks and appreciation.

On behalf of the bench and bar of the state, the court also expresses its thanks to West Publishing Company for printing as a public service and without charge both the tentative draft and the final draft of the rules. Without such assistance, our lack of funds for the purpose would have made the task materially more difficult.

The general approval of the rules by the bar is gratifying. It is not thought that they are perfect. Amendment will not be difficult when necessity for such amendment appears clear.

August 29, 1952.

MILTON B. BADT
Chief Justice

EDGAR EATHER
CHARLES M. MERRILL
Associate Justices

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF A STUDY COMMITTEE TO REVIEW THE NEVADA RULES OF CIVIL PROCEDURE.

ADKT 276

ORDER AMENDING THE NEVADA RULES OF CIVIL PROCEDURE

WHEREAS, in July 1999, this court appointed an Advisory Committee to study the Nevada Rules of Civil Procedure and to propose amendments or revision; and

WHEREAS, on March 19, 2003, the Committee submitted to this court a report of its activities and recommended specific amendments to the Nevada Rules of Civil Procedure; and

WHEREAS, this court solicited and considered public comment on the recommended amendments; and

WHEREAS, this court has concluded that amendment of the Nevada Rules of Civil Procedure is warranted, accordingly,

IT IS HEREBY ORDERED:

1. That the Nevada Rules of Civil Procedure shall be amended and shall read as set forth in Exhibit A.

2. That the Introductory Statement and Forms 3, 19 and 31 of Appendix of Forms to the Nevada Rules of Civil Procedure shall be amended and shall read as set forth in Exhibit B.

3. That a new Form 33 for Consent to Service by Electronic Means Under Rule 5 shall be added to the Appendix of Forms and shall read as set forth in Exhibit B.

4. That these rule amendments shall become effective January 1, 2005, and shall govern all proceedings brought after that date and all further proceedings in actions pending on that date, unless in the opinion of the district court their application in a particular pending action would not be feasible or would work an injustice, in which event the former procedure applies.

5. That 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 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.

Dated this 26th day of July, 2004.

BY THE COURT

MIRIAM SHEARING, *Chief Justice*

DEBORAH A. AGOSTI
Associate Justice

ROBERT E. ROSE
Associate Justice

NANCY A. BECKER
Associate Justice

A. WILLIAM MAUPIN
Associate Justice

MARK GIBBONS
Associate Justice

MICHAEL L. DOUGLAS
Associate Justice

RULES OF CIVIL PROCEDURE FOR THE NEVADA DISTRICT COURTS

I. SCOPE OF RULES—ONE FORM OF ACTION

RULE 1. SCOPE OF RULES

These rules govern the procedure in the district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendment adds the words "and administered" to the second sentence consistent with the 1993 amendment to the federal rule. As explained in the advisory committee notes to the federal rule, the purpose of this revision is to emphasize the court's duty to ensure that litigation is resolved without undue cost or delay.

RULE 2. ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

RULE 3. COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.

[As amended; effective October 1, 1959.]

RULE 4. PROCESS

(a) Summons: Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff or to the plaintiff's attorney, who shall be responsible for service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

[As amended; effective February 11, 1986.]

(b) Same: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and county and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which the defendant must appear and defend, and shall notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. When service of the summons is made by publication, the summons shall, in addition to any special statutory requirements, also contain a brief statement of the object of the action substantially as follows: "This action is brought to recover a judgment dissolving the contract of marriage (or bonds of matrimony) existing between you and the plaintiff," or "foreclosing the mortgage of plaintiff upon the land (or other property) described in complaint," or as the case may be.

[As amended; effective January 1, 2005.]

(c) By Whom Served. Process shall be served by the sheriff of the county where the defendant is found, or by a deputy, or by any person who is not a party and who is over 18 years of age, except that a subpoena may be served as provided in Rule 45; where the service of process is made outside of the United States, after an order of publication, it may be served either by any person who is not a party and who is over 18 years of age or by any resident of the country, territory, colony or province, who is not a party and who is over 18 years of age.

[As amended; effective January 1, 2005.]

(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) Service Upon Nevada Corporation. If the suit is against a corporation formed under the laws of this state; to the president or other head of the corporation, secretary, cashier, managing agent, or resident agent thereof; provided, when for any reason service cannot be had in the manner hereinabove provided, then service may be made upon such corporation by delivering to the secretary of state, or the deputy secretary of state, a copy of said summons attached to a copy of the complaint, and by posting a copy of said process in the office of the clerk of the court in which such action is brought or pending; defendant shall have 20 days after such service and posting in which to appear and answer; provided, however, that before such service shall be authorized, plaintiff shall make or cause to be made and filed in such cause an affidavit setting forth the facts showing that personal service on or notice to the officers, managing agent or resident agent of said corporation cannot be had within the state; and provided further, that if it shall appear from such affidavit that there is a last known address of a known officer of said corporation outside the state, plaintiff shall, in addition to and after such service upon the secretary of state and posting, mail or cause to be mailed to such known officer at such address by registered mail, a copy of the summons and a copy of the complaint, and in all such cases defendant shall have 20 days from the date of such mailing within which to answer or plead.

[As amended; effective January 1, 2005.]

(2) Service Upon Foreign Corporation or Nonresident Entity. If the suit is against a foreign corporation, or a nonresident partnership, joint-stock company or association, doing business and having a managing or business agent, cashier, or secretary within this state; to such agent, cashier, or secretary or to an agent designated for service of process as required by law; or in the event no such agent is designated, to the secretary of state or the deputy secretary of state, as provided by law.

[As amended; effective January 1, 2005.]

(3) Service Upon Minors. If against a minor, under the age of 14 years, residing within this state, to such minor, personally, and also to the minor's father, mother, or guardian; or if there be none within this state; then to any person having the care or control of such minor, or with whom the minor resides, or in whose service the minor is employed.

[As amended; effective January 1, 2005.]

(4) Service Upon Incompetent Persons. If against a person residing within this state who has been judicially declared to be of unsound mind, or incapable of conducting his or her own affairs, and for whom a guardian has been appointed, to such person and also to his or her guardian.

[As amended; effective January 1, 2005.]

(5) Service Upon Local Governments. If against a county, city, or town, to the chairperson of the board of commissioners, president of the council or trustees, mayor of the city, or other head of the legislative department thereof.

[As amended; effective January 1, 2005.]

(6) Service Upon Individuals. In all other cases to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

[As amended; effective January 1, 2005.]

(e) Same: Other Service.

(1) Service by Publication.

(i) General. In addition to methods of personal service, when the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that the defendant is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of summons.

Provided, when said affidavit is based on the fact that the party on whom service is to be made resides out of the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in such affidavit that at a previous time such person resided out of this state in a certain place (naming the place and stating the latest date known to affiant when such party so resided there); that such place is the last place in which such party resided to the knowledge of affiant; that such party no longer resides at such place; that affiant does not know the present place of residence of such party or where such party can be found; and that affiant does not know and has never been informed and has no reason to believe that such party now resides in this state; and, in such case, it shall be presumed that such party still resides and remains out of the state, and such affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This rule shall apply to all manner of civil actions, including those for divorce.

(ii) Property. In any action which relates to, or the subject of which is, real or personal property in this state in which such person defendant or corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part of excluding such person or corporation from any interest therein, and the said defendant resides out of the state or has departed from the state, or cannot after due diligence be found within the state, or by concealment seeks to avoid the service of summons, the judge or justice may make an order that the service be made by the publication of summons; said service by publication shall be made in the same manner as now provided in all cases of service by publication.

(iii) Publication. The order shall direct the publication to be made in a newspaper, published in the State of Nevada, to be designated by the court or judge thereof, for a period of 4 weeks, and at least once a week during said time. In addition to in-state publication, where the present residence of the defendant is unknown the order may also direct that publication be made in a newspaper published outside the State of Nevada whenever the court is of the opinion that such publication is necessary to give notice that is reasonably calculated to give a defendant actual notice of the proceedings. In case of publication, where the residence of a nonresident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be deposited in the post office, directed to the person to be served at the person's place of residence. The service of summons shall be deemed complete in cases of publication at the expiration of 4 weeks from the first publication, and in cases when a deposit of a copy of the summons and complaint in the post office is also required, at the expiration of 4 weeks from such deposit.
[As amended; effective January 1, 2005.]

(2) Personal Service Outside the State. Personal service of summons upon a party outside this state may be made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a party of like kind within this state. The methods of service are cumulative, and may be utilized with, after, or independently of, other methods of service.
[As amended; effective January 1, 2005.]

(3) Statutory Service. Whenever a statute provides for service, service may be made under the circumstances and in the manner prescribed by the statute.

(f) Territorial Limits of Effective Service. All process, including subpoenas, may be served anywhere within the territorial limits of the State and, when a statute or rule so provides, beyond the territorial limits of the State. A voluntary appearance of the defendant shall be equivalent to personal service of process upon the defendant in this State.
[As amended; effective January 1, 2005.]

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Proof of service shall be as follows:

(1) If served by the sheriff or deputy, the affidavit or certificate of such sheriff or deputy; or,

(2) If by any other person, the affidavit thereof; or

(3) In case of publication, the affidavit of the publisher, foreman or principal clerk, or other employee having knowledge thereof, showing the same, and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited; or,

(4) The written admission of the defendant.

In case of service otherwise than by publication, the certificate or affidavit shall state the date, place and manner of service. Failure to make proof of service shall not affect the validity of the service.

[As amended; effective January 1, 2005.]

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion, unless the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period. If the party on whose behalf such service was required fails to file a motion to enlarge the time for service before the 120-day service period expires, the court shall take that failure into consideration in determining good cause for an extension of time. Upon a showing of good cause, the court shall extend the time for service and set a reasonable date by which service should be made.

[Added; effective June 9, 1986; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments to subdivisions (b), (d), (f) and (g) are technical.

The amendment to subdivision (c), adding the words "person who is not a party," clarifies that service may be made by any person who is over 18 years of age so long as he or she is also a disinterested person. The revised provision is consistent with the current federal rule and with the common law rule, followed in Nevada, requiring that service be made by a disinterested person, see Sawyer v. Sugarless Shops, 106 Nev. 265, 269-70, 792 P.2d 14, 17 (1990) ("Nevada has long had rules prohibiting service by a party. This was a common law requirement and has not been changed by [statute]." (citation omitted)).

The amendments to subdivision (e)(1)(iii) clarify that a publication order is not a precondition to personal service outside of the state by removing the fourth sentence of the former rule. The amendment to subdivision (e)(2) removes language that provided that personal service outside of Nevada could be used "only where the party being served has submitted to the jurisdiction of the courts of this state as provided by NRS 14.065." The revision corresponds to the 1995 amendments to NRS 14.065.

Subdivision (i) is similar to the federal rule except that the district court is limited to enlarging the time for service only upon a motion to enlarge the 120-day service period that demonstrates good cause why service was not made within the 120-day period. Thus, unlike the federal rule, the Nevada rule does not give the district court discretion to enlarge the time for service in the absence of a showing of good cause. Additionally, unlike the federal rule, the revised Nevada rule clarifies that in deciding whether there is good cause why service was not made within the 120-day period, the district court must consider whether the party on whose behalf such service was required filed a motion to enlarge the time for service within the 120-day period.

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

[As amended; effective September 27, 1971.]

(b) Same: How Made.

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless the court orders that service be made upon the party.

(2) Service under this rule is made by:

(A) Delivering a copy to the attorney or the party by:

(i) handing it to the attorney or to the party;

(ii) leaving it at the attorney's or party's office with a clerk or other person in charge, or if there is no one in charge, leaving it in a conspicuous place in the office; or

(iii) if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing there.

(B) Mailing a copy to the attorney or the party at his or her last known address. Service by mail is complete on mailing; provided, however, a motion, answer or other document constituting the initial appearance of a party must also, if served by mail, be filed within the time allowed for service; and provided further, that after such initial appearance, service by mail be made only by mailing from a point within the State of Nevada.

(C) If the attorney or the party has no known address, leaving a copy with the clerk of the court.

(D) Delivering a copy by electronic means if the attorney or the party served has consented to service by electronic means.

Service by electronic means is complete on transmission provided, however, a motion, answer or other document constituting the initial appearance of a party must also, if served by electronic means, be filed within the time allowed for service. The served attorney's or party's consent to service by electronic means shall be expressly stated and filed in writing with the clerk of the court and served on the other parties to the action. The written consent shall identify:

(i) the persons upon whom service must be made;

(ii) the appropriate address or location for such service, such as the electronic-mail address or facsimile number;

(iii) the format to be used for attachments; and

(iv) any other limits on the scope or duration of the consent.

An attorney's or party's consent shall remain effective until expressly revoked or until the representation of a party changes through entry, withdrawal, or substitution of counsel. An attorney or party who has consented to service by electronic means shall, within 10 days after any change of electronic-mail address or facsimile number, serve and file notice of the new electronic-mail address or facsimile number.

(3) Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.

(4) Proof of service may be made by certificate of an attorney or of the attorney's employee, or by written admission, or by affidavit, or other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.
[As amended; effective January 1, 2005.]

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, except as otherwise provided in Rule 5(b), but, unless filing is ordered by the court on motion of a party or upon its own motion, depositions upon oral examination and interrogatories, requests for production, requests for admission, and the answers and responses thereto, shall not be filed unless and until they are used in the proceedings. Originals of responses to requests for admissions or production and answers to interrogatories shall be served upon the party who made the request or propounded the interrogatories and that party shall make such originals available at the time of any pretrial hearing or at trial for use by any party.
[As amended; effective February 11, 1986.]

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. A court may by local rule permit papers to be filed, signed or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper signed by electronic means in compliance with the local rule constitutes a written paper presented for the purpose of applying these rules. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (b) is reorganized to make its provisions more accessible. Subparagraphs (A), (B), and (C) of Rule 5(b)(2) retain the method-of-service provisions of former Rule 5(b). Subparagraph (D) is new. It permits service by electronic means, including facsimile and electronic-mail, consistent with the 2001 amendments to the federal rule. Subdivision (b)(2)(D) provides that the served attorney or party must consent in writing to service by electronic means and includes specific provisions governing the form and content of the consent to service by electronic means. Subdivision (b)(3) is also new. It addresses the question of failed electronic service. Subdivision (b)(4) retains the proof-of-service provisions of former Rule 5(b).

Subdivision (e) is revised to conform to the 1991 and 1996 amendments to the federal rule. First, the amendment adds language that prohibits the clerk from refusing to ''accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.'' Second, the amendment adds language to accommodate local rules that authorize filing by facsimile or other electronic means and thereby empowers the district courts to address the adoption of electronic filing based on the capabilities of both the district court clerk's office and the desires of the bench and bar.

RULE 6. TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day,

in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and nonjudicial days shall be excluded in the computation except for those proceedings filed under Titles 12 or 13 of the Nevada Revised Statutes.

[As amended; effective January 1, 2005.]

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the parties, by written stipulation of counsel filed in the action, may enlarge the period, or the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 50(c)(2), 52(b), 59(b), (d) and (e) and 60(b), except to the extent and under the conditions stated in them.

[As amended; effective January 1, 2005.]

(c) Reserved.

(d) For Motions—Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by rule or order of the court. Such an order may, for cause shown, be made on ex parte application. When a motion or opposition is supported by affidavit, the affidavit shall be served with the motion or opposition.

[As amended; effective January 1, 2005.]

(e) Additional Time After Service by Mail or Electronic Means. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, upon the party and the notice or paper is served upon the party by mail or by electronic means, 3 days shall be added to the prescribed period.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is revised to extend the exclusion of intermediate Saturdays, Sundays, and nonjudicial days to the computation of time periods less than 11 days consistent with the 1985 amendments to the federal rule. Additionally, the ''inaccessibility of the court'' provision found in subdivision (a) of the federal rule is added to Rule 6(a). Subdivision (a) is further amended, by adding language referring to ''proceedings filed under Titles 12 or 13 of the Nevada Revised Statutes,'' to avoid any changes to current procedures in probate, guardianship and trust proceedings.

Subdivision (b) is amended to preclude the district court from extending the time for taking any action under Rule 50(c)(2), except to the extent and under the conditions stated in that rule. The revision is consistent with the federal rule.

Subdivision (d) is amended to require that an affidavit in support of an opposition to a motion must be served with the opposition. The revised rule is based on local rules in several districts. The revised rule does not incorporate language in the federal rule that requires opposing affidavits to be filed 1 day before the hearing.

Subdivision (e) is amended to provide an additional 3 days to act in response to a paper that is served by electronic means under new paragraph (2)(D) added to Rule 5(b).

III. PLEADINGS AND MOTIONS

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

[As amended; effective March 16, 1964.]

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

[Added; effective February 11, 1986.]

(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

RULE 8. GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded. Where a claimant seeks damages of more than $10,000, the demand shall be for damages "in excess of $10,000" without further specification of amount.

[As amended; effective January 1, 2005.]

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

[As amended; effective January 1, 2005.]

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

[As amended; effective January 1, 2005.]

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical. The restriction added to subdivision (a) in 1971 to prohibit allegation of specific amounts of damages in excess of $10,000 is retained without amendment.

RULE 9. PLEADING SPECIAL MATTERS

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

[As amended; effective January 1, 2005.]

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

DRAFTER'S NOTE
2004 AMENDMENT

The amendment is technical.

RULE 10. FORM OF PLEADINGS

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court and county, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. A party whose name is not known may be designated by any name, and when the true name is discovered, the pleading may be amended accordingly.
[As amended; effective January 1, 2005.]

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

DRAFTER'S NOTE
2004 AMENDMENT

The amendment is technical.

RULE 11. SIGNING OF PLEADINGS

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.
[As amended; effective January 1, 2005.]

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
[As amended; effective January 1, 2005.]

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

[As amended; effective January 1, 2005.]

(d) Applicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 16.1, 16.2, and 26 through 37. Sanctions for refusal to make discovery are governed by Rules 26(g) and 37.

[As amended; effective July 1, 2008.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to conform to the federal rule, as amended in 1993, in its entirety. A cross-reference to Rules 26(g) and 37 was added to subsection (d) to clarify their application to discovery violations.

RULE 12. DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON PLEADINGS

(a) When Presented.

(1) A defendant shall serve an answer within 20 days after being served with the summons and complaint, unless otherwise provided by statute when service of process is made pursuant to Rule 4(e)(3).

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(3) The State of Nevada or any political subdivision thereof, and any officer, employee, board or commission member of the State of Nevada or political subdivision, and any state legislator shall file an answer or other responsive pleading within 45 days after their respective dates of service.

(4) The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, a responsive pleading shall be served within 10 days after notice of the court's action;

(B) if the court grants a motion for a more definite statement, a responsive pleading shall be served within 10 days after service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a claim upon which relief can be

granted, (6) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

[As amended; effective September 27, 1971.]

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(6) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

[As amended; effective September 27, 1971.]

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

[As amended; effective April 24, 1998.]

RULE 13. COUNTERCLAIM AND CROSS-CLAIM

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

[As amended; effective January 1, 2005.]

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State. These rules shall not be construed to enlarge beyond the limits now fixed by law the right

to assert counterclaims or to claim credits against the State or an officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.
[As amended; effective January 1, 2005.]

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.
[As amended; effective January 1, 2005.]

(g) Cross-Claim Against Coparty. A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.
[As amended; effective September 27, 1971.]

(i) Separate Trials: Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 14. THIRD-PARTY PRACTICE

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.
[As amended; effective January 1, 2005.]

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.
[As amended; effective January 1, 2005.]

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may

be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

[As amended; effective January 1, 2005.]

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical. Subdivision (c) remains unchanged and thus does not conform to the 1966 or 1991 amendments to subdivision (c) of the federal rule.

RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) Expediting the disposition of the action;

(2) Establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) Discouraging wasteful pretrial activities;

(4) Improving the quality of the trial through more thorough preparation; and

(5) Facilitating the settlement of the case.

[As amended; effective January 1, 1988.]

(b) Scheduling and Planning. Except in categories of actions exempted by district court rule as inappropriate, the judge, or a discovery commissioner shall, after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time:

(1) To join other parties and to amend the pleadings;

(2) To file and hear motions; and

(3) To complete discovery.

The scheduling order may also include:

(4) The date or dates for conferences before trial, a final pretrial conference, and trial; and

(5) Any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within 60 days after the filing of a case conference report pursuant to Rule 16.1 or an order by the discovery commissioner or the court waiving the requirement of a case conference report pursuant to Rule 16.1(f). A schedule shall not be modified except by leave of the judge or a discovery commissioner upon a showing of good cause.

[As amended; effective January 1, 2005.]

(c) Subjects to Be Discussed at Pretrial Conferences. The participants at any conference under this rule may consider and take action with respect to:

(1) The formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) The avoidance of unnecessary proof and of cumulative evidence, and the use of testimony under NRS 50.275 and pursuant to NRS 47.060;

(5) The appropriateness of summary adjudication under Rule 56;

(6) The identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(7) The advisability of referring matters to a master;

(8) Settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;

(9) The form and substance of the pretrial order;

(10) The disposition of pending motions;

(11) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(12) An order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or with respect to any particular issue in the case;

(13) An order establishing a reasonable limit on the time allowed for presenting evidence; and

(14) Such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

[As amended; effective January 1, 2005.]

(d) Final Pretrial Conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

[As amended; effective January 1, 1988.]

(e) Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting any action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

[As amended; effective January 1, 1988.]

(f) Sanction. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the court's own initiative, may make such orders with regard thereto as are just, including any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to conform to the 1993 amendments to the federal rule, with some exceptions.

Application of subdivision (b) is no longer limited to cases not designated as complex litigation pursuant to Rule 16.1(f). The amendments change the deadline for entry of the scheduling order by calculating it from the filing of the case conference report required by Rule 16.1 rather than from the filing of the complaint. This provision differs from the federal rule, which provides that the scheduling order must issue within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. Paragraphs (5) and (6) of the federal rule are renumbered as paragraphs (4) and (5) in Nevada's rule. Nevada has not adopted paragraph (4) of the federal rule, added in 1993, which provides that the scheduling order may also include ''modifications of the times for disclosures under Rules 26(a) [cf.

N.R.C.P. 16.1(a)] and 26(e)(1) and of the extent of discovery to be permitted.''

The revisions to subdivision (c) expand the topics to be discussed at a pretrial conference, including pretrial review and redirection to alternative dispute resolution. The amended rule conforms to the 1993 amendments, with two exceptions. Omitted federal provisions are paragraph (6), which allows the court to take appropriate action with respect to ''the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37,'' and paragraph (14) which provides for ''an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c).'' Paragraphs (5), (12) and (13) are new and conform to paragraphs (5), (13) and (15) respectively of the federal rule. Existing paragraphs (5) through (10) and paragraph (12) are renumbered and paragraph (11) concerning limitation of the number of experts is eliminated.

Subdivision (c) is further amended to permit the court to require that a party or its representative be present or reasonably available by telephone during the pretrial conference to consider possible settlement of the dispute.

The amendment to subdivision (f) is technical.

RULE 16.1. MANDATORY PRETRIAL DISCOVERY REQUIREMENTS

[Applicable to all civil cases except proceedings in the Family Division of the Second and Eighth Judicial District Courts and domestic relations cases in the judicial districts without a family division.]

(a) Required Disclosures.

(1) Initial Disclosures. Except in proceedings exempted or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information;

(B) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b);

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment and any disclaimer or limitation of coverage or reservation of rights under any such insurance agreement.

These disclosures must be made at or within 14 days after the Rule 16.1(b) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Rule 16.1(c) case conference report. In ruling on the objection, the court must determine what disclosures—if any—are to be made, and set the time for disclosure. Any party first served or otherwise joined after the Rule 16.1(b) conference must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285 and 50.305.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The court, upon good cause shown or by stipulation of the parties, may relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of extraordinary circumstances, the court shall direct that the disclosures shall be made at least 90 days before the discovery cut-off date or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under Rule 26(e)(1).

(3) Pretrial Disclosures. In addition to the disclosures required by Rule 16.1(a)(1) and (2), a party must provide to other parties the following information regarding the evidence that it may present at trial, including impeachment and rebuttal evidence:

(A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present, those witnesses who have been subpoenaed for trial, and those whom the party may call if the need arises;

(B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under NRS 48.025 and 48.035, shall be deemed waived unless excused by the court for good cause shown.

(4) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rules 16.1(a)(1) through (3) must be made in writing, signed, and served.
[As amended; effective January 1, 2005.]

(b) Meet and Confer Requirements.

(1) Attendance at Early Case Conference. Unless the case is in the court annexed arbitration program or short trial program, within 30 days after filing of an answer by the first answering defendant, and thereafter, if requested by a subsequent appearing party, the parties shall meet in person to confer and consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a)(1) of this rule and to develop a discovery plan pursuant to subdivision (b)(2). The attorney for the plaintiff shall designate the time and place of each meeting which must be held in the county where the action was filed, unless the parties agree upon a different location. The attorneys may agree to continue the time for the case conference for an additional period of not more than 90 days. The court, in its discretion and for good cause shown, may also continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 180 days after an appearance is served by the defendant in question.

Unless otherwise ordered by the court or the discovery commissioner, parties to any case wherein a timely trial de novo request has been filed subsequent to an arbitration, need not hold a further in person conference, but must file a joint case conference report pursuant to subdivision (c) of this rule within 60 days from the date of the de novo filing, said report to be prepared by the party requesting the trial de novo.

(2) Planning for Discovery. The parties shall develop a discovery plan which shall indicate the parties' views and proposals concerning:

(A) What changes should be made in the timing, form, or requirement for disclosures under Rule 16.1(a), including a statement as to when disclosures under Rule 16.1(a)(1) were made or will be made;

(B) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(C) What changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(D) Any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c); and

(E) An estimated time for trial.
[As amended; effective January 1, 2005.]

(c) Case Conference Report. Within 30 days after each case conference, the parties must file a joint case conference report or, if the parties are unable to agree upon the contents of a joint report, each party must serve and file a case conference report which, either as a joint or individual report, must contain:

(1) A brief description of the nature of the action and each claim for relief or defense;

(2) A proposed plan and schedule of any additional discovery pursuant to subdivision (b)(2) of this rule;

(3) A written list of names exchanged pursuant to subdivision (a)(1)(A) of this rule;

(4) A written list of all documents provided at or as a result of the case conference pursuant to subdivision (a)(1)(B) of this

rule;

(5) A calendar date on which discovery will close;

(6) A calendar date, not later than 90 days before the close of discovery, beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(7) A calendar date by which the parties will make expert disclosures pursuant to subdivision (a)(2), with initial disclosures to be made not later than 90 days before the discovery cut-off date and rebuttal disclosures to be made not later than 30 days after the initial disclosure of experts;

(8) A calendar date, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed;

(9) An estimate of the time required for trial; and

(10) A statement as to whether or not a jury demand has been filed.

After any subsequent case conference, the parties must supplement, but need not repeat, the contents of prior reports. Within 7 days after service of any case conference report, any other party may file a response thereto objecting to all or a portion of the report or adding any other matter which is necessary to properly reflect the proceedings occurring at the case conference.
[As amended; effective January 1, 2005.]

(d) Discovery Disputes.

(1) Where available or unless otherwise ordered by the court, all discovery disputes (except those presented at the pretrial conference or trial) must first be heard by the discovery commissioner.

(2) Following each discovery motion before a discovery commissioner, the commissioner must prepare and file a report with the commissioner's recommendations for a resolution of each unresolved dispute. The commissioner may direct counsel to prepare the report. The clerk of the court shall forthwith serve a copy of the report on all parties. Within 5 days after being served with a copy, any party may serve and file written objections to the recommendations. Written authorities may be filed with an objection, but are not mandatory.

(3) Upon receipt of a discovery commissioner's report and any objections thereto, the court may affirm, reverse or modify the commissioner's ruling, set the matter for a hearing, or remand the matter to the commissioner for further action, if necessary.
[As amended; effective January 1, 2005.]

(e) Failure or Refusal to Participate in Pretrial Discovery; Sanctions.

(1) If the conference described in Rule 16.1(b) is not held within 180 days after an appearance by a defendant, the case may be dismissed as to that defendant upon motion or on the court's own initiative, without prejudice, unless there are compelling and extraordinary circumstances for a continuance beyond this period.

(2) If the plaintiff does not file a case conference report within 240 days after an appearance by a defendant, the case may be dismissed as to that defendant upon motion or on the court's own initiative, without prejudice.

(3) If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection (d) of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(A) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f);

(B) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a).
[As amended; effective January 1, 2005.]

(f) Complex Litigation. In a potentially difficult or protracted action that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, the court may, upon motion and for good cause shown, waive any or all of the requirements of this rule. If the court waives all the requirements of this rule, it shall also order a conference pursuant to Rule 16 to be conducted by the court or the discovery commissioner.
[As amended; effective January 1, 2005.]

(g) Proper Person Litigants. When a party is not represented by an attorney, the party must comply with this rule.
[As amended; effective January 1, 1988.]

DRAFTER'S NOTE

2004 AMENDMENT

Subdivision (a) is amended to conform to the 1993 and 2000 amendments to Rule 26(a) of the federal rules, with some notable exceptions. Consistent with the federal rule, the revised rule imposes an affirmative duty to disclose certain basic information without a formal discovery request.

Subdivision (a)(1) incorporates the federal rule but adopts the "subject matter" standard for the scope of discovery that is retained in revised Rule 26(b) of the Nevada rules. Paragraph (1) also retains the Nevada requirement that impeachment witnesses and documents be disclosed, whereas the federal rule exempts impeachment evidence. Paragraph (1)(C) is intended to apply to special damages, not general or other intangible damages. Paragraph (1)(D) expands on the federal rule by requiring disclosure and production of liability policy denials, limitations or reservations of rights.

Subdivision (a)(2) imposes an additional duty to disclose information regarding expert testimony and requires that certain experts must prepare a detailed and complete written report. But unlike its federal counterpart, subdivision (a)(2)(B) allows the court to relieve a party of this duty upon a showing of good cause. The requirement of a written report applies only to an expert who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony. Given this limitation, a treating physician could be deposed or called to testify without any requirement for a written report. See Fed. R. Civ. P. 26(a) advisory committee note (2000). The expert witness disclosures and written reports are not part of the initial disclosure under paragraph (1). Instead, subdivision (a)(2)(C) contemplates that the court will set the time for such disclosures but that they must be made at least 90 days before the discovery cut-off date absent extraordinary circumstances. This provision differs from its federal counterpart, which allows the disclosures to be made at least 90 days before the trial date or the date the case is to be ready for trial.

Subdivision (a)(3) retains the Nevada requirement for pretrial disclosure of impeachment and rebuttal evidence and the names of witnesses who have been subpoenaed for trial. Unlike the federal rule, there is no requirement that the information disclosed be filed with the court.

Subdivision (b) is repealed in its entirety. New subdivision (b)(1) incorporates the requirement under former Rule 16.1(a) of attendance at an early case conference. It is based on Rule 26(f) of the federal rules, but is tailored to practice in state court and, unlike the federal rule, it requires the parties to meet in person. The rule also retains deadlines that are unique to Nevada. Subdivision (b)(2) incorporates provisions of Rule 26(f) of the federal rules regarding planning for discovery. But the Nevada provision expands the subjects to be discussed at the early case conference beyond those listed in the federal rule to include an estimated time for trial.

Subdivision (c) is amended to reflect the new disclosure provisions of subdivision (a). The requirements for a case conference report are more detailed and extensive than those in Rule 26(f) of the federal rules and include specific time periods for the close of discovery, filing of motions to amend pleadings or add parties, expert disclosures, and filing of dispositive motions.

Subdivision (d) retains the Nevada provisions on discovery disputes with some revisions.

RULE 16.1. MANDATORY PRE-TRIAL DISCOVERY REQUIREMENTS

[Effective February 1, 2006, this version of Rule 16.1 applies to all proceedings in the Family Division of the Second and Eighth Judicial District Courts and domestic relations cases in the judicial districts without a family division.]

(a) Attendance at Early Case Conference. Within thirty (30) days after service of the answer by the first answering defendant, and thereafter as each defendant answers the original complaint or an amended complaint, the attorneys for the parties, who must possess authority to act and knowledge of the case obtained after reasonable inquiry under the circumstances, shall meet in person for the purpose of complying with subdivision (b) of this rule. The attorney for the plaintiff shall designate the time and place of each meeting which must be held in the county where the action was filed, unless the parties agree upon a different location. The attorneys may agree to continue the time for the case conference for an additional period of not more than ninety (90) days. The court, in its discretion and for good cause shown, may also continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than one hundred and eighty (180) days after service of the summons and complaint upon the defendant in question. The time for holding a case conference with respect to a defendant who has filed a motion pursuant to Rule 12(b)(2)-(4) is tolled until entry of an order denying the motion.

(b) Meet and Confer Requirements; Mandatory Discovery Exchanges. At each case conference, the attorneys must:

(1) Exchange all documents then reasonably available to a party which are then contemplated to be used in support of the allegations or denials of the pleading filed by that party, including rebuttal and impeachment documents;

(2) Request with reasonable specificity from the opposing party all other documents, discoverable within the scope of Rule 26(b), that may support the allegations of the pleading filed by the requesting party, including rebuttal and impeachment documents. The opponent must (A) provide the additional documents, or (B) agree to provide the additional documents as soon as they are reasonably available, or (C) explain why the documents will not be provided;

(3) Identify, describe or produce all tangible things which constitute or contain matters within the scope of Rule 26(b) and, upon request, arrange for all other parties to inspect and copy, test or sample the same;

(4) Request to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of another party. The party who has possession, custody or control of such tangible things must (A) provide the discovery requested, or (B) explain why it will not be provided;

(5) Exchange written lists of persons (other than expert witnesses or consultants) then known or reasonably believed to have knowledge of any facts relevant to the allegations of any pleading filed by any party to the action, including persons having knowledge of rebuttal or impeachment evidence. Each person must be identified by name and location, along with a general description of the subject matter of his testimony. Each party is under a continual duty to promptly supplement that party's list of persons pursuant to this subsection;

(6) Propose a plan and schedule of discovery and make a reasonable effort to agree with opposing attorneys to provide all

discovery requested, with any conditions or limitations thereon;

(7) Discuss settlement of the action and the use of extrajudicial procedures or alternative methods of dispute resolution to resolve the controversy; and

(8) Discuss such other matters as may aid in the disposition of the action.
[Added; effective February 1, 2006.]

(c) Case Conference Report. Within thirty (30) days after each case conference, the parties must file a joint case conference report or, if the parties are unable to agree upon the contents of a joint report, each party must serve and file a case conference report which, either as a joint or individual report, must contain:

(1) A brief description of the nature of the action and each claim for relief or defense;

(2) A proposed plan and schedule of any additional discovery;

(3) A written list of all documents provided at or as a result of the case conference together with any objection that the document is not authentic or genuine. The failure to state any objection to the authenticity or genuineness of a document constitutes a waiver of such objection at a subsequent hearing or trial. For good cause the court may permit the withdrawal of a waiver and the assertion of an objection;

(4) A written list of all documents not provided under subsection (b)(2)(C) of this rule together with the explanation as to why each document was not provided;

(5) The written list of persons exchanged pursuant to subsection (b)(5) of this rule; and

(6) An estimate of the time required for discovery.

After any subsequent case conference, the parties must supplement, but need not repeat, the contents of prior reports. Within seven (7) days after service of any case conference report, any other party may file a response thereto objecting to all or a portion of the report or adding any other matter which is necessary to properly reflect the proceedings occurring at the case conference. All case conference reports and responses shall be signed in accordance with Rule 11.

(d) Case Conference Disputes; Court Intervention.

(1) At any time after the filing of a case conference report, the court, upon motion or on its own initiative, may direct the attorneys and the parties to appear before the court or a discovery commissioner to resolve any disputes arising during or as a result of the case conference. The resolution of all discovery disputes by stipulation of the parties shall be entered in the minutes in the form of an order or reduced to writing subscribed by the parties or by their attorneys.

(2) Following each dispute resolution conference before a discovery commissioner, the commissioner must prepare and file a report with his recommendations for a resolution of each unresolved dispute. The clerk of the court shall forthwith serve a copy of the report on all parties. Within five (5) days after being served with a copy, any party may serve and file written objections to the recommendations.

(3) Upon receipt of a discovery commissioner's report and any objections thereto or after any resolution conference which was held before the court, the court shall enter an order establishing a plan and schedule for discovery, setting limitations on the discovery, if appropriate, requiring compliance with subdivision (b) of this rule, imposing sanctions pursuant to subdivision (e) of this rule, if necessary, and determining such other matters, including the allocation of expenses, as are necessary for proper control of the action.

(e) Failure or Refusal to Participate in Pre-Trial Discovery; Sanctions.

(1) If the mandatory discovery meeting described in Rule 16.1(a) is not held within one hundred and eighty (180) days after service of the summons and complaint upon a defendant, the case may be dismissed as to that defendant upon motion or on the court's own initiative, without prejudice, unless there are compelling and extraordinary circumstances for a continuance beyond this period.

(2) If the plaintiff does not file a case conference report within two hundred and forty (240) days after the service of a summons and complaint upon a defendant, the case may be dismissed as to that defendant upon motion or on the court's own initiative, without prejudice.

(3) If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection (d) of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or his attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(A) Any of the sanctions available pursuant to Rule 37(b)(2);

(B) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to subdivision (b) of this rule.

(4) Should it appear to the satisfaction of the court at any time that an objection under subsection (c)(3) of this rule to the authenticity or genuineness of a document was made in violation of Rule 11, the court shall forthwith order the party or his attorney, or both, to pay to the other party the reasonable expenses caused by the objection, including reasonable attorney's fees.

(f) Complex Litigation. In a potentially difficult or protracted action that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, the court may, upon motion and for good cause shown, waive any or all of the requirements of this rule. If the court waives all the requirements of this rule, it shall also order a conference pursuant to Rule 16.

(g) Proper Person Litigants. When a party is not represented by an attorney, the party must comply with this rule.
[As amended; effective February 1, 2006.]

RULE 16.2. MANDATORY PREJUDGMENT DISCOVERY REQUIREMENTS IN DOMESTIC RELATIONS MATTERS [Effective July 1, 2008, until January 1, 2009]

(a) Required Disclosures.

(1) Financial Disclosure. In divorce, annulment or separate maintenance actions, a party must complete the court-approved Financial Disclosure Form. In custody matters between unmarried parties where paternity is established, a party must complete the cover sheet, the ''personal income schedule'' and the ''business income/expense schedule'' portions of the court-approved Financial Disclosure Form. A party must file and serve the completed Financial Disclosure Form no later than 45 days after service of the summons and complaint.

(A) Failure to File or Serve. If a party fails to timely file or serve the financial disclosure form required by this rule, the court shall impose an appropriate sanction upon the party or the party's attorney, or both, unless the party establishes by clear and convincing evidence that there is good cause for the failure. After notice and a hearing, the court shall impose appropriate sanctions in regard to the failure(s) as are just, including the following:

(i) An order treating the party's failure as a contempt of court;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(iii) An order requiring the party failing to timely file or serve the disclosure to pay the opposing party's reasonable expenses, including attorney's fees and costs, caused by the failure.

(B) Failure to Include an Asset or Liability. If a party intentionally fails to include a material asset or liability in the party's financial disclosure form, the court, after notice and hearing, may impose an appropriate sanction, including but not limited to the following:

(i) An order awarding the omitted asset to the opposing party as his or her separate property or making another form of unequal division of community property;

(ii) An order treating the party's failure as a contempt of court; or

(iii) An order requiring the party failing to make the disclosure to pay the other party's or opposing party's reasonable expenses, including attorney's fees and costs, related to the omitted items.

(C) Duty to Supplement. A party must supplement or correct the party's financial disclosure form within 10 judicial days after the party acquires additional information or otherwise learns that in some material respect the party's disclosure is incomplete or incorrect. If the supplemental disclosure includes an asset, liability, income, or expense omitted from the party's prior disclosure(s), the supplemental disclosure shall include an explanation as to why the item was omitted.

(D) Obtaining Discovery. Any party may obtain discovery by one or more of the methods provided in Rules 26-36 within 30 days after service of the summons and complaint.

(2) Other Initial Disclosures. Except in proceedings exempted or to the extent otherwise stipulated in writing or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information; and

(B) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in

the possession, custody, or control of the party and which are discoverable under Rule 26(b).
These disclosures must be made within 45 days after service of the summons and complaint. A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because the party has not fully completed an investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made the required disclosures.

(3) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraphs (1) and (2), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305. These disclosures must be made within 90 days after the financial disclosures are required to be filed and served under Rule 16.2(a)(1) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (3)(B), within 60 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under Rule 26(e)(1).

(B) Except as otherwise stipulated or directed by the court, a party who retains or specially employs a witness to provide expert testimony in the case, or whose duties as an employee of the party regularly involve giving expert testimony, shall deliver to the opposing party a written report prepared and signed by the witness, within 60 days before trial. The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the experts' reports or relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years.

(4) Pretrial Disclosures. In addition to the disclosures required by Rule 16.2(a)(1), (2) and (3), a party must provide to other parties the following information regarding the evidence that the party may present at trial, including impeachment and rebuttal evidence:

(A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present, those witnesses who have been subpoenaed for trial, and those whom the party may call if the need arises;

(B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.
Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve a list disclosing: (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under NRS 48.025 and 48.035, shall be deemed waived unless excused by the court for good cause shown.

(5) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rules 16.2(a)(1) through (4) must be made in writing, signed, and served.

(b) Case Management Conference.

(1) Attendance at Case Management Conference.

(A) In judicial districts that do not include a county whose population is 100,000 or more, the district court shall conduct a case management conference with counsel and the parties. The district court shall conduct the case management conference within 60 days after service of the summons and complaint.

(B) In judicial districts that include a county whose population is 100,000 or more, the district court shall conduct a case management conference with counsel and the parties if the estimated gross value of the marital estate exceeds $500,000. In these cases, the case management conference shall be conducted within 60 days after service of the summons and complaint. The district court may change by local rule the threshold value requirement that triggers a mandatory case management conference in a judicial district that is subject to this paragraph. In all other matters commenced in the larger districts, the district court shall have the discretion to conduct case management conferences.
At the case management conference, the court, counsel, and the parties shall meet in person to confer and consider the nature and basis of the claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a) of this rule and to develop a discovery plan pursuant to subdivision (b)(2). At least 5 days before the case management conference, counsel for the parties shall confer to resolve as many of the matters as possible which are to be addressed at the case management conference. The court, in its discretion and for good cause shown, may continue the time for the

conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the summons and complaint.

(2) Planning for Discovery. At the case management conference, the court and parties shall develop a discovery plan which shall address:

(A) What changes should be made in the timing, form, or requirement for disclosures under Rule 16.2(a), including a statement as to when disclosures under Rule 16.2(a)(1) were made or will be made;

(B) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(C) What changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(D) Any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c); and

(E) Any orders that should be entered setting the case for settlement conference and/or for trial.

(c) Case Management Order. Within 30 days after the case management conference, the court must enter an order that contains:

(1) A brief description of the nature of the action and each claim for relief or defense;

(2) A proposed plan and schedule of any additional discovery pursuant to subdivision (b)(2) of this rule;

(3) A written list of names exchanged pursuant to subdivision (a)(2)(A) of this rule;

(4) A written list of all documents provided at or as a result of the case conference pursuant to subdivision (a)(2)(B) of this rule;

(5) A deadline on which discovery will close;

(6) A deadline, not later than 90 days before the close of discovery, beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(7) A deadline by which the parties will make expert disclosures pursuant to subdivision (a)(3), with initial disclosures to be made not later than is specified in subdivision (a)(3) of this rule and rebuttal disclosures to be made not later than 60 days after the initial disclosure of experts;

(8) A deadline, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed.

(d) Meet and Confer Requirements; Scheduling Order.

(1) Meeting. Except in cases governed by subdivision (b)(1) of this rule, within 60 days after service of the summons and complaint, the parties and their attorneys shall meet in person to confer and consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a) of this rule and to develop a discovery plan pursuant to subdivision (b)(2) of this rule. The attorney for the plaintiff shall designate the time and place of the meeting, which must be held in the county where the action was filed, unless the parties agree upon a different location. The attorneys may agree to continue the time for the case conference for an additional period of not more than 30 days. The court, in its discretion and for good cause shown, may also continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the summons and complaint.

(2) Case Conference Report. Within 30 days after the meeting under subdivision (d)(1) of this rule, the parties must file a joint case conference report or, if the parties are unable to agree upon the contents of a joint report, each party must serve and file a case conference report which, either as a joint or individual report, must contain:

(A) A brief description of the nature of the action and each claim for relief or defense;

(B) A proposed plan and schedule of any additional discovery pursuant to subdivision (b)(2) of this rule;

(C) A written list of names exchanged pursuant to subdivision (a)(2)(A) of this rule;

(D) A written list of all documents provided at or as a result of the case conference pursuant to subdivision (a)(2)(B) of this rule;

(E) A deadline on which discovery will close;

(F) A deadline, not later than 90 days before the close of discovery, beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(G) A deadline by which the parties will make expert disclosures pursuant to subdivision (a)(3), with initial disclosures to be made not later than is specified in subdivision (a)(3) of this rule and rebuttal disclosures to be made not later than 60 days after the initial disclosure of experts;

(H) A deadline, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed.

(3) Scheduling Order. Within 30 days after the filing of the case conference report under subdivision (d)(2), the court shall comply with Rule 16(b).

(e) Discovery Disputes.

(1) Where available or unless otherwise ordered by the court, all discovery disputes (except those presented at the pretrial conference, early case management conference, or trial) must first be heard by the discovery commissioner.

(2) Following each discovery motion before a discovery commissioner, the commissioner must prepare and file a report with the commissioner's recommendations for a resolution of each unresolved dispute. The commissioner may direct counsel to prepare the report. The clerk of the court shall forthwith serve a copy of the report on all parties. Within 5 days after being served with a copy, any party may serve and file written objections to the recommendations. Written authorities may be filed with an objection, but are not mandatory.

(3) Upon receipt of a discovery commissioner's report and any objections thereto, the court may affirm, reverse, or modify the commissioner's ruling, set the matter for a hearing, or remand the matter to the commissioner for further action, if necessary.

(f) Failure or Refusal to Participate in Pretrial Discovery; Sanctions. If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection (e) of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(1) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f);

(2) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.2(a).

(g) Proper Person Litigants. When a party is not represented by an attorney, the party must comply with this rule.

(h) Exemptions. Upon finding compelling circumstances, a court may exempt all or any portion of a case from application of this rule, in whole or in part.

RULE 16.2. MANDATORY PREJUDGMENT DISCOVERY REQUIREMENTS IN DOMESTIC RELATIONS MATTERS [Effective January 1, 2009]

(a) Required Disclosures.

(1) Financial Disclosure. In divorce, annulment or separate maintenance actions, a party must complete the court-approved Financial Disclosure Form. In custody matters between unmarried parties where paternity is established, a party must complete the cover sheet, the ''personal income schedule'' and the ''business income/expense schedule'' portions of the court-approved Financial Disclosure Form. A party must file and serve the completed Financial Disclosure Form no later than 45 days after service of the summons and complaint.

(A) Failure to File or Serve. If a party fails to timely file or serve the financial disclosure form required by this rule, the court shall impose an appropriate sanction upon the party or the party's attorney, or both, unless the party establishes by clear and convincing evidence that there is good cause for the failure. After notice and a hearing, the court shall impose appropriate sanctions in regard to the failure(s) as are just, including the following:

(i) An order treating the party's failure as a contempt of court;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(iii) An order requiring the party failing to timely file or serve the disclosure to pay the opposing party's reasonable

expenses, including attorney's fees and costs, caused by the failure.

(B) Failure to Include an Asset or Liability. If a party intentionally fails to include a material asset or liability in the party's financial disclosure form, the court, after notice and hearing, may impose an appropriate sanction, including but not limited to the following:

(i) An order awarding the omitted asset to the opposing party as his or her separate property or making another form of unequal division of community property;

(ii) An order treating the party's failure as a contempt of court; or

(iii) An order requiring the party failing to make the disclosure to pay the other party's or opposing party's reasonable expenses, including attorney's fees and costs, related to the omitted items.

(C) Duty to Supplement. A party must supplement or correct the party's financial disclosure form within 10 judicial days after the party acquires additional information or otherwise learns that in some material respect the party's disclosure is incomplete or incorrect. If the supplemental disclosure includes an asset, liability, income, or expense omitted from the party's prior disclosure(s), the supplemental disclosure shall include an explanation as to why the item was omitted.

(D) Obtaining Discovery. Any party may obtain discovery by one or more of the methods provided in Rules 26-36 within 30 days after service of the summons and complaint.

(2) Other Initial Disclosures. Except in proceedings exempted or to the extent otherwise stipulated in writing or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information; and

(B) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b).
These disclosures must be made within 45 days after service of the summons and complaint. A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because the party has not fully completed an investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made the required disclosures.

(3) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraphs (1) and (2), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285, and 50.305. These disclosures must be made within 90 days after the financial disclosures are required to be filed and served under Rule 16.2(a)(1) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (3)(B), within 60 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under Rule 26(e)(1).

(B) Except as otherwise stipulated or directed by the court, a party who retains or specially employs a witness to provide expert testimony in the case, or whose duties as an employee of the party regularly involve giving expert testimony, shall deliver to the opposing party a written report prepared and signed by the witness, within 60 days before trial. The court, upon good cause shown or by stipulation of the parties, may extend the deadline for exchange of the experts' reports or relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years.

(4) Pretrial Disclosures. In addition to the disclosures required by Rule 16.2(a)(1), (2) and (3), a party must provide to other parties the following information regarding the evidence that the party may present at trial, including impeachment and rebuttal evidence:

(A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present, those witnesses who have been subpoenaed for trial, and those whom the party may call if the need arises;

(B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately

identifying those which the party expects to offer and those which the party may offer if the need arises.
Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve a list disclosing: (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under NRS 48.025 and 48.035, shall be deemed waived unless excused by the court for good cause shown.

(5) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rules 16.2(a)(1) through (4) must be made in writing, signed, and served.

(b) Case Management Conference.

(1) Attendance at Case Management Conference.
The district court shall conduct a case management conference with counsel and the parties within 60 days after service of the summons and complaint.
At the case management conference, the court, counsel, and the parties shall meet in person to confer and consider the nature and basis of the claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a) of this rule and to develop a discovery plan pursuant to subdivision (b)(2). At least 5 days before the case management conference, counsel for the parties shall confer to resolve as many of the matters as possible which are to be addressed at the case management conference. The court, in its discretion and for good cause shown, may continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the summons and complaint.

(2) Planning for Discovery. At the case management conference, the court and parties shall develop a discovery plan which shall address:

(A) What changes should be made in the timing, form, or requirement for disclosures under Rule 16.2(a), including a statement as to when disclosures under Rule 16.2(a)(1) were made or will be made;

(B) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(C) What changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(D) Any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c); and

(E) Any orders that should be entered setting the case for settlement conference and/or for trial.

(c) Case Management Order. Within 30 days after the case management conference, the court must enter an order that contains:

(1) A brief description of the nature of the action and each claim for relief or defense;

(2) A proposed plan and schedule of any additional discovery pursuant to subdivision (b)(2) of this rule;

(3) A written list of names exchanged pursuant to subdivision (a)(2)(A) of this rule;

(4) A written list of all documents provided at or as a result of the case conference pursuant to subdivision (a)(2)(B) of this rule;

(5) A deadline on which discovery will close;

(6) A deadline, not later than 90 days before the close of discovery, beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;

(7) A deadline by which the parties will make expert disclosures pursuant to subdivision (a)(3), with initial disclosures to be made not later than is specified in subdivision (a)(3) of this rule and rebuttal disclosures to be made not later than 60 days after the initial disclosure of experts;

(8) A deadline, not later than 30 days after the discovery cut-off date, by which dispositive motions must be filed.

(d) Discovery Disputes.

(1) Where available or unless otherwise ordered by the court, all discovery disputes (except those presented at the pretrial conference, early case management conference, or trial) must first be heard by the discovery commissioner.

(2) Following each discovery motion before a discovery commissioner, the commissioner must prepare and file a report with the commissioner's recommendations for a resolution of each unresolved dispute. The commissioner may direct counsel to prepare the report. The clerk of the court shall forthwith serve a copy of the report on all parties. Within 5 days after being served with a copy, any party may serve and file written objections to the recommendations. Written authorities may be filed with an objection, but are not mandatory.

(3) Upon receipt of a discovery commissioner's report and any objections thereto, the court may affirm, reverse, or modify the commissioner's ruling, set the matter for a hearing, or remand the matter to the commissioner for further action, if necessary.

(e) Failure or Refusal to Participate in Pretrial Discovery; Sanctions. If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection (d) of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(1) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f);

(2) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.2(a).

(f) Proper Person Litigants. When a party is not represented by an attorney, the party must comply with this rule.

(g) Exemptions. Upon finding compelling circumstances, a court may exempt all or any portion of a case from application of this rule, in whole or in part.

RULE 16.3. DISCOVERY COMMISSIONERS

(a) Appointment and Compensation. The court may appoint one or more discovery commissioners to serve at the pleasure of the court. In multi-judge districts, appointment shall be by the concurrence of a majority of all the judges of such district. The compensation of a discovery commissioner may not be taxed against the parties, but when fixed by the court must be paid out of appropriations made for the expenses of the district court.

[As amended; effective July 1, 2008.]

(b) Powers and Duties. As directed by the court, a discovery commissioner may enter scheduling orders pursuant to Rule 16(b) and preside at the case conferences and discovery resolution conferences required by Rule 16.1 or 16.2. A discovery commissioner also may conduct settlement conferences pursuant to an agreement by the parties or an order of the district court. The discovery commissioner has and shall exercise the power to administer oaths and affirmations, to regulate all proceedings in every conference before him, and to do all acts and take all measures necessary or proper for the efficient performance of his duties.

[As amended; effective July 1, 2008.]

RULE 16.21. POSTJUDGMENT DISCOVERY IN DOMESTIC RELATIONS MATTERS

Unless the court orders otherwise, parties are prohibited from conducting discovery in postjudgment domestic relations matters. For good cause shown, however, a court may order postjudgment discovery.

[Added; effective July 1, 2008.]

IV. PARTIES

RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the State. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

[As amended; effective January 1, 2005.]

(b) Capacity to Sue or Be Sued. The capacity of an individual, including one acting in a representative capacity, to sue or be sued shall be determined by the law of this State. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless a statute of this State provides to the contrary.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make

such other order as it deems proper for the protection of the infant or incompetent person.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 18. JOINDER OF CLAIMS AND REMEDIES

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable or both as the party has against an opposing party.
[As amended; effective January 1, 2005.]

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.
[As amended; effective January 1, 2005.]

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.
[As amended; effective January 1, 2005.]

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.
[As amended; effective September 27, 1971.]

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.
[Added; effective September 27, 1971.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 20. PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or of fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.
[As amended; effective September 20, 1971.]

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 21. MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

RULE 22. INTERPLEADER

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 23. CLASS ACTIONS

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

[As amended; effective September 27, 1971.]

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

[As amended; effective September 27, 1971.]

(c) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice

practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

[As amended; effective January 1, 2005.]

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on interveners; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

[Added; effective September 27, 1971.]

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

[Added; effective September 27, 1971.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical. Neither the court nor the advisory committee considered the amendments to the federal rule, effective December 1, 2003, which revised subdivisions (c) and (e) and added new subdivisions (g) and (h).

RULE 23.1. DERIVATIVE ACTIONS BY SHAREHOLDERS

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

[Added; effective September 27, 1971; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 23.2. ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

[Added; effective September 27, 1971.]

RULE 24. INTERVENTION

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the

applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
[As amended; effective January 1, 2005.]

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.
[As amended; effective March 16, 1964.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 25. SUBSTITUTION OF PARTIES

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.
[As amended; effective March 16, 1964.]

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.
[As amended; effective January 1, 2005.]

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation From Office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.
[As amended; effective January 1, 2005.]

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

V. DEPOSITIONS AND DISCOVERY

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. At any time after the filing of a joint case conference report, or not sooner than 10 days after a party has filed a separate case conference report, or upon order by the court or discovery commissioner, any party who has complied with Rule 16.1(a)(1) may obtain discovery by one or more of the following additional methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34

or Rule 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.
[As amended; effective January 1, 2005.]

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

(2) Limitations. By order, the court may alter the limits in these rules or set limits on the number of depositions and interrogatories, the length of depositions under Rule 30 or the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c) of this rule.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under Rule 16.1(a)(2)(B) or 16.2(a)(3), the deposition shall not be conducted until after the report is provided.
[As amended; effective July 1, 2008.]

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and (ii) with respect to discovery obtained under subdivision (b)(4)(B) of this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.
[As amended; effective January 1, 2005.]

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute

without court action, and for good cause shown, the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

[As amended; effective January 1, 2005.]

(d) Sequence and Timing of Discovery. After compliance with subdivision (a) of this rule, unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

[As amended; effective January 1, 2005.]

(e) Supplementation of Disclosures and Responses. A party who has made a disclosure under Rule 16.1 or 16.2 or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired, if ordered by the court or in the following circumstances:

[As amended; effective July 1, 2008.]

(1) A party is under a duty to supplement at appropriate intervals its disclosures under Rule 16.1(a) or 16.2(a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under Rule 16.1(a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 16.1(a)(3) are due.

[As amended; effective July 1, 2008.]

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production or request for admission, if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

[As amended; effective January 1, 2005.]

(f) Form of Responses. Answers and objections to interrogatories or requests for production shall identify and quote each interrogatory or request for production in full immediately preceding the statement of any answer or objections thereto. Answers, denials, and objections to requests for admission shall identify and quote each request for admission in full immediately preceding the statement of any answer, denial, or objection thereto.

[Added; effective February 11, 1986; Amended effective January 1, 2005.]

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1) Every disclosure and report made pursuant to Rules 16.1(a)(1), 16.1(a)(3), 16.1(c), 16.2(a)(2), 16.2(a)(4), and 16.2(d) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

[As amended; effective July 1, 2008.]

(2) Every discovery request, response or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection, is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass, obscure, equivocate or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection was made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

[Added; effective January 1, 1988; Amended effective January 1, 2005.]

(h) Demand for Prior Discovery. Whenever a party makes a written demand for discovery which took place prior to the time the party became a party to the action, each party who has previously made discovery disclosures, responded to a request for admission or production or answered interrogatories shall make available to the demanding party the document(s) in which the discovery disclosures and responses in question are contained for inspection and copying or furnish to the demanding party a list identifying each such document by title and upon further demand shall furnish to the demanding party, at the expense of the demanding party, a copy of any listed discovery disclosure or response specified in the demand or, in the case of document disclosure or request for production, shall make available for inspection by the demanding party all documents and things previously produced. Further, each party who has taken a deposition shall make a copy of the transcript thereof available to the demanding party at the latter's expense.

[Added; effective February 11, 1986; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The initial-disclosure provisions in Rule 26(a) of the federal rules, as amended in 2000, are adopted as modified in Rule 16.1(a) of the Nevada rules; only other discovery methods are retained as part of Rule 26(a) of the Nevada rules.

Subdivision (b) retains the Nevada rule as to the scope of discovery—''any matter, not privileged, which is relevant to the subject matter involved in the pending action.'' Thus, the Nevada rule does not conform to the 2000 amendments to its federal counterpart which limits the scope of discovery to ''any matter, not privileged, that is relevant to the claim or defense of any party,'' except upon a showing of ''good cause.''

The insurance discovery provisions in subdivision (b)(2) of the former rule have been amended and moved to Rule 16.1(a)(1)(D).

Subdivision (b)(2)(iii) does not incorporate the weighing provisions that were added to the federal rule in 1993 but instead retains the language in the Nevada rule, which was based on the federal provision as it was adopted in 1983.

Expert discovery under subdivision (b)(4) is modified consistent with expert disclosure under revised Rule 16.1(a)(2). The provisions of former subdivision (b)(5) regarding demands for expert witness lists and the exchange of reports and writings, are repealed as unnecessary under the new expert disclosure provisions in Rule 16.1. New subdivision (b)(5) conforms to the federal rule.

Subdivision (c) is amended to conform to the 1993 amendment to subdivision (c) of the federal rule. The amendment requires that the parties meet and confer in an effort to resolve discovery disputes before seeking a protective order from the court. The party filing a motion for a protective order must include a certificate stating that the parties met and conferred, or, if the moving party is unable to get opposing parties to meet and confer regarding the dispute, indicating the moving party's efforts in attempting to arrange such a meeting.

Subdivision (d) is amended to clarify that once the parties have complied with the provisions of subdivision (a) of the rule, the parties may use any method of formal discovery provided in the rules in any sequence unless the court orders otherwise. The provision is similar to subdivision (d) of the federal rule, but it does not include the first sentence of the federal rule, which provides that with certain exceptions, the parties may not commence formal discovery until after they have met and conferred as required by subdivision (f) of the federal rule (*cf.* NRCP 16.1(b)). The parties must comply with subdivision (a) of the Nevada rule.

Subdivision (e) is amended to conform to the 1993 amendments to subdivision (e) of the federal rule. The rule is amended to provide that the requirement for supplementation applies to disclosures required by Rule 16.1(a). Paragraph (1) is amended to address when a party must supplement disclosures made under Rule 16.1(a) and to require supplementation of expert reports and depositions. Paragraph (2) is amended to address the duty to supplement responses to formal discovery requests including interrogatories, requests for production and requests for admissions. Like its federal counterpart, paragraph (2) does not include deposition testimony. However, under paragraph (1), a party must supplement information provided through a deposition of an expert from whom a report is required under Rule 16.1(a)(2)(B). Paragraphs (3) and (4) of the former rule are repealed.

Subdivision (f) of the former rule is repealed as duplicative of provisions in Rules 16 and 16.1. To avoid redesignating the remaining subdivisions, former subdivision (f) is replaced with the language from former subdivision (j) regarding the form of responses to discovery requests. There is no federal counterpart to this provision.

Subdivision (g) is amended to conform to the 1993 amendments to subdivision (g) of the federal rule. Paragraph (1) is added to require signatures on certain disclosures required by Rule 16.1. Paragraph (2) retains language from the former rule for signatures on discovery requests, responses, and objections with some revisions to conform to the 1993 amendments to the federal rule. Paragraph (3) retains language from the former rule regarding sanctions if a certification is made in violation of the rule with modifications to make it consistent with Rules 37(a)(4) and 37(c)(1)—in combination, these rules provide sanctions for violation of the rules regarding disclosures and discovery matters.

Subdivision (h) is amended to address technical issues. It has no federal counterpart. The provision is retained because it clarifies

responsibilities to exchange discovery with new parties.

Subdivision (i) of the former rule is repealed in favor of a strong scheduling order under Rule 16 that will set discovery deadlines.

RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

(1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of the State may file a verified petition in a district court. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a court of the State but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and the petitioner's interest therein, 3, the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, 4, the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. An order appointing an attorney under subdivision (a)(2) to represent the absent expected adverse party and to cross-examine the proposed witness shall set the attorney's compensation including expenses. The compensation so set shall be paid by the petitioner prior to the appearance of the appointed attorney at the examination. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of this state, it may be used in any action involving the same subject matter subsequently brought in a district court, in accordance with the provisions of Rule 32(a).

[As amended; effective January 1, 2005.]

(b) Pending Appeal. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

[As amended; effective January 1, 2005.]

(c) Reserved.

DRAFTER'S NOTE
2004 AMENDMENT

The amendments to subdivision (a)(1) are technical. Subdivision (a)(2) is amended to conform to the federal rule, as adopted in 1937, by adding language that allows the court to order service by publication or other means and to appoint an attorney if necessary for an ''expected adverse party'' to preserve that party's right to confrontation. Subdivision (a)(3) is amended to provide that the court shall set the compensation for an attorney appointed to represent an expected adverse party under subdivision (a)(2) and that the compensation so set must be paid by the petitioner before the appointed attorney appears at the examination. There is no similar provision in the federal rule, but the language is taken from a local rule for the District Court for the Northern District of Illinois. Subdivision (a)(4) is amended to conform to the federal rule by adding language that allows broader use of testimony perpetuated than would otherwise be admissible.

Subdivision (c) is retained as a reserved provision rather than adopting subdivision (c) of the federal rule, which addresses independent actions to perpetuate testimony.

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the

place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. Upon proof that the notice to take a deposition outside the State of Nevada has been given as provided in these rules, the clerk shall issue a commission or a letter of request (whether or not captioned a letter rogatory) in the form prescribed by the jurisdiction in which the deposition is to be taken, such form to be presented by the party seeking the deposition. Any error in the form or in the commission or letters is waived unless objection thereto be filed and served on or before the time fixed in the notice. The term "officer" as used in Rule 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

[As amended; effective January 1, 2005.]

(b) In Foreign Countries. Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention; or (2) pursuant to a letter of request (whether or not captioned a letter rogatory); or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States; or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in {here name the country}." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely for the reason that it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

[As amended; effective January 1, 2005.]

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to conform to the federal rule, which, consistent with modern terminology and the primary method provided by The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, replaced the phrase ''letter rogatory'' with ''letter of request.'' The third sentence in subdivision (a) of the Nevada rule, governing the issuance of commissions and letters of request for depositions taken within other states, is retained. It does not have a federal counterpart.

RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to conform to the federal rule, which allows parties to stipulate to certain procedural waivers and limitations in discovery, while protecting against a stipulation that is contrary to court mandated discovery deadlines, such as a stipulation to waive early disclosure under Rule 16.1. The amended rule requires that stipulations to extend the time for responses to discovery provided in Rules 33, 34, and 36 may be made only with the court's approval if the extension would interfere with times set for completing discovery, hearing a motion, or trial.

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken; When Leave Required.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in subdivision (a)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) the person to be examined already has been deposed in the case; or

(B) a party seeks to take a deposition before the time specified in Rule 26(a), unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the state and be unavailable for examination in this state unless deposed before that time.

[As amended; effective January 1, 2005.]

(b) Notice of Examination: General Requirements; Special Notice; Method of Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice, not less than 15 days, in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.
[As amended; effective January 1, 2005.]

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.
[As amended; effective January 1, 2005.]

(3) With 5 days' notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.
[As amended; effective January 1, 2005.]

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.
[As amended; effective January 1, 2005.]

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.
[As amended; effective January 1, 2005.]

(7) The parties may stipulate, or the court may upon noticed motion order that a deposition be taken by telephone or other remote electronic means. For the purpose of these rules, a deposition taken by telephone is taken at the place where the deponent is to answer the questions propounded. Unless otherwise stipulated by the parties: (A) the party taking the deposition shall arrange for the presence of the officer before whom the deposition will take place; (B) the officer shall be physically present at the place of the deposition; and (C) the party taking the deposition shall make the necessary telephone connections at the time scheduled for the deposition. Nothing in this paragraph shall prevent a party from being physically present at the place of the deposition, at the party's own expense.
[As amended; effective January 1, 2005.]

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.
[As amended; effective January 1, 2005.]

(d) Motion to Terminate or Limit Examination.

(1) Any objection during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under paragraph (3).

(2) If the court or discovery commissioner finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(3) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

[As amended; effective January 1, 2005.]

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

[As amended; effective January 1, 2005.]

(f) Certification by Officer; Exhibits; Copies.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer shall securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of {here insert name of witness}" and shall send it to the party who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

[As amended; effective January 1, 2005.]

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court shall order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees, unless good cause be shown.

[As amended; effective January 1, 2005.]

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court shall order the party giving the notice to pay such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees, unless good cause be shown.

[As amended; effective January 1, 2005.]

(h) Expert Witness Fees.

(1) A party desiring to depose any expert who is to be asked to express an opinion, shall pay the reasonable and customary hourly or daily fee for the actual time consumed in the examination of that expert by the party noticing the deposition. If any other attending party desires to question the witness, that party shall be responsible for the expert's fee for the actual time consumed in that

party's examination. If requested by the expert before the date of the deposition, the party taking the deposition of an expert shall tender the expert's fee based on the anticipated length of that party's examination of the witness. If the deposition of the expert takes longer than anticipated, any party responsible for any additional fee shall pay the balance of that expert's fee within 30 days of receipt of a statement from the expert. Any party identifying an expert whom that party expects to call at trial is responsible for any fee charged by the expert for preparing for and reviewing the deposition.

[As amended; effective January 1, 2005.]

(2) If a party desiring to take the deposition of an expert witness pursuant to this subdivision deems that the hourly or daily fee of that expert for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion shall be accompanied by an affidavit stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. Notice of this motion shall be given to the expert. The court shall set the fee of the expert for providing deposition testimony if it determines that the fee demanded by that expert is unreasonable. The court may impose a sanction pursuant to Rule 37 against any party who does not prevail, and in favor of any party who does prevail, on a motion to set expert witness fee, providing the prevailing party has engaged in a reasonable and good faith attempt at an informal resolution of any issues presented by the motion.

[Added; effective January 1, 1988.]

DRAFTER'S NOTE
2004 AMENDMENT

Former subdivision (a) is repealed. New subdivision (a) conforms to the federal rule, as amended in 1993. It provides that leave of court is not required to take a deposition except as set forth in paragraph (2). Paragraph (2)(A) of the federal rule, which limits the number of depositions that may be taken is not included in the Nevada rule. Paragraphs (2)(B) and (C) of the federal rule are redesignated as paragraphs (2)(A) and (B) and adopted with minor modifications to reflect practice in state court.

Subdivision (b) is amended to conform to the federal rule, as amended in 1993, with some exceptions. The amendments to paragraph (1) are technical, but the 15-day minimum notice of examination is retained. Former paragraphs (2), (3), and (4) are repealed. New paragraph (2) permits the party noticing the deposition to choose the method of recording and permits recording by nonstenographic means. It is noted that the last two sentences of the first paragraph of former subdivision (b)(2) are deleted because they are redundant to Rule 26(g) and because Rule 11 no longer applies to discovery requests. New paragraph (3) permits other parties to arrange for recording by a means in addition to that selected by the person noticing the deposition. Unlike its federal counterpart, paragraph (3) of the Nevada rule requires 5 days' notice to the deponent and other parties. New paragraph (4) provides that all depositions be recorded by an officer appointed or designated under Rule 28 and includes procedures to protect the utility and integrity of nonstenographic recordings. Paragraph (6) is amended to require a subpoena to depose an organization, remove the phrase "have knowledge of" from the second sentence, and provide that the subpoena must advise a nonparty organization of its duty to designate a person who consents to testify on its behalf. Paragraph (7) is amended to permit the taking of a deposition by other remote electronic means in addition to telephonic means, but it retains telephonic deposition procedures that do not appear in the federal rule.

Subdivision (c) is amended to conform to the federal rule, as amended in 1993. The fourth sentence of the former subdivision is repealed consistent with the new provisions of subdivision (b). The other revisions are intended to reduce the number of interruptions during depositions and complement the new provisions of subdivision (d)(1).

Subdivision (d) is amended to conform to the federal rule, as amended in 1993, by adding two new paragraphs. New paragraph (1) requires that any objection during a deposition be made concisely and in a nonargumentative and nonsuggestive manner. It also prohibits instructing a deponent not to answer except in three specific circumstances. Paragraph (2) of the federal rule, as amended in 2000, limits depositions to one day of seven hours; this provision is not included in the Nevada rule. Paragraph (3) of the federal rule is redesignated and adopted as new paragraph (2) of the Nevada rule. It authorizes the court or discovery commissioner to impose sanctions when a fair examination of the deponent is impeded, delayed or otherwise frustrated. Paragraph (3) retains the provisions of the former subdivision (d) and corresponds to paragraph (4) of the federal rule.

Subdivision (e) is amended to conform to the federal rule, as amended in 1993. Under the amended provision, review of the deposition transcript by the deponent is required only if requested before the deposition is completed.

Subdivision (f) is amended to conform to the federal rule, as amended in 1980 and 1993, with the exception of paragraph (3) of the federal rule. Paragraph (1) is amended to require a written certificate from the officer accompany the record of the deposition, which is sealed and sent to the party who arranged for the transcript or recording for safekeeping. Other amendments clarify the use of originals or copies of documents as exhibits to a deposition. The first sentence in paragraph (2) is new and generally provides that the officer must retain stenographic notes or a copy of the recording of any deposition.

The amendments to subdivision (g) are technical. The rule retains in both paragraphs the word "shall" rather than "may," which is used in the federal rule. The Nevada rule also retains the good cause exception in both paragraphs, which does not appear in the federal rule.

Subdivision (h) is retained with some modifications. It has no federal counterpart. Paragraph (1) is amended to eliminate confusion concerning responsibility for travel expenses for a party's expert to attend a deposition noticed by another party.

RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving Questions; Notice.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

[As amended; effective January 1, 2005.]

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) the person to be examined has already been deposed in the case; or

(B) a party seeks to take a deposition before the time specified in Rule 26(a).

[Added; effective January 1, 2005.]

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating

(1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

[As amended; effective January 1, 2005.]

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

[As amended; effective January 1, 2005.]

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e) and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended to conform to the federal rule, as amended in 1993, including shorter periods for serving cross, redirect, and recross questions. The rule provides that depositions upon written questions may be taken without leave of court except as provided in new paragraph (2). The revised rule does not include the 10 deposition limit set forth in paragraph (2)(A) of the federal rule. As a result, paragraphs (2)(B) and (C) of the federal rule are redesignated as paragraphs (2)(A) and (B).

The amendment to subdivision (b) is technical. The provision conforms to the federal rule.

Subdivision (c) of the federal rule, which provides for notice of filing, is not included in the Nevada rule.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Nevada Rules of Evidence, NRS Chapters 47-56.

[As amended; effective February 11, 1986.]

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or in any State and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Nevada Rules of Evidence, NRS Chapters 47-56.

[As amended; effective January 1, 2005.]

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

[As amended; effective September 27, 1971.]

(c) Form of Presentation. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

[As amended; effective January 1, 2005.]

(d) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

[As amended; effective September 27, 1971.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to conform to the federal rule, with one significant exception. The last paragraph of subdivision (a)(3) of the federal rule, concerning deposition without leave of court or with insufficient notice, is not included in the Nevada rule. Former subdivision (c), which addressed impeaching one's own witness, is repealed as outdated. The provision was deleted from the federal rule in 1972. New subdivision (c) conforms to the 1993 amendment to the federal rule. It complements the amendments to Rule 30 that authorize nonstenographic methods of recording depositions.

RULE 33. INTERROGATORIES TO PARTIES

(a) Availability. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 40 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(a).

[As amended; effective January 1, 2005.]

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. The answers shall first set forth each interrogatory asked, followed by the answer or response of the party.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A short or longer time may be directed by the court or in the absence of such an order,

agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

[As amended; effective January 1, 2005.]

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

[As amended; effective January 1, 2005.]

(d) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to conform to the federal rule, except the limit on the number of interrogatories. Former subdivision (a) is divided into two subdivisions and amended consistent with the federal rule. Subdivision (a) retains the Nevada rule permitting 40 interrogatories including all discrete subparts in place of the 25-interrogatory limit in the federal rule. Former subdivisions (b) and (c) are redesignated as subdivisions (c) and (d) to match the federal rule. Subdivision (b)(1) is amended to incorporate language from Rule 26(f), requiring restatement of the interrogatory before the answer or response. Former subdivision (d) is repealed, but the provisions in the first sentence of the former subdivision are incorporated in the amendments to subdivision (a).

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

[As amended; effective January 1, 2005.]

(b) Procedure. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(a).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in absence of such an order, agreed to in writing by the parties subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The response shall first set forth each request for production made, followed by the answer or objections thereto. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

[As amended; effective January 1, 2005.]

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

[As amended; effective January 1, 2005.]

(d) Expenses of Copying. The party requesting that documents be copied must pay the reasonable cost therefor and the court may, upon such terms as are just, direct the respondent to copy the documents.

[Added; effective January 1, 1988.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule, with the exception of subdivision (d), is amended to conform to the federal rule. The amendments to subdivision (a) are technical. Subdivision (b) is amended to reflect changes made to Rule 26(a) and (d), preventing a party from seeking formal discovery before complying with Rule 26(a). It is also amended to clarify that the response must first set forth each request for production, followed by the answer or objections to the request. Subdivision (c) is amended to reflect the changes made to Rule 45 to provide for subpoenas to compel nonparties to produce documents and things and to submit to inspections of premises. Subdivision (d) of the former rule, which requires payment of reasonable expenses for copying, is retained. A similar provision was considered but rejected in the 2000 amendments to the federal rules.

RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

[As amended; effective January 1, 2005.]

(b) Report of Examiner.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended to conform to the federal rule, as amended in 1991, which permits court ordered or stipulated examinations by anyone suitably licensed or certified. The amendments to subdivision (b) are technical.

RULE 36. REQUESTS FOR ADMISSION

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(a).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, or the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is

insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it. The answer shall first set forth each request for admission made, followed by the answer or response of the party.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.
[As amended; effective January 1, 2005.]

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.
[As amended; effective January 1, 2005.]

(c) Number of Requests for Admissions. No party shall serve upon any other single party to an action more than 40 requests for admissions that do not relate to the genuineness of documents, in which subparts of requests shall count as separate requests, without first obtaining a written stipulation, subject to Rule 29, of such party to additional requests or obtaining an order of the court upon a showing of good cause granting leave to serve a specific number of additional requests.

The number of requests for admission of the genuineness of documents is not limited except as justice requires to protect the responding party from annoyance, oppression, or undue burden and expense.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended to conform to the federal rule, as amended in 1993, by reflecting changes to Rule 26(a) and (d) that require a party to comply with Rule 26(a) before serving formal discovery requests. It is also amended to provide that stipulations to modify the time for a response are subject to Rule 29. Subdivision (a) is also amended to incorporate language from Rule 26(f), requiring restatement of the request for admission before the answer or response. The amendments to subdivision (b) are technical. Subdivision (c), which does not appear in the federal rule, is retained, including the language limiting requests for admissions to 40 in number except as to genuineness of documents. The provision is amended to include a reference to Rule 29 with respect to stipulations to exceed the 40-request limit.

RULE 37. FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY; SANCTIONS

(a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being, or is to be, taken.
[As amended; effective January 1, 2005.]

(2) Motion.

(A) If a party fails to make a disclosure required by Rule 16.1(a) or 16.2(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.
[As amended; effective July 1, 2008.]

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.
[As amended; effective January 1, 2005.]

(3) Evasive or Incomplete Disclosure, Answer or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer or response is to be treated as a failure to disclose, answer or respond.

[As amended; effective January 1, 2005.]

(4) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

[As amended; effective January 1, 2005.]

(b) Failure to Comply With Order.

(1) Sanctions—Deponent. If a deponent fails to be sworn or to answer a question after being directed to do so by the court the failure may be considered a contempt of court.

(2) Sanctions—Party. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rules 16, 16.1, and 16.2, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

[As amended; effective July 1, 2008.]

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

[As amended; effective January 1, 2005.]

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

[As amended; effective July 1, 2008.]

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may

apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

[As amended; effective January 1, 2005.]

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

[As amended; effective January 1, 2005.]

(e) Reserved.

(f) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the development and submission of a proposed discovery plan as required by Rule 16.1(b)(2) or 16.2, the court may, after opportunity for hearing, require such party or party's attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

[As amended; effective July 1, 2008.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended to conform to the federal rule, as amended in 1993. The amendments reflect the changes to Rule 16.1(a), requiring disclosure of matters without a discovery request. New paragraph (2)(A) provides for a motion to compel disclosures required by revised Rule 16.1(a) and requires a meet-and-confer or a good faith attempt to meet and confer before seeking court intervention. The language of former paragraph (2), except the last sentence of the former paragraph, is retained in paragraph (2)(B) with the addition of a meet-and-confer requirement that is identical to paragraph (2)(A). Paragraph (3) is amended to apply to disclosures under Rule 16.1(a) and responses to discovery. Paragraph (4) is divided into three subparagraphs consistent with the federal rule and in each provision the phrase "after opportunity for hearing" is changed to "after affording an opportunity to be heard" to clarify that the court may consider sanctions on written submissions as well as on oral hearings. Subparagraph (A) is amended to address the situation where the withheld information is produced after the motion is filed but before it is heard and to provide that the moving party is not entitled to an award for its expenses if a meet-and-confer could have prevented the need for a motion. Subparagraph (C) is amended to include the provision that was included as the last sentence of former subdivision (a)(2).

The amendments to subdivision (b) are technical except that the reference to Rule 26(f) in paragraph (2) is changed to Rules 16 and 16.1 consistent with amendments to those rules.

Subdivision (c) is amended to conform to the 1993 and 2000 amendments to the federal rule. New paragraph (1) sets forth sanctions for failing to make disclosures required by Rules 16.1 and 26(e)(1). The language of former subdivision (c) is retained in paragraph (2) with technical amendments.

Subdivision (e) is retained as a reserved provision for future amendments.

Subdivision (f) corresponds to subdivision (g) of the federal rule. It is amended to conform to the revision of Rules 26(f) and 16.1(b)(2).

VI. TRIALS

RULE 38. JURY TRIAL OF RIGHT

(a) Right Preserved. The right of trial by jury as declared by the Constitution of the State or as given by a statute of the State shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving as required by Rule 5(b) upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than the time of the entry of the order first setting the case for trial.

[As amended; effective January 1, 2005.]

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

[As amended; effective January 1, 2005.]

(d) Waiver; Deposit of Jurors' Fees. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) and to deposit the fees required by this rule constitutes a waiver by the party of trial by jury. At the time a demand is filed as required by Rule 5(d), the party demanding the trial by jury shall deposit with the clerk an amount of money equal to the fees to be paid the trial jurors for their services for the first day of the trial. A demand for trial by jury made as herein provided may be withdrawn only with the consent of the parties, or for good cause shown upon such terms and conditions as the court may fix.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (b) is amended to include language that requires compliance with Rule 5(b). The amendments to subdivisions (c) and (d) are technical.

RULE 39. TRIAL BY JURY OR BY THE COURT

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the State.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion may try any issue with an advisory jury or, the court, with the consent of all parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

DRAFTER'S NOTE
2004 AMENDMENT

When Nevada adopted the rule, the federal rule was revised to eliminate language in subdivision (c) of the federal rule that permits the court to impanel an advisory jury on its own motion. The court accepted the Advisory Committee's recommendation that the Nevada rule retain this distinction from the federal rule. Thus, there are no amendments to this rule.

RULE 40. ASSIGNMENT OF CASES FOR TRIAL

The district courts shall provide for the placing of actions upon the trial calendar (1) without request of the parties but upon notice to the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by any statute.

RULE 41. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute, an action may be dismissed by the plaintiff upon repayment of defendants' filing fees, without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By Order of Court. Except as provided in subdivision (a)(1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

[As amended; effective January 1, 2005.]

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

[As amended; effective January 1, 2005.]

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subdivision (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

[As amended; effective January 1, 2005.]

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action

based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) Want of Prosecution. The court may in its discretion dismiss any action for want of prosecution on motion of any party or on the court's own motion and after due notice to the parties, whenever plaintiff has failed for 2 years after action is filed to bring such action to trial. Any action heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced or to which it may be transferred on motion of any party, or on the court's own motion, after due notice to the parties, unless such action is brought to trial within 5 years after the plaintiff has filed the action, except where the parties have stipulated in writing that the time may be extended. When, in any action after judgment, a motion for a new trial has been made and a new trial granted, such action shall be dismissed on motion of any party after due notice to the parties, or by the court of its own motion, if no appeal has been taken, unless such action is brought to trial within 3 years after the entry of the order granting a new trial, except when the parties have stipulated in writing that the time may be extended. When in an action after judgment, an appeal has been taken and judgment reversed with cause remanded for a new trial (or when an appeal has been taken from an order granting a new trial and such order is affirmed on appeal), the action must be dismissed by the trial court on motion of any party after due notice to the parties, or of its own motion, unless brought to trial within 3 years from the date upon which remittitur is filed by the clerk of the trial court. A dismissal under this subdivision (e) is a bar to another action upon the same claim for relief against the same defendants unless the court otherwise provides.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (b) is amended to conform to the 1963 and 1991 amendments to the federal rule by removing the second sentence, which authorized the defendant to file a motion for involuntary dismissal at the close of the plaintiff's evidence in jury and nonjury cases when the plaintiff had "failed to prove a sufficient case for the court or jury." For a nonjury case, the device is replaced by the new provisions of Rule 52(c), which authorize the court to enter judgment on partial findings against the plaintiff as well as the defendant. For a jury case, the correct motion is the motion for judgment as a matter of law under amended Rule 50.

Subdivision (b) is further amended to conform to the federal rule by adding "improper venue" as a ground for dismissal under the rule that does not act as an adjudication upon the merits.

The current language in subdivision (a)(1) on repayment of filing fees and subdivision (e) on failure to prosecute is retained.

RULE 42. CONSOLIDATION; SEPARATE TRIALS

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.

[As amended; effective September 27, 1971.]

RULE 43. EVIDENCE

(a) Form. In every trial, the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules or by statute. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

[As amended; effective January 1, 2005.]

(b) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(d) Interpreters. The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

[Added; effective September 27, 1971; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended to conform to the 1996 amendments to the federal rule by deleting the requirement that testimony be taken "orally" and adding the second sentence, which permits the "presentation of testimony in open court by contemporaneous transmission from a different location" upon a showing of "good cause" in "compelling circumstances." Subdivisions (b) and (c), which were deleted from the federal rule in 1972 because the matters were treated in the Federal Rules of Evidence, are retained in the Nevada rule. The amendment to subdivision (d) is technical.

RULE 44. PROOF OF OFFICIAL RECORD

(a) Authentication.

(1) Domestic. An official record kept within the United States, or any state, district, commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.
[As amended; effective January 1, 2005.]

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.
[As amended; effective September 27, 1971.]

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by law.
[As amended; effective September 27, 1971.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to conform to the federal rule, as amended effective December 1, 1991.

RULE 44.1. DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.
[Added; effective September 27, 1971; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendment is technical.

RULE 45. SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state the name of the court from which it is issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil case number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

A command to produce evidence or permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) A subpoena commanding attendance at a trial or hearing shall issue from the court for the district in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the court for the district in which the action is pending. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the district in which the action is pending. If the action is pending out of the state, a subpoena may be issued by the clerk of any district court, and the court in the district in which the deposition is being taken or in which the production or inspection is to take place shall, for the purposes of these rules, be considered the court in which the action is pending.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of the court if the attorney is authorized to practice therein.

[As amended; effective January 1, 2005.]

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the State or an officer or agency thereof, fees and mileage need not be tendered. Prior notice, not less than 15 days, of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the state.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

[As amended; effective January 1, 2005.]

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or

occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

[As amended; effective January 1, 2005.]

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[As amended; effective January 1, 2005.]

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended to conform to the 1991 amendments to subdivision (a) of the federal rule with some minor revisions to tailor the provision to practice in state court. Rule 45(a)(1) authorizes the issuance of a subpoena to compel a nonparty to produce evidence independent of any deposition or permit inspection of premises within the nonparty's possession. Rule 45(a)(3) authorizes "[a]n attorney as officer of the court" to issue and sign a subpoena on behalf of the court so long as the attorney is authorized to practice before that court.

Subdivision (b) is amended to conform to the 1991 amendments to subdivision (b) of the federal rule. Subdivision (b)(1) retains the text of former subdivision (c) with some minor changes to delete reference to the sheriff or his deputy and to limit the requirement for one day's attendance and mileage to subpoenas that command a person's attendance. The fourth sentence is new and requires service of prior notice under Rule 5 of any commanded production of documents and things or inspection of premises. Unlike its federal counterpart, this new provision in the Nevada rule requires prior notice within a specific period of time. (Pretrial notice of subpoenas for testimony at trial is governed by revised Rule 16.1(a)(3)(A).) Subdivision (b)(2) retains language formerly set forth in the second sentence of subdivision (e)(1), providing that "a subpoena may be served at any place within the state," but extends its application to subpoenas for depositions or production. Subdivision (b)(3) is new to the Nevada rule and addresses what is required to demonstrate proof of service.

Subdivision (c) is amended to conform to the 1991 amendments to the federal rule with some minor changes to reflect practice in state court. The revised provision states the rights of persons subject to subpoena. Subdivision (c)(1) addresses the duties and liabilities of a party or attorney "responsible for the issuance and service of a subpoena." Subdivision (c)(2) retains language from former subdivision (d)(1), but it extends the 10-day period for response to a subpoena to 14 days. Subdivision (c)(3) replaces and expands on language from former subdivision (b), regarding the court's authority to quash or modify a subpoena. Subdivision (c)(3)(A) specifies the circumstances in which the court "shall" quash or modify a subpoena. Subdivision (c)(3)(B) specifies circumstances in which a court "may" quash or modify a subpoena or impose appropriate conditions to protect the interests of the subpoenaed person.

Subdivision (d) is replaced in its entirety to conform to the 1991 amendments to the federal rule. Subdivision (d)(1) extends to nonparties the duty imposed on parties by the last paragraph of Rule 34(b), regarding the manner in which documents are produced. Subdivision (d)(2) addresses the specificity required when information subject to the subpoena is "withheld on a claim that it is privileged or subject to protection as trial preparation materials."

Subdivision (e) retains the entirety of former subdivision (f). The 1991 amendment to the federal rule that added a second sentence to subdivision (e) regarding "adequate cause" for failing to obey a subpoena is not included in the revised Nevada rule.

RULE 46. EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the party's grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 47. JURORS

(a) Examination of Jurors. The court shall conduct the examination of prospective jurors and shall permit such supplemental examination by counsel as it deems proper.

[As amended; effective January 1, 2005.]

(b) Alternate Jurors. The court may direct that alternate jurors may, in addition to the regular jury, be called and impaneled to sit. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have

the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law for every two alternate jurors that are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended by replacing the word "may" with "shall," such that the court "shall permit . . . supplemental examination by counsel as it deems proper."

Subdivision (b) retains the provision for alternate jurors, whereas the federal rule was amended in 1991 to abolish the institution of the alternate juror. However, subdivision (b) is revised to eliminate language that limited the trial court to impaneling not more than six alternate jurors and allows each side one peremptory challenge for every two alternates impaneled.

The revised Nevada rule does not incorporate subdivision (c) of the federal rule.

RULE 48. JURIES OF LESS THAN EIGHT

The parties may stipulate that the jury shall consist of four jurors rather than eight.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to provide for an 8-person jury with the parties authorized to stipulate to a 4-person jury in place of the former language that provided for a 12-person jury with the parties authorized to stipulate to a 4- or 8-person jury. The changes are based on current civil jury practice and the adoption of the Nevada Short Trial Rules.

RULE 49. SPECIAL VERDICTS AND INTERROGATORIES

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

[As amended; effective January 1, 2005.]

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments to subdivision (a) are technical. Subdivision (b) is amended to include a reference to entry of judgment under Rule 58 consistent with the federal rule. But unlike the federal rule, the Nevada rule retains permissive language in the last sentence of subdivision (b), regarding returning the jury for further consideration of its answers and verdict or ordering a new trial where the jury's answers to written interrogatories are "inconsistent with each other and one or more is likewise inconsistent with the general verdict."

RULE 50. JUDGMENT AS A MATTER OF LAW IN JURY TRIALS; ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS

(a) Judgment as a Matter of Law.

(1) If during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at the close of the evidence offered by the nonmoving party or at the close of the case. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to

the judgment.
[As amended; effective January 1, 2005.]

(b) Renewing Motion for Judgment After Trial; Alternative Motion for New Trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment and may alternatively request a new trial or join a motion for new trial under Rule 59. In ruling on a renewed motion the court may:

(1) if a verdict was returned:

(A) allow the judgment to stand,

(B) order a new trial, or

(C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:

(A) order a new trial, or

(B) direct entry of judgment as a matter of law.
[As amended; effective January 1, 2005.]

(c) Granting Renewed Motion for Judgment as a Matter of Law; Conditional Rulings; New Trial Motion.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed not later than 10 days after service of written notice of entry of the judgment.
[Added; effective March 16, 1964; Amended effective January 1, 2005.]

(d) Same: Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.
[Added; effective March 16, 1964; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is revised in its entirety. The revised rule adopts the "judgment as a matter of law" terminology from the 1991 amendments to the federal rule.

Subdivision (a)(1) sets forth the standard for granting a motion for judgment as a matter of law. It is not the same as the federal standard; rather, the revised subdivision (a)(1) of the Nevada rule incorporates language from former Rule 41(b), thus incorporating the standard used to decide a motion to dismiss under former Rule 41(b). The new subdivision (a) replaces part of Rule 41(b), which had authorized a dismissal at the close of a plaintiff's case if the plaintiff had "failed to prove a sufficient case for the . . . jury." The revised subdivision (a)(2) also differs from the federal rule in the timing of a motion for judgment as a matter of law and authorizes a motion at the close of the evidence offered by the nonmoving party or at the close of the case, rather than at any time as permitted under the federal rule.

Subdivision (b) is amended to conform to the 1991 amendment to the federal rule. The Nevada rule was amended in 1971 to delete the requirement under the then-existing federal rule that a motion for judgment notwithstanding the verdict did not lie unless it was preceded by a motion for a directed verdict. The revised rule takes the same approach as the federal rule, as amended in 1963 and 1991, that a post-verdict motion for judgment as a matter of law is a renewal of an earlier motion made before or at the close of evidence. Thus, a "renewed" motion filed under subdivision (b) must have been preceded by a motion filed at the time permitted by subdivision (a)(2). The Nevada rule retains the "notice of entry of judgment" language from former subdivision (b) as the starting point for the 10-day time limit for filing a post-verdict motion under the rule.

Subdivisions (c) and (d) are amended to conform the language of the former provisions to the change in diction set forth in subdivision (a) of the revised rule. Subdivision (c)(2) requires that a motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed no later than 10 days after service of written notice of entry of the judgment. Under former subdivision (c)(2), the motion had to be served no later than 10 days after service of written notice of entry of the judgment notwithstanding the verdict.

RULE 51. INSTRUCTIONS TO JURY; OBJECTIONS; PRESERVING A CLAIM OF ERROR

(a) Written Requests; Format.

(1) A party may, at the close of the evidence or at such earlier time as the court reasonably directs, file written requests that the court instruct the jury on the law as set forth in the requests. The written requests shall be in the format directed by the court. If a party relies on statute, rule or case law to support or object to a requested instruction, the party shall provide a citation to or a copy of the precedent. An original and one copy of each instruction requested by a party shall be filed with the court. The copies shall be appropriately numbered and indicate who filed them.

(2) After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated at an earlier time for requests set under Rule 51(a)(1), and

(B) with the court's permission file untimely requests for instructions on any issue.
[As amended; effective January 1, 2005.]

(b) Instructions.

(1) The court:

(A) shall inform counsel of its proposed instructions and proposed action on the requests before instructing the jury and before the arguments to the jury; and

(B) must give the parties an opportunity to object on the record and out of the jury's hearing to the proposed instructions and actions on requests before the instructions and arguments are delivered.

(2) Whenever the court refuses to give any requested instruction, the court shall write the word "refused" in the margin of the original and initial or sign the notation. Whenever the court modifies any requested instruction, the court shall mark the same in such manner that it shall distinctly appear how the instruction has been modified and shall initial or sign the notation. The instructions given to the jury shall be firmly bound together and the court shall write the word "given" at the conclusion thereof and sign the last of the instructions. After the jury has reached a verdict and been discharged, the originals and copies of all instructions, whether given, modified or refused, shall be made part of the trial court record.

(3) The court shall instruct the jury before the parties' arguments to the jury, but this shall not prevent the giving of further instructions that may become necessary by reason of the argument. The jury shall be permitted to take to the jury room the written instructions given by the court, or a true copy thereof.
[As amended; effective January 1, 2005.]

(c) Objections.

(1) A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds of the objection.

(2) An objection is timely if:

(A) a party that has been informed of an instruction or action on a request before the jury is instructed and before final arguments to the jury, as provided by Rule 51(b)(1)(A), objects at the opportunity for objection required by Rule 51(b)(1)(B); or

(B) a party that has not been informed of an instruction or action on a request before the time for objection provided under Rule 51(b)(1)(B) objects promptly after learning that the instruction or request will be, or has been, given or refused.
[As amended; effective January 1, 2005.]

(d) Assigning Error; Plain Error.

(1) A party may assign as error:

(A) an error in an instruction actually given if that party made a proper objection under Rule 51(c), or

(B) a failure to give an instruction if that party made a proper request under Rule 51(a), and, if the court did not make a definitive ruling on the record rejecting the request, also made a proper objection under Rule 51(c).

(2) A court may consider a plain error in the instructions affecting substantial rights that has not been preserved as required by Rule 51(d)(1)(A) or (B).
[As amended; effective January 1, 2005.]

(e) Scope. This rule governs instructions to the trial jury on the law that governs the verdict. Other instructions, including preliminary instructions to a venire and cautionary or limiting instructions delivered in immediate response to events at trial, are not within the scope of this rule.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The rule is amended to conform to the 2003 amendments to the federal rule with a few exceptions.

Subdivision (a) governs requests. It mirrors subdivision (a) of the federal rule with some exceptions noted below. Subdivision (a)(1) retains the first sentence of the former rule with some technical amendments. The provision differs from the federal rule in that it specifies that written requests must be filed in the format directed by the court, requires a party to provide a citation to or a copy of any legal precedent that the party relies on to support or object to a requested instruction, and requires the requesting party to file an original and one copy of each requested instruction and to number the instructions on the copies and indicate who filed them. Subdivision (a)(2) is identical to the 2003 amendments to the federal rule and addresses unanticipated and untimely requests.

Subdivisions (b)(1)(A) and (B) track the 2003 amendments to subdivision (b)(1) and (2) of the federal rule. Subdivision (b)(1)(A) requires the court to inform the parties of the proposed instructions and the proposed action on requested instructions before instructing the jury and before final jury arguments. Subdivision (b)(1)(B) carries forward the opportunity to object established by former Rule 51, but it makes explicit the opportunity to object on the record. Subdivision (b)(2) is unique to the Nevada rule. It addresses proper record keeping regarding given and refused jury instructions and is based in part on Hawaii Rule of Civil Procedure 51(c) and in part on NRS 16.110. Subdivision (b)(3) addresses when the court should instruct the jury. The federal rule and the former Nevada rule are revised to provide that the court shall instruct the jury before final arguments. The phrase "unless a party demands otherwise" in the former Nevada rule is not retained in the revised rule. The final sentence of subdivision (b)(3) is retained from former Rule 51; the federal rule has no counterpart.

Subdivision (c) addresses the requirements for a proper objection to an instruction or the failure to give an instruction. The provision conforms to the 2003 amendment to the federal rule. Subdivision (c)(1) retains the requirement in former Rule 51 that the objection state distinctly the matter objected to and the grounds of the objection, but it makes explicit the requirement that the objection be made on the record. Subdivision (c)(2) makes clear when an objection is timely.

Subdivision (d) addresses what is required to preserve the right to appeal the giving of an instruction or the failure to give an instruction and the applicability of plain error review where a party fails to preserve the right to appellate review. The provision conforms to the 2003 amendments to the federal rule, with some minor rewording of paragraph (1)(B).

Subdivision (e) is unique to the Nevada rule. It addresses the scope of the rule. The provision mirrors language in the advisory committee notes to the 2003 amendments to the federal rule.

RULE 52. FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule. But an order granting summary judgment shall set forth the undisputed material facts and legal determinations on which the court granted summary judgment.

[As amended; effective January 1, 2005.]

(b) Amendment. Upon a party's motion filed not later than 10 days after service of written notice of entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may later be questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

[As amended; effective January 1, 2005.]

(c) Judgment on Partial Findings. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

[Added; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended to conform to the 1963 and 1983 amendments to the federal rule by providing that the court's judgment in a case tried without a jury shall be entered pursuant to Rule 58, that the court may make the findings of fact and conclusions of law required in nonjury cases orally and by including a reference to new subdivision (c) in the last sentence. The revised rule does not include the 1985 amendment to subdivision (a) of the federal rule. The last sentence is added to conform this rule with the change to Rule 56(c) requiring that an order granting summary judgment set forth the undisputed material facts and legal determinations on which the court granted summary judgment.

The amendments to subdivision (b) are technical.

Subdivision (c) is added. It conforms to the 1991 amendment to the federal rule. The provision parallels revised Rule 50(a), but it applies to nonjury trials. It authorizes the court to enter judgment at any time that it can appropriately make a dispositive finding of fact on the evidence. The new subdivision replaces part of former Rule 41(b), which had authorized a dismissal at the close of a plaintiff's case if the plaintiff had "failed to prove a sufficient case for the court."

RULE 53. MASTERS

(a) Appointment and Compensation.

(1) The court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner and an assesor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.
[As amended; effective January 1, 2005.]

(2) Any party may object to the appointment of any person as a master on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror.

2. Consanguinity or affinity within the third degree to either party.

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party.

4. Having served as a juror or been a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause.

5. Interest on the part of such person in the event of the action, or in the main question involved in the action.

6. Having formed or expressed an unqualified opinion or belief as to the merits of the actions.

7. The existence of a state of mind in such person evincing enmity against or bias to either party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.
[As amended; effective September 27, 1971.]

(c) Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43(c) and statutes for a court sitting without a jury.
[As amended; effective January 1, 2005.]

(d) Proceedings.

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of Accounts. When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof

to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

[As amended; effective January 1, 2005.]

(e) Report.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) In Nonjury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing a report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a)(1) is amended to add "assessor" to the definition of the word "master." The amendment conforms to the federal rule as it existed before the December 1, 2003, amendment to the federal rule. The provisions in subdivision (a)(2), regarding the grounds for objecting to a master's appointment, are retained.

Subdivision (c) is amended to include a reference to evidence statutes in addition to the existing reference to Rule 43(c).

The amendments to subdivision (d) are technical.

Subdivision (e)(1) is amended to provide that the master must serve a copy of his or her report on each party unless the referring court directs otherwise. The amendment conforms to the 1991 amendment to the federal rule, which is now reflected in subdivision (f) of the federal rule, as amended effective December 1, 2003.

VII. JUDGMENT

RULE 54. JUDGMENTS; ATTORNEY FEES

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Involving Multiple Parties. When multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the rights and liabilities of all the parties.

[As amended; effective January 1, 2005.]

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment, except that where the prayer is for damages in excess of $10,000 the judgment shall be in such amount as the court shall determine. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

[As amended; effective January 1, 2005.]

(d) Attorney Fees.

(1) Reserved.

(2) Attorney Fees.

(A) Claim to Be by Motion. A claim for attorney fees must be made by motion. The district court may decide the motion despite the existence of a pending appeal from the underlying final judgment.
[Added; effective August 7, 2008.]

(B) Timing and Contents of the Motion. Unless a statute provides otherwise, the motion must be filed no later than 20 days after notice of entry of judgment is served; specify the judgment and the statute, rule, or other grounds entitling the movant to the award; state the amount sought or provide a fair estimate of it; and be supported by counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable, documentation concerning the amount of fees claimed, and points and authorities addressing appropriate factors to be considered by the court in deciding the motion. The time for filing the motion may not be extended by the court after it has expired.
[Added; effective August 7, 2008.]

(C) Exceptions. Subparagraphs (A)-(B) do not apply to claims for fees and expenses as sanctions pursuant to a rule or statute, or when the applicable substantive law requires attorney fees to be proved at trial as an element of damages.
[Added; effective August 7, 2008.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (b) is amended to omit any mention of claims. Under the revised rule, the court can no longer direct the entry of a final judgment as to one or more but fewer than all of the claims in a multiple-claim case. Thus, an order adjudicating one or more but fewer than all of the claims in a multiple-claim case is not a final judgment and is not appealable. The revised rule retains language permitting the court to direct entry of a final judgment as to one or more but fewer than all of the parties involved in a case.

RULE 55. DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.
[As amended; effective January 1, 2005.]

(b) Judgment. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, guardian ad litem, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the State.
[As amended; effective January 1, 2005.]

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60.

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the State. No judgment by default shall be entered against the State or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (b)(2) is amended to add the phrase "who has appeared therein" at the end of the first sentence to conform to the federal rule. All other amendments are technical.

RULE 56. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or

any part thereof.
[As amended; effective January 1, 2005.]

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.
[As amended; effective January 1, 2005.]

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. Motions for summary judgment and responses thereto shall include 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, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. An order granting summary judgment shall set forth the undisputed material facts and legal determinations on which the court granted summary judgment.
[As amended; effective January 1, 2005.]

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.
[As amended; effective January 1, 2005.]

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.
[As amended; effective January 1, 2005.]

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.
[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (c) is amended to make clear that motions for summary judgment and responses thereto must identify each material fact that the party claims is or is not genuinely in issue and must cite the relevant portions of any documents or evidence upon which the party relies. The new language is taken from Rule 56-1 of the Local Rules of Practice for the United States District Court for the District of Nevada. The provision is also amended to require that an order granting summary judgment set forth the undisputed material facts and legal determinations that support the decision to grant summary judgment.

RULE 57. DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to statute, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

RULE 58. ENTRY OF JUDGMENT

(a) Judgment. Subject to the provisions of Rule 54(b):

(1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the court shall sign the judgment and the judgment shall be filed by the clerk;

(2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form and sign the judgment, and the judgment shall be filed by the clerk.

The court shall designate a party to serve notice of entry of the judgment on the other parties under subdivision (e).
[As amended; effective January 1, 2005.]

(b) Judgment in Other Cases. Except as provided in subdivision (b)(1) of Rule 55, all judgments shall be signed by the judge and filed with the clerk.
[As amended; effective January 1, 2005.]

(c) When Judgment Entered. The filing with the clerk of a judgment, signed by the judge, or by the clerk, as the case may be, constitutes the entry of such judgment, and no judgment shall be effective for any purpose until the entry of the same, as hereinbefore provided. The entry of the judgment shall not be delayed for the taxing of costs.

(d) Judgment Roll. The judgment, as signed and filed, shall constitute the judgment roll.

(e) Notice of Entry of Judgment. Within 10 days after entry of a judgment or an order, the party designated by the court under subdivision (a) shall serve written notice of such entry, together with a copy of the judgment or order, upon each party who is not in default for failure to appear and shall file the notice of entry with the clerk of the court. Any other party may in addition serve a notice of such entry. Service shall be made in the manner provided in Rule 5(b) for the service of papers. Failure to serve notice of entry does not affect the validity of the judgment, but the judgment may not be executed upon until such notice is served.
[Added; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Rule 58 deviates substantially from its federal counterpart. Subdivision (a) is amended in part to conform to federal practice, but the amendments alter existing Nevada practice and require that judgments entered pursuant to subdivision (a) be signed by the judge and not by the clerk of the court. The revised rule also requires the court to designate a party to serve notice of entry of the judgment upon other parties.

Subdivision (b) is also amended to reflect that the judge must sign all judgments except default judgments entered pursuant to Rule 55(b)(1).

Subdivision (e) is new and adds a provision expressly requiring the party designated by the court under subdivision (a) to serve notice of entry of a judgment or order. The provision also allows any other party to serve notice of entry of the judgment or order. The amendment is similar to federal rule 77(d), but obligates the parties rather than the clerk to provide notice of entry. The new subdivision also provides that although failure to serve notice of entry does not affect the validity of the judgment, the judgment may not be executed upon until such notice is served.

RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially affecting the substantial rights of an aggrieved party: (1) Irregularity in the proceedings of the court, jury, master, or adverse party, or any order of the court, or master, or abuse of discretion by which either party was prevented from having a fair trial; (2) Misconduct of the jury or prevailing party; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial; (5) Manifest disregard by the jury of the instructions of the court; (6) Excessive damages appearing to have been given under the influence of passion or prejudice; or, (7) Error in law occurring at the trial and objected to by the party making the motion. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.
[As amended; effective January 1, 2005.]

(b) Time for Motion. A motion for a new trial shall be filed no later than 10 days after service of written notice of the entry of the judgment.
[As amended; effective January 1, 2005.]

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be filed with the motion. The opposing party has 10 days after service within which to file opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.
[As amended; effective January 1, 2005.]

(d) On Court's Initiative; Notice; Specifying Grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.
[Added; effective January 1, 2005.]

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendment to subdivision (a) is technical. Unlike the federal rule, the Nevada rule lists specific grounds for a new trial. Those grounds are retained in the revised rule.

Subdivision (b) is amended to provide that a motion for new trial must be filed, not just served, within the specified time period. The time for filing the motion runs from service of notice of entry rather than from entry of the judgment under the federal rule. A similar amendment to subdivision (c) requires that opposing affidavits be filed, not just served, within the specified time period.

Subdivision (d) is added. It conforms to the existing federal rule and permits the court to grant a new trial on its own initiative or for grounds not stated in a timely motion.

Subdivision (e) is amended to provide that a motion to alter or amend a judgment must be filed, not just served, within the specified time period. The time for filing the motion runs from service of notice of entry rather than from entry of the judgment under the federal rule.

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

[As amended; effective January 1, 2005.]

(c) Default Judgments: Defendant Not Personally Served. When a default judgment shall have been taken against any party who was not personally served with summons and complaint, either in the State of Nevada or in any other jurisdiction, and who has not entered a general appearance in the action, the court, after notice to the adverse party, upon motion made within 6 months after the date of service of written notice of entry of such judgment, may vacate such judgment and allow the party or the party's legal representatives to answer to the merits of the original action. When, however, a party has been personally served with summons and complaint, either in the State of Nevada or in any other jurisdiction, the party must make application to be relieved from a default, a judgment, an order, or other proceeding taken against the party, or for permission to file an answer, in accordance with the provisions of subdivision (b) of this rule.

[As amended; effective January 1, 2005.]

(d) Default Judgments: Modification Nunc Pro Tunc. Whenever a default judgment or decree has been entered, the party or parties in default therein may at any time thereafter, upon written consent of the party or parties in whose favor judgment or decree has been entered, enter general appearance in the action, and the general appearance so entered shall have the same force and effect as if entered at the proper time prior to the rendition of the judgment or decree. On such appearance being entered the court may make and enter a modified judgment or decree to the extent only of showing such general appearance on the part of the party or parties in default, and it shall be entered nunc pro tunc as of the date of the original judgment or decree; provided, however, that nothing herein contained shall prevent the court from modifying such judgment or decree as stipulated and agreed in writing by the parties to such action, and in accordance with the terms of such written stipulation and agreement.

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (b) is amended to incorporate the 1946 amendment to the federal rule, which added newly discovered evidence as a ground for relief under subdivision (b). The revised rule does not include the provision in the federal rule for relief under subdivision (b) based on "any other reason justifying relief from the operation of the judgment." Subdivision (b) is also amended by deleting the reference to fraud that "would have theretofore justified a court in sustaining a collateral attack upon the judgment"—language that does not appear in the current federal rule. Subdivision (b) is further amended by adding language, consistent with the federal rule, that abolishes "[w]rits of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review." Finally, subdivision (b) retains the 6-month limit on motions based on the first three grounds stated in the revised rule rather than the 1-year limit provided by the federal rule. But the provision is revised so that the 6-month limit starts to run from service of written notice of entry of the judgment or order.

Subdivisions (c) and (d), which do not appear in the federal rule, are retained. The revisions to subdivision (c) are technical with the exception that the 6-month limit now starts to run from service of notice of entry of the judgment rather than "the date of rendition" of the judgment under the former rule.

RULE 61. HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay; Exceptions—Injunctions and Receiverships. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after service of written notice of its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

[As amended; effective January 1, 2005.]

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a judgment as a matter of law made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

[As amended; effective January 1, 2005.]

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is filed.

[As amended; effective January 1, 2005.]

(e) Stay in Favor of the State or Agency Thereof. When an appeal is taken by the State or by any county, city or town within the State, or an officer or agency thereof and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Reserved.

(g) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

[As amended; effective March 16, 1964.]

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (a) is amended to adopt the federal rule, which provides for an automatic stay of execution upon or enforcement of a judgment except in an action for an injunction or in a receivership action. But the Nevada rule provides for a stay until 10 days after service of written notice of entry of the judgment whereas the federal rule provides for a stay until 10 days after entry of the judgment.

Subdivision (b) is amended to conform to the change in diction set forth in revised Rule 50(a).

Subdivision (d) is amended to add the exceptions for injunctions and receiverships consistent with the amendments to subdivision (a). The provision retains the Nevada rule that a stay upon appeal is effective when the supersedeas bond is filed in lieu of the federal provision that the stay is effective when the court approves the supersedeas bond.

RULE 63. INABILITY OF A JUDGE TO PROCEED

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness. But if such successor judge cannot perform those duties because the successor judge did not preside at the trial or for any other reason, the successor judge may, in that judge's discretion, grant a new trial.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The revision substantially replaces the former rule and conforms, in large part, to the 1991 amendment to the federal rule. The former rule was limited to disability of the judge and did not specifically provide for disqualification or other reasons that a judge might withdraw from a case. It was also limited to a judge's withdrawal after trial. The revised rule applies when the judge "is unable to proceed" and is not limited to withdrawal after trial. The federal rule is revised by retaining, as the last sentence, language from the former Nevada rule that gives the successor judge broad discretion to grant a new trial.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

RULE 64. SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the State. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The revision adds a portion of the last sentence from the federal rule to the end of the Nevada rule. The new language lists nonexclusive remedies for seizure of persons or property. Parts of the federal rule that are particular to practice in federal court are omitted.

RULE 65. INJUNCTIONS

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

[As amended; effective September 27, 1971.]

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 15 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

[As amended; effective January 1, 2005.]

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

[As amended; effective September 27, 1971.]

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Reserved.

(f) When Inapplicable. This rule is not applicable to suits for divorce, alimony, separate maintenance or custody of children. In such suits, the court may make prohibitive or mandatory orders, with or without notice or bond, as may be just.

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical. Subdivision (b) retains the 15-day presumptive limit for a TRO in lieu of the federal 10-day limit. Subdivision (e) is retained in the Nevada rule as a reserved provision for future amendments and to maintain the same paragraphing as the federal rule.

RULE 65.1. SECURITY: PROCEEDINGS AGAINST SURETIES

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

[Added; effective September 27, 1971; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

RULE 66. RECEIVERS

An action wherein a receiver has been appointed shall not be dismissed except by order of the court.

RULE 67. DEPOSIT IN COURT

(a) In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing to be held by the clerk of the court, or upon court order to be deposited in an interest-bearing account or invested in an interest-bearing instrument, subject to withdrawal, in whole or in part, at any time thereafter upon order of the court.

[As amended; effective January 1, 2005.]

(b) When it is admitted by the pleading or examination of a party, that the party has possession or control of any money or other thing capable of delivery, which, being the subject of litigation, is held by the party as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court, or deposited in an interest-bearing account or invested in an interest-bearing instrument, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The subdivisions are changed from (1) and (2) to (a) and (b) to maintain consistency with the format of the other rules. The rule is also amended to permit a deposit in an interest-bearing account or investment in an interest-bearing instrument consistent with provisions in the federal rule.

RULE 68. OFFERS OF JUDGMENT

(a) The Offer. At any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.

(b) Apportioned Conditional Offers. An apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed.

(c) Joint Unapportioned Offers.

(1) Multiple Offerors. A joint offer may be made by multiple offerors.

(2) Offers to Multiple Defendants. An offer made to multiple defendants will invoke the penalties of this rule only if (A) there is a single common theory of liability against all the offeree defendants, such as where the liability of some is entirely derivative of the others or where the liability of all is derivative of common acts by another, and (B) the same entity, person or group is authorized to decide whether to settle the claims against the offerees.

(3) Offers to Multiple Plaintiffs. An offer made to multiple plaintiffs will invoke the penalties of this rule only if (A) the

damages claimed by all the offeree plaintiffs are solely derivative, such as that the damages claimed by some offerees are entirely derivative of an injury to the others or that the damages claimed by all offerees are derivative of an injury to another, and (B) the same entity, person or group is authorized to decide whether to settle the claims of the offerees.

(d) Judgment Entered Upon Acceptance. If within 10 days after the service of the offer, the offeree serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service. The clerk shall enter judgment accordingly. The court shall allow costs in accordance with NRS 18.110 unless the terms of the offer preclude a separate award of costs. Any judgment entered pursuant to this section shall be expressly designated a compromise settlement. At his option, a defendant may within a reasonable time pay the amount of the offer and obtain a dismissal of the claim, rather than a judgment.

(e) Failure to Accept Offer. If the offer is not accepted within 10 days after service, it shall be considered rejected by the offeree and deemed withdrawn by the offeror. Evidence of the offer is not admissible except in a proceeding to determine costs and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. With offers to multiple offerees, each offeree may serve a separate acceptance of the apportioned offer, but if the offer is not accepted by all offerees, the action shall proceed as to all. Any offeree who fails to accept the offer may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer. If the offeree rejects an offer and fails to obtain a more favorable judgment,

(1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for the period after the service of the offer and before the judgment; and

(2) the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney's fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

(g) How Costs Are Considered. To invoke the penalties of this rule, the court must determine if the offeree failed to obtain a more favorable judgment. Where the offer provided that costs would be added by the court, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs. Where a defendant made an offer in a set amount which precluded a separate award of costs, the court must compare the amount of the offer together with the offeree's pre-offer taxable costs with the principal amount of the judgment.

(h) Offers After Determination of Liability. When the liability of one party to another has been determined by verdict, order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

[Replaced; effective October 27, 1998.]

DRAFTER'S NOTE
2004 AMENDMENT

The Nevada rule was replaced in 1998. It is substantially different from the federal rule.

RULE 69. EXECUTION

(a) In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the State. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

[As amended; effective January 1, 2005.]

(b) Service of Notice of Entry Required Prior to Execution. Prior to execution upon a judgment, service of written notice of entry of the judgment must be made in accordance with Rule 58(e).

[Added; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendment to subdivision (a) is technical. Subdivision (b) is added to the rule to clarify that execution on a judgment may not be had unless notice of entry of the judgment is first served as required by Rule 58(e). There is no federal counterpart to this provision.

RULE 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or

personal property is within the State, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

RULE 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if the person were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments are technical.

IX. APPEALS

[Rules 72 to 76A, inclusive, were abrogated and replaced by Nevada Rules of Appellate Procedure, effective July 1, 1973.]

X. DISTRICT COURTS AND CLERKS

RULE 77. DISTRICT COURTS AND CLERKS

(a) District Courts Always Open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room, except private trial may be had as provided by statute. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and nonjudicial days. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

[As amended; effective January 1, 2005.]

(d) Reserved.

DRAFTER'S NOTE
2004 AMENDMENT

Subdivision (e) is deleted because of the 2001 legislative repeal of the statutes that had required district court clerks to publish lists of submitted cases and because the issue is better handled by local rule.

RULE 78. MOTION DAY

Unless local conditions make it impracticable, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendment is technical.

RULE 79. RESERVED

RULE 80. STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

(a) Reserved.

(b) Reserved.

(c) Stenographic Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

XI. GENERAL PROVISIONS

RULE 81. APPLICABILITY IN GENERAL

(a) To What Proceedings Applicable. These rules do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute. Where the applicable statute provides for procedure under the former statutes governing civil actions, such procedure shall be in accordance with these rules. Appeals from a district court to the Supreme Court of Nevada, and applications for extraordinary writs in the Supreme Court are governed by the Nevada Rules of Appellate Procedure.

[As amended; effective July 1, 1973.]

(b) Reserved.

(c) Removed Actions. Whenever a cause shall have been removed from a state court to a United States court, and thereafter remanded, judgment by default shall not be entered therein until the expiration of 10 days after service of written notice upon defendants that the order remanding such cause has been filed. Within such time the defendants may move or plead as they might have done had such cause not been removed.

[As amended; effective January 1, 2005.]

(d) Reserved.

(e) Reserved.

(f) Reserved.

DRAFTER'S NOTE
2004 AMENDMENT

The amendment is technical.

RULE 82. JURISDICTION AND VENUE UNAFFECTED

These rules shall not be construed to extend or limit the jurisdiction of the district courts or the venue of actions therein.

RULE 83. RULES BY DISTRICT COURTS

Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court, but shall not become effective until 60 days after approval by the Supreme Court and publication or as otherwise ordered by the Supreme Court. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendment is technical.

RULE 84. FORMS

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

RULE 85. TITLE

These rules may be known and cited as the Nevada Rules of Civil Procedure, or abbreviated N.R.C.P.

RULE 86. EFFECTIVE DATES

(a) Effective Date. These rules will take effect on the date specified by the Supreme Court. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) Effective Date of Amendments. The Nevada Rules of Civil Procedure became effective January 1, 1953. Subsequent amendments have been as follows:

(1) Amendment of Rules 5(b) and (d), effective January 4, 1954.

(2) Amendment of Rules 11 and 45(d)(1), effective May 15, 1954.

(3) Amendment of Rule 51, effective February 15, 1955.

(4) Amendment of Rules 3, 75(b), and 75(g), effective October 1, 1959.

(5) Amendment of Rules 38(b), 38(d), 65(b), 73(c), and 73(d), effective September 1, 1960.

(6) Amendment of Rules 4(d)(2), 5(a), 5(b), 6(a), 6(b), 7(a), 13(a), 14(a), 15(d), 24(c), 25(a)(1), 25(d), 26(e), 28(b), 30(f)(1), 41(b), 41(e), 47(a), 48, 50(a), 50(b), 50(c), 50(d), 52(b), 54(b), 56(c), 56(e), 59(a), 62(h), 77(c), 86, Forms 22-A and 22-B, 27, 30, 31 and 32, effective March 16, 1964.

(7) Amendment of Rule 86 and Form 31, effective April 15, 1964.

(8) Amendment of Rules 73(c), 73(d)(1) and 86, effective September 15, 1965.

(9) Amendment of Rules 4(b), 5(a), 8(a), 12(b), 12(g), 12(h), 13(h), 14(a), 17(a), 18(a), 19, 20(a), 23, 23.1, 23.2, 24(a), 26, 29, 30, 31, 32, 33, 34, 35, 36, 37(a), 37(b), 37(c), 37(d), 41(a), 41(b), 42(b), 43(f), 44(a), 44(b), 44(c), 44.1, 45(d)(1), 47(b), 50(b), 53(b), 54(c), 65(a), 65(b), 65(c), 65.1, 68, 69(a), 77(e), 86(b), and Form 24, effective September 27, 1971.

(10) Amendment of Rules 6 and 81, effective July 1, 1973; the abrogation of Rules 72, 73, 74, 75, 76, 76A and Form 27, effective July 1, 1973.

(11) Amendment of Rules 1, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 16.1, 17, 18, 19, 20, 22, 23, 23.1, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 44, 44.1, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 62, 63, 64, 65, 65.1, 67, 69, 71, 77, 78, 81 and 83 and Forms 3, 19, 31 and the Introductory Statement to the Appendix of Forms, effective January 1, 2005, and the adoption of new Form 33.

APPENDIX OF FORMS

(See Rule 84)

Introductory Statement

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. If the district in which an action is brought has departments, the department should be indicated in the caption.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons." In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4(b), 7(b)(2), and 10(a).

3. Reserved.

4. Each pleading, motion, and other paper is to be signed by at least one attorney of record in the attorney's individual name (Rule 11). The attorney's name is to be followed by the attorney's address and telephone number as indicated in Form 3. In forms following Form 3 the signature, address and telephone number are not indicated.

5. If a party is not represented by an attorney, the signature, address and telephone number of the party are required in place of those of the attorney.

[As amended; effective January 1, 2005.]

Form 1. Summons

(Title of Court)

Civil Action, File Number _____

A.B., Plaintiff }
v. } *Summons*

C.D., Defendant }

To the above-named Defendants:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. (The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members, and legislators, each has 45 days after service of this summons within which to file an answer to the complaint.) If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.[1]

_____
Clerk of Court

[Seal of the District Court]
Dated: _____

_____

[1] When service is by publication, add a brief statement of the object of the action, e.g., "This action is brought to recover a judgment dissolving the contract of marriage existing between you and the plaintiff." See Rule 4(b).

[As amended; effective April 24, 1998.]

Form 2. Reserved

Form 3. Complaint on a Promissory Note

1. Defendant on or about June 1, 1935, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1936 the sum of ten thousand dollars with interest thereon at the rate of six percent per annum].

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of ten thousand dollars, interest, and costs.

Signed:_____
Attorney for Plaintiff

Address:_____

Telephone:_____

NOTES TO FORM 3

1. The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Under the rules free joinder of claims is permitted. See Rules 8(e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.

DRAFTER'S NOTE
2004 AMENDMENT

Form 3 is amended to reflect the change to Rule 11(a) requiring both the address and telephone number of the person signing the document.

Form 4. Complaint on an Account

Defendant owes plaintiff ten thousand dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 3).

Form 5. Complaint for Goods Sold and Delivered

Defendant owes plaintiff ten thousand dollars for goods sold and delivered by plaintiff to defendant between June 1, 1936 and

December 1, 1936.

Wherefore (etc. as in Form 3).

NOTE—This form may be used where the action is for an agreed price or for the reasonable value of the goods.

Form 6. Complaint for Money Lent

Defendant owes plaintiff ten thousand dollars for money lent by plaintiff to defendant on June 1, 1936.

Wherefore (etc. as in Form 3).

Form 7. Complaint for Money Paid by Mistake

Defendant owes plaintiff ten thousand dollars for money paid by plaintiff to defendant by mistake on June 1, 1936, under the following circumstances: [here state the circumstances with particularity -see Rule 9(b)].

Wherefore (etc. as in Form 3).

Form 8. Complaint for Money Had and Received

Defendant owes plaintiff ten thousand dollars for money had and received from one G. H. on June 1, 1936, to be paid by the defendant to plaintiff.

Wherefore (etc. as in Form 3).

Form 9. Complaint for Negligence

1. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars and costs.

NOTE—Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

Form 10. Complaint for Negligence Where Plaintiff Is Unable to Determine Definitely Whether the Person Responsible Is C. D. or E. F. or Whether Both Are Responsible and Where His Evidence May Justify a Finding of Wilfulness or of Recklessness or of Negligence

A. B., Plaintiff }
v. } *Complaint*
C. D. and E. F., Defendants }

1. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. wilfully or recklessly or negligently drove or cause to be driven a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of ten thousand dollars and costs.

Form 11. Complaint for Conversion

On or about December 1, 1936, defendant converted to his own use ten bonds of the ———— Company (here insert brief identification as by number and issue) of the value of ten thousand dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars, interest, and costs.

Form 12. Complaint for Specific Performance of Contract to Convey Land

1. On or about December 1, 1936, plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed as Exhibit A.

2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of ten thousand dollars.

NOTE—Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect. Furthermore, plaintiff may seek legal or equitable relief or both.

Form 13. Complaint on Claim for Debt and to Set Aside Fraudulent Conveyance Under Rule 18(b)

A. B., Plaintiff }
v. } *Complaint*
C. D. and E. F., Defendants }

1. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant C. D. promised to pay to plaintiff or order on _____ the sum of five thousand dollars with interest thereon at the rate of _____ percent per annum].

2. Defendant C. D. owes to plaintiff the amount of said note and interest.

3. Defendant C. D. on or about _____ conveyed all his property, real and personal [or specify and describe] to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for ten thousand dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs.

Form 14. Complaint for Negligence Under Federal Employers' Liability Act

1. Allegation of jurisdiction.

2. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at _____ and known as Tunnel No. _____.

3. On or about June 1, 1936, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

4. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

5. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

Form 15. Reserved

Form 16. Reserved

Form 17. Reserved

Form 18. Complaint for Interpleader and Declaratory Relief

1. On or about June 1, 1935, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ten thousand dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1936, and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premiums due June 1, 1936, was ever paid and the policy ceased to have any force or effect on July 1, 1936.

3. Thereafter, on September 1, 1936, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

4. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

5. Each of defendants, C. D., E. F., and X. Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

Form 19. Motion to Dismiss, Presenting Defense of Failure to State a Claim

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

Signed: _____
Attorney for Defendant

Address: _____

Telephone: _____

Notice of Motion

To: _____
Attorney for Plaintiff

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at [specify name and location of court], on the [date set for hearing], at [time set for hearing] or as soon thereafter as counsel can be heard.

Signed: _____
Attorney for Defendant

Address: _____

Telephone: _____

NOTE—The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7(b). A motion to quash and not a motion to dismiss must be used to raise defenses (2)-(4), Rule 12(b), to avoid making a general appearance.

[As amended; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendment to Form 19 is technical.

Form 20. Answer Presenting Defenses Under Rule 12(b)

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is subject to the jurisdiction of this court; and has not been made a party.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint.)

NOTE—The above form contains examples of certain defenses provided for in Rule 12(b). The first defense challenges the legal sufficiency of the complaint. It is a substitute for a general demurrer or a motion to dismiss.

The second defense embodies the old plea in abatement; the decision thereon, however, may well provide under Rules 19 and 21 for the citing in of the party rather than an abatement of the action.

The third defense is an answer on the merits.

The fourth defense is one of the affirmative defenses provided for in Rule 8(c).

The answer also includes a counterclaim and a cross-claim.

Form 21. Answer to Complaint Set Forth in Form 8, With Counterclaim for Interpleader

Defense

Defendant denies the allegations stated to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of ten thousand dollars as a deposit from E. F.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.[1]

(2) That the court order the plaintiff and E. F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

---

[1]Rule 13(h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

Form 22. Motion to Bring in Third-Party Defendant

[Deleted; effective March 16, 1964.]

Form 22-A. Summons and Complaint Against Third-Party Defendant

(Title of Court)

Civil Action, File Number _____

A. B., Plaintiff }
v. }
C. D., Defendant and } *Summons*
Third-Party Plaintiff }
v. }
E. F., Third-Party Defendant }

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.

_____
Clerk of Court

[Seal of the District Court]

Dated _____

(Title of Court)

Civil Action, File Number _____

A. B., Plaintiff }
v. }

C. D., Defendant and Third-Party Plaintiff
v.
E. F., Third-Party Defendant

Third-Party Complaint

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit A."

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums[1] that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____
Attorney for C. D., Third-Party Plaintiff

Address: _____

[Added; effective March 16, 1964.]

[1]Make appropriate change where C. D. is entitled to only partial recovery-over against E. F.

Form 22-B. Motion to Bring in Third-Party Defendant

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E. F. a summons and third-party complaint, copies of which are hereto attached as Exhibit X.

Signed: _____
Attorney for Defendant C. D.

Address: _____

Notice of Motion

(Contents the same as in Form 19. The notice should be addressed to all parties to the action.)

Exhibit X

(Contents the same as in Form 22-A.)

[Added; effective March 16, 1964.]

Form 23. Motion to Intervene as a Defendant Under Rule 24

(Title of Court)

Civil Action, File Number _____

A. B., Plaintiff
v.
C. D., Defendant
E. F., Applicant for Intervention

Motion to Intervene as a Defendant

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the ground that _____ and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.[2]

Signed: _____
Attorney for E. F., Applicant for Intervention

Address: _____

[2]For other grounds of intervention, either of right or in the discretion of the court, see Rule 24(a) and (b).

Notice of Motion

(Contents the same as in Form 19)

(Title of Court)

Civil Action, File Number _____

A. B., Plaintiff }
v. } *Intervener's Answer*
C. D., Defendant }
E. F., Intervener }

First Defense

Intervener admits the allegations stated in paragraphs 1 and 4 of the complaint; denies the allegations in paragraph 3, and denies the allegations in paragraph 2 in so far as they assert the

Second Defense

(Set forth defenses.)

Signed: _____
Attorney for E. F., Intervention

Address: _____

Form 24. Request for Production of Documents, Etc., Under Rule 34

Plaintiff A. B. requests defendant C. D. to respond within _____ days to the following requests:

(1) That defendant produce and permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(2) That defendant produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:

(Here list the objects either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(3) That defendant permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test or sample (here describe the portion of the real property and the objects to be inspected).

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

Signed: _____
Attorney for Plaintiff

Address: _____

[As amended; effective September 27, 1971.]

Form 25. Request for Admission Under Rule 36

Plaintiff A. B. requests defendant C. D. within —— days after service of this request to make the following admissions for the

purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.

(Here list the statements.)

Signed: _____
Attorney for Plaintiff

Address: _____

Form 26. Allegation of Reason for Omitting Party

When it is necessary, under Rule 19(c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action [because he is not subject to the jurisdiction of this court].

Form 27. [Abrogated]

Form 28. Reserved

Form 29. Reserved

Form 30. Suggestion of Death Upon the Record Under Rule 25(a)(1)

A. B. [describe as a party, or as executor, administrator, or other representative or successor of C. D., the deceased party] suggests upon the record, pursuant to Rule 25(a)(1), the death of C. D. [describe as party] during the pendency of this action.

Form 31. Judgment on Jury Verdict

(Title of Court)

Civil Action, File Number _____

A.B., Plaintiff }
v. } *Judgment*
C.D., Defendant }

This action came on for trial before the Court and a jury, Honorable John Marshall, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It Is Ordered and Adjudged

[that the plaintiff A. B. recover of the defendant C. D. the sum of _____, with interest thereon at the rate of _____ per cent as provided by law, and his costs of action.]

[that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.]

Dated this _____ day of _____, 20_____.

_____
District Judge

[Added; effective April 15, 1964; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Form 31 is amended to conform to revised Rule 58(a). All judgments upon jury verdicts must now be signed by the district judge and not the clerk of the court.

Form 32. Judgment on Decision by the Court

(Title of Court)

Civil Action, File Number _____

A.B., Plaintiff }
v. } *Judgment*
C.D., Defendant }

This action came on for [trial] [hearing] before the Court, Honorable John Marshall, District Judge, presiding, and the issues having been duly [tried] [heard] and a decision having been duly rendered,

It Is Ordered and Adjudged

[that the plaintiff A. B. recover of the defendant C. D. the sum of _____, with interest thereon at the rate of _____ per cent as provided by law, and his costs of action.]

[that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.]

Dated at _____, Nevada, this _____ day of _____, 20_____.

_____
District Judge

[Added; effective March 16, 1964.]

Form 33. Consent to Service by Electronic Means Under Rule 5

The undersigned party hereby consents to service of documents under Rule 5(a) by electronic means as designated below in accordance with Rule 5(b)(2)(D).

Party name(s):
_____
_____

Documents served by electronic means must be transmitted to the following person(s):
_____
_____

Facsimile transmission to the following facsimile number(s):
_____
_____

Electronic mail to the following e-mail address(es):
_____
_____

Attachments to e-mail must be in the following format(s):
_____
_____

The undersigned party also acknowledges that this consent does not require service by the specified means unless the serving party elects to serve by that means.

Dated this day of , 20 .

_____ _____, _____

Signed: _____,
Attorney for Consenting Party

Address: _____

Telephone: _____

Fax number: _____

E-mail address: _____

[Added; effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

Form 33 is added to the appendix of forms. Rule 5(b) was amended to permit service by electronic means, including facsimile and electronic mail. Service by electronic means is allowed only if the attorney or party to be served consents in writing to such service. The consent must be filed with the clerk of the court and served on the other parties to the action and must identify: the persons upon whom such service must be made; the appropriate address or location for such service; the format to be used for attachments; and any other limits on the scope or duration of the consent.