

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PROPOSED  
AMENDMENTS TO NEVADA RULES  
OF CIVIL PROCEDURE 26, 30, AND 34.

ADKT 0487

**FILED**

MAR 18 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *D. Castille*  
CHIEF DEPUTY CLERK

ORDER SCHEDULING PUBLIC HEARING  
AND REQUESTING PUBLIC COMMENT

On March 1, 2013, the Hon. James W. Hardesty and the Hon. Michael Douglas, Associate Justices, filed a petition requesting that this court consider amendments to Nevada Rules of Civil Procedure 26, 30, and 34. The petition and proposed amendments are attached.

The Nevada Supreme Court will conduct a public hearing on the proposed amendments on Thursday, June 6, 2013, at 3:00 p.m. in the Nevada Supreme Court Courtroom, 200 Lewis Avenue, 17<sup>th</sup> Floor (Regional Justice Center), Las Vegas, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada.

Further, this court invites written comment from the bench, bar and public regarding the proposed amendments. An original and 8 copies of written comments are to be submitted to: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., May 31, 2013. Comments must be submitted in hard-copy format. Be advised that comments submitted electronically will not be docketed. Persons interested in participating in the hearing must notify the Clerk no later than May 31, 2013.



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**FILED**

MAR 07 2013

TRACIE LEIDMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

PETITION TO AMEND NEVADA RULES OF CIVIL PROCEDURE

James Hardesty and Michael Douglas, Justices of the Nevada Supreme Court, petition this Honorable Court to adopt the attached amendments to Nevada Rules of Civil Procedure (NRCP) 26, 30, and 34 and bring them into line with their federal counterparts under the Federal Rules of Civil Procedure (FRCP) to improve and clarify discovery in civil cases.

The proposed rule amendments clarify the scope of discovery, place limits on certain methods of discovery, and specifically provide for the discovery of electronically stored information. This court's Bench-Bar Committee supports the placement of these objectives on the Nevada Supreme Court's administrative docket for review.

NRCP 26(b)(1)—Scope of discovery

1. The scope of discovery under NRCP 26(b) is currently defined as "any matter, not privileged, which is relevant to the subject matter involved in the pending action."

2. The proposed amendments to NRCP 26(b)(1) would bring the rule into alignment with FRCP 26(b)(1), which deleted reference to "subject matter" in 2000 and narrowed the scope of discovery "to any nonprivileged matter that is relevant to any party's claim or defense."

13-06450

3. FRCP 26(b)(1) was amended to alleviate “discovery requests that sweep far beyond the claims and defenses of the parties on the ground that they nevertheless have a bearing on the ‘subject matter’ involved in the action” and to involve the courts in a more active role in regulating the breadth of sweeping or contentious discovery. See FRCP 26 advisory committee notes, 2000 Amendment, Subdivision (b)(1); see also Andrades v. Hodler, 286 F.R.D. 64, 66 (D.D.C. 2012) (determining that FRCP 26 is not an open-ended invitation to subject parties to irrelevant, unduly burdensome, or improper discovery requests); Harvard Pilgrim Health Care v. Thompson, 318 F. Supp. 2d 1, 13 (D.R.I. 2004) (holding that under FRCP 26, a party was not entitled to discovery concerning relevant documents that might “crop up at some point during this case” because it was overly broad).

NRCP 26(b)(2)—Limitations on discovery

1. The proposed amendments to NRCP 26(b)(2) add limits on interrogatories and depositions, include provisions regarding limitations on electronically stored information, and bring the rule into alignment with its federal counterpart. Due to the added provisions regarding electronically stored information, the amendments include alteration to the general format of the rule, which has been subdivided into NRCP 26(b)(2)(A), (b)(2)(B), and (b)(2)(C).

2. NRCP 26(b)(2)(A) refers to limitations on depositions and interrogatories as discussed in NRCP 30, which, in part, establishes a presumptive limit on the length of depositions and will be discussed below. NRCP 26(b)(2)(B) addresses issues raised by difficulties in locating, retrieving, and providing discovery of some electronically stored information, and would align itself with FRCP 26(b)(2)(B). NRCP

26(b)(2)(C) maintains the same proportionality test language as NRCP 26(b)(2)(i)-(iii) and is renumbered to provide ease of reading and consistency with the new sections under NRCP 26(b)(2)(A) and (B).

3. FRCP 26(b)(2)(B) was added to regulate discovery of information on electronic sources that are accessible only by incurring substantial burdens or costs. See FRCP 26 advisory committee notes, 2006 Amendment, Subdivision (b)(2).

NRCP 26(a)(2), (b)(3), and (b)(4)—Drafts of experts' reports

1. NRCP currently precludes discovery of "facts known or opinions held by an expert" who is not expected to testify and is merely retained in anticipation of litigation except as provided in Rule 35(b) or upon a showing of exceptional circumstances.

2. There are no specific provisions in the NRCP guarding against discovery of drafts of experts' reports or disclosures.

3. The proposed amendments to NRCP 26(a), (b)(3), and (b)(4) create additional protections of drafts of experts' reports and disclosures and certain communications, consistent with FRCP 26(a)(2), (b)(3), and (b)(4).

4. In 2010, FRCP 26(a)(2) was amended to require disclosure regarding expected expert testimony of those expert witnesses not required to provide expert reports and limit the expert report to facts or data considered by the witness. FRCP 26(b)(4) was also amended to provide work-product protection against discovery regarding draft expert disclosures or reports and, with three specific exceptions, communications between expert witnesses and counsel.

5. These amendments to FRCP were enacted because many courts authorized discovery of all communications between counsel and

expert witnesses and all draft reports, which caused costs to rise as attorneys often employed two sets of experts: “one for purposes of consultation and another to testify at trial—because disclosure of their collaborative interactions with expert consultants would reveal their most sensitive and confidential case analysis.” FRCP 26 advisory committee notes, 2010 Amendments, Rule 26.

NRCP 30—Limits on depositions

1. NRCP 30 does not currently provide limitations on depositions.

2. The proposed amendments to NRCP 30(d) creates a presumptive limit on the duration of depositions to one day of six hours.

3. The purpose behind the proposed amendment to NRCP 30(d) is similar to that of the purpose behind FRCP 30(d)’s imposed limitation: to alleviate unduly prolonged depositions. See FRCP 30 advisory committee notes, 2000 Amendment, Subdivision (d).

NRCP 34—Electronically stored information

1. NRCP 34 currently focuses discovery on “documents,” “things,” and “data compilations.”

2. Since its enactment, there has been a dramatic growth in electronically stored information and in the variety of systems creating and storing such information, which prompted the federal rules to address this issue.

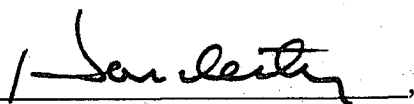
3. FRCP 34 was amended to encompass discovery of all information, whether tangible or electronically stored information, and meant to facilitate the orderly, efficient, and cost-effective discovery of electronically stored information. See FRCP 34 advisory committee notes, 2006 Amendment, Subdivision (a) and (b); see also City of Colton v.

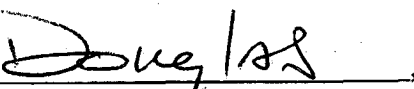
American Promotional Events, 277 F.R.D. 578 (C.D. Cal. 2011) (discussing the requirements of production of electronically stored information under FRCP 34); Dawe v. Corrections USA, 263 F.R.D. 613, 618 (E.D. Cal. 2009) (discussing the interplay between FRCP 26(b)(1) and 34(a) and balancing the parties' interests under FRCP 26(b)(2)(C) as it relates to electronically stored information).

4. The proposed amendment to NRCP 34 specifically addresses discovery of information that is fixed in a tangible form and stored in an electronic medium. It also allows the requesting party to designate the form or forms that it wants the electronically stored information produced in order to facilitate the orderly and cost-effective discovery of such information.

Based on the foregoing, it is respectfully requested that the Nevada Supreme Court approve the proposed amendments to NRCP 26, as set forth in Exhibit A; NRCP 30, as set forth in Exhibit B; and NRCP 34, as set forth in Exhibit C.

Respectfully submitted this 28 day of February, 2013.

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

  
\_\_\_\_\_, J.  
Douglas

## EXHIBIT A

### AMENDMENT TO NEVADA RULE OF CIVIL PROCEDURE 26

#### RULE 26. DUTY TO DISCLOSE; 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.]~~  
Required Disclosures.

##### (1) Initial Disclosure.

(A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and



copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

**(B) Proceedings Exempt From Initial Disclosure.** The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) a forfeiture action in rem arising from a federal statute;

(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) an action to enforce or quash an administrative summons or subpoena;

(vi) an action by the United States to recover benefit payments;

(vii) an action by the United States to collect on a student loan guaranteed by the United States;

(viii) a proceeding ancillary to a proceeding in another court; and

(ix) an action to enforce an arbitration award.

**(C) Time for Initial Disclosures—In General.** A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) 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 this action and states the objection in the proposed discovery

plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) Time for Initial Disclosures—For Parties Served or Joined Later. A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated 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 General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to other parties the identity of any witness it may use at trial to present evidence.

(B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specifically employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the bases and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

**(C) Witnesses Who Do Not Provide a Written Report.** Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

**(D) Time to Disclose Expert Testimony.** A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

**(E) Supplementing the Disclosure.** The parties must supplement these disclosures when required under Rule 26(e).

### **(3) Pretrial Disclosures.**

**(A) In General.** In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) Time for Pretrial Disclosures; Objections. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made—except for one under NRS 48.025 or 48.035—is waived unless excused by the court for good cause.

(4) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

~~(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] Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any [matter, not privileged, which] nonprivileged matter that is relevant to [the subject matter involved in the pending action, whether it relates to the] any party's 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] who know of any discoverable matter. [It is not ground for objection that the information sought will be inadmissible] For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the [information sought] discovery 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)](C).

**(2) Limitations on Frequency and Extent.**

**(A) When Permitted.** By order, the court may alter the limits in these rules [~~or set limits~~] on the number of depositions and interrogatories[~~;~~] or on the length of depositions under Rule 30 [~~or~~]. By order or local rule, the court may also limit the number of requests under Rule 36. ~~[The]~~

**(B) Specific Limitations on Electronically Stored Information.** A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(C). The court may specify conditions for the discovery.

**(C) When Required.** On motion or on its own, the court must limit the frequency or extent of use of the discovery [~~methods~~] otherwise [~~permitted under~~] allowed by 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~~] can be 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~~] burden or expense outweighs its likely benefit, considering 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.] action, and the importance of the discovery in resolving the issues.~~

(3) Trial Preparation: Materials.

(A) Documents and Tangible Things. ~~[Subject to the provisions of subdivision (b)(4) of this rule,]~~ Ordinarily, a party may obtain discovery of documents and tangible things ~~[otherwise discoverable under subdivision (b)(1) of this rule and]~~ that are prepared in anticipation of litigation or for trial by or for another party or ~~[by or for that other party's]~~ its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) ~~[only upon a showing that the party seeking discovery].~~ But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1);  
and

(ii) the party shows that it has substantial need [of] for the materials [in the preparation of the party's case and that the party is unable] to prepare its case and cannot, without undue hardship [to], obtain [the] their substantial equivalent [of the materials] by other means.

(B) Protection Against Disclosure. ~~[In ordering discovery of such]~~ If the court orders those materials [when the required showing has been made, the court shall], it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of ~~[an]~~ a party's attorney or other representative ~~[of a party]~~ concerning the litigation.

[A] (C) Previous Statement. ~~Any~~ party ~~[may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon]~~ or other person may, on request[, a person not a party may obtain] and without the required showing [a], obtain the person's own previous statement [concerning] about 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], and~~ Rule 37(a)(4) [apply] applies to the award of expenses ~~[incurred in relation to the motion. For purposes of this paragraph, a].~~ A previous statement [previously made] is either:

~~[(A)] (i) a written statement [signed or otherwise adopted or approved by] that the person [making it, or (B) a] has signed or otherwise adopted or approved; or~~

~~(ii) a contemporaneous stenographic, mechanical, electrical, or other recording[,]— or a transcription [thereof, which is a] of it—that recites substantially verbatim recital [~~of an~~] the person's oral statement [by the person making it and contemporaneously recorded].~~

#### (4) Trial Preparation: Experts.

(A) Deposition of an Expert Who May Testify. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert [is required under Rule 16.1(a)(2)(B) or 16.2(a)(3)], the deposition ~~[shall not]~~ may be conducted [until] only after the report is provided.

~~(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.] Trial Preparation Protection for Draft Reports or Disclosures. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.~~

(C) Trial Preparation Protection For Communications Between a Party's Attorney and Expert Witnesses. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinion to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

**(D) Expert Employed Only for Trial Preparation.** Ordinarily, a party may not, by interrogatories or 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 to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

**(E) Payment.** Unless manifest injustice would result, ~~[(i)]~~ the court ~~[shall]~~ must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under ~~[this subdivision]~~ Rule 26(b)(4)(A) or (D); and

(ii) ~~[with respect to discovery obtained under subdivision (b)(4)(B) of this rule,]~~ for discovery under (D), also ~~[the court shall require the party seeking discovery to]~~ pay the other party a fair portion of the fees and expenses it reasonably incurred ~~[by the latter party]~~ in obtaining the expert's facts and opinions ~~[from the expert].~~

\* \* \*



## EXHIBIT B

### AMENDMENT TO NEVADA RULE OF CIVIL PROCEDURE 30

#### RULE 30. DEPOSITIONS [UPON] BY ORAL EXAMINATION

\* \* \*

(d) Duration; Sanction; Motion to Terminate or Limit Examination].

(1) [Any objection] Duration. Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) Sanction. The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) Motion to Terminate or Limit.

(A) Grounds. At any time 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)], the deponent or a party may move to terminate or limit it on the grounds that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

[(2)](B) Order. [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.] The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.~~

~~[(3)](C) Award of Expenses. [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(e). 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~~] applies to the award of expenses incurred in relation to the motion.~~

\* \* \*

EXHIBIT C

AMENDMENTS TO NEVADA RULE OF CIVIL PROCEDURE 34

\* \* \*

RULE 34. [PRODUCTION OF] PRODUCING DOCUMENTS [AND THINGS AND ENTRY UPON], ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS, OR ENTERING ONTO LAND, FOR INSPECTION AND OTHER PURPOSES

(a) ~~[Scope. Any]~~ In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting 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 its representative 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 following items in the responding party's possession, custody, 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]:~~

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary after translation by the responding party into a reasonably usable form; or

(B) any designated [object or operation thereon, within the scope of Rule 26(b).] tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

**(b) Procedure.**

**(1) Contents of the Request.** The request ~~[shall set forth the items to be inspected either by individual item or by category, and];~~

(A) must 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).] each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

**(2) Responses and Objections.**

**(A) Time to Respond.** The party ~~[upon]~~ to whom the request is ~~[served shall serve a written response]~~ directed must respond in writing within 30 days after ~~[the service of the request]~~ being served. A shorter or longer time may be ~~[directed]~~ stipulated under Rule 29 or be ordered 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]~~

**(B) Responding to Each Item.** For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

(C) Objections. An objection to part of ~~[an item or category, the part shall be specified and]~~ a request must specify the part and permit inspection ~~[permitted]~~ of the ~~[remaining parts]~~ rest.

(D) Responding to Request for Production of Electronically Stored Information. 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.]~~ may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

~~(c) [Persons Not Parties. A person not a party to the action]~~ Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to ~~[submit to]~~ permit an inspection, ~~[as provided in Rule 45.]~~

~~(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.]~~