

You Filed or Received a Complaint – Now What?

October 8, 2014
8:30 a.m. – 12:45 p.m.
Oquendo Center
Las Vegas, NV

4 General CLE Hours



600 E. Charleston Blvd. Las Vegas, NV 89104 702-382-2200

9456 Double R Blvd. Suite B Reno, NV 89521 775-329-4100

BIOGRAPHIES

Jeremy Alberts graduated with a B.S. from Arizona State University and with a J.D. from Gonzaga University of School of Law. He started his career as a Law Clerk for Chief Justice Michael L. Douglas of the Supreme Court of Nevada. His main concentration is on complex commercial and personal injury litigation. He is a member of the American Bar Association, State Bar of Nevada, and State Bar of Arizona and is admitted to practice in the Federal and State Courts of Nevada and Arizona, the Ninth Circuit Court of Appeals, and the Supreme Court of the United States.

Mr. Murdock grew up in Philadelphia, Pennsylvania. He attended the University of Denver where he majored in History and minored in Chemistry. He then attended Case Western Reserve University School of Law in Cleveland where he obtained his Juris Doctor.

Mr. Murdock began his legal career at Beckley Singleton Delanoy Jemison and List. Then, in 1992 he opened his own law firm and has been practicing Plaintiff's litigation ever since. Within a very short time, Murdock began representing victims of catastrophic injuries and became a mainstay in Las Vegas newspapers, television news and CourtTV. Many of his cases are in the public interest and are featured in the media. Mr. Murdock has lectured extensively on Catastrophic Injury Cases and Litigation and has been retained as an Expert Witness with regard to various litigation matters. His firm is a boutique firm practicing in catastrophic loss. The firm only accepts 5-8 cases per year allowing Mr. Murdock to work up the cases in a complete and complex way.

Howard Russell obtained a Bachelor's degree in English from the State University of New York at Geneseo in 1997. He joined Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, in their Atlanta office, in 2000 and has been with the firm ever since. He is licensed in Nevada, Georgia and Massachusetts and has tried cases in seven different states, involving trucking and bus accidents, commercial disputes, insurance coverage, premises and product liability. He opened the Las Vegas office of WWHGD in 2004 and was named managing partner of the Las Vegas office at the beginning of 2014.

Discovery Practices

Rule 16.1

Timing—How long for conference

Production—What Gets Produced?

A Meaningful Conference—ediscovery, calendaring, early resolution

Report—How to Draft

HANDOUTS: Rule 16.1, Disclosure Form, Report Form

Rules 26-37

Basics of Written Discovery

Interrogatories-Number

Requests for Production-Number, How Produced

Requests for Admission-Late Answers

Depositions

Basic—video/not video

Rule 30(b)(6)— Setting Issues, Responding Issues

Motions to Compel

Spoliation

HANDOUTS: Interrogatory Instructions, Production Instructions, Rule 30 (b)(6)
Deposition Notice, Rules 26-37

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.

Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, the initial disclosure must state the subject matter on which the witness is expected to present evidence under NRS 50.275, 50.285 and 50.305; a summary of the facts and opinions to which the witness is expected to testify; the qualifications of that witness to present evidence under NRS 50.275, 50.285 and 50.305, which may be satisfied by

the production of a resume or curriculum vitae; and the compensation of the witness for providing testimony at deposition and trial, which is satisfied by production of a fee schedule.

(C) These disclosures shall be made at the times and in the sequence directed by the court.

(i) In the absence of extraordinary circumstances, and except as otherwise provided in subdivision (2), the court shall direct that the disclosures shall be made at least 90 days before the discovery cut-off date.

(ii) If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), the disclosures shall be made within 30 days after the disclosure made by the other party. This later disclosure deadline does not apply to any party's witness whose purpose is to contradict a portion of another party's case in chief that should have been expected and anticipated by the disclosing party, or to present any opinions outside of the scope of another party's disclosure.

(D) The parties must 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 October 1, 2012.]

(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.

**DRAFTER'S NOTE
2012 AMENDMENT**

Subdivision (a)(2)(B) specifies the information that must be included in a disclosure of expert witnesses who are not otherwise required to provide detailed written reports. A treating physician is not a retained expert merely because the patient was referred to the physician by an attorney for treatment. These comments may be applied to other types of non-retained experts by analogy. In the context of a treating physician, appropriate disclosure may include that the witness will testify in accordance with his or her medical chart, even if some records contained therein were prepared by another healthcare provider. A treating physician is not a retained expert merely because the witness will opine about diagnosis, prognosis, or causation of the patient's injuries, or because the witness reviews documents outside his or her medical chart in the course of providing treatment or defending that treatment. However, any opinions and any facts or documents supporting those opinions must be disclosed in accordance with subdivision (a)(2)(B).

1 Robert E. Murdock, Esq.
2 Nevada Bar No. 4013
3 MURDOCK & ASSOCIATES, CHTD.
4 521 South Third Street
5 Las Vegas, NV 89101
6 (702) 685-6111
7 (702) 685-6222 – Fax
8 Attorney for Plaintiff

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 JOHN DOE,)
13)
14 Plaintiff,)
15)
16 vs.)
17)
18 ROE COMPANY, a Delaware corporation;)
19 JAMES BROWN; and DOES I through X,)
20 inclusive,)
21)
22 Defendants.)
23)

CASE NO.
DEPT. NO.

**PLAINTIFF'S NRCP 16.1
EARLY CASE CONFERENCE
DISCLOSURES**

24 COMES NOW Plaintiff John Doe, by and through his attorney of record, Murdock &
25 Associates, Chtd., and hereby identifies the following documents and witnesses for the early case
26 conference pursuant to NRCP 16.1 as follows:

27 **DOCUMENTS**

- 28
1. State of Nevada Traffic Accident Report, Accident No. _____.
 2. Medical and billing records from [treating doctor].
 3. Medical and billing records from _____ Therapy.
 4. Medical and billing records from [treating doctor].
 5. Billing records from radiologist.
 6. Plaintiff reserves the right to supplement this list of documents as discovery
- continues.

1 7. Plaintiff further reserves the right to identify any and all documents identified by
2 Defendants.

3 **WITNESSES**

- 4 1. Plaintiff
5 c/o Murdock & Associates, Chtd.
6 521 South Third Street
7 Las Vegas, NV 89101

8 Dr. Schore will testify regarding the facts and circumstances alleged in his
9 Complaint, his injuries and medical treatment.

- 10 2. James Brown
11 c/o Defendant's Attorney

12 Mr. Brown is one of the Defendants herein and is expected to testify as to his
13 knowledge of the subject accident.

- 14 4. Person(s) Most Knowledgeable
15 Roe Company
16 c/o Defendant's Attorney

17 Said individual(s) is/are expected to testify regarding the employment of Defendant
18 Brown and other matters regarding the subject accident.

- 19 5. Officer _____, ID 277
20 Nevada Highway Patrol
21 4615 West Sunset Road
22 Las Vegas, NV 89118

23 Officer _____ is expected to testify regarding the investigation into the
24 subject accident and the citation issued to Defendant Brown.

- 25 6. Witness name and address

26 Said individual is expected to testify regarding her knowledge of the subject
27 accident.

- 28 7. Witness name and address

Said individual is expected to testify regarding her knowledge of the subject
accident.

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Treating Doctor

Dr. _____ will testify regarding the care and treatment provided to Plaintiff, his diagnosis, his prognosis and possible future treatment.

9. Treating Therapists
_____ Therapy

Said individuals will testify regarding the care and treatment provided to Plaintiff.

10. Custodians of Plaintiff's Medical Records are expected to testify regarding the search for and accuracy of the records produced.

11. Custodians of Plaintiff's Billing Records are expected to testify regarding the search for and accuracy of the records produced.

12. Plaintiff reserves the right to supplement this list of witnesses as further information becomes available.

13. Plaintiff further reserves the right to call any witnesses identified by Defendants.

14. Plaintiff further reserves the right to designate additional expert witnesses on liability and damages.

DATED this _____ day of _____, 2014.

MURDOCK & ASSOCIATES, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4103
521 South Third Street
Las Vegas, NV 89101
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIPT OF COPY

RECEIPT of a copy of the foregoing PLAINTIFF'S NRCP 16.1 EARLY CASE
CONFERENCE DISCLOSURES is hereby acknowledged this ____ day of _____, 2014.

FIRM NAME

Attorney for Defendants

1 **JOINT CASE CONFERENCE**
2 **REPORT**

3
4 **DISCOVERY PLANNING/DISPUTE**
5 **CONFERENCE REQUIRED:**
6 **YES NO XX**

7 **SETTLEMENT CONFERENCE**
8 **REQUESTED:**
9 **YES NO XX**

10 If yes, list five dates the parties are available to attend a Settlement Conference (provide
11 dates that are at least 90 days after the filing of the Case Conference Report - all Settlement
12 Conferences will be set at 10:30 a.m., Tuesdays through Fridays).

13 **I.**

14 **PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT**

- 15 A. Date of filing of Complaint:
16 B. Date of filing Answer by Defendants:
17 C. Date Early Case Conference Was Held and Who Attended:
18 Robert E. Murdock, Esq. for Plaintiff.

19 **II.**

20 **A BRIEF DESCRIPTION OF THE NATURE OF THE**
21 **ACTION AND EACH CLAIM FOR RELIEF OR DEFENSE**

22 **[16.1(c)(1)]**

- 23 A. Description of the Action:
24 B. Claims for Relief:
25 C. Defenses:
26 1.

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT THEREOF [16.1(a)(1)(B) and 16.1(c)(4)]

A. Documents provided by Plaintiff:

- 7. Plaintiff reserves the right to supplement this list of documents as discovery continues.
- 8. Plaintiff further reserves the right to identify any and all documents identified by Defendant.

B. Documents Provided by Defendant:

- 1.

IV.

LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER RULE 26(b) INCLUDING IMPEACHMENT OR REBUTTAL WITNESSES

[16.1(a)(1)(A) and 16.1(c)(3)]

A. Plaintiff:

- 1. 11. Custodians of Plaintiff's Medical Records are expected to testify regarding the search for and accuracy of the records produced.
- 12. Custodians of Plaintiff's Billing Records are expected to testify regarding the search for and accuracy of the records produced.
- 13. Plaintiff reserves the right to supplement this list of witnesses as further information becomes available.
- 14. Plaintiff further reserves the right to call any witnesses identified by Defendant.

1 15. Plaintiff further reserves the right to designate additional expert witnesses on
2 liability and damages.

3 B. Defendant:

4 V.

5 **DISCOVERY PLAN [16.1(b)(2) and 16.1(c)(2)]**

6 A. What changes, if any should be made in the timing, form or requirements for
7 disclosures under 16.1(a):

- 8 1. Plaintiff's view: None
9 2. Defendant's view: None

10 When disclosures under 16.1(a)(1) were made or will be made:

- 11 1. Plaintiff's disclosures:
12 2. Defendant's disclosures:

13 B. Subjects on which discovery may be needed:

- 14 1. Plaintiff's view: Liability and damages
15 2. Defendant's view: Liability, causation and damages

16 C. Should discovery be conducted in phases or limited to or focused upon particular
17 issues?

- 18 1. Plaintiff's view: No
19 2. Defendant's view: No

20 D. What changes, if any, should be made in limitations on discovery imposed under
21 these rules and what, if any, other limitations should be imposed?

- 22 1. Plaintiff's view: None
23 2. Defendant's view: None

24 E. What, if any, other orders should be entered by court under Rule 26(c) or Rule
25 16(b) and (c):

- 26 1. Plaintiff's view: None
27 2. Defendant's view: None

28 F. Estimated time for trial:

1. Plaintiff's view: _____ days
2. Defendant's view: _____ days

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI.

DISCOVERY AND MOTION DATES [16.1(c)(5) – (8)]

A. Dates agreed by the parties:

1. Close of discovery: _____
2. Final date to file motions to amend pleadings or add parties
(without a further court order): (90 days prior to COD)
3. Final dates for expert disclosures
 - i. initial disclosures: (90 days prior to COD)
 - ii. rebuttal disclosures: (30 days after initial)
4. Final date to file dispositive motions: (30 days after COD)

B. In the event the parties do not agree on dates, the following section must be completed:

1. Plaintiff's suggested close of discovery: Not applicable
Defendant's suggested close of discovery: Not applicable
2. Final date to file motions to amend pleadings or
add parties (without a further court order):
Plaintiff's suggested: Not applicable
Defendant's suggested: Not applicable
3. Final dates for expert disclosures:
 - i. Plaintiff's suggested initial disclosure: Not applicable
Defendant's suggested initial disclosure: Not applicable
 - ii. Plaintiff's suggested rebuttal disclosure: Not applicable
Defendant's suggested rebuttal disclosure: Not applicable
4. Final date to file dispositive motions:
Plaintiff's suggested: Not applicable

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant's suggested:

Not applicable

Failure to agree on the calendar dates in this subdivision shall result in a discovery planning conference.

VII.

JURY DEMAND [16.1(c)(10)]

A jury demand has been filed:

Yes

VIII.

INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall the set time for such disclosures.

This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct at this time.

DATED this ____ day of _____ 2014

DATED this ____ day of _____, 2014

ECKLEY M. KEACH, CHTD.
MURDOCK & ASSOCIATES, CHTD.

Robert E. Murdock Bar No. 4013
Eckley M. Keach Bar No. 1154
521 South Third Street
Las Vegas, NV 89101
lasvegasjustice@aol.com
Attorneys for Plaintiff

Attorney for Defendant

1 Robert E. Murdock, Esq.
2 Nevada Bar No. 4013
3 MURDOCK & ASSOCIATES, CHTD.
4 521 South Third Street
5 Las Vegas, NV 89101
6 (702) 685-6111
7 (702) 685-6222 - Fax
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JOHN DOE,)
10)
11 Plaintiff,)
12)
13 vs.)
14)
15 ROE COMPANY, a Delaware corporation;)
16 JAMES BROWN; and DOES I through X,)
17 inclusive,)
18)
19 Defendants.)

CASE NO.
DEPT. NO.

**PLAINTIFF'S FIRST SET
OF INTERROGATORIES
TO DEFENDANTS**

20 TO: _____, Defendants; and
21 TO: _____, Their Attorneys of Record

22 Pursuant to NRCP 33, Plaintiff John Doe, by and through his attorney of record, Murdock
23 & Associates, Chtd. hereby requests Defendants answer under oath the following interrogatories
24 within thirty (30) days from the date of service hereof.

25 **NOTE: Answers to the Interrogatories must include not only information in your**
26 **personal knowledge and possession, but also any and all information available to you,**
27 **including information in the possession of any and all information available to you, including**
28 **information in the possession of any of your current or former agents, attorneys,**
accountants, or employees. If a claim of privilege is made as to any information or
document sought by these Interrogatories, you must specify the basis for the privilege, and
describe the information or document claimed to be privileged.

1 As to each person named in response to each question herein, state the person's full name,
2 last known residence address and telephone number, his/her last known business address and
3 telephone number, and his/her job title, capacity or position at such last known employment.

4 If any information called for by any interrogatory is not available in the full detail
5 requested, such interrogatory shall be deemed to require the setting forth of the information related
6 to the subject matter of the interrogatory in such detailed manner as is available, including, where
7 no specific information is available, estimates identifying and describing the method by which any
8 estimate is made. When the context herein makes it appropriate, each singular word shall include
9 its plural and each plural word shall include its singular.

10 With respect to any of the following Interrogatories or parts thereof, as to which
11 Defendant, after answering, acquires additional knowledge or information, Plaintiff asks that from
12 time to time Defendant serves upon the undersigned further answers to such Interrogatories within
13 thirty (30) days after acquiring such additional knowledge or information.

14 INTERROGATORY NO. 1

15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this ____ day of _____, 2014.

MURDOCK & ASSOCIATES, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
521 South Third Street
Las Vegas, NV 89101
Attorney for Plaintiff

1 Robert E. Murdock, Esq.
Nevada Bar No. 4013
2 MURDOCK & ASSOCIATES, CHTD.
3 521 South Third Street
Las Vegas, NV 89101
4 (702) 685-6111
5 (702) 685-6222 - Fax
Attorney for Plaintiff

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

9 JOHN DOE,)	CASE NO.
)	DEPT. NO.
10 Plaintiff,)	
)	
11 vs.)	PLAINTIFF'S FIRST SET
)	OF REQUESTS FOR
12 ROE COMPANY, a Delaware corporation;)	PRODUCTION OF
13 JAMES BROWN; and DOES I through X,)	DOCUMENTS TO DEFENDANTS
14 inclusive,)	
)	
15 Defendants.)	
)	

16 _____
17 TO: _____, Defendants; and
18 TO: _____, Their Attorneys of Record

19 Pursuant to NRCP 34, Plaintiff John Doe, by and through his attorney of record, Murdock
20 & Associates, Chtd. hereby requests Defendant Neuromonitoring Associates, Inc. produce for
21 inspection and copying the following documents within thirty days from the date of service hereof.

22 **DEFINITIONS AND ABBREVIATIONS**

23 1. The term "document" means all originals (or any copies when originals are
24 unavailable) including any non-identical copies (whether different from originals because of
25 notations made on such copies or otherwise) of all written or printed matter of any kind, whether
26 handwritten, typewritten, or stored by any other means, including electronic or photographic
27 media.
28

1 2. The term "person" or "persons" means natural persons, partnerships, corporations,
2 professional corporations, firms, associations, government entities, and any other legal entity,
3 including divisions, departments or other units thereof.

4 3. Whenever the identity of a person is requested, supply the following information:
5 (a) the full name; (b) the present business and residence address; (c) the current residence
6 telephone number; (d) the job capacity/title or position with a description thereof presently held by
7 the individual identified; and (e) when used in relation to a corporation, partnership, joint venture,
8 subsidiary, affiliate or other business entity, the name and address of the entity.

9 4. Any time the word "you" is utilized throughout this discovery, it shall refer to any
10 person having any knowledge of the subject matter of this lawsuit, including attorneys,
11 investigators, or anyone else acting on behalf of this Respondent.

12 5. Whenever you are asked to identify a document, state: (a) a description of the
13 nature of the document sufficient to identify it; (b) a physical description including the number of
14 pages; (c) the date of the document; (d) the identity of each and every person to whom the
15 document was directed; (e) the identity of the persons by whom it is signed or subscribed, if any;
16 (f) the present or last known location of the original and all copies; (g) the identity of the person
17 with present custody of the original and all copies; and (h) if any such document was, but no
18 longer is, in the Respondent's possession, custody, or control, state the disposition that was made
19 of such document, the reason for such disposition and the date thereof.

20 6. Whenever a Request calls for the identification of an oral communication, state: (a)
21 all parties to the communication; (b) the identity of all persons present at the time the oral
22 communication took place; (c) the date of the communication; (d) the place and time where the
23 communication took place; (e) the substance of the communication; and (f) the identity of any
24 documents or records of such communication.

25 7. Whenever a Request asks for the "basis" of any statement, allegation, or answer,
26 state: (a) the identity of all sources upon which such statement, allegation, or answer is
27 predicated; and (b) every act, omission, conduct, event, transaction, document, meeting or
28 occasion which forms the predicate for any such statement, allegation, or answer.

1 8. If the "basis" in answering any Request: (a) is derived in whole or in part from any
2 document, identify the document; (b) is derived in whole or in part from any oral communication,
3 identify the oral communication; (c) refers to any person, state the identity of the person; and (d) is
4 derived in whole or in part from any inferences or assumptions, state these inferences or
5 assumptions.

6 9. Whenever a Request asks to identify "corporate records," corporate records shall
7 mean and include any and all by-laws, articles of incorporation, regulations, rules, minutes of any
8 executive committee meetings.

9 10. When, after a reasonable and thorough investigation using due diligence, you are
10 unable to answer any Request, or any part thereof, due to lack of information available to you,
11 state in detail the reason the information is not available, and what has been done to locate such
12 information. In addition, state what knowledge you do have concerning the unanswered portion of
13 the Request and set forth the facts upon which such knowledge is based.

14 11. Where a fact or facts are necessary to make the answer to a Request
15 comprehensible, complete or not misleading, include such fact or facts as part of the answer to the
16 Request.

17 12. If you claim any form of privilege, whether based on a statute or otherwise, as a
18 ground for not answering an Interrogatory or any portion thereof, state in detail all facts upon
19 which the privilege is based, sufficient for the arbitration panel to make a full determination as to
20 whether the claim of privilege is valid.

21 13. If you claim any form of privilege, whether based on a statute or otherwise, as a
22 ground for not describing requested oral communications, state: (a) the date of the
23 communication; (b) the identity of each of the participants in the communication; (c) the identity
24 of each person present during any or all portions of the communication; (d) a description of the
25 communication sufficient to identify the particular communication without revealing the
26 information for which privilege is claimed; and (e) each and every fact or basis upon which such
27 privilege is claimed, sufficient to permit the arbitration panel to make a full determination as to the
28 validity of the claim.

1 14. If you claim any form of privilege, whether based on statute or otherwise, as a
2 ground for not describing requested writings or documents, state: (a) the date such document was
3 prepared; (b) the identity of the author; (c) the addressee of the document; (d) the medium or
4 media to which such document is reduced, i.e., letter, memorandum, telegram, etc.; (e) the subject
5 matter of the document, without revealing the information as to which privilege is claimed; (f)
6 each and every fact or basis upon which such privilege is claimed, sufficient to permit the
7 arbitration panel to make a full determination as to the validity of the claim; and (g) any other
8 information requested, without revealing the information as to which privilege is claimed.

9 15. For the purposes of these Requests, words employing the singular number include
10 the plural, and words employing the plural include the singular. Words employing the masculine
11 gender include the feminine and neuter genders, and words employing the neuter gender include
12 the masculine and feminine.

13 16. Whenever the term "manner" is used in connection with a communication or
14 representation, indicate the method of communication, e.g., personal meeting, telephone
15 conversation, letter, memorandum, etc.

16 17. When used in the course of an enumeration of items as to which documents or
17 information are requested, the words "or" and "and," or the term "and/or" are to be construed as
18 requesting documents or information as to each item in the enumeration, as if the entire request
19 had been addressed solely to that item.

20 18. All terms utilized in these Requests are to be defined with reference to the
21 meanings ascribed to them by generally accepted dictionaries of the English language. Although
22 certain words or phrases may also constitute "terms of art," their meaning is that which is
23 generally ascribed to them by dictionaries of the English language unless a specific definition is
24 provided.

25 19. If you object on the basis of vexatiousness, annoyance, embarrassment, oppression
26 or the like, as a ground for not providing an answer to an interrogatory, or any part thereof, state in
27 a manner sufficient to permit the arbitration panel to make a full determination as to the validity of
28 the objection each and every fact or basis upon which such objection is made.

1 20. If you object on the basis of irrelevance or lack of relevance, i.e., that the
2 information requested does not tend to make the existence of a fact of consequence more probable
3 or less probable than it would be in the absence of such information, state: (a) the fact or facts of
4 consequence to which you consider such information irrelevant, including the basis for your
5 conclusions, sufficient for the arbitration panel to make a full determination as to the validity of
6 the objection; and (b) the basis for any objection that the information sought, if found to be
7 irrelevant, would not lead to the discovery of admissible evidence.

8 21. If you object on the basis of undue economic burden or the like as a ground for not
9 providing an answer to a Request, state in a manner sufficient to permit the arbitration panel to
10 make a full determination as to the validity of the objection: (a) the identity of the documents
11 where such information may be found; (b) the approximate cost in obtaining the information
12 sought, including the basis for your estimate; and (c) the basis for any contention that the burden
13 on you in obtaining such information is substantially the same as it would be for the party serving
14 the Request.

15 **22. All documents must be produced in searchable pdf or by hard paper copies**
16 **only.**

17 **23. If you claim attorney-client privilege or work product privilege, or any other**
18 **privilege, please produce a privilege log in a Discovery Commissioner acceptable format**

19 REQUEST NO. 1

20
21
22
23
24
25
26
27
28

DATED this ____ day of _____, 2014.

MURDOCK & ASSOCIATES, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
521 South Third Street
Las Vegas, NV 89101
Attorney for Plaintiff

1 Robert E. Murdock, Esq.
Nevada Bar No. 4013
2 MURDOCK & ASSOCIATES, CHTD.
3 521 South Third Street
Las Vegas, NV 89101
4 (702) 685-6111
5 (702) 685-6222 - Fax
Attorney for Plaintiff

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 JOHN DOE,)
9)
10 Plaintiff,)
11 vs.)
12 ROE COMPANY, a Delaware corporation;)
13 JAMES BROWN; and DOES I through X,)
inclusive,)
14 Defendants.)
15 _____)

CASE NO.
DEPT. NO.

**NOTICE OF TAKING
DEPOSITION OF PERSON(S)
MOST KNOWLEDGEABLE
OF _____**

**DATE:
TIME:**

16
17 TO: _____, Defendants; and

18 TO: _____, Their Attorneys of Record

19 Pursuant to Rules 26, 30 and 30(b)(6) of the Nevada Rules of Civil Procedure, please take
20 notice that on _____, 2014, at _____ a.m. at Murdock & Associates, Chtd.,
21 521 South Third Street, Las Vegas, Nevada 89101, Plaintiff will take the deposition of the
22 Person(s) Most Knowledgeable of _____. The deponent(s) will testify
23 regarding the following:

- 24 1. Insurance policies of Roe Company;
- 25 2. The type of policies;
- 26 3. Monies remaining on the policies to be paid out;
- 27 4. Reservation of rights letters; and
- 28 5. Attorney's fees and costs deducted from available insurance policies.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this ____ day of _____, 2014.

MURDOCK & ASSOCIATES, CHTD.

/s/ Robert E. Murdock
Robert E. Murdock Bar No. 4013
521 South Third Street
Las Vegas, NV 89101
Attorney for Plaintiff

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 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 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.

, 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).

Rethinking Motion Practice

Rethinking How to Write Effectively

- Becoming a good legal writer.

*Thinking Like a
Lawyer*

The law is complex

LOGIC

*Thinking Like a
Writer*

The law must appear
simple

CLARITY

Commands →

Achieving Clarity

1. Provide Context
2. Match Form & Substance
3. Segment Your Information

Providing Context

- Readers absorb information best if they understand its significance as soon as they see it.
 - Given the big picture before giving the details;
 - Old information before new information.

Old Info Before New Info

- Before:
 - *The Fourth Amendment protects citizens of the United States against unreasonable searches by the government. The Supreme Court applies a reasonableness test to determine whether a citizen's rights have been violated in unreasonable search cases. The test balances the citizen's privacy interests against the government's interest that are furthered by the search.*
- After
 - *The Fourth Amendment protects citizens of the United States against unreasonable searches by the government. **To determine whether a citizen's rights have been violated in a search**, the Supreme Court applies a reasonableness test. This test balances the citizen's privacy interests against the government's interest that are furthered by the search.*

Providing Context

- Readers absorb information best if they understand its significance as soon as they see it.
 - Given the big picture before giving the details;
 - Old information before new information.
 - **Make the structure explicit.**

Explicit Structure

- Example
 - *This motion addresses two hearsay issues, one relating to the business records exception and one relating to out-of-court admissions. We will consider each in turn.*

Explicit Structure

- Organization
 - Avoid Default Organization
- Create an organization that matches the logic of your analysis; looking backward from your conclusion.
 - Each section of your brief should begin with a good introduction (road map of where you've been and where your going);

3) Segment Your Info

- Focus on short sentences
- Omit needless words
- Break long sentences into chunks
- Organize the chunks to emphasize importance

Know Your Audience

- The Judge
 - Research/Ask Around/Attend Hearings
 - Understand Your Judge is Busy
 - 50+ motions per week.
 - They rely heavily (if not exclusively) on their law clerks.
- Your Opponent
 - Know your opponent (research/understand skill set)

Know the Forum

- Know the rules:
 - Page Limit;
 - No Citing Unpublished Decisions;
 - Order Shortening Time;
 - Don't File Disc Motions in District Court;
 - Don't File Dispositive Motions w/ Disc Comm.

Oral Argument

- Maintain Decorum
 - Judge has an intense respect for the court, and expects counsel to share the sentiment
 - No crazy gestures;
 - No eye rolling;
 - No interruptions; &
 - DON'T interrupting the judge.

Oral Argument

- Understand Your Argument
 - Busy Court; Judge Has Probably Heard 5 Other Motion to Strike That Week
 - At the Outset; Convey your Request & Importance of Ruling
 - Know the difference between arguing your case and arguing with the judge.
- Recognized when you have prevailed
 - Then SIT DOWN!
 - Ask for Clarification in the event of an unclear ruling.

Effective Use of the Motion in Limine



Basic Principles

- Over utilized & Under utilized?
 - Under utilized:
 - Not capitalizing on a major litigation tool;
 - Cases can be won (and lost) before trial even begins with admission/exclusion of key evidence.
 - Over utilized:
 - Risk infuriating the judge;
 - Risk giving away trial strategy.

Most Useful MILs

- 1) Exclusionary MIL
- 2) Inclusionary MIL
- 3) Preclusionary MIL

Exclusionary MIL

- Evidence
- Demonstrative Evidence
- Witnesses
 - Fact Witnesses
 - 30(b)(6) Witnesses
 - Expert Witnesses

Inclusionary MIL ("Pre-Admission")

- Benefits of Pre-Admitting Evidence
 - Opening Statements
 - Maintaining Flow of Trial
- What Evidence to Pre-Admit
 - Highly contested evidence;
 - Key evidence;

Preclusionary MIL

- “Instruct Counsel Not to Violate _____ Rule.”
 - Golden Rule
 - Established Rules of Evidence
 - The Exception:
- The “Omnibus” MIL

Preserve Issues For Appeal

- The old rule:
 - Following the trial court's ruling on a motion in limine, the attorney was not required to take any additional action during trial in order to preserve his/her argument on appeal. *Richmond v. State*, 118 Nev. 924, 59 P.3d 1249 (2002).
- The new rule:

Preserve Issues For Appeal

- *BMW v. Roth*, 127 Nev. ____, 252 P.3d 649 (2011)
 - When the exclusion/admission of evidence during trial is consistent with the Court's ruling on the motion in limine, the issue is preserved for appeal even without a renewed objection.
 - Reason → There is no new "error".
 - When the an exclusion/admission of evidence during trial is inconsistent with the Court's ruling on the motion in limine (i.e. violates the ruling), the opposing party must object in order to preserve the issue for appeal.
 - Reason → The violation of the Court's in limine ruling is new error.

Misc Issues

- Are Motions in Limine Binding?
 - Motion in limine rulings are not binding on trial court, and the district court may always change its mind during course of trial. *Ohler v. U.S.*, 529 U.S. 753 (U.S. 2000).
- Don't Forget about the Order:
 - The MIL orders will lay the ground rules for trial.
 - Orders should be Detailed; Describe exactly what should be admitted/excluded; and Filed before trial.

KEEP = Common Mistakes

- Failure to meet and confer
- Filing a motion on an obvious point that can be dealt with quickly at trial
- Using a motion in limine as a substitute for a summary judgment motion
 - *McConnell v. Wal-Mart Stores, Inc.*, 995 F.Supp.2d 1164, 1167 (D. Nev. 2014) (“a motion in limine should not be used to resolve factual disputes or weigh evidence”)

Authority

- Rules don't provide for motions in limine in, so where does the authority come from?
- Motions in limine derive from the court's inherent authority to control the trial process and the admissibility of evidence
 - *Luce v. U.S.*, 469 U.S. 38, 41 (1984)
 - *U.S. v. Cook*, 608 F.2d 1175, 1186 (9th Cir. 1979)
 - *State ex rel. Dep't of Highways v. Nev. Aggregates & Asphalt Co.*, 92 Nev. 370, 551 P.2d 1095 (1976)

Local Rules

- Timing:
 - State Court (EDCR 2.47)
 - Due 45 days before trial and hearing will be set for 14+ days before trial, unless otherwise provided for in an order of the court
 - Federal Court (LR 16-3(b))
 - Due 30 days before trial;
 - No Reply Briefs, Unless Leave of Court is Granted.
- Meet and Confer: (EDCR 2.47 Conference)
 - Exchange a “list” of MIL’s or a “draft” of the MIL’s before the 2.47 conference;
 - A truly meaningful 2.47 conference should narrow the list of MILs and avoid having to file a non-opposition to a MIL that should have been stipulated to.

Voir Dire

The Rejection Process

Don'ts & Dos

- Don't . . .

– Talk at them



- Do . . .

– Speak with them



Don'ts & Dos

- Don't . . .

– Talk about them



- Do . . .

– Ask about them



Don'ts & Dos

- Don't . . .

– Be their buddy



- Do . . .

– Be their friend



Don'ts & Dos

- Don't . . .

- Talk

- Do . . .

- Listen



Don'ts & Dos

- Don't . . .

– Preview



- Do . . .

– Tease



The Tao of
Courtroom Technology

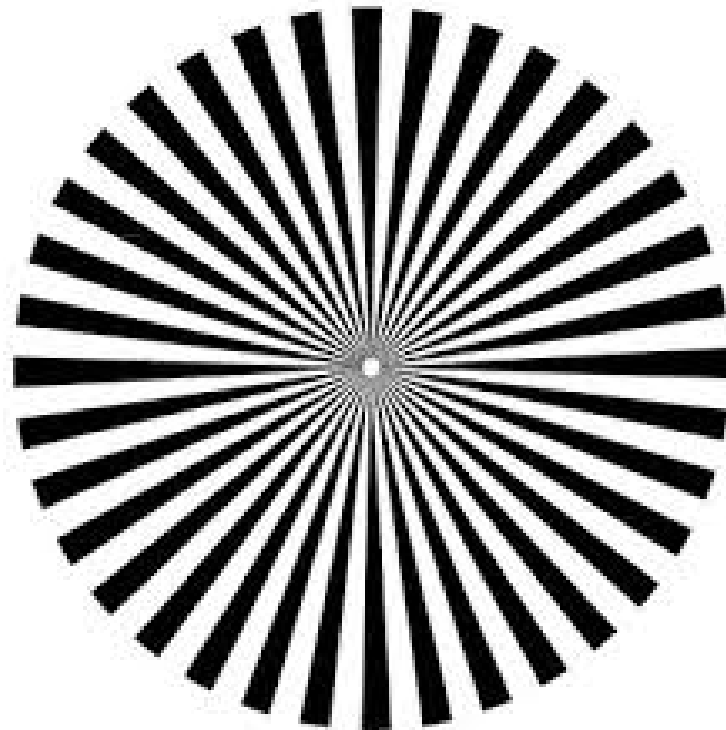
Restraint



Self-Awareness



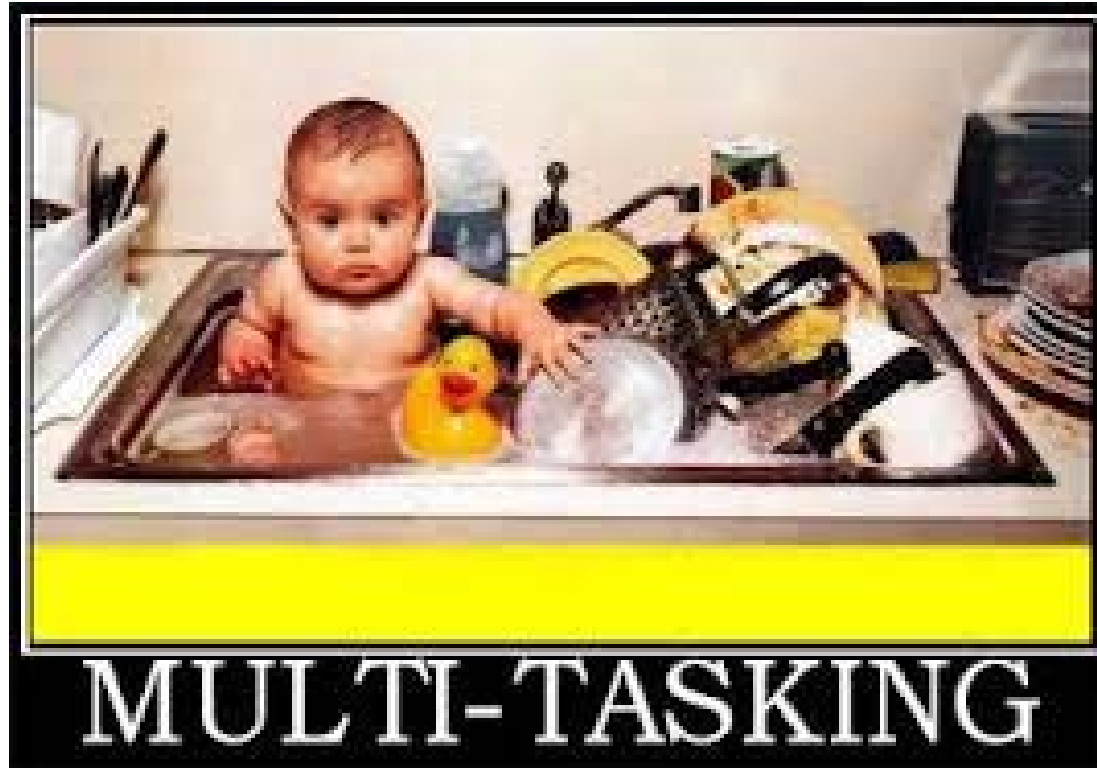
Focus



Training



Balance



Adaptation



How To Prepare For Your First Trial

by Howard J. Russell

Prior to 2002, the extent of my “trial preparation” consisted of rehearsing pre-scripted questions for a mock trial competition. When asked to second chair a commercial dispute in federal court, however, I quickly learned that my resume-building mock trial experience had prepared me for this moment about as much as watching reruns of “Law & Order”. Law school advocacy programs and captivating closing arguments delivered by Sam Waterston are certainly helpful tools, but both are closed-universe dramatizations and of what every trial lawyer imagines his or her courtroom experience will be. Preparing for your first real trial is, however, both a stressful and exciting attempt to expect the unexpected.

I. The Opening Statement: Introduce the message

We learn the importance of a coherent theme in our early childhood years. From using our imaginations as toddlers, to writing our first elementary school essays, we create stories from the moment we learn what a story is. Writing at any level typically requires a cohesive and consistent theme throughout the narrative. Preparing for your first trial is no different. Before you draft your first question or develop your first PowerPoint slide, you need to be able to complete this sentence: “My client should prevail in this case because . . .” How you complete that sentence is your theory of the case, and from that is developed your theme.

A jury trial is a type of narrative. The attorney is both author and narrator, and relies on witness testimony and documentary evidence as the building blocks for the culminating chapter known as the closing argument. Whether you are preparing an opening statement, outlining cross examination questions, or simply arguing the appropriate jury instructions to a judge, your theme should always be clear. By the end of the trial, both the judge and jury should come to a singular conclusion: your client should prevail because, accepting as true the basic premise and theme you have focused on for days or weeks, there can be no other outcome. A successful trial attorney is not always one the jury likes the most, or who represents the more likeable client. A successful trial attorney is one who can convince the jury that his or her view of the legal and factual issues in the case is the more reasonable one.

When developing a theme, brainstorming is vital. Chances are that your first trial will be alongside a more seasoned trial attorney and will involve extensive collaboration. In the rare circumstance you are venturing into a trial for the first time with no one to assist (and of course staying loyal to your ethical duty of confidentiality to your client), use your colleagues, staff members, law school classmates, family, friends, hair stylist, or whomever else you trust as a sounding board for ideas. Brilliant case theories may quickly be discarded when a layperson points out an inherently flawed logic on which the theory relied, or stares blankly, without comprehension because the message is just too complicated.

Your theme should not be “dumbed down” for the jury. It should not be trite. On the other hand, simplicity in communication is a virtue if you can accomplish it without diluting or undermining the message. Maxims are a starting point, but apply the facts of your case. “A picture is worth a thousand words” is a fine opening line for a case in which just a few pictures will speak volumes about an important aspect of your case, but unless you can actually coax a

thousand words of narrative out of each of those few pictures, your theme will, by the end of the case, seem overextended and the jury's expectations will be disappointed.

The opening statement should keep you on track to avoid overselling a weak theme. It should not include argument and it should not mention that hotly contested piece of evidence that the judge has yet to rule on, but the opening statement is your first and best opportunity to lay out your theme and theory for the jury. If, in that opening statement, you can reference the vital pieces of testimony and most important documents that you reasonably expect will be presented as evidence and logically tie them into your larger theme, you're on the right path.

II. Direct Examination: Tell your story

One of the least exciting, yet most important, aspects of trial preparation is to develop thorough direct examinations, and to prepare your witnesses accordingly. Direct examination is not considered "sexy". Probably few people remember the scene in "A Few Good Men" where Noah Wyle describes, during a direct examination, the circumstances under which he might be subject to a Code Red. Anyone who has seen the film vividly remembers, however, Tom Cruise's intense cross-examination of Jack Nicholson, and Nicholson's damning admission on the stand.

Nevertheless, direct examination is the primary component of the trial attorney's case-in-chief. It is the opportunity to develop your theory, and emphasize your theme, largely on your terms. In many cases, you control the witnesses, or at the very least, have had cordial enough dealings with them that you have a comfort level with how the testimony will play out. Building your narrative through direct examination is a delicate balance between sounding overly rehearsed and being too casual, such that the jury becomes disengaged.

Preparing an effective direct examination is much more difficult than one might expect, particularly for questioning non-party fact witnesses. While experts, law enforcement personnel, or corporate representatives may testify with some regularity and be familiar enough with the process to understand the cues and hints in your questions, many fact witnesses will be new to the experience and therefore likely nervous. The goal then is to draft a line of questioning which is not objectionable as leading, and complete enough to build effectively on the theory of your case. For inexperienced or nervous witnesses, keywords and signals are sometimes helpful to keep the testimony on track and effective, but it is equally important to be flexible enough to reword or re-order questions if a witness stumbles and gets off track regarding the intended message. Ultimately, the examination needs to allow the witness to tell his or her story, while simultaneously developing yours.

III. Cross Examination: Beware the dreaded open-ended question

Every trial attorney dreams of that defining moment when a case is won with a "silver bullet" cross examination question. Attorneys are often more interested in finding a weakness in our opponent's case than we are in shoring up our own, but only because it is very difficult not to salivate over the thought of changing the course of a trial by eliciting a devastating "yes" or "no" answer from an adverse witness. That desire to achieve complete victory at the opponent's expense, however, along with Hollywood's romanticized portrayal of trial attorneys, can be dangerous. All trial attorneys - even the most seasoned - risk leaving a potentially damaging

question open-ended enough that the witness can dodge it with a well-crafted answer, which ends up being equally damaging to your case.

The solution: Rely on questions to which you know the answer, or you are confident will lead to the desired answer. There are two reasons depositions are a vital tool in the discovery process. The first is obviously the discovery of information, but the second and equally important one is early preparation of cross examination questions for trial. A deposition transcript does not carry with it any guarantee that the witness will not change his or her testimony at trial, but at least it provides a secondary method to introduce helpful testimony into evidence. Any witness (even your own) can take a 180° degree turn in front of the jury, but being able to refer a witness to his or her prior testimony, and perhaps establish that the witness now completely lacks credibility, is a rare gift in the course of trial. Preparing questions to which you are already certain of the answer, or at least questions that can help establish your case theory by admitting the answer through deposition testimony if the witness changes his or her story on the stand, is key to effective cross examination.

Equally important is brevity whenever possible. A very well-respected trial attorney once asked my opinion of opposing counsel, and asked if he had ever really “filleted” someone on the stand. It was an interesting way to describe the process of cross examination, but there is a flaw in assuming that eviscerating every witness on cross examination is necessary to be an effective trial attorney. There are certainly times when a cross examination will be extensive, for example, to intricately question each assumption on which an expert bases an opinion, only to later to show those assumptions were horribly flawed. More often than not, however, it is just as effective to elicit two or three important points from the witness, the proof of which will make the remainder of the witness’s testimony largely forgettable. This goes back to the point discussed above: Prepare to tell *your* story and remain consistent to *your* theme. The less time you dedicate to “filleting” the other side’s witnesses, the more the jury will believe that you are unconcerned with what those witnesses have to say.

IV. The X Factor: Believe that any jury can be a good jury

One thing no trial attorney can “prepare” for is the jury makeup. Perhaps you will have the benefit of a jury questionnaire to identify potential jurors who may (at least on paper) be particularly favorable or detrimental to your case. Once *voir dire* commences, you will quickly learn that any expectations based on how a juror answered a cold questionnaire were formed in vain. Jurors are people, and as we likely told prospective employers coming out of law school, people are much more complex than what a resume may reveal. If you prepare for a certain jury makeup, you will be sorely disappointed and will spend your first days of trial trying to revise your case strategy to address this unexpected jury.

The better approach is to focus your energy on preparing for *any* jury. If you have a solid and workable theme, have developed a plan to build your narrative efficiently through your own case-in-chief, and have taken the time to understand the nuances of the case such that you can anticipate the weaknesses of your case, then just about any jury has the potential to be convinced of your point of view. Over the years, I have been thoroughly impressed by the interest jurors take in our civil justice system, and how attentive they are even if they exhibited hesitance during *voir dire* about their ability to serve.

There is no adequate way to prepare for what the jury will be. The best preparation is to minimize concerns about what the jury “could be”, and instead dedicate your time to preparing your case, with your own unique point of view. The only way to truly be prepared for any eventuality in the jury pool is to develop your case in such a way that any juror, regardless of preconceptions or prejudices, can be convinced of your theory.

V. Closing Arguments: Be a facilitator, not a dictator

Over the years I have been honored and privileged to practice with extremely talented trial attorneys, one of whom once said: “You can’t win a case in closing argument, but you can sure as hell lose it.” The closing argument is your opportunity to bring the case together for the jury, and connect the evidence it heard to the theme you cogently delivered in the opening statement. It should not be considered an opportunity to salvage a case that you failed to lay the groundwork for during your case-in-chief, or to explain that witness outsmarting you on cross examination. If you have prepared adequately and focused on the big picture theme throughout the trial, however, the closing argument is a golden opportunity to deliver a brief, concise and persuasive roadmap the jury can use to find in your favor. Do not overlook the fact that the jurors will be fatigued at this point, and are ready to start deliberations. *Telling* the jurors how they must decide the case could therefore alienate them, in contrast to *showing* the jurors how the evidence you have presented leads to the necessary conclusion that you should prevail.

VI. Conclusion: Expect the unexpected

The most effective way to prepare for your first trial is to appreciate, no matter how much you prepare, there will be unforeseen hurdles to overcome throughout the trial. Rulings on motions in limine will require last minute changes to your opening statement and a need to re-work the direct examination of your key witness. A juror during *voir dire* will make such an outrageous and inflammatory comment, contrary to your client’s interests, that you will be unable to imagine the jurors possibly keeping open minds going forward. A witness will go rogue during trial, forcing you to consider abandoning entirely your primary theory. If you have prepared for the trial by understanding what your ultimate goal is, by developing an effective and overarching theme to convince the jury of your point of view, and by focusing on the bigger picture rather than hoping that each witness examination and offer of proof will go flawlessly, then your first foray as a trial attorney should be a partly rewarding, partly terrifying, and hopefully successful endeavor.

Howard Russell is the Managing Partner for the Las Vegas office of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC. He is a graduate of the University of Georgia School of Law, and is licensed to practice in Nevada, Georgia and Massachusetts. Over the past decade, he has tried cases in several states, involving a wide range of claims including product liability, premises liability, nightclub altercations, transportation, construction, and insurance coverage.

Direct/Cross Examination

Direct Examination:

Themes, Order, Prepare, Non-Verbal Evidence

No Leading Questions?

Open Ended Questions That Tell A Story—Themes

Checklist of What You Need Witness For

Cross Examination

This Is Not Television

Younger's 10 Commandments—DO NOT VIOLATE

- 1. Be Brief**
- 2. Use Plain Words**
- 3. Use Only Leading Questions**
- 4. Be Prepared**
- 5. Listen**
- 6. Do Not Quarrel**
- 7. Avoid Repetition**
- 8. Disallow Witness Explanation**
- 9. Limit Questioning**
- 10. Save for Summation**

Re-Direct

Be Careful Trying To Fix Things That Cannot Be Fixed

Closing Arguments

Many Methods:

Map

Candyland

Thanksgiving Dinner

Use Jury Instructions

Go Back To Voir Dire

Go Back To Openings

Use Exhibits

Technology—Good and Bad

Whatever you do, do not, under any circumstance.....

Preserving the Record for Appeal

Overview of the Appellate Process

- The civil appellate process involves:
 - Limited review of a fixed record;
 - Search for prejudicial error;
 - In order to prevent a miscarriage of justice.

Basic Principles

- Appellate review is ordinarily limited to:
 - Final judgments and orders;
 - Issues raised in the lower court;
 - Record created in the lower court.

Basic Principles

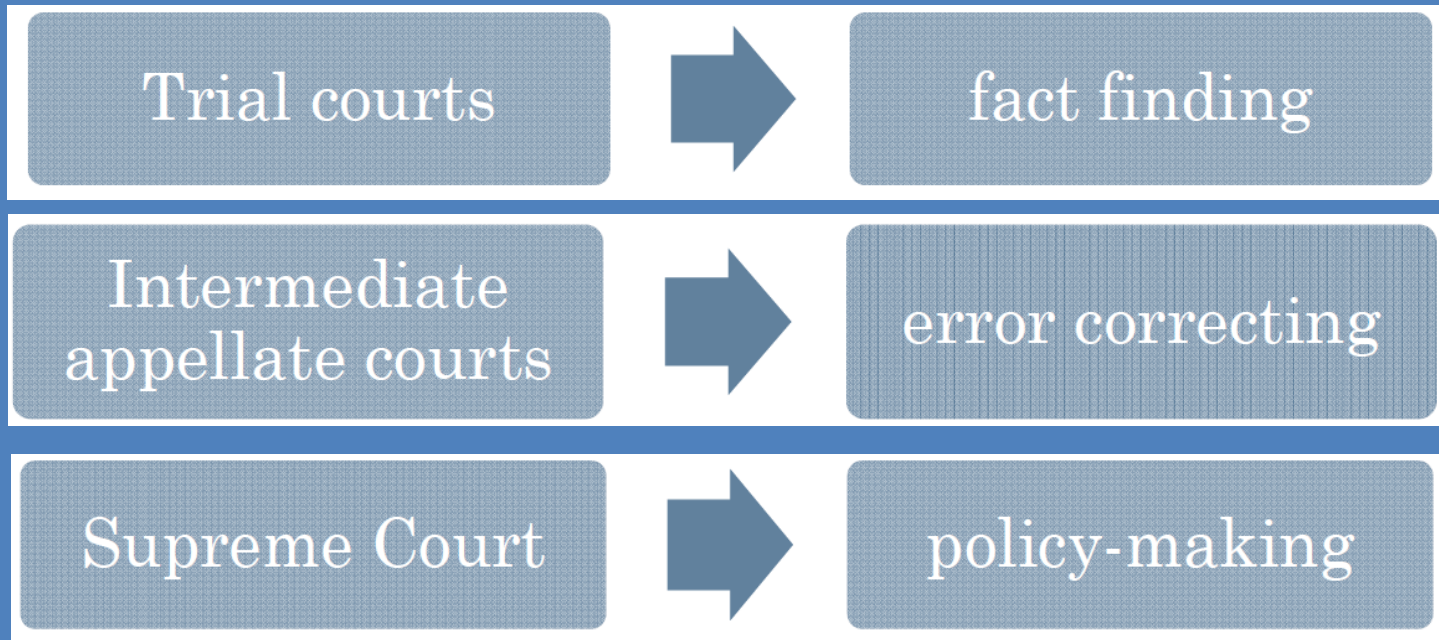
- Appellate Review Requires:
 - An issue preserved for appeal;
 - No review of invited error
 - No review of new legal theories
 - No Relief Absent Prejudicial Error

Basic Principles

- NFL Instant Replay/Presumptions
 - Presumption in favor of the prevailing party
 - Presumption in favor of the trial court's order
- The trial court's discretion will be upheld on appeal unless:
 - Abuse of Discretion;
 - Applied wrong legal standard;
 - Clearly Erroneous

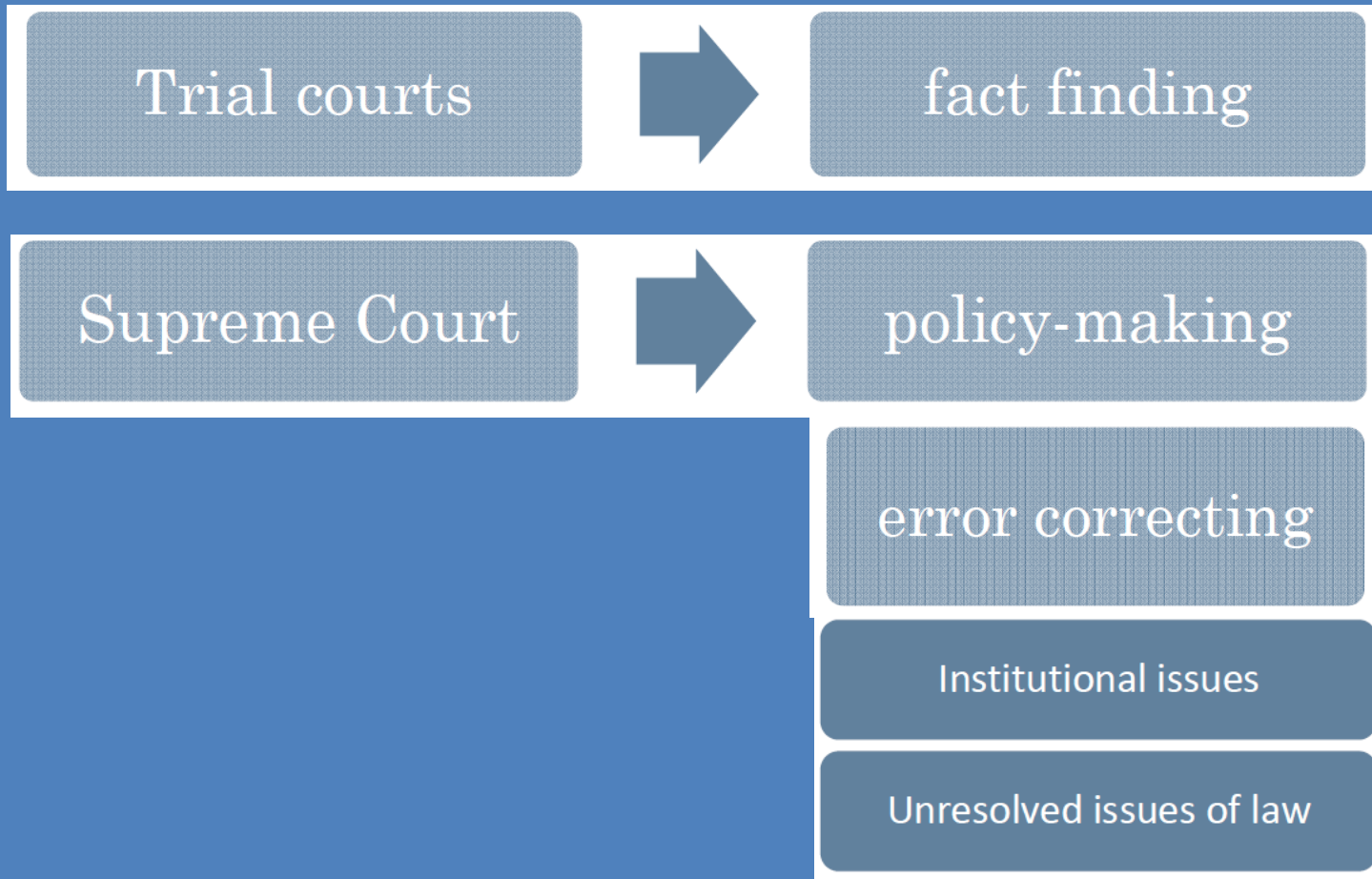
Nevada's Busy Court of Appeal

- Typical Structure



Busy Court of Appeal

- Nevada's Current Structure



Preserving the Record

- Basic Record
 - Pleadings, notices, orders
 - Transcripts
 - Evidence
 - Requests for jury instructions
 - Post-trial motions
- If its not in the record, it never happened.
 - Check, Double Check, and Re-Check that Evidence has been admitted into the record.
 - Make an Offer of Proof concerning excluded evidence.
 - Request/object to adequate jury instructions

Preserving the Record

- Evidentiary Issues:
 - Importance of Motions in Limine
 - Obtain a record of any important sidebar conference.
- Get videotaped testimony and other electronic evidence into the written record;
- Verbally record visual presentations

Preserving the Record

- Make complete/timely objections
- Obtain a ruling on objections;
 - Seek clarification of ambiguous trial court rulings
 - Make sure admission/exclusion of evidence is noted in the record;

Record Preservation Techniques

- Object to form of jury verdict or jury questions before deliberation
- Make adequate post-trial motions

PROGRAMS & SERVICES



LAWYER REFERRAL AND INFORMATION SERVICE is a public service providing free referrals to members of the public who can afford to pay an attorney but don't know who to call. Build or expand your client base by gaining access to the more than **20,000** referrals LRIS makes each year.

FIND-A-LAWYER is a **free iPhone and Android app**. Use this digital directory to quickly contact your peers within the Nevada legal community.

ETHICS HOTLINE helps navigate the Rules of Professional Conduct. State bar attorneys answer ethics questions and offer informal opinions based on their knowledge of the Rules of Professional Conduct. Call **1.800.254.2797** for guidance.

FEE DISPUTE RESOLUTION assists bar members and their clients by attempting to resolve fee-related disputes of \$250 or more. Use this **free, effective service** where disputes can be resolved by mediation or arbitration, instead of writing off a client's bill, placing a lien on the client's file or filing a suit against a client.

NEVADA LAWYER ASSISTANCE PROGRAM offers confidential clinical services to State Bar of Nevada members who seek assistance with addictive and other psychiatric illnesses. Members may self-refer to NLAP, speak with a professional, and obtain the therapy and treatment necessary to effectively cope with working in the legal environment and the inherent stress associated with the practice of law. Visit us at www.nvbar.org/NLAP for more information.

ONLINE CLE provides convenient, **24-hour/7 day a week access** to CLE seminars and content with our web-based catalog. Or purchase CLEtoGo audio MP3 downloads you can listen to on any computer or portable audio player. Go to www.nvbarcle.org for a complete catalog of online programs.

TRANSITIONING INTO PRACTICE (TIP) MENTOR PROGRAM pairs newly admitted attorneys with seasoned attorneys. If you're interested in sharing your wisdom and guidance with lawyers new to the State Bar of Nevada, apply to be a mentor at www.nvbar.org/tip today.

SOLACE (Support of Lawyers/Legal Personnel – All Concern Encouraged) is a voluntary listserve program for lawyers and legal personnel all over the state to reach out in small, but meaningful and compassionate ways to help each other and their families when they have a critical need for services, guidance or other non-monetary assistance.

To find out more about any of these member benefits, visit:

nvbar.org

MEMBER BENEFITS



As a member of the State Bar of Nevada, you have access to a variety of free or discounted benefits. Our goal is to help you and your law practice thrive and prosper. We partner with providers whose services are not only valuable, but will help improve your bottom line.



Available to all active members of the bar, Fastcase is your key to free and unlimited online legal research. Not only do you save time and money, so does your client. Access Fastcase anytime from your desktop, iPhone or iPad and save money each time you do.



Clio is the #1 cloud-based legal practice management system for solos and small firms. All State Bar of Nevada members receive a 10% lifetime discount on Clio.



LawPay Credit Card Processing enables you to accept credit cards correctly without worrying about commingling your trust and operating accounts. They safely do this for you, at discounted rates, with no annual fees, contracts or minimum processing.



ALPS provides a full range of professional liability coverage and is the preferred legal malpractice provider of the State Bar of Nevada. ALPS was created (and is still owned and operated) by attorneys for attorneys.



ABA Retirement Funds provides retirement solutions exclusively to the legal community with no out-of-pocket costs to firms of all sizes.



Need a job? Need an employee? The Career Center is an excellent resource for job search and recruitment.



The FedEx Advantage Program provides discounted rates for all of your shipping needs.



Discounted auto rentals, whether you're traveling for business or pleasure. Visit the state bar's Car Rental Discounts webpage for more information and direct links to the Hertz, Avis and Budget reservations sites.

To find out more about any of these member benefits, visit:
nvbar.org