

1 **NRCP 15 – Proposed**
2 **(Adopt federal rule with edits)**

3 **Rule 15. Amended and Supplemental Pleadings**

4 **(a) Amendments Before Trial.**

5 (1) **Amending as a Matter of Course.** A party may amend its pleading
6 once as a matter of course within:

7 (A) 21 days after serving it, or

8 (B) if the pleading is one to which a responsive pleading is
9 required, 21 days after service of a responsive pleading or 21 days after service of a
10 motion under NRCP 12(b), (e), or (f), whichever is earlier.

11 (2) **Other Amendments.** In all other cases, a party may amend its
12 pleading only with the opposing party's written consent or the court's leave. The
13 court should freely give leave when justice so requires.

14 (3) **Time to Respond.** Unless the court orders otherwise, any required
15 response to an amended pleading must be made within the time remaining to
16 respond to the original pleading or within 14 days after service of the amended
17 pleading, whichever is later.

18 **(b) Amendments During and After Trial.**

19 (1) **Based on an Objection at Trial.** If, at trial, a party objects that
20 evidence is not within the issues raised in the pleadings, the court may permit the
21 pleadings to be amended. The court should freely permit an amendment when doing
22 so will aid in presenting the merits and the objecting party fails to satisfy the court
23 that the evidence would prejudice that party's action or defense on the merits. The
24 court may grant a continuance to enable the objecting party to meet the evidence.

1 (2) **For Issues Tried by Consent.** When an issue not raised by the
2 pleadings is tried by the parties' express or implied consent, it must be treated in all
3 respects as if raised in the pleadings. A party may move—at any time, even after
4 judgment— to amend the pleadings to conform them to the evidence and to raise an
5 unpleaded issue. But failure to amend does not affect the result of the trial of that
6 issue.

7 (c) **Relation Back of Amendments.** An amendment to a pleading relates
8 back to the date of the original pleading when:

9 (1) the amendment asserts a claim or defense that arose out of the
10 conduct, transaction, or occurrence set out—or attempted to be set out—in the
11 original pleading; or

12 (2) the amendment changes a party or the naming of a party against
13 whom a claim is asserted, if Rule 15(c)(1) is satisfied and if, within the period
14 provided by Rule 4(e) for serving the summons and complaint, the party to be brought
15 in by amendment:

16 (A) received such notice of the action that it will not be prejudiced
17 in defending on the merits; and

18 (B) knew or should have known that the action would have been
19 brought against it, but for a mistake concerning the proper party's identity.

20 ~~(2) **Notice to the United States.** When the United States or a United~~
21 ~~States officer or agency is added as a defendant by amendment, the notice~~
22 ~~requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period,~~
23 ~~process was delivered or mailed to the United States attorney or the United States~~

1 ~~attorney's designee, to the Attorney General of the United States, or to the officer or~~
2 ~~agency.~~

3 (d) **Supplemental Pleadings.** On motion and reasonable notice, the court
4 may, on just terms, permit a party to serve a supplemental pleading setting out any
5 transaction, occurrence, or event that happened after the date of the pleading to be
6 supplemented. The court may permit supplementation even though the original
7 pleading is defective in stating a claim or defense. The court may order that the
8 opposing party plead to the supplemental pleading within a specified time.

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10 **Advisory Committee Note—2018 Amendment**

11 [The Advisory Committee Note will be conformed to the recommendation.]
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1 **NRCP 15 – Proposed**
2 **(Subcommittee notes to the Committee)**

- 3 (1) The existing NRCP 15(a) permits one amendment at any time before a
4 responsive pleading is served. FRCP 15(a)(1)(B) permits one amendment any
5 time within 21 days after a responsive pleading or a NRCP 12(b), (e), or (f)
6 motion is filed. The FRCP alterations were retained.
- 7 (2) FRCP 15(c)(1)(A) and 15(c)(2) were deleted as federal specific and the rule
8 renumbered.
- 9 (3) The subcommittee is uncertain how to proceed with Rule 15(c). The proposed
10 alternatives for NRCP 15(c) ask if the committee wants to (ALT 1) retain the
11 current Nevada rule, or (ALT 2A) adopt the federal rule including the federal
12 relation back test for parties, (ALT 2B) adopt the federal rule but retain
13 current Nevada statement of relation back for parties, or (ALT 2C) adopt the
14 federal rule but revise the relation back test for parties.

15 **Alternative (1):**

16 NRCP 15(c) is the existing test for relation back for claims or defenses. Nevada
17 apparently considered adopting the FRCP provisions regarding parties but did not
18 do so, per the comment noted above. Nevertheless, the Nevada Supreme Court in
19 *Costello v. Casler* stated that the Nevada text applies with equal force to
20 amendments adding claims or defenses and those adding parties. 127 Nev. 436, 440
21 n.4, 254 P.3d 631, 634 n.4 (2011).

22 **Alternative (2):**

23 FRCP 15(c) by contrast makes provision for relation back for (1) adding claims, and
24 (2) adding parties, but the federal relation back for parties incorporates terms

1 different from the existing Nevada case law for adding parties under NRCP 15(c).
2 (This case law is also different from the test for substitution of parties in NRCP
3 10(a).) The current Nevada rule is in *Costello v. Casler*, 127 Nev. 436, 440-41, 254
4 P.3d 631, 634 (2011) (“An amended pleading adding a defendant that is filed after
5 the statute of limitations has run will relate back to the date of the original
6 pleading under NRCP 15(c) if the proper defendant (1) receives actual notice of the
7 action; (2) knows that it is the proper party; and (3) has not been misled to its
8 prejudice by the amendment.”).

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- 10 (1) In conjunction with these alternatives, the subcommittee seeks the
11 committee’s directive regarding whether NRCP 10(a)’s provision for fictitious
12 parties should be eliminated, as it is in the federal rule.
- 13 (2) The advisory committee note will be modified according to the committee’s
14 directive.
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