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NRCP 68 – Proposed (Revise Nevada Rule)

Rule 68. Offers of Judgment

(a) **The Offer.** At any time more than ~~10~~21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest and, if attorney fees are permitted by law or contract, attorney fees.

(b) **Apportioned Conditional Offers.** An apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed.

(c) **Joint Unapportioned Offers.**

(1) **Multiple Offerors.** A joint offer may be made by multiple offerors.

(2) **Offers to Multiple Defendants.** An offer made to multiple defendants will invoke the penalties of this rule only if:

(A) there is a single common theory of liability against all the offeree defendants, such as where the liability of some is entirely derivative of the others or where the liability of all is derivative of common acts by another, and

(B) the same entity, person or group is authorized to decide whether to settle the claims against the offerees.

(3) **Offers to Multiple Plaintiffs.** An offer made to multiple plaintiffs will invoke the penalties of this rule only if:

(A) the damages claimed by all the offeree plaintiffs are solely

1 derivative, such as that the damages claimed by some offerees are entirely derivative
2 of an injury to the others or that the damages claimed by all offerees are derivative
3 of an injury to another, and

4 (B) the same entity, person or group is authorized to decide
5 whether to settle the claims of the offerees.

6 (d) **Judgment Entered Upon Acceptance of the Offer and Dismissal or**
7 **Entry of Judgment.**

8 ~~(1) If within 10~~Within 14 days after ~~the~~ service of the offer, the offeree
9 ~~serves~~may accept the offer by serving written notice that the offer is accepted.

10 ~~(2) The offeree may, within 21 days after service of written notice that~~
11 ~~the offer is accepted, pay the amount of the offer and obtain a dismissal of the claim,~~
12 ~~rather than entry of a judgment.~~

13 ~~(3) At any time after 21 days after service of~~ written notice that the offer
14 is accepted, either party may ~~then~~ file the offer and notice of acceptance together
15 with proof of service. ~~The~~ clerk shall then enter judgment accordingly. ~~The~~ court
16 shall allow costs in accordance with NRS 18.110 unless the terms of the offer preclude
17 a separate award of costs. ~~Any~~ judgment entered pursuant to this section shall be
18 expressly designated a compromise settlement. ~~At his option, a defendant may~~
19 ~~within a reasonable time pay the amount of the offer and obtain a dismissal of the~~
20 ~~claim, rather than a judgment.~~

21 (e) **Failure to Accept Offer.** If the offer is not accepted within ~~10~~14 days
22 after service, it shall be considered rejected by the offeree and deemed withdrawn by
23 the offeror. Evidence of the offer is not admissible except in a proceeding to
24 determine costs, expenses, and fees. The fact that an offer is made but not accepted

1 does not preclude a subsequent offer. A subsequent offer will not extinguish prior
2 offers. With offers to multiple offerees, each offeree may serve a separate acceptance
3 of the apportioned offer, but if the offer is not accepted by all offerees, the action shall
4 proceed as to all. Any offeree who fails to accept the offer may be subject to the
5 penalties of this rule.

6 **(f) Penalties for Rejection of Offer.** If the offeree rejects an offer and fails
7 to obtain a more favorable judgment,

8 (1) the offeree cannot recover any costs, expenses or attorney's attorney
9 fees and shall not recover interest for the period after the service of the offer and
10 before the judgment; and

11 (2) the offeree shall pay the offeror's post-offer costs and expenses,
12 including a reasonable sum to cover any expenses incurred by the offeror for each
13 expert witness whose services were reasonably necessary to prepare for and conduct
14 the trial of the case, applicable interest on the judgment from the time of the offer to
15 the time of entry of the judgment and reasonable attorney's attorney fees, if any be
16 allowed, actually incurred by the offeror from the time of the offer. If the offeror's
17 attorney is collecting a contingent fee, the amount of any attorney's attorney fees
18 awarded to the party for whom the offer is made must be deducted from that
19 contingent fee.

20 (3) Multiple Offers. The penalties in this rule run from the date of
21 service of the earliest rejected offer for which the offeree failed to obtain a more
22 favorable judgment.

23 **(g) How Costs, Expenses, Interest, and Attorney Fees Are**
24 **Considered.** To invoke the penalties of this rule, the court must determine if the

1 offeree failed to obtain a more favorable judgment. Where the offer provided that
2 costs, expenses, interest and, if attorney fees are permitted by law or contract,
3 attorney fees, would be added by the court, the court must compare the amount of
4 the offer with the principal amount of the judgment, without inclusion of costs,
5 expenses, interest and, if attorney fees are permitted by law or contract, attorney
6 fees. Where a ~~defendant~~party made an offer in a set amount which precluded a
7 separate award of costs, expenses, interest and, if attorney fees are permitted by law
8 or contract, attorney fees, the court must compare the amount of the offer together
9 with the offeree's pre-offer taxable costs, expenses, interest and, if attorney fees are
10 permitted by law or contract, attorney fees, with the principal amount of the
11 judgment.

12 (h) **Offers After Determination of Liability.** When the liability of one
13 party to another has been determined by verdict, order or judgment, but the amount
14 or extent of the liability remains to be determined by further proceedings, the party
15 adjudged liable may make an offer of judgment, which shall have the same effect as
16 an offer made before trial if it is served within a reasonable time not less than ~~10~~14
17 days prior to the commencement of hearings to determine the amount or extent of
18 liability.

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20 **DRAFTER'S NOTE—2004 AMENDMENT**

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22 ~~—The Nevada rule was replaced in 1998. It is substantially different from the federal rule.~~

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24 **ADVISORY COMMITTEE NOTE—2017 AMENDMENT**

1 Paragraph (e) is amended to provide that the offer contemplated in paragraph
2 (f) is the offer earliest in time that is more favorable than the judgment. The existence
3 of any subsequent offer, whether more or less favorable, does not change the penalty
4 for rejecting the relevant offer. This amendment changes the approach to multiple
5 settlement offers that is prescribed by *Albios v. Horizon Communities, Inc.*, 122 Nev.
6 409, 132 P.3d 1022 (2006). Experience under *Albios* suggests that parties are
7 reluctant to make subsequent settlement offers when the penalty for rejecting a
8 favorable offer applies only to the last offer of judgment. The drafters intend to
9 encourage more settlement offers with this new approach.

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