NRCP 51 – Proposed (Revise.)

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

(a) Requests.

- (1) **Before or at the Close of the Evidence.** At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.
- (2) **After the Close of the Evidence.** After the close of the evidence, a party may:
- (A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and
- (B) with the court's permission, file untimely requests for instructions on any issue.
- (3) **Format; Citation**. The written requests must be in the format directed by the court. If a party relies on any statute, rule, case law, or other legal authority to support a requested instruction, the party must cite each legal authority or provide a copy of it.

(b) Settling Instructions.

- (1) The court must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury.
- (2) The court must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered.

13 || or

(3) The court and the parties must make a record of the instructions that were proposed, that the court rejected or modified, and that the court gave to the jury. If the court modifies an instruction, the court must clearly indicate how the instruction was modified.

(c) Objections.

(1) **How to Make.** A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection. If a party relies on any statute, rule, case law, or other legal authority to object to a requested instruction, the party must cite each legal authority or provide a copy of it.

(2) **When to Make.** An objection is timely if:

- (A) a party objects at the opportunity provided under Rule 51(b)(2);
- (B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Giving Instructions.

- (1) The court must instruct the jury before the parties' closing arguments to the jury.
- (2) The court may also give the jury further instructions that may become necessary by reason of the argument.
- (3) The final instructions given to the jury must be bound together in the order given and the court must sign the last instruction. The court must provide the original instructions or a copy of them to the jury.

10

11 12

13

14

15

16 17

18

19

20 21

22

23

24

(4) After the jury has reached a verdict and been discharged, the originals and copies of all given instructions must be made part of the trial court record.

(e) Assigning Error; Plain Error.

(1) **Assigning Error.** A party may assign as error:

- (A) an error in an instruction actually given, if that party properly objected; or
- (B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record also properly objected.
- (2) **Plain Error.** A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(e)(1) if the error affects substantial rights.

(f) Scope.

- (1) **Preliminary Instructions**. Nothing in this rule prevents a party from requesting, or a court from giving, preliminary instructions to the jury. A request for preliminary jury instructions must be made at any reasonable time that the court orders. If preliminary instructions are requested or given, the court and the parties must comply with Rules 51(a)(3), 51(b), and 51(d)(4), as applicable.
- (2) **Other Instructions**. This rule governs instructions to the trial jury on the law that governs the verdict. Other instructions, including instructions to a venire and cautionary or limiting instructions delivered in immediate response to events at trial, are not within the scope of this rule.

Advisory Committee Note-2018 Amendment

Rule 51 has been revised. These rules on jury instructions should be read in conjunction with the jury instruction requirements in NRS Chapter 16.

Rule 51(a) governs requests for instructions. Rules 51(a)(1) and (2) mirror FRCP 51(a). Rule 51(a)(3) retains existing Nevada law from the prior NRCP 51(a)(1).

Rule 51(b)(1) and (2) track the federal rule. Rule 51(b)(3) is modified from the existing Nevada rule for refusing to give and modifying instructions. Specific words and actions are not necessary, but the court and the parties should make a record of all instructions that the court or the parties propose, that the court modifies or rejects, and that are ultimately given to the jury. The parties must be permitted to make a record of any objections to, or arguments concerning, the jury instructions.

Rule 51(c) conforms to the federal rule, except the second sentence in Rule 51(c)(1) is retained from the prior NRCP 51(a)(1).

Rule 51(d) is revised from the existing Nevada rule. Rule 51(d)(1)-(3) modifies the prior NRCP 51(b)(2) and (3). The court must give jury instructions prior to closing argument. At least one copy of the jury instructions must be given to the jury. Rule 51(d)(4) tracks the requirements in the prior NRCP 51(b)(2).

Rule 51(e) conforms to FRCP 51(d).

Rule 51(f) is unique to Nevada. Rule 51(f)(1) is new and expressly authorizes giving preliminary jury instructions. The Committee contemplates that preliminary instructions will generally be given before trial, but the rule provides the district court with the flexibility of, in an appropriate case, giving instructions after opening statement or the start of evidence. Rule 51(f)(2) corresponds to the prior NRCP 51(e).