

1 **NRCP 16 – Proposed**
2 **(Adopt federal rule but retain Nevada distinctions)**

3 **Rule 16. Pretrial Conferences; Scheduling; Management**

4 (a) **Pretrial Conferences; Objectives.** In any action, the court may order
5 the attorneys and any unrepresented parties to appear for one or more pretrial
6 conferences for such purposes as:

7 (1) expediting disposition of the action;

8 (2) establishing early and continuing control so that the case will not be
9 protracted because of lack of management;

10 (3) discouraging wasteful pretrial activities;

11 (4) improving the quality of the trial through more thorough
12 preparation; and

13 (5) facilitating the settlement of the case.

14 (b) **Scheduling and Planning.**

15 (1) **Scheduling Order.** Except in categories of actions exempted by
16 local rule, the court or a discovery commissioner shall, after consulting with the
17 attorneys for the parties and any unrepresented parties by a scheduling conference,
18 telephone conference, or other suitable means, enter a scheduling order.

19 (2) **Time to Issue.** The court or discovery commissioner must issue the
20 scheduling order as soon as practicable, but unless the court or discovery
21 commissioner finds good cause for delay, the court or discovery commissioner must
22 issue it within 60 days after:

23 (A) a Rule 16.1 case conference report has been filed; or

1 (B) the court or discovery commissioner waives the requirement
2 of a case conference report under Rule 16.1(f).

3 (3) **Contents of the Order.**

4 (A) **Required Contents.** The scheduling order must limit the
5 time to join other parties, amend the pleadings, complete discovery, and file
6 motions.

7 (B) **Permitted Contents.** The scheduling order may:

8 (i) provide for disclosure, discovery, or preservation of
9 electronically stored information;

10 (ii) direct that before moving for an order relating to
11 discovery, the movant must request a conference with the court;

12 (iii) set dates for pretrial conferences, a final pretrial
13 conference, and for trial; and

14 (iv) include any other appropriate matters.

15 (4) **Modifying a Schedule.** A schedule may be modified by the court
16 or discovery commissioner for good cause.

17 (c) **Attendance and Subjects to Be Discussed at Pretrial Conferences.**

18 (1) **Attendance.** A represented party must authorize at least one of its
19 attorneys to make stipulations and admissions about all matters that can
20 reasonably be anticipated for discussion at a pretrial conference. If appropriate, the
21 court may require that a party or its representative be present or reasonably
22 available by other means to consider possible settlement.

23 (2) **Matters for Consideration.** At any pretrial conference, the court
24 may consider and take appropriate action on the following matters:

1 (A) formulating and simplifying the issues, and eliminating
2 frivolous claims or defenses;

3 (B) amending the pleadings if necessary or desirable;

4 (C) obtaining admissions and stipulations about facts and
5 documents to avoid unnecessary proof, and ruling in advance on the admissibility
6 of evidence;

7 (D) avoiding unnecessary proof and cumulative evidence, and
8 limiting the use of testimony under NRS 47.060 and NRS 50.275;

9 (E) determining the appropriateness and timing of summary
10 adjudication under Rule 56;

11 (F) identifying witnesses and documents, scheduling the filing
12 and exchange of any pretrial briefs, and setting dates for further conferences and
13 for trial;

14 (G) referring matters to a discovery commissioner or a master;

15 (H) settling the case and using special procedures to assist in
16 resolving the dispute when authorized by statute or local rule;

17 (I) determining the form and content of the pretrial order;

18 (J) disposing of pending motions;

19 (K) adopting special procedures for managing potentially difficult
20 or protracted actions that may involve complex issues, multiple parties, difficult
21 legal questions, or unusual proof problems;

22 (L) ordering a separate trial under Rule 42(b) of a claim,
23 counterclaim, crossclaim, third-party claim, or particular issue;

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1 (M) establishing a reasonable limit on the time allowed to present
2 evidence; and

3 (N) facilitating in other ways the just, speedy, and inexpensive
4 disposition of the action.

5 (d) **Pretrial Orders.** After any conference under this rule, the court should
6 issue an order reciting the action taken. This order controls the course of the action
7 unless the court modifies it.

8 (e) **Final Pretrial Conference and Orders.** The court may hold a final
9 pretrial conference to formulate a trial plan, including a plan to facilitate the
10 admission of evidence. The conference must be held as close to the start of trial as
11 is reasonable, and must be attended by at least one attorney who will conduct the
12 trial for each party and by any unrepresented party. The court may modify the
13 order issued after a final pretrial conference only to prevent manifest injustice.

14 (f) **Sanctions.**

15 (1) **In General.** On motion or on its own, the court may issue any just
16 orders, including those authorized by Rule 37(b)(1)(A)(ii)–(vii), if a party or its
17 attorney:

18 (A) fails to appear at a scheduling or other pretrial conference;

19 (B) is substantially unprepared to participate—or does not
20 participate in good faith—in the conference; or

21 (C) fails to obey a scheduling or other pretrial order.

22 (2) **Imposing Fees and Costs.** Instead of or in addition to any other
23 sanction, the court must order the party, its attorney, or both to pay the reasonable
24 expenses—including attorney’s fees—incurred because of any noncompliance with

1 this rule, unless the noncompliance was substantially justified or other
2 circumstances make an award of expenses unjust.

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4 ADVISORY COMMITTEE NOTE—2018 AMENDMENT

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6 Rule 16 is amended to conform to the 2015 amendments to the federal rule,
7 with some exceptions. Except as noted, the amendments are stylistic and do not
8 change the substance of the rule.

9 Rule 16(b)(1) continues to omit the reference in FRCP 16(b)(1)(A) to FRCP
10 26(f). The deadline for entry of the scheduling order in Rule 16(b)(2) differs from
11 the federal rule and is calculated from the filing of the case conference report
12 required by Rule 16.1 rather than from the filing of the complaint. In Rule
13 16(b)(3)(B), Nevada has not adopted sections (i), (ii), or (iv) from the federal rule
14 and the remaining sections have been renumbered.

15 The amended Rule 16(c) is conformed to the federal rule, except that Nevada
16 has not adopted FRCP 16(c)(2)(F) and (N). The remaining sections of the rule have
17 been renumbered.