

## PUBLICATION UPDATE

Route to: ☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_  
☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_

---

# Nevada Civil Practice Manual

Publication 67233

Release 22

September 2018

---

## HIGHLIGHTS

### Motions

- The chapter on motions has been updated with many revised local rules and amended forms language. See Ch. 11.

### Limited Liability Companies

- The Nevada Supreme Court has held that LLCs are subject to veil-piercing under the alter ego doctrines, just as corporations are. See Ch. 29.

**Out-of-State Attorneys.** Out-of-state attorneys and non-attorneys who claim to act as regulatory consultants or tax specialists in Nevada run the risk of violating not only SCR 77, but also NRS Ch. 240A regulating document preparation services. Amended NRS 240A.030 and 240A.240 expressly prohibit enumerated persons, including most out-of-state attorneys and non-attorney consultants, from representing clients in administrative proceedings before state and local agencies. Also, except for Nevada CPA, these provisions prohibit out-of-state attorneys and non-attorney consultants from providing advice or representa-

tion in federal tax matters. See *Nevada Society of Enrolled Agents v. State of Nevada, ex rel. Secretary of State* (1st JD, Case No. 17 OC 00224 1B, filed Oct. 31, 2017). See Ch. 1, *General Civil Practice Considerations*, § 1.04[1].

**Class Actions.** To determine whether a putative class action should be brought in district court or justice court, class member claims should not be aggregated. See *Castillo v. United Fed. Credit Union*, 134 Nev. Adv. Op. 3, 409 P.3d 54, 58 (2018). See Ch. 4, *Parties and Class Actions*, § 4.09[1].

**Amendment and Relation Back.** Under *Nurenberger Hercules-Werke*, an amended claim automatically related back to the date of the filing of the original complaint if all three factors discussed were met. However, in 2011, the Court disavowed that dicta and concluded “that the relation back effect of NRCP 15(c) does apply to the addition or substitution of parties.” *Costello v. Casler*, 127 Nev. 436, 440, fn. 4, 254 P.3d 631, 634 (2011). Therefore, a party substituting a named defendant for a fictitiously named defendant must meet the factors in NRCP 15(c) in order for the amendment to relate back. See Ch. 5, *Complaints*, § 5.02[5].

**Removal.** Chapter 8, *Removal and Remand*, has been extensively updated with many recent federal cases discussing CAFA and removal statutes generally.

**Counterclaims.** “The relevant consideration in permissive vs. compulsory counterclaims is whether the pertinent facts of the different claims are so logically related that issues of judicial economy and fairness mandate that all issues be tried in one suit.” *Mendenhall v. Tassinari*, 403 P.3d 364, 371 (Nev. 2017). See Ch. 10, *Counterclaims, Cross-Claims, and Third-Party Practice*, § 10.02[2].

**Motions.** This chapter has been revised with many updated local rule citations and revised form language. See Ch. 11, *Motions, Affidavits, Declarations, Stipulations, and Order*.

**Attorney Work Product.** Nevada has adopted the “because of” test for determining whether work has been done “in anticipation of litigation,” pursuant to the first portion of NRCP 26(b)(3). *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev. \_\_\_, 399 P.3d 334 (2017). See Ch. 13, *General Provisions Governing Discovery*, § 13.04[2].

**Offer of Judgment.** NRS 17.115 was often the basis for offers of judgment served in federal cases when jurisdiction was based on diversity of citizenship, as the federal version of Rule 68 allows for recovery of costs but not fees. Notwithstanding the repeal of NRS 17.115, practitioners may still invoke Nevada’s offer of judgment rule by serving an offer premised on NRCP 68 rather than FRCP 68. *Cheffins v. Stewart*, 825 F.3d 588, 597 (9th Cir. 2016) (holding federal court can grant fees under NRCP 68). See Ch. 18, *Offers of Judgment*, § 18.02.

**Summary Judgment.** A motion for summary judgment may be brought in the

alternative. See, e.g., *Lennox Indus., Inc. v. Aspen Mfg., Inc.*, No. 72125, 2018 Nev. Unpub. LEXIS 346 (Apr. 24, 2018). See Ch. 19, *Summary Judgment*, § 19.02[1].

**Anti-SLAPP Motions.** The pre-2013 version of NRS 41.660 provided that special motions under Nevada’s anti-SLAPP statutes were treated as motions for summary judgment. NRS 41.660 (1997). However, under the 2013 amendments, when a party files a special motion under the anti-SLAPP statutes, the court must first determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. *Delucchi v. Songer*, 396 P.3d 826, 831 (Nev. 2017) (citing NRS 41.660(3)(a) (2013); 2013 Nev. Stat., ch. 176 § 3(3)(a)). If the district court determines that the plaintiff has shown by clear and convincing evidence a likelihood of succeeding on the merits, the determination on the special motion has no effect on the remainder of the proceedings. *Id.* (citing NRS 41.660(3)(c)(1), (2); 2013 Nev. Stat., ch. 176 § (3)(c)). Because the 2013 amendment substantively changed the standard of review for special motions, it cannot be applied retroactively. See Ch. 19, *Summary Judgment*, § 19.02[3].

**Establishing Genuine Issue of Material Fact.** “The Nevada Supreme Court requires—not merely recommends—the party invoking NRCP 56(f) protections to affirmatively demonstrate how discovery or other means will lead to the creation of a genuine issue of material fact.” *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669–70, 262 P.3d 705, 714 (2011). See Ch. 19, *Summary Judgment*, § 19.14[3].

**Challenging Interlocutory Orders.** The

court will usually decline to consider writ petitions that challenge interlocutory orders, such as orders granting partial summary judgment, but may do so in its discretion when an important issue of law needs clarification and sound judicial economy warrants intervention. *High Noon at Arlington Ranch Homeowners Ass'n v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. Adv. Op. 66, 402 P.3d 639, 643 (2017) (citing *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008)). See Ch. 19, *Summary Judgment*, § 19.32[4].

**Relevance of Evidence.** Nevada courts address the issue of conditional relevancy of evidence as one of authentication, but it is left to the jury to determine “whether evidence admitted for its consideration is that which the proponent claims.” *Rodriguez v. State*, 128 Nev. 155, 273 P.3d 845, 128 Nev. Adv. Op. 14, n. 5 (2017). See Ch. 23, *Evidence*, § 23.04[2][c].

**Right to Jury Trial.** In an unpublished opinion dealing with a construction defect case, the Nevada Supreme Court held that subsequent purchasers of a home, who were non-signatories to purchase agreements between the builder and the original homeowners, were bound by the arbitration provision contained in the original purchase agreements, where the subsequent purchasers received a direct benefit from the agreements when they asserted breach of contract claims against the builder based on the agreements. *Michalowski v. Second Jud. Dist. Ct. of State, ex rel. County of Washoe*, 2015 Nev. Unpub. LEXIS 1426 (Nev. 2015). See Ch. 24, *Jury Trials*, § 24.02[2][e].

**Failure to Give Proper Jury Instruction.** In a criminal case, the Nevada Supreme Court indicated that “the district court’s failure to give a jury instruction

. . . prohibiting jurors from conducting any independent research, investigations, or experiments constituted error and requir[ed] reversal.” *Bowman v. State*, 387 P.3d 202, 207, 132 Nev. Adv. Ops. 74 (2016). See Ch. 24, *Jury Trials*, sec. 24.07[3].

**Attorneys Representing Themselves.** Attorneys representing themselves in litigation are not entitled to recover attorney’s fees because they do not actually incur any attorney’s fees. *Dezzani v. Kern & Associates, Ltd.*, 134 Nev. Adv. Op. 9, 412 P.3d 56, 57 (2018). See Ch. 27, *Fees, Costs, and Interest*, § 27.02[6].

**Attorney’s Fees.** Excluding cases where attorney’s fees are properly sought and proven as damages, it seems NRS 18.010(3) authorizes a court to pronounce its decision only regarding a party’s *entitlement* to attorney’s fees, but not the amount or the reasonableness thereof, without a written motion or additional evidence. Thus, even when a court pronounces a party’s entitlement to attorney’s fees in a post-trial ruling or judgment, a motion for attorney’s fees is still necessary to supply the information required by the case law and NRCP 54(d)(2)(B), when that rule is applicable. See Ch. 27, *Fees, Costs, and Interest*, § 27.02[6].

**Review of Attorney Sanctions.** When an attorney is sanctioned under NRS 7.085, review of the award against the attorney must be pursued by writ of mandamus, rather than via an appeal. *Watson Rounds*, 131 Nev. Adv. Op. 79, 358 P.3d at 231 (“Sanctioned attorneys do not have standing to appeal because they are not parties in the underlying action; therefore, extraordinary writs are a proper avenue for attorneys to seek review of sanctions.”) See Ch. 27, *Fees, Costs, and Interest*, § 27.02[6].

**Alter Ego Liability.** The Nevada Su-

preme Court has held that, despite no express statutory provision stating such, alter ego theory applies to LLCs. Thus, litigants may pierce an LLC's veil when its members abuse the entity's limited liability structure. *See Gardner v. Eighth Jud. Dist. Ct.*, 133 Nev. Adv. Op. 89, 405 P.3d 651, 655–56 (Nev. 2017). *See* Ch. 29, *Judgments*, § 29.05[1].

**Court's Findings and Conclusions.** A failure by the district court to make appropriate findings and conclusions can be fatal on appeal. *See Arcella v. Arcella*, 133 Nev. Op. 104, 407 P.3d 341, 346 (Nev. 2017) (reversing a child custody order because its only finding was a “judicial shrug” that was “insufficient to satisfy the district court's duty to make specific factual findings”). *See* Ch. 29, *Judgments*, § 29.06[1].

**Altering Offer of Judgment.** Rule 60(b) provides relief when a party makes an offer of judgment and then discovers facts during NRCp 68's 10-day acceptance period that would materially affect the offer. *See* NRCp 68(a); *see also Mendenhall v. Tassinari*, 133 Nev. Adv. Op. 78, 403 P.3d 364, 372 (Nev. 2017). *See* Ch. 29, *Judgments*, § 29.12[1].

**Vacating Judgment.** An order granting a motion to amend or reconsider and vacating a final judgment is not appealable as a special order after final judgment. *TRP International, Inc. v. Proimtu MMI LLC*, 391 P.3d 763, 764–65 (Nev. 2017). *See* Ch. 30, *Appeals*, § 30.03[1].

**Enforcement of Judgments.** An attorney should request from the district court a stay of execution and a stay pending appeal if a judgment is rendered against your client. The Nevada Supreme Court generally will not consider a stay of execution if such request was not first sought in the district court. *McLeod v. McLeod*, 2017 Nev. LEXIS 158, \*2 (May 22, 2017) (unpub-

lished). *See* Ch. 31, *Enforcement of Judgments*, § 31.07.

**Recording Judgment.** When recording a judgment or abstract, you must also record an Affidavit of Judgment, NRS 17.150(4). This document must contain the following information: (1) name and address of the judgment debtor, (2) if the judgment debtor is a person, the last four digits of his or her driver's license or social security number, and (3) the assessor's parcel number (APN) as well as the address “if the lien is against real property which the judgment debtor owns at the time the Affidavit of Judgment is recorded.” Thus, the language of the Affidavit of Judgment should state, in addition to 1 and 2 above, “that the judgment is a lien against the following property currently owned by the judgment debtor located at [address] APN [#] as well as any other real property currently owned by the judgment debtor or which the judgment debtor may acquire.” *See* Ch. 31, *Enforcement of Judgments*, § 31.09.

**Review of Arbitration Award.** The scope of judicial review of an arbitration award is extremely limited, and where “there is a colorable justification for the outcome, the award should be confirmed.” *Half Dental Franchise, LLC v. Houchin*, 403 P.3d 685, Nev. Unpub. LEXIS 630 (Nev. 2017). Ch. 36, *Alternative Dispute Resolution (ADR)*, § 36.08[12][a].

**Lien Law.** *Iliescu v. Steppan*, 133 Nev. Adv. Op. 25, 394 P.3d 930 (Nev. 2017), seems to suggest that an architect and anyone else who performs offsite work can lien the property affected without direct contact with it. *See* Ch. 37, *Nevada Bond and Lien Law*, § 37.03. In addition, the Nevada Supreme Court found two ways in which the seller was potentially prejudiced. First, “without a showing that the architec-

tural work has improved the property, the property owner assumes the risk for payment of a prospective buyer's architectural services for a project that may never be constructed on the property." *Iliescu*, 133 Nev. Op. 25, 394 P.3d at 935. Second, the owner will not have a chance to file a notice

of non-responsibility. *Iliescu*, 133 Nev. Op. 25, 394 P.3d at 935. See Ch. 37, *Nevada Bond and Lien Law*, § 37.05[1].

**Finding Aids.** The Table of Cases, Table of Statutes, and Index are updated in this release.

---

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer service

matters, +1.800.833.9844.

- Outside the United States and Canada, +1.937.247.0293, or fax (+1.800.828.8341) or email ([international@bender.com](mailto:international@bender.com));
- Toll-free ordering (+1.800.223.1940) or visit [www.lexisnexis.com/BrowseUs](http://www.lexisnexis.com/BrowseUs).



[www.lexis.com](http://www.lexis.com)

---

---

Copyright © 2018 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
Publication 67233, Release 22, September 2018

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.



<b>FILING INSTRUCTIONS</b>
----------------------------

# Nevada Civil Practice Manual

---

Publication 67233    Release 22

September 2018

---

**Check  
As  
Done**

- ☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 21. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 21, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. This Release Number 22 contains only White Revision pages.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

**Check  
As  
Done**

*Remove Old  
Pages Numbered*

*Insert New  
Pages Numbered*

*For faster and easier filing, all references are to right-hand pages only.*

## VOLUME 1

### Revision

☐ Title page thru xxxix . . . . . Title page thru xli

### Special Alert

☐ No Material removed . . . . . Special Alert page 1SA-1 (file preceding 1-1)

### Revision

<input type="checkbox"/>	1-1 thru 1-29 . . . . .	1-1 thru 1-29
<input type="checkbox"/>	2-1 thru 2-27 . . . . .	2-1 thru 2-27
<input type="checkbox"/>	4-1 thru 4-21 . . . . .	4-1 thru 4-22.1
<input type="checkbox"/>	4-29 . . . . .	4-29 thru 4-30.1
<input type="checkbox"/>	5-1 thru 5-19 . . . . .	5-1 thru 5-21
<input type="checkbox"/>	6-13 thru 6-25 . . . . .	6-13 thru 6-25
<input type="checkbox"/>	7-1 thru 7-17 . . . . .	7-1 thru 7-18.1
<input type="checkbox"/>	8-3 thru 8-39 . . . . .	8-3 thru 8-40.3
<input type="checkbox"/>	9-1 thru 9-15 . . . . .	9-1 thru 9-15
<input type="checkbox"/>	10-1 thru 10-7 . . . . .	10-1 thru 10-7
<input type="checkbox"/>	11-1 thru 11-19 . . . . .	11-1 thru 11-19
<input type="checkbox"/>	13-1 thru 13-37 . . . . .	13-1 thru 13-37
<input type="checkbox"/>	14-1 thru 14-19 . . . . .	14-1 thru 14-19
<input type="checkbox"/>	15-1 thru 15-7 . . . . .	15-1 thru 15-7
<input type="checkbox"/>	18-3 thru 18-8.1 . . . . .	18-3 thru 18-8.1
<input type="checkbox"/>	18-23 thru 18-25 . . . . .	18-23 thru 18-25
<input type="checkbox"/>	19-1 thru 19-14.1 . . . . .	19-1 thru 19-14.1
<input type="checkbox"/>	19-29. . . . .	19-29 thru 19-30.1
<input type="checkbox"/>	19-51 thru 19-53 . . . . .	19-51 thru 19-53
<input type="checkbox"/>	20-1 thru 20-13 . . . . .	20-1 thru 20-13
<input type="checkbox"/>	21-7 thru 21-9 . . . . .	21-7 thru 21-10.1
<input type="checkbox"/>	22-1 thru 22-27 . . . . .	22-1 thru 22-29
<input type="checkbox"/>	23-1 thru 23-11 . . . . .	23-1 thru 23-12.1
<input type="checkbox"/>	23-21 thru 23-29 . . . . .	23-21 thru 23-29
<input type="checkbox"/>	24-1 thru 24-21 . . . . .	24-1 thru 24-22.1
<input type="checkbox"/>	25-1 thru 25-19 . . . . .	25-1 thru 25-19
<input type="checkbox"/>	27-1 thru 27-25 . . . . .	27-1 thru 27-25
<input type="checkbox"/>	29-1 thru 29-17 . . . . .	29-1 thru 29-18.1
<input type="checkbox"/>	30-1 thru 30-15 . . . . .	30-1 thru 30-17
<input type="checkbox"/>	31-1 thru 31-25 . . . . .	31-1 thru 31-26.1

## VOLUME 2



**Check  
As  
Done**

*Remove Old  
Pages Numbered*

*Insert New  
Pages Numbered*

**Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	34-3 thru 34-23 . . . . .	34-3 thru 34-24.1
<input type="checkbox"/>	35-3 thru 35-15 . . . . .	35-3 thru 35-16.1
<input type="checkbox"/>	36-15 thru 36-31 . . . . .	36-15 thru 36-32.1
<input type="checkbox"/>	36-43 thru 36-49 . . . . .	36-43 thru 36-49
<input type="checkbox"/>	37-3 thru 37-7 . . . . .	37-3 thru 37-8.1
<input type="checkbox"/>	37-17 thru 37-19 . . . . .	37-17 thru 37-20.1
<input type="checkbox"/>	38-3 thru 38-13 . . . . .	38-3 thru 38-14.1
<input type="checkbox"/>	38-31. . . . .	38-31 thru 38-32.1
<input type="checkbox"/>	38-41 thru 38-45 . . . . .	38-41 thru 38-45
<input type="checkbox"/>	TC-1 thru TC-51 . . . . .	TC-1 thru TC-53
<input type="checkbox"/>	TS-1 thru TS-39 . . . . .	TS-1 thru TS-39
<input type="checkbox"/>	I-1 thru I-67 . . . . .	I-1 thru I-67

FILE IN THE FRONT OF THE FIRST VOLUME  
OF YOUR SET

To order missing pages log on to our self service center, [www.lexisnexis.com/printcdsc](http://www.lexisnexis.com/printcdsc) or call Customer Services at 1 (800) 833-9844 and have the following information ready:

- (1) the publication title;
- (2) specific volume, chapter and page numbers; and
- (3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?  
FIND THEM AT [www.lexisnexis.com/printcdsc](http://www.lexisnexis.com/printcdsc)

Use the search tool provided to find and download missing filing instructions,  
or sign on to the Print & CD Service Center to order missing pages or  
replacement materials. Visit us soon to see what else  
the Print & CD Service Center can do for you!



[www.lexis.com](http://www.lexis.com)

---

---

**Copyright © 2018 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
Publication 67233, Release 22, September 2018**

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.