

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PROPOSED
AMENDMENTS TO NRCP 16.1(a)(2).

ADKT 0472

FILED

AUG 07 2012

TRACIE K. ANDELMAN
CLERK OF SUPREME COURT
BY *J. Castella*
CHIEF DEPUTY CLERK

ORDER AMENDING NRCP 16.1(a)(2)

WHEREAS, on October 26, 2011, the Honorable Mark Gibbons petitioned this court requesting the amendment of Nevada Rule of Civil Procedure 16.1(a)(2); and

WHEREAS, this court solicited comment from the bench, bar and public regarding the proposed amendments and held public hearings on December 5, 2011, and April 17, 2012; and

WHEREAS, this court has determined that the proposed rule amendments are warranted; accordingly

IT IS HEREBY ORDERED that Nevada Rule of Civil Procedure 16.1(a)(2) shall be amended and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that the rule changes shall be effective 60 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the

accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

It is so ORDERED.

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Francis C. Flaherty, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Judges
Clark County Bar Association
Washoe County Bar Association
Bonnie Bulla, Discovery Commissioner
Chris A. Beecroft, Jr., Discovery Commissioner
Wesley M. Ayres, Discovery Commissioner
Administrative Office of the Courts

EXHIBIT A**RULE 16.1. MANDATORY PRETRIAL DISCOVERY REQUIREMENTS****(a) Required Disclosures.**

* * *

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under NRS 50.275, 50.285 and 50.305.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The court, upon good cause shown or by stipulation of the parties, may relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

Unless otherwise stipulated or ordered by the Court, if the witness is not required to provide a written report, the initial disclosure must state the subject matter on which the witness is expected to present evidence under NRS 50.275, 50.285 and 50.305; a summary of the facts and opinions to which the witness is expected to testify; the qualifications of that witness to present evidence under NRS 50.275, 50.285 and 50.305, which may be satisfied by the production of a resume or curriculum vitae;

and the compensation of the witness for providing testimony at deposition and trial, which is satisfied by production of a fee schedule.

(C) These disclosures shall be made at the times and in the sequence directed by the court. ~~[In the absence of extraordinary circumstances, the court shall direct that the disclosures shall be made at least 90 days before the discovery cut-off date or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under Rule 26(e)(1).]~~

(i) In the absence of extraordinary circumstances, and except as otherwise provided in subdivision (2), the court shall direct that the disclosures shall be made at least 90 days before the discovery cut-off date.

(ii) If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), the disclosures shall be made within 30 days after the disclosure made by the other party. This later disclosure deadline does not apply to any party's witness whose purpose is to contradict a portion of another party's case in chief that should have been expected and anticipated by the disclosing party, or to present any opinions outside of the scope of another party's disclosure.

(D) The parties must supplement these disclosures when required under Rule 26(e)(1).

DRAFTER'S NOTE

2012 AMENDMENT

Subdivision (a)(2)(B) specifies the information that must be included in a disclosure of expert witnesses who are not otherwise required to provide detailed written reports. A treating physician is not a retained expert merely because the patient was referred to the physician by an attorney for treatment. These comments may be applied to other types of non-retained experts by analogy. In the context of a treating physician, appropriate disclosure may include that the witness will testify in accordance

with his or her medical chart, even if some records contained therein were prepared by another healthcare provider. A treating physician is not a retained expert merely because the witness will opine about diagnosis, prognosis, or causation of the patient's injuries, or because the witness reviews documents outside his or her medical chart in the course of providing treatment or defending that treatment. However, any opinions and any facts or documents supporting those opinions must be disclosed in accordance with subdivision (a)(2)(B).