

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE  
AMENDMENT OF RULE 41(E) OF THE  
NEVADA RULES OF CIVIL  
PROCEDURE

ADKT 0560

**FILED**

DEC 04 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER AMENDING NEVADA RULE OF CIVIL PROCEDURE 41(e)*

WHEREAS, on June 2, 2020, Kristina Pickering, Chief Justice, and Mark Gibbons, Associate Chief Justice, of the Nevada Supreme Court, filed a petition in this court seeking to amend the mandatory dismissal provisions in Nevada Rule of Civil Procedure 41(e); and

WHEREAS, this court solicited public comment on the petition and a public hearing was held in this matter on June 29, 2020, and thereafter invited and considered additional public comment; and

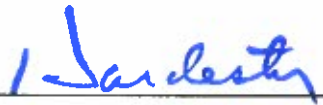
WHEREAS, it appears that an amendment to Nevada Rule of Civil Procedure 41(e) is warranted; accordingly,

IT IS HEREBY ORDERED that Nevada Rule of Civil Procedure 41(e) shall be amended and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that the amendments to Nevada Rule of Civil Procedure 41(e) 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 rule amendment.

Dated this 4<sup>TH</sup> day of December, 2020.

, J.  
Hardesty

  
Parraguirre

, J.  
Stiglich

, J.  
Cadish

, J.  
Silver

PICKERING, C.J., with whom GIBBONS, J., agrees, concurring in part and dissenting in part:

The 5-year mandatory dismissal provision in NRCP 41(e) dates back to the mid-20th century. *See Astorga v. Ishimatsu*, 77 Nev. 30, 32, 359 P.2d 83, 84 (1961) (tracing history and statutory origins of NRCP 41(e)). Early case management procedures and computerized case tracking systems have led courts elsewhere, almost without exception, to abandon their version of NRCP 41(e) in favor of discretionary dismissal provisions modeled on Fed. R. Civ. P. 41(b). *See In the Matter of the Amendment of Rule 41(e) of the Nevada Rules of Civil Procedure*, ADKT No. 560 (Working Group Fifty-State Survey). The time has come, I submit, for Nevada to do the same. For these reasons, I would adopt the amendment to NRCP 41(e) unanimously proposed by the working group whose research underlies this



## EXHIBIT A

### AMENDMENT OF NEVADA RULE OF CIVIL PROCEDURE 41(e)

#### Rule 41. Dismissal of Actions

\* \* \*

##### **(e) Dismissal for Want of Prosecution.**

**(1) Procedure.** When the time periods in this rule have expired:

(A) any party may move to dismiss an action for lack of prosecution; or

(B) the court may, on its own, issue an order to show cause why an action should not be dismissed for lack of prosecution. After briefing, the court may hold a hearing or take the matter under submission, as provided by local rules on motion practice.

##### **(2) Dismissing an Action Before Trial.**

(A) The court may dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 2 years after the action was filed.

(B) The court must dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 5 years after the action was filed.

**(3) Dismissing an Action After a New Trial Is Granted.** The court must dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the entry of an order granting a new trial.

##### **(4) Dismissing an Action After an Appeal.**

(A) If a party appeals an order granting a new trial and the order is affirmed, the court must dismiss the action for want of prosecution if

a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.

(B) If a party appeals a judgment and the judgment is reversed on appeal and remanded for a new trial, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.

**(5) Extending Time; Computing Time.** The parties may stipulate in writing to extend the time in which to prosecute an action. If two time periods requiring mandatory dismissal apply, the longer time period controls. When a court is unable to conduct civil trials due to compelling and extraordinary circumstances beyond the control of the court and the parties, such as an epidemic, pandemic, natural disaster, or safety or security threat, and enters a district-wide administrative order staying such trials, neither the period of the stay nor an additional period of up to one year after the termination of the stay, if ordered by the court in the same or a subsequent administrative order, shall be counted in computing the time periods under this section.

**(6) Dismissal With Prejudice.** A dismissal under Rule 41(e) is a bar to another action upon the same claim for relief against the same defendants unless the court provides otherwise in its order dismissing the action.