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OUTLINE: THE NEW RULES (EDCR 5 RE-WRITE)

I. BACKGROUND, ORGANIZATION, AND PROCESS

From the founding of the family court forward, the rules governing procedures in that court have sometimes referenced the rules in the civil/criminal division. At other times they have diverged, due to the unique needs and subject matter addressed in the family division. The rules accreted fairly haphazardly over 20 years, with a great variety of styles, substance, and intent, resulting in a rule set that was disorganized, partially contradictory, and not entirely workable.

The process leading to this total re-write was accidentally set in motion in 2013 by amendment of certain motion timing rules in part 2 of the EDCR (by the civil/criminal division) that had the unintended consequence of throwing the family court hearing schedules into disorder because several rules in part 2 were incorporated by reference in part 5. Some parts of the part 2 rules referenced procedures that are no longer relevant to family court (e.g., NRCP 16.1).

A core committee of lawyers and judges met throughout 2013 and 2014. After receiving and organizing input from the bench and bar as to perceived problems, it was determined that no band-aid approach to resolving the perceived problems would be sufficient, and a top-to-bottom reorganization and re-write was undertaken, with the stated goals of increasing user-friendliness, economy, and efficiency wherever possible.

The rules were regrouped and organized to make referencing them easier for the bench, bar, and public, noting that family court has an especially large proportion of proper person litigants. With that reality in mind, all drafting was done with the goal of simplicity and ease of understanding of the language used. The numbering system for the rule set was reorganized in a three-digit-past-the-decimal format to make future rule revisions simpler to make without disrupting the organizational scheme.

Several themes were developed at the outset, including elimination of cross-referenced incorporation of part 2 rules and eliminating redundancy (i.e., no setting forth requirements already set out by some other rule, case, or statute). Because, in practice, different judges had interpreted and applied the same word (e.g., “day”) to mean more than one thing, a definitions section was added. Rules were updated to reflect the current technology in use in the family court. Methods and forms that had evolved over time such as affidavits and show-cause procedures were formalized.

As sections were addressed, progress was reported to the family law bar with requests for input and commentary, which was then taken back to the Committee for review. The input of every known stakeholder, agency, or office with regular family court contact was actively solicited and considered.

The final Committee report was delivered to the family court judges in August, 2014, and their review was completed in May, 2015, altering the Committee work product. The rule set was then reviewed by the entire Eighth Judicial District Court Judges, and then submitted to the Supreme Court, which filed ADKT 512, approving the rule changes, on December 28, 2016. Some changes were made at each step of the review process.

II. MOTIONS

Family court motion practice was overhauled to reflect experience. The Committee, in its most controversial recommendations, had shortened response dates and greatly altered motion practice to provide for a much higher proportion of matters resolved without hearings. The family court judges elected to retain the prior hearing scheduling rules, although a provision for resolution of motions when neither party requests an oral argument hearing was retained [5.502].

You are now required to attempt resolution of a problem before filing a motion, and to explain in your filing why you could not do so, if you could not do so. [5.501]. No more bare citations to statutes are allowed. [5.503].

When relevant, separately-filed schedules of arrearages are required, encouraging conformity to case law concerning interest and penalties [5.507].

Previously-problematic motion practice relating to supplements was formalized [5.508]. What can happen if you decide to file one – a continuance, fees to the other side, or striking it and requiring a separate motion, are specified.

A unified procedure relating to Orders to Show Cause for contempt was formalized [5.509], and rules reflecting the practicalities of motions in limine in family court matters were adopted [5.510].

Several technical tweaks relating to extensions of time [5.511], reconsideration [5.512], shortening time [5.513], and continuances [5.514] were adopted.

Policies for attendance at hearings (personally or by phone or A/V equipment) was altered to comport with other rule sets and evolving technology [5.516].

Clark County Joint Preliminary Injunction practice was altered to eliminate conflicts as to whether such injunctions are enforceable “orders” and to refine the matters prohibited by such injunctions (no more insurance beneficiary changing without notice and permission), bringing Clark County into greater conformity with Washoe practice, and reflecting experience in practice since the rule was first adopted [5.517].

You may, but are not required to, submit proposed orders. [5.504].

The procedures relating to temporary and extended orders as to domestic violence were overhauled [5.518]. The judges eliminated the specific prior rule relating to temporary exclusive possession of residences, leaving it part of the amended general rule set governing temporary restraining orders and preliminary injunctions [5.519]. Tweaks were added during the Supreme Court’s review at the request of the domestic violence commissioners, essentially to preserve their current practices.

In light of case law indicating that the failure to provide for distribution of benefits could cause loss of those benefits, counsel are required to actually submit the orders and documents required to achieve distribution of interests in the proceedings (e.g., QDROs), or specify *on the record* how, when, and by whom that will be accomplished [5.520]. However, the judges removed the Committee recommendation requiring recitals in a decree certifying compliance with the statutory requirement to actually equally divide all property or explain why that was not done.

Provision was made for counter-signatures and direct submission of orders reflecting the particular needs of family court practice [5.521]. A problem with clerk’s office recognition of enforcement orders was rectified by automatic construction of money-payment orders to include provision for actual enforcement of those orders [5.522].

III. EXHIBITS

All documents filed as exhibits are to be assigned unique identifying numbers (i.e., Bate stamps), to ease reference at the district court level and upon appellate review [e.g., 5.205, 5.601]; all “collective exhibits” must be filed as a separate appendix with a table of contents [5.205].

Use a cover sheet between exhibits [5.205(c)]. Do *not* submit as exhibits any prior filings, any cases, statutes, or any confidential documents [5.205(f)].

Resolving one matter of contention, exhibits are deemed “offers of proof” but are not considered substantive evidence until admitted [5.205, 5.206]. Courtesy copy delivery was specified [5.515].

IV. CASE MANAGEMENT CONFERENCES

Responding to wide-spread dissatisfaction by both bench and bar with how the NRCP 16.2/Case Management Conference proceedings have been handled in Clark County, a series of rules now specify what should be submitted in advance, what should be done at the conferences, and what follow up is required, providing for interim orders where appropriate and intended to improve the administration and timely resolution of an increased number of cases [5.401-5.402].

V. MATTERS RELATING TO CHILDREN, PARENTS, AND EXPERTS

The mediation process was modified to comport with experience gained over the past 20 years, providing for counsel participation, obtaining copies of agreements reached, payment of fees, etc. [5.303].

The judges removed a provision that had been inserted by the Committee out of equal protection concerns that would have permitted parties appearing *pro se* to retain hard copies of confidential child interview reports by request [5.304].

VI. TECHNICAL AND ADMINISTRATIVE CHANGES

Throughout, language was “normalized” for consistency wherever possible, and matters were re-grouped for ease of access. This CLE will not further comment on technical, typographical, or wording changes inserted to improve ease of access or interpretation of timing issues, etc.

New 5.104 is intended to handle the coordination of pleadings in the often-occurring situation in family court where parties file near-simultaneous actions.

The family court judges eliminated the reference in the EDCRs to the standards of conduct set out in the American Academy of Matrimonial Lawyers’ BOUNDS OF ADVOCACY.

Provisions were added permitting new consulting counsel access to sealed files with client consent, and for counsel to obtain confidential reports, tests, etc., without having to personally appear at family court [5.302, 5.203].

Several changes were made to ease litigation in the world of e-filing. Service must be made promptly (within 3 days of submission), and if a new hearing date is obtained, that notice must be served, too [5.206(b)-(c)]; courtesy copy delivery was specified [5.515].

Affidavit requirements were altered in several ways: to conform with the substantive law in the UCCJEA [5.207]; the years-old policy of accepting “short-form” affidavits incorporating factual recitals in filings except where required by specific statutes or rules was codified [5.505]; residency affidavit requirements were clarified [5.207(c)].

If you are dealing with child custody in a summary disposition, you must detail date of separation, where the child has been, child contact with both parents, and a proposed custody schedule. [5.207(b)].

Rules governing appearances and withdrawals of attorneys in limited services (“unbundled services”) were refined; what must be recited in the notice of withdrawal is specified, or it is ineffective [5.209]. The timing rules for dismissing, closing, and reactivating cases was specified [5.525].

A “day” is 24 hours, but a “judicial day” is 12:00 a.m. to 11:59 p.m., one of which (not 24 hours) must pass if such notice is required [5.102(b) & (h)].

“Close of discovery” is the date discovery is to be completed, not requested. [5.102(d)].

Updated references to and directions regarding the revised Financial Disclosure Forms was made throughout [e.g., 5.506]. An FDF may be filed within 2 days of the filing it supports, and if nothing has changed in the past 6 months, you can rely on a prior FDF. [5.506].

The family court largely adopted the Supreme Court’s document formatting and filing length/type-volume rules [5.503].

VII. GUARDIANSHIP

Given recent events and decision to comprehensively overhaul guardianship practice and procedure state-wide, the proposed guardianship amended rules have been removed from this rule set proposal and will be separately submitted at a later date. The current submission is an interim measure.

VIII. CROSS-INDEX GUIDE

To make the transition easier, the below is an index that shows where the new rules incorporate the matters addressed in the prior rule set.

- 5.100 Organization of the Family Court and these Rules [5.1]**
[5.01, 5.05, 5.42,]
- Rule 5.101 Scope of rules [5.01]**
- Rule 5.102 General terms and definitions**
- Rule 5.103 Departmental assignment procedure [5.42]**
- Rule 5.104 Simultaneous proceedings [new]**
- Rule 5.105 Domestic violence hearing masters [5.22(g)]**
- Rule 5.106 Family mediation center (FMC) mediators [5.70(o)-(q)]**
- Rule 5.107 Court appointed Special Advocate (CASA) services and protocols [5.13(b), (e)]**

- 5.200 Court practice and procedure generally; attorneys and proper person litigants [5.2] [5.4]**
[5.04, 5.28,]
- Rule 5.201 Filing of case required before application for judicial order [5.05]**
- Rule 5.202 Access to sealed files**
- Rule 5.203 Pick-up of reports, tests, etc.**
- Rule 5.204 Resolution of parent-child issues before trial of other issues [5.81]**
- Rule 5.205 Exhibits to motions and other filings**
- Rule 5.206 Filing and Service of papers [5.23]**
- Rule 5.207 Summary disposition and uncontested matters [5.09; 5.10]**
- Rule 5.208 Amended pleadings [5.35]**
- Rule 5.209 Withdrawal of attorney in limited services (“unbundled services”) contract [5.28]**

- 5.300 Children, parents, and experts [5.5]**
[5.03, 5.06, 5.07, 5.12, 5.13, 5.69, 5.70, 5.81,]
- Rule 5.301 Minor children; exposure to court proceedings [5.03; 5.06]**
- Rule 5.302 Seminar for separating parents [5.07]**
- Rule 5.303 Mandatory Mediation Program [5.70]**
- Rule 5.304 Child interview, outsource evaluation, and court appointed special advocate (CASA) reports [5.13, 5.69 (g)-(m)]**
- Rule 5.305 Expert testimony and reports [5.12]**

- 5.400 Case Management Conferences (CASE MANAGEMENT CONFERENCE) and Early Case Evaluations (ECE)**
- Rule 5.401 Pre-CASE MANAGEMENT CONFERENCE/ECE Filings and Procedure**
- Rule 5.402 CASE MANAGEMENT CONFERENCE/ECE Proceedings**

- 5.500 Motions, timing, procedure, hearings, and orders**
- Rule 5.501 Requirement to attempt resolution [5.11]**
- Rule 5.502 Motion, opposition, countermotion, and reply submission and setting [5.25]**
- Rule 5.503 Motion, opposition, countermotion, and reply content [5.25]**
- Rule 5.504 Proposed orders**
- Rule 5.505 Affidavits relating to motions [5.26]**
- Rule 5.506 Financial disclosure required for motions involving money [5.32]**
- Rule 5.507 Schedule of arrearages required for motions seeking arrearages in periodic payments [5.33]**
- Rule 5.508 Supplements relating to motions**
- Rule 5.509 Motions and procedure for orders to show cause**
- Rule 5.510 Motions in Limine [5.40]**
- Rule 5.511 Extensions of time relating to motions [5.27]**
- Rule 5.512 Reconsideration and/or Rehearing of motions [5.29]**
- Rule 5.513 Orders shortening time for a hearing [5.31]**
- Rule 5.514 Stipulations and motions to continue or vacate a hearing [5.27]**
- Rule 5.515 Courtesy copies**
- Rule 5.516 Attendance at hearings [5.27]**
- Rule 5.517 Joint preliminary injunction (JPI) [5.85]**
- Rule 5.518 Domestic violence protection orders (TPO and EOP) [5.22]**
- Rule 5.519 Other temporary restraining orders and preliminary injunctions [5.20]**
- Rule 5.520 Issuance of decisions [5.90]**
- Rule 5.521 Countersignatures and direct submission of orders**
- Rule 5.522 Construction of orders requiring payment of money**
- Rule 5.523 Settlement conferences**
- Rule 5.524 Meetings of counsel before calendar call or final pre-trial conference; pre-trial memorandum [5.87]**
- Rule 5.525 Dismissal and closing of cases; reactivation procedure [5.90]**
- Rule 5.526 Filing fee to reopen cases [5.80]**

5.600 Discovery [5.3]

5.36, 5.37, [5.38,] 5.47,

Rule 5.601 Discovery documents; Bate stamps

Rule 5.602 Discovery disputes, conferences, motions, stays [5.37]

5.700 Guardianship (omitted here)