This is a compilation of comments on the proposed EDCR 5 changes.

1. Overall comment: This is an opportunity to make the family court more user friendly. Please use this opportunity to fix things and differentiate family court.
2. Rule 5.02 Hearings may be private. Should be modified as follows:

Rule 5.02. Hearings may be private.

(a) In any **family division matter** ~~contested action for divorce, annulment, separate maintenance, breach of contract or partition based upon a meretricious relationship, custody of children or spousal support~~, the court must, upon demand of either party, direct that the trial or hearing(s) on any issue(s) of fact joined therein be private and upon such direction, all persons shall be excluded from the court or chambers wherein the action is heard, except officers of the court, the parties, their witnesses while testifying, and counsel.
(b) In appropriate cases when a party has demanded that the trial or hearing be private, the court may nevertheless permit an expert witness either called by the court or by a party to remain in the courtroom to observe and hear other relevant portions of the proceedings, including the testimony of other witnesses, when the court has determined that such action would promote the interests of justice or the best interest of a child.
~~[Amended; effective August 21, 2000.]~~

3. Rule 5.04 Standards of Conduct. Remove the words “aspire to.” The Bounds of Advocacy set forth reasonable standards that should be followed by everyone.

Rule?5.04.??Standards of conduct.??

All lawyers and pro se litigants involved in matters before the family division should ~~aspire to~~ [~~compliance with the~~] **comply with the most current edition of the** American Academy of Matrimonial Lawyer’s standards of conduct, the Bounds of Advocacy [~~(1991 Edition)~~].

4. Rule 5.25 Motions; contents, responses, and replies.
    a. The “P” in the word “COPY” is missing from the NOTICE IN SECTION C.
    b. If the page length limit in section B is intended to apply to trial briefs only, and not motions, as implied in the title, it should be so specified.
    c. Section D implies that the memorandum of points and authorities may be a separate document and not subject to the page length limit indicated above. If that is not intended, it should be clarified.
    d. The 5 day deadline for Replies has been a constant source of concerns amongst practitioners due to the fact that calculating it using judicial days typically creates timing problems and usually leaves only days to file an Reply to Opposition. With e-file delays, or by delaying service of a motion just a few days, a moving party can completely block a party from filing a Reply within the time limits. Something needs to be done to address the concerns that have been repeatedly raised by attorneys in this regard. Perhaps a solution would be to use this rule as an opportunity to require the immediate service of documents upon opposing counsel and eliminate the ability of attorneys to delay service in an effort to gain a tactical

advantage? Under our rules, there is currently no requirement that a document be served forthwith and the rules have been routinely abused.

e. The following language should be added to subparagraph (g).

(g) An opposition to a motion which contains a motion related to the same subject matter will be considered as a counter-motion. A counter-motion will be heard and decided at the same time set for the hearing of the original motion and no separate notice of motion is required.? **A counter-motion not related to the same subject matter will only be heard and decided at the same time set for the hearing of the original motion if the counter-motion is served at least ten judicial days before the hearing date or, if an Order Shortening Time is obtained and served in accordance with EDCR 2.26 or, if the parties so stipulate.**

f. Is it necessary for every pleading and paper be courtesy copied to the department?

g. Shouldn't subparagraph K refer to paragraphs (e), (f), and (h) instead of (a), (b), or (d)?

h. Subparagraphs (b), (h), and (k) now require court approval under certain circumstances. Do we really want to require these extra steps?

5. Rule 5.26 Affidavits on motions.
   a. Summary affidavit form already approved except in motions for contempt. The rule should so specify.
   b. I am concerned by the inclusion of discovery documents being included in this provision as – unlike affidavits – it has been my understanding that they are not supposed to be considered evidence until subjected to admissibility objections and admitted into evidence. In my experience, discovery responses often contain hearsay and other information that is inadmissible. I see problematic unintended consequences with this rule.

6. Rule 5.27. Vacating Motions and Voluntary Dismissal of Actions; appearance of counsel and stipulations for extension of time.
   a. Subsections (a) and (b): I am completely confused as to why we would be adopting this portion of EDCR 2.22 that everyone has universally agreed is not practicable and subjected Judge Pollock to so much criticism when he enforced it and made people appear when last minute continuances are requested. I do not understand why the Court would want to waste judicial resourced and cause people to incur needless expense, and think that it would be in everyone's interest to liberally allow people to take matters off calendar if there is an agreement to do so. This process should be made quick and simple.
   b. Subsection c: I, again, do not understand why this rule is not being changed as the current EDCR is being universally ignored for good reason. We have adopted the bounds of advocacy that encourage attorneys to work together and be accommodating to one another, and are needlessly causing fees to parties. In my experience attorneys are extremely courteous in regard to deadlines, and should be given latitude by the Court to work together in these areas. Let attorney's work these things out themselves, and don't force litigants to incur additional fees.

c. Subsection (d): This rule should specifically authorize the filing of an ex parte motion under such circumstances.

d. Subsection (e): Can a two-strike rule really have any applicability in the context of family law matter? Why would we be including this?

e. Subsection (e)(1): Why would the rule require the payment of filing fees, when the notice must be filed prior to them being incurred?

f. Subsection (e)(2)(1): The numbering and organization doesn't make sense. Further, I do not understand this rule. Is this provision intended to apply to all ex parte orders or just orders sought in the context of this rule. Wouldn't dodging service render emergency orders ineffective upon the filing of an objection? Furthermore, is this retroactive infirmity of orders?

g. Subsection (e)(2)(2): The numbering and organization doesn't make sense. Further, this is contra to NRCP 4-5.

7. Rule 5.28 Withdrawal of attorney in limited services ("unbundled services") contract. Shouldn't the litigant have some opportunity to object? Without the retainer agreement being provided, how will the Court determine whether the notice is proper or valid? Wouldn't this be a good opportunity to lay out a process for objecting? Maybe require a notice that the litigant has ten (10) days to object, or will otherwise lose that right to eliminate problems down the road?

8. Rule 5.30 Extending time. Again, we have adopted the bounds of advocacy that encourage attorneys to work together and be accommodating to one another, and are needlessly causing fees to parties. In my experience attorneys are extremely courteous in regard to deadlines, and should be given latitude by the Court to work together in these areas. Let attorney's work these things out themselves, and don't force litigants to incur additional fees.

9. Rule 5.32 Motions for support; fees and allowances; financial disclosure form required. Shouldn't all these references be changed to GFDF/DFDF? On its face, you would need to file an additional GFDF upon opting in. In subsection (d), it is a bad idea to be so specific because the forms are in flux and the rule changes are slow.

10. Rule 5.34. Notice of and compliance with order. Shouldn't the 10 day NRCP 62 be addressed to eliminate the perceived contradiction re: enforceability of orders?

11. Rule 5.40 Motions in limine.
    a. Does the timing of this rule work in the context of 16.2?
    b. I often come across information WITHIN 45 days of trial meriting a motion in limine.

12. Rule 5.41 Exhibits.
    a. Section (e) of this section is a potentially serious problem. Case law consistently states that pleadings and filings are not substantive evidence unless and until they are admitted at trial and determined to have met the rules for admissibility. There is a clear difference between such filings being part of an appellate record, and substantive evidence in a case. While I have learned that Judge Steel will not permit you to use prior filings to impeach witnesses, case law indicates otherwise and there is no legitimate

reason as to why prior inconsistent sworn statement filed with the Court cannot be admitted as substantive evidence against a party. From my perspective this rule is simply ill-advised and you need to admit such items as evidence if you want the Court to properly rely upon them.

b. With regards to subsection (e): Ever? We do so when the document is the focus of the hearing, as should rationally be done for convenience of everyone in the room.

13. Rule 5.38 Responding to discovery requests. Why is this being repealed?

14. Rule 5.45 Notice of trial setting. Why is this being repealed? Does this mean that Attorneys will no longer have to maintain folders and that such folders will no longer be a means of service of trial notices? Why would this be done?

The comments will be posted on the Willick Law Group website, Clark County Bench Bar page, for review and further comments by others.