FROM: Marshal S. Willick, Esq.
TO: Hon. Chuck Hoskin, Presiding Judge
Re: Report Re: Bar Review of EDCR 5 Re-draft
Date: September 1, 2014

This is the requested summary of attorney and stakeholder comments, criticisms, and suggestions regarding the EDCR 5 re-write.

While everyone seems to agree that the family court system should be made as fast and efficient as possible, many complaints were, at bottom, "make someone other than me do things to make the process faster/better." Still, what is below is a distillation of the comments, suggestions, and complaints from the Bar, and some of them could be facilitated easily if the judges direct me to do so.

I. TECHNICAL, TYPOGRAPHICAL, ETC. ERROR CORRECTION

(These should be inserted/changed before the Rules are passed along for further review)

A. 5.202: The Self-Help center suggests adding "or other initial pleading" to the second sentence to ensure the Clerk's Office knows that all initial filings (not just "Complaints") are included for indigents.

B. 5.304(c): "make an request" should be "make a request".

C. 5.402(c): "may issues" should be "may issue".

D. 5.504(c): Add "within 3 calendar days before the hearing or submission" immediately following "with the motion" [during editing, the precise deadline became unclear].

E. 5.513: Self-help suggests a wording change in (a) to allow a party to seek an order shortening time not just for a "motion" but for "an upcoming hearing" because there could be status checks, FMC returns, etc., not associated with a motion for which there could be an urgent need to shorten time.

F. 5.518(e)(2): Suggest deletion of "at an extension hearing" as it has been pointed out that SOMETIMES there are hearings set on initial applications as well (for cases where the initial TPO is not granted, but instead set for hearing). Deleting those words should solve the ambiguity.

G. 5.527(c): "copy of an notice" should be "copy of a notice".

II. SUBSTANTIVE COMMENTS, COMPLAINTS, AND CONCERNS, BY RULE

(These could be implemented as amendments to the draft submitted, if the judges direct doing so)

A. 5.303: Some lawyers do not believe counsel should be allowed to attend mediation (they are apparently unaware that this is already existing policy).

B. 5.502: Virtually all comments received believe the time for preparing an opposition to a countermotion is too short.

The only options would be to take some time away from the time to submit an opposition/countermotion, or to extend the minimum filing-to-hearing time from 28 days to some later time, such as 35 days, making the time 10 days for a Reply/Opposition to Countermotion, and 5 days for a Reply to Countermotion [by my count, this would also expand the minimum time a judge has for review of all filings from 3 days to 5].

This was probably the most universal criticism/complaint received as to the entire rule set. Given the strong feelings on the matter, I have attached as Exhibit 1 a comparative timeline showing the deadlines under the proposed rule, and as the suggested alternative would make it.

1. A frequent Bar comment/complaint (that did not come up during Committee discussions) was the alleged insertion of new requests for relief in countermotions, and a request to prohibit such [this could be easily placed in 5.502(g)].

C. 5.504: There was some loud angst by a few highly vocal critics of the proposed order provisions,[1] and a few comments that think this is a great idea that will lead to faster and better orders. Self-help was of the opinion that pro per litigants would be incapable of complying.

The request at the Bar meeting was to make the submission of proposed orders ***optional*** rather than mandatory. This could be simply accomplished by changing the words "are required" to "may," as was done with CMC briefs in 5.401(a). As a practical matter, this may be the result no matter what the rule says, since those that won't, or can't submit proposed orders will not do

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[1] 1. It is a waste of time, either because judges won't read or use them, or because orders do not exactly match motion filings.

2. How could pro per litigants ever comply?

3. It is "more work" [the response to which is that ***somebody*** at some point will be drafting an order, and this time-shifts that prep to the beginning rather than the end, hopefully speeding overall time to an order].

so, and judges are not really likely to sanction such non-submission; it may make sense to have the rule reflect this reality.

D. 5.511(b): There is a concern that the 5 judicial days maximum time to submit a stipulation for extension conflicts with the 3 calendar days for filing a Reply – by the time it is due, the window for extension would already be past. [This rule was intended to prevent lawyers from deleting matters from court dockets at the last minute, when it was no longer possible for judges to fill the time with other matters.]

E. 5.515: One law clerk reported that courtesy copies are entirely unnecessary and the requirement for sending them should be eliminated. (I presume that comment does not go to photos and other items that Odyssey will not reproduce.) [No other law clerks commented, but if this opinion is widespread, eliminating the requirement would be a significant time and money saver for counsel and litigants, and should be discussed by the judges.]

F. 5.528: One submission suggests that since there is no filing fee for motions filed prior to entry of a final order, this is an exception to be listed in the group of motions where no fee or information sheet is required [I'm not sure on this one, and think the clerk's current procedures already encompass the request, but pass it along for review].

G. 5.706(c): There is a concern that (c) conflicts with (a): "If they don't have to post until 4 pm the day before the hearing, how is it possible for the attorney to correct the deficiency before noon on the day before the hearing?"

H. One lawyer proposes restricting acceptable affidavits of due diligence, as a prelude to an order to service by publication) to licensed process servers only. [I have some concerns about statutory contradiction, as this would seem to restrict practice as defined by the NRCPs.]

I. One lawyer proposes eliminating points and authorities in "routine and repetitive motions that judges and lawyers have seen hundreds of times." Others, commenting on the proposal, suggest that such a rule would produce due process concerns in review of those cases. [If there is any appetite to pursue this, it probably would be possible to draft and publish a "standard statement of points and authorities" that could be incorporated by reference without repetition.]

III. MISCELLANEOUS

A. **Attached Exhibits**: As noted, Exhibit 1 is a comparative motion filing

timeline. The only "stakeholder" comments received were from Stephanie McDonald, for the Family Las Self-Help Center. I have attached her memo as Exhibit 2, and my response as Exhibit 3.

B. There were individuals with strong, but not widely-held, feelings about individual rules. One lawyer protested the removal of "relatedness" as to filed countermotions, and also wanted long-form affidavits to be required in all cases.

C. There were many comments that might have led to discussion of various points if they had been raised much earlier in the process, or concerned matters of preferred wording, but as the existing language has been vetted by the Committee twice, I am simply holding those stylistic suggestions, unless there is a desire to have them reviewed.

D. For reference, this was the note sent to the Bar with the request to review the proposed rule set:

All:

For over a year, I have been posting portions of proposed rule re-writes, and soliciting feedback and suggestions for improving the rules in which we operate each day. In May, 2013, I advised:

> The goals of the working group are to increase user-friendliness, economy, and efficiency, wherever possible, balancing the interests of the public, the lawyers, and the Court. . . . This is a tall order. Like most things involving competing interests, compromises are likely. And like most committee work-products, it is never as speedy, simple, and easy as might be wished, or imagined.

That was an understatement. Every suggestion, comment, and complaint made to date was examined and discussed. The Committee has now completed its proposed draft, which is available in its entirety for review and further comments, before the rule set goes to further review. For those unfamiliar, here is the process:

> The Family Court judges collectively get to review, amend, and approve the rule set.
>
> It is reviewed by the entire District Court Judges Rules Committee.
>
> It goes (in an ADKT) to the Nevada Supreme Court for consideration, public hearing, and final approval.

Those reading this have one more chance (well, two, really) to weigh in, from now until the Family Court Judges meet to decide on forwarding the package. Your final chance would be during the NVSCT public hearing, but it seems unwise to wait until then before voicing any concerns or suggestions.

Accordingly, I have posted the proposed EDCR 5 re-write, and a motion filing timeline showing the changes to the timing of filings leading up to a hearing or submission, at http://willicklawgroup.com/clark-county-bench-bar-committee/. If you can possibly do so, please review them from end to end, think about the changes made, and if you wish, provide any constructive criticism you feel is warranted. I have agreed to collect all such comments, organize them, and provide them to the judges before their meeting (not yet set; I will advise when a deadline for comments is known). The current rule numbers of rules specifically modified or adapted are noted in brackets following the new proposed rules, for reference. If anyone has questions, send them to me and I will do what I can to answer them.

A little more than a year ago, I summarized this process: "As with most projects involving lots of people and processes involving lots of possible situations, doing rule-writing perfectly is impossible, and doing it even passably well is harder than it looks." Nothing I have seen in the past year has altered that observation.

Thanks for your patience, and for your assistance in the home stretch of this effort.

Marshal

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

MOTION FILING TIMELINE (Comparison)

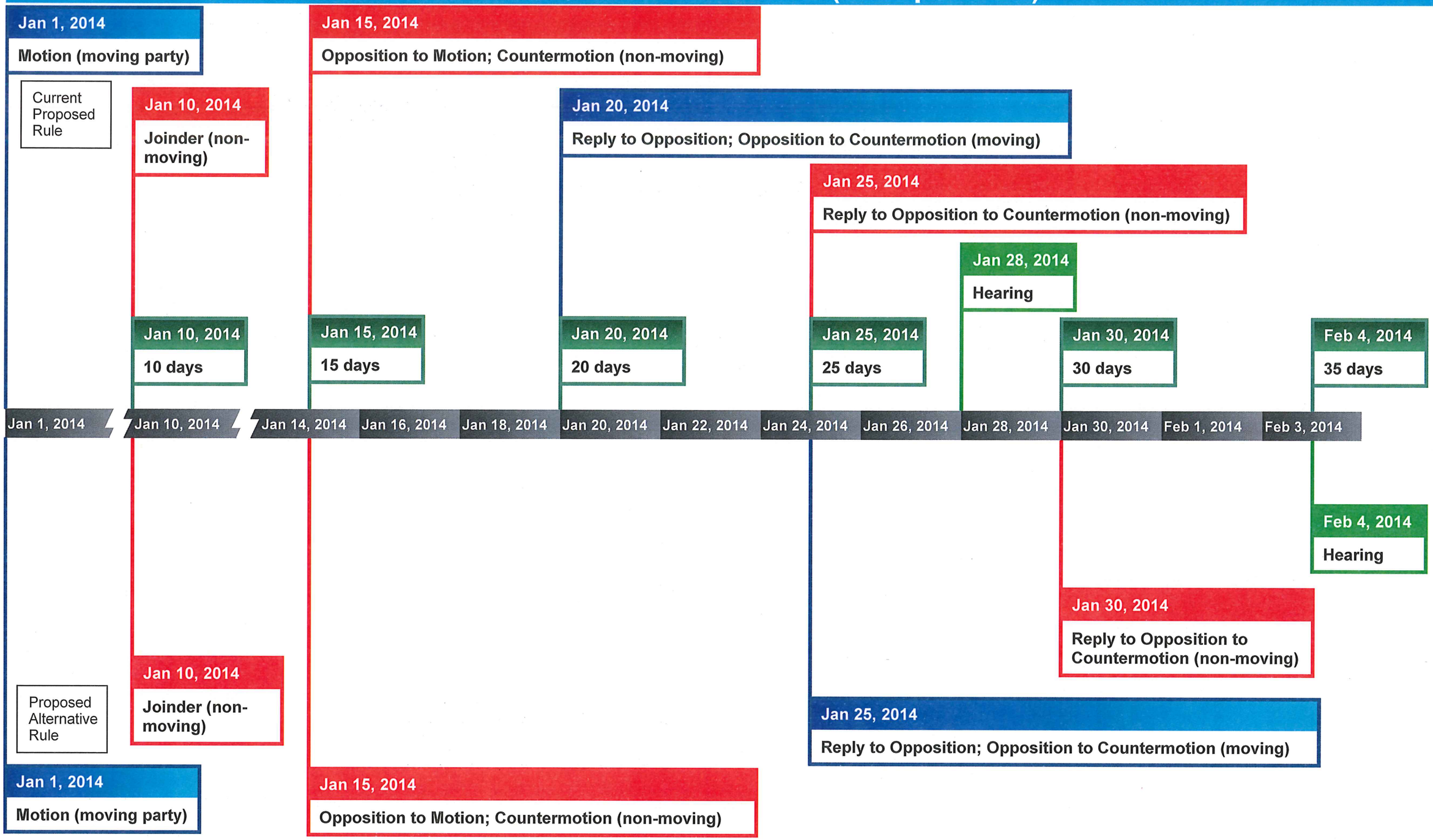

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

MEMORANDUM

TO: MARSHAL WILLICK AND THE EDCR 5 COMMITTEE
FROM: STEPHANIE MCDONALD, FAMILY SELF-HELP CENTER
SUBJECT: EDCR 5 REVISION
DATE: AUGUST 15, 2014

Please find my comments regarding some of the proposed new Eighth Judicial District Court Rules. As the Directing Attorney of the Family Law Self-Help Center, my comments are from the point of view of the unrepresented litigant. As you are no doubt aware, roughly 60% of litigants at family court are unrepresented. Although they are expected to follow the rules just as attorneys, as a practical matter, rules can create unnecessary barriers to their access to the courts. My comments are targeted at the rules that will prove most difficult (and unreasonable) for the average unrepresented litigant to follow. I hope the committee and the judges will take these comments into consideration before passing them on to the next phase.

Rule 5.202 Filing of case required before application for judicial order

The first sentence refers to the filing of a "complaint or other initial pleading," however the second sentence only refers to an order allowing an indigent to file a "complaint" without fees. Add "*or other initial pleading*" to that sentence as well to ensure all initial filings are included for indigents.

Rule 5.206 Exhibits to motions and other filings

Subsection (b) would require all exhibits to be Bate-stamped and produced in discovery. "Bate stamping" is a technique used exclusively by attorneys and is a concept completely foreign to unrepresented litigants. *Unrepresented litigants will be unable to comply with this rule as they do not have the means to Bate-stamping processes.* This provision would result in exclusion of all exhibits presented by an unrepresented litigant. This provision should be eliminated.

The requirement in subsection (c) that identifying exhibit pages with the exhibit number printed three times also seems overly burdensome and should be eliminated.

Rule 5.207 Filing and Service of papers

This rule changes the current clerk's office procedure in requiring immediate acceptance of an e-filed document subject to cancellation if a document is later rejected for filing. Although meant to reduce the e-filing limbo time between filing and acceptance, the result will be many documents filed and discovered by unrepresented litigants who do not understand that the document was later cancelled. Unrepresented litigants do monitor

their case activity and immediately seek court help when they see a document filed in their case that they do not understand. It is difficult to explain to an unrepresented litigant that a document was cancelled and has no meaning – litigants worry about everything filed by the other party. It is better for all involved to ensure the documents filed are the ones that will actually be part of the court file rather than have litigants try to sort out the "real" documents later.

Additionally, the rule requires service of the e-filed document, with additional service required after a hearing date is entered. Unrepresented litigants notoriously have a hard time with service. *Requiring service of a document twice creates twice the chance for an unrepresented litigant to fail*. By allowing the clerk to approve a document before accepting, there will only be one ultimate document to serve, thus simplifying service for the unrepresented litigants.

Rule 5.303 Mandatory Mediation Program

Subsection (b)(7) requires that a report be released to *counsel* at the request of counsel or the mediating party. The rule should also allow the report to be released directly to the *party* (I believe this is already the case, it just is not spelled out in the proposed rule).

Rule 5.304 Child interview, outsource evaluation, and CASA reports

I am confused as to how this rule intersects with Rule 5.204. Rule 5.304 implies that parties will be able to "have copies of" written reports, yet Rule 5.204 prohibits parties from picking up the report. The rules should be consistent.

Unrepresented litigants should be explicitly allowed to have copies of the reports included under this rule. Although (c) allows parties to request copies, there is no standard supplied for judges to grant or deny such requests. The reports are often heavily relied on by the court and counsel, and unrepresented litigants are at an unfair disadvantage in not being able to retain copies. They may have paid thousands of dollars for an outsource evaluation yet the court may not allow them to have a copy. Not having copies of reports also makes it more difficult for unrepresented litigants to obtain representation when they cannot provide potential counsel with all relevant materials. The warnings and potential sanctions for unauthorized disclosure should assuage any fears that the reports would be mishandled by a litigant.

Rule 5.501 Requirement to attempt resolution

The added requirement that a moving party include an explanation of attempts to resolve the matter or why the attempt would be impractical is an added burden for unrepresented litigants. Realistically, litigants do not want to come back to court and only do so when all else has failed. Filing a motion is much more difficult for an unrepresented litigant than trying to work out the issue privately, so the mere fact a motion is being filed should

be evidence that attempts to resolve the matter have failed. Unrepresented litigants are often not articulate enough to explain their reasons for needing to come to court.

Rule 5.502 Motion, opposition, countermotion, and reply submission and setting

First, there is an inconsistency between the required notice in (a) and the timing of (e). The notice in (a) advises the party they must respond within 15 days of *being served* (thus, the 15 days would presumably begin on the day of receipt). The timing in (e) states the 15 days starts from service of the motion – so really a moving party only has 12 days to respond after being served. The timings need to be consistent.

Second, (b) creates an overly burdensome requirement that a litigant explain why a hearing is requested. As with my comments from Rule 5.501, unrepresented litigants are often not articulate enough to explain their reasons for coming to court. Their education and writing skills may not be savvy enough to properly convey their intent. *The average unrepresented litigant sees the written motion as a means to get in front of the judge so they can have their day in court.* They typically believe that the hearing is where they will have their full chance to explain what is going on, because it is difficult for them to express themselves in writing. Again, the mere fact that an unrepresented litigant is filing a motion should be proof enough that the issues will not resolve on their own and that the person wants to speak with the judge. If the person loses at court, at least they feel they had their chance to present their case. If no hearing is held, the litigants feel as if they were not heard (and they may seek to re-file!).

Third, (g) shortens the reply time to 2 days upon receipt. This is an alarmingly short reply period even for counsel and should be extended.

Rule 5.503 Motion, opposition, countermotion, and reply content

Subsections (b), (c), and (d) are entirely unnecessary. The rules regarding the form of papers presented for filing are already contained in 7.20. The Family Law Self-Help Center has worked hard to amend 7.20 to address the rules of pleading under the current rule. Adding an entirely new rule regarding the form of papers creates inconsistencies between the two rules, and *passage of this rule will require that every single Self Help form (400+) will have to be redone*.

If the rule is passed, the Self-Help Center respectfully requests that a (f) be added exempting the Self-Help Center from the rule.

Rule 5.504 Proposed orders

This rule should be rejected. *Unrepresented litigants do not know how to prepare orders in advance of a hearing that will include proposed findings of fact, conclusions of law, and orders relevant to each point of dispute*. Even if litigants could prepare a proposed order in advance of a hearing, judges rarely issue orders that match everything only one

party requested. Proposed orders are an overly burdensome waste of time for counsel and unrepresented litigants alike.

Subsection (e) would require disclosure of every law clerk's email address to unrepresented litigants. Disclosure of their email addresses will open up law clerks to unwanted ex parte communication from any number of litigants.

If this rule is adopted, it should apply to counsel only. Unrepresented litigants will not be able to comply with this rule, and even if they do, it is unlikely their proposed orders would be deemed acceptable to the judges.

Rule 5.507 Schedule of arrearages

The requirement that a schedule of arrears include the calculations for interest, penalties, and an explanation of the calculation is beyond the capability of the average unrepresented litigant.

Rule 5.509 Motions and procedures for orders to show cause

It would be wonderful to include in (d) the manner of service that is required for an OSC. Departments seem to vary in regard to how the OSC should be served, and this is an opportunity to create some consistency.

Rule 5.513 Orders shortening time

Subsection (a) should allow a party to "seek an order shortening time of an *upcoming hearing*" rather than just to hear a motion. Not all urgent matters litigants need heard are based on a motion. For instance, parties are often referred to FMC, but when mediation fails, there are urgent custody and timeshare matters requiring the judge's attention prior to the return date (such as school selection and timeshares at the start of the school year). There are a number of return hearings and status checks that litigants want to expedite, but they cannot under the current version of the rule.

Subsection (c) creates twice the chance for unrepresented litigants to fail at service, an area they typically already have difficulty with. Requiring litigants to serve the original motion and then serve the OST later creates another barrier to an unrepresented litigant's ability to successfully serve their documents. The provision should be eliminated.

Rule 5.525 Meetings of counsel before calendar call; pretrial memorandum

Subsection (b)(8) requires that the list of exhibits be Bate-stamped. As with Rule 5.206, *this requirement is burdensome and beyond the capability of most unrepresented litigants*. Bate-stamping is a mechanism used exclusively by attorneys and is completely foreign to unrepresented litigants. This is an unnecessary requirement that will prejudice unrepresented litigants in attempting to present exhibits at trial.

Rule 5.526 Settlement conferences

The settlement brief requirements listed in (b) is overly extensive, and many of these items are inapplicable to cases with unrepresented litigants (are settlement conferences only scheduled where counsel represents both parties?). Including all of these items in 5 pages would be difficult for counsel and unrepresented litigants alike. The average unrepresented litigant is able to express what they want, why, and why they disagree with what the other side is asking for.

Rule 5.528 Filing fee to reopen cases

There is no filing fee for motions filed prior to entry of a final order. This exception should also be listed in the group of motions where no fee or information sheet is required.

Rule 5.601 Discovery documents; Bate stamps

As with Rule 5.206 and 5.525, *the Bate stamp requirement is burdensome and beyond the capability of most unrepresented litigants*.

Marshal Willick

From: Stephanie McDonald <smcdonald@lacsn.org>
Sent: Friday, August 15, 2014 3:49 PM
To: Marshal Willick
Subject: RE: EDCR 5 re-write; timing and meetings
Attachments: EDCR 5 Revision Comments.docx; image001.jpg

Marshal,

Thank you to you and the committee for all the hard work on this re-write! It is obvious looking through the proposed rules that a great deal of time and thought went into the proposals. I knew it was a big project, but had no idea just how big until I saw the result.

I've taken the opportunity to write up my comments to some of the proposals, which is attached. I hope this format is helpful in your compilation of all comments received, if not let me know what would be preferred and I will re-send.

I read through the rules from the perspective of the average self-represented litigant who will be expected to comply with these rules just as counsel. While many requirements are second nature to attorneys, they will be difficult for those unfamiliar with the law and the legal process - and nearly 60% of litigants at family court are self-represented. My comments are meant to highlight the potential barriers self-represented litigants will face, and ask for exceptions or deletions where their access to justice may be impeded due to procedural requirements.

Again, thank you for all your work on this. I'm unable to attend any of the in-person meetings that are being put together (and don't see the need since the process is beyond the phase for the bar to debate, but rather for the judges to consider), but hope the written comments will suffice.

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From: Nvfamilylaw [nvfamilylaw-bounces+smcdonald=lacsn.org@lists.nvbar.org] on behalf of Marshal Willick [marshal@willicklawgroup.com]
Sent: Saturday, August 09, 2014 10:09 AM
To: nvfamilylaw@lists.nvbar.org
Subject: [NVFamilyLaw] EDCR 5 re-write; timing and meetings

All:

At the Bench/Bar Agenda Committee meeting (last Thursday), it was revealed that the judges have not managed to set their meeting date to go over the revised rules, but they intend to do so REAL SOON NOW. To facilitate their review, I am to package/condense/report on Bar discussion, in advance of their meeting; I've been set a September 1 deadline. Just dealing with what I have already received (some folks have already packaged and sent their comments) will take a few days.

If there is a request for a meeting to make additional points/comments/suggestions, it will have to be between now and then. Looking at possible dates, I can accommodate Thursday, August 28, at 6:00 p.m., in my conference room.

I would appreciate it if anyone intends to actually pop over at that time for any additional comments or questions, they send me a heads up in advance; the more organized and concise I can make the feedback, the easier time the judges will have reviewing it.

Marshal

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EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

Marshal Willick

To: Stephanie McDonald
Cc: Barbara Buckley (BBuckley@lacsn.org)
Subject: RE: EDCR 5 re-write; timing and meetings
Attachments: EDCR 5 Revision Comments.docx

Stephanie:

Thank you for your input, below and on the attached. My task, at this point, is to assemble, summarize and report to the judges whatever comments are received, for their consideration when reviewing the package. As you are as much of an "institutional" participant than an individual, I intend to pass along your memo entirely as an exhibit to my summary (unless you object), as detailed at the end of this note.

While it is beyond my assigned function at this point, it might be a useful exercise to address some of your concerns from a committee perspective, and I do so below. Those of your points not responded specifically have been inserted in either my list of typographical/technical corrections (e.g. 5.202), or list of substantive requests made, without further comment, or because (as with 5.303) the answer is "yes, that is already existing policy," so no further action is required, or 5.509, which is addressed in other statutes, cases, and rule sets, or 5.526, where the requirement is really already there and just being clarified, and the judges are hopeful but are unlikely to respond any more unfavorably by violation of this nearly aspirational rule than they are to the one it replaces.

Since I am necessarily compromised (being on the rule-drafting committee, as well as on the self-help advisory committee), I have taken the liberty of copying Barbara, who (if she has the time and cares to do so) can perhaps add a bit of perspective if either of us is in any way off base, or otherwise sees a way to assist in the multiple ends being pursued. I've attached your memo so she can see what I'm responding to (my responses are a bit out of order to your items, because many of them concern common elements responded to at the end).

I see your point about the appearance of an implicit contradiction between 5.204 (no pro per can pick up reports) and 5.304 (pro pers can ask to have restricted documents given to them). The latter rule was greatly altered to give pro pers much more access to data than they had previously, and was looked at long after 5.204 was finished. The pick-up rule restriction was based on judicial desire to control who gets things, looking to protect children, and the 5.204 restriction is more expansive than custody evals, also addressing drug test results, etc. The "unless otherwise ordered" language at the beginning of 5.204(b) allows for release upon ex parte request, which request can be made as stated in 5.304.

Your first suggested alteration for 5.513 (for (a)) fits as a phrasing change, and has been put in the memo to the judges. For (c), it is a bit different; this rule change was put in at the suggestion of one or two judges to correct sand-bagging, requiring people to submit motions when they are filed, and OSTs when they are obtained; I've included it in the list of comments, but I believe that the judges will consider their motives more weighty than the complaint that pro pers would have two things to serve.

"TOO HARD"/"UNNECESSARY" COMMENTS:

Your comment to 5.206, 5.525, and 5.601 (exhibits to be bate-stamped, and separator pages to have big "Exhibit # ___" printing on them) states that pro pers are unable to comply with the rules. Your comments to 5.207 predicts that rogue filings will likely be served, if immediately accepted rather than after waiting for the clerks to inspect them, leading to too much confusion for pro pers, and that they should not have to serve a second copy if the first one did not have a hearing date on it.

For 5.501, you criticize the "extra burden" of explaining what attempts were made to solve the problem before filing a motion, which should be assumed.

For 5.502, you believe that the timing is inconsistent; I don't think so – "service" as used here means INITIATION of service. If they are in the electronic system, and I am trying to make sure that pro pers can have e-service just like lawyers, the two should be essentially synonymous. The bulk of your comments concern the widely-held belief that a pro per does not think he has "had his day in court" unless he stands in front of a judge and vents his spleen, regardless of results.

You do not like the length limits, font size and format requirements, and type style limits, stating that adequate provisions are "already contained in 7.20." Preliminarily, 7.20 is outdated, anachronistic, and in need of revision (two-hole top punching, for example is entirely useless in current practice) – but that is outside my purview. The type/style rules copy those for NV SCT filings (except that footnotes can be smaller). Everything in this rule was inserted at the request of the judges, who find it difficult to see and quickly/fairly review documents formatted otherwise in the electronic files they see in Odyssey. Beside the comments below, note that the permissible type styles are the defaults of every word processor and typewriter known.

For 5.504, you state that pro pers will never be able to submit proposed orders, and it is "overly burdensome" to do so "for counsel and unrepresented litigants alike." You suggest it be eliminated, or apply to lawyers only.

Similarly, you say that calculating interest and penalties for child support orders, etc., is "beyond the capability of the average unrepresented litigant."

.....

My common response to most of the group of comments above, from the Committee perspective, is this: While everyone seems to agree that the family court system should be made as fast and efficient as possible, most of the complaints as to these rules are, at bottom, "make someone other than me do things to make the process faster and better" which is actually the bottom line to ***most*** of the push-back from litigants, lawyers, and judges as to ***any*** of the proposed rule changes.

There is no free lunch, and a bit more will be required from all quarters if there is to actually be an improvement in results, timeliness, and efficiency. I am very concerned about some of the above comments indicating a differentiation of standards for attorney-involved, and pro-per, cases. I have gone to extraordinary lengths to avoid creating a "two-tiered" system of justice – stacked in EITHER direction.

Complaints about endless delay, and sand-bagging, counterweigh every argument about documents being immediately processed and the requirement that they be served upon receipt. I am continuing, in other forums, to try to make e-filing, and e-service, and inexpensive and universal as possible.

In Reno, NO ONE appears for hearings in virtually any case – there are no hearings unless the judge orders it. Yet people have "their day in court." I have not pushed our process to that of Reno – if ANYONE (plaintiff, defendant, or the judge) wants a hearing, there will be one. But for every hearing held, there is another party required to attend (with or without the expense of paying a lawyer) and an entire ROOM full of other people – each of whom may ALSO have a lawyer on the clock sitting there cooling their heels while someone drones endlessly and fruitlessly along repeating the same stuff stated in the written motion.

The single biggest complaint about motion practice in Clark County is wasted time waiting through hearings that should not be held, tying up the judges from actually deciding cases, and wasting the time of everyone left waiting. For every hearing that can be eliminated, 30 people will not have a wasted half day of their time and thousands in fees. Changing the culture will take time, and this is a first, tentative step, but the payoff is so huge that the "additional burden" of asking someone to state what they did to avoid the need for a hearing (already required by 5.11) and why they need an

oral hearing at all seems pretty modest. And if, as expected, most of them have no good reason, I do not expect much beyond the current practice (eye rolls and sighs) to come of it – but we really should start somewhere. If you have a better idea for achieving the objective sought please suggest it; in the 18 months I have been working on this, no one has yet suggested one.

For 20 years I have worked to stop poor people from being deprived of interest and penalties on their judgments, and I respectfully suggest that a far better response than exempting them from presenting the calculation (meaning they STILL do not get what they are entitled to) would be to provide a means for them to achieve it. I have done everything in my power to facilitate that result, including GIVING the necessary software to the self-help centers state-wide, and (essentially) giving it to the judges so it could be run by court staff if necessary.

Ditto bate-stamping. The lawyers and judges complain that a huge amount of time is wasted at hearings and trials trying to figure out which copy of a piece of paper came from where, which this rule is intended to address and if possible eliminate. Bate-stamping software is ubiquitous and cheap, and in a closet somewhere I have a mechanical, actual "Bate stamper" which could be chained to a counter if a low-tech solution was desired. Separator sheets with 24-font "EXHIBIT 1" at the correct locations could be posted for no cost, or run off and handed out for very little. Perhaps some effort could be made to give pro pers a way to create proposed orders; if on self-help forms, I would not expect them to be overly complex; if not, as in current practice, that burden will continue to fall to the other party, if represented, or to the court. Meantime, I continue to work on real-time order generation, so orders from hearings will be as fast and painless as possible, and court-generated; once we get that working, the same software could be adapted to the creation of proposed orders at self-help, I would think.

The judges say that they cannot read small-font documents. It does pro pers no real good to permit them to file papers that are not being read, even if that means altering the forms. While I am not authorized to speak for the judges, I am quite sure that even if it takes another year, or two, to get everything into conformity with the new rules, they will accommodate, as they have with continuing to accept documents from self-help litigants over the past several years that are outdated, deficient, defective, and legally incorrect – all the stuff you have spent the last year trying to clean up.

Thank you again for taking the time to look at this in detail. My intent will be to submit to the judges your memo requesting various changes, and this response, as an exhibit to the summary they have requested. If you wish for me to do anything else, please let me know.

Marshal

Marshal S. Willick

From: Stephanie McDonald [mailto:smcdonald@lacsn.org]
Sent: Friday, August 15, 2014 3:49 PM
To: Marshal Willick
Subject: RE: EDCR 5 re-write; timing and meetings

Marshal,

Thank you to you and the committee for all the hard work on this re-write! It is obvious looking through the proposed rules that a great deal of time and thought went into the proposals. I knew it was a big project, but had no idea just how big until I saw the result.

I've taken the opportunity to write up my comments to some of the proposals, which is attached. I hope this format is helpful in your compilation of all comments received, if not let me know what would be preferred and I will re-send.

I read through the rules from the perspective of the average self-represented litigant who will be expected to comply with these rules just as counsel. While many requirements are second nature to attorneys, they will be difficult for those unfamiliar with the law and the legal process - and nearly 60% of litigants at family court are self-represented. My comments are meant to highlight the potential barriers self-represented litigants will face, and ask for exceptions or deletions where their access to justice may be impeded due to procedural requirements.

Again, thank you for all your work on this. I'm unable to attend any of the in-person meetings that are being put together (and don't see the need since the process is beyond the phase for the bar to debate, but rather for the judges to consider), but hope the written comments will suffice.

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From: Nvfamilylaw [nvfamilylaw-bounces+smcdonald=lacsn.org@lists.nvbar.org] on behalf of Marshal Willick [marshal@willicklawgroup.com]
Sent: Saturday, August 09, 2014 10:09 AM
To: nvfamilylaw@lists.nvbar.org
Subject: [NVFamilyLaw] EDCR 5 re-write; timing and meetings

All:

At the Bench/Bar Agenda Committee meeting (last Thursday), it was revealed that the judges have not managed to set their meeting date to go over the revised rules, but they intend to do so REAL SOON NOW. To facilitate their review, I am to package/condense/report on Bar discussion, in advance of their meeting; I've been set a September 1 deadline. Just dealing with what I have already received (some folks have already packaged and sent their comments) will take a few days.

If there is a request for a meeting to make additional points/comments/suggestions, it will have to be between now and then. Looking at possible dates, I can accommodate Thursday, August 28, at 6:00 p.m., in my conference room.

I would appreciate it if anyone intends to actually pop over at that time for any additional comments or questions, they send me a heads up in advance; the more organized and concise I can make the feedback, the easier time the judges will have reviewing it.

Marshal

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