

## NRCP 16.2 and 16.205

### I. Why are we talking about this?

Effective February 1, 2006, there were two versions of NRCP 16.1: one for family cases in the Second and Eighth Judicial District Courts and one for all other cases. A few years later, NRCP 16.2 was adopted as a more tailored rule to family law cases, but NRCP 16.1 applicable to family cases had not been repealed. This caused confusion as to whether or not the Early Case Conference requirement of NRCP 16.1 still needed to be followed.

Effective May 1, 2017:

- NRCP 16.1 that applied to domestic relations cases was REPEALED.
- NRCP 16.2 was updated to accomplish two things:
  - incorporate the necessary provisions of NRCP 16.1 for domestic relations cases and
  - update NRCP 16.2 and NRCP 16.205.

### II. What provisions of NRCP 16.1 for domestic relations cases were incorporated into NRCP 16.2 before NRCP 16.1 was repealed and why?

- The requirement for an Early Case Conference (found in NRCP 16.1 for domestic relations cases) was incorporated into NRCP 16.2. NRCP 16.1 was repealed.
- The Committee members believed that the two rules, both applicable to domestic relations cases (16.1 and 16.2) was confusing as people didn't realize they had an obligation to comply with both. The decision to incorporate the ECC requirement into NRCP 16.2 (rather than simply do away with it entirely) resulted from the lack of communication between litigants and/or counsel prior to the CMC. Judges want to see an effort from the parties and their counsel to **identify** and **narrow down** the issues as much as possible prior to the CMC and to report the foregoing to the Court prior to the CMC.
- NRCP 16.2 was re-organized and updated.

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### III. Reorganization and update to NRCP 16.2 and 16.205 – simple steps you need to follow.

#### 1. Determine which rule applies.

- If divorce, annulment, separate maintenance, or dissolution of domestic partnerships, use NRCP 16.2
- If paternity or custody action between unmarried parties, use NRCP 16.205

#### 2. Consider whether or not all or any portion of the case should be exempt from application of the rule, in whole or in part.

- A party can move for exemption, or the court may sua sponte at the CMC exempt all or any portion of the case from application of this rule, in whole or in part, for “good cause,” (which includes, but is not limited to, a divorce, annulment, separate maintenance, or dissolution of domestic partnerships case with negligible assets and no children).
- Any exemption must be included in an order of the court. Otherwise, the rule applies.

#### 3. Decide whether or not to “opt-in” to the Detailed Financial Disclosure Form and Complex Litigation Procedure

- The “opt-in” is only available if:
  - Either party’s individual gross income or the combined gross income of the parties is more than \$250,000 per year; or
  - Either party is self-employed or the owner, partner, managing or majority shareholder, or managing or majority member of a business (THE KEY HERE IS CONTROL); or
  - The combined gross value of the assets owned by either party individually or in combination is more than \$1 Million.
- The “opt-in” is not mandatory and should only be used when beneficial to the case

**Example:** Husband and wife were married in 2007. They executed a prenuptial agreement that essentially eliminates any community property from accruing. Wife files for divorce. Husband is paying all household expenses. Husband is the “moneyed spouse” with significant holdings in a variety of entities and has a number of sources of passive income. Wife is the “non-moneyed spouse” who has no job and limited resources.

**Question:** Should there be an “opt-in”?

**Answer:** An opt-in is not mandatory. However, a Detailed Financial Disclosure Form would be more appropriate for Husband’s financials

because the General FDF is overly simplified for his holdings and income streams. The DFDF, on the other hand, would be too complex for Wife's financials. Thus, it would be appropriate for Wife to opt-in (although either party could do so) and then seek an exemption for herself from having to complete the Detailed Financial Disclosure Form.

- Once a request to opt-in is filed, a DFDF becomes mandatory.
- Plaintiff's request to opt-in should be filed concurrently with the filing of the Complaint.
- Defendant's request to opt-in should be filed concurrently with the filing of the Answer.

**4. Instruct your client to provide the following items within 14 days:**<sup>1</sup>

- Completed draft Financial Disclosure Form (in paternity and custody actions between unmarried parents, only the cover sheet, income schedule, and expense schedule) for your review.
- **Evidence Supporting Financial Disclosure Form.** For each line item on the General Financial Disclosure Form or Detailed Financial Disclosure Form, if not already evidenced by the other disclosures required herein, the financial statement(s), document(s), receipt(s), or other information or evidence relied upon to support the figure represented on the form. If no documentary evidence exists, an explanation in writing of how the figure was calculated.
- **Evidence of Property,\* Income, and Earnings as to Both Parties.** A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because the party has not fully completed an investigation of the case, or because the party challenges the sufficiency of another party's disclosures, or because another party has not made the required disclosures. For each requirement set forth in subparagraphs (a) through (p) below, if the disclosing party is not in possession of the documents, the disclosing party must identify each such asset / debt that exists and disclose where information pertaining to each asset / debt may be found. If no such asset or debt exists, the disclosing party must specifically so state.
  - **Bank and Investment Statements.** Copies of all monthly or periodic bank, checking, savings, brokerage, investment, and security account statements in which any party has or had an interest for the period commencing six (6) months prior to the

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<sup>1</sup> Items with an asterisk only apply in cases of divorce, annulment, separate maintenance, and dissolution of domestic partnership actions.

service of the Summons and Complaint through the date of the disclosure;

- **Credit Card and Debt Statements.\*** Copies of credit card statements and debt statements for all parties for all months for the period commencing six (6) months prior to the service of the Summons and Complaint through the date of disclosure;
- **Real Property.\*** Copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price, and encumbrances of all real property owned by any party;
- **Property Debts.\*** Copies of all monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for the period commencing six (6) months prior to the service of the Summons and Complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information;
- **Loan Applications.\*** Copies of all loan applications that a party has signed within twelve (12) months prior to the service of the Summons and Complaint through the date of the disclosure;
- **Promissory Notes.\*** Copies of all promissory notes under which a party either owes money or is entitled to receive money;
- **Deposits.\*** Copies of all documents evidencing money held in escrow or by individuals or entities for the benefit of either party;
- **Receivables.\*** Copies of all documents evidencing loans or monies due to either party from individuals or entities;
- **Retirement and Other Assets.\*** Copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option, and annuity balances, including individual retirement accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing 6 months prior to the service of the Summons and Complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information;
- **Insurance.\*** Copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party

has or had an interest for the period commencing 6 months prior to the service of the Summons and Complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information;

- **Insurance Policies.** Copies of all policy statements and evidence of costs of premiums for health and life insurance policies covering either party or any child of the relationship;
  - **Values.\*** Copies of all documents that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for the period commencing 6 months prior to the service of the Summons and Complaint through the date of the disclosure, including any documents that the party may rely upon in placing a value on any item of real or personal property (i.e., appraisals, estimates, or official value guides);
  - **Tax Returns.** Copies of all personal and business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last 5 completed calendar or fiscal years with respect to any business or entity in which any party has or had an interest within the past 12 months;
  - **Proof of Income.** Proof of income of the party from all sources, specifically including W-2 forms, 1099 forms, and K-1 forms, for the past 2 completed calendar years, and year-to-date income information (paycheck stubs, etc.) for the period commencing 6 months prior to the service of the Summons and Complaint through the date of the disclosure; and
  - **Personalty.\*** A list of all items of personal property with an individual value exceeding \$200, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, coins, stamp collections, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item.
  - **Exhibits.** A copy of every other document or exhibit, including summaries of other evidence, which a party expects to offer as evidence at trial in any manner.
- **Continuing Duty to Supplement and Disclose.** Ensure that Client is aware and complies with this requirement.

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**5. Review documents and information provided by Client, confirm accuracy of FDF, prepare initial disclosures.**

- File GFDF and initial disclosures within 30 days of service of Complaint for Divorce.
- File DFDF and initial disclosures within 45 days of Request to Opt-In.
- Failure to file or serve FDF or to produce disclosures **shall** result in sanctions upon the party, the party's attorney, or both unless there is a finding of good cause for the failure or undue hardship if the penalty is applied OR, that other means fully compensate the nonviolating party for any losses, delays, and expenses suffered as a result of the violation.
- Failure to accurately report income and/or failure to include an asset or liability shall result in sanctions against the party, the party's attorney, or both, if the other party establishes that there is not good cause for the failure.
- There is a continuing duty to supplement and disclose. Must be done within 14 days of obtaining new information unless there is a calendared event scheduled in less than 14 days, then the information must be provided within 24 hours.
- Objections to the authenticity of documents must be made in writing within 21 days of receiving documents. Otherwise they shall be presumed authentic and shall not be excluded from evidence on grounds of authenticity and genuineness.

**6. Hold Early Case Conference and file Early Case Conference Report.**

- Within 45 days after service of the Answer, the parties and counsel must confer.
- Time to hold ECC may be extended up to 60 days by stipulation.
- Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than 90 days after service of the Answer.
- The filing of a 12(b)(2)-(4) motion tolls the time for holding an ECC until the motion is denied.
- Within 15 days of ECC but not later than 5 days before CMC, Joint Case Conference Report or Individual Case Conference Report must be filed with the court containing the following:
  - (a) A statement of jurisdiction;
  - (b) A brief description of the nature of the action and each claim for relief or defense;
  - (c) If custody is at issue in the case, a proposed custodial timeshare and a proposed holiday, special day, and vacation schedule;
  - (d) A written list of all documents provided at or as a result of the case conference together with any objection that the document is not authentic

or genuine. The failure to state any objection to the authenticity or genuineness of a document constitutes a waiver of such objection at a subsequent hearing or trial. For good cause the court may permit the withdrawal of a waiver and the assertion of an objection;

(e) A written list of all documents not provided under Section D of this rule together with the explanation as to why each document was not provided;

(f) For each issue in the case, a statement of what information and/or documents are needed along with a proposed plan and schedule of any additional discovery;

(g) A list of the property (including pets, vehicles, real estate, retirement accounts, pensions, etc.) that each litigant seeks to be awarded in this action;

(h) The list of witnesses exchanged in accordance with Sections D(5) and D(6) of this rule;

(i) Identification of each specific issue preventing immediate global resolution of the case along with a description of what action is necessary to resolve each issue identified;

(j) A litigation budget; and

(k) Proposed trial dates.

- If there was an opt-in to the Complex Divorce Litigation Procedures, a Complex Divorce Litigation Plan must be filed and served as part of the Early Case Conference Report. It shall additionally include any and all proposals concerning the time, manner, and place for needed discovery, proposed conferences and anticipated hearings with the court, and any other special arrangements focused on prompt settlement, trial, or resolution of the case.

#### **7. Attend Case Management Conference with your client present.**

- CMC must be held within 90 days of filing of the Answer.
- May be extended up to another 30 days (i.e., 120 days after filing of Answer) but may not be continued beyond 120 days absent “compelling and extraordinary circumstances.”
- Be prepared to address the following:
  - confer and consider the nature and basis of the claims and defenses, the possibilities for a prompt settlement or resolution of the case, and any other orders that should be entered setting the case for settlement conference and/or for trial,

- make or arrange for the disclosures required under this rule and to develop a discovery plan, which may include limitations on discovery or changes in the timing of discovery requirements required in this rule,
- recite stipulated terms on the record pursuant to local district court rules,
- enter interim orders sufficient to keep the peace and allow the case to progress; for matters that are claimed to be in contest, directions by the court as to which party will have which burden of proof,
- discuss the litigation budget and its funding, and
- enter a scheduling order.
- In the event a party fails to attend the CMC and the judge believes that some or any actions cannot be taken in the absence of the missing party, the court shall reschedule the CMC and make an appropriate award of fees imposed on the non-appearing party, measured by the cost of the attendance of the complying party.
- Within 30 days after the case management conference, the court shall enter an order that contains:
  - A brief description of the nature of the action;
  - The stipulations of the parties, if any;
  - Any interim orders made by the court including those pertaining to discovery and burdens of proof;
  - Any changes to the timelines of this rule as stipulated by the parties and/or ordered by the court;
  - A deadline on which discovery will close;
  - A deadline beyond which the parties shall be precluded from filing motions to amend the pleadings or to add parties unless by court order;
  - A deadline by which dispositive motions must be filed; and
  - Any other orders the court deems necessary during the pendency of the action, including interim custody, child support, maintenance, and NRS 125.040 orders.

**8. Propound discovery and/or request Authorizations for Discovery.**

- Authorization for discovery from a third party must be signed within ten days of presentation.
- Refusal to sign authorization without good cause **shall** result in granting of motion to compel and award of fees and costs to requesting party.

**9. Disclose witnesses, expert witnesses, and rebuttal witnesses.**

- Disclose witnesses and expert witnesses within 90 days of filing initial FDF.
- Disclose rebuttal witnesses within 21 days after the relevant disclosure from the other party.



- Expert reports are due 60 days before the close of discovery. Requirement to produce written report and/or due date is modifiable by the court.
- No witness may be called at trial unless disclosed at least 45 days before trial.

**10. Discovery Disputes**

- Heard by Discovery Commissioner
- Report and Recommendations to be filed and served.
- Objections must be filed within 5 judicial days of being served.
- Court may affirm, reverse, modify, set the matter for a hearing, or remand the matter to the commissioner for further action.

If you have questions, comments, or suggestions on improving this rule, feel free to contact:

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