

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE REPEAL OF NEVADA RULE OF
CIVIL PROCEDURE 68.

ADKT 151

ORDER REPEALING NEVADA RULE OF CIVIL PROCEDURE 68 AND ADOPTING NEW RULE 68

WHEREAS on September 25, 1991, a petition was filed to repeal NRCP 68, and;

WHEREAS on March 29, 1995, this court appointed a study committee to determine what changes should be made to clarify the provisions of NRCP 68, and

WHEREAS on March 25, 1998, the committee filed its final committee notes and a proposed revised Rule 68, now, therefore,

IT IS HEREBY ORDERED that Rule 68 of the Nevada Rules of Civil Procedure is repealed in its entirety.

IT IS FURTHER ORDERED that the revised Rule 68 proposed by the study committee shall be adopted and shall read as follows:

RULE 68. OFFERS OF JUDGMENT

(a) **The Offer.** At any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.

(b) **Apportioned Conditional Offers.** An apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed.

(c) **Joint Unapportioned Offers.**

(1) **Multiple Offerors.** A joint offer may be made by multiple offerors.

(2) **Offers to Multiple Defendants.** An offer made to multiple defendants will invoke the penalties of this rule only if (A) there is a single common theory of liability against all the offeree defendants, such as where the liability of some is entirely derivative of the others or where the liability of all is derivative of common acts by another, and (B) the same entity, person or group is authorized to decide whether to settle the claims against the offerees.

(3) **Offers to Multiple Plaintiffs.** An offer made to multiple plaintiffs will invoke the penalties of this rule only if (A) the damages claimed by all the offeree plaintiffs are solely derivative, such as that the damages claimed by some offerees are entirely derivative of an injury to the others or that the damages claimed by all offerees are derivative of an

injury to another, and (B) the same entity, person or group is authorized to decide whether to settle the claims of the offerees.

(d) Judgment Entered Upon Acceptance. If within 10 days after the service of the offer, the offeree serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service. The clerk shall enter judgment accordingly. The court shall allow costs in accordance with NRS 18.110 unless the terms of the offer preclude a separate award of costs. Any judgment entered pursuant to this section shall be expressly designated a compromise settlement. At its option, a defendant may within a reasonable time pay the amount of the offer and obtain a dismissal of the claim, rather than a judgment.

(e) Failure to Accept Offer. If the offer is not accepted within 10 days after service, it shall be considered rejected by the offeree and deemed withdrawn by the offeror. Evidence of the offer is not admissible except in a proceeding to determine costs and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. With offers to multiple offerees, each offeree may serve a separate acceptance of the apportioned offer, but if the offer is not accepted by all offerees, the action shall proceed as to all. Any offeree who fails to accept the offer may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer. If the offeree rejects an offer and fails to obtain a more favorable judgment,

(1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for the period after the service of the offer and before the judgment; and

(2) the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney's fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

(g) How Costs Are Considered. To invoke the penalties of this rule, the court must determine if the offeree failed to obtain a more favorable judgment. Where the offer provided that costs would be added by the court, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs. Where a defendant made an offer in a set amount which precluded a separate award of costs, the court must compare the amount of the offer together with the offeree's pre-offer taxable costs with the principal amount of the judgment.

(h) Offers After Determination of Liability. When the liability of one party to another has been determined by verdict, order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of

judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

IT IS HEREBY FURTHER ORDERED that this rule change shall be effective ninety (90) 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 order shall be conclusive evidence of the adoption and publication of the foregoing amended Rules.

DATED this 29th day of July, 1998.

BY THE COURT

CHARLES E. SPRINGER, *Chief Justice*

MIRIAM SHEARING
Associate Justice

ROBERT E. ROSE
Associate Justice

CLIFF YOUNG
Associate Justice

A. WILLIAM MAUPIN
Associate Justice

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