

SENATE BILL NO. 6—COMMITTEE ON JUDICIARY
(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 14, 2018

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to courts.
(BDR 1-497)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to courts; clarifying and codifying the existing authority of the Supreme Court to adopt rules governing the appointment, powers, functions and duties of commissioners, masters and referees in the district court; specifying the qualifications of such commissioners, masters and referees; providing the district court with exclusive jurisdiction over civil actions pleaded and certified as class actions; clarifying and codifying the existing authority of the Supreme Court to adopt rules governing offers of judgment made by parties to settle civil actions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Based on the constitutional separation of powers, the judiciary has inherent power to adopt rules of procedure to govern court proceedings in both civil and criminal cases. (*Whitlock v. Salmon*, 104 Nev. 24, 26 (1988); *State v. Second Jud. Dist. Court*, 116 Nev. 953, 959-63 (2000)) When the Legislature enacts a procedural statute relating to court practices, “the courts may acquiesce out of comity or courtesy; however, such statutes are merely legislative authorizations of independent rights already belonging to the judiciary.” (*Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1220 n.4 (2000)) Furthermore, when a procedural statute conflicts with a procedural rule, the judiciary attempts to harmonize the conflicting provisions whenever possible, but if there is an irreconcilable conflict, the rule generally takes precedence over the statute to the extent of the conflict, unless the rule abridges, enlarges or modifies any substantive



rights. (*State v. Connery*, 99 Nev. 342, 344-46 (1983); *Berkson v. LePome*, 126 Nev. 492, 498-500 (2010))

Under existing law, the Legislature has enacted statutes codifying the judiciary's inherent rule-making authority in civil cases. In particular, existing law provides that the Nevada Supreme Court may adopt rules regulating civil practice and procedure to simplify such practice and procedure and to promote the speedy determination of litigation upon its merits. Existing law also provides that the rules: (1) must not abridge, enlarge or modify any substantive right or conflict with the Nevada Constitution; and (2) must be published promptly upon adoption and take effect on a date specified by the Supreme Court which cannot be less than 60 days after entry of the order adopting the rules. (NRS 2.120)

Under the Nevada Constitution, the Legislature is authorized to provide by statute for referees in the district court. (Nev. Const. Art. 6, § 6) The judiciary also has the inherent power to appoint assistant judicial officers, such as commissioners, masters or referees, to perform subordinate judicial duties that assist judges in the exercise of their judicial functions. When commissioners, masters or referees are performing their subordinate judicial duties, their findings and recommendations are advisory only and not binding on the parties unless the district court independently reviews and adopts the findings and recommendations or the parties agree to be bound by them. The Legislature may, by statute, regulate the manner in which the district court appoints, utilizes, reviews and supervises commissioners, masters or referees, so long as the Legislature does not defeat or materially impair the court's exercise of its judicial functions. (*People v. Superior Ct.*, 23 P.3d 563, 575, 583-85 (Cal. 2001); 21 C.J.S. *Courts* §§ 310-12 (2018); 76 C.J.S. *References* §§ 1-3 (2018))

Section 1 of this bill clarifies and codifies the existing authority of the Nevada Supreme Court to adopt rules governing the appointment, powers, functions and duties of commissioners, masters and referees in the district court. **Section 1** also requires such commissioners, masters and referees to possess qualifications equivalent to or greater than district judges and allows them to exercise powers and perform functions and duties only as authorized by the rules adopted by the Supreme Court.

Under the Nevada Constitution, the district court has original jurisdiction in all cases that the Legislature excludes by statute from the original jurisdiction of the justice court. (Nev. Const. Art. 6, § 6) Under existing law, the Legislature has provided the justice court with limited original jurisdiction in certain civil actions where the amount claimed in relief does not exceed \$15,000, and the Legislature has excluded other civil actions from the original jurisdiction of the justice court. (NRS 4.370) Under existing court rules, representative parties of a class that has claims or defenses in common may plead a civil action as a class action that is brought on behalf of the class members, and the district court or the justice court in which the action is brought may certify the action as a class action if the representative parties establish that the action: (1) falls within the original jurisdiction of the court; and (2) meets certain requirements for certification as a class action. (N.R.C.P. 23; JCRCP 23; *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 845-61 (2005))

The Nevada Supreme Court has held that in determining whether the district court or the justice court has original jurisdiction over a civil action that is pleaded as a class action, the representative parties cannot aggregate the individual claims of the class members to determine the amount necessary for the action to fall within the original jurisdiction of the district court. Consequently, unless at least one of the individual claims of the class members satisfies the amount necessary for the action to fall within the original jurisdiction of the district court, the representative parties must bring the action in the justice court. (*Castillo v. United Fed. Credit Union*, 134 Nev. Adv. Op. 3, 409 P.3d 54, 57-58 (2018); see also *Exxon Mobil Corp. v.*



Allappattah Servs., Inc., 545 U.S. 546, 559-66 (2005) (holding that the federal district court may exercise jurisdiction over a class action under FRCP 23 if at least one of the individual claims of the class members satisfies the amount necessary for the action to fall within the original jurisdiction of the district court))

Section 2 of this bill amends existing law by excluding from the original jurisdiction of the justice court a civil action that is pleaded and certified as a class action, regardless of the amount claimed for each individual claim or for all the claims in the aggregate of the class members. **Section 2** also prohibits the justice court from certifying or adjudicating a civil action as a class action, thereby giving the district court exclusive jurisdiction over civil actions pleaded and certified as class actions.

Under existing law, Nevada follows the American rule that courts may not award attorney's fees to a party to a civil action unless authorized by a statute, rule or contract or by a judicially created exception to the American rule. (*Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90-91 (2006)) Historically in Nevada, under the authority of both statutes and rules, courts have been authorized to award certain costs, attorney's fees and interest to a party who makes a reasonable and timely offer of judgment to settle a civil action if the other party rejects the offer of judgment and fails to obtain a more favorable judgment in the action thereafter. (N.R.C.P. 68; JCRCP 68; *McCrary v. Bianco*, 122 Nev. 102, 106-07 (2006); *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 383 (2012); *Frazier v. Drake*, 131 Nev. Adv. Op. 64, 357 P.3d 365, 371-72 (Ct. App. 2015)) The purpose of the offer-of-judgment provisions is to encourage compromise and settlement, and thereby save time and money for the court system, the parties and the taxpayers, by rewarding the party who makes a reasonable and timely offer of judgment to settle the action and punishing the party who refuses to accept such an offer. (*Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 382 (1999); *Mendenhall v. Tassinari*, 133 Nev. Adv. Op. 78, 403 P.3d 364, 374 (2017))

Because the offer-of-judgment provisions were governed by both statutes and rules, the Nevada Supreme Court was required to harmonize any conflicting provisions, and the Legislature periodically amended the statutory provisions governing offers of judgment to provide conformity with the rules. (*Bowyer v. Taack*, 107 Nev. 625, 627-28 (1991), *superseded by statute and rule as recognized by McCrary v. Bianco*, 122 Nev. 102, 109 (2006); *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 81 n.5 (2014)) During the 2015 Legislative Session, the Legislature repealed the statutory provisions governing offers of judgment to eliminate any conflicts between the statutory provisions and the rules. (Chapter 442, Statutes of Nevada 2015, p. 2569 (repealing NRS 17.115); *Amezcuca v. Jordan Transp., Inc.*, No. 2:13-cv-01608-APG-CWH, 2017 WL 1293994, at *1 n.1 (D. Nev. Mar. 31, 2017))

Section 3 of this bill clarifies and codifies the existing authority of the Nevada Supreme Court to adopt rules governing offers of judgment in civil actions, including, without limitation, rules governing the award of costs, attorney's fees and interest for or against any party to a civil action after an offer of judgment has been made.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 3 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In accordance with the provisions of NRS 2.120, the Supreme Court may adopt rules governing the appointment, powers, functions and duties of one or more commissioners, masters or referees in the district court.

2. A commissioner, master or referee appointed pursuant to the rules adopted by the Supreme Court:

(a) Must possess qualifications that are equal to or greater than the qualifications required of a district judge as set forth in NRS 3.060.

(b) May exercise powers and perform functions and duties only as authorized by the rules adopted by the Supreme Court.

Sec. 2. NRS 4.370 is hereby amended to read as follows:

4.370 1. Except as otherwise provided in subsection 2, justice courts have jurisdiction of the following civil actions and proceedings and no others except as otherwise provided by specific statute:

(a) In actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed \$15,000.

(b) In actions for damages for injury to the person, or for taking, detaining or injuring personal property, or for injury to real property where no issue is raised by the verified answer of the defendant involving the title to or boundaries of the real property, if the damage claimed does not exceed \$15,000.

(c) Except as otherwise provided in paragraph (l), in actions for a fine, penalty or forfeiture not exceeding \$15,000, given by statute or the ordinance of a county, city or town, where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll or municipal fine.

(d) In actions upon bonds or undertakings conditioned for the payment of money, if the sum claimed does not exceed \$15,000, though the penalty may exceed that sum. Bail bonds and other undertakings posted in criminal matters may be forfeited regardless of amount.

(e) In actions to recover the possession of personal property, if the value of the property does not exceed \$15,000.

(f) To take and enter judgment on the confession of a defendant, when the amount confessed, exclusive of interest, does not exceed \$15,000.



(g) Of actions for the possession of lands and tenements where the relation of landlord and tenant exists, when damages claimed do not exceed \$15,000 or when no damages are claimed.

(h) Of actions when the possession of lands and tenements has been unlawfully or fraudulently obtained or withheld, when damages claimed do not exceed \$15,000 or when no damages are claimed.

(i) Of suits for the collection of taxes, where the amount of the tax sued for does not exceed \$15,000.

(j) Of actions for the enforcement of mechanics' liens, where the amount of the lien sought to be enforced, exclusive of interest, does not exceed \$15,000.

(k) Of actions for the enforcement of liens of owners of facilities for storage, where the amount of the lien sought to be enforced, exclusive of interest, does not exceed \$15,000.

(l) In actions for a fine imposed for a violation of NRS 484D.680.

(m) Except as otherwise provided in this paragraph, in any action for the issuance of a temporary or extended order for protection against domestic violence. A justice court does not have jurisdiction in an action for the issuance of a temporary or extended order for protection against domestic violence:

(1) In a county whose population is 100,000 or more and less than 700,000;

(2) In any township whose population is 100,000 or more located within a county whose population is 700,000 or more; or

(3) If a district court issues a written order to the justice court requiring that further proceedings relating to the action for the issuance of the order for protection be conducted before the district court.

(n) In an action for the issuance of a temporary or extended order for protection against harassment in the workplace pursuant to NRS 33.200 to 33.360, inclusive.

(o) In small claims actions under the provisions of chapter 73 of NRS.

(p) In actions to contest the validity of liens on mobile homes or manufactured homes.

(q) In any action pursuant to NRS 200.591 for the issuance of a protective order against a person alleged to be committing the crime of stalking, aggravated stalking or harassment.

(r) In any action pursuant to NRS 200.378 for the issuance of a protective order against a person alleged to have committed the crime of sexual assault.

(s) In actions transferred from the district court pursuant to NRS 3.221.



(t) In any action for the issuance of a temporary or extended order pursuant to NRS 33.400.

(u) In any action seeking an order pursuant to NRS 441A.195.

2. The jurisdiction conferred by this section does not extend to :

(a) A civil ~~actions~~ *action*, other than for forcible entry or detainer, in which the title of real property or mining claims or questions affecting the boundaries of land are involved.

(b) *A civil action pleaded and certified as a class action, regardless of the amount claimed for each individual claim or for all the claims in the aggregate of the potential members of the class, and justice courts shall not certify or adjudicate a civil action as a class action.*

3. Justice courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute. Upon approval of the district court, a justice court may transfer original jurisdiction of a misdemeanor to the district court for the purpose of assigning an offender to a program established pursuant to NRS 176A.250 or, if the justice court has not established a program pursuant to NRS 176A.280, to a program established pursuant to that section.

4. Except as otherwise provided in subsections 5 and 6, in criminal cases the jurisdiction of justices of the peace extends to the limits of their respective counties.

5. In the case of any arrest made by a member of the Nevada Highway Patrol, the jurisdiction of the justices of the peace extends to the limits of their respective counties and to the limits of all counties which have common boundaries with their respective counties.

6. Each justice court has jurisdiction of any violation of a regulation governing vehicular traffic on an airport within the township in which the court is established.

Sec. 3. Chapter 17 of NRS is hereby amended by adding thereto a new section to read as follows:

In accordance with the provisions of NRS 2.120, the Supreme Court may adopt rules governing an offer of judgment in a civil action, including, without limitation, rules governing the award of costs, attorney's fees and interest for or against any party to a civil action after an offer of judgment has been made.

Sec. 4. The amendatory provisions of sections 1 and 3 of this act are a legislative pronouncement of already existing law and are intended to clarify and codify rather than change such existing law.

