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Civil Procedure; Voir Dire

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10. Ch. 659 §10 (amending NRS 266.565(1)).
11. Id. §9 (amending NRS 189.050).
12. Id. §10 (amending NRS 266.565).
13. 1973 Nev. Stats. ch. 141 §1, at 199 (NRS 266.555(3)).
14. Ch. 676 §7 (amending NRS 266.555(3)).
15. NCL §§8924, 8927 (NRS 18.020, 18.050).
16. Ch. 676 §§3, 4 (amending NRS 18.020, 18.050). Chapter 676 §3 apparently amended language of NRS 18.020 without indicating the change with brackets or italics as is usually done. Prior to Chapter 676, NRS 18.020 read "costs shall be allowed of course to the prevailing party...in the following cases... 3. In an action for recovery of money or damages where the plaintiff recovers $300 or over" (emphasis added) (1977 Nev. Stats. ch. 401 §5, at 774). However, Chapter 676, from its initial printing, with no italicized or bracketed identification, changed the above language to "... 3. ... the plaintiff seeks to recover [$300] $750 or over" (emphasis added) (1979 Nev. Stats. Ch. 676 §3). Thus it appears that costs must be awarded to the prevailing party whenever the plaintiff claims $750 or over. Note, however that NRS 18.050 continues to speak in terms of apportioning costs in other actions depending on plaintiff's actual recovery. (See 1979 Nev. Stats. Ch. 676 §4).
17. Ch. 676 §4 (amending NRS 18.050).
18. NCL §8927 (NRS 18.050).
19. Ch. 676 §9.
20. See Ch. 676 §2, amending other provisions of NRS 4.370(1).

CIVIL PROCEDURE; VOIR DIRE

Amends NRS 16.030, 175.031
AB 257 (Committee on Judiciary); STATS 1979, Ch 467
AB 258 (Committee on Judiciary); STATS 1979, Ch 149

Criminal Procedure

Chapter 149 amends NRS 175.031 to provide that in criminal cases the court shall conduct the initial examination of prospective jurors. The attorneys "are entitled to supplement the examination by such further inquiry as the court deems

proper," but the supplemental examination must not be "unreasonably restricted."[1] Previously, in criminal cases the court conducted voir dire examination; the court permitted its examination to be supplemented as it deemed proper by either submitting to the jury additional questions given to the court by the parties or their attorneys or by permitting the attorneys to further examine the prospective jurors.[2] Due to the broad language of Chapter 149, this procedure may still be allowed.[3]

Prior law was similar to Federal Rule of Criminal Procedure 24(a).[4] Under that rule a court's discretion as to the manner and scope of examination is accorded considerable latitude on appellate review.[5] A defendant is not considered to be deprived of constitutional rights so long as the examination is conducted in a fair and judicious manner.[6]

Civil Procedure

Chapter 467 adds to NRS 16.030, making civil voir dire similar to criminal voir dire.[7] In civil cases, the judge shall conduct the initial examination and the attorneys are entitled to conduct supplemental examinations which the court must not unreasonably restrict.[8]

Chapter 467 may create a conflict because the conduct of civil voir dire is already provided for by Rule 47(a) of the Nevada Rules of Civil Procedure. N.C.R.P. 47(a) is similar to Rule 47(a) of the Federal Rules of Civil Procedure. Both are interpreted to give the judge wide discretion as to whether voir dire should be conducted by the judge or the attorneys.[9] In addition, the Nevada legislature has granted to the state supreme court the power to regulate civil procedure[10] and in Lindauer v. Allen[11] the court held that the legislature cannot affect the court's power to regulate civil procedure until the statute granting the power is amended.[12] In Lindauer and later cases, a Nevada Rule of Civil Procedure was applied despite the conflicting legislation.[13] Therefore, since Chapter 467 amends NRS 16.030 by adding a provision which conflicts with N.R.C.P. 47(a), it may fail to limit the court's discretion in the conduct of civil voir dire.

According to N.C.R.P. 81(a), the Nevada Rules of Civil Procedure do not apply to special stautory proceedings when there is a conflict.[14] However, since Chapter 467 enacts a general law relating to all civil actions, and not to a special proceeding in a specific subject matter, it appears not to be a special statutory procedure under N.R.C.P. 81(a).

FOOTNOTES

1. 1979 Nev. Stats. ch. 149 (hereinafter "Ch. 149") §1 (amending NRS 175.031).
2. 1971 Nev. Stats. ch. 186 §1, at 246 (NRS 175.031).
3. See also, CAL. PENAL CODE §1078 (West). As amended, NRS 175.031 is similar to CAL. PENAL CODE §1078 (West). In People v. Crowe, 8 Cal.3d 815, 106 Cal.Rptr. 369, 506 P.2d 193 (1973), the California Supreme Court, in analyzing CAL. PENAL CODE §1078, held proper a procedure of voir dire in which the court examined prospective jurors and allowed the attorneys to submit additional questions which the court then propounded to the jury. 8 Cal.3d at 829, 106 Cal.Rptr. at 378-379, 506 P.2d at 202-203.
4. Compare 1971 Nev. Stats. ch. 186 §1, at 246 (NRS 175.031) with FED. R. CRIM. PROC. 24(a).
5. See U.S. v. Crawford, 444 F.2d 1404, 1405 (10th Cir. 1971); Spillers v. State, 84 Nev. 23, 27, 436 P.2d 18, 20 (1968).
6. Hamer v. U.S., 259 F.2d 274, 280 (9th Cir., 1958).
7. Compare 1979 Nev. Stats. ch. 467 (hereinafter "Ch. 467") §1 (adding NRS 16.030(5)) with Ch. 149 §1 (amending NRS 175.031).
8. Ch. 467 §1 (adding NRS 16.030(5)).
9. See Kiernan v. Van Schaik, 347 F.2d 775, 778 (3rd Cir., 1965); Frame v. Grisewood, 81 Nev. 114, 121-122, 399 P.2d 450, 454 (1965).
10. NRS 2.120(2).
11. 85 Nev. 430, 456 P.2d 851 (1969).
12. Id. at 435, 456 P.2d at 854 (applies NEV. CONST. art. 3 §1 to find that the legislature unconstitutionally interfered with the judicial function).
13. Id.; Volpert v. Papagna, 85 Nev. 437, 440, 456 P.2d 848, 849 (1969); P.T.P., Inc. v. Casey, 85 Nev. 562, 563, 459 P.2d 770, 771 (1969).
14. See Harley v. Board of Public Instruction, 103 So.2d 111, 112 (Sup. Ct. Fla. 1958) (finding the Duval County Teacher Tenure Act to be a "special statutory proceeding" under a rule setting forth exceptions to application of the Florida Rules of Civil Procedure, because the act is a "new, specific and complete remedy and fully covers the subject matter of teacher, tenure ...", pointing out

that a special grant of power or a special act of the legislature takes precedence over a general grant or law on the same subject). See generally 1 C.J.S. Actions §§1 at 958 and 42 at 1093 (1936) (discussing "special proceedings").

CIVIL PROCEDURE; PROVING DOMICILE

Adds to NRS Chapter 41
SB 355 (Ashworth); STATS 1979, Ch 239

Chapter 239 provides that a person may evidence his intended domicile by filing a sworn statement in the local district court.[1] Apparently, the sworn statement may also evidence a person's residence where "residence" has been interpreted to mean "domicile."[2]

Under existing law, a person's place of residence coupled with his intent to make that residence his permanent home, establishes his domicile.[3] Both a person's statements[4] and conduct[5] that manifest his intent are considered in determining his intended place of residence.

A Nevada domiciliary, with or without an out of state residence, may evidence his domicile in Nevada by filing a sworn statement that he intends his Nevada residence to be his permanent home.[6] In addition, upon making the statement, he must declare that he is currently a bona fide resident of Nevada, listing all places where he had ever maintained a residence.[7]

A person not domiciled in Nevada, but whose acts or Nevada residence might indicate Nevada to be his intended domicile, may file a sworn statement declaring his intent to remain permanently domiciled elsewhere.[8] This statement must identify his place of domicile, his intent to remain domiciled out of the state, and any out of state residence or the fact that he has no Nevada residence.[9]

Statements made under Chapter 239 are to be sworn to and filed with the clerk in the local district court.[10]

Chapter 239 is not intended to change existing law.[11] Apparently, filing a record of intent to prove domicile is not exclusive proof of domicile.[12] Courts may draw their conclusions from all of the circumstance in each case.[13] Therefore, it appears that a statement made under the provisions of Chapter 239 only establishes some evidence of the declarant's intended domicile. It is well settled that both