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Civil Procedure; Service and Parties in Suits Against Political Subdivisions

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FOOTNOTES

1. See Seavy v. IXL Laundry Co., 60 Nev. 324, 330, 108 P.2d 853, 855, (1941) holding that the filing of a certificate of dissolution does not completely dissolve the corporation and, under the winding-up statute (then NCL §1664, now NRS 78.585), the corporation may still be sued.
2. 1979 Nev. Stats. ch. 344 (hereinafter "Ch. 344") §1 (adding NRS 78.750(2)).
3. See Mitchell v. Second Judicial District court, 82 Nev. 377, 381, 418 P.2d 994, 997 (1966) (holding service by registered mail to nonresident motorist and to department of motor vehicles was adequate although mail to motorist was returned undelivered); National Grocery Co. v. Kotzebue Fur & Trading Co., 100 P.2d 408, 412 (Wash. Sup. Ct. 1940) (under statute, service upon Secretary of State is valid where corporation fails to maintain list of officers with the Secretary of State).
4. Ch. 344 §1 (amending NRS 78.750) ("service of process ... may be made ..." (emphasis added)).
5. Ch. 344 §1 (amending and renumbering NRS 78.750(1)).

CIVIL PROCEDURE; SERVICE AND PARTIES IN SUITS AGAINST POLITICAL SUBDIVISIONS

Adds to NRS Chapter 12

SB 114 (Committee on Judiciary); STATS 1979, Ch 279

(Effective July 1, 1979)

Chapter 279 adds a section to NRS Chapter 12 on parties to permit suit against a political subdivision, public corporation, special district, or other state or local government agency in the name of the entity alone, without naming individual members of the entity's governing body.¹ Chapter 279 also allows service of process on the clerk or secretary of the entity in addition to any other method already provided by statute or rule of court.²

The latter provision of Chapter 279 purporting to provide an alternative method for service of process is in conflict with NRCP 4(d)(5) requiring service of

process in actions against counties, cities and towns to be upon the chairman of the board of commissioners, president of the council or trustees, mayor of the city, or other head of legislative department of the entity. In Lindauer v. Allen³ the Nevada Supreme Court held that conflicts between legislative rules on civil procedure and the Nevada Rule of Civil Procedure adopted by the Court must be resolved in favor of the Rules of the Court to preserve the constitutional separation of legislative and judicial powers. Under NRCP 81(a) a rule of the legislature prevails over a rule of the court if it is a "special statutory proceeding," however, the provision for service under Chapter 279 would not fit this exception since it purports to have general rather than specially created and limited application.⁴

Similarly, NRCP 4(d)(1) specifically requires that service upon a corporation formed under the laws of the state be made upon the president or other head of the corporation, the secretary, cashier, managing agent or resident agent thereof. Since there does not appear to be any distinction between a public nonmunicipal corporation and a private corporation for purpose of service under NRCP 4(d)(1)⁵, it follows that Chapter 279 is preempted to the extent it purports to allow service of process upon the clerk of a public corporation. Service on the secretary of the corporation is already provided for under NRCP 4(d)(1), so there is no conflict in that respect.

To the extent that the political subdivision, special district or governmental agency being sued is not a county, city, town, or corporation, service upon the clerk or secretary under Chapter 279 would be sufficient since NRCP 4(d)(6) provides for service on an agent authorized by law in all cases when service is not otherwise specifically provided for in NRCP 4(d).

Darlynne Cassaday

FOOTNOTES

1. 1979 Nev. Stats. ch. 279 §1 (adding to NRS Ch. 12).
2. Id.
3. 85 Nev. 430, 435, 456 P.2d 851, 854 (1969) (applies NEV. CONST. art. 3 §1, providing for separation of legislative and judicial powers, to interpret NRS 2.120(2), the statute granting the Supreme Court the power to regulate civil practice).

4. See Harley v. Board of Public Instruction, 103 So.2d 111, 112 (Fla. Sup. Ct. 1958) (finding an act to be a "special statutory proceeding," and therefore an exception to the Florida Rules of Civil Procedure, because the act is a "new, specific and complete remedy" which "fully covers the subject matter of ... [teacher tenure] ...). See generally C.J.S. Special Proceedings § 958, 1093-96.
5. See Gabrielson v. State 408 P.2d 1020, 1022-23 (Wash. Sup. Ct. 1965). Cf., City of Los Angeles v. Eighth Judicial District of Nevada, 58 Nev. 1, 13, 67 P.2d 1019, 1023 (1937) (dicta) ("the word 'corporation' is never construed to include municipal corporation"). See also In re Scott, 53 Nev. 24, 292 P.291 (1930).

CRIMINAL PROCEDURE; APPOINTMENT OF INTERPRETERS

Adds to NRS Chapters 50, 213, 233B, 391, 396, 422, 463

Amends NRS 50.045, 50.050, 171.1536, 213.010, 213.107, 391.311, 615.200

Repeals NRS 171.1535

SB 143 (Committee on Judiciary); STATS 1979, Ch 382

Chapter 382 requires that interpreters be appointed at public expense for handicapped persons in various judicial and administrative proceedings. A "handicapped person" is a person who cannot readily communicate because of a physical impairment or disability.¹ An "interpreter" is a person who can communicate with and translate for a handicapped person.

Interpreters must be appointed at public expense for a handicapped person who is: (a) a party or a witness in a criminal proceeding;³ (b) arrested;⁴ (c) an applicant or a witness in a clemency hearing;⁵ (d) a prisoner, parolee, or witness at a parole hearing;⁶ (e) a witness at a contested administrative proceeding;⁷ (f) a school district employee or a witness at a demotion, dismissal, or reemployment hearing;⁸ (g) a member of the university community or a witness at a university disciplinary hearing;⁹ (h) the subject of a welfare hearing or a witness at the hearing;¹⁰ or (i) the subject of a hearing on licensing and control of gaming, or a witness at the hearing.¹¹ Interpreters appointed in other civil proceedings¹² shall not be charged as a public expense, but may be taxed as costs.¹³

The person presiding over the proceeding must appoint the interpreter.¹⁴ Whenever possible, the handicapped person is entitled to choose or approve the interpreter.¹⁵ Unless otherwise agreed by the parties, the interpreter must not be