



THINKING OUTSIDE THE BOX

ENENSTEIN
PHAM & GLASS

EP&G NEVADA LAW PRIMER

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Robert has particular experience handling partnership disputes. He also participates in all aspects of real estate transactions and has experience handling substantial family law matters.

Robert is admitted to practice in Nevada, California, and Oregon and is a graduate of UCLA School of Law.

FAILING TO BEAT A NEVADA OFFER OF JUDGMENT WILL RESULT IN AN ATTORNEY'S FEE AWARD AGAINST YOU

Nevada offers of judgment are **exponentially** more powerful than those in California.

Put simply, an offer of judgment is an offer to pay a certain sum to end a lawsuit. Offers of judgment are designed, in theory, to encourage early settlement by penalizing a party who fails to beat an offer of judgment at trial: "The purpose of [offers of judgment] is to encourage settlement of lawsuits before trial." *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995 (1993); *Prince v. Invensure Ins. Brokers, Inc.* (2018) Cal.App.5th 614, 621 (same).

Both Nevada and California law provide for pre-trial offers of judgment. In California, Code of Civil Procedure § 998 controls:

"If an offer . . . is not accepted and the [offeree] fails to obtain a more favorable judgment . . . the [offeree] shall not recover [its] postoffer costs and shall pay the defendant's costs from the time of the offer [and] the court . . . may require the [offeree] to pay

PRACTICE AREAS

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... costs of the services of expert witnesses” (Emphasis added.)

Thus, if you fail to beat an offer of judgment (known as a “998”) in California then: (i) you cannot recover costs, (ii) you must pay defendant’s costs and, maybe, (iii) the Court will require you to pay defendant’s expert fees.

Sounds great, but paying costs and, maybe, expert fees will not drive a settlement in a large dispute. Nevada, on the other hand, takes the policy of encouraging settlements much more seriously. Rule 68 of the Nevada Rules of Civil Procedure governs and provides:

“If the offeree rejects an offer and fails to obtain a more favorable judgment . . . 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 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 . . . actually incurred . . . from the time of the offer.” (Emphasis added.)

Thus, if you fail to beat a Nevada offer of judgment then: (i) you can’t recover costs or fees, (ii) you can’t recover interest, (iii) you must pay defendant’s costs, and, most importantly, (iv) **you must pay defendant’s attorneys’ fees**, incurred after the offer.

The potential for an award of attorney’s fees is a monumental game-changer. Attorney’s fees in major disputes may amount to hundreds of thousands of dollars, or much more. By presenting a Rule 68 offer, a Nevada litigant can alter the approach to a lawsuit and gain a critical advantage

(particularly if the litigant was on the wrong side of a one-sided contractual attorney’s fees provision)

There are, of course, nuances and limitations to Rule 68 that must be carefully navigated. Consult a Nevada practitioner to guide you.

ABOUT THE FIRM

Enenstein Pham & Glass is a result-oriented law firm that implements a creative approach to attain its clients’ objectives. Thinking outside the box brings results to otherwise difficult or hopeless situations. Whether at trial or in the boardroom, the Firm employs a multidisciplinary approach to complex situations to provide an effective resolution.

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