

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION
OF RULE 16 OF THE NEVADA RULES
OF APPELLATE PROCEDURE
GOVERNING SETTLEMENT
CONFERENCES IN CIVIL APPEALS.

ADKT No. 244

FILED

MAR 10 2006

ORDER ADOPTING CODE OF CONDUCT FOR
SUPREME COURT SETTLEMENT JUDGES

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

WHEREAS, this court adopted Rule 16 of the Nevada Rules of Appellate Procedure on December 27, 1996, and implemented the settlement conference program in 1997;

WHEREAS, although the program has been successful in meeting the court's original goals, an evaluation was needed to ensure the program meets the court's current goals;

WHEREAS, Nancy Neal Yeend of the John Paul Jones Group conducted a comprehensive review of the program and submitted a report with 32 recommendations;

WHEREAS, the report was submitted to the Settlement Judges Core Committee for comment;

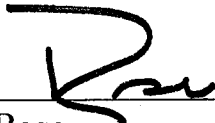
WHEREAS, the court also solicited written comments from the settlement judges and the public at large and, on May 5, 2005, held a public hearing to receive oral comment on the report;

WHEREAS, the court entered an order on November 18, 2005, regarding those 32 recommendations; and

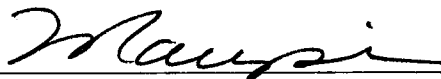
WHEREAS, in that order the court, among other things, accepted Recommendation 25 to adopt a Code of Conduct for Settlement Judges;


IT IS HEREBY ORDERED that this court adopts the Code of Conduct for Supreme Court Settlement Judges attached to this order and identified as Exhibit A.

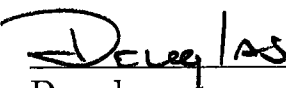
It is so ORDERED.


_____, C.J.
Rose

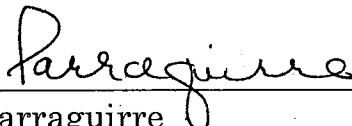

_____, J.
Becker


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: All Settlement Judges
Nancy Neal Yeend

Code of Conduct for Supreme Court Settlement Judges

Introduction

The Supreme Court Settlement Conference Program is a mediation program that was implemented to assist parties to resolve their dispute on their own terms without the expense and uncertainty of going through the appellate process. The program is administered according to the procedures and requirements set forth in Rule 16 of the Nevada Rules of Appellate Procedure. This Code of Conduct is intended to serve as a fundamental ethical guideline for persons appointed as Supreme Court Settlement Judges who act as mediators for the Supreme Court. The Code serves three primary goals: to guide the conduct of Settlement Judges; to inform the mediating parties; and to promote public confidence in the court's settlement conference program as a process for resolving disputes.

Mediation is a process in which an impartial third party (the Settlement Judge) facilitates communication and negotiation and promotes voluntary decision-making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

The use of the term "shall" throughout the Code indicates that the settlement judge must follow the practice described. The use of the term "should" indicates that the practice described in the Code is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

Various aspects of a mediation, including some matters covered by this Code, may also be affected by applicable law, court rules, regulations, other applicable professional rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, this Code. However, a settlement judge should make every effort to comply with the spirit and intent of this Code in resolving such conflicts.

STANDARD I. SELF-DETERMINATION

- A. A settlement judge shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
 - 1. Although party self-determination for process design is a fundamental principle of mediation practice, a settlement judge may need to balance such party self-determination with a settlement judge's duty to conduct a quality process in accordance with this Code.
 - 2. A settlement judge cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a settlement judge should make the parties aware of the importance of consulting other professionals to help them make informed choices.
- B. A settlement judge shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, or outside pressures from court personnel, the program administrator, the media or others.

STANDARD II. IMPARTIALITY

- A. A settlement judge shall decline a case if the settlement judge cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A settlement judge shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. A settlement judge should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

2. A settlement judge should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the settlement judge's actual or perceived impartiality.
- C. If at any time the settlement judge is unable to conduct a mediation in an impartial manner, the settlement judge shall request the program administrator to reassign the case to another settlement judge.

STANDARD III. CONFLICTS OF INTEREST

- A. A settlement judge shall avoid a conflict of interest or the appearance of a conflict of interest. A conflict of interest can arise from involvement by a settlement judge with the subject matter of the dispute or from any relationship between a settlement judge and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a settlement judge's impartiality.
- B. A settlement judge shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a settlement judge. A settlement judge's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on circumstances or context.
- C. If the nature of the conflict is such that the settlement judge is unable to disclose it, the settlement judge shall request the program administrator to reassign the case.
- D. A settlement judge shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the settlement judge and could reasonably be seen as raising a question about the settlement judge's impartiality. After disclosure, if all parties agree, the settlement judge may proceed with the mediation.
- E. If a settlement judge learns any fact after accepting a case that raises a question with respect to that settlement judge's service creating a potential or actual conflict of interest, the settlement

judge shall disclose it as quickly as practicable. After disclosure, if all parties agree, the settlement judge may proceed with the mediation.

- F. If a settlement judge's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the settlement judge shall decline to proceed with the case regardless of the expressed desire or agreement of the parties to the contrary and request the program administrator to assign the case to another settlement judge.

- G. After mediation, a settlement judge shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a settlement judge develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the settlement judge should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

STANDARD IV. COMPETENCE

- A. A settlement judge shall mediate only when the settlement judge has the necessary competence to satisfy the reasonable expectations of the parties.
 - 1. A settlement judge shall attend educational programs and related activities to maintain and enhance the settlement judge's knowledge and skills related to mediation, and comply with any mandatory continuing education requirements set by the Supreme Court.

 - 2. All settlement judges' professional biographies will be on file with the Supreme Court and made available to parties upon request. Settlement judges have a duty to ensure their biography is current and accurate.

- B. If a settlement judge, during the course of a mediation, determines that the settlement judge cannot conduct the mediation competently, the settlement judge shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, requesting the program administrator to assign the case to another settlement judge.

STANDARD V. CONFIDENTIALITY

- A. A settlement judge shall maintain the confidentiality of all information obtained by the settlement judge in mediation, unless otherwise agreed to by the parties or required by applicable law.

- 1. A settlement judge shall not communicate to any non-participant information about how the parties acted in the mediation. A settlement judge may report whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.

- 2. If a settlement judge participates in teaching, research or evaluation of mediation, the settlement judge shall protect the anonymity of the parties and shall abide by their reasonable expectations regarding confidentiality.

- B. A settlement judge who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.
- C. A settlement judge shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.

STANDARD VI. QUALITY OF THE PROCESS

- A. A settlement judge shall conduct a mediation in accordance with this Code and any applicable Supreme Court Rule or Procedure and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation,

procedural fairness, party competency and mutual respect among all participants.

1. A settlement judge should agree to mediate only when the settlement judge is prepared to commit the attention essential to an effective mediation.
 2. A settlement judge should promote honesty and candor between and among all participants, and a settlement judge shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
 3. The role of a settlement judge as a mediator differs substantially from other professional roles. Mixing the role of a settlement judge and the role of another profession is problematic and thus, a settlement judge should distinguish between the roles. A settlement judge may provide information that the settlement judge is qualified by training or experience to provide, only if the settlement judge can do so consistent with this Code.
 4. If a mediation is being used to further criminal conduct, a settlement judge shall take appropriate steps including those required by any applicable statutes, rules or regulations and, if necessary, postpone the mediation, or recommend that the case be removed from the program.
 5. If a participant appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the settlement judge should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the participant's capacity to comprehend, participate and exercise self-determination.
- B. If a settlement judge becomes aware of domestic abuse or violence among the parties, the settlement judge shall take appropriate steps including, if necessary, postponing the mediation, or recommending to the court that the case be removed from the program.

- C. If a settlement judge believes that participant conduct, including that of the settlement judge, jeopardizes conducting a mediation consistent with this Code, the settlement judge shall take appropriate steps including, if necessary, postponing the mediation, requesting the program administrator to assign the case to another settlement judge, or recommending to the court that the case be removed from the program.