Proposed Revisions to Rules Governing ADR – submitted by Judge Riggs, through Judge Steinheimer

Rules Governing ADR
General Provisions

Rule 1. Definitions. As used in these rules:

(a) "Arbitration" means a process whereby a neutral third person, called an arbitrator, considers the facts and arguments presented by the parties and renders a decision, which may be binding or nonbinding as provided in these rules.

(b) "Mediation" means a process whereby a neutral third person, called a mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(c) "Settlement conference" is a process whereby, with the approval of the district judge to whom the case is assigned, a district court judge not assigned to the particular case, senior judge, special master, referee or other neutral third person, conducts, in the presence of the parties and their attorneys and person or persons with authority to resolve the matter, a conference for the purpose of facilitating settlement of the case.

(d) "Nevada Arbitration Rules" may be cited as NAR.

(e) "Nevada Mediation Rules" may be cited as NMR.

Rule 2. Forms of court annexed alternative dispute resolution.

(a) For certain civil cases commenced in judicial districts that include a county whose population is 100,000 or more, there shall be made available the following forms of court annexed alternative dispute resolution:

(1) Arbitration, pursuant to Subpart B of these rules;

(2) Mediation, pursuant to Subpart C of these rules;

(3) Settlement conference, as provided herein; and

(4) Such other alternative dispute resolution mechanisms contemplated by NRS 38.250 as may from time to time be promulgated.

(b) Judicial districts having a lesser population may adopt local rules implementing all or part of these forms of alternative dispute resolution.

(c) Each district may appoint an alternative dispute resolution commissioner to serve at the pleasure of the court. The alternative dispute resolution commissioner (hereafter the commissioner) may be an arbitration commissioner, discovery commissioner, short trial commissioner, other special master, or any qualified and licensed Nevada attorney appointed by the court. The appointment shall be made in accordance with local rules. The commissioner so appointed shall have the responsibilities and powers conferred by these Rules Governing Alternative Dispute Resolution and any local rules. **Alternatively, a judge of the district court may act upon designation as the court's arbitration judge.**

Nevada Arbitration Rules

Rule 3. Matters subject to arbitration.

(a) All civil cases commenced in the district courts, unless otherwise exempted by NAR 5, are subject to the program.

(b) Any civil case, regardless of the amount in controversy or relief sought, may be submitted to the program upon the agreement of all parties and the approval of the district judge to whom the case is assigned.

(c) While a case is in the program, the parties may stipulate, with the approval of the district judge to whom the case is assigned**,** or in districts with an arbitration judge, to the arbitration judge, or the court may order that a settlement conference, mediation proceeding, or other appropriate settlement technique be conducted by another district judge, a senior judge, or a special master. The settlement procedure conducted pursuant to this subdivision shall not extend the timetable set forth in these rules for resolving cases in the program.

(d) Parties to cases submitted or ordered to the program may agree at any time to be bound by any arbitration ruling or award. If the parties agree to be bound by the decision of the arbitrator, the procedures set forth in these rules governing trials de novo will not apply to the case.

Rule 4. Relationship to district court jurisdiction and rules.

(a) Cases filed in the district court shall remain under the jurisdiction of that court for all phases of the proceedings, including arbitration.

(b) The district court having jurisdiction over a case has the authority to act on or interpret these rules.

(c) Before a case is submitted or ordered to the program, and after a request for trial de novo is filed, and except as hereinafter stated, all applicable rules of the district court, the Nevada Short Trial Rules, and the Nevada Rules of Civil Procedure apply. After a case is submitted or ordered to the program, and before a request for trial de novo is filed, or until the case is removed from the program, these rules apply. Except as stated elsewhere herein, once a case is accepted or remanded into the program, the requirements of NRCP 16.1 do not apply.

(d) The calculation of time and the requirements of service of pleadings and documents under these rules are the same as under the NRCP. The commissioner or the commissioner's designee or in districts with an arbitration judge, the arbitration judge or their designee, shall serve all rulings of the commissioner on any matter allowed by NRCP 5(b).

(e) During the pendency of arbitration proceedings conducted pursuant to these rules, no motion may be filed in the district court by any party, except motions that are dispositive of the action, or any portion thereof, motions to amend, consolidate, withdraw, intervene, or motions made pursuant to NAR 3(c), requesting a settlement conference, mediation proceeding or other appropriate settlement technique. Any of the foregoing motions must be filed no later than 45 days prior to the arbitration hearing, or said motion may be foreclosed by the judge and/or sanctions may be imposed. A copy of all motions and orders resulting therefrom shall be served upon the arbitrator. All discovery, pre-hearing procedural and evidentiary motions are to be heard by the arbitrator. Pursuant to NAR 17(b), any application for attorney's fees, costs, and interest must be submitted to and heard by the arbitrator after entry of the arbitration award.

(f) Once a case is submitted or ordered to the program all parties subsequently joined in the action shall be parties to the arbitration unless dismissed by the district judge to whom the case is originally assigned.

(g) Except as otherwise provided in these rules, all disputed issues arising under these rules must be resolved in the manner set forth in NAR 8(b).

Rule 5. Cases exemption from arbitration.

(a) Automatic exemption.

(1) All civil cases commenced in the district courts in the following categories are exempted from arbitration and shall not be required to file a request for exemption if the initial pleading specifically designates the category of claimed exemption in the caption of the initial pleading:

(A) class actions;
(B) appeals from courts of limited jurisdiction;
(C) probate actions;
(D) divorce and other domestic relations actions;
(E) actions seeking judicial review of administrative decisions;
(F) actions concerning title to real estate;
(G) actions for declaratory relief;
(H) actions for medical or dental malpractice governed by the provisions of NRS 41A.003 to 41A.120, inclusive;
(I) actions seeking equitable or extraordinary relief;
(J) business court actions;
(K) construction defect actions; and
(L) actions in which any of the parties is incarcerated.

A party that fails to specifically identify the category of claimed exemption in the caption pursuant to this Rule NAR 5(a) may nevertheless file a request for exemption pursuant to NAR 5(b).

(2) In cases where any party's claim qualifies for exemption, every other party's claim, though suitable for arbitration, shall automatically be exempted and be heard in the district court action.

(3) Any civil case, regardless of the amount in controversy or relief sought, may be exempted from the program by mutual consent of the parties to participation in the Mediation Program as allowed by NMR 2 or the Short Trial Program as allowed by NSTR 4(b)(1).

4) In any civil case where the district court has determined on a dispositive motion that plaintiff's punitive damage claim(s) may be heard by the trier of fact, regardless of the amount in controversy or relief sought, the district court's order on the dispositive motion shall automatically exempt the matter from arbitration.

(b) Permissive exemption.

(1) All civil cases commenced in the district courts making any of the following categories of claims may be exempted from the program upon leave of the commissioner, or in districts with an arbitration judge, of the arbitration judge:

~~(A) any action~~ presenting significant issues of public policy, including claims for punitive damages;

(B) any actions that present unusual circumstances that constitute good cause for removal from the program; and

(C) any action where, assuming a jury finds in favor of plaintiff, the probable jury verdict would exceed $50,000 per Plaintiff, exclusive of fees, costs, and interest.

(2) If a party believes that a case described in NAR 5(b) should not be in the program, that party must file with the clerk of court a request to exempt the case from the program and serve the request on any party who has appeared in the action. The request for exemption must be filed within 21 days after the filing of an answer by the first answering defendant, and the party requesting the exemption must certify that his or her case is included in one the categories of exempt cases listed in NAR 5(b). The parties may file a joint request for exemption.

(3) The request for exemption must also include a summary of facts including any evidentiary support necessary to illustrate the party's contentions. For good cause shown, an appropriate case may be removed from the program upon the filing of an untimely request for exemption; however, such a filing may subject the requesting party to sanctions by the commissioner or the arbitration judge.

(c) Any opposition to a request for exemption from arbitration must be filed with the clerk of court and served upon all appearing parties within 7 days of service of the request for exemption.

(d) Where requests for exemptions from arbitration are filed, the commissioner or the arbitration judge shall review the contentions, facts and evidence available and determine whether an exemption is warranted. The commissioner or the arbitration judge may require that a party submit additional facts supporting the party's contentions. Any objection(s) to the commissioner's or the arbitration judge's decision must be filed with the clerk of court who shall then notify the district judge to whom the case is assigned. Objections must be filed within 7 days of the date the commissioner's or the arbitration judge's decision is served, with service to all parties.

(e) The district judge to whom a case is assigned, or in districts with an arbitration judge, the arbitration judge, shall make all final determinations regarding the arbitrability of a case and may hold a hearing on the issue of arbitrability, if necessary. The district judge's determination of such an issue is not reviewable.

(f) The district judge to whom a case is assigned or the arbitration judge may impose any sanction authorized by NRCP 11 against any party who without good cause or justification attempts to remove a case from the program.

(g) Any party to any action has standing to seek alternative dispute resolution under these rules.

Rule 6. Assignment to arbitrator.

(a) Parties may stipulate to use a private arbitrator or arbitrators who are not on the panel of arbitrators assigned to the program, or who are on the panel but who have agreed to serve on a private basis. Such stipulations must be made and filed with the clerk of court no later than the date set for the return of the arbitration selection list and may require the use of any alternative dispute resolution procedure to resolve the dispute. The stipulation must include an affidavit that is signed and verified by the arbitrator expressing his or her willingness to comply with the timetables set forth in these rules. Failure to file a timely stipulation shall not preclude the use of a private arbitrator, but may subject the dilatory parties to sanctions by the commissioner or the arbitration judge.

(b) Any and all fees or expenses related to the use of a private arbitrator, or the use of any other alternative dispute resolution procedure, shall be borne by the parties.

(c) Unless a request for exemption is filed, the commissioner or the arbitration judge shall serve the two adverse appearing parties with identical lists of 5 arbitrators selected at random from the panel of arbitrators assigned to the program.

(1) Thereafter, the parties shall, within 14 days, file with the commissioner or the arbitration judge either a private arbitrator stipulation and affidavit or each party shall file the selection list with no more than two (2) names stricken.

(2) If both parties respond, the commissioner or the arbitration judge shall appoint an arbitrator from among those names not stricken.

(3) If only one party responds within the 14-day period, the commissioner or the arbitration judge shall appoint an arbitrator from among those names not stricken.

(4) If neither party responds within the 14-day period, the commissioner or the arbitration judge will appoint one of the 5 arbitrators.

(5) If there are more than 2 adverse parties, 2 additional arbitrators per each additional party shall be added to the list with the above method of selection and service to apply. For purposes of this rule, if several parties are represented by one attorney, they shall be considered as one party.

(d) If a request for exemption is filed and denied, the commissioner or the arbitration judge shall, within 7 days after the time has expired for filing an objection to the commissioner's or the arbitration judge's denial of the request, or within 7 days after the district judge's or the arbitration judge's decision on such an objection, serve the parties with identical lists of 5 arbitrators as provided in subsection (c) of this rule.

(e) Where an arbitrator is assigned to a case and additional parties subsequently appear in the action, the additional parties may object to the arbitrator assigned to the case within 14 days of the date of the party's appearance in the action. Objections must be in writing, state specific grounds, be served on all other appearing parties and filed with the clerk of the court. The commissioner or the arbitration judge shall review the objections and render a decision. This decision may be appealed to the district judge to whom the case is assigned, or in a district with an arbitration judge, may be submitted for reconsideration. The notice of appeal

or motion for reconsideration shall be filed with the clerk of court within 14 days of the date of service of the commissioner's or arbitration judge's decision.

(f) If the selection process outlined above fails for any reason, including a recusal by the arbitrator, the commissioner or arbitration judge shall repeat the process set forth in subdivision (c) of this rule to the select an alternate arbitrator.

Rule 7. Qualifications of arbitrators.

(a) Each commissioner or the arbitration judge shall create and maintain a panel of arbitrators consisting of attorneys licensed to practice law in Nevada and a separate panel of non-attorney arbitrators. An applicant must have a juris doctorate degree and 8 years of work experience in their area of expertise. Attorney arbitrators must be licensed to practice law in Nevada and shall have practiced law a minimum of 8 years in any jurisdiction. An application for appointment to the panel of arbitrators is filed with the admissions director of the State Bar of Nevada on a form approved by the Supreme Court, together with a $150 application fee. The state bar shall investigate the applicant's qualifications and fitness to serve as an arbitrator, including, but not limited to, verification of the applicant's educational background, employment history, professional licensure and any related disciplinary proceedings, and criminal history. No later than 90 days from the date of referral, the state bar shall transmit to the Supreme Court a certificate concerning the applicant's qualifications and fitness, as follows:

(1) Whether the applicant meets the minimum experience requirements of this rule;

(2) Whether the applicant has been subject to disciplinary proceedings involving any license; if so, the nature and result of those proceedings;

(3) Whether the applicant has a criminal history; if so, the details of that history;

(4) Whether the applicant has ever been named as a defendant in any proceeding involving fraud, misappropriation of funds, misrepresentation or breach of fiduciary duty; if so, the nature and resolution of such proceedings; and

(5) Whether the state bar's investigation revealed any other matter pertinent to the applicant's qualifications or fitness; if so, the details of the matter and how it relates to the applicant's potential service as an arbitrator.

(b) Arbitrators shall be required to complete an arbitrator training program biennially in conjunction with their selection to the panel. The program completed must be one offered by the State Bar of Nevada specific to the Court Annexed Arbitration Program or, alternatively, a program that is approved for continuing legal education credits in Nevada for the same number of hours as the state bar's program. The court may also require arbitrators to complete additional training sessions or classes. Arbitrators must complete at least 3 hours of continuing legal education from courses deemed appropriate by the commissioner or the arbitration judge biennially. Failure to do so may constitute grounds for temporary suspension or removal from the panel of arbitrators.

(c) Arbitrators affirm an oath to uphold these rules of the program, the Nevada Code of Judicial Conduct, and the laws of the State of Nevada by any person authorized to administer the official oath under NRS 281.030(3).

(d) Within 7 days of appointment, an arbitrator must disclose known facts likely to affect the impartiality of the arbitrator, including those required by NRS 38.227. An arbitrator who would be disqualified for any reason that would disqualify a judge under the Nevada Code of Judicial Conduct, CANON 2, Rule 2.1 or NRS 38.226(2), shall immediately recuse himself/herself or be withdrawn as an arbitrator.

(e) Any party may challenge the appointment of an arbitrator by filing and affidavit specifying the facts upon which the disqualification is sought. The affidavit of a party represented by an attorney must be accompanied by a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay. Any challenge to the appointment of an arbitrator must be filed within 14 days of the arbitrator's appointment or within 14 days of any disclosure required by these rules, whichever is later. Any challenge shall be referred to the commissioner or the arbitration judge for a final determination.

Rule 8. Authority of arbitrators.

(a) Arbitrators hear cases admitted to the program and shall render awards in accordance with these rules. The authority of an arbitrator shall include, but not be limited to, the powers:

(1) To administer oaths or affirmations to witnesses; and

(2) To relax all applicable rules of evidence and procedure to effectuate a speedy and economical resolution of the case without sacrificing a party's right to a full and fair hearing on the merits. Consistent with NAR 11, the arbitrator shall set deadlines for discovery and expert disclosures at the early arbitration conference to be included in a discovery order to be filed within 14 days of the early arbitration conference.

(b) Any challenge to the authority or action of an arbitrator shall be filed with the clerk of court and served upon the other parties and the arbitrator within 14 days of the date of the challenged decision or action. Any opposition to the challenge must be filed with the clerk of court and served upon the other parties within 7 days of service of the challenge. The commissioner or **the arbitration judge** shall rule on the issue in due course. Judicial reconsideration of the arbitration judge's ruling must be made to the arbitration judge. Judicial review of the ruling of the commissioner may be obtained by filing a petition for such review with the clerk of court within 14 days of the date of service of the commissioner's ruling. The commissioner shall then notify the district judge to whom the case is assigned of the petition and may enter an appropriate stay pending review by the district judge. The district judge to whom the case is assigned shall have the non-reviewable power to uphold, overturn or modify the commissioner's ruling, including the power to stay any proceeding.

Rule 9. Stipulations and other documents. During the course of arbitration proceedings commenced under these rules, no document other than the motions or stipulations permitted or contemplated by NAR 4 may be filed with the district court.

Rule 10. Restrictions on communications.

(a) An arbitrator shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of all of the other parties or their lawyers concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the arbitrator reasonably believes that no party shall gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the arbitrator makes provision promptly to notify all other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.

(b) If an arbitrator inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the arbitrator shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) An arbitrator shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(d) An arbitrator shall make reasonable efforts, including appropriate supervision, to ensure that this Rule is not violated by those subject to the arbitrator's direction and control.

(e) Unless otherwise agreed in writing by all parties, no offer or demand of settlement made by any party, including any offer of judgment, shall be disclosed to the arbitrator prior to the filing of an award.

Rule 11. Discovery.

(a) Early Arbitration Conference. Within 30 days after the appointment of the arbitrator, the parties must meet with the arbitrator to confer, exchange documents, identify witnesses known to the parties which would otherwise be required pursuant to NRCP 16.1, and to formulate a discovery plan, if necessary. The conference may be held by telephone in the discretion of the arbitrator. The extent to which additional discovery is allowed, if at all, is in the discretion of the arbitrator, who must make every effort to ensure that the discovery, if any, is neither costly nor burdensome. Types of discovery shall be those permitted by the NRCP, consistent with the proportionality standard set forth in NRCP 26(b) and, may be modified in the discretion of the arbitrator to save time and expense.

(b) It is the obligation of the plaintiff to notify the arbitrator prior to the early arbitration conference, if other parties have appeared in the action subsequent to the appointment of the arbitrator.

(c) All discovery disputes must be heard by the arbitrator.

(d) The arbitrator shall issue a discovery scheduling order within 14 days after the early arbitration conference.

Rule 12. Scheduling of hearings; pre-hearing conferences.

(a) Except as otherwise provided by this rule, all arbitrations shall take place and all awards must be filed no later than 6 months from the date of the arbitrator's appointment. Arbitrators shall set the time and date of the hearing within this period.

(b) The arbitration hearing date may be advanced or continued by the arbitrator for good cause upon written request from either party. The arbitrator may not grant a request for a continuance of the hearing beyond a period of 9 months from the date of the arbitrator's appointment without written permission from the commissioner **or the arbitration judge**. Any such request for permission for an extension beyond the 9-month period must be made in writing to the commissioner **or the arbitration judge** by the arbitrator. The commissioner **or the arbitration judge** may permit such an extension upon a showing of unusual circumstances. All arbitration hearings must take place within one year of the date on which the arbitrator is appointed.

(1) Arbitration hearings which take place in violation of this Rule may subject the parties, their counsel, and/or the arbitrator to sanctions which can include:

(B) temporary suspension of the arbitrator from the panel;

(C) monetary sanctions assessed against the parties or counsel.

(2) Additionally, if the arbitration hearing does not take place within one year of the appointment of the arbitrator, the case may be subject to dismissal or entry of default.

(c) Any request to extend the time to hold an arbitration hearing beyond one year from the date of the arbitrator's appointment must be filed with the clerk of court and decided by the district court judge.

(d) Consolidated actions shall be heard on the date assigned to the latest case involved, to be heard by the earliest appointed arbitrator.

(e) Arbitrators or the commissioner may, at their discretion, conduct pre-arbitration hearings or conferences. However, the pre-hearing conference required by NAR 11 must be conducted within 30 days from the date a case is assigned to an arbitrator.

(f) The arbitrator shall give immediate written notification to the commissioner **or the arbitration judge** of the arbitration date and any change thereof, any settlement or any change of counsel.

Rule 13. Pre-hearing statement.

(a) Unless otherwise ordered by the arbitrator, at least 14 days prior to the date of the arbitration hearing, each party shall furnish the arbitrator and serve upon all other parties a statement containing a final list of witnesses whom the party intends to call at the arbitration hearing, and a list of exhibits and documentary evidence anticipated to be introduced. The statement shall contain a brief description of the matters about which each witness will be called to testify. Each party shall, simultaneously with the submission of the final list of witnesses described above, make all exhibits and documentary evidence available for inspection and copying by other parties.

(b) A party failing to comply with this rule, or failing to comply with any discovery order, may not present at the arbitration hearing a witness or exhibit not previously furnished pursuant to this rule, except with the permission of the arbitrator upon a showing of unforeseen and unusual circumstance.

(c) Each party shall furnish to the arbitrator at least 14 days prior to the arbitration hearing copies of any pleadings and other documents contained in the court file which that party deems relevant.

Rule 14. Conduct of the hearing.

(a) The arbitrator shall have complete discretion over the timing, location (including any appearance by audio or video conference), conduct, and scheduling of the final arbitration hearing.

(b) Any party may, at its own expense, cause the arbitration hearing to be reported.

Rule 16. Form and content of award.

(a) Arbitration awards shall be in writing and signed by the appointed arbitrator.

(b) The arbitrator shall make a decision on each issue raised by the pleadings in cases that are subject to arbitration under the program, including issues of comparative negligence, if any, and damages, if any. The arbitrator shall present a determination in a written arbitration award, The maximum award that can be rendered by the arbitrator is $50,000 per plaintiff, exclusive of attorney's fees, interest and costs.

Awards should follow the following format:

Award for Plaintiff(s):
The arbitration hearing in this matter was held on the _____day of ___, 20___. Having considered the (insert those that apply: pre-hearing statements of the parties, the testimony of the witnesses, the exhibits offered for consideration and argument on behalf of the parties), based upon the evidence presented at the arbitration hearing concerning the causes of action, I hereby find in favor of Plaintiff, (Plaintiff's name), and against Defendant(s), (name of each defendant against whom ward is made), in the amount of $(amount of award).*

**If an award is made to more than one plaintiff, each award must be separate and distinctly stated in the same document.*

Award for Defendant(s):
The arbitration hearing in this matter was held on the _____day of ___, 20___. Having considered the (insert those that apply: pre-hearing statements of the parties, the testimony of the witnesses, the exhibits offered for consideration and argument on behalf of the parties), based upon the evidence presented at the arbitration hearing concerning the causes of action, I hereby find in favor of Defendant(s), (defendant's name), and against Plaintiff(s), (name of each plaintiff). Plaintiff's (name of each plaintiff) shall take nothing by way of the complaint on file herein.

(c) The arbitrator must file and serve an arbitration decision that is separate from the arbitration award. The arbitration decision must be served at the same time as the arbitration award. The arbitration decision may contain findings of fact and conclusions of law if requested by all parties. Otherwise, the arbitration decision must consist of a written opinion stating the reasons for the arbitrator's decision. If the parties request findings of fact and conclusions of law, they must each provide the arbitrator with proposed findings of fact

and conclusions of law with their prehearing statements required by NAR 13.

(d) The offer of judgment provisions of NRCP 68 and NRS Chapter 17 apply to matters in the program.

(e) Awards of attorney's fees are solely within the discretion of the arbitrator. An arbitrator may grant an award of attorney's fees if the request in consistent with NRS 18.010, any controlling contract, NRCP 68, or other applicable Nevada statute or caselaw. Decisions on applications for attorney's fees, costs, and interest are to be filed separately from the arbitration award and only after proper application by prevailing party after the entry of the arbitration award.

(f) After an award is made the arbitrator shall return all exhibits to the parties who offered them during the hearing.

Note: Committee to incorporate the language from *Rios* (see 7/15 meeting materials) regarding fee awards for multiple plaintiffs in short trials into this rule.

Rule 17. Filing of award.

(a) Within 7 days after the conclusion of the arbitration hearing, or 30 days after the receipt of the final authorized memoranda of counsel, the arbitrator shall file the award with the clerk of the court, and also serve copies of the award on the attorneys of record, and on any unrepresented parties. Application must be made by the arbitrator to the commissioner or the arbitration judge for an extension of these time periods.

(b) Applications for attorney's fees, costs and/or interest pursuant to any statute or rule must be submitted to the arbitrator only after the arbitration award is filed. Any application must be filed and served on the other parties within ~~5~~ 7days after service of the award on the applicant; failure to make timely application shall act as a jurisdictional waiver of any right to fees, costs or interest. Responses to such applications must be submitted to the arbitrator and served on the other parties within 7 days after service of the application on the responding party. Rulings on applications under this subsection must be filed with the clerk of the court by the arbitrator and served on all parties within 7 days after the deadline for responses to such applications.

(1) Applications for relief under this subsection do not toll the time periods specified in Rules 18 or 19.

(2) Decisions on applications for relief under this rule do not constitute amended awards and shall not be designated as such by the arbitrator.

(3) Any grant of fees, costs, and/or interest shall be included in any judgment on the arbitration award submitted by a prevailing party pursuant to NAR 19.

(c) No amended award shall be filed by the arbitrator, but for good cause the arbitrator may submit a request to the commissioner or the arbitration judge and serve on the parties a request to amend the award, as long as su~~ch~~ request is filed within 20 21 days from the date of service of the original award.

(1) If the commissioner decides an amended award is warranted, the commissioner will issue, file and serve such amended award.

(2) Upon the issuance of an amended arbitration award, the time for requesting a trial de novo pursuant to NAR18 or notifying a prevailing party to enter judgment pursuant to NAR 19 will begin anew upon service on the parties. Any request for a trial de novo filed before an amended arbitration award is issued shall be rendered ineffective by the amended award.

(d) This rule does not authorize the use of an amended award to change the arbitrator's decision on the merits.

(e) Failure of the arbitrator to timely file the award or timely rule on an application for fees, costs and/or interest may subject the arbitrator to a forfeiture (waiver) of part or all of the arbitrator's fees. Repeated failure shall lead to the arbitrator's removal from the panel.

Rule 18. Request for trial de novo.

(a) Within 30 days after the arbitration award is served upon the parties, any party may file with the clerk of the court and serve on the other parties a written request for trial de novo of the action. Any party requesting a trial de novo must certify that all arbitrator fees and costs for such party have been paid or shall be paid within 30 days, or that an objection is pending and any balance of fees or costs shall be paid in accordance with subsection (c) of this rule.

(b) The 30-day filing requirement is jurisdictional; an untimely request for trial de novo shall not be considered by the district court.

(c) Any party who has failed to pay the arbitrator's bill in accordance with this rule shall be deemed to have waived the right to a trial de novo; if a timely objection to the arbitrator's bill has been filed with the clerk of the court pursuant to NAR 23 and/or NAR 24, a party shall have 14 days from the date of service of the commissioner's decision in which to pay any remaining balance owing on said bill. No such objection shall toll the 30-day filing requirement of subsection (b) of this rule.

(d) Any party to the action is entitled to the benefit of a timely filed request for trial de novo. Subject to Rule 22, the case shall proceed in the district court as to all parties in the action unless otherwise stipulated by all appearing parties in the arbitration. In judicial districts that are required to provide a short trial program under the Nevada Short Trial Rules, the trial de novo shall proceed in accordance with the Nevada Short Trial Rules, unless a party timely filed a demand for removal from the short trial program as provided in NSTR 5.

(e) After the filing and service of the written request for trial de novo, the case shall be set for trial upon compliance with applicable court rules. In judicial districts that are required to provide a short trial program under the Nevada Short Trial Rules, the case shall be set for trial as provided in those rules, unless a party timely filed a demand for removal from the short trial program as provided in NSTR 5.

(f) If the district court strikes, denies, or dismisses a request for trial de novo for any reason, the court shall explain its reasons in writing and shall enter a final judgment in accordance with the arbitration award. A judgment entered pursuant to this rule shall have the same force and effect as a final judgment of the court in a civil action, and may be appealed in the same manner. Review on appeal, however, is limited to the order striking, denying, or dismissing the trial de novo request and/or a written interlocutory order disposing of a portion of the action.

(g) A motion to strike a request for trial de novo may not be filed more than 30 days after service of the request for trial de novo, except that a motion to strike based solely on the failure to pay the arbitrator fees and costs in accordance with subsections (A) and (C) must be filed no more than 14 days after the time to pay has expired.

Rule 19. Judgment on award.

(a) Upon notification to the prevailing party by the commissioner that no party has filed a written request for trial de novo within 30 days after service of the award on the parties, the prevailing party shall submit to the commissioner, or assigned judge when no commissioner is appointed, a form of final judgment in accordance with the arbitration award, and a separate decision on any timely application for attorney's fees, costs and/or interest. The commissioner shall submit judgment to the assigned district judge for signature; the judgment must then be filed with the clerk.

(b) A judgment entered pursuant to this rule shall have the same force and effect as a final judgment of the court in a civil action but may not be appealed. Except that an appeal may be taken from the judgment if the district court entered a written interlocutory order disposing of a portion of the action. Review on appeal, however, is limited to the interlocutory order and no issues determined by the arbitration will be considered.

(c) Although clerical mistakes in judgments and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party, no other amendment of or relief from a judgment entered pursuant to this rule shall be allowed.

Rule 20. Procedures at trial de novo.

(~~A~~a) Evidence. If a trial de novo is requested:

(1) The arbitration award, but not the arbitrator's analysis and/or reasons for the award, shall be admitted as evidence in the trial de novo, and all discovery obtained during the course of the arbitration proceedings shall be admissible in the trial de novo, subject to all applicable rules of civil procedure and evidence.

(2) Any claim or defense not raised by a party through presentation of expert opinion or other competent evidence at the arbitration hearing will be waived at trial de novo.

(~~B~~b) Attorney fees; costs; interest.

(1) The prevailing party at the trial de novo is entitled to all ~~recoverable~~ attorney's fees, costs, and interest allowed by NSTR 27. ~~pursuant to statute or N.R.C.P. 68.~~

(2) ~~Exclusive of any award of fees and costs under subsection (1), a party is entitled to a separate award of attorney's fees and costs as set forth in (a) and (b) below.~~

~~a) Awards of $20,000 or less. Where the arbitration award is $20,000 or less, and the party requesting the trial de novo fails to obtain a judgment that exceeds the arbitration award by at least 20 percent of the award, the non-requesting party is entitled to its attorney's fees and costs associated with the proceedings following the request for trial de novo. Conversely, if the requesting party fails to obtain a judgment that reduces by at least 20 percent the amount for which that party is liable under the arbitration award, the non-requesting party is entitled to its attorney's fees and costs associated with the proceedings following the request for trial de novo.~~

~~(b) Awards over $20,000. Where the arbitration award is more than $20,000, and the party requesting the trial de novo fails to obtain a judgment that exceeds the arbitration award by at least 10 percent of the award, the non-requesting party is entitled to its attorney's fees and costs associated with the proceedings following the request for trial de novo. Conversely, if the requesting party fails to obtain a judgment that reduces by at least 10 percent the amount for which that party is liable under the arbitration award, the non-requesting party is entitled to its attorney's fees and costs associated with the proceedings following the request for trial de novo.~~

(3) ~~In comparing the arbitration award and the judgment, the court shall not include costs, attorney's fees, and interest with respect to the amount of the award or judgment. If multiple parties are involved in the action, the court shall consider each party's respective award and judgment in making its comparison between the award and judgment.~~

Proposed Drafter's Note ***(May 13, 20220 Version)***

The intent of the addition of NAR 20 (a)(1) is to prevent a party from not fully participating in the arbitration proceedings in good faith. For example, if a plaintiff fails to present expert opinions or other competent evidence to support a claim for damages during arbitration proceedings, then the plaintiff will be prevented from presenting that claim at trial de novo. Similarly, if a defendant fails to contest liability during the arbitration proceedings, or fails to contest the causation or reasonable of damages through the presentation of expert opinions or other competent evidence at arbitration, then the defendant will be barred from doing so at the time of the trial de novo.

Rule 21. Scheduling of trial de novo.

(a) In judicial districts required to provide a short trial program under the Nevada Short Trial Rules, a trial de novo shall be processed as provided in those rules, unless a party timely filed a demand for removal from the short trial program as provided in NSTR 5. Cases that are removed from the short trial program will not be given preference on the trial calendar of the district court simply because those cases were subject to arbitration proceedings pursuant to these rules. Trials de novo in cases removed from the short trial program will be processed in the ordinary course of the district court's business.

(b) In judicial districts that do not provide a short trial program, cases requiring a trial de novo will not be given preference on the trial calendar of the district court simply because those cases were subject to arbitration proceedings pursuant to these rules. Trials de novo will be processed in the ordinary course of the district court's business.

Rule 22. Sanctions.

(a) The failure of a party or an attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo. If an arbitrator makes a finding that a party or an attorney failed to prosecute or defend a case in good faith, the arbitrator's decision must include findings of fact supporting the conclusion of failure to act in good faith.

(b) If, during the proceedings in the trial de novo, the trial judge determines that a party or attorney engaged in conduct designed to obstruct, delay or otherwise adversely affect the arbitration proceedings, it may impose, in its discretion, any sanction authorized by NRCP 11 or NRCP 37.

Rule 23. Costs for Arbitrators.

(a) The arbitrator is entitled to recover the costs, not to exceed $250, that the arbitrator reasonably incurs in processing and deciding an action. Costs recoverable by the arbitrator are limited to:

1. Reasonable costs for telecopies;
2. Reasonable costs for photocopies;
3. Reasonable costs for long distance telephone calls;
4. Reasonable costs for postage;
5. Reasonable costs for travel and lodging; and
6. Reasonable costs for secretarial services.

(b) To recover such costs, the arbitrator must submit to the parties an itemized bill of costs within 14 days of the date that the arbitrator serves the award in an action; within 14 days of notice of removal of the case from the program by resolution or exemption; or within 14 days of notice of change of arbitrator, whichever date is earliest.

(c) An arbitrator's costs must be borne equally by the parties to the arbitration and must be paid to the arbitrator within 14 days of the date that the arbitrator serves the bill reflecting the arbitrator's costs. Parties may not recover an arbitrator's fees or costs from any other party. If any party fails to pay that party's portion of the arbitrator's costs within the time prescribed in this subsection, the district court shall, after giving appropriate notice and opportunity to be heard, enter a judgment and a writ of execution against the delinquent party for the amount owed by that party to the arbitrator, plus any costs and attorney's fees incurred by the arbitrator in the collection of the costs. If one of the parties to the arbitration is an indigent person who was exempted pursuant to NRS 12.015 from paying a filing fee, the arbitrator may not collect costs from any party to the arbitration.

(d) All disputes regarding the propriety of an item of costs must be filed with the clerk of the court within 7 days of the date that the arbitrator serves the bill reflecting the arbitrator's costs, and resolved by the commissioner.

(e) For purposes of this rule, if several parties are represented by one attorney, they shall be considered as one party.

Rule 24. Fees for arbitrators.

(a) Arbitrators appointed to hear cases pursuant to these rules are entitled to be compensated at the rate of $150 per hour to a maximum of $2,000 per case unless otherwise authorized by the commissioner for good cause shown. If required by the arbitrator, each party to the arbitration shall submit, within 30 days of request by the arbitrator, a sum of up to $1,000 as an advance toward the arbitrator's fees and costs. If a party fails to pay the required advance, the party may be subject to sanctions, including an award dismissing the complaint or entry of the non-complying party's default.

(b) To recover any fee, the arbitrator must submit to the parties an itemized bill reflecting the time spent on a case within 14 days of the date that the arbitrator serves an award in an action; within 14 days of notice of removal of the case from the program by resolution or exemption; or within 14 days of notice of change of arbitrator, whichever date is earliest. If the parties have paid an advance toward the arbitrator's fees and costs, the arbitrator shall indicate this advance on the itemized bill and shall return to the parties any portion of the advance that is over the amount on the itemized bill.

(c) The fee of the arbitrator must be paid equally by the parties to the arbitration and are not a recoverable cost at arbitration and must be paid to the arbitrator within 14 days of the date that the arbitrator serves the bill reflecting the fee. If any party fails to pay that party's portion of the arbitrator's fee within the time prescribed in this subdivision, the district court shall, after giving appropriate notice and opportunity to be heard, enter a judgment and a writ of execution against the delinquent party for the amount owed by that party to the arbitrator, plus any costs and attorney's fees incurred by the arbitrator in the collection of the fee. If one of the parties to the arbitration is an indigent person who was exempted pursuant to NRS 12.015 from paying a filing fee, the arbitrator may not collect a fee from any party to the arbitration.

(d) Time spent by an arbitrator, where fees may not be collected pursuant to this provision, may be reported as pro bono publico legal service hours to the State Bar of Nevada under NRPC 6.1

(e) All disputes regarding the fee of the arbitrator must be filed with the clerk of the court within 7 days of the date that the arbitrator serves the bill reflecting the arbitrator's fee and resolved by the commissioner.

(f) For purposes of this rule, if several parties are represented by one attorney, they shall be considered one party.

Nevada Mediation Rules

Rule 1. The court annexed mediation program. The Court Annexed Mediation Program (the program) is an alternative to the Court Annexed Arbitration Program and is intended to provide parties a prompt, equitable and inexpensive method of dispute resolution for matters otherwise mandated into the arbitration program.

Rule 2. Matters entering the mediation program. Any matter that is otherwise subject to the Court Annexed Arbitration Program may be voluntarily placed into the Mediation Program. Participation in the Mediation Program shall be by mutual consent of the parties pursuant to written stipulation. The stipulation must be filed with the commissioner within 14 days after the filing of an answer by the first answering defendant. For good cause shown, an appropriate case may be placed into the program upon the filing of an untimely stipulation; however, such filing may subject the parties to sanctions by the commissioner.

Rule 3. Assignment to mediator.

(a) Parties may stipulate to use a private mediator who is not on the panel of mediators assigned to the program, or who is on the panel but who has agreed to serve on a private basis. The private mediator must possess the qualifications as stated in NMR 4 and must present a résumé demonstrating said qualifications to the commissioner prior to serving as mediator. Such stipulation must be made and filed with the commissioner no later than the date set for the return of the mediator selection list. The stipulation must include an affidavit that is signed and verified by the mediator expressing his or her willingness to comply with the timetables set forth in these rules. Failure to file a timely stipulation shall not preclude the use of a private mediator, but may subject the dilatory parties to sanctions by the commissioner.

(b) Any and all fees or expenses related to the use of a private mediator shall be borne by the parties equally.

(c) Unless the parties have stipulated to a mediator pursuant to subdivision (a), the commissioner shall serve the two adverse appearing parties with identical lists of 3 mediators selected at random from the panel of mediators assigned to the program.

(1) Thereafter the parties shall, within 14 days, file with the clerk of court either a private mediator stipulation and affidavit or each party shall file the selection list with no more than one name stricken.

(2) If both parties respond, the commissioner shall appoint a mediator from among those names not stricken.

(3) If only one party responds within the 14-day period, the commissioner shall appoint a mediator from among those names not stricken.

(4) If neither party responds within the 14-day period, the commissioner shall appoint one of the 3 mediators.

(5) If there are more than 2 adverse parties, one additional mediator per each additional party shall be added to the list with the above method of selection and service to apply. For purposes of this rule, if several parties are represented by one attorney, they shall be considered as one party.

(d) If the selection process outlined above fails for any reason, including a recusal by the mediator, the commissioner shall repeat the process set forth in subdivision (C) of this rule to select an alternate mediator.

Rule 4. Qualifications of mediators.

(a) Each commissioner shall create and maintain a panel of mediators consisting of attorneys licensed to practice law in Nevada. ~~and a separate panel of non-attorney mediators~~.

~~(b) Mediators must have the equivalent of at least 10 years of civil experience as a practicing attorney or judge or must have the equivalent of at least 5 years' experience as a mediator or must be a senior judge or justice.~~

(b) The panel of mediators shall be selected by a committee composed of the Chief Judge or the Chief Judge's designee, the commissioner and a representative of the Alternative Dispute Resolution (ADR) Committee of the State Bar of Nevada.

(c) Each mediator who desires to remain on the panel shall fulfill at least 3 hours of accredited continuing educational activity in mediation annually and provide proof thereof to the commissioner. Failure to do so may constitute grounds for temporary suspension or removal from the panel.

Rule 5. Stipulations and other documents. During the course of mediation proceedings commenced under these rules, no documents may be filed with the district court. All stipulations and other documents relevant to the mediation proceeding must be lodged with the mediator.

Rule 6. Scheduling of mediation proceedings. All mediation proceedings shall take place no later than 60 days from the date of the mediator's appointment.

Rule 7. Conduct of the mediation proceeding. The mediator shall have complete discretion over the conduct of the proceeding. The parties present at mediation must have authority to resolve the matter.

Rule 8. Report to the commissioner. Within 7 days after the conclusion of the mediation proceedings, the mediator shall file with the clerk of court and serve copies on the attorneys of record and on any unrepresented parties, a report advising whether the matter was resolved, an impasse has been declared, or that no agreement was reached, or that the matter has been continued, and whether all requisite parties with authority to resolve the matter were present. The report will be similar to the settlement conference report submitted by settlement judges in the appellate settlement program under NRAP 16(g), and shall not disclose any matters discussed at the mediation proceedings.

Rule 9. Matters not resolved in mediation. All matters not resolved in the program shall forthwith enter the short trial program set forth in the Nevada Short Trial Rules.

Rule 10. Fees and costs for mediators.

(a) Mediators shall be entitled to remuneration at the rate of $150 per hour to a maximum of $2,000 per case, unless otherwise authorized by the commissioner for good cause shown.

(b) Mediators are entitled to recover the costs, not to exceed $250, that the mediator reasonably incurs. Costs recoverable by the mediator are limited to:

(1) Reasonable costs for facsimiles;
(2) Reasonable costs for photocopies;
(3) Reasonable costs for long distance telephone calls;
(4) Reasonable costs for postage;
(5) Reasonable costs for travel and lodging; and
(6) Reasonable costs for secretarial services.

(c) Fees and costs of the mediator are paid equally by the parties unless otherwise stipulated.

(d) If required by the mediator, each party to a case within the program shall deposit with the mediator, within 21 days of request by the mediator, a sum of up to $1,000 as an advance toward the mediator's fees and costs. If any party fails to pay their portion of the mediator's fees and costs within the time prescribed in this subsection, the district court shall, after giving appropriate notice and opportunity to be heard, enter a judgment and a writ of execution against the delinquent party for the amount owed by the party to the mediator, together with any fees and costs incurred by the mediator in the collection of the fees and costs.

(e) If one of the parties to the mediation is an indigent person who was exempted under NRS 12.015 from paying a filing fee, the mediator may not collect a fee or costs from any party to the mediation.

Rule 11. Confidentiality; immunity of mediators.

(a) Each party involved in a mediation proceeding pursuant to these rules has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing, communications made during the proceeding. All oral or written communications in a mediation proceeding, other than an executed settlement agreement, shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

(b) For the purposes of NRS 41.0305 to 41.0309, inclusive, a person serving as a mediator shall be deemed an employee of the court while in the performance of the person's duties under the program. Mediators in the program shall be afforded shall the same immunity as arbitrators pursuant to NRS 38.229 and 38.253.

Nevada Short Trial Rules

Rule 1. The short trial program.

(a) Purpose. The purpose of the short trial program is to expedite civil trials through procedures designed to control the length of the trial, including, without limitation, restrictions on discovery, the use of smaller juries, and time limits for presentation of evidence.

(b) Availability of program. The short trial program is mandatory in judicial districts subject to the mandatory arbitration program. In all other judicial districts, establishment of a short trial program is voluntary and the judicial district may adopt local rules implementing all or part of the short trial program.

(c) Applicability of rules. The Nevada Rules of Evidence and Civil Procedure apply in short trials except as otherwise specified by these rules.

Rule 2. Short trial commissioner. Each judicial district may appoint a short trial commissioner to administer the short trial program. Any commissioner so appointed has the responsibilities and powers conferred by these rules and by any local rules. The short trial commissioner may be an arbitration commissioner, alternative dispute resolution commissioner, discovery commissioner, special master, or other qualified and licensed Nevada attorney appointed by the court. The appointment shall be made in accordance with local rules. In districts where there is no commissioner, the district court shall, by local rule, designate a person to perform the duties of the commissioner set forth in these rules.

Note: During the May 13 meeting, Justice Hardesty commented that a clarification would need be made here to address the concerns raised earlier by Judge Steinheimer.

Rule 3. Presiding judge. ~~A short trial may be conducted by either a district court judge or a pro tempore judge.~~

(a) Assignment of presiding judge. ~~No later than~~ Within 21 days after a case enters the short trial program, the commissioner shall assign a short trial judge to preside over the case. The presiding judge shall be selected by one of the following methods:

(1) By stipulation. The parties, within ~~15~~14 days from the date a case enters the short trial program, may stipulate to have a particular short trial judge serve as the presiding judge. The judge must be selected from the panel of short trial judges and the judge must consent to the assignment. Alternatively, the parties may ~~also~~ stipulate to have a particular district judge serve as presiding judge, provided that ~~provided that~~ if the district judge also consents to serve as such.

(2) Random selection. Absent a timely stipulation under subdivision (a)(1) of this rule, the commissioner shall randomly select the names of 3 judicial panelists and send the same to the parties. Each party may strike one name within ~~10~~14 days, and the commissioner shall select the judge from the remaining name(s). For purposes of this rule, if several parties are represented by one attorney, they shall be considered as one party.

(b) Panel of short trial judges. The commissioner shall maintain a list of judges available to hear short jury trials. The list shall include all qualified pro tempore judges for the judicial district.

(c) Pro tempore judges. Pro tempore judges shall be selected and trained by a committee composed of the chief judge of the judicial district or the chief judge's designee, the commissioner, and a representative of the Alternative Dispute Resolution (ADR) Committee of the State Bar of Nevada. The selection committee shall seek to create a diverse group of qualified pro tempore judges. A pro tempore judge may be added to or removed from the panel of short trial judges pursuant to procedures adopted by each of the district courts. A pro tempore judge shall, however, meet the following minimum qualifications:

(1) Be an active member of the State Bar of Nevada;

(2) Have the equivalent of 10 years of civil trial experience ~~or, in the alternative, be a retired jurist, or presently acting short trial pro tempore judge~~ with a civil background;

(3) Have participated in at least two civil jury trials as first or second chair trial-counsel or, in the alternative, be a retired jurist, or is presently acting as a short trial pro tempore judge with a civil background: and

~~(3)~~ (4) Fulfill at least 3 hours of accredited continuing legal education ~~annually as~~ from courses deemed appropriate by the commissioner, biennially. ~~Fulfill at least 3 hours of accredited continuing legal education annually as deemed appropriate by the commissioner~~. Complete a short trial judge training program biennially in conjunction with their selection to the panel. Failure to do so may constitute grounds for temporary suspension or removal from the panel of short trial judges.

(d) Authority. While presiding over a case that is in the short trial program, the pro tempore judge ~~shall~~ shall have all the powers and authority of a district court judge except with respect to the final judgment. A final judgment is one that finally resolves all claims against all parties to the action and leaves nothing for the pro tempore judge's future consideration except for post-judgment issues such as attorney's fees and costs.

(1) Not later than ~~10~~14 days after the rendering of a jury verdict in a jury trial or upon a decision by the presiding judge in a trial to the bench, the judge pro tempore shall submit to the district court judge to whom the case is assigned a proposed judgment.

(2) The judge pro tempore shall provide written notice of the proposed judgment to the parties. Any objections to the proposed judgment shall be filed within ~~10~~14 days after the written notice of the proposed judgment is served on the parties, and any responses to such objections shall be filed within ~~5~~7 days after such objections are served.

(3) After reviewing the proposed judgment and any objection to the proposed judgment, the district court shall:

(A) Approve the proposed judgment, in whole or in part; or

(B) Reject the proposed judgment, in whole or in part, and order such relief as may be appropriate.

(4) A proposed judgment from a judge pro tempore is not effective until expressly approved by the district court as evidenced by the signature of the district court judge.

NSTR 3. As noted above, NJA's members have become increasingly concerned about the uniform competence of Judges Pro Tempore. This stems from a variety of reasons, such as a lack of familiarity with the cases over which Judges Pro Tempore are charged to preside, inadequate experience in trying cases and an inadequate knowledge of trial practice and procedure. Additionally, because Judges Pro Tempore are paid by the litigants, the litigants' access to justice is impacted.

For these reasons NJA proposes that Short Trials be handled by District Court Judges unless the litigants stipulate to the use of a Judge Pro Tempore. Litigants could opt out by stipulating to a particular Judge Pro Tempore within 120 days (or some other appropriate time period) of entering the Short Trial Program.

NJA also proposes additional experiential and educational requirements for lawyers to become a Judge Pro Tempore. For instance, Judges Pro Tempore should have a minimum of 10 hours of mandatory judicial training when they are appointed. They should also only be authorized to preside over the kind of cases with which they have some experience. They should certify their practice is comprised of at least 25% of the area in which they are authorized to preside. Judges Pro tempore should have participated in at least two jury trials as first or second chair trial counsel. Additional CLE requirements regarding current jurisprudence and the Civil Justice System should be mandated.

Rule 4. Matters subject to the short trial program.

(a) Mandatory participation in the short trial program.

(1) Trial de novo after arbitration. All cases that are subject to the mandatory court annexed arbitration program in which a party has filed a request for trial de novo shall enter the short trial program. The party filing the request for trial de novo must comply with ~~N.A.R.~~ NAR 18 and must also pay to the district court clerk all applicable juror fees and costs at the time of filing of the request for trial de novo.

(2) Cases entering short trial program after unsuccessful mediation in lieu of arbitration. Cases that enter the mediation program in lieu of arbitration under the Nevada Mediation Rules but are not resolved in the mediation program shall enter the short trial program. The applicable juror fees and costs shall initially be borne equally by the parties. The parties must pay all applicable juror fees and costs as directed by the commissioner.

(b) Voluntary participation in the short trial program. Parties may stipulate to participation in the short trial program as follows:

(1) Short trial in lieu of arbitration. In all cases that would otherwise qualify for the court annexed arbitration program, the parties may stipulate to enter the short trial program in lieu of the court annexed arbitration program. A written stipulation, together with all applicable juror fees and costs, must be filed with the district court clerk and served on the commissioner before the conference required under NAR 11. An untimely written stipulation may be filed provided that the parties certify that all arbitrator fees and costs have been paid.

(2) Cases exempt from arbitration. Cases exempt from the court annexed arbitration program may, by stipulation of all parties, be placed in the short trial program. A written stipulation, together with all applicable juror fees and costs, must be filed with the district court clerk and served on the commissioner. The parties must also provide written notice to the department of the district court to which the case is assigned.

(c) Juror fees and costs. For purposes of this rule, costs and juror fees shall be calculated using a 4-member jury.

(d) Demand for jury trial. Any party who desires a trial by jury of any issue triable of right by a jury must file and serve upon the other parties a demand therefore in writing, and deposit with the district court clerk all applicable juror fees, no later than the following deadlines:

(1) Trial de novo cases. The demand for jury trial and deposit of juror fees by the party who did not request the trial de novo and additional fees for a jury panel larger than four persons must be made not later than 14 days after service of the request for trial de novo.

(2) Mediation cases. The demand for jury trial and deposit of juror fees must be made no later than 14 days after service of the mediator's report under NMR 8.

(3) Voluntary participation cases. The demand for jury trial and deposit of juror fees must be made when the written stipulation is filed with the district court.

(e) Relief from waiver. Notwithstanding the failure of a party to demand a jury in accordance with this rule, the presiding judge, upon motion, may order a trial by a jury of any or all issues.

Rule 5. Removal of cases subject to mandatory participation in the short trial program.

(a) Demand for removal; time for filing. Any party may file with the district court clerk and serve on the other parties and the court clerk a written demand to remove the case from the short trial program. ~~upon the deposit of a non-refundable Court administration fee of $2,500~~. Unless the district in which the action is pending has adopted a local rule pursuant to NRCP 83 declaring otherwise, at the time a demand is filed as required by this rule, the party demanding removal of the case from the short trial program shall deposit with the clerk an amount equal to the fees to be paid the trial jurors for their services for the estimated length of the trial and court costs. If more than one party demands removal of the case from the short trial program, those parties shall be equally responsible for the jury fees and court costs upon filing the demand.

(1) Trial de novo cases. A demand to remove a trial de novo case from the short trial program must be filed and served no later than 14 days after service of the request for trial de novo. For good cause shown, an appropriate case may be removed from the short trial program upon the filing of an untimely request for exemption; however, such filing may subject the requesting party to sanctions.

(2) Mediation cases. A demand to remove an unsuccessful mediation case from the short trial program must be filed and served no later than 14 days after service of the mediator's report under NMR 8. For good cause shown, an appropriate case may be removed from the short trial program upon the filing of an untimely request for exemption; however, such filing may subject the requesting party to sanctions.

(b) Juror fees and costs. For purposes of this rule, costs and juror fees shall be calculated using an 8-member jury and costs shall be estimated at $1,000 unless the parties stipulate to another amount.

(c) Waiver of removal. A party's opportunity to remove a case from the short trial program is waived if that party fails to timely file and serve a demand to remove the case or fails to deposit the fees and costs required by this rule.

(d) Procedure after removal. After removal from the short trial program, the case shall proceed under the provisions of the Nevada Arbitration Rules governing trials de novo and the NRCP.

Rule 6. Filing and service of documents. Unless otherwise specified in these rules, all documents must be filed and served in accordance with the provisions of the NRCP. Following trial, the presiding judge shall file all documents, jury instructions and evidence with the district court clerk.

Rule 7. Motions; rulings to be written and filed. The presiding judge shall hear and decide all motions. All rulings issued by the presiding judge shall be in writing and filed with the district court clerk.

Rule 8. Mandatory discovery and settlement conference. Within 30 days after the appointment of the presiding judge, the parties must meet with the presiding judge to confer, exchange documents, identify witnesses known to the parties which would otherwise be required pursuant to NRCP 16.1, to formulate a discovery plan, if necessary, and to discuss the possibility of settlement or the use of other alternative dispute resolution mechanisms. The extent to which discovery is allowed is in the discretion of the presiding judge. The presiding judge shall resolve all disputes relating to discovery.

Rule 9. Pretrial memorandum. No later than 14 days before the pretrial conference under NSTR 10, the parties shall prepare and serve on the presiding judge a joint pretrial memorandum. The joint pretrial memorandum shall contain:

(a) a brief statement of the nature of the claim(s) and defense(s);

(b) a complete list of witnesses, including rebuttal and impeachment witnesses, and a description of the substance of the testimony of each witness;

(c) a list of exhibits; and

(d) all other matters to be discussed at pretrial conference.

Rule 10. Pretrial conference. No later than 14 days before the scheduled short trial date, the presiding judge shall hold a conference with the parties, in person or by audio/visual means, to discuss all matters needing attention prior to the trial date. During the pretrial conference the presiding judge may rule on any motions or disputes including motions to exclude evidence, witnesses, jury instructions or other pretrial evidentiary matters.

Rule 11. Settlement before trial. In the event a case settles before the scheduled short trial date, the parties must, no more than 7 working days after a settlement is reached but no later than 2 days before the first day of trial, submit to the commissioner either a written stipulation and order of dismissal executed by the parties and/or their attorneys or a written statement signed by counsel confirming that the parties have reached a settlement. Violation of this rule shall subject the parties, their attorneys, or both, to sanctions by the commissioner.

Rule 12. Scheduling. Unless otherwise stipulated to by the parties and approved by the presiding judge, or for good cause shown, a short trial shall be scheduled, depending on courtroom availability, to commence not later than 120 days from the date that the presiding judge is assigned, and 240 days after the filing of a written stipulation for cases that are directly entered in the short trial program by stipulation of the parties under NSTR 4(b).

Rule 13. Continuances. No request for the continuance of a trial scheduled in the short trial program may be granted ~~except upon extraordinary circumstances~~ without leave for a good cause shown, including by stipulation. A motion or stipulation for a continuance must be in writing and served on the presiding judge, must state the ~~extraordinary circumstances~~ good cause justifying a continuance, and must otherwise comply with local rules. ~~An order from~~ The presiding judge may issue an amended trial order, granting ~~a~~ continuance ~~of a case scheduled for trial in the short~~ and scheduling trial ~~program must state the nature of the extraordinary circumstances and provide~~ for a date approved by the commissioner ~~with at least 3 dates within the ensuing 60 days when the parties can conduct the trial. The commissioner shall then calendar the case for trial on one of the specified dates.~~

Rule 14. Location of trial. The local district court, through the chief judge, senior presiding judge or the court-designated administrator, shall provide courtroom space for said trials and the time and place for the same in coordination with the parties and the presiding judge.

Rule 15. Use of discovery at trial. Each party is permitted to quote directly from relevant depositions and video depositions, interrogatories, requests for admissions, or any other evidence as stipulated to by the parties.

Rule 16. Documentary evidence. Subject to a timely objection pursuant to NSTR 17, or as otherwise stipulated to by the parties, any and all reports, documents or other items that would be admitted upon testimony by a custodian of records or other originator such as wage loss records, auto repair estimate records, photographs, or any other such items as stipulated to, may be admitted into evidence without necessity of authentication or foundation by a live witness.

Rule 17. Evidentiary ~~objections~~ booklets. ~~On~~ The parties shall create a joint evidentiary booklet that may include, but is not limited to, photographs, facts, diagrams, and other evidence to be presented. The booklet shall be submitted with the ~~date the~~ pretrial memorandum ~~is due, the parties shall submit to the presiding judge all evidentiary objections to reports, documents or other items proposed to be utilized as evidence and presented to the jury or presiding judge at the time of trial. Unless an objection is based upon a reasonable belief about its authenticity, the presiding judge shall admit the report, document or other item into evidence without requiring authentication or foundation by a live witness.~~

Rule 18. Evidentiary ~~booklets~~ objections. ~~The parties shall create a joint evidentiary booklet that may include, but is not limited to, photographs, facts, diagrams, and other evidence to be presented. The booklet shall be submitted with the joint pretrial memorandum. Any evidentiary objections relating to the booklet shall be raised at the Rule 10 conference or shall be deemed waived.~~ No later than 14 days before the NSTR 10 pretrial conference, the parties shall submit to the presiding judge all evidentiary objections to reports, documents, or other items proposed to be utilized as evidence and presented to the jury or presiding judge at the time of trial. Unless an objection is based upon a reasonable belief about its authenticity, the presiding judge shall admit the report, document, or other item into evidence without requiring authentication or foundation by a live witness. Any evidentiary objections relating to the booklet shall be raised at the pretrial conference or shall be deemed waived.

Rule 19. Expert witnesses.

(a) Form of expert evidence. The parties are not required to present oral testimony from experts and are encouraged to use written reports in lieu of oral testimony in court.

(b) Use of oral testimony; disclosure. If a party elects to use oral testimony, that party must include the expert's name on the witness list submitted with the pretrial memorandum under ~~Rule~~ NSTR 9.

(c) Use of written report; disclosure. If a party elects to use a written report, that party shall provide a copy of the written report to the other parties pursuant to the pro tempore judge's deadline to disclose expert reports and rebuttal reports with enough time for either party to dispose the expert no later than 30 days before the pretrial conference. Any written report intended solely to contradict or rebut another written report must be provided to the other parties no later than ~~15~~14 days before the pretrial conference.

(d) Qualification of expert witness. At the time of the pretrial conference, the parties shall file with the presiding judge and serve on each other any documents establishing an expert's qualifications to testify as an expert on a given subject. There shall be no voir dire of an expert regarding that expert's qualifications. The presiding judge may rule on any disputes regarding the qualifications of an expert during the pretrial conference under ~~Rule~~ NSTR 10.

(e) Cap on recovery for expert witness fees. ~~Recovery for~~ The presiding judge may grant an award of expert witness fees ~~is limited to $500 per expert unless the parties stipulate to a higher amount~~ consistent with NRS 18.005.

(f) Scope of rule. For purposes of this rule, a treating physician is an expert witness.

Rule 20. Reporting of testimony. There shall be no formal reporting of the proceedings unless paid for by the party or parties requesting the same.

NSTR 20. NJA also proposes that all Short Trials be reported through an audio recording system to create an official record of the proceedings that will be provided to the litigants free of charge. The Eighth Judicial District Courts already have audio recording capability. While it does not yet exist in the Second Judicial District and other districts where the Short Trial Program is in use, funds from COVID relief programs could be used to cover the modest cost of providing such important and basic technology in courtrooms designated for Short Trials. Should funding from those sources not occur, NJA would be willing to donate that technology to courtrooms designated for Short Trials.

Rule 21. Time limits for conduct of trial. Plaintiff(s) and defendant(s) shall each be allowed ~~3~~ 3.25 3.50 hours ~~each~~ to present their respective cases unless a different time frame is stipulated to and approved by the presiding judge. Presentation includes voir dire, opening statements, closing statements, presentation of evidence, examination and cross-examination of witnesses, and any other information to be presented to the jury or presiding judge, including rebuttal. Cross-examination of witnesses shall be attributed to the party cross-examining for calculation of time allowed. For the purposes of this Rule, all plaintiffs collectively shall be treated as one plaintiff, and all defendants collectively shall be treated as one defendant.

NSTR 21. Limiting each side to three hours to present their case regardless of the number of issues, evidence, and witnesses, is unreasonable in certain situations. This "one size fits all" approach should be modified. While many cases can be appropriately tried under the existing time constraints, some cannot. The goal of the Civil Justice System is to provide a just result in accordance with the law and evidence. That goal should not be subordinated to an administrative desire to process all cases in an arbitrary time period regardless of the circumstances or the results obtained. NJA believes the concern that attorneys will use up more time than necessary just because more time is available is exaggerated. The presiding judge is vested with the authority to keep presentations moving along efficiently when warranted.

As discussed below, NJA proposes to remove the time limits for conducting voir dire and include that time into each side's allotted time to present their cases. Therefore, additional time to present each side's case may be needed for this change as well. NJA therefore proposes the time for conducting a Short Trial be expanded to 6 hours upon a requisite showing of the need for additional time.

Rule 22. Size of Jury. The parties may stipulate to a jury of 4 or 6 members. For good cause shown to the presiding judge, a party may request a jury of 8 members. Should the parties fail to stipulate to specific jury size, the jury shall be composed of 4 members