Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
Director and State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator

AGENDA

Committee to Study the Rules Governing Alternative Dispute Resolution and Nevada Short Trials

Date and Time of Meeting: July 15, 2022 at 1:30 p.m.
Place of Meeting: Remote Access via Zoom (Zoom.com or Zoom app, see "Notices" for access information)

All participants attending remotely should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.

I. Call to Order
   A. Call of Roll
   B. Determination of a Quorum
   C. Welcome and Opening Remarks

II. Approval of Previous Meeting Summary* ***(Tab 1)***
   A. May 13, 2022 Meeting Summary

III. Review of Revisions Approved During Previous Meeting ***(Tab 2)***
   A. *Rios v. Progressive N. Ins. Co.* ***(Tab 3)***

IV. Continued Review of Proposed Rule Revisions*
   A. Proposed Rule Revisions ***(Tab 4)***
   B. ADKT 0575 and ADKT 0592 - Public Comments from Insurance Counsel and Defense Bar ***(Tab 5)***

V. Other Items/Discussion

VI. Next Meeting Date and Location
   A. TBD

VII. Adjournment

Notices:

- Action items are noted by * and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030)
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- Meeting Access Information:

Teleconference Dial-in:	1-669-900-6833
Meeting ID:	834 3446 6814
Participant Passcode:	475627

TAB 1

KATHERINE STOCKS
Director and State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator

MEETING SUMMARY

Committee to Study the Rules Governing Alternative Dispute Resolution and Nevada Short Trials

May 15, 2022
1:00 PM
Summary prepared by: Jamie Gradick

**Note: Because this meeting focused on developing/editing a working document, this summary will only include the relevant discussion and action item portions of the meeting. Please see the edited rule revisions in the meeting material packet for work product completed during the meeting.*

Members Present
Justice James Hardesty, Chair
George Bochanis
David Boehrer
Eric Dobberstein
Robert Jensen
Paul Matteoni
Judge Connie Steinheimer
Commissioner Erin Truman
Commissioner Jay Young

AOC Staff Present
Jamie Gradick

I. Call to Order
- Justice Hardesty called the meeting to order at 1:10 p.m.
- A quorum was present.

II. Approval of Previous Meeting Summary
- The summary from the April 18, 2022 meeting was approved.

III. Review of Revisions Approved During Previous Meeting
- NAR 5: During the April 18 meeting, a decision was made to add language giving the district court the ability, upon ruling on a dispositive motion in favor of the plaintiff, to automatically exempt it from arbitration; however, no language was finalized during the meeting.

DRAFT

- Justice Hardesty tasked Commissioner Young with drafting this language for presentation to the group at the next meeting.

➢ NAR 11: During the April 18 meeting, a decision was made to add language regarding "arbitrator shall issue a discovery scheduling order within 14 days after conducting the early arbitration conference" but a location within the rule wasn't determined.
- Commissioner Truman suggested the removal of "conducting"; attendees agreed.
- Attendees approved the addition of this language as (d) of the rule.

➢ NAR 16: During the April 18 meeting, there was general consensus to remove the cap on attorney's fees, but no official decision or agreement was made and no language was finalized during the meeting.
- Discussion was held regarding whether, in instances where there are multiple plaintiffs, an arbitrator is obligated to award fees to each.
  - Commissioner Truman commented that this issue was decided by *Rios v Progressive*: in arbitration is it per side and in short trial, it is per party. Attendees discussed the need to apply the rule consistently.
  - Justice Hardesty decided to circle back to this issue at the next meeting to incorporate the language regarding fee awards for multiple plaintiffs in short trials into Rule 16. Ms. Gradick will include the *Rios* case in the meeting materials for the next meeting so that Committee members may address this.
- Attendees agreed to incorporate the 16(e) language proposed by the 8th Judicial District, removing caps on attorney's fees.

IV. Continued Review of Proposed Rule Revisions

➢ Nevada Arbitration Rules (NAR) Revisions
- NAR 17: changes as proposed by the 8th Judicial District were accepted.
- NAR 18: changes as proposed by the 8th Judicial District were accepted; additional changes made to conform formatting.
- NAR 19: changes as proposed by the 8th Judicial District were accepted; additional changes were made.
  - Attendees discussed possible confusion regarding submission to a district judge other than the arbitration judge.
    - Attendees agreed to add "or assigned judge when no commissioner is appointed…" to the rule.
  - Mr. Jenson suggested including a mechanism that would allow for review of an arbitration judge or commissioner's rulings.
    - Attendees discussed the duty of arbitration judges to seek necessary training. Justice Hardesty cautioned against incorporating an appellate process into the rules.
- NAR 20: changes as proposed by Commissioner Truman and Commissioner Young (in draft submitted and circulated on May 13) were discussed.
  - Commissioner Young explained that the intent behind the proposed addition of NAR 20(a)(1) is to "prevent a party from not fully participating in the arbitration process in good faith."
  - Mr. Boehrer expressed concern regarding not allowing a plaintiff to present evidence at a trial de novo if the plaintiff failed to present this same evidence during the arbitration proceedings. This approach seems counterproductive if the point of arbitration is to save money and resources.

        - Commissioner Truman clarified that the expert doesn't need to be called to testify during the arbitration process for the evidence to be considered "presented". A suggestion was made that language clarifying the acceptability of documentation as evidence be included.
    - Mr. Jensen commented that maybe there should be an exception in the arbitration process, especially for those situations where the defendant is represented by an insurance company with resources that the plaintiff doesn't have access to.
    - Justice Hardesty suggested the addition of language specifying that any claim or defense not raised is waived; this is an established legal principle.
    - Mr. Matteoni suggested this item be tabled until a representative of the defense bar is appointed to this Committee.
        - Justice Hardesty agreed to defer this rule and applicable edits until a defense bar representative can be present for the discussion. Justice Hardesty asked that, in the meantime, Mr. Boehrer, Mr. Jenson, and Mr. Matteoni discuss possible language that would address the concerns raised.
- NAR 21: changes as proposed by the 8th Judicial District were accepted.
- NAR 22: changes as proposed by the 8th Judicial District were accepted.
- NAR 23: changes as proposed by the 8th Judicial District were accepted.
- NAR 24: most changes as proposed by the 8th Judicial District and the State Bar of Nevada were accepted; additional conforming formatting changes were made.
    - Attendees discussed whether to increase the cap to $2,500 per case or to leave it at $2000, as proposed.

➢ Nevada Mediation Rules (NMR) Revisions

- NMR 1: changes as proposed by the 8th Judicial District were accepted; a minor conforming formatting change was made.
- NMR 2: changes as proposed by the 8th Judicial District were accepted.
- NMR 3: changes as proposed by the 8th Judicial District were accepted.
- NMR 4: changes as proposed by the 8th Judicial District were accepted; additional changes were made.
    - Judge Steinheimer asked for clarification regarding removal of non-attorney mediators since non-attorney arbitrators were removed from the Nevada Arbitration Rules.
    - Attendees agreed to remove language regarding non-attorney mediators from the rule.
- NMR 5: no proposed changes
- NMR 6: no proposed changes
- NMR 7: no proposed changes
- NMR 8: changes as proposed by the 8th Judicial District were accepted.
- NMR 9: no proposed changes
- NMR 10: changes as proposed by the 8th Judicial District were accepted to conform this rule to the changes made to the Nevada Arbitration Rules.
- NMR11: changes as proposed by the 8th Judicial District were accepted.

➢ Nevada Short Trial Rules (NSTR) Revisions

- NSTR 1: changes as proposed by the 8th Judicial District were accepted.
- NSTR 2: no proposed changes submitted.

- Justice Hardesty commented that a clarification would need be made here to address the concerns raised earlier by Judge Steinheimer.
- NSTR 3: Justice Hardesty deferred discussion on this rule for a later date.
- NSTR 4: changes as proposed by the 8th Judicial District were accepted; a minor conforming formatting change was made
- NSTR 5: some changes as proposed by the 8th Judicial District were accepted; the language change to (a) was rejected.
- Attendees discussed the addition of the "non-refundable Court administration fee" language.
    - Commissioner Truman explained this was previously referred to as a "jury fee".
    - Judge Steinheimer commented that this fee is used as a jury fee in the Second Judicial District.
    - Concern was expressed regarding the "non-refundable" requirement; a suggestion was made to return to the $1000 jury fee language.
    - Justice Hardesty commented that administration fees are assessed by statute; inclusion in these rules could be problematic. There needs to be a nexus between the fee and the service.
    - Mr. Dobberstein suggested making the fee a $2500 refundable retainer that could be awarded to the prevailing party under certain circumstances,
- Attendees agreed to remove the proposed "upon the deposit of a non-refundable Court administration fee of $2,500" language and to leave the language of the rule as it currently stands. Commissioner Truman verified the current language of the rule.
- NSTR 6: changes as proposed by the 8th Judicial District were accepted.
- NSTR 7: no proposed changes submitted.
- NSTR 8: changes as proposed by the 8th Judicial District were accepted.
- NSTR 9: changes as proposed by the 8th Judicial District were accepted.
- NSTR 10: changes as proposed by the 8th Judicial District were accepted.
- NSTR 11: changes as proposed by the 8th Judicial District were accepted.
- NSTR 12: changes as proposed by the 8th Judicial District were accepted.
- NSTR 13: Justice Hardesty deferred discussion on this rule for a later date.
- NSTR 14: no proposed changes submitted.
- NSTR 15: changes as proposed by the 8th Judicial District were accepted.
- NSTR 16: changes as proposed by the 8th Judicial District were accepted.
- NSTR 17: Justice Hardesty deferred discussion on this rule for a later date.
- NSTR 18: Justice Hardesty deferred discussion on this rule for a later date.
- NSTR 19: Justice Hardesty deferred discussion on this rule for a later date.
- NSTR 20: Justice Hardesty deferred discussion on this rule for a later date.
- NSTR 21: Justice Hardesty deferred discussion on this rule for a later date.
- NSTR 22: no proposed changes submitted.

V. Other Items/Discussion

- Justice Hardesty asked attendees to review comments filed by insurance counsel and defense bar under ADKT 575 and/or ADKT 592.
    - Ms. Gradick will include these in the materials for the next meeting materials packet.

VI. Next Meeting Date and Location

- Attendees agreed to meet July 15, 2022 from 1:30 pm – 4:30 pm.

VII. Adjournment

- The meeting was adjourned at 4:20 pm.

TAB 2

Approved Changes to the Nevada Alternative Dispute Resolution and Nevada Short Trial Rules

Meeting Date	Rules Discussed/Revised	Notes
April 18, 2022	General Provisions (Rules 1 and 2) NAR 3-14;16	**NAR 5**: A decision was made to add language giving the district court the ability, upon ruling on a dispositive motion in favor of the plaintiff, to automatically exempt it from arbitration; however no language was finalized during the meeting. **NAR 11**: A decision was made to add language regarding "arbitrator shall issue a discovery scheduling order within 14 days after conducting the early arbitration conference" but a location within the rule wasn't determined. **NAR 16**: There was general consensus to remove the cap on attorney's fees but no official decision or agreement was made and no language was finalized during the meeting.
May 13, 2022	Revisited NAR 5, 11, 16 NAR 17-24 NMR 1-11 NSTR 1-2; 4-12; 14-16; 22	**NAR 5**: Pending; Commissioner Young provided language for Committee review. **NAR 16**: A decision was made to incorporate the language from *Rios* regarding fee awards for multiple plaintiffs in short trials into this rule as well. Ms. Gradick provided a copy of the case in the meeting materials so the Committee may address this. **NAR 20**: This rule was deferred until defense bar representation could be present for the discussion, especially regarding proposed 20(a)(1). **NSTR 2:** Justice Hardesty commented that a clarification would need be made here to address the concerns raised earlier by Judge Steinheimer but no language was formally added. **NSTR 3, 13, 17, 18, 19, 20, 21:** Deferred for the next meeting.
July 15, 2022		

***Please Note**: These rules have been "cleaned-up" to reflect Committee-approved changes. Redlined portions reflect additional changes made during or after the meeting; highlighted portions reflect areas where discussion was held but a final decision was not made. Please refer to the meeting summaries and original rule change proposal documents for additional details.*

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.

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, with the approval of the district judge to whom the case is assigned, stipulate, 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 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 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:

(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.

(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 shall review the contentions, facts and evidence available and determine whether an exemption is warranted. The commissioner may require that a party submit additional facts supporting the party's contentions. Any objection(s) to the commissioner'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 decision is served, with service to all parties.

(e) The district judge to whom a case is assigned 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 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.

(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 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 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 shall appoint an arbitrator from among those names not stricken.

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

(4) If neither party responds within the 14-day period, the commissioner 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 shall, within 7 days after the time has expired for filing an objection to the commissioner's denial of the request, or within 7 days after the district 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 court. The commissioner shall review the objections and render a decision. This decision may be appealed to the district judge to whom the case is assigned. The notice of appeal shall be filed with the clerk of court within 14 days of the date of service of the commissioner's decision. The commissioner shall then notify the district judge of the appeal.

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

Rule 7. Qualifications of arbitrators.

(a) Each commissioner 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 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 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 shall rule on the issue in due course. 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. Any such request for permission for an extension beyond the 9-month period must be made in writing to the commissioner by the arbitrator. The commissioner 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:

(A) loss or reduction of the arbitrator's fee;

(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 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 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 and serve on the parties a request to amend the award, as long as such 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

TAB 3

No. 71225
COURT OF APPEALS OF THE STATE OF NEVADA

Rios v. Progressive N. Ins. Co.

Decided Aug 24, 2017

No. 71225

08-24-2017

ANGELICA RIOS; AND REBECA VELASCO, Appellants, v. PROGRESSIVE NORTHERN INSURANCE COMPANY, Respondent.

Silver

ORDER OF REVERSAL AND REMAND

Angelica Rios and Rebeca Velasco appeal from a post judgment order awarding attorney fees. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.[1]

[1] The presiding short trial judge was John Graves Jr.

Following an automobile collision, appellants Rios and Velasco jointly sued their underinsured motorist coverage carrier, respondent Progressive Northern, for failing to compensate them as required by their insurance policy. The suit went to arbitration and Rios and Velasco prevailed. The arbitrator awarded Rios $7,500 and Velasco $6,500, as well as attorney fees. Progressive requested a trial de novo. At the short trial, appellants prevailed again, though the short trial judge awarded only $2,000 to Rios and $1,000 to Velasco. Presumably because Progressive reduced the total judgment, the short trial judge declared Progressive the "prevailing party" and awarded Progressive $5,442.97 in fees and costs. Thus, despite winning the trial, the appellants ultimately owed more money to Progressive than Progressive owed them.

Appellants appealed and we reversed, holding that because Rios and Velasco prevailed on the one
2 cause of action litigated at the short *2 trial and obtained a money judgment in their favor, they—not Progressive—were the prevailing parties. *Rios v. Progressive N. Ins. Co.*, No. 68631, 2016 WL 2870777, at *2 (Nev. App. May 9, 2016) (unpublished) (citing *Scott v. Zhou*, 120 Nev. 571, 573-74, 98 P.3d 313, 314-15 (2004); *Sack v. Tomlin*, 110 Nev. 204, 215, 871 P.2d 298, 305 (1994)). Further, in the same order, we explicitly instructed the district court to "vacate the award of attorney's fees and costs to respondent, and determine the amount of reasonable attorney's fees and costs to be awarded to appellants as the prevailing party pursuant to NAR 20(B) and NSTR 27(b)." *Id.* at *2 n.3.

On remand, the parties argued over the amount of fees and costs the district court should award Rios and Velasco. After holding a hearing, the district court ordered as follows:

> IT IS HEREBY ORDERED THAT Plaintiff's Motion for Fees and Costs granted in part and denied in part. Consistent with the Court of Appeals order filed on May 9, 2016, the award of attorney fees and costs to Defendant is vacated. Plaintiffs are entitled to reasonable costs of $2,040.05, not including the arbitrator fees. The Court exercises its discretion to award fees to Plaintiff. Pursuant to NSTR 27(b)(4), these fees may not exceed a total of $3,000.

Rios and Velasco appeal again. This time, they argue that the district court's award of attorney fees is unclear as to how much, if any, it has awarded each of them, and that the district court's order was erroneous because it relied on a misinterpretation of NSTR 27(b)(4) and disregarded the governing legal principles of *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

We review a district court's decision on a motion for attorney fees for an abuse of discretion. *Las Vegas Metro. Police Dep't v. Blackjack Bonding*, 131 Nev. ___, ___, 343 P.3d 608, 614 (2015), 3 *reh'g denied* (May 29, *3 2015), *reconsideration en banc denied* (July 6, 2015). An abuse of discretion occurs "when the district court bases its decision on a clearly erroneous factual determination or disregards controlling law." *Id.* (citing *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004); *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993)). "Questions of statutory construction, including the meaning and scope of a statute, are questions of law, which this court reviews de novo." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (citing *City of Reno v. Reno Gazette-Journal*, 1.1.9 Nev. 55, 58, 63 P.3d 1147, 1148 (2003)).

When determining the amount of attorney fees to which a prevailing party is entitled, the trial court must first consider the factors the Nevada Supreme Court announced in *Brunzell*, which include: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). A district court should consider each of these factors and no one element should predominate or be given undue weight. *Id.*

After a short trial, "[t]he prevailing party at the short trial is entitled to all recoverable fees, costs and interest pursuant to statute or N.R.C.P. 68." NSTR 27(b)(1). However, "[a]n award of fees under subsections (1) or (2) of this rule may not 4 exceed a total of $3,000, unless the *4 parties otherwise stipulate or the attorney's compensation is governed by a written agreement between the parties allowing a greater award." NSTR 27(b)(4). Progressive argues that NSTR 27(b)(4) means that the maximum a losing party will have to pay in attorney fees—no matter how many prevailing parties arise from a short trial—is $3,000, while Rios and Velasco argue that this rule simply means that each of them are independently entitled to a maximum of $3,000.

The plain language of both NSTR 27(b)(1) and 27(b)(4), when read in combination, provide that the $3,000 award limit is to be the maximum award granted *per prevailing party*, rather than prevailing "side." NSTR 27(b)(1) explicitly states that "[t]he prevailing party at the short trial is entitled to all recoverable fees," which uses the singular form of the word "party," indicating that this rule applies to individual parties rather than a collective group. In the legal lexicon, courts refer to a "party" to a lawsuit to refer to an individual person or entity. *Party*, Black's Law Dictionary (10th ed. 2014) ("2. One by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment; litigant <a party to the lawsuit>"). And a "prevailing party" is thus an individual "party"—i.e. an independent person or entity—who wins at that trial. *See id.* ("prevailing party (17c) A party in whose favor a judgment is rendered, regardless of the amount of damages awarded . . ."); *see also Smith v. Crown Financial Services of America*, 111 Nev. 277, 284, 890 P.2d

769, 773 (1995) (holding that the term "prevailing party" includes "plaintiffs, counterclaimants and defendants"); *Blackjack Bonding*, 131 Nev. at ___, 343 P.3d at 614 (holding that a "prevailing party" is one that succeeds "on any significant issue in litigation which achieves some of the benefit it sought in bringing suit."). A "party" or "prevailing party" as meant by NSTR 27(b), therefore, does not refer to the entire group of plaintiffs who prevailed at trial as a whole, nor does it refer to any group of plaintiffs represented by a single attorney. Rather, it means exactly what it says: "one by or against whom a lawsuit is brought," meaning an individual person or entity, regardless of the existence of co-parties.

Also, the phrase "an award" as used in NSTR 27(b)(4) refers to an individual award made to an individual "prevailing party" under NSTR 27(b)(1), not the total judgment the losing party needs to pay between all prevailing parties. Otherwise, NSTR 27(b)(4) would limit "a judgment" regarding attorney fees to $3,000 per *losing party*, or refer to it as "a penalty" upon the losing party. But it does not. it refers to "an award" to the prevailing party. *See* NSTR 27(b)(1) and 27(b)(4).

Progressive argues that limiting the award to $3,000 per side—i.e. requiring all joint prevailing parties in a short trial to share a combined maximum award of $3,000 in attorney fees—is consistent with the spirit of the short trial program, which is meant to keep costs low. But capping the attorney fees award at $3,000 per individual prevailing party still keeps costs much lower than a full jury trial. Moreover, Progressive's interpretation would create uncertainty in results. For example, in this case, if Rios prevailed on her claim, but Velasco did not, it would be unclear whether the court should award the $3,000 in attorney fees if the phrase "prevailing party" meant both Rios and Velasco. The more logical interpretation is that "prevailing party" means each individual party and, under this hypothetical, Rios could be awarded fees while Velasco is not.

Therefore, we agree with Rios and Velasco that the $3,000 limit of NSTR 27(b)(4) means that a court can award the prevailing parties after a short trial no more than $3,000 each.

Consequently, the trial court abused its discretion in ruling on attorney fees because in deciding the issue, it relied on a misinterpretation of law or disregarded the guiding legal principles in deciding the issue. *See Blackjack Bonding*, 131 Nev. at ___, 343 P.3d at 614 (citing *NOLM, LLC*, 120 Nev. at 739, 100 P.3d at 660-61); *Bergmann*, 109 Nev. at 674, 856 P.2d at 563).[2] Accordingly, we

[2] To the extent the order could theoretically be construed as a denial of attorney fees, which would not require application of the *Brunzell* factors, *see Stubbs v. Strickland*, 129 Nev. 146, 152 n.1, 297 P.3d 326, 330 n.1 (2013), remand is still required because the trial judge misconstrued the law for the reasons discussed above. --------

ORDER the judgment of the trial court REVERSED AND REMAND this matter for proceedings consistent with this order.

/s/_____, C.J.

Silver

/s/_____, J.

Tao

/s/_____, J.

Gibbons cc: Hon. Douglas Smith, District Judge

Kathleen M. Paustian, Settlement Judge

Kenneth L. Hall

Dennett Winspear, LLP

Eighth District Court Clerk

casetext

TAB 4

Proposed Changes to the Nevada Alternative Dispute Resolution and Nevada Short Trial Rules

Blue = Nevada Justice Association Proposed Changes
Green = State Bar of Nevada Proposed Changes
Purple = Eighth Judicial District Court Proposed Changes

Rules Governing ADR
General Provisions

Rule 1. Definitions. As used in these rules:

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

(~~C~~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 ~~Rules~~ and any local rules.

Nevada Arbitration Rules

Rule 3. Matters subject to arbitration.

~~(A)~~ All civil cases commenced in the district courts ~~that have a probable jury award value not in excess of $50,000 per plaintiff, exclusive of interest and costs, and regardless of comparative liability~~, otherwise exempted by NAR 5 are subject to the program. ~~except class actions, appeals from courts of limited jurisdiction, probate actions, divorce and other domestic relations actions, actions seeking judicial review of administrative decisions, actions concerning title to real estate, actions for declaratory relief, actions governed by the provisions of NRS 41A.003 to 41A.069, inclusive, actions presenting significant issues of public policy, actions in which the parties have agreed in writing to submit the controversy to arbitration or other alternative dispute resolution method prior to the accrual of the cause of action, actions seeking equitable or extraordinary relief, actions that present unusual circumstances that constitute good cause for removal from the program, actions in which any of the parties is incarcerated and actions utilizing mediation pursuant to Subpart C of these rules.~~

(~~B~~a) Any civil case, regardless of the ~~monetary value, the~~ amount in controversy, or ~~the~~ 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~~b) While a case is in the program, the parties may, with the approval of the district judge to whom the case is assigned, stipulate, 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 ~~will extend~~ shall not extend ~~by no more than 30 days~~ the timetable set forth in these rules for resolving cases in the program.

(~~D~~c) 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. The parties may, however, either confirm, vacate or modify the decision of the arbitrator in the manner authorized by NRS 38.135, 38.145 and 38.155.

~~(E) In cases where any party's claim qualifies for exemption, any other party's claim, though suitable for arbitration, may be included with the exempt claims in the district court action for the convenience of the litigants, if the party with the claim qualified for arbitration so requests.~~

Rule 4. Relationship to district court jurisdiction and rules.

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

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

(~~C~~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 ~~N.R.C.P.~~ NRCP 16.1 do not apply.

(~~D~~d) The calculation of time and the requirements of service of pleadings and documents under these rules are the same as under the ~~Nevada Rules of Civil Procedure~~. The commissioner or the commissioner's designee shall serve all rulings of the commissioner on any matter ~~as defined in~~ allowed by ~~N.R.C.P.~~NRCP 5(b); ~~additionally, in the Eighth Judicial District, service may also be made by the commissioner's designee placing the ruling or other communication in the attorney's folder in the clerk's office. Whenever a party is required or permitted to do an act within a prescribed period after service of a ruling by mail or by placement in the attorney's folder, 3 days shall be added to the prescribed period~~.

(~~E~~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 ~~Rule~~ 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. 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~~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 assigned.

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

Rule 5. Exemptions from arbitration.

(A) A party claiming an exemption from the program pursuant to Rule 3(A) on grounds other than the amount in controversy, the presentation of significant issues of public policy, or the presentation of unusual circumstances that constitute good cause for removal from the program will not be required to file a request for exemption if the initial pleading specifically designates the category of claimed exemption in the caption. Otherwise, if a party believes that a case should not be in the program, that party must file with the commissioner 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 20 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 of the categories of exempt cases listed in Rule 3. The request for exemption must also include a summary of facts which supports 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 filing may subject the requesting party to sanctions by the commissioner. *See below for proposed revision to 5(a).*

(~~B~~c) Any opposition to a request for exemption from arbitration must be filed with the ~~commissioner~~ clerk of court and served upon all appearing parties within ~~5~~ 7 days of service of the request for exemption.

~~(C) The parties may file a joint request for exemption.~~

(~~D~~d) Where requests for exemptions from arbitration are filed, the commissioner shall review the contentions, facts and evidence available and determine whether an exemption is warranted. The commissioner may require that a party submit additional facts supporting the party's contentions. Any objection(s) to the commissioner's decision must be filed with the ~~commissioner~~ clerk of court who shall then notify the district judge to whom the case is assigned. Objections must be filed within ~~5~~ 7 days of the date the commissioner's decision is served, with service to all parties.

(E) The district judge to whom a case is assigned 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 may impose any sanction authorized by ~~N.R.C.P~~ 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 5. Cases exempt 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).

(b) Permissive exemption. 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:

(1) any action presenting significant issues of public policy;

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

(3) any action where, assuming a jury finds in favor of plaintiff, the probable jury verdict would exceed $75,000 per Plaintiff, exclusive of fees, costs, and interest.

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 serv 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.

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.

Rule 6. Assignment to arbitrator.

(~~A~~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 ~~commissioner~~ 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.

(~~B~~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~~c) Unless a request for exemption is filed, the commissioner 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 ~~10~~ 14 days, file with the commissioner 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 shall appoint an arbitrator from among those names not stricken.

(3) If only one party responds within the ~~10~~ 14-day period, the ~~commissioner~~ clerk of court shall appoint an arbitrator from among those names not stricken.

(4) If neither party responds within the ~~10~~ 14-day period, the commissioner 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~~d) If a request for exemption is filed and denied, the commissioner shall, within ~~5~~ 7 days after the time has expired for filing an objection to the commissioner's denial of the request, or within ~~5~~ 7days after the district 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~~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 ~~10~~ 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 court. The commissioner, ~~who~~ shall ~~will~~ review the objections and render a decision. This decision may be appealed to the district judge to whom the case is assigned. The notice of appeal shall be filed with the ~~commissioner~~ clerk of court within ~~10~~ 14 days of the date of service of the commissioner's decision. The commissioner shall then notify the district judge of the appeal.

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

Rule 7. Qualifications of arbitrators.

(a) Each commissioner 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. The state bar may charge applicants for the non-attorney panel of arbitrators an appropriate fee to cover the expense of its investigation. 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) Non-attorney arbitrators must: ~~(i)~~ be listed on the roster of approved arbitrators of the American Arbitration Association or a similar, reputable arbitration service, ~~or (ii) have a juris doctorate degree and 8 years of work experience in their areas 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~~.

(c) 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 biennially. Failure to do so may constitute grounds for temporary suspension or removal from the panel of arbitrators.

(d) Arbitrators ~~shall be sworn or affirmed~~ 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).

(e) 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.

(f) Any ~~issue~~ challenge concerning the participation or disqualification of a person on the panel of arbitrators shall be referred to the commissioner 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 ~~powers~~ authority of an arbitrator shall include, but not be limited to, the power~~s~~:

(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. The arbitrator shall set deadlines for discovery and expert disclosures at the early arbitration conference.

(b) Any challenge to the authority or action of an arbitrator shall be filed with the ~~commissioner~~ clerk of court and served upon the other parties and the arbitrator within ~~10~~ 14 days of the date of the challenged decision or action. Any opposition to the challenge must be filed with the ~~commissioner~~ clerk of court and served upon the other parties within ~~5~~ 7 days of service of the challenge. The commissioner shall rule on the issue in due course. Judicial review of the ruling of the commissioner may be obtained by filing a petition for such review with the ~~commissioner~~ clerk of court within ~~10~~ 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 ~~Rule~~ NAR 4 may be filed with the district court. ~~All stipulations, motions and other documents relevant to the arbitration proceeding must be lodged with the arbitrator.~~

Rule 10. Restrictions on communications.

(a) ~~Neither counsel nor parties may communicate directly with the~~ An arbitrator ~~regarding the merits of the case, except in~~ shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of, ~~or with reasonable notice to,~~ 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 receive 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 ~~N.R.C.P~~. 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 ~~Nevada Rules of Civil Procedure, but~~ 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.

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. Any such request for permission for an extension beyond the 9-month period must be made in writing to the commissioner by the arbitrator. The commissioner 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:

(A) loss or reduction of the arbitrator's fee;

(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) ~~Consolidated actions shall~~ 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.

(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 ~~Rule~~ 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 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 ~~10~~ 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 ~~10~~ 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 and may conduct such by video conference if necessary.

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

Rule 16. Form and content of award.

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

(~~B~~b) The arbitrator shall ~~determine all issues~~ 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~~. and costs~~. The arbitrator shall present a determination in a written arbitration award, The maximum award that can be rendered by the arbitrator is ~~$50,000~~ $75,000 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~~c) Findings of fact and conclusions of law, or a written opinion stating the reasons for the arbitrator's decision are not required but may be prepared at the arbitrator's discretion. If prepared, findings of fact and conclusions of law must be filed at the same time as the arbitration award, in a separate document titled as an arbitration decision.

(~~D~~d) The offer of judgment provisions of ~~N.R.C.P.~~NRCP 68 and NRS Chapter 17 apply to matters in the program.

(~~E~~e) (Attorney's fees awarded by the arbitrator may not exceed $10,000, unless the compensation of an attorney is governed by an agreement between the parties allowing a greater award.) ~~(Attorney's fees awarded by the arbitrator may not exceed $10,000, unless the compensation of an attorney is governed by an agreement between the parties allowing a greater award.)~~

(~~F~~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.

NAR 16(E). NJA also recommends modifying NAR 16(E) to increase the limits on awardable attorney's fees to $10,000 as proposed by the State Bar in ADKT 0575. NJA further proposes NRS 18.010(2)(a) be brought back into full effect by inserting the italicized language: "…unless the compensation of an attorney is governed by an agreement between the parties *or by statute* allowing a greater award."

Rule 17. Filing of award.

(~~A~~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 ~~commissioner~~ 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 for an extension of these time periods.

(~~B~~b) Applications for attorney's fees, costs and/or interest pursuant to any statute or rule must be submitted to ~~filed with~~ 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 filed~~ submitted to ~~with~~ the arbitrator and served on the other parties within ~~5~~ 7 days after service of the application on the responding party. Rulings on applications under this subsection must be filed with the ~~commissioner~~ clerk of the court by the arbitrator and served on all parties within ~~5~~ 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 ~~Rule~~ NAR 19.

(~~C~~c) No amended award shall be filed by the arbitrator, but for good cause the arbitrator may ~~file with~~ submit a request to the commissioner and serve on the parties a request to amend the award, as long as such 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 NAR ~~Rule~~ 18 or notifying a prevailing party to enter judgment pursuant to ~~Rule~~ 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~~d) This rule does not authorize the use of an amended award to change the arbitrator's decision on the merits.

(~~E~~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~~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 ~~and the commissioner~~ 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~~c) of this rule.

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

(~~C~~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 ~~commissioner~~ clerk of the court pursuant to Nevada Arbitration Rules 23 and/or 24, a party shall have ~~10~~ 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~~b) of this rule.

(~~D~~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 ~~N.S.T.R.~~ NSTR 5.

(~~E~~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 ~~N.S.T.R.~~ NSTR 5.

(~~F~~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~~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~~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 a form of final judgment in accordance with the arbitration award, ~~including~~ and a separate decision on any ~~grant of~~ timely application for attorney's fees, costs and/or interest.~~, which~~ The commissioner shall submit judgment ~~shall then be submitted for signature~~ to the assigned district judge ~~to whom the case was assigned;~~ for signature; the judgment must then be filed with the clerk.

(~~B~~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~~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, 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.

(~~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.~~

Rule 21. Scheduling of trial de novo.

(~~A~~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 ~~N.S.T.R.~~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~~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~~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~~b) If, during the proceedings in the trial de novo, the ~~district court~~ 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 ~~N.R.C.P.~~NRCP 11 or ~~N.R.C.P.~~ NRCP 37.

Rule 23. Costs for Arbitrators.

(~~A~~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~~b) To recover such costs, the arbitrator must submit to the parties an itemized bill of costs within ~~15~~ 14 days of the date that the arbitrator serves the award in an action; within ~~15~~ 14 days of notice of removal of the case from the program by resolution or exemption; or within ~~15~~ 14 days of notice of change of arbitrator, whichever date is earliest.

(~~C~~c) An arbitrator's ~~C~~costs must be borne equally by the parties to the arbitration, and must be paid to the arbitrator within ~~10~~ 14days 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~~d) All disputes regarding the propriety of an item of costs must be filed with the ~~commissioner~~ clerk of the court within ~~5~~ 7 days of the date that the arbitrator serves the bill reflecting the arbitrator's costs, and resolved by the commissioner.

(~~E~~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~~a) Arbitrators appointed to hear cases pursuant to these rules are entitled to be compensated at the rate of ~~$100~~ $150 per hour to a maximum of ~~$1,000~~ $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 ~~$250~~ $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. If an arbitrator is not fully compensated for time to conduct the arbitration, the arbitrator may report their uncompensated time as pro bono publico services under RPC 6.1(b).

(~~B~~b) To recover any fee, the arbitrator must submit to the parties an itemized bill reflecting the time spent on a case within ~~15~~ 14 days of the date that the arbitrator serves an award in an action; within ~~15~~ 14 days of notice of removal of the case from the program by resolution or exemption; or within ~~15~~ 14days 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~~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 ~~10~~ 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~~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 Nev. R. Prof. Cond. 6.1

(e) All disputes regarding the fee of the arbitrator must be filed with the ~~commissioner~~ clerk of the court within ~~5~~ 7 days of the date that the arbitrator serves the bill reflecting the arbitrator's fee, and resolved by the commissioner.

(~~E~~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.

(~~A~~a) 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.

~~(B) These rules may be known and cited as the Nevada Mediation Rules, or abbreviated N.M.R.~~

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 ~~15~~ 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~~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 ~~Rule~~ 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~~b) Any and all fees or expenses related to the use of a private mediator shall be borne by the parties equally.

(~~C~~c) Unless the parties have stipulated to a mediator pursuant to subdivision (~~A~~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 ~~10~~ 14 days, file with the ~~commissioner~~ 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 ~~10~~ 14-day period, the commissioner shall appoint a mediator from among those names not stricken.

(4) If neither party responds within the ~~10~~ 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~~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~~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~~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.

(~~C~~c) 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.

(~~D~~d) 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 ~~5~~7 days after the conclusion of the mediation proceedings, the mediator shall file with the ~~commissioner~~ 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 ~~N.R.A.P.~~ 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~~a) Mediators shall be entitled to remuneration (of up to $2,500) (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~~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~~c) Fees and costs of the mediator are paid equally by the parties unless otherwise stipulated.

(~~D~~d) If required by the mediator, each party to a case within the program shall deposit with the mediator, within ~~15~~21 days of request by the mediator, a sum of up to $~~250~~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~~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~~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~~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 ~~the statutory immunity provided by NRS 48.109 and also shall be afforded~~ shall the same ~~statutory~~ immunity as arbitrators pursuant to ~~N.R.S.~~ 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. ~~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.

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 ~~N.A.R.~~ 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 ~~10~~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 ~~10~~14 days after service of the mediator's report under N.M.R. 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 commissioner~~ 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 ~~10~~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 ~~10~~14 days after service of the mediator's report under ~~N.M.R.~~ 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 ~~Nevada Rules of Civil Procedure~~ 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 ~~Nevada Rules of Civil Procedure~~ 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 ~~N.R.C.P.~~ NRCP16.1, 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 ~~7~~14 days before the pretrial conference under ~~Rule~~ 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 ~~10~~14 days before the scheduled short trial date, the presiding judge shall hold a conference with the parties, in person or by ~~telephone~~ 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 ~~2~~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. ~~Calendaring~~ Scheduling. Unless otherwise stipulated to by the parties and approved by the presiding judge, or for good cause shown, a short trial shall be ~~calendared~~ 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 ~~Rule~~ 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. ~~Depositions, interrogatories and admissions~~ 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 ~~Rule~~ 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.

Rule 23. Juror selection and voir dire. Twelve potential jurors will shall be selected from the county jury pool for a jury of 4 members; 14 potential jurors will be selected for a jury of 6 members; and 16 potential jurors will be selected for a jury of 8 members. Each side shall be allowed ~~15~~ as much of their 3 hours and thirty minutes ~~voir dire, which time shall not be deducted from the 3~~ may utilize ~~shall be allowed 15 minutes of voir dire, which time shall not be deducted from the 3~~ as much of their 3.25 ~~hours~~ of presentation time provided under ~~Rule~~ NSTR 21 as they deem necessary. ~~At the discretion of the judge, the time for voir dire may be expanded to 20 minutes per side~~. Each side shall be entitled to strike 2 jurors by peremptory challenge. Challenges for cause shall will remain the same as provided by statute. In the event the resulting jury panel is greater than 4 members for a 4-member jury, the first 4 members called will constitute the jury panel. In the event the resulting jury panel is greater than 6 members for a 6-member jury, the first 6 members called will constitute the jury panel. In the event the resulting jury panel is greater than 8 members for an 8-member jury, the first 8 members called will constitute the jury panel.

NSTR 23. The necessity of adequate time to conduct voir dire is essential to enable counsel to attempt to impanel a truly impartial jury. Voir dire is designed to identify prospective jurors that are unqualified, biased or unwilling to follow the facts and the law, and remove them for cause. It is also to enable counsel to intelligently exercise their peremptory challenges.

The right of counsel to conduct voir dire is deemed by this Court to be a substantive right that cannot be unreasonably restricted. In Nevada a challenge for cause to further the goal of obtaining an impartial and disinterested jury is deemed so sacrosanct that this Court has held that not even the Legislature can abrogate such a right. That is not a problem, however, as the Nevada Legislature is in complete agreement and has codified this right in NRS 16.030(6) (The judge shall conduct the initial examination of prospective jurors and the parties or their attorneys are entitled to conduct supplemental examinations which must not be unreasonably restricted.)

Prospective juror incompetence, bias, and an unwillingness to follow the facts and law, infects Short Trial cases just as much as other cases and with just as deleterious effects. No attorney can even come close to adequately questioning a panel of prospective jurors for a Short Trial in the current time allotted. Every attorney the
Committee has spoken with on this point agrees. The time limits in NSTR 23 abridge the substantive right of trial counsel to conduct adequate voir dire.
Therefore, NJA proposes removing the time limits for conducting voir dire and incorporating the time a party uses on voir dire into the time allotted to present their case.

Rule 25. Jury instructions. Standard jury instructions should be taken from the Nevada Pattern Civil Jury Instruction Booklet unless a particular instruction has been disapproved by the Nevada Supreme Court. Any proposed or agreed to additions to the jury instructions shall be included in the pretrial memorandum and ruled on by the presiding judge at the pretrial conference. All stipulated and proposed instructions must be presented to the presiding judge prior to trial under ~~Rule~~ NSTR 10. The presiding judge shall encourage limited jury instructions.

Rule 26. Entry of judgment. Judgment shall be entered upon the short trial jury verdict form in a jury trial or upon a decision by the presiding judge in a trial to the bench, and the judgment, including any costs or attorney's fees, shall be filed with the clerk. A decision of at least 3 of the 4 jurors is necessary to render a verdict for a 4-member jury, at least 5 of the 6 jurors for a 6-member jury, and at least 6 of the 8 jurors for an 8-member jury. A judgment arising out of the short trial program may not exceed $~~50~~75,000 per plaintiff exclusive of attorney's fees, costs and prejudgment interest, unless otherwise stipulated to by the parties. Jurors shall not be notified of this limitation. Where cases not subject to mandatory arbitration were brought into the short trial program, the parties may establish a different ceiling of recovery by stipulation.

Rule 27. Attorney's fees, presiding judge's fees and costs.

(a) Attorney's fees, costs and interest for cases removed from the short trial program. In cases removed from the short trial program pursuant to Rule 5, attorney's fees, costs and interest shall be allowed as follows:

(1) The prevailing party at the trial following removal from the short trial program is entitled to all recoverable fees, costs, and interest pursuant to statute or ~~N.R.C.P.~~ NRCP 68.

(2) Exclusive of any award of fees and costs under subdivision (a)(1), a party is entitled to a separate award of reasonable attorney's fees and costs as set forth in paragraphs (~~A~~a) and (~~B~~b) below. If both parties demanded removal from the short trial program, the provisions of ~~N.A.R.~~ NAR 20(~~B~~b)(2) apply in lieu of (~~A~~a) and (~~B~~b) below.

(~~A~~a) Where the party who demanded removal from the short trial program fails to obtain a judgment that exceeds the arbitration award by at least 20 percent of the award, the nondemanding party is entitled to its reasonable attorney's fees and costs associated with the proceedings following removal from the short trial program.

(~~B~~b) Where the party who demanded removal from the short trial program 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 nondemanding party is entitled to its attorney's fees and costs associated with the proceedings following removal from the short trial program.

(b) Attorney's fees, presiding judge's fees, costs and interest following short trial. Attorney's fees, presiding judge's fees and costs shall be allowed following a short trial as follows:

(1) Upon application consistent with NRCP 54(d)(2);

(2) The prevailing party at the short trial is entitled to all recoverable fees, costs and interest pursuant to statute or ~~N.R.C.P.~~ NCRP 68.

~~(2)~~ (3) Exclusive of any award of fees and costs under subdivision (b)(1), a party is entitled to a separate award of fees and costs as set forth in ~~N.A.R.~~ NAR 20(~~B~~b)(2) in cases that enter the short trial program upon a request for trial de novo.

~~(3)~~ (4) The prevailing party at the short trial is also entitled to recover any fees and costs the party paid to the presiding judge.

~~(4) An award of fees under subsections (1) or (2) of this rule may not exceed a total of $3,000, unless the parties otherwise stipulate or the attorney's compensation is governed by a written agreement between the parties allowing a greater award.~~

~~(5)~~ (4) Recovery of expert witness fees is limited to $500 per expert unless the parties stipulate to a higher amount.

(5) An award of fees under subsections (1) or (2) of this rule ~~may not exceed a total of $3000, unless the parties otherwise stipulate~~ must be consistent with NRS 18.010, any controlling contract, NRCP 68, or ~~the attorneys compensation is governed by a written agreement between the parties allowing a greater~~ other applicable Nevada statute or case law: and

(6) The presiding judge may grant an award:

~~(5) Recovery~~ of expert witness fees ~~is limited to $500 per expert unless the parties stipulate to a higher amount~~ consistent with NRS 18.005.

NSTR 27(b)(4). The $3,000 cap on attorney's fees in NSTR 27(b)(4) deviates from existing Nevada law, is outdated and out of step with current insurance industry practices. The Nevada Legislature recognized that Nevada citizens could not be made whole in smaller cases without an adequate award of attorney's fees and enacted NRS 18.010(2)(a) to provide a means for them to be made whole. The current iteration of NRS 18.010(2)(a) designates those smaller cases as having a value of not more than $20,000. This Court expressly recognized Nevada's strong public policy in having plaintiffs made whole in smaller cases, first in its 1995 decision in Smith v. Crown Financial Services of America, 111 Nev. 277, 281-282, 890 P.2d 769, 772 (1995)10 and again in its 2004 decision in Trustees v. Developers Surety, 120 Nev. 56, 62-63, 84 P.3d 59, 63 (2004).11 The $3,000 limit on attorney's fees in NSTR 27(b)(4) conflicts with the public policy underlying NRS 18.010(2)(a) and the Smith and Trustees decisions. It does so by expressly limiting awards of attorney's fees in smaller cases.

Exclusive of the time involved in arbitrating a case, estimates of the time to litigate and try a Short Trial case to verdict range between $20,000 and $40,000. Understandably, Nevada attorneys are reluctant to take on these smaller cases if there is no hope their clients can be made whole, and it is economically unfeasible to do so. The $3,000 cap on awardable attorney's fees thus also creates an access to justice problem which will only get worse as time goes on.

The $3,000 attorney's fees limit in NSTR 27(b)(4) is also at odds with the legal framework for awarding fees under NRCP 68, *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 and *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998). This Court mandates under Rule 68 that a determination be made that the fees sought are reasonable and justified in amount. The maximum award able fee of $3,000 under NTSR 27(8)(4) is now unreasonably low in every case in which fu11 fees should be awarded under Rule 68.

The $3,000 limit under NSTR 27(b)(4) also creates an incentive for liability insurers to reject arbitration decisions, "wait out" Nevada citizens trying to receive justice and litigate cases through a Short Trial at little risk. Liability insurers in Nevada defend the vast majority of these cases. Most do so with in-house counsel and view the potential maximum $3,000 award of fees as a minor cost of doing business. This incentivizes the rejection of arbitration decisions and undermines the laudable goal of the Arbitration Program in providing" ... a procedure for obtaining a prompt and equitable of certain civil matters." NAR l(A).

NJA therefore proposes the limit on attorney's fees in NSTR 27(b)(4) be removed. In doing so, the policy of NRS 18.010(2)(a) will be upheld, litigants can be made whole in these smaller cases, and the stated purpose of the Arbitration Program will be promoted.

Rule 28. Fees for presiding judge.

(a) Allowable fees. Pro tempore judges shall be entitled to remuneration of ~~$150~~ $200 $185 per hour, with a maximum per case of ~~$1,500~~ $4,000 $2,000, unless otherwise stipulated.

(b) Itemized bill required. To recover fees, the judge pro tempore must submit to the parties an itemized bill within ~~10~~14 days of ruling on the post-trial motions, if any ~~the verdict or judgment in a bench trial~~, or within ~~10~~14 days of notice of removal of the case from the program by resolution or otherwise, whichever is earlier. The judge pro tempore shall indicate the advance deposits paid by the parties and adjust the amount requested accordingly.

(c) Payment. The fees shall be paid equally by the parties unless otherwise stipulated. Any dispute regarding the requested fees must be filed within ~~5~~7 days of the date that the judge pro tempore serves the itemized bill. The commissioner shall settle all disputes concerning the reasonableness or appropriateness of the fees. If a timely dispute to the itemized bill is not filed, the fees shall be paid within ~~10~~14 days of the date that the judge pro tempore serves the itemized bill. If fees are disputed, the parties shall pay the costs as determined by the commissioner within ~~5~~7 days from the commissioner's decision.

(d) Exception for indigent party. If one of the parties to the short trial is an indigent person who was exempted under NRS 12.015 from paying a filing fee, no fees for a short trial judge may be collected from any party to the short trial. Time spent by the judge pro tempore, where fees may not collected pursuant to this provision, may be reported as pro bono publico legal services hours to the State Bar of Nevada under Nev. R. Prof. Cond. 6.1.

NSTR 28. This rule has not been amended for nearly a decade. NJA proposes the maximum allowable fees for Arbitrators, Mediators and Judges Pro Tempore be increased to $3,000.

Rule 29. Costs for presiding judge.

(a) Allowable costs. Pro tempore judges are entitled to recover the costs, not to exceed $250, that the pro tempore judge reasonably incurs in presiding over an action within the short trial program. Costs recoverable by the pro tempore judge 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;
(6) Reasonable costs for secretarial services;
(7) Reasonable runner's fees; and
(8) Reasonable e-filing fees.

(b) Itemized bill required. To recover such costs, the presiding judge must submit to the parties an itemized bill of costs within ~~10~~14 days of the verdict or judgment in a bench trial, or within ~~10~~14 days of notice of removal of the case from the program by resolution or otherwise, whichever is earlier. The presiding judge shall indicate the advance deposits paid by the parties and adjust the amount requested accordingly.

(c) Disputes. All disputes regarding the propriety of an item of costs must be filed with the commissioner within ~~5~~7 days of the date that the presiding judge serves the bill reflecting the presiding judge's costs. The commissioner shall settle all disputes concerning the reasonableness or appropriateness of the presiding judge's costs. The parties shall pay the costs as determined by the commissioner within ~~5~~7 days from the commissioner's decision.

(d) Exception for indigent party. If one of the parties to the short trial is an indigent person who was exempted under NRS 12.015 from paying a filing fee, the pro tempore judge may not collect costs from any party to the short trial.

Rule 30. Deposits; failure to pay. Each party to a case within the short trial program shall deposit with the presiding judge, no later than ~~10~~14 days after the mandatory discovery and settlement conference, $~~875~~1,000 as an advance toward the presiding judge's fees and costs, unless the presiding judge is a district judge, in which case no payment of judge's costs or fees is required. If a party fails to pay the required advance, the district court shall, after giving appropriate notice and opportunity to be heard, hold the delinquent party in contempt and impose an appropriate sanction.

Rule 31. Allocation of fees and costs.

(a) Cases entered in short trial program by stipulation or following mediation. For cases that are entered in the short trial program by stipulation of the parties or after unsuccessful participation in the mediation program, jurors fees, presiding judge's fees and costs shall be borne equally by the parties subject to retaxation pursuant to ~~Rule~~ NSTR 27.

(b) Trial de novo cases. For cases that enter the short trial program following the filing of a request for a trial de novo:

(1) Juror fees shall initially be borne by the party filing the request for trial de novo as provided in ~~Rule~~ NSTR 4(a)(1), subject to retaxation pursuant to ~~Rule~~ NSTR 27.

(2) Should the plaintiff requesting the trial de novo fail to obtain a judgment in the short trial program that exceeds the arbitration award, or should the defendant requesting the trial de novo fail to obtain a judgment that reduces the amount for which that party is liable under the arbitration award, all presiding judge's fees and costs incurred while the case is in the short trial program shall become a taxable cost against and be paid by the party requesting the trial de novo. In comparing the arbitration award and the judgment, the presiding judge shall not include costs, presiding judge's fees, attorney's fees, and interest with respect to the amount of the award or judgment. If multiple parties are involved in the action, the presiding judge shall consider each party's respective award and judgment in making the comparison between the arbitration award and the judgment.

(New) Rule 32. Procedures at trial de novo.

(A) Evidence. If a trial de novo is requested, the arbitration 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.

(B) Attorney fees; costs; interest.

(1) The prevailing party at the trial de novo is entitled to all recoverable fees, costs, and interest 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 arbitration award is $20,000 or less, and the party requesting the trial de novo fails to obtain a judgement 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 judgement 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 assonated with the proceedings following the request for trial de novo. Conversely, of 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 ward and judgment in making its comparison between the award and judgement.

Rule 32. Binding short trial. Parties to cases in the short trial program may agree at any time that the results of the short trial are binding. If the parties agree to be bound by the results of the short trial, the procedures set forth in these rules governing direct appeals to the ~~supreme court~~ Supreme Court will not apply to the case.

Rule 33. Direct appeal of final judgment. Any party to a case within the short trial program shall have a right to file a direct appeal of the final judgment to the ~~supreme court~~ Supreme Court under the provisions of the ~~Nevada Rules of Civil Procedure~~ NRCP and the ~~Nevada Rules of Appellate Procedure~~ NRAP. Any party who has failed to pay the presiding judge's fees and/or costs in accordance with Rules 28 and 29 shall be deemed to have waived the right to appeal.

Rule 34. Support personnel. Short trials shall not require a bailiff or court clerk, but, on the day of the trial, the court administrator or designated representative shall be responsible for providing the panel of jurors for a short jury trial.

NSTR 34. NJA proposes the presiding judge be authorized to designate one of their staff or other suitable person to record the proceedings and sequester the jury.

Rule 35. Citations to rules. These ~~rules may be known and cited as the~~ Nevada Short Trial Rules, ~~or abbreviated N.S.T.R.~~ may be cited as NSTR.

TAB 5

From: Candace Carlyon <ccarlyon@carlyoncica.com>
Sent: Tuesday, February 9, 2021 1:49 PM
To: Supreme Court Clerk
Subject: ADKT 575

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FILED
FEB 09 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Elizabeth A. Brown
Clerk of the Supreme Court
201 S. Carson St.
Carson City, NV 89701

Dear Ms. Brown:

I wanted to express my support for ADKT 575. I have served as a Nevada Short Trial judge for many years. While the process is streamlined, the current numbers utilized for fee awards to parties and payment and reimbursement to Arbitrators, Mediators and Short Trial Judges are not reflective of reasonable rates or hours involved in the processes. A typical case that goes to trial involves 20-30 hours of judicial time, including conducting pretrial hearings, law and motion pleadings, a trial day which is typically 10-12 hours, and post trial motions. A recent case involving a pro per litigant consumed over 48 hours of my time acting as the judicial officer, and counsel for the prevailing side expended almost that amount of time only through the trial (not taking into account numerous post-trial motions), receiving a fee award which comprised less than $65 per hour. This represents less per hour than would be charged by a typical auto mechanic or plumber in the Las Vegas area.

The Short Trial program is a great benefit to our judicial system. Many cases are resolved through that program which would otherwise increase the burden on our district courts. The program also provides a highly cost-effective method of dispute resolution for parties, who are able to expedite the consideration of matters in a manner which is designed to require less time to be devoted by legal counsel than would be the case in a traditional trial process. Expert and other witnesses whose testimony is based on reports or documents need not be called to testify in person, as reports are presumptively admissible. Pretrial procedures are expedited by judicial oversight from the early stages of the case, with an emphasis on cooperation and efficiency. The increases proposed by ADKT 575 would be assessed against the litigants who receive the benefits of this highly successful program.

Candace Carlyon, Esq.
ccarlyon@carlyoncica.com
265 E. Warm Springs Road, Suite 107
Las Vegas, NV 89119
702.685.4444 (office)
702.577.3613 (direct)
702.220.4360 (facsimile)

CARLYON CICA CHTD.
www.carlyoncica.com
FEB 09 2021

21-03888

Brown, Elizabeth

FILED

FEB 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

From: Quiban, Anthony <ANTHONY.QUIBAN@Allstate.com>
Sent: Monday, February 22, 2021 8:22 AM
To: Supreme Court Clerk
Subject: Please note my OBJECTION to ADKT 0575.

[**NOTICE:** This message originated outside of the Supreme Court of Nevada -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

I am opposed to ADKT 0575

Anthony Quiban, Legal Administrative Assistant
ANDERTON & ASSOCIATES
Allstate Insurance Company Staff Counsel
2360 Corporate Circle, Suite #320
Henderson, NV 89074
(702) 726-3342
Fax: (877)684-4264
Anthony.Quiban@Allstate.com

FILED
FEB 09 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

From: David Sampson <davidsampsonlaw@gmail.com>
Sent: Tuesday, February 9, 2021 12:44 PM
To: Supreme Court Clerk
Subject: ADKT 0575

[**NOTICE:** This message originated outside of the Supreme Court of Nevada -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

I support the proposed amendments to ADKT 0575. I also ask that prevailing parties please be allowed to recover the arbitrator's fees as part of their costs in having to pursue the litigation. If a losing litigant required that the matter proceed to litigation, then the losing litigant should have to reimburse the prevailing party all costs, including the arbitrator's fees. I believe that is particularly appropriate if the arbitrator's fees are going to be increased.

Thank you,

--

David Sampson, Esq.
Certified Personal Injury Specialist (Nevada Justice Association, State Bar of Nevada)
Trial Lawyer of the Year (Nevada Reptile Trial Lawyers 2017)

The Law Office of David Sampson, LLC.

630 S. 3rd St.
Las Vegas NV 89101
Phone: (702) 605-1099
Fax: (888) 209-4199

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Thank you.

RECEIVED
FEB 09 2021

Brown, Elizabeth

FILED

FEB 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

From: Mascarello, Michael <michael.mascarello@allstate.com>
Sent: Monday, February 22, 2021 1:39 PM
To: Supreme Court Clerk
Subject: OBJECTION on ADKT 0575

[**NOTICE:** This message originated outside of the Supreme Court of Nevada -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

I am opposed to ADKT 0575. Increasing the attorney fees cap will discourage settlement after an arbitration award and will lead to an increase in cases where a trial de novo is requested thus cutting against the stated purpose of the alternative dispute rules. A prompt resolution of civil matters subject to the arbitration rules will be greatly compromised.

Michael L. Mascarello
Trial Attorney
ANDERTON & ASSOCIATES
Staff Counsel for Allstate Insurance Company
2360 Corporate Circle, Suite 320
Henderson, Nevada 89074
(702) 726-3343 Direct
(877) 684-4264 Fax
Email: michael.mascarello@allstate.com

FILED

From: Michael N. Feder <MFeder@dickinson-wright.com>
Sent: Tuesday, February 9, 2021 12:48 PM
To: Supreme Court Clerk
Subject: ADKT 575

FEB 09 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

[NOTICE: This message originated outside of the Supreme Court of Nevada -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good afternoon. I am emailing to demonstrate my support for the proposed amendments to ADKT 575 so long as indigent and Pro Bono matters still remain exempt from these fees. Thank you.

Sent from my iPhone please excuse any typos

Michael N. Feder Member

Dickinson Wright PLLC
3883 Howard Hughes Parkway
Suite 800
Las Vegas NV 89169

Phone702-550-4440
Fax844-670-6009
EmailMFeder@dickinsonwright.com

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21-03887

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FEB 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Brown, Elizabeth

From: Anderton, Michelle <michelle.anderton@allstate.com>
Sent: Monday, February 22, 2021 3:45 PM
To: Supreme Court Clerk
Subject: OBJECTION on ADKT 0575 and request to participate in the March 2, 2021 Public Hearing

Importance: High

[**NOTICE:** This message originated outside of the Supreme Court of Nevada -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

Dear Elizabeth Brown

Please note my OBJECTION to ADKT 0575.

I was surprised to hear of this proposed revision and more surprised later to learn at the Civil Bench/Bar Meeting in Clark County on February 8, 2021 that this proposal is the brain-child of Eric Dobberstein, the President of the State Bar. To hear Mr. Dobberstein describe during the bench-bar meeting why he made this proposal, one would think he is the President of the Nevada Justice Association representing only Plaintiff personal injury attorneys, not the President of all lawyers in the state. (*The civil bench bar meeting was recorded*). Prior to the January 22, 2021 filing of the subject petition there was no proposal to the members of the Bar of which I am aware, rather merely a "highlight of the proposed changes" given to the Board of Governors in their December 2020 meeting.

Under ADKT 0575 arbitrator/judge fees and the maximum award of attorney fees would drastically increase without a reasonable basis. Such an extreme action would ultimately hinder the successful ADR program in Nevada.

The court-annexed arbitration program is nearing its 30-year anniversary. It works well because of the way it is structured. The purpose of the program is not to give those who act as arbitrators or short trial judges a solid source of income but rather to simplify the process to allow many files to resolve in a "prompt and equitable" manner. Other states have similar programs where the arbitrators and mediators serve at no expense to the parties. Many arbitrators and short trial judges in Nevada serve in that capacity to give assistance to the community and treat it as *quasi* pro bono work. I am not aware of any shortage of arbitrators or short trial judges willing to serve with the fees that are presently allowed. The arbitrator or *pro tem* fees should serve to offset the time and expenses incurred by the arbitrator, not fully compensate them for their time at the hourly rate billed by some attorneys. While a modest increase in the hourly fee and the capped fee at both the arbitration and the short trial level may be warranted, the amounts proposed are improvident.

Of even greater concern, the proposal seeks a **233%** increase in the attorney fees that can be awarded following an arbitration award. The logic for such a steep proposed increase in a program designed to encourage prompt and equitable resolution defies reason without an understanding of Mr. Dobberstein's motives as he revealed at the February 8 civil bench bar meeting. If ADKT 0575 is accepted and the ADR rules amended, the purpose of court-annexed arbitration will be thwarted and more arbitration decisions and awards will be de novo'd to short trial where no similar increase is proposed.

At a very minimum, this proposal should be tabled until comments from members of the bar and those who serve as arbitrators, mediators, and short trial judges can be obtained. It is important that the integrity of the program be maintained and the purpose of the program be preserved.

21-05223

I would appreciate the opportunity to be heard at the public hearing on March 2, 2021.

Please let me know if you have questions or if you need additional information from me prior to the hearing.

Michelle L. Anderton
Lead Counsel
ANDERTON & ASSOCIATES
Staff Counsel for Allstate Insurance
2360 Corporate Circle, Suite 320
Henderson, Nevada 89074
Direct Line: (702) 726-3354
Cell: (702) 494-9721

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February 22, 2021

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FEB 23 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Elizabeth A. Brown
Clerk of the Supreme Court
The Supreme Court of Nevada
201 S. Carson St.
Carson City, NV 89701
nvscclerk@nvcourts.nv.gov

In re: Amendment to Rules Governing Alternative Dispute Resolution, Short Trial Rules, and NRCP 68 to Increase the Rates for Compensation to Attorneys, Arbitrators, Mediators, and Judges Pro Tempore; ***ADKT # 0575***
Comment Deadline: February 22, 2021

Dear Supreme Court:

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions – protecting families, communities, and businesses in the U.S. and across the globe.

Property casualty insurers are among the highest-volume consumers of legal services and have a genuine interest in preserving the integrity of a fair, predictable, legal system. APCIA appreciates the opportunity to submit this comment letter, responding to the Petition filed on January 22, 2021 by the Board of Governors of the State Bar of Nevada (Board) seeking to amend the Rules Governing Alternative Dispute Resolution and Short Trial Rules regarding compensation for attorneys, mediators, and arbitrators. For the reasons set forth below, APCIA urges the Supreme Court to reject the relief requested in the Petition.

Nevada has implemented a court-annexed arbitration program, governed by the Nevada Arbitration Rules (N.A.R.,) which "is a mandatory, non-binding arbitration program... for certain civil cases commenced in judicial districts that include a county whose population is 100,000 or more." [N.A.R. 1] The program is intended "to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." [N.A.R. 2] The program applies to

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"[a]ll civil cases commenced in the district courts that have a probable jury award value not in excess of $50,000 per plaintiff, exclusive of interest and costs, and regardless of comparative liability" [N.A.R. 3} with certain listed exceptions, none of which are relevant here. Once a case is accepted or ordered into the program, the parties are relieved from the mandatory pretrial discovery and disclosure requirements set forth in Nevada Rule of Civil Procedure (N.R.C.P.) 16.1. [N.A.R. 4(C).] While a case is pending in the program, motion practice is significantly reduced, with only dispositive motions and a few other specified types of motions being permitted. [N.A.R. 4(E).] Arbitrators have discretion to relax the rules of evidence "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" [N.A.R. 8 (A)(2).]

Attorney Compensation Limitation

The Board has asked that the Supreme Court "increase the cap on compensation for attorney fees to $10,000 for each case." The referenced "cap on compensation" resides in N.A.R. 16(E) which states as follows:

> **Rule 16. Form and content of award.**
> (E) Attorney's fees awarded by the arbitrator may not exceed $3,000, unless the compensation of an attorney is governed by an agreement between the parties allowing a greater award.[1]

This fee cap does not apply to cases in which the parties have agreed to submit a case to a private arbitrator as permitted under N.A.R. 6. In fact, N.A.R. 6(B) specifies that "[a]ny 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."

The Board asserts that the cap on attorney fees "does not reflect current market rates nor practices in our sister states." However, the Board cites no authority to support the inference that the statutory cap was intended to "reflect current market rates" when adopted. Nevada's court-annexed arbitration is specifically designed to be a pared-down, simplified, low-cost option for the resolution of eligible disputes without extensive discovery or motion practice, elements of litigation that typically require significant attorney time. The cap on attorney's fees reflects the focus on providing a low-cost option. The Board offers no reasoned approach for amending the cap and fails to explain how it calculated the arbitrary figure suggested.

The Board asserts that Nevada should amend the attorney fee cap because Nevada's "sister states" have no similar limitations. As support, the Board cites the Utah Uniform Arbitration Act [78B-11-122] but makes no reference to the Utah Rules of Court-Annexed Alternative Dispute

[1] Court annexed arbitration sets a cap on attorney compensation only where the compensation of an attorney is not already governed by an agreement between the parties allowing a greater award.

Resolution (URCADR) and makes no attempt to distinguish between those rules and the rules governing arbitration in Nevada. Although court-annexed arbitration in Utah is surely intended to provide a simplified approach to resolution of disputes, there are some material differences in how the program is administered, some of which could account for more extensive attorney involvement. For instance, although discovery is stayed during the pendency of arbitration proceedings in Utah, as it is in Nevada, URCADR 102(f) specifically provides that "[s]ubpoenas for the production of evidence by nonparties may be issued, served *and enforced by the court* as provided by the Utah Rules of Civil Procedure." [emphasis added.] This suggests that motion practice in the courts is not foreclosed in Utah court-annexed arbitration cases.

The Board cites to statutes in Arizona and Washington that authorize arbitration in those states but again fails to wrestle with whether the Rules implementing court-annexed arbitration in those states are materially different, from the Nevada rules, possibly requiring more extensive attorney involvement. For instance, in Washington, the Superior Court Civil Arbitration Rule 4.2 permits the parties to engage in discovery, including party depositions.

> After the assignment of a case to the arbitrator, a party may conduct discovery as follows: (1) request from the arbitrator an examination under CR 35; (2) request admissions from a party under CR 36; and (3) take the deposition of another party. A party may request additional discovery from the arbitrator, including interrogatories, and the arbitrator will allow additional discovery only when reasonably necessary. [SCCAR 4.2]

These comments are not intended to set forth an exhaustive comparison between the Nevada court-annexed arbitration rules and those of Nevada's sister states, but are instead intended to demonstrate that the Board's Petition compares apples to oranges and fails to offer a reasoned justification for an increase in the attorney fee cap. The fee cap was deliberately included as an important feature of the rules implementing Nevada's pared-down, simplified, low-cost court-annexed program.

Arbitrator and Mediator Compensation

The Board's proposal to amend the fees for arbitrators, mediators and judges pro tempore similarly lacks reasoned justification for the arbitrary numbers proposed.

Offers of Judgment

The Board has provided no reasoned basis for amending NRCP 68 to allow the prevailing party in court-annexed arbitration to invoke penalties under the rule. As noted above, Nevada's court-annexed arbitration program is intended to provide parties with a pared-down, simplified, low-cost option for resolving disputes. At times, one party or the other may be dissatisfied with the arbitration outcome. Nevada Arbitration Rules 18-21 set forth a *trial de novo* option available under these circumstances. The *trial de novo* rules spell out when a prevailing party is entitled to recover fees and costs, and specify when an additional award of

attorney fees may also be appropriate. Access to additional penalties under NRCP 68 is not necessary.

Thank you for the opportunity to comment and for your consideration of our perspective. We urge the Nevada Supreme Court to reject the relief requested in the Board's Petition.

Please contact me directly at mark.sektnan@apci.org with any questions.

Sincerely,

Mark Sektnan
Vice President, State Government Relations (CA, HI, NV, WA)
American Property Casualty Insurance Association
mark.sektnan@apci.org

Christian John Rataj, Esq.
NAMIC State Government Affairs
Senior Regional Vice President – Western Region
(AK, CA, HI, NV, OR, & WA)
crataj@namic.org

Melissa Crawford
Board President
Nevada Insurance Council
crawfm12@nationwide.com

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One GEICO Plaza ■ Washington, DC 20076-0001

ADKT 575

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

February 22, 2021

Elizabeth A. Brown, Clerk of the Supreme Court of Nevada
201 South Carson Street
Carson City, Nevada 89701
Sent via email to: nvscclerk@nvcourts.nv.gov

RE: Proposed Amendments to the Rules Governing Alternate Dispute Resolution and Short Trial Rules

Dear Ms. Brown,

I am writing on behalf of Government Employees Insurance Company (GEICO) in regard to the proposed amendments to the Rules Governing Alternate Dispute Resolution and Short Trial Rules. We appreciate the opportunity to provide comments at this time.

GEICO is the second largest private passenger automobile insurance company in Nevada and is the second largest in the country.

In the petition submitted to the Supreme Court of Nevada, there are several states listed that have adopted the Uniform Arbitration Act. Some of these states are discussed below. However, we feel it is important to note that while it may seem that these states contain similar language that "reasonable attorney fees and other reasonable expenses of arbitration" may be awarded, this language was directly taken from the Uniform Arbitration Act which has been adopted in the applicable states. In addition, while it could appear that this language would allow an unlimited about of attorney fees that are considered reasonable, these states do have some specific criteria as it relates to arbitrations and would arguably be considered less generous than the Nevada rules as currently drafted. Below is some discussion on this. Finally, it should also be noted that the Uniform Arbitration Act actually governs agreements to arbitrate, so in cases where you would apply the Act, there is likely a contract that governs how the attorney fees may be awarded. Thus, just taking into consideration the language from the Uniform Arbitration Act can be deceiving and not entirely relevant to the situation at hand.

Under the above-mentioned proposals, there would be an increase of the attorney fees cap in arbitrations from the current fees of $3,000 to $10,000 total. GEICO is opposed to such a significant increase in attorney fees in arbitrations and would like to make some clarifications regarding other states' laws as it relates to attorney fees in arbitrations. Within the petition submitted to the Supreme Court of Nevada regarding these proposals, there is mention of several states' arbitration laws in relation to the attorney fees provisions of the law. Utah is one of these states. In Utah, the law is written so that there are limited circumstances as to when attorney fees may be awarded, which is arguably even more restrictive than the current Nevada system. In Utah, Utah Code Ann. § 31A-22-321 (16) states the following:

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> If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

Thus, while "reasonable attorney fees" may be rewarded per 78B-11-122, these fees are generally only awarded in certain circumstances when a district court may determine that the trial de novo process was filed in bad faith.

In addition, Washington is mentioned in the petition to the Supreme Court of Nevada. In Washington Revised Code § 4.84.010(6) it states that "the measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums for the prevailing party's expenses in the action," which includes "statutory attorney and witness fees." Per Washington Rev. Code Ann. § 4.84.080 when the attorney fees are allowed to either party in all actions where judgment is rendered it shall be two hundred dollars. In actions where judgment is rendered in the supreme court or the court of appeals, after argument, the attorney fees shall be two hundred dollars.

Another state mentioned in the petition is Oregon. If you take a similar look at the Oregon laws as it pertains to attorney fees there are specific ways to calculate the attorney fees as well. For instance, per ORS 36.425(5), if a party is entitled to an award of attorney fees solely by reason of subsection (4) of this section, the court shall award reasonable attorney fees not to exceed the following amounts:

> (a) Twenty percent of the judgment, if the defendant requests the trial de novo but the position of the defendant is not improved after the trial de novo; or
>
> (b) Ten percent of the amount claimed in the complaint, if the plaintiff requests the trial de novo but the position of the plaintiff is not improved after the trial de novo.

Taking a review of the Oregon law above, it seems to indicate that the attorney fees in Oregon may also be considered similar to Nevada's current cap on attorney fees at $3,000.

Therefore, while it has been some time since the attorney fees in arbitrations have been reviewed, GEICO believes it is in line with how arbitrations work today in neighboring states and may even be considered a higher cap on attorney fees in arbitration even at the current $3,000 cap. GEICO is opposed to the attorney fee proposal submitted in the petition as the company believes the current cap on attorney fees is reasonable as it stands today and such a significant increase would add to the already high costs in arbitrations which would eventually lead to more costs to Nevada consumers overall.

In addition, we would like to address the request for an increase in fees for arbitrators, mediators and judges pro tempore. While we are not opposed to a reasonable increase in these fees, we believe that the current proposal should be examined carefully so that these fees are not excessive.

Sensitivity: General/Internal

We appreciate the opportunity to provide comments and for the consideration of these comments as it relates to the proposed amendments before the Supreme Court of Nevada. Thank you.

Sincerely,

Sonya L. Bassaly
Senior Counsel
sbassaly@geico.com

Sensitivity: General/Internal

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

Brown, Elizabeth

From: Corcoran, Wendy <WENDY.CORCORAN@allstate.com>
Sent: Monday, February 22, 2021 7:38 AM
To: Supreme Court Clerk
Subject: OBJECTION on ADKT 0575 and request to participate in the March 2, 2021 Public Hearing.

[**NOTICE:** This message originated outside of the Supreme Court of Nevada -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

Under ADKT 0575 arbitrator/judge fees and the maximum award of attorney fees would drastically increase without a reasonable basis. Such an extreme action would ultimately hinder the successful ADR program in Nevada. If ADKT 0575 is accepted and the ADR rules amended, the purpose of court-annexed arbitration will be prevented and more arbitration decisions and awards will be de novo'd to short trial where no similar increase is proposed. While a modest increase in the hourly fee and the capped fee at both the arbitration and the short trial level may be warranted, the amounts proposed are careless.

I would appreciate the opportunity to be heard at the public hearing on March 2, 2021.

Please let me know if you have questions or if you need additional information from me prior to the hearing.

Wendy Corcoran, Paralegal
Allstate Insurance Company Staff Counsel
2360 Corporate Circle #320
Henderson, NV 89074
Direct Line (702) 726-3361
Facsimile (877) 684-4264
Email wendy.corcoran@allstate.com

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