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: May 13, 2022 at 1:00 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. April 18, 2022 Meeting Summary

III. Review of Revisions Approved During Previous Meeting* ***(Tab 2)***

IV. Continued Review of Proposed Rule Revisions* ***(Tab 3)***
   A. State Bar of Nevada's Proposal ***(Tab 4)***
   B. Nevada Justice Association's Proposal ***(Tab 5)***
   C. Eighth Judicial District Court Rules Committee's Proposal ***(Tab 6)***

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:	846 6683 7514
Participant Passcode:	469007

TAB 1

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

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MEETING SUMMARY

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

April 18, 2022
2:00 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 1:35 p.m.
- Ms. Gradick called roll; a quorum was present.
- Opening Comments
  - Justice Hardesty opened the meeting by thanking attendees for participating in the Committee and asked attendees to introduce themselves
  - Justice Hardesty commented that is it his hope that the Committee will complete its work within 2 months.

II. Review of Proposed Rule Revisions
- Rules Governing ADR: General Provisions
  - Rule 1: changes as proposed by the 8th Judicial District were accepted.

- Commissioner Young explained that lettering changes were proposed in order to be consistent with NRCP formatting.

- Rule 2: changes as proposed by the 8th Judicial District were accepted.

➢ Nevada Arbitration Rules (NAR) Revisions

- NAR 3: approved proposed revisions, additional changes made.
  - Mr. Bochanis explained that cases, generally, require all of the time allotted; if the jurisdictional limit is going to be raised, then the time requirements need to be changed as well to provide more time to adequately handle the complexities of the case.
    - Justice Hardesty directed attendees to NRS 38.250, commented that the limit is statutorily defined, and expressed concern regarding the adoption of a rule that could be challenged for conflicting with the NRS.
    - Attendees discussed the need for legislative involvement to change the limit and whether there is a distinction between short trials and arbitration rules.
    - Attendees agreed to leave the limit at $50,000 as outlined in NRS 38.250 and will address this further in NAR 5.
  - Attendees briefly discussed the placement of exemptions and confirmed that these are addressed in NAR 5.
  - Justice Hardesty proposed removal of the sentence containing references to repealed statutes; attendees agreed.
- NAR 4: changes as proposed by the 8th Judicial District were accepted; additional changes made.
  - Mr. Dobberstein asked for clarification regarding NAR 4(e) and whether a time limit should be set. Commissioner Truman commented that this is addressed in NAR 17(b); attendees agreed to add in a reference to NAR 17(b).
- NAR 5: changes as proposed by the 8th Judicial District were accepted; additional changes were made.
  - Commissioner Young explained that 5(a) and 5(b) were reorganized to present "automatic" and "permissive" exemptions more clearly.
  - Mr. Jensen suggested the addition of punitive damages to the automatic exemption list.
    - Commissioner Truman commented that punitive damages should be a "permissive exception" in order to allow for case-by-case review of factual allegations.
    - Commissioner Young suggested the addition of punitive damages to NAR 5(b)(1).
    - Mr. Boehrer commented on the need to define which actions fall under NAR 5(b)(3). Attendees discussed the need for legislative involvement in defining this as the language of the NRS is vague as to what falls within the jurisdictional limits.
    - Mr. Bochanis commented that, should a punitive damages claim survive a dispositive motion, the case could be automatically exempted from the arbitration program because it would surpass the limit. Commissioner Truman commented that, at that point, a renewed request for exemption could be filed and reviewed.
    - Attendees discussed situations under which punitive damages claims are, typically, made.

- Mr. Bochanis submitted a commentary that "if a punitive damage claim survives a dispositive motion, it becomes an automatic exception.
  - Justice Hardesty asked Mr. Bochanis to submit proposed language to Ms. Gradick for inclusion in the proposed rule revision document.
  - Commissioner Truman commented that a third method for exemptions would need to be developed to get it before the judge or commissioner for review after there's a decision on a punitive damages motion.
- Commissioner Young suggested giving the district court the ability, upon ruling on a dispositive motion in favor of the plaintiff, to automatically exempt it from arbitration.
  - Attendees supported this suggestion and agreed to add it into the rule.
- The jurisdictional limit was changed back to $50,000.

- NAR 6: changes as proposed by the 8th Judicial District were accepted.
- NAR 7: most changes as proposed by the 8th Judicial District were accepted; additional changes made.
  - Attendees discussed non-attorney arbitrators and confusion surrounding qualifications for attorney versus non-attorney arbitrators.
    - Several language and organization suggestions were made and dismissed.
  - Mr. Jensen commented that, given the increasing complexity of these cases, arbitrators should be trained in Nevada law.
    - Attendees discussed the possibility of limiting arbitrator participation to qualified attorneys.
    - Commissioner Truman commented that there are only a few non-attorney arbitrators on the list and those are, usually, not selected.
    - Attendees agreed to remove non-attorney arbitrators from the rule and limit participation to attorney arbitrators.
  - Justice Hardesty expressed concern regarding NAR 7(e) and timing of disqualification motions.
    - Attendees discussed the need for provision for this; Justice Hardesty asked Commissioner Young to review NRS 38.226 and NRS 38.227 and provide language regarding timeframes.
- NAR 8: most changes as proposed by the 8th Judicial District and the State Bar of Nevada were accepted; additional changes were made.
  - Commissioner Young suggested the addition of "to be included in a discovery order to be filed within 14 days of the early arbitration conference" NAR (a)(2).
  - Judge Steinheimer commented that that language of NAR(b) wouldn't be applicable to the Second Judicial District. A district judge acts as the commissioner, the determination would not appealed to another judge.
    - Attendees discussed the process followed in the Second Judicial District; Justice Hardesty referred attendees to NAR 2(c) and commented that the judge is assigned these responsibilities, in the absence of a commissioner in the district, NAR 8(2)(b) would not apply.
    - Attendees discussed the distinction between a commissioner versus a judge acting as a commissioner. Justice Hardesty commented that the analysis would be similar to a case transfer situation. Whether acting as a commissioner or not, a judge is still a judge
- NAR 9: changes as proposed by the 8th Judicial District were accepted.
- NAR 10: changes as proposed by the 8th Judicial District were accepted.

- NAR 11: most changes as proposed by the 8th Judicial District were accepted; additional changes made.
  - Commissioner Truman suggested that the "discovery deadline language (must be submitted within 14 days of the early arbitration conference) incorporated into NAR 8 would be more appropriate here.
    - Attendees agreed to this change as long as a reference to the deadline is added to NAR 8.
- NAR 12: changes as proposed by the 8th Judicial District were accepted.
  - Attendees added "judge" to the end of NAR 12(c).
- NAR 13: changes as proposed by the 8th Judicial District were accepted.
- NAR 14: changes as proposed by the 8th Judicial District were accepted; language proposed by State Bar of Nevada was removed since it was duplicative.
  - Justice Hardesty briefly informed attendees of the work being completed by the Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts.
    - Resources and materials are available on the Commission's webpage via the Nevada Supreme Court's website.
- NAR16: most changes as proposed by the 8th Judicial District were accepted; additional changes were made.
  - Mr. Matteoni asked for input regarding NAR 16(c) and whether completing a written opinion should be left to the "arbitrator's discretion".
    - Attendees agreed that this should not be discretionary; confidence in judicial processes is built through transparency.
  - Attendees discussed proposed language and the need to clarify that arbitrator's decision should be prepared and filed separately. Commissioner Young and Commissioner Truman will draft proposed language and submit to Ms. Gradick.
    - Concern was expressed regarding the arbitrator's decision becoming part of the public record; attendees discussed public access and variances between judicial district local rules.
  - Attendees discussed the possibility of arbitrators requesting proposed findings of fact and conclusions of law prior or the arbitration hearing.
    - A suggestion was made that there be a rule requiring parties to submit this prior to arbitration.
    - Commissioner Young suggested a clarification that there is only an obligation to submit findings fact and conclusions of law if the parties request it and submit proposed findings prior to the arbitration. This suggestion was supported by Mr. Dobberstein and Mr. Bochanis.
    - Commissioner Young and Commissioner Truman will draft proposed language and submit to Ms. Gradick
  - Justice Hardesty asked for clarification regarding the NJA's comments.
    - Attendees discussed whether to increase the limit on attorney's fees to $10,000 (as proposed by the NJA) or to proceed with no limit (as proposed by the 8th Judicial District).
    - Attendees discussed NRS 18.010(2)(a). Mr. Jensen commented that the NJA's focus was tying the attorney's fees into the statute and the caselaw.
    - Attendees discussed "overzealous" attorneys taking advantage of a rule allowing unlimited attorney's fees versus a potential access to justice issue with placing a limit on fees.

- There was general consensus that the cap on attorney's fees could be removed; however, no formal decision or agreement was made.

- Mr. Dobberstein suggested there be rules limiting scope of discovery and duration of hearings.
  - Attendees discussed the ability of an attorney to appeal arbitration decisions.
- Justice Hardesty commented on compensation concerns and changing compensation dynamics; these issues need to be taken into consideration as the Committee progresses through these rule revisions.
- Mr. Matteoni suggested the addition of members from the defense bar and counsel representing insurance agencies.
  - Justice Hardesty commented that he intends to appoint an additional member to represent the defense bar.
- Commissioner Young commented that, should the cap be eliminated, the rule would need to indicate that the prevailing party is entitled to an award of fees and the fee amount is at the discretion of the arbitrator following an appropriate fee request. Justice Hardesty agreed.

III. Other Items/Discussion

IV. Next Meeting date and Location

- After discussion, attendees agreed to hold the next meeting on May 13, 2022 at 1:00 pm.
  - Ms. Gradick will distribute a calendar invite.

V. 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) and 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		

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***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).

(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. ~~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.~~

(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, ~~A~~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 ~~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 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 conducting 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 ~~F~~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. ~~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) The offer of judgment provisions of NRCP 68 and NRS Chapter 17 apply to matters in the program.

(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) 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.

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

Rule 7

(e) Within 7 days of appointment, an~~An~~ arbitrator must disclose known facts likely to affect the impartiality of 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 ~~shall~~, CANON 2, Rule 2.1 or NRS 38.226(2), shall immediately recuse himself/herself or be withdrawn as an arbitrator.

(~~F~~f) Any party may challenge the appointment of an arbitrator by filing an 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 arbitration 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 ~~issue~~challenge ~~concerning the participation or disqualification of a person on the panel of arbitrators~~ shall be ~~referred~~ determined~~to~~ by the commissioner for a final determination.

Rule 16. Form and content of award.

(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 ~~F~~findings of fact and conclusions of law if requested by all parties. ~~, or a~~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 pre-hearing statement required by NAR 13. ~~, are not required, but may be prepared at the discretion of the arbitrator. If prepared, findings of fact and conclusions of law must filed at the same time as the arbitration award, in a separate document titled as an arbitration decision.~~

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TAB 3

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 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

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 AND AMENDMENTS TO THE SHORT TRIAL PROGRAM	ADKT NO.: 0575

PETITION

The Board of Governors (Board) of the State Bar of Nevada (State Bar) hereby petitions this Court for an Order amending the Rules Governing Alternative Dispute Resolution and Short Trials. The State Bar also respectfully petitions the Court to amend Nevada Rule of Civil Procedure (NRCP) 68 to allow offers of judgment to be considered in awarding attorney fees in arbitration proceedings.

Proposed changes to the Nevada Arbitration Rules (N.A.R.), Nevada Mediation Rules (N.M.R.), and Short Trial Rules are set forth in **Exhibit A and B**, respectively. Proposed changes to the NRCP are set forth in **Exhibit C.**

Germane to the mission of the State Bar of Nevada is service to its members. To this end, the State Bar sought and received input from numerous stakeholders regarding this petition, including both the Eighth and Second Judicial District courts, the Nevada Justice Association, the State Bar's ADR Section, and attorneys

practicing in a variety of areas representing both plaintiff and defense. While these stakeholders made many suggestions, the State Bar included only those suggestions in which there was consensus. Other suggested amendments require a broader overview of the rules and as such, may be more appropriately addressed through a court appointed study commission, as several of the stakeholders suggested. This petition is not intended to foreclose those proposed amendments.

Attorney Fees Awarded by Arbitrator

The purpose of using an ADR process is to settle disputes in an economical and expeditious manner. As cited in the Court's petition to appoint a study committee to implement ADR rules[1], "delays in the processing of cases in the judicial system...have resulted in increasing costs to persons who desire to settle their disputes through traditional judicial processes." The petition further stated that the "increasing costs of traditional litigation also discourage many people from either defending against spurious claims or seeking redress for their injuries." These sentiments were echoed by several of the stakeholders, who noted that the ADR process is intended to keep costs down for the parties and encourage arbitration over litigation by capping attorney fees.

[1] ADKT 126, December 19, 1989

Our legal community has grown significantly since the $3,000 limit on attorneys' fees was set more than 29 years ago.[2] Litigation has become more difficult and complex. Attorneys now charge hourly rates significantly higher than they did three decades ago. According to the 2021 Clio Trends Report, Nevada attorneys, on average, charge $320 per hour; the average rates for mediation and arbitration is $306 per hour. The proposed amended cap is reflective of the average hourly fee charged by Nevada attorneys.

The proposed cap seeks to respect the N.A.R.'s purpose of providing an efficient and economical forum for litigants of small matters while respecting the changes in the costs of litigation and the practice of law. Increasing the cap on attorney's fees to $10,000 would allow arbitrators to award attorney fees that better align with prevailing community rates. Such increase complements RPC 1.5, which lists fees "customarily charged in the locality for similar legal services" as a factor to weigh for reasonableness. RPC 1.5(a)(3).

Allowing an attorney's fee award that more closely reflects the current market will also encourage attorneys to take the smaller dollar cases. Cases that can be resolved through arbitration, mediation or short trial procedures will assist in reducing the District Court caseload and the significant civil case backlog caused by the pandemic.

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[2] ADKT 126, Order issued September 24, 1993.

Attorney Fees Awarded in Other Jurisdictions

Increasing the attorneys fee limit is in keeping with the attorneys' fees awarded in our sister states and by private arbitration organizations.

Utah, Arizona, Washington, and Oregon have no similar limitations on attorney fees. Rather, our sister states most often permit "reasonable attorney fees" or "reasonable attorney fees to the prevailing party," following a trial *de novo*. We examine each of these comparisons as follows.

In Utah, an arbitrator may award "reasonable attorney fees and other reasonable expenses of arbitration." *See* Chapter 11, Utah Uniform Arbitration Act, Rule 78B-11-122 (Remedies – Fees and expenses of arbitration proceeding). Utah provides its arbitrators with significant flexibility and discretion in the formulation of an attorneys' fee award. While Utah law does contain a provision allowing for an award of attorney's fees if it is concluded that a party to an arbitration pursued a trial *de novo* in bad faith (Utah Code Ann. §31A-22-321(16), this statute is rarely applied.

Notwithstanding this narrow basis for an attorney's fee award, Utah Code Ann. §78B-11-122 provides a "catch all", which allows an arbitrator to "...order any remedies the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding..." See, Utah Code Ann. §78B-11-122(3). Hence, arbitrator discretion for the awarding of attorney's fees is broad in Utah.

Arizona and Washington[3] have identical rules for awarding attorney fees. *See* Arizona Revised Statutes, Title 12 Courts and Civil Proceedings, Section 12-3021, fees and expenses of arbitration proceedings; *and* Revised Code of Washington (RCW), Title 7, Chapter 7.06.

Washington's statutes and court rules governing its court arbitration program are more pertinent to this proposed ADKT and lend support for an increase in attorney's fees for cases within the Court Annexed Arbitration Program and the Short Trial Program.

Washington's court of general jurisdiction (equivalent to Nevada's district court) is the superior court. RCW 7.06.020(1) requires arbitration of all civil actions filed in "superior court in counties which have authorized arbitration" solely for money damages up to $15,000 "or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to one hundred thousand dollars, exclusive of interest and costs." RCW 7.06.060 provides that the superior court "shall assess costs and reasonable attorneys' fees against a party who appeals the award and fails to improve his or her position on the trial de novo. The court may assess costs and reasonable attorneys' fees against a party who

[3] Washington limits attorneys' fees for private contractual arbitration, such as claims under an insurance policy, at $200; reasonable fees may be awarded following a trial de novo after mandatory arbitration.

voluntarily withdraws a request for a trial de novo if the withdrawal is not requested in conjunction with the acceptance of an offer of compromise.

Accordingly, RCW 7.06.060(1) allows the superior court to award "reasonable attorneys' fees" against parties who file a trial de novo and fail to improve upon the arbitration award. This is similar to NAR 20(B)(2).

Additionally, Superior Court Civil Arbitration Rule (SCCAR) 7.3 provides a semi-identical "mirror rule" to RCW 7.06.060, stating "[t]he court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. The court may assess costs and reasonable attorney fees against a party who voluntarily withdraws a request for a trial de novo. 'Costs' means those costs provided for by statute or court rule. Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule." The attorneys' fees that may be awarded by district courts (equivalent to Nevada's justice courts) and Washington's superior courts in civil cases differ, with the latter allowing for "reasonable" attorneys' fees.

Other neighboring states grant even broader discretion in their arbitration rules and statutes. Oregon, like Nevada, has provided that matters involving $50,000 or less are subject to the established mandatory arbitration program. ORS 36.400-36.425; NAR 3. However, unlike Nevada, Oregon has no statutory cap on

attorney's fees awarded in the arbitration process. If a trial de novo is requested by one of the parties, then further analysis is required. Further, Oregon's Uniform Trial Court Rule 13 ("UTCR") directs the procedures and authority of conducting arbitration and expressly provides that '[t]he arbitrator shall determine all issues raised by the pleadings, including a determination of [...] costs and attorney fees where allowed under applicable law." URCR 13.210(2); see also, UTCR 13.210(4)(e). The Oregon statutory scheme does not have an express cap on attorney's fees and costs that may be awarded by the arbitrator, while Nevada has a current cap of $3000.

California's code states, "Arbitrator may award attorney fees to the prevailing party." California Civil Code Section 1717 (Obligations Imposed by Law).

The American Arbitration Association ("AAA"), a private arbitration company, places no restrictions on attorney fees. The AAA rules state that arbitrators are empowered to award attorney fees when requested to do so by a party without a cap on the amount. *See* AAA Commercial Rule 47(d)(ii).

Qualifications of Arbitrators

Consistent with the recent goal of encouraging all attorneys to continuously update their skills through continuing education programs, arbitrators should also be required to complete a biennial training program in conjunction with their selection to an arbitration panel. As arbitrators are not elected and non-attorney arbitrators do not have to take a bar examination to determine minimum competency, it is important that litigants have assurances that the arbitrator appointed to hear their matter has minimum training as an adjudicator. This can be accomplished by amending N.A.R. Rule 7(C) to require biennial training.

Authority of Arbitrators

While the goal of the arbitration program is to provide an efficient and economic venue for the resolution of limited dollar amount disputes, the rules should clearly spell out the need for the arbitrator to set deadlines at the early arbitration conference. This can be accomplished by amending N.A.R. 8(A)(2), giving arbitrators the authority to set deadlines for discovery and expert witness disclosures at the early arbitration conference.

Conduct of the hearing

As the COVID-19 pandemic has caused the legal system to recognize, there are many technological options available to litigants other than appearing in person. One of these options is the use of video conferencing. Adding this option to N.A.R. 14 is one of the ways an arbitrator can exercise discretion over the conduct of the hearing and furthers the goal of arbitration, while recognizing options that were not available at the time the Rule was approved.

Fees for Arbitrators

Although arbitrator compensation is set in Nevada Revised Statute 38.255(4), N.A.R. 24 should be amended to reflect the rising costs of doing business. A review of the arbitrator rates charged by Advanced Resolution Management range from $450 to $700 per hour and for AAA, $300 to $1000 per hour. The State Bar requests raising the maximum advance that may be requested by an arbitrator from $250 to $625 and allowing arbitrators to claim as pro bono hours any uncompensated time to conduct the arbitration. The $625 figure is 50% of the total fees and costs that can be paid to an arbitrator under the current statute. Allowing an advance of 50% of the total fees and costs is consistent with the percentage advance allowed in the Short Trial Program.

Short Trials

The State Bar reviewed the rules governing the short trial process and proposes several amendments to better reflect the qualifications a litigant should be entitled to expect of pro tempore judges as well as to address some of the agreed upon difficulties encountered by litigants. Generally, the proposed amendments would:

(a) Amend Short Trial Rules 21 and 23 regarding the timeframe for a short trial from 3 to 3.25 hours per side, with the time for voir dire included in the overall calculation of time. This amendment would allow parties to spend as much time on voir dire as needed, rather than limiting the time for voir dire to 15 minutes.

(b) Remove Short Trial Rule 27 (b)(4) regarding caps on awarding of fees under Rule 27(1) and (2). Awards should only be limited by the authority contained in controlling contracts, statutes, or rules.

(c) Increase the allowable fees for pro tempore judges from $1,500 per case maximum to $4,000 per case maximum. Short Trial Rule 28(a). This fee increase represents the average billable hour rate in Nevada and the increased costs of doing business since this fee was first adopted.

(d) Amend Short Trial Rule 28(b) regarding the timing for the presiding judge to submit an itemized bill. Short Trial Rule 1(c) specifies that the Nevada Rules of Civil Procedure apply in short trials except as otherwise specified in the Short Trial

Rules. Thus, a party may file a motion for attorneys' fees up to 21 days after written notice of entry of judgment is served. NRCP 54(d). Likewise, a party may move for a new trial or move to alter or amend a judgment up to 28 days after service of written notice of entry of judgment. A presiding judge may, therefore, be required to continue to work on the matter long after she or he has been required to submit a bill.

(e) Add Rule 32 regarding procedures at trial de novo. The proposed language mimics the procedure for trial de novo in N.A.R. 20. As all trials de novo from arbitration go initially into the Short Trial Program, adding similar language in the Short Trial rules more fully explains this transition.

Offers of Judgment

Finally, the State Bar petitions the Court to apply offers of judgment to the arbitration program. Nevada Arbitration Rule 16(D) states that the offer of judgment provisions of NRCP 68 (Offers of Judgment) apply to matters processed in the ADR program.

The Supreme Court held that it is "well settled" that the NRCP 68 permits attorney fees and costs to be awarded when a party fails to improve upon a rejected offer of judgment in an action before *the District Court* (emphasis added). *See WPH Architecture vs. Vegas VP,* 131 Nev. 884, 888, 360 P.3d 1145, 1148 (2015).

However, the Supreme Court added that N.A.R. 16(D) and NRCP 68 do not mandate arbitrators to award fees and costs after the prevailing party obtains a more favorable judgment than the offer of judgment. The Court held that arbitrators retained discretion to award fees and costs.

Therefore, the State Bar respectfully requests that the Court amend NRCP 68 to allow the prevailing party in court-annexed arbitration proceedings to invoke the penalties of the rule.

RECOMMENDATION

The amendments that have been proposed in this petition reflect the intense growth in Nevada during the last three decades and the ever-increasing complexity of litigation. The State Bar, therefore, requests this Court's Order amending the N.A.R, N.M.R. and Short Trial Rules to compensate attorneys, arbitrators, and judges pro tempore consistent with prevailing rates, impose certain minimum training from those adjudicators, recognize the technology options present now and update the process for the short trial program. Finally, the State Bar petitions the Court to amend NRCP 68 to invoke offer of judgment penalties in court-annexed arbitration proceedings.

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RESPECTFULLY SUBMITTED this 20th day of January 2022.

STATE BAR OF NEVADA
BOARD OF GOVERNORS

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EXHIBIT A

RULES GOVERNING ALTERNATIVE DISPUTE RESOLUTION
NEVADA ARBITRATION RULES

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 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-lawyer~~] 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~~] 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.

(D) Arbitrators shall be sworn or affirmed to uphold these rules of the program, 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 who would be disqualified for any reason that would disqualify a judge under the Nevada Code of Judicial Conduct shall immediately recuse himself/herself or be withdrawn as an arbitrator.

(F) Any issue 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 of [~~the arbitrators~~] 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. 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 and served upon the other parties and the arbitrator within 10 days of the date of the challenged decision or action. Any opposition to the challenge must be filed with the commissioner and served upon the other parties within 5 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 within 10 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 14. Conduct of the hearing.

(A) The arbitrator shall have complete discretion over the conduct of the 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) Awards shall be in writing and signed by the arbitrator.

(B) The arbitrator shall determine all issues raised by the pleadings in cases that are subject to arbitration under the program, including issues of comparative negligence, if any, damages, if any, and costs. The maximum award that can be rendered by the arbitrator is $50,000 per plaintiff, exclusive of attorney's fees, interest and costs.

(C) Findings of fact and conclusions of law, or a written opinion stating the reasons for the arbitrator's decision, may be prepared at the arbitrator's discretion [~~of the arbitrator~~].

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

(E) Attorney's fees awarded by the arbitrator may not exceed [~~$3,000~~] $10,000, unless the compensation of an attorney is governed by an agreement between the parties allowing a greater award.

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

Rule 24. Fees for arbitrators.

(A) Arbitrators appointed to hear cases pursuant to these rules are entitled to be compensated at the rate of $100 per hour to a maximum of $1,000 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~~] $625 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) To recover any fee, the arbitrator must submit to the parties an itemized bill reflecting the time spent on a case within 15 days of the date that the arbitrator serves an award in an action; within 15 days of notice of removal of the case from the program by resolution or exemption; or within 15 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 must be paid to the arbitrator within 10 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) All disputes regarding the fee of the arbitrator must be filed with the commissioner within 5 days of the date that the arbitrator serves the bill reflecting the arbitrator's fee, and resolved by the commissioner.

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

NEVADA MEDIATION RULES

Rule 10. Fees and costs for mediators.

(A) Mediators shall be entitled to remuneration of up to [~~$1,000~~] $2,500 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 15 days of request by the mediator, a sum of up to $250 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.

EXHIBIT B

NEVADA SHORT TRIAL 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 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. [~~Except that~~] Alternatively, the parties may [~~also~~] stipulate to have a particular district judge serve as presiding judge [~~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 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; and

(3) [~~Fulfill at least 3 hours of accredited continuing legal education annually as deemed appropriate by the commissioner.~~] Complete a short trial judge trial 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 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 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 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 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.

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 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 other parties pursuant to the pro tempore judge's deadline to disclose expert reports and rebuttal reports with enough time for either party to depose 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 other parties no later than 15 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 10.

(e) Cap on recovery for expert witness fees. Recovery for expert witness fees is limited to $1,500 per expert unless the parties stipulate to a higher amount.

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

Rule 21. Time [~~limits~~] for conduct of trial. Plaintiff(s) and defendant(s) shall each be allowed [~~3~~] 3.25 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.

Rule 23. Juror selection and voir dire. Twelve potential jurors will 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 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 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 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.

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. 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) and (B) below. If both parties demanded removal from the short trial program, the provisions of N.A.R. 20(B)(2) apply in lieu of (A) and (B) below.

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

(3) 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.

Rule 28. Fees for presiding judge.

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

(b) Itemized bill required. To recover fees, the judge pro tempore must submit to the parties an itemized bill within 10 days of ruling on the post-trial motions, if any, or within 10 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 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 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 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.

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 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 [~~32~~] 33. 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 will not apply to the case.

Rule [~~33~~] 34. 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 under the provisions of the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure. 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~~] 35. 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.

Rule [~~35~~] 36. Citations to rules. These rules may be known and cited as the Nevada Short Trial Rules, or abbreviated N.S.T.R.

EXHIBIT C

AMENDMENT TO NRCP 68

Rule 68. Offers of Judgment

(a) **The Offer.** At any time more than 21 days before trial <u>in district court, short trial or in a court-annexed arbitration pursuant to the Nevada Arbitration Rules</u>, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees.

TAB 5

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FILED

JAN 25 2022

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

December 8, 2021

Chief Justice James W. Hardesty
Justice Elissa F. Cadish
Justice Douglas Herndon
Justice Ron D. Parraguirre
Justice Kristina Pickering
Justice Abbi Silver
Justice Lidia S. Stiglich
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

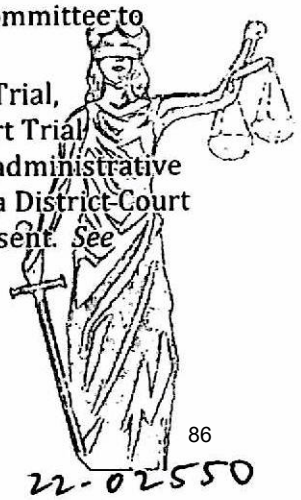
ADKT 575

Re: Proposed Changes to the Nevada Short Trial Rules

Dear Members of the Court:

The Nevada Justice Association (NJA) is an association of approximately 900 Nevada lawyers who devote a significant portion of their practice to representing individuals injured through the fault of others. Many practice in this area exclusively. Most members of NJA have first-hand experience with the Nevada Short Trial Program (Short Trial Program) and many have extensive experience in trying multiple cases to verdict in that program.[1] While there has always been some controversy regarding the Nevada Short Trial Program (Short Trial Program), dissatisfaction with the Short Trial Program among NJA's membership has steadily grown over time. By the summer of 2020, that dissatisfaction became so intense that NJA's Board of Governors voted unanimously to establish a committee to

[1] The experience of the District Court Judges and Short Trial, Discovery and Arbitration Commissioners with the Short Trial Program in their current capacity is almost exclusively administrative by design, except in the relatively rare situations when a District Court Judge presides over a Short Trial by stipulation and consent. *See* NSTR 2 and 3(a)(1) and (d).



22-02550

study the Nevada Short Trial Rules (NSTR) and propose changes to this Court.

A committee was constituted (Committee) with NJA lawyers who had considerable experience in trying cases to verdict through the Short Trial Program. The Committee sought input from NJA's members to identify areas of concern. The primary areas of concern were determined to be: 1) the wide disparity in the competence of Pro Tempore Judges leading to unjust and inconsistent rulings; 2) an arbitrary and practically inflexible limitation on the time allotted for trying all Short Trials regardless of the issues or the number of parties or witnesses involved; 3) the inability to conduct meaningful voir dire under such a severe time constraint; 4) the inability to make plaintiff's whole or feasibly try these cases from an economic standpoint by limiting the amount of attorney's fees that can be awarded; 5) and the lack of a record of the proceedings, rendering appellate review difficult if not impossible.[2]

The Committee then undertook a comprehensive study of the NSTR with the goal of proposing changes to rectify several long-standing problems, bring the Rules current with existing practice conditions, and improve the Short Trial Program going forward.

By January 2021 the Committee's review and recommendations were largely complete. Coincidently, the State Bar of Nevada (State Bar) had also been working on proposed changes to the NSTR, as well as the Nevada Arbitration Rules (NAR), and had lodged with the Court ADKT 0575 on January 22, 2021 to modify the NSTR, Nevada Mediation Rules and the NAR.[3] ADKT 0575 dealt exclusively with: 1) increasing the cap on awardable attorney's fees

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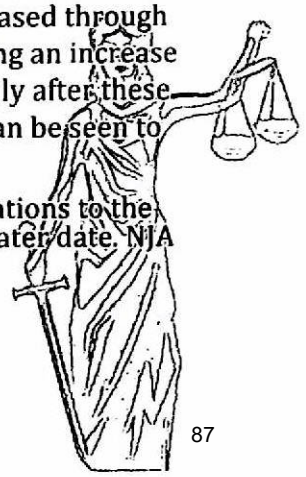
[2] The Committee carefully considered and rejected the idea of expanding the jurisdictional limit of the Short Trial Program beyond $50,000 at this point in time. It is NJA's firm belief the Short Trial Program has serious deficiencies which have only increased through the passage of time. NJA would be in favor of considering an increase in the jurisdictional limits of the Short Trial Program only after these deficiencies are rectified and the Short Trial Program can be seen to function more justly.

[3] While the Committee recognized the need for modifications to the NAR, NJA initially decided to leave that evaluation to a later date. NJA does propose one change to NAR 16(E) at this time.



under NAR 16(E), 2) increasing the cap on compensation for arbitrators, mediators and Judges Pro Tempore; 3) and fully incorporating Rule 68 into the Arbitration Program.

NJA reviewed the State Bar's proposed ADKT and agreed with the State Bar's suggested changes. NJA then contacted the State Bar and offered NJA's proposed changes to the NSTR. The State Bar then withdrew its proposed ADKT. After several consultations between the two organizations' committees, NJA's proposed changes to the NSTR's were incorporated into a revised joint submission by the State Bar and NJA.

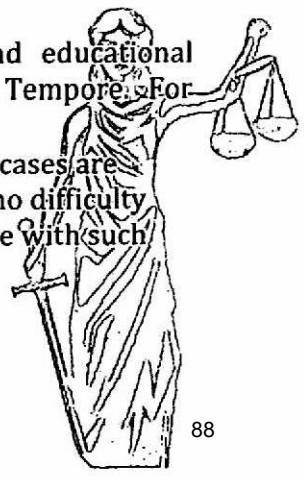
The State Bar proceeded to open up the revised proposed ADKT for comment. That ultimately resulted in multiple Bench Bar Hearings in the Eighth Judicial District with no definitive outcome as of this date. It is our understanding this proposed ADKT was also an agenda item discussed by the State Bar Board of Governors at the most recent State Bar Convention, but we are unaware if any further action was taken with respect to the joint ADKT proposal by the State Bar and NJA. Accordingly, NJA offers its proposed changes to the NSTR as explained below.

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.[4]

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

[4] From a practical standpoint, defendants in negligence cases are almost always defended by liability insurers who have no difficulty paying the costs of trial. Plaintiffs almost always struggle with such costs and must rely on counsel for assistance.

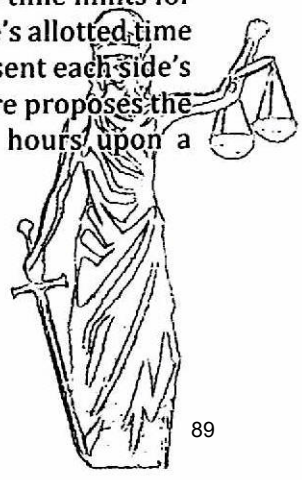


instance, Judges Pro Tempore should have a minimum of 10 hours of mandatory judicial training when they are appointed. They should also only be authorized to preside over the kind of cases with which they have some experience. They should certify their practice is comprised of at least 25% of the area 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.

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.

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.



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.[5]

The right of counsel to conduct voir dire is deemed by this Court to be a substantive right that cannot be unreasonably restricted.[6] 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.[7] 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.[8] 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.[9]

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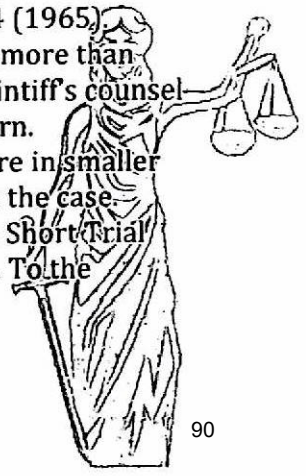
[5] *See also* Mu'Min *v. Virginia*, 500 U.S. 415, 431 (U.S. 1991).
[6] *Whitlock v. Salmon*, 104 Nev. 24, 26, 742 P.2d. 210 (1988)("The importance of a truly impartial jury... is so basic to our notion of jurisprudence that its necessity has never really been questioned in this country."). Citing *United States v. Bear Runner*, 502 F.2d 908 (8th Cir. 1974).
[7] *Frame v. Griswold*, 81 Nev. 114, 122, 399 P.2d 450, 454 (1965).
[8] Time limits on voir dire generally impact plaintiffs far more than defendants who have the benefit of first listening to plaintiff's counsel question prospective jurors on common issues of concern.
[9] One might be tempted to think that conducting voir dire in smaller cases is less complicated or time consuming. That is not the case. Some may also think voir dire is not as important in the Short Trial Program because the amounts at issue are insignificant. To the



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.

NSTR 27(b)(4) and NAR 16(E). 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 plaintiff's 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

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majority of our clients, however, these amounts are oftentimes a matter of economic survival.

[10] This Court observed in *Smith*: ...Plaintiffs who sought relatively small recoveries were not being made whole because they were required to pay attorney fees out of their judgments.... *Smith* at p. 281-82.

[11] This Court in *Trustees* noted:

> In 1985, the Legislature amended NRS 18.010 to authorize attorney fees awards when the prevailing party had recovered no more than $20,000. (Footnote omitted.) While the Legislature may have been partially concerned with inflation, (Footnote omitted.) the statute's 2003 amendment unambiguously reflects the Legislature's intent to liberalize attorney fee awards. In 2003, Senate Bill 250 added the following language to NRS 18.010: "The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations." (Footnote omitted.) *The statutory language is clear; it encourages the district court to award attorney fees* and it makes no exemptions for sureties. The district court should have considered awarding attorney fees under NRS 18.010(2)(a). (Emphasis supplied.)

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.

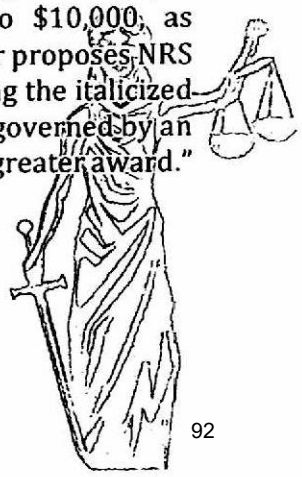
Exclusive of the time involved in arbitrating a case, estimates of the time to litigate and try a Short Trial case to verdict range between $20,000 and $40,000. Understandably, Nevada attorneys are reluctant to take on these smaller cases if there is no hope their clients can be made whole, and it is 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 awardable fee of $3,000 under NTSR 27(B)(4) is now unreasonably low in every case in which full 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 1(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.

Correspondingly, 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 No. 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."



Trustees at p. at 62-63.

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.

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.

NJA hopes the forgoing is useful to the Court in its reassessment of the Short Trial Program. Members of NJA are willing to answer any questions members of the Court may have or explain our position further in any forum the Court deems appropriate.

Further, if the Court decides to place the previously submitted ADKT for public comment before it makes any changes to the Short Trail Program, we will have representatives present to answer any questions.

We have copied the District Court Judges below and ask that they please share this with all other interested Judges in their district.

Sincerely,

David D. Boehrer, Esq.
President

cc: Hon. James T. Russell
Chief Judge Scott Freeman
Chief Judge Linda M. Bell
Hon. Nathan Todd Young
Hon. Thomas W. Gregory

TAB 6

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE AMENDMENT OF THE RULES GOVERNING ALTERNATIVE DISPUTE RESOLUTION, THE NEVADA ARBITRATION RULES, THE NEVADA MEDIATION RULES, AND THE NEVADA SHORT TRIAL RULES.

ADKT No. 592

FILED

FEB 02 2022

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

The Rules Committee of the Eighth Judicial District Court ("Committee") hereby petitions this Court for an Order amending the Rules Governing Alternative Dispute Resolution and Short Trials. Proposed changes to the Nevada Arbitration Rules ("NAR"), Nevada Mediation Rules ("NMR"), and Short Trial Rules ("STR") (NAR, NMR, and STR are referred to hereinafter collectively as the "ADR Governing Rules") are set forth in **Exhibit A**.

The Committee began its review of the ADR Governing Rules after the 2019 Amendments to the Nevada Rules of Civil Procedure ("NRCP"). The deadlines currently in the ADR Governing Rules are inconsistent with the 2019 NRCP. Whereas the NRCP calculates time in increments of 7 days, the ADR Governing Rules currently adhere to the pre-2019 NRCP increments of 5, 10, 20, and 30 days.

The Committee's review disclosed other changes that were necessary or desirable. For instance, the organizational numbering protocol between the NRCP and the ADR Governing Rules are inconsistent. NSTR's numbering is consistent with the NRCP, but the NAR are inconsistent with the NRCP. The ADR Governing Rules should be amended to be consistent with the NRCP.

The Committee delayed its presentation of any proposed rule changes due to COVID-19. The time has come to consider all aspects of these rules to better address the needs of the courts, the bar, and the public.

22-03576

NAR 3 is entitled "Matters subject to arbitration", but much of the rule deals with exemptions from arbitration, which more naturally belongs in NAR 5, entitled "Exemptions from arbitration". We propose that all exemptions be moved to NAR 5.

NAR 4 should be amended to make clear which motions must be heard by the assigned arbitrator as opposed to the district court. As written, the rule is apparently confusing, as counsel frequently file motions with the district court that should be heard by the arbitrator.

NAR 5 should be amended to articulate all matters that are exempt from arbitration. That list should be augmented to include business court actions and construction defect actions. Further, the rule should be clarified. Apparently, the rule is confusing counsel, who mistakenly believe they are entitled to automatic exemption by merely claiming in the caption of their complaint that the matter in controversy exceeds $50.000. Therefore, the Committee believes the Rule should be clarified to clearly state that automatic exemptions may be claimed in the complaint, but permissive exemptions must be decided upon a request for exemption.

NAR 7 should be amended to require arbitrators to complete 3 hours of CLE training in arbitration biennially. Further, the rule should be amended to make clearer that arbitrators are subject to the Nevada Code of Judicial Conduct and must disclose facts likely to affect the impartiality of the arbitrator, including those required by NRS 28.227. The Rule should clarify that an arbitrator must recuse himself/herself for any reason that would disqualify a judge under the Canons, Rule 2.1 or NRS 38.226(2).

NAR 10 should be amended to clearly restate the Nevada Code of Judicial Conduct's standard regarding ex parte communications, rather than the less clear standard in the current rule.

NAR 11 should be amended to make clear that discovery in arbitration must be consistent with NRCP 26's proportionality standard. It should further clarify that all discovery disputes must be heard by the arbitrator, as some counsel are still filing discovery matters to be heard by the discovery commissioners.

NAR 12 should be amended to make clear that any request to extend the time to hold an arbitration beyond one year from the arbitrator's appointment must be heard by the district court.

NAR 14 should be amended to make clear that an arbitration may be held by video conference if necessary.

NAR Rules 16 and 19 should be amended to make clear the difference between an award, a decision, and an order on application for attorney fees and costs. This is an issue that vexes litigants and arbitrators constantly, requiring a rule change.

NAR 20 contains portions that more appropriately belong in the NSTR. Those portions should be moved to the NSTR.

NAR 22 should be amended to make clear that an arbitrator who finds a party fails to participate in the arbitration in good faith must make specific findings of fact supporting that conclusion. The rule should establish baseline standards against which behavior may be judged.

NAR 23 should be amended to make clear that a party may not seek reimbursement of an arbitrator's fees or costs from the other party as part of a cost award. This amendment is necessary, as many parties frequently claim arbitrator's fees as part of their request for a cost award.

NAR 24 should be amended to increase compensation for arbitrators. NAR 24 should be amended to allow an arbitrator to claim pro bono service hours for any uncompensated time.

The NAR should be amended to explicitly grant arbitrators the immunity provided in NRS 38.229 and 38.253.

NMR and NAR should be amended to explicitly grant mediators the immunity provided in NRS 38.229 and 38.253.

NSTR 3 should be amended to require short trial judges ("STJ") to have at least 10 years of civil trial experience, including participating in at least 2 jury trials. Further, Rule 3 should be amended to require STJ to complete 3 hours of CLE short trial training biennially.

NSTR 7 should be amended to make clearer that the STJ must hear and decide all motions as though the STJ were the district court.

NSTR Rules 17 and 18 should be amended to clarify how evidentiary objections to exhibits are to be handled by the STJ.

NSTR 19 should be amended to allow a party to recover expert witness fees consistent with NRS 18.005, whereas the parties are presently capped at $500 per expert witness.

NSTR 23 should be amended to allow a party to spend as much of their presentation time on voir dire as they desire. Presently, a party is only allowed 15 minutes to conduct voir dire.

NSTR 27 should be changed to remove the limit on attorney fee awards. Awards should be limited only by the authority contained in a controlling contract, statute, or rule.

NSTR 28 should be amended to increase compensation for STJ. It should further be amended to allow a STJ to claim pro bono service hours for any uncompensated time.

The Committee is aware of the competing Petition to amend the same rules proposed to the Court by the Board of Governors ("BOG") of the State Bar of Nevada. The discovery commissioners and judges of the Eighth Judicial District Court asked the BOG over the last

year to work cooperatively to draft amendments to the ADR Governing Rules or, alternatively, to request this Court appoint a Nevada ADR and Short Trial Rules Committee to seek input from all stakeholders and to propose a unified single ADKT for consideration by the Court. Unfortunately, the BOG declined those overtures and did not permit our court to assist in drafting a unified ADKT. Rather, the BOG submitted its own ADKT. The Eighth Judicial District Court hereby requests this Court appoint a Nevada ADR and Short Trial Rules Committee to seek input from all shareholders and to propose a unified single ADKT for consideration before approving any amendments to the ADR Governing Rules.

Respectfully submitted,

Dated this 1st day of February, 2022

629 086 1A61 AD95
Joe Hardy
District Court Judge

EXHIBIT A
RULES GOVERNING ALTERNATIVE DISPUTE RESOLUTION

A. 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;

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(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.

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(~~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.

B. NEVADA ARBITRATION RULES

Rule 1. The court annexed arbitration program.

The Court Annexed Arbitration Program (the program) is a mandatory, non-binding arbitration program, as hereinafter described, for certain civil cases commenced in judicial districts that include a county whose population is 100,000 or more. Judicial districts having a lesser population may adopt local rules implementing all or part of the program.

Rule 2. Intent of program and application of rules.

(~~A~~a) The purpose of the program is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters.

(~~B~~b) These rules shall apply to all arbitration proceedings commenced in the program.

(~~C~~c) These arbitration rules are not intended, nor should they be construed, to address every issue which may arise during the arbitration process. The intent of these rules is to give considerable discretion to the arbitrator, the commissioner and the district judge. Arbitration hearings are intended to be informal, expeditious and consistent with the purposes and intent of these rules.

~~(D) These rules may be known and cited as the Nevada Arbitration Rules, or abbreviated N.A.R.~~

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 11A.003 to 11A.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~~

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~~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 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 an 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 shall 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.~~NRCP. The commissioner or the commissioner's designee shall serve all rulings of the commissioner on any matter ~~as defined in N.R.C.P.~~allowed by 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~~

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~~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.~~).

~~(b)~~(c) 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~~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.~~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~~b).

Rule 5. ~~Exemptions~~Cases exempt 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~~(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. ~~Otherwise, if~~ of the initial pleading:

(A) class actions;

(B) appeals from courts of limited jurisdiction;

(C) probate actions;

(D) divorce and other domestic relations actions;

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(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 $75,000.00 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 ~~commissioner~~clerk of the 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 ~~20~~21 days after the filing of an answer by the

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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 NAR 5(b). The parties may file a joint request for exemption. ~~Rule 3.~~

The request for exemption must also include a summary of facts ~~which supports,~~ 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 filing may subject the requesting party to sanctions by the commissioner.

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

~~(C) (d~~**~~The parties may file a joint 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 ~~commissioner~~clerk of the 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~~

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

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 the 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.

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(~~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 equally 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~~clerk of the court 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 shall appoint an arbitrator from among those names not stricken.

~~———~~(4) If neither party responds within the ~~10~~14 day period, the commissioner shall 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~~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~~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 the court. The commissioner~~, who~~, 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 ~~commissioner~~clerk of the 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~~c) of this rule to select an alternate arbitrator.

Rule 7. Qualifications of arbitrators.

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(~~A~~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~~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-lawyer 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~~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~~

(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 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.~~

(~~C~~c) Arbitrators shall be required to complete an arbitrator training program 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.

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(~~D~~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) —~~(e) An arbitrator must disclose known facts likely to affect the impartiality of 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 ~~shall~~, CANON 2, Rule 2.1 or NRS 38.226(2), shall immediately recuse himself/herself or be withdrawn as an arbitrator.

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

(1) To administer oaths or affirmations to witnesses;

(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.

(~~B~~b) Any challenge to the authority or action of an arbitrator shall be filed with the ~~commissioner~~clerk of the 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 the 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 the 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.

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~~(A) Neither counsel nor parties may communicate directly with the~~ (a) 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,~~ the 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 ~~of the~~ other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.

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~~(B)~~(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 providing 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 ~~shall~~, including any offer of judgment, shall be disclosed to the arbitrator prior to the filing of an award.

Rule 11. Discovery.

~~(A)~~ (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.

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

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

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

(~~D~~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.

(~~E~~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.

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Rule 13. Pre-hearing statement.

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

Rule 15. Arbitration in the absence of a party.

An arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a continuance. The arbitrator shall require that the party present submit such evidence as he or she may require for the making of an award, and may offer the absent party an opportunity to appear at a subsequent hearing, if such a hearing is deemed appropriate by the arbitrator.

Rule 16. Form and content of award.

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

(~~B~~b) The arbitrator ~~shall determine all issues~~shall make a determination 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

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determination in a written arbitration award. The maximum award that can be rendered by the arbitrator is $~~50~~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 arguments 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 award 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 (~~C~~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 arguments 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/sts') 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) 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 discretion of the arbitrator. If prepared, findings of fact and conclusions of law must 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) 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.~~

~~(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 is 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 a prevailing party after the entry of the arbitration award.

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

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 be must be ~~filed with~~submitted to the arbitrator only after the arbitration award is filed. Any application must be filed and served on the other parties within ~~5~~7 days 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 with~~submitted to 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 shall 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 ~~Rule~~NAR 18 or notifying a prevailing party to enter judgment pursuant to ~~Rule~~NAR 19 shall 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.

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(~~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~~NAR 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

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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 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.

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 attorneys' fees, costs, and~~/or~~ interest~~, which~~. The commissioner shall submit the 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 shall 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~~shall~~, 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) Attorney~~(b) Attorney's fees; costs; interest.

~~(1)~~ The prevailing party at ~~the~~ trial de novo is entitled to all ~~recoverable~~attorney's 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 the arbitration award is $20,000 or less, and the party requesting the trial de novo fails to obtain a judgment that~~

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~~exceeds the arbitration award~~allowed 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 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.~~

~~NSTR 27(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 shall 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 shall 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 shall 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 shall 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.

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(~~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;

~~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) Costs~~(c) An arbitrator's costs must be borne equally by the parties to the arbitration, and must be paid to the arbitrator within ~~10~~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 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.

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(~~E~~c) 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~~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.

(~~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~~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~~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 fees 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 the 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.

Rule 25. Immunity of Arbitrators. For the purposes of NRS 41.0305 to 41.039, inclusive, a person serving as an arbitrator under these rules shall be deemed an employee of the

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court while in the performance of the person's duties under the program. Arbitrators in the program shall be afforded the immunity as granted pursuant to N.R.S. 38.229 and 38.253.

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Nevada Arbitration Rules effective July 1, 1992
Amended Rules effective December 24, 1997
Rules 20 & 24 Amended April 27, 2000
~~Rule~~NAR 7 Amended June 18, 2001
~~Rule~~NAR 24 Amended October 25, 2001 (Effective 60 days from Order Date)
~~Rule~~NAR 7 Amended July 26, 2002 (Effective 60 days from Order Date)
~~Rule~~NAR 20 Amended April 28, 2003 (Effective 60 days from Order Date)
Amended Rules effective January 1, 2005 (Complaint # A497499 and higher)
Rules 18 & 21 Amended March 25, 2005 (Effective immediately as to Complaints filed on or after January 1, 2005)
Assembly Bill 468 (Effective May 18, 2005 raised from $40,000 to $50,000 per Plaintiff)[A504175]
NAR, Rules 3 & 16 Amended March 14, 2007 (raised from $40,000 to $50,000 consistent with NRS 38.250)
~~Rule~~NAR 7 Amended December 28, 2007 effective January 1, 2008.
NRCP Amended 12/31/18, effective 3/1/19, Times changed pursuant to NAR 4(d)

C. NEVADA MEDIATION RULES

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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.

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_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 resume 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~~ 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.

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(~~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~~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 proceedings 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 shall be similar to the settlement conference report submitted by settlement judges in the appellate settlement

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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 at the rate of ~~up~~$150 per hour to ~~$1~~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;

~~(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.

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Rule 11. Confidentiality; immunity of mediators.

(Aa) 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 proceedings from disclosing, communications made during the proceeding. All oral and 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 41.039, 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.

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NEVADA SHORT TRIAL RULES

I. SCOPE OF RULES

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~~RULE~~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.~~

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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 21 days after a case enters the short trial program, the commissioner ~~shall~~ 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. Except that the parties may also stipulate to have a particular district judge serve as presiding judge, provided that the district judge also consents to serve as such.

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

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(b) Panel of short trial judges.

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_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 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. 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

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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.

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(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.

II. PARTICIPATION IN AND REMOVAL FROM THE SHORT TRIAL PROGRAM

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Rule 4. Matters subject to the short trial program.

(a) Mandatory participation in the short trial program.

(1) Trial de novo after arbitration.

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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:

~~Parties may stipulate to participation in the short trial program as follows:~~

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———(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 thereof 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.

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(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.

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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 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.

~~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.

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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.

~~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.~~

III. PLEADINGS AND MOTIONS; DISCOVERY AND PRETRIAL PROCEDURE

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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.

~~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.~~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 ~~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);

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———(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.

IV. TRIALS

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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.

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_No request for the continuance of a trial scheduled in the short trial program may be granted ~~except upon extraordinary circumstances.~~without leave for 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~~ 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.~~

~~On~~**booklets.** 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~~joint pretrial memorandum.

Rule 18. Evidentiary ~~is due~~objections. 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

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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 18. Evidentiary booklets.**~~

~~*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.~~

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 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.

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~~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. There shall be no formal reporting of the proceedings unless paid for by the party or parties requesting the same.

Rule 21. Time ~~limits~~ for conduct of trial.

Plaintiff(s) and defendant(s) shall be allowed 3 hours and thirty minutes each to present their respective cases unless a different time frame is stipulated to and approved by the presiding judge. Presentation includes 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.

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 a specific jury size, the jury shall be composed of 4 members.

Rule 23. Juror selection and voir dire.

Twelve potential jurors shall be selected from the county jury pool for a jury of 4 members; 14 potential jurors shall be selected from a jury of 6 members; and 16 potential jurors shall 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 hours~~ of presentation time provided under ~~Rule~~NSTR 21. ~~At the discretion of the judge, the time~~ as they deem necessary 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 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 shall 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 shall constitute the jury

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panel. In the event the resulting jury panel is greater than 8 members for an 8-member jury, the first 8 members called shall constitute the jury panel.

Rule 24. Opening charge to jury.

The presiding judge shall advise the impaneled jury in the opening charge as follows:

> A trial is a search for the truth using the rules of law. Therefore, the court shall allow members of the jury to ask written questions of any witness called to testify in this case. You are not encouraged to ask questions because that is the responsibility of the attorneys. Nevertheless, if you believe that an important question has not been asked, or that an answer needs clarification, you may submit a question. Keep in mind that a witness scheduled to testify later in the trial may be the best person to answer that question.
>
> A question may be asked in the following manner. Please write it down and pass the paper to the presiding judge. Copies shall then immediately be made for counsel and the presiding judge. The presiding judge shall privately confer with the attorneys at a convenient time and then decide if the question is appropriate under Nevada law.
>
> If the question seeks factual information from the witness and is designed to clarify information about issues in this trial, the presiding judge or the attorneys may question the witness regarding the points raised in the juror question. No emphasis should be placed on the answer to the question merely because the question came from a juror.
>
> If a question submitted by a juror is not asked, no adverse inference can be drawn. The question was simply not allowed under the Nevada Rules of Evidence and must be disregarded.

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.

V. JUDGMENT

Rule 26. Entry of judgment.

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_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 NSTR 5, attorney's fees, costs and interest shall be allowed as follows:

~~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 non-demanding 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 non-demanding 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:

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~~Attorney's fees, presiding judge's fees and costs shall be allowed following a short trial as follows:~~

~~(1)~~ (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.~~NRCP 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~~5) 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~~must be consistent with NRS 18.010, any controlling contract, NRCP 68, or ~~the attorney's compensation is governed by a written agreement between the parties allowing a greater~~other applicable Nevada statute or caselaw; 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.

Rule 28. Fees for presiding judges.

(a) Allowable fees.

Pro tempore judges shall be entitled to remuneration of $~~150~~185 per hour, with a maximum per case of $~~1,500~~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 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

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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.

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.

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(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 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.

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(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

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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.

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 shall not apply to the case.

VI. APPEALS

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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.

VI. GENERAL PROVISIONS

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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.

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.

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NRS 38.258
Order Amending 6/7/00
Short Trial Program effective date 7/7/00
Amended Short Trial Rules effective January 1. 2005 (Complaint # A497499 and higher)
NSTR. Rules 4. 5. & 27 Amended March 25. 2005 (Effective immediately for Complaints filed on or after January 1. 2005)
Assembly Bill 468 (Effective May 18. 2005 raised from $40.000 to $50.000 per Plaintiff [A504175]
~~Rule~~NSTR 26 Amended March 14. 2007 effective immediately (raised from $40.000 to $50.000)
~~Rule~~NSTR 28 Amended May 3. 2007 effective June 3. 2008
Amended Short Trial Rules effective April 7. 2008
NSTR, Rules 1. 4. & 27 Amended June 17. 2009 (effective August 17. 2009)
NSTR, Rules 3. 4. 5. 22. 28. 29. 30 & 31 Amended February 8. 2012 (effective March 8. 2012)

NRCP Amended 12/31/18, effective 3/1/19 STP Dates changed to comply with NRCP 6

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