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Attn: Verise Campbell
State of Nevada Foreclosure Mediation
Program Administrator
201 S. Carson St., Ste. 109
Carson City, NV 89701

VIA U.S. MAIL FILED

NOV 16 2010
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Re: Proposed Changes to the Foreclosure Mediation Program: Rule 4.2

Dear Verise:

ADKT 0435

This letter is being sent pursuant to the Nevada Supreme Court's request for comments on proposed rule changes to the Foreclosure Mediation Program. I am commenting specifically on the proposed change to Rule 4.2, which would appear to prohibit persons who represent homeowners or lenders from serving as mediators.

This change would not only be unfair to those of us who currently represent homeowners or lenders, it would be detrimental to the FMP as well for the following reasons:

1. Before providing the substantial time investment associated with becoming a mediator in this program, I specifically asked (both prior to and during training) whether this would create a conflict. I was told by you, Ms. Reed-Bottino, and my trainers that it would not. Now, after only one year, this proposed rule change would render the training investment useless. If this change is implemented, at the very least, those who were trained prior to the change should be "grandfathered in" and permitted to continue mediating.
2. Presumably, this change is being proposed to remove the appearance of bias. Please note that a mediator can be biased even if they don't represent homeowners or lenders; this change would address the "appearance", not the actual bias. A far more effective solution would be to provide a mechanism wherein homeowners and lenders alike can report incidents of alleged bias so the FMP can deal with these issues individually rather than removing good and effective mediators for the sake of "appearance".
3. The persons advocating this change have likely failed to consider the positive aspects of lender/homeowner representation. The FMP clearly recognizes the inherent value of having mediators observe other mediators - it is a component of the training process. I have observed over 30 mediators in the course of my homeowner

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representation and have not only learned from them, I have also identified ongoing problems with other mediators that only someone who had been through the training would recognize. I have then reported these problems to you and your staff.

4. I believe that implementing this change drives the FMP even further toward a place that it doesn't want to go – a situation where the only people conducting mediations are those who can't make a living any other way. While \$400 per mediation may seem like a lot to mediators that are not attorneys, I think we both recognize that most attorneys that are mediators in the program do it for non-financial motives. Yet these are the very attorneys that this proposed change would drive from the program. In short, the money I make representing homeowners helps finance my ability to serve as a mediator for \$400 per case.

Please be advised, I believe that most mediators forced to choose between mediating and lender/homeowner representation will choose the latter, resulting in the loss of tremendous institutional memory and skill. There are other, far better ways to address the issue of bias among mediators. I implore you to use other means to address the real problem, not just the appearance of one.

Sincerely,



MARVIN L. LONGBAUGH, Esq.

MLL/lah

cc:

Honorable Justice James W. Hardesty
Honorable Chief Justice Ron Parraguirre
Honorable Justice Michael L. Douglas
Honorable Justice Michael A. Cherry
Honorable Justice Nancy M. Saitta
Honorable Justice Mark Gibbons
Honorable Justice Kristina Pickering