

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE  
AMENDMENTS TO SUPREME COURT  
RULE 10.

ADKT No. 362

**FILED**

MAY 20 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
CHIEF DEPUTY CLERK

PETITION


COME NOW, James W. Hardesty, Michael A. Cherry and Mark Gibbons, Associate Justices of the Nevada Supreme Court, who petition the Supreme Court on its Administrative Docket to amend Supreme Court Rule (SCR) 10 as follows:


1. SCR 10 currently provides the procedures for which a Supreme Court Justice, Court of Appeals Judge or District Judge may apply to become a Senior Justice, Senior Court of Appeals Judge or Senior District Judge.
2. This rule requires clarification to address the courts in which a Senior Court of Appeals Judge may sit.
3. The proposed amendment to SCR 10.1(b) would further clarify that a Justice, Court of Appeals Judge or District Judge must formally retire to become a Senior Justice, Senior Court of Appeals Judge or Senior District Judge.

Wherefore, the undersigned request that this court consider approving the amendments to SCR 10 to incorporate the provisions set forth in the attached exhibit.

Dated this 19 day of May, 2016.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

## EXHIBIT A

### AMENDMENT TO SUPREME COURT RULE 10

**Rule 10. Senior justices, senior court of appeals judges and senior district judges; designation; service as settlement judge; assignment; duties and powers; compensation and expenses; oath; discipline and removal.**

1. **Eligibility for recall.** The supreme court may recall a former supreme court justice, court of appeals judge, or district judge to active service as a senior justice, senior court of appeals judge or senior district judge of the Nevada court system, provided that:

(a) He or she has served as a supreme court justice, court of appeals judge, or district judge, or any combination thereof, for at least four consecutive years; and

(b) He or she ~~is eligible to retire or~~ has retired under the provisions of the Nevada Revised Statutes; and

(c) He or she was not removed or retired for cause or defeated for retention in an election for the judicial office that he or she seeks to be recalled for service.

2. **Application.** A former supreme court justice, court of appeals judge, or district judge who meets the requirements of subsection 1 of this rule may apply to be commissioned as a senior justice, senior court of appeals judge or senior district judge by filing with the clerk of the supreme court a written application on a form approved by the supreme court. The approved application forms shall be available at the supreme court clerk's office.

3. **Investigation and approval.** The supreme court may refer an applicant to the administrative office of the courts or the commission on

judicial selection for investigation into the background and qualifications of the applicant and for a recommendation as to whether the applicant should receive a commission as a senior justice, senior court of appeals judge or senior district judge ~~or judge~~. If the supreme court determines that the applicant remains physically and mentally capable of performing valuable judicial service on a continuing basis, and that the applicant's recall to active service will promote the effective administration of justice, a commission, duly executed and authenticated by the chief justice and clerk, shall thereupon issue under the seal of the supreme court.

4. **Term of commission.** Each senior justice, senior court of appeals judge or senior district judge ~~or judge~~ being recalled to service shall serve a term of one year, unless the term is earlier terminated or the senior justice, senior court of appeals judge or senior district judge ~~or judge~~ voluntarily resigns his or her commission. The renewal of the one-year term for a senior justice, senior court of appeals judge or senior district judge ~~or judge~~ shall be as follows:

(a) Judges who have retired and who are not currently serving as a senior justice, senior court of appeals judge or senior district judge ~~or judge~~, may apply for a commission to serve as a senior judge 90 days after the retirement ~~at any time~~;

(b) The renewal date of the terms of senior justices, senior court of appeals judge or senior district judge ~~or judge~~, recalled after adoption of this rule shall be July 1 of each year; however, the supreme court may, in its sole discretion, elect not to renew the commission of a senior justice, senior court of appeals judge or senior district judge ~~or judge~~, at the end of that judge's one-year term;

(c) No later than May 1 of each year, a senior justice, senior court of appeals judge or senior district judge or judge, wishing to continue to serve may request a new commission. The supreme court may require additional information or evaluation prior to extending any judge's term.

(d) Any extended commission shall be for one year.

(e) The supreme court may further provide for continuing educational requirements for senior justices, senior court of appeals judges or senior district judges or judge, as a condition for issuing a commission.

**5. Extra-judicial employment.** A senior justice, senior court of appeals judge or senior district judge or judge, is ineligible to practice law in any of the courts of this state or to accept employment which contemplates giving advice on legal matters and shall not be a member of or associated with a firm or attorney that practices law. A senior justice, senior court of appeals judge or senior district judge or judge, may, however, serve as a private mediator or arbitrator for compensation provided that the case or matter being mediated or arbitrated did not first come to the senior justice, senior court of appeals judge or senior district judge or judge, while serving in his or her capacity as senior justice, senior court of appeals judge or senior district judge or judge. A senior justice, senior court of appeals judge or senior district judge or judge, may work for a private arbitration/mediation firm or company that is not affiliated directly or indirectly with a private law firm. Notwithstanding Canon 4C(3) of the Nevada Code of Judicial Conduct, a senior justice, senior court of appeals judge or senior district judge or judge, may serve as an officer, director, manager, or employee of a business, but full disclosure of such activity shall in all cases be made a matter of record, and the participation of such justice or judge may in all cases be

precluded by any party through a timely objection made before consideration of any contested matter.

6. **Eligibility for assignment.** A senior justice, senior court of appeals judge or senior district judge, or judge, with his or her consent, is eligible for temporary assignment to any state court at or below the level of the court in which he or she was serving at the time of retirement or leaving office, provided that the justice or judge previously served at least two years in that office of temporary assignment and provided that the judge was not removed or retired for cause from that judicial office or defeated for retention in an election for that office. A senior justice or senior court of appeal's judge is eligible for temporary assignment to the court of appeals. ~~If designated by the governor,~~ <sup>a</sup>At the request of the chief justice or the chief justice's designee, a senior justice or senior court of appeals judge may also hear specific cases in the ~~supreme court~~ court of appeals upon disqualification of a ~~justice or court of appeals judge~~ thereof. A senior justice, senior court of appeals judge or senior district judge, or judge may also be assigned to act as a settlement judge in any state court. But no senior justice, senior court of appeals judge or senior district judge or judge may serve as a settlement judge unless that justice or judge completes a course in alternative dispute resolution offered by the National Judicial College, or a similar course of study approved by the chief justice. The chief justice may, in appropriate circumstances, waive the educational requirement for service as a settlement judge.

The cost of any course taken by a senior justice, senior court of appeals judge or senior district judge or judge to qualify that justice or judge to serve as a settlement judge shall be paid from funds appropriated for judicial education or from the senior judge budget if approved by the chief justice.

7. **Temporary assignment to district court.** A district court requiring supplemental judicial assistance may request that the supreme court temporarily assign a senior justice, senior court of appeals judge or senior district judge, or judge to that court. Any request for a temporary assignment must be submitted to the Administrative Office of the Courts in a form and manner prescribed by that office. The chief justice or the chief justice's designee shall approve the assignment in writing. The Administrative Office of the Courts shall advise the district court of the assignment by issuing an assignment memorandum signed by the chief justice or the chief justice's designee.

8. **Temporary assignment to supreme court or court of appeals.** The temporary assignment of a senior justice or senior court of appeals judge to the supreme court or court of appeals, respectively, shall be made by order signed by the chief justice or the chief justice's designee and filed with the clerk of the supreme court. ~~The chief justice, as in the case of sitting district court judges, may request the governor to issue a special commission assigning a senior judge to hear and determine a case in the supreme court.~~

9. **Duties and powers.** Each senior justice, senior court of appeals judge or senior district judge or judge assigned as provided in this rule has all the judicial powers and duties, while serving under the assignment, of a regularly elected and qualified justice or judge of the court to which he or she is assigned. Without specific assignment, senior justices, senior court of appeals judge or senior district judge or judge may perform routine ministerial acts, including the solemnization of marriages, and the administering of oaths, but shall not admit to bail any person accused of crime.

10. **Compensation.** A senior justice, senior court of appeals judge or senior district judge ~~or judge~~-assigned as provided in this rule shall receive as compensation for the time actually engaged in the performance of duties under the assignment an amount proportional to the gross monthly salary of a regularly elected and qualified judge of the court on which he or she qualified at ~~for~~-retirement. The compensation shall be paid upon the certificate of the justice or judge that the services were performed for the number of hours shown in the certificate.

Each senior justice, senior court of appeals judge or senior district judge ~~or judge~~ shall be deemed to have a home court. The home court for a judge residing in Nevada is the district court closest to his or her residence. If a judge has more than one residence, the home court is the district court closest to the assignment. For a judge residing outside of Nevada, the home court is the district court closest to the assignment to which the judge can fly or drive.

A senior justice, senior court of appeals judge or senior district judge ~~or judge~~ shall be entitled to compensation for travel time, travel expenses and per diem expenses as set forth in the Supreme Court Policy for Administration of the Senior Judge Program.

11. **Oath.** To accept a commission as a senior justice, senior court of appeals judge or senior district judge, a former supreme court justice, former court of appeals judge or former district judge must take, subscribe and file with the clerk of the supreme court, the following oath or affirmation:

"I, ....., do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith,



allegiance and loyalty to the same, any ordinance, resolution or law of any State notwithstanding, and that I will well and faithfully perform all the duties of the office of a senior (justice, court of appeals judge or district judge ~~senior justice (or judge)~~ of the Nevada court system on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.”

12. **Discipline and removal.** The supreme court may for cause revoke the commission of any senior justice, senior court of appeals judge or senior district judge, ~~or judge,~~ either following notice and opportunity for hearing before the court, or after proceedings before the commission on judicial discipline. The supreme court may temporarily suspend the commission of any senior justice, senior court of appeals judge or senior district judge, ~~or judge.~~