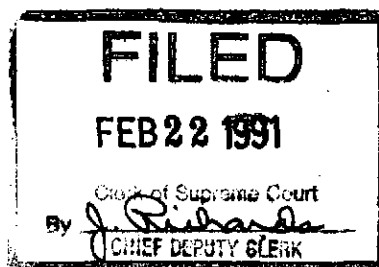


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE DEVELOPMENT)
OF ALTERNATIVES TO TRADITIONAL)
LITIGATION FOR RESOLVING LEGAL)
DISPUTES.)

ADKT 126



ORDER AMENDING NEVADA SUPREME COURT RULES

BY ADDING SUBPART A TO PART V, NEVADA ARBITRATION RULES

WHEREAS, on December 20, 1989, this court created a committee to work with a subcommittee of the Legislative Commission in a cooperative effort to develop a comprehensive system of statutes and court rules that would alleviate the burdensome costs and delays that currently plague the judicial system. The committee filed its final report with the clerk of this court on November 29, 1990; and

WHEREAS, the court is aware of determined efforts in the present legislative session to enact statutes that would implement a mandatory, nonbinding system of arbitration in the courts of this state; and

WHEREAS, the court is of the opinion that any system of mandatory, nonbinding arbitration adopted for Nevada should be developed and supervised under the auspices of the court to insure that its procedures are both efficacious and sufficiently flexible to enhance the administration of justice; and

WHEREAS, the court deems it necessary to monitor any system of alternative dispute resolution to make certain that it truly reduces the costs and delays associated with traditional litigation; and

91-1

WHEREAS, the court has reviewed the final report submitted to it by the committee, and has determined that the committee's proposal regarding a system of mandatory, nonbinding arbitration appears to have merit and deserves further study. Therefore,

IT IS HEREBY ORDERED that the Nevada Supreme Court Rules be, and they hereby are, amended by the addition of a new subpart A to Part V of said rules following Supreme Court Rule 252, entitled Nevada Arbitration Rules, which shall read as set forth in Exhibit A, attached hereto.


IT IS FURTHER ORDERED that the Nevada Arbitration Rules are adopted on an experimental basis. The rules will be effective in all actions commenced on or after May 1, 1992, and will continue in effect until January 1, 1994. This court may extend the application of the arbitration rules, or amend or terminate the rules at any time before or after January 1, 1994.

IT IS FURTHER ORDERED that this court will appoint a committee to aid in the implementation of the arbitration rules prior to their effective date, and to monitor the performance of the rules after their effective date.

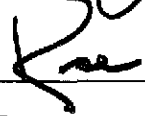
IT IS FURTHER ORDERED that this order shall become effective when signed and filed by the clerk of this court. Publication of this order shall be made by the mailing of a copy by the clerk of this court to each member of the State Bar of Nevada according to the clerk's official list of membership of such bar (which will include all district judges and district attorneys), and the certificate of the clerk of this

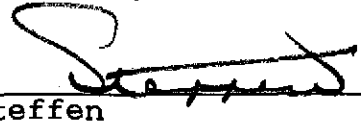
court as to the accomplishment of such mailing shall be conclusive evidence of the adoption of the foregoing rules.

Dated this 22nd day of February, 1991.


_____, C.J.
Mowbray


_____, J.
Springer


_____, J.
Rose


_____, J.
Steffen

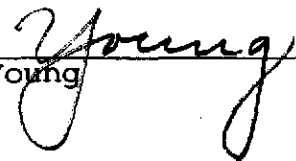

_____, J.
Young

EXHIBIT "A"

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 having a population of at least 125,000. 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) The purpose of the Program is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters.

(B) These rules shall apply to all arbitration proceedings commenced in the Program.

(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 Discovery Commissioner and the District Judge. Arbitration hearings are intended to be informal, expeditious and consistent with the purposes and intent of these rules.

RULE 3

MATTERS SUBJECT TO ARBITRATION

(A) All civil cases commenced in the district courts, except probate proceedings, domestic relations cases, cases seeking judicial review of administrative decisions, cases seeking to quiet title to real property, cases seeking declaratory relief, cases presenting significant issues of public policy and cases seeking equitable or extraordinary relief, that have a probable jury award value not in excess of fifty thousand dollars (\$50,000), exclusive of interest and costs, and regardless of comparative liability, are subject to the program.

(1) 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 the District Judge to whom the case is assigned, another district judge, a senior judge, or a special master. The settlement procedure conducted pursuant to this subdivision will extend by no more than thirty (30) days the timetable set forth in these rules for resolving cases in the Program.

(B) 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) Parties to cases submitted or ordered to the Program may agree at any time to be bound by any arbitration ruling or award.

(1) 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.

(D) The District Judge to whom a case is assigned may remove from the Program any action where good cause for acceptance or removal is found. The Court's decision in this regard is non-reviewable.

RULE 4

RELATIONSHIP TO DISTRICT COURT JURISDICTION AND RULES: FORM OF DOCUMENTS

(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 and 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.

(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.

(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 motions made pursuant to Rule 3(A)(1), requesting a settlement conference, mediation proceeding or other appropriate settlement technique.

(F) All documents required to be utilized or filed under these rules shall be in a form designated by the Supreme Court.

(G) 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.

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

RULE 5

EXCEPTIONS FROM ARBITRATION

(A) If a party believes that a case should not be in the Program, that party must file with the Discovery Commissioner a request to exempt the case from the Program. The request for exemption must be filed within ten (10) days of the filing of the case conference report required by NRCP 16.1(c), 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.

(B) Where exemptions from arbitration are requested, the Discovery Commissioner shall review the contentions, facts and evidence available and determine whether an exemption is warranted. The Discovery Commissioner may require that a party submit additional facts supporting the party's contentions. Any objection(s) to his decision must be filed with the District Judge to whom the case is assigned within ten (10) days of the date the decision is served, with service to all parties.

(C) The District Judge to whom a case is assigned shall make all final determinations regarding the arbitrability of a case when that issue is disputed by any party, and may hold a

hearing on the issue of arbitrability, if necessary. The District Judge's determination of such an issue is not reviewable.

(D) 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.

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 furnished to the Discovery Commissioner within twenty (20) days after the filing of the case conference report required by NRCP 16.1(c) and may require the use of any ADR 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.

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

(C) Unless the Discovery Commissioner is notified of a stipulation for a private arbitrator or the use of any other ADR procedure as provided above, or a request for exemption is filed, the Discovery Commissioner will serve the parties with identical lists of five (5) arbitrators selected at random from the panel of arbitrators assigned to the Program.

(1) Thereafter, each party shall, within ten (10) days, return the list with no more than two (2) names stricken.

(2) If both parties respond, the Discovery Commissioner shall appoint an arbitrator from among those names not stricken.

(3) If only one party responds within the ten (10) day period, the Discovery Commissioner shall appoint an arbitrator from among those names not stricken.

(4) If neither party responds within the ten (10) day period, the Discovery Commissioner will appoint one of the five (5) arbitrators.

(D) If a request for exemption is filed and denied, the Discovery Commissioner shall, within five (5) days of the denial of the request, serve the parties with identical lists of 5 arbitrators as provided in subsection (C) of this rule.

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

(F) Where an arbitrator is assigned to a case and additional parties are subsequently added to the action, the additional parties may object to the arbitrator assigned to the case within ten (10) days of the date of the party's appearance in the action. Objections must be in writing, state specific grounds, and be filed with the Discovery Commissioner, who will review the objections and render a decision. This decision may be appealed to the District Judge to whom the case is assigned.

(G) If the selection process outlined above fails for any reason, including a decision by the arbitrator selected to recuse himself from considering a case, the Discovery Commissioner shall repeat the process set forth in subdivision (C) of this rule to select an alternate arbitrator.

RULE 7

QUALIFICATIONS OF ARBITRATORS

(A) The State Bar of Nevada shall create and maintain a panel of arbitrators designated by areas of expertise consisting of attorneys licensed to practice in the State of Nevada and a separate panel of arbitrators qualified to engage in professions other than law.

(B) Arbitrators shall have substantial experience in their areas of expertise and shall have engaged in their profession for a period of at least three (3) years.

(1) No person serving on a panel of arbitrators established pursuant to this rule may use his status as an arbitrator for any advertising purpose whatsoever.

(C) Arbitrators shall be required to complete an orientation and training program following their selection to the panel, and shall also attend such other additional training sessions or classes as the State Bar may require. The orientation and training program must specifically include training in techniques to obtain settlement of a case at the earliest opportunity.

(D) Arbitrators shall be sworn or affirmed by the Chief Justice or his designee to uphold these rules of the Program, and the laws of the State of Nevada.

(E) An arbitrator who would be disqualified for any reason that would disqualify a judge under the Nevada Code of Judicial Conduct shall immediately resign or be withdrawn as an arbitrator.

(F) Any issue concerning the disqualification of a person to serve on the panel of arbitrators shall be referred to the State Bar of Nevada 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 shall include, but not be limited to the powers:

- (1) To administer oaths or affirmations to witnesses;
- (2) To relax all applicable rules of evidence and procedures 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;
- (3) To authorize the parties to obtain from the clerk of the district court subpoenas to secure the attendance of witnesses or the production of evidence at arbitration proceedings conducted pursuant to these rules.

(B) Any challenge to the authority or the act of an arbitrator shall be made to the Discovery Commissioner who will make a ruling on the issue in due course. Judicial review of the ruling of the Discovery Commissioner may be obtained by filing a petition for such review within ten (10) days of the date that the Discovery Commissioner makes his ruling. The District Judge to whom the case is assigned shall have the non-reviewable power to uphold, overturn or modify the ruling of the Discovery Commissioner, 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 permitted by Rule 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 arbitrator regarding the merits of the case, except in the presence of, or with reasonable notice to, all of the other parties.

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

RULE 11

DISCOVERY

Within thirty (30) days after the appointment of the arbitrator, the parties must meet in the presence of the arbitrator to confer and exchange documents that were not previously exchanged at the conference required by NRCP 16.1, and to formulate a discovery plan, if necessary. The extent to which discovery is allowed, if at all, is in the discretion of the arbitrator, who must make every effort to insure 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 may be modified in the discretion of the arbitrator to save time and expense.

RULE 12

**SCHEDULING OF HEARINGS;
PRE-HEARING CONFERENCES**

(A) All arbitrations shall take place and all awards must be filed no later than six (6) months from the date that the district court appoints the arbitrator, unless said time is extended pursuant to this rule. 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. A request for a continuance of the hearing beyond a period of nine (9) months from the date that the district court appoints the arbitrator may not be granted by the arbitrator until said arbitrator obtains an extension of the above nine (9) month period upon a showing of unusual circumstances from the District Judge to whom the case is assigned. Any request for an extension of the above nine (9) month period must be made in writing to the District Judge by the arbitrator and be granted in writing by the District Judge. All arbitration hearings must take place within one year of the date that the district court appoints the arbitrator.

(C) Consolidated actions shall be heard on the date assigned to the latest case involved.

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

(E) The arbitrator shall give immediate written notification to the Discovery Commissioner of any change of the arbitration date, any settlement or any change of counsel.

RULE 13

PRE-HEARING STATEMENT

(A) At least ten (10) 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 circumstances.

(C) Each party shall furnish to the arbitrator at least ten (10) 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 conduct of the hearing.
- (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 by the arbitrator shall be in writing, signed and on forms prescribed by the Supreme Court.

(B) The arbitrator shall determine all issues raised by the pleadings that are subject to arbitration under the Program, including a determination of comparative negligence, if any, damages, if any, and costs. Regardless of whether any party made a request pursuant to Rule 5(A) to exempt a case from the Program, the arbitrator may award in an appropriate case damages that exceed \$50,000.

(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 discretion of the arbitrator.

(D) 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) Within seven (7) days after the conclusion of the arbitration hearing, or thirty (30) days after the receipt of the final authorized memoranda of counsel, the arbitrator shall file the award with the Discovery Commissioner, and also serve copies of the award to the attorneys of record. Application must be made by the arbitrator to the Discovery Commissioner for an extension of these time periods.

(B) The arbitrator may, within the period specified in subsection (A) of this rule, file with the Discovery Commissioner an amended award to correct an obvious error in the award. Subsequent to this time, permission must be obtained from the Discovery Commissioner. All amended awards shall be served on the attorneys of record by the Discovery Commissioner.

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

RULE 18

REQUEST FOR TRIAL DE NOVO

(A) Within thirty (30) days after the award is served upon the parties, any party may file with the clerk of the court and serve on the other parties and the Discovery Commissioner a written request for trial de novo of the action.

(B) After the filing and service of the written request for trial de novo, the case shall be set for trial pursuant to applicable court rules.

RULE 19

JUDGMENT ON AWARD

If no party files a written request for trial de novo within thirty (30) days after service of the award on the parties, the clerk of the court shall, upon notification by the Discovery Commissioner, enter the arbitration award as a final judgment of the court. Said award shall have the same force and effect as a final judgment of the court in a civil action, but may not be appealed.

RULE 20

PROCEDURES AT TRIAL DE NOVO

(A) The clerk shall seal any arbitration award if a trial de novo is requested. The jury, if a jury is demanded, will not be informed of the arbitration proceedings, the award, or about any other aspect of the arbitration proceedings. The sealed arbitration award shall not be opened until after the verdict is received and filed in a jury trial, or until after the judge has rendered a decision in a bench trial. Except as otherwise provided in this subsection, if the amount of the award in the trial de novo does not either exceed by at least 10% the arbitration award made to the party requesting the trial de novo, or reduce by at least 10% the liability imposed on that party by the arbitration award, the party requesting the trial de novo must pay to the other adverse parties all actual costs and attorney's fees associated with both the arbitration and the trial de novo. The district court may not alter the amount of the costs and attorney's fees awarded unless it enters specific written findings regarding the extraordinary circumstances of the case that justify a lower award.

(1) The penalty provided in subdivision (A) of this rule does not apply to any case in which the arbitrator's award exceeds \$50,000.

(B) 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. The court in the trial de novo shall insure that any reference to the arbitration proceeding is omitted from any discovery taken therein and sought to be introduced at the trial de novo.

RULE 21

SCHEDULING OF TRIAL DE NOVO

Cases requiring a trial de novo will not be given preference on the trial calendar of the district court simply because those cases were subject to arbitration proceedings pursuant to these rules. Trials de novo will be processed in the ordinary course of the district court's business.

RULE 22

SANCTIONS

(A) The failure of a party or an attorney to either prosecute or defend a case in good faith during the arbitration

proceedings shall constitute a waiver of the right to request a trial de novo.

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

RULE 23

COSTS

(A) The arbitrator is entitled to recover the costs, not to exceed two hundred fifty dollars (\$250), that he reasonably incurs in deciding an action. Costs recoverable by the arbitrator are limited to:

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

(B) To recover his costs, the arbitrator must submit to the parties an itemized bill of costs within five (5) days of the date that he renders the award in an action.

(C) Costs must be borne equally by the parties to the arbitration, and must be paid to the arbitrator within ten (10) days of the date that the arbitrator serves the bill reflecting his costs. If any party fails to pay his portion of the arbitrator's costs within the time prescribed in this subdivision, the district court shall, after giving appropriate notice and opportunity 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 unrepresented indigent person who was exempted pursuant to NRS 12.015 from paying a filing fee, the arbitrator may not collect his costs from any party to the arbitration.

(D) All disputes regarding the propriety of an item of costs must be filed within five (5) days of the date that the arbitrator serves the bill reflecting his costs, and resolved by the Discovery Commissioner.

RULE 24

FEEES FOR ARBITRATORS

(A) Arbitrators appointed to hear cases pursuant to these rules are entitled to be compensated at the rate of seventy-five dollars (\$75) per hour to a maximum of one thousand dollars (\$1000) per case.

(B) To recover his fee, the arbitrator must submit to the parties an itemized bill reflecting the time spent on a case within five (5) days of the date that he renders an award in an action.

(C) The fee of the arbitrator must be paid equally by the parties to the arbitration, and must be paid to the arbitrator within ten (10) days of the date that the arbitrator serves the bill reflecting his fee. If any party fails to pay his portion of the arbitrator's fee within the time prescribed in this subdivision, the district court shall, after giving appropriate notice and opportunity 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 unrepresented 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 within five (5) days of the date that the arbitrator serves the bill reflecting his fee, and resolved by the Discovery Commissioner.