

FILED

APR 08 1992

JANETTE M. BLOOM
CLERK OF SUPREME COURT
J. M. Bloom
DUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE DEVELOPMENT) ADKT 126
OF ALTERNATIVES TO TRADITIONAL)
LITIGATION FOR RESOLVING LEGAL)
DISPUTES.)
_____)

ORDER AMENDING THE
NEVADA ARBITRATION RULES

WHEREAS, the Board of Governors of the State Bar of Nevada has submitted recommendations respecting the amendment of the Nevada Arbitration Rules; and

WHEREAS, this court has reviewed and carefully considered those recommendations and other concerns relating thereto;

IT IS HEREBY ORDERED that the rules specifically set forth in Exhibit A, annexed hereto, and contained in Subpart A of Part V of the Nevada Supreme Court Rules, entitled: "Nevada Arbitration Rules," be and hereby are amended as set forth in Exhibit A;

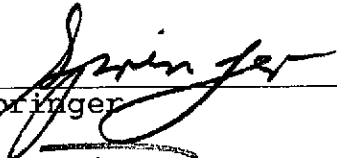
IT IS HEREBY FURTHER ORDERED that this order shall become effective thirty (30) days after its entry. Publication of this order shall be made by the mailing of a copy by the clerk of this court to each member of the State Bar of Nevada according to the clerk's official list of membership of such bar (which will include all district court 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 and publication of the foregoing.


Dated this 8th day of April, 1992.


_____, C.J.

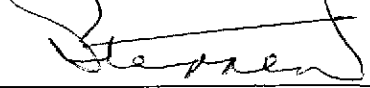
Mowbray


_____, J.

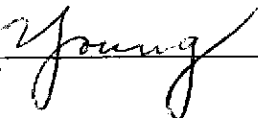
Springer


_____, J.

Rose


_____, J.

Steffen


_____, J.

Young

EXHIBIT "A"

AMENDMENTS TO THE NEVADA
ARBITRATION RULES

(Expires by limitation on January 1, 1994.)

Rule 1. The court annexed arbitration program. The Court Annexed Arbitration Program (the [P]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] 100,000. Judicial districts having a lesser population may adopt local rules implementing all or part of the [P]program.

Rule 2. Intent of program and application of rules.

(A) The purpose of the [P]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 [P]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 [D]discovery [C]commissioner and the [D]district [J]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 that have a probable jury award value not in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs, and regardless of comparative liability, are subject to the program, except class actions, appeals from courts of limited jurisdiction, probate [proceedings,] actions, divorce and other domestic relations [cases] actions, [cases] actions seeking judicial review of administrative decisions, [cases seeking to quiet] actions concerning title to real [property] estate, [cases seeking] actions for declaratory relief, actions governed by the provisions of NRS 41A.003 to 41A.069, inclusive, [cases] actions presenting significant issues of public policy, actions in which the parties have agreed in writing to submit the controversy to arbitration or other alternate dispute resolution method prior to the accrual of the cause of action and [cases] actions seeking equitable or extraordinary relief[, that have a probable jury award value not in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs, and regardless of comparative liability, are subject to the program].

(1) While a case is in the [P]program, the parties may, with the approval of the [D]district [J]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 [D]district [J]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 [P]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 [D]district [J]judge to whom the case is assigned.

(C) Parties to cases submitted or ordered to the [P]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 [D]district [J]judge to whom a case is assigned may remove from the [P]program any action where good cause for [acceptance or] removal is found. The [C]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 [D]district [C]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 [P]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 [P]program, and before a request for trial de novo is filed, or until the case is removed from the [P]program, these rules apply. Except as stated elsewhere herein, once a case is accepted or remanded into the program, the requirements of NRCPC 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 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 [S]supreme [C]court.

(G) Once a case is submitted or ordered to the [P]program all parties subsequently joined in the action shall be parties to the arbitration unless dismissed by the [D]district [J]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) A party claiming an exemption from the program pursuant to Rule 3(A) on grounds other than the amount in controversy or the presentation of significant issues of public policy 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, [I]if a party believes that a case should not be in the [P]program, that party must file with the [D]discovery [C]commissioner a request to exempt the case from the [P]program. The request for exemption must be filed within [ten (10)] twenty (20) days of the filing of any answer by any party defendant [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 requests for exemptions from arbitration are filed [requested], the [D]discovery [C]commissioner shall review the contentions, facts and evidence available and determine whether an exemption is warranted. The [D]discovery [C]commissioner may require that a party submit additional facts supporting the party's contentions. Any objection(s) to [his] the commissioner's decision must be filed with the commissioner who shall then notify the [D]district [J]judge to whom the case is assigned. Objections must be filed within ten (10) days of the date the commissioner's decision is served, with service to all parties. The commissioner or the commissioner's designee shall serve all rulings of the commissioner on any matter by delivery as defined in NRCP 5(b), or by mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a ruling by mail, three (3) days shall be added to the prescribed period.

(C) The [D]district [J]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 [any] may hold a hearing on the issue of arbitrability, if necessary. The [D]district [J]judge's determination of such an issue is not reviewable.

(D) The [D]district [J]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 [P]program.

(E) Any party to any action has standing to seek alternate 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 [P]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 [D]discovery [C]commissioner within twenty (20) days after the filing of [the case conference report required by NRCP 16.1(c)] any answer of any party defendant 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 [D]discovery [C]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 [D]discovery [C]commissioner will serve the parties with identical lists of five (5) arbitrators selected at random from the panel of arbitrators assigned to the [P]program.

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

(2) If both parties respond, the [D]discovery [C]commissioner shall appoint an arbitrator from among those names not stricken.

(3) If only one party responds within the ten (10)

day period, the [D]discovery [C]commissioner shall appoint an arbitrator from among those names not stricken.

(4) If neither party responds within the ten (10) day period, the [D]discovery [C]commissioner will appoint one of the five (5) arbitrators.

(D) If a request for exemption is filed and denied, the [D]discovery [C]commissioner shall, within five (5) days [of the] after the time has expired for filing an objection to the commissioner's denial of the request, or within five (5) 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) 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 [D]discovery [C]commissioner, who will review the objections and render a decision. This decision may be appealed to the [D]district [J]judge to whom the case is assigned. The notice of appeal shall be filed with the discovery commissioner within ten (10) days of the date of service of the commissioner's decision. The commissioner shall then notify the district judge of the appeal.

(G) If the selection process outlined above fails for any reason, including a recusal [a decision] by the arbitrator selected [to recuse himself] from [considering] a case, the [D]discovery [C]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] areas of expertise 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 or her 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] the Chief Justice's designee to uphold these rules of the [P]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 [P]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 procedure[s] 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] action of an arbitrator shall be [made to the Discovery Commissioner] filed with the discovery commissioner within ten (10) days of the date of the challenged decision or action. The discovery commissioner shall rule [who will make a ruling] on the issue in due course. Judicial review of the ruling of the [D]discovery [C]commissioner may be obtained by filing a petition for such review with the discovery commissioner within ten (10) days of the date of service of [that] the [D]discovery [C]commissioner's [makes his] ruling. The discovery 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 [D]district [J]judge to whom the case is assigned shall have the non-reviewable power to uphold, overturn or modify the ruling of the [D]discovery [C]commissioner, including the power to stay any proceeding.

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 in writing 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], 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 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) Except as otherwise provided by this rule, [A]all arbitrations shall take place and all awards must be filed no later than six (6) months from the date of the arbitrator's appointment [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. The arbitrator may not grant a [A] request for a continuance of the hearing beyond a period of nine (9) months from the date of the arbitrator's appointment without written permission [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 [D]district [J]judge to whom the case is assigned. Any such request for permission for an extension beyond [of] the [above] nine (9) month period must be made in writing to the [D]district [J]judge by the arbitrator. [and be granted in writing by t]The [D]district [J]judge may permit such an extension upon a showing of unusual circumstances. 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 [D]discovery [C]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 [D]discovery [C]commissioner of any change of the arbitration date, any settlement or any change of counsel.

Rule 16. Form and content of award.

(A) Awards by the arbitrator shall be in writing, signed and on forms prescribed by the [S]supreme [C]court.

(B) The arbitrator shall determine all issues raised by the pleadings in cases that are subject to arbitration under the [P]program, including [a determination] issues 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 \$25,000.] The maximum award that can be rendered by the arbitrator is \$25,000, exclusive of attorney's fees 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 discretion of the arbitrator.

(D) The offer of judgment provisions of NRCP 68 and NRS Chapter 17 apply to matters in the program. An award of attorney's fees may not exceed \$3,000.

(E) 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 [D]discovery [C]commissioner, and also serve copies of the award [to] on the attorneys of record. Application must be made by the arbitrator to the [D]discovery [C]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 [D]discovery [C]commissioner an amended award to correct an obvious error in the award. Subsequent to this time, permission must be

obtained from the [D]discovery [C]commissioner. Copies of [A]all amended awards shall be served on the attorneys of record by the [D]discovery [C]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 [D]discovery [C]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 [D]discovery [C]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 discovery commissioner [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 the arbitration award made to the party requesting the trial de novo, or reduce the liability imposed on that party by the arbitration award, the party requesting the trial de novo must pay to the adverse parties all recoverable costs and actual attorney's fees associated with the prosecution or defense of the trial de novo. Awards of attorney's fees may not exceed the total amount of \$3,000 unless the court finds extraordinary circumstances justifying a higher award. [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% 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 \$25,000.]

(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 23. Costs.

(A) The arbitrator is entitled to recover the costs, not to exceed two hundred fifty dollars (\$250), that [he] the arbitrator 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] such costs, the arbitrator must submit to the parties an itemized bill of costs within five (5) days of the date that [he] the arbitrator 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] the arbitrator's costs. If any party fails to pay [his] that party's portion of the arbitrator's costs 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 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 with the discovery commissioner within five (5) days of the date that the arbitrator serves the bill reflecting [his] the arbitrator's costs, and resolved by the [D]discovery [C]commissioner.

Rule 24. Fees 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 five hundred dollars (\$500) per case.

(B) To recover [his] any 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] the arbitrator 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] the fee. If any party fails to pay [his] 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 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 with the discovery commissioner within five (5) days

of the date that the arbitrator serves the bill reflecting
[his] the arbitrator's fee, and resolved by the [D]discovery
[C]commissioner.