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June 3, 1993

FILED

JUN 28 1993

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ADKT 126

The Honorable Robert Rose
Chief Justice
Supreme Court of Nevada
Capitol Complex
Carson City, Nevada 89710

Re: Court Annexed Arbitration Program
(Second Implementation Subcommittee Report)

Dear Justice Rose:

The following is the second formal report of the ADR Implementation Subcommittee. This report will discuss the second round of training programs for panel arbitrators conducted in December of 1992 in Clark and Washoe Counties; our plan for maintaining arbitrator resumes; the survey we conducted of bar members seeking initial reactions to the program; the status of the program in the second and eighth judicial districts, including early statistics; additional continuing legal education programs for the general bar; suggestions for additional arbitrator training programs; recent amendments to NRS Chapter 38; and some further impressions gathered by the subcommittee.

ARBITRATOR TRAINING CONDUCTED IN DECEMBER OF 1992

Additional training programs for arbitration panel members were conducted in Reno and Las Vegas in December of 1992 in conjunction with the E. L. Cord Center for Dispute resolution. In preparation for these programs, the National Judicial College assisted the faculty with a special seminar in teaching and communication skills designed to improve our training techniques. We are informed that the training programs received largely positive evaluations. Ninety-six (96) persons were trained in Las Vegas and forty-eight (48) persons were trained in Reno. The state bar has provided the court with a list of the attendees in good standing with the Nevada bar (we are now informed that the court has issued its Order appointing these trainees). Our committee has

93-2

also separately provided the court with additional names of laypeople and attorneys licensed in other states who have attended the training programs and, in our opinion, would make effective arbitrators.

MAINTENANCE OF ARBITRATOR RESUMES:

At the outset of the program, we required all prospective panel members to submit resumes. Because many of the resumes were cumbersome and not uniform in content, we developed a two page form that very briefly contains each arbitrator's educational background, licensure and disciplinary information, professional history and areas of expertise, private certification(s) of specialization, trial experience (numbers of jury, non-jury and administrative trials), representative clientele to identify potential conflicts, and affiliations with private arbitration services.

As of the submission of this report, almost all of the panel members have returned the new resume forms. These will be maintained in the state bar office for our use, and in the offices of the Washoe and Clark County Discovery Commissioners for use by parties involved in the court annexed arbitration selection process and as a resource for parties contemplating voluntary arbitration.

PRELIMINARY SURVEY CONDUCTED OF STATE BAR MEMBERS:

As you know, we conducted a survey of the state bar membership to obtain some early impressions of the program and to generate interest. We receive over seventy detailed responses, copies of which are appended to this report. Generally speaking, the membership is still reacting to the promulgation of the program. Many believe that, while arbitration is an important alternative to traditional litigation procedures, a voluntary program would be preferable if marketed properly. This particularly appears to be the view of attorneys in northern Nevada.

The following categories of comments represent the most common specific reactions to the program.

COMPILATION OF BAR RESPONSES TO
REQUESTS FOR ADR EVALUATION

Comment/categories	Number of Responses in each category
Eliminate or relax early arbitration conference rule (i.e., allow procedure via telephone)	2

Arbitrators tend to "cut baby in half" rather than forthrightly ruling on cases	2
Exemption process being abused by plaintiff's counsel	4
Exemption process being abused by defendant's counsel	1
Trial de novo process being abused	1
Arbitrators should have immunity	2
System encourages frivolous litigation	3
Dislike program	15
Like program	12
Don't know yet	8
Too much discovery allowed	3
Not enough discovery allowed	3
Arbitrators not qualified in types of cases being handled	5
Arbitrators not being compensated adequately	7
Arbitrators should not be compensated	1
Arbitrators are adequately compensated	-0-
Arbitrations should be binding	10
Exemption process should be simplified	1
Respondents did not understand the aspect of system upon which they were commenting	8
Jurisdictional amount should be raised	3
Jurisdictional amount should be lowered (our sense is that most attorneys believe the jurisdictional amounts should not be altered)	1
Remedies to prevailing parties need clarification	3

System should be voluntary	1
Rules should encourage formal opinions so parties may fully understand the reasoning for the outcome	1
Include currently exempted matters in program (i.e., eminent domain actions)	1
First answer should not be the stimulating event for issue of arbitrability to arise (should allow all subsequent answering parties to participate in arbitrator selection)	1

STATISTICAL INFORMATION FROM WASHOE AND CLARK COUNTIES

WASHOE COUNTY:

There have been some delays in the full institution of the program in the second judicial district. This primarily stems from the lack of a discovery commissioner for many months. Judge Adams advises us that the position has been advertized and filled. The new commissioner is Mr. Wesley Ayres. As you know, the discovery commissioner is the judicial officer charged with administrating the program.

Most recently, the second judicial district has been in the process of developing standard forms and case management protocols for ADR. Also, the judges have been very active in conducting settlement conferences to ease their caseloads. Judge Adams estimates that approximately 100 cases have been remanded into the program since July 1, 1992, and that 300 to 400 cases will have been remanded for arbitration by January 1, 1994.

CLARK COUNTY:

Statistics for the program in Clark County from inception to February 28, 1993[1], are as follows:

Number of Arbitrators Appointed (Cases Remanded to the Program)

July 1992	0
August 1992	7
September 1992	119
October 1992	157
November 1992	160

[1] Statistics provided by Clark County Discovery Commissioner Thomas Biggar.

December 1992	176
January 1993	194
February 1993	194
TOTAL	1,007

These figures must be compared with the gross information on filings during this time period. Between July 1, 1992, and March 1, 1993, 7,695 "A" filings (non-domestic and non-probate cases) were reported by the Eighth Judicial District Court clerk. Answers were filed in 2,650 of these cases.[2] With 1,007 of the answered cases having been remanded into arbitration, this means that 38% of the contested cases were diverted out of district court for mandatory non-binding arbitration (approximately 13% of all "A" filings).

As of February 28, there have been 110 awards filed, seventy-two of which have been reduced to judgment, and sixteen of which have been taken back into district court via requests for trial de novo.

Commissioner Biggar projects that approximately 200 cases per month will be routinely referred to the arbitration program in Clark County. This is quite significant, given an average filing rate in excess of 1,000 "A" cases per month, about 33% of which will be answered and thus subject to referral. Again, slightly less than 40% of the answered cases are now being remanded. Commissioner Biggar indicates that by October 1, 1994, we should have sufficient statistical information upon which to accurately evaluate the program in the eighth judicial district.

ADDITIONAL CONTINUING LEGAL EDUCATION FOR GENERAL ORIENTATION OF MEMBERS OF THE STATE BAR

As of now, the state bar has continued to offer access to the videotaped presentations mentioned in the subcommittee's first report. Also, a three hour program will be offered at the state bar convention this June in Lake Tahoe. The undersigned, Commissioner Biggar and representatives of the Neighborhood Justice Center have given presentations to the annual district judges seminar in Laughlin, Nevada, as well as to other private groups and firms.

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[2] It should be noted that many complaints in which money damages are sought are never answered. Thus, the amount of traffic in the arbitration program should be examined in terms of the number of matters that are at issue (answers filed).

FUTURE PROGRAMS TO TRAIN MORE ARBITRATORS:

There is an apparent demand for more panel members, at least in Clark County. We would recommend that yearly training programs be conducted through the state bar in cooperation with the E. L. Cord Center for Dispute Resolution. Attached is a piece of correspondence from Lansford Levitt, Esq., of the E. L. Cord project in which he discusses the accounting of costs and income from the prior programs. By having a state bar and E. L. Cord co-sponsor these seminars, we can continue to maintain program quality and equitably share in revenues.

RECENT LEGISLATIVE CHANGES TO NRS CHAPTER 38:

A series of "housekeeping" amendments to NRS 38. 215 et. seq. were recently signed by the governor, to be effective July 1, 1993. First, NRS 38.215 was repealed as a formality to eliminate the distinction between auto and non-auto cases from the statutory scheme developed at the last legislature. This brings the 1991 legislative changes into harmony with the court rules which encompass all damage cases where the amount in controversy does not exceed $25,000.00. Subsection two (2) of now repealed NRS 38.215, the provision which preserves the jurisdiction of justice courts in cases where the amount in controversy does not exceed $5,000.00, was moved and is now incorporated into NRS 38.250. This subsection was also the subject of a minor amendment and now reads as follows:

> 38.250(2). A civil action for damages filed in justice's court may be submitted to arbitration if the parties agree, orally or in writing, to the submission.

This amendment simply clarifies the authority of justices of the peace to refer matters to arbitration.

Also, NRS 38.253 was amended to provide arbitrators with judicial immunity similar to that enjoyed by court employees:

> 5. For the purposes of NRS 41.031 to 41.039, inclusive, a person serving as an arbitrator shall be deemed an employee of the court while in the performance of his duties under the program.

GENERAL COMMENTS:

The most serious problems identified thus far involve the adequacy of arbitrator compensation; the lack of specific procedural mechanisms for awarding additional relief to prevailing parties and for reducing awards to judgment; the apparent lack of clarity in the provisions defining the jurisdiction of the arbitrators to award attorneys fees and interest; the qualifications of arbitrators; and whether certain types of cases now within the scope of the program should be exempted.

The universal response is that the arbitrators are not being adequately compensated. The consensus is to return to the original $100 per hour rate with a ceiling of $1000. The low billing rate is, as predicted, putting unfair pressure on the most talented and therefore the most popular arbitrators. Many of the current members of the panel in Clark County have been appointed to as many as five matters in a single week. If substantial numbers of these people resign (many have started to consider resignation), the success of the program could very well be compromised. Even though arbitrators are appointed through random selection, the peremptory challenge procedure enables parties in a large number of cases to select one of the more able and experienced arbitrators by agreement.

As you recall, proposals to further amend the rules to clarify the mechanism for awarding of costs and fees to prevailing parties, to clarify the scope of the arbitrator's authority to award attorneys fees and interest, and to clarify the process by which awards are reduced to judgment were discussed at the most recent meeting between the state bar board of governors and the court. It is my understanding that these proposed amendments, along with several other changes suggested by messrs Biggar and Wanderer, are currently pending. Attached to this report is a further suggestion by Mr. Wanderer which would prohibit trial judges from hearing settlement conferences in matters to which they are assigned.

We are still evaluating whether certain categories of cases should remain subject to remand into the program. The most notable example would be collection cases. Mr. Wanderer points out that collection cases are particularly susceptible to abuse by debtor parties. To explain, the debtor can use the arbitration as a shield to postpone collection, will rarely pay costs, and would rarely agree to pay the costs of the arbitrator. This leaves the plaintiffs in collection matters bearing the brunt of the additional costs discrete to arbitration that might not be encountered outside the program.

CONCLUSION:

Please advise us of any other issues the court would like addressed either immediately or in future reports of the committee.

Very Truly Yours,

A. William Maupin
Chairperson, Supreme Court Implementation Committee

cc: Board of Governors
Members of the Implementation Sub-Committee

STATE BAR OF NEVADA

REPLY TO ☐ RENO ☒ LAS VEGAS

December 1, 1992

HELP US EVALUATE ADR!

The ADR implementation subcommittee would like your criticisms/suggestions relative to the new Court Annexed Arbitration program. Pleased send your written comments to:

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

No exp Yet !

Jan Hopkins

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The 2nd Judicial District has yet to implement the program To my knowledge no cases have been filed yet received in accordance with the rules.

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Court-Annexed Arbitration is defective in the following respects: (1) No mechanism for determining claims of evidentiary privilege; (2) NO motions in limine to keep out inadmissible evidence; (3) "Dispositive motions" exception is a joke - response to a Summary Judgment Motion I filed was "It's premature, no Discovery Done yet" - b/c the speeded-up nature of Arbitration Summary Judgment is a useless procedure; (4) Limitations on discovery favors Plaintiffs unduly.

Your really rolled over and gave in to the Plaintiffs' lawyers. By the way this whole system is unconstitutional, violates Equal Protection, Right to Jury Trial.

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It appears to add yet another layer of rules. and ~~would~~ will does not address the real problem in the system i.e frivolous lawsuits. I would much rather see stronger application of N.R.C.P. 56. including 56(d). In my experience 50% of the cases I'm involved in are frivolous and/or assert immaterial issues of fact. I fear our new arbitration will merely ~~add~~ delay or ignore the problem. B.S. I do Plaintiff & Defense work.

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1) Litigious clients/attorneys will not be forced to uphold the goal of the program to reduce litigation time/costs given its non-binding nature.
2) I have already witnessed blatant attempts to circumvent the jurisdictional monetary limit by "creative" pleading by plaintiffs' lawyers - and no apparent enforcement of sanctions for such abuse of the program.

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Arbitrators MUST receive more than a maximum of $500 or it is not worth their time.

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In personal injury cases, the defense has no motive to resolve cases quickly. The defense attorney wants to bill hours on the case and the insurer wants to keep its money in the bank earning interest to the last minute. Consequently, I believe few cases will be settled after arbitration, because the process is not binding. The defense will merely use the process for discovery and then refuse to settle as per the arbitrator's decision. The arbitration will have to be binding to be effective.

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I attended the CLE on the 18th; I am very excited about this program; It is well thought out and far-reaching. California's arbitration program met with resistence from the bar, but now almost all lawyers are delighted with it.

HOWEVER, UNLESS YOU PROVIDE IMMUNITY FOR THE ARBITRATORS from civil liability, you will not get responsible arbitrators to sign up!

While you're at it, provide privilege as well. I talked to a mediator at the seminar who said that he had been sued on every mediation he'd worked on, so he quit--and that was with immunity. Why should someone even risk a lawsuit for $500?

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1. Time + paper shouldn't be WASTED on Filing A "Petition for exemption" IF the pleading SAYS under the complaint it is exempt + The Reason OR The exemption is checked on the cover sheet - EXTRA pleadings + filings for the Clerk isn't helping anyone. (BINDING
2. Why NOT MAKE all ARBITRATION [redacted] UNLESS one side specifically files a request that it NOT be binding? This would satisfy the constitutions Right to TRIAL IE. They can exercise the right IF Requested timely + at the same time cutting DOWN on Repeating ARBITRATIONS only with a judge on the SECOND Bite of the Apple.

J. A. 12

R Reynolds

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Need some role play - from assignment as Arbitrator (use of forms, approvals, directions, etc) - to opening arbitration session only, Then the wrap up at completion of arbitration

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The program seems to be half heartedly administered in Washoe County. Everyone seems confused.

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(1) Too much discovery is allowed by Arbitrators.

(2) Arbitrators are being assigned to cases in areas where they have no practical experience.

(3) Arbitrators don't know the limits of their authority.

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HAVE NOT USED AS YET BUT BELIEVE IT IS FINE IDEA

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I think the program increases (not decreases) the cost of litigation in that every party has a right to a trial de Novo.

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The primary deficiency is that quality arbitrators are not going to act as such in these cases because of the low fee schedule. The procedural problems can always be worked out.

Hugh Allison

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ADR has caused a dramatic rise in the filing of "garbage" lawsuits and of questionable value which heretofore have been settled.

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I feel ADR can be an excellent tool I think the dollar amount should be higher, and some bumps need smoothing out, i.e., (1) NRCP 8(a) should be modified to plead "in excess of $25,000", (2) Multiple Defendants and answers should be ~~same~~ less complex to figure out, (3) Arbitrators should be able to earn more than $75/hr up to $500.

SGRO & PERRY LTD.

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Programs are good but too expensive for public interest lawyers. It would be helpful to offer a waiver to public interest attorneys working on small salaries.

Terri Keyes-Cooper
650 Tahoe ST
Reno, NV 89509

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I love it. Really helps the plaintiffs

Ben Childs
#3946

RECEIVED
DEC 0 9 1992
TBM&A

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It just adds another layer of expense to my clients.

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Arbitrators should have significant experience in field of law that case involves.

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REPLY TO ☐ RENO ☒ LAS VEGAS

December 1, 1992

HELP US EVALUATE ADR!

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The arbiters chosen must have expertise or substantial experience in the matter which is to be arbitrated.

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TDM&A
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(1) So far, the list of 5 arbitrators from which the parties may choose do not seem matched with areas of expertise here in Washoe County. Banking lawyers are being assigned to personal injury cases, for example.
(2) Also, the need to involve the arbitrator in the preliminary stages (16.1) is delaying resolution of the cases.
(3) Exemption is too easy to achieve
(4) Ability to arbitrate cheaply seems to discourage filing &

Gary A. Cardinal Martin Cases Margaret A.
Erickson, Thorpe & Swainston
Box 3559
Reno, NV 89505

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The Defense needs discovery in order to have due process. The Plaintiff usually don't. Replace Tom Beggar as Arbitration Commissioner because he is hostile to any discovery in arbitration. If we don't get it, discovery we have no choice but to appeal the decisions.

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DEC 14 19[illegible]
TDMC[illegible]

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I believe that the Court Annexed Arbitration is working extremely well. With respect to the Rules, I realize that a certain amount of judicial interpretation will be necessary to provide guidance as to their implementation. However, a very fruitful area of litigation with respect to arbitration is the area of attorney's fees, costs, interest and Offers of Judgment. It would seem to me that it would be quite helpful if the availability of attorney's fees, costs, and interest to the participants in the Court Annexed Arbitration Program were more clearly and succinctly spelled out. In my judgment, this will tremendously reduce the amount of litigation at the District Court level and appeals from these areas.

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Why impose another non-binding step in the judicial process leading to more expenses for litigants with attendant delay. Why not extend the jurisdiction of justice court to say $20,000 and limit District Ct jurisdiction to cases in excess of $20,000 with appropriate penalties if cases are touched to be in excess of jurisdiction but turn out not to be.

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The new ADR is an example of how rules ruin justice. Master vehicle arbitration worked much better w/o any formal regulations. The parties agreed on informal procedures which were more efficient. Everyone produced documents voluntarily, the witnesses were honest and frank, the decisions quick. Now under ADR the defense wants a deposition of the plaintiff and wants interrogs and production of docs. Before the $25,000 cap was suggested. Now it becomes a strategic consideration. You have taken a good voluntary system and ruined it. Byce Dyer

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The FACT THAT IT IS non-binding CREATES A System of built in DELAY RATHER Then Speed + efficiency; Secondly, The low pay promotes Sloppy WORK, ineffective ARBITRATORS AND CONFLICT OF INTEREST BETWEEN The ARBITRATORS DESIRE TO ~~TO~~ Do good WORK + his DESIRE TO AVOID LOSS of INCOME.

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1) Arbitrators are not clear on whether they can award punitive damages ≤ $25K, and do not understand costs/interest. Can costs/interest be awarded w/o offer of judgment. Rules need to be very clear on this

2) Rules should provide prices we charge for support services — since our hourly rate is fixed, that should be fine

3) Rules should be changed to encourage, not discourage, lengthy opinions. People want to know why, not just how much!

4) Basically, the system is great! Should have done this years ago!

Ron Pehr

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1. The fee maximum for arbitrators should be changed from $500 to $1000; Presently, the maximum is unrealistically small.
2. Confusion presently reigns regarding whether a party must opt out or not.

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The ADR has resulted in an unwarranted and unnecessary delay in cases outside arbitration because Defense council ~~has~~ refuse to participate in the ECC until after the matter is exempted from arbitration.

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In the event that a private arbitration is agreed to, then to what extent does ADR apply without express stipulation?

In the event counsel fails to cooperate with pre-arbitration conference or fails to show how and why is responsible for sanctions?

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It is a good program and should not be "fiddled" with.

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It appears to add yet another layer of rules. and ~~contract with~~ does not address the real problem in the system i.e frivolous lawsuits. I would much rather see stronger application of N.R.C.P. 56. including 56(d). In my experience 50% of the cases I'm involved in are frivolous and/or assert immaterial issues of fact. I fear ans new arbitration will merely ~~add~~ delay or ignore the problem. B.S. Ido Plaintiff & Defense work.

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The rules must specifically state that a trial de novo shall be granted unless the arbitrator's award is so clearly correct that reasonable people could not come to a different conclusion. Otherwise, a party's right to a jury trial is violated. The system as a whole (or the idea) is good. I also fear that burden of proof is shifted somewhat in hopes of reaching the middle ground between the parties.

0 0 40

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Each arbitrator does things w/ some degree of individuality + it would be helpful if there was some standardization at least as to the [illegible].

1) ~~[illegible]~~ When does the arb want copies of pleadings – are they [illegible] w/ [illegible]

2) Does arb want all discovery produced [illegible] or just those which would be admitted at hearing –

3) When the [illegible] must be done – at [illegible] [illegible] w/ [illegible]

I'd question what [illegible] ~~[illegible]~~ [illegible] – [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] w/ [illegible] – [illegible] ? [illegible] [illegible] [illegible] [illegible] [illegible] refuse [illegible] [illegible] [illegible] pleadings [illegible] [illegible] any of [illegible] ?

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Each arbitrator does things with some degree of individuality and it would be helpful if there was standardization at least as to the following:

1. When does the Arbitrator want copies of the pleadings - at the Pre-Arb meeting or with the pre-arbitration due prior to the actual hearing?

2. Does the arbitrator want all documents produced (some do) or just those documents which the parties reasonably believe will be admitted as exhibits?

3. When does the arbitrator want the documents - at the pre-arb meeting or along with the pre arbitration memo?

Another question which has arisen has to do withdrawal of counsel during the arbitration process. Is the motion to withdraw filed with the arbitration or with the clerks office. It's my understanding that the preliminary ruling from the arbitration office is that it is filed in that office rather than the clerk's office. If that's true how does the real file, which is maintained in the clerk's office, ever reflect that the attorneys listed on the pleadings are no longer attorney(s) of record?

Setting Precedent in Marin:

All civil lawsuits referred to mediation or arbitration

In an unprecedented effort to reduce court congestion, parties to every civil lawsuit now filed in Marin County are told about alternative dispute resolution and encouraged to use it.

The Marin program is the first of its kind in California and one of only a handful nationwide. Its backers believe it will serve as a model for courts in other counties and states.

Since the program started only five months ago, it's still too early to determine its success, but Steve Rosenberg, the Marin County Bar Association's ADR committee chair, believes most of the cases which have gone to mediation since July 1 have been settled. He believes the ADR referral mandate ultimately will resolve as many as half of all Superior Court civil cases within four months after they are filed. Once a case goes to ADR, he thinks, there's about an 80 percent chance of successful resolution.

Steve Rosenberg

Rosenberg and a group of colleagues spent three years developing the ADR program, with the backing of the county's superior court bench and with early assistance from the State Bar's Office of Legal Services.

"We initially envisioned a much smaller program, which would refer every third or fourth case to a panel with specific training," he explained.

But with the prospect of "fast-track" requirements looming, says Rosenberg, "mediation/arbitration was seen as the savior for compliance with fast track." The judges, he said, were extremely receptive to the idea and have been among its strongest advocates. Under the new program, attorneys for parties in civil cases are instructed to review with their clients the forms of ADR available in Marin: there are three 75-member panels of mediators, arbitrators and neutral evaluators. If the dispute is not resolved within 140 days, the parties are required to appear at an ADR assessment conference with a judge, who tries to determine if the case is appropriate for ADR. With the exception of binding arbitration, any party can proceed with a lawsuit if unsatisfied with the process.

Rosenberg, who has given up his Mill Valley family law/personal injury practice to become a mediator, believes both the plaintiff and defense bars need to be educated about the benefits of ADR. "We need to talk about ADR as another weapon, another tool you need to give effective representation to your client," he says. "It's a competitive market out there; you have to be sensitive to it."

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The adoption of such program is long past due; both economically and socially necessary--and without delay.

Edna Henry Wiley

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NONE

J 0 43

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I believe the present ADR system imposes additional expense upon litigants. A better solution would be to increase the jurisdiction of justice courts to $25,000 and add 5 or 6 more judges.

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All I do is civil litigation and I have had only one case stay in ADR. All other cases have been exempted by the Courts. So, it is not really working at $25,000.

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Its early, but many arbitrations are allowing substantial discovery, which I believe defeats the entire purpose of arbitration.

Lets keep it simple or it's going to become a bureaucratic nightmare.

I also believe there should be a greater penalty attached for failure to improve one's position at a trial de novo.

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I feel the program is good, both as an arbitrator and a litigator. Results are fast and inexpensive. The arbitrators have seemed conscientious and competent.

I suspect that some insurance defense people may be using ADR and trial de novo to get 2 bites, i.e., try liability in ADR and damages de novo. The program may possibly need a greater disincentive use of the trial de novo.

This program is a decided improvement.

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I think ADR is an excellent idea. However, there are several problems: (1) lawyers still don't understand how beneficial it is to our practice & (2) rumors has it that the judges in Washoe County are not receptive to this program.

I think both of these problems need to be worked on.

0 0 40

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Condemnation (Eminent Domain) actions filed by public utilities and ~~[illegible]~~ governmental entities, etc. should be included in the arbitration program.

Cheryl K. Hochman
[illegible]
[illegible]

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The decision of the arbitrator should be binding; alternatively, if the decision of the arbitrator is affirmed by the trial court in the case de novo, all of the post-arbitration attorneys fees should be awarded.

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Increase the amount for mandatory arbitration from ~~for~~ $25,000 to, at least, $50,000.

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Excellent.

HOWARD J. NEEDHAM, CHTD.
A LAW CORPORATION
3216 W. Charleston
Las Vegas, Nevada 89102

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It is more of a hinderance than a help!

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The program is not working - It is viewed as a joke. There need to be more exceptions, i.e. cases below $5000.

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An arbitration statute has been on the books for many years and few lawyers paid any attention to it. Most of us felt that we would rather take our chances with the judges. My experience with administrative law judges compel me to believe that arbitrators will be just as bad. I think that most attorneys will try to reject the notion of arbitration if at all possible. The only way you will achieve successful implementation of the arbitration concept is to make arbitration indoctrination mandatory. And virtually without charge. Attending classes on all phases of arbitration should be a prerequisite to renewal of our tickets. What the hell, attending legal seminars is a prerequisite, ~~as~~ So there is precedence.

12/10/92

Samuel S. Buchanan

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December 1, 1992

HELP US EVALUATE ADR!

The ADR implementation subcommittee would like your criticisms/suggestions relative to the new Court Annexed Arbitration program. Pleased send your written comments to:

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

At present, the only criticism ofthe ADR system is that while attorneys from both sides are making their legal fees as agreed upon with their clients, arbitrators are limited to an amount as hourly fees and with a low maximum cap. It seems to me that in order to maintain a good and qualified selection of arbitrators, the hourly fees should be increased to at least the median of attorney hourly fees here un Las Vegas and the cap should be raised to at least $1,000.00 with provisions that if special problems arise then in certain circumstances the cap could be raised.

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STATE BAR OF NEVADA

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HELP US EVALUATE ADR!

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A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

The problem I find with the Arbitration Program is that cases with multiple defendants are not handled properly. If a defendant files a motion instead of an answer they are excluded from the arbitration proceedings until after the motion is decided. In one of my cases the motion was set for hearing, rescheduled by stipulation of the parties, then rescheduled again. By the time the motion is decided the other parties to the litigation will have already held the arbitration conference. If the motion is denied my client will be prejudiced in that he was not a party to the arbitration process from the beginning. I believe that all parties to a suit should be included in the arbitration process as soon as they file their first pleading, be it a motion or an answer. I understand that the arbitration office only receives answers from the clerk's office. Maybe that system could be arranged to include any responsive pleading. Thank you.

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Attachment 1

STATE BAR OF NEVADA

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HELP US EVALUATE ADR!

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A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

Prevailing party should be entitled to atty fees prejudgmt interest and costs.

0[illegible]61

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HELP US EVALUATE ADR!

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ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

TOO NEW TO REALLY EVALUATE, BUT EARLY PROGRESS SEEMS GOOD

0000 65

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HELP US EVALUATE ADR!

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A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

1. Too much emphasis on making "mini-litigation" i.e. trial lawyers need to forget about rules of evidence in civil matters submitted to arbitration. All the silly "objections" and rulings thereon are bogging down the process. Keep it simple.

2. Washoe County felt the need to come up with (another) silly initial form. Could have handled applicability of CAA in caption or complaint and demand for jury in FDC.

3. Insurance defense lawyers have virtually destroyed the NRCP 16.1 concept of production and pertinent documentation in the NRCP 16.1 hearing. They are doing the same now with CAA.

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Ans'd.....

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HELP US EVALUATE ADR!

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A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

I believe that Non-binding arbitration is a waste of time. Make it binding, appealable to District Court, or eliminate it

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ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

it was pretty good.

/John A. Dorsey

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A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

(1) Selection process re arbitrators much more neutral than previously & should be retained

(2) in practice (clark County), exemptions re personal injury claims on basis of value exceeding 25K routinely granted w/o much showing.

(3) 25K authority for arbitrators is excessive in view of State mandatory minimums on auto policies

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December 1, 1992

HELP US EVALUATE ADR!

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A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

I am pleased & optimistic with what I have experienced so far. I believe the system will be useful & successful IF you can keep Biggar under control. If he does with ADR what he has done with Discovery, he's liable to wreck the whole damned system. Let the system work, and keep his involvement to a minimum.

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A.....

December 1, 1992

HELP US EVALUATE ADR!

The ADR implementation subcommittee would like your criticisms/suggestions relative to the new Court Annexed Arbitration program. Pleased send your written comments to:

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

I Have not used Arbitration Program as yet and therefore I am not in a position to comment.

0000 71

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Ans'd.....

December 1, 1992

HELP US EVALUATE ADR!

The ADR implementation subcommittee would like your criticisms/suggestions relative to the new Court Annexed Arbitration program. Pleased send your written comments to:

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

No problems so far.

0000 72

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Ans'd.....

December 1, 1992

HELP US EVALUATE ADR!

The ADR implementation subcommittee would like your criticisms/suggestions relative to the new Court Annexed Arbitration program. Pleased send your written comments to:

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

A.D.R. doesn't work! It is abused by the parties and lawyers, especially TIS and their attorneys. It results in awards out of proportion to the injuries, mostly because the parties are unable (or not required) to participate in meaningful discovery. The inability to compel the testimony of not parties (through subpoenae) is a serious flaw.

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Ans'd.....

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HELP US EVALUATE ADR!

The ADR implementation subcommittee would like your criticisms/suggestions relative to the new Court Annexed Arbitration program. Pleased send your written comments to:

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

CHECK A BOX FORMS
FOR EXEMPTIONS

0000 73

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Misc.....

December 1, 1992

HELP US EVALUATE ADR!

The ADR implementation subcommittee would like your criticisms/suggestions relative to the new Court Annexed Arbitration program. Pleased send your written comments to:

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

Mandatory ADR rules do not address the situation where an indigent defendant (criminal action) is served with a civil action for forfeiture simultaneously for an amount less than $25,000. How does this defendant pay for mandatory ADR?

0000 77

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REPLY TO ☐ RENO ☒ LAS VEGAS

December 1, 1992

HELP US EVALUATE ADR!

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A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

As yet haven't had enough cases to evaluate

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STATE BAR OF NEVADA

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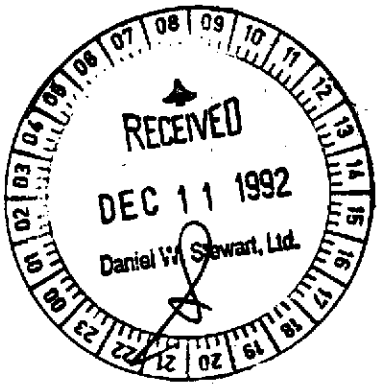

December 1, 1992

HELP US EVALUATE ADR!

The ADR implementation subcommittee would like your criticisms/suggestions relative to the new Court Annexed Arbitration program. Pleased send your written comments to:

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

While most of the cases I handle fall under ADR, I am still confused and mystified as to how it works. Attending the seminar on ADR did not help. The people who gave the seminar were as consused as I was. As I handle commercial collection cases, some sort of arbitration program could potentially be of real benefit. Usually there is no substance to the defense. Also, the cases I handle tend to involve some of the more technical aspects of commercial, banking, transportation and insurance law. It would be a real help to get an arbitrator who has specialized knowledge in these fields.

The limitation on attornyes fees and the inadequate provision to compensate the arbitrator make the ADR program unworkable. Also, for the small case, the prospect of having to go through ADR and then trial beyond that essentially leaves the the plaintiff in most commercial cases without any economically feasible remedy whatsoever. The cost

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The cost of going through ADR and trial together with the realities of collection will make most contract cases between $5,000.00 and $25,000.00 economically uncollectible. Also, dumping the administration of the program on the discovery master, who is already wearing more hats than any one head could accomodate, virtually assures that the program will be poorly admininstered. ADR has some real potential value, especially in commercial litigation. However, I think you are on a fool's errant to try and and make this program work without adequate provision for staffing and compensation.

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Law Offices
Harold G. Albright
124 Ridge Street
P. O. Box 40668
Reno, Nevada 89504

Fax (702) 348-6298

Telephone (702) 348-9696

November 2, 1992

A. William Maupin, Esq.
Thorndal, Backus, Maupin & Armstrong
1100 East Bridger Avenue
P. O. Drawer 2070
Las Vegas, Nevada 89125-2070

Re: ADR

Dear Bill:

In the continuing saga of the Implementation Committee, I am providing you with some additional very good questions that were asked at the latest seminar at which I taught. The questions are three:

1. Is the $3,000.00 limit on attorney's fees total or do you get $3,000.00 in attorney's fees under Rule 16 D and another $3,000.00 of attorney's fees under Rule 20 A?

2. Is it possible for an arbitrator to provide interim relief if a crisis arises under the arbitration? For example, if the defendant is leaving and heading to Mexico, can the arbitrator issue a writ of attachment, preliminary injunction, temporary restraining order or something that would be in the nature of interim relief? The arguments are that it is extraordinary relief and therefore would be excluded under Rule 3. By the same token, since you are already in the program all motions have to be filed with the arbitrator under Rule 9, so how do you get to the District Judge? It seems as though the procedure would be to require a person to go to the arbitrator and have the arbitrator not act, and then appeal that act to the Discovery Commissioner and ultimately to the District Judge under Rule 8 B. This is a cumbersome procedure and possibly there should be some clarification of these interim relief matters.

3. Since the whole thrust of the arbitration is to remove the judges from the process, it was suggested by several lawyers that even dispositive motions should be made to the arbitrator and then the arbitrator's action appealed to the Discovery Commissioner and ultimately the District Judge under Rule 8. Conceptually I don't disagree with this and it may be that we would want to amend Rule 4 E and Rule 9 to allow dispositive motions to be made to the arbitrator in the first instance.

There is no need for you to respond to this letter, but I simply would like you to include these questions in the ultimate discussion we have of the Implementation Committee whenever that discussion occurs.

Sincerely,

HAROLD G. ALBRIGHT

HGA/np

Law Offices
Harold G. Albright
124 Ridge Street
P. O. Box 40668
Reno, Nevada 89504

Fax (702) 348-6298

Telephone (702) 348-9696

November 12, 1992

A. William Maupin, Esq.
Thorndal, Backus, Maupin & Armstrong
1100 East Bridger Avenue
P. O. Drawer 2070
Las Vegas, Nevada 89125-2070

Re: ADR

Dear Bill:

The continuing saga of the implementation of the Nevada Arbitration Rules poses yet another problem. The problem is that Rule 5(d) should be amended to provide Rule 11 sanctions against a party who wrongfully attempts to keep a case in the program. I am receiving complaints from attorneys to the effect that insurance defense counsel are making them work very hard to prove up their exemption when in fact the case is clearly one in excess of $25,000.00. It would be my suggestion that paragraph (d) be amended to read:

> "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 or who without good cause or justification objects to a claim of exception filed by any party."

I'll keep providing you with problems as they arise.

Sincerely,

HAROLD G. ALBRIGHT

HGA/np
cc: Richard W. Myers, Esq.
700 South Third Street
Las Vegas, Nevada 89101

MICHAEL A. ROSENAUER, LTD.
ATTORNEY AT LAW
431 WEST PLUMB LANE
RENO, NEVADA 89509
TELEPHONE (702) 324-3303

December 9, 1992

Mr. A. William Maupin, Chairperson
ADR Implementation Committee
1100 East Bridger
Las Vegas, Nevada 89125-2070

Re: Comments to ADR Implementation

Dear Mr. Maupin:

I have filed three actions which qualify for mandatory ADR under our new rules. I also am serving as arbiter in one case, after being certified at the initial class in Reno.

The three cases in which I am an advocate were routinely filed, using the required form/coversheet. The form/coversheet is now on my word processing system and is automatically generated when the final copy of the complaint is printed. We do not find it burdensome. None of these cases have been assigned to specific arbiters.

The one in which I am serving as the assigned arbiter is more troublesome. First, I would request that the compensation be reset at something more reasonable than $75.00 per hour, with a maximum of $500.00 before costs. $75.00 per hour is below the hourly rate normally being charged by practitioners in my area. By agreeing to act as an arbiter, the practitioner is reducing his marginal revenue.

The current statutory time allowed is 6.66 hours per case. This is too short. We can assume that the arbiter has some initial time spent in coordinating the initial conference. He then holds the initial conference which lasts 1 hour. This leaves approximately five hours for any prehearing conferences, the actual hearing, review of notes, etc., and the drafting of the, albeit brief, decision. Even the simplest matters routinely run longer than five hours for their presentation alone. I believe that it would be reasonable to increase the estimated time per case to 10 hours.

I can understand the Committee's motivation to keep the proceedings as brief as possible, but it seems as if the current rules statutorily decrease not only the practitioner/arbiter's marginal revenue, but virtually guarantee the time spent as being

above the 6.66 hours allowed. The arbiter loses on both time and compensation under the current plan.

In my specific case, it has taken me almost 2½ months to gather the parties for the initial case meeting. I wrote three letters, each of which took some careful drafting to insure their judicial nature. It took the threat of sanctions, and my unilaterally scheduling of a mandatory prehearing conference, to get the majority of the parties' attention. This has significantly eaten into the permitted 6.66 hours and we are not even at the mandatory 30 day conference.

I recommend an amendment to ADR 22 to permit a direct motion to the Discovery Master for dismissal or other sanction if the parties do not follow the timelines.

Second, I recommend an amendment to ADR 11 such that the plaintiff has the obligation to coordinate the initial 30 day meeting among counsel and the arbiter. Although the plaintiff has the laboring responsibility as he bears the burden of proof, the rules as currently written, do not specifically address this issue and provide no clear delegation of responsibility. This alteration would follow NRCP 16.1.

Third, I would amend ADR 24 to require the parties to interplead their pro-rata share of the arbiter's maximum fee with the court. Interpleading the sum would occur when the arbiter is appointed and must be completed before the initial case conference. Interpleading of the arbiter's fee insures that the arbiter will get paid for his time.

If, for example, the plaintiff neglects to pay the arbiter, there is no way to recover the fee. The statute certainly does not create a private right of action in the arbiter against the offending plaintiff or his counsel. The arbiter receives neither a lien against the plaintiff's award nor a shortcut to a judgment. Even if the arbiter did receive a judgment, the arbiter should not be required to undertake execution remedies to collect his fee.

Instead, the arbiter, especially in light of the modest compensation permitted by the statute, should have a high degree of confidence that he will be paid for his time.

Please do not consider this letter as one of sour grapes. I believe that the system can work, with the local

practitioners becoming its best proponents both through time spent as advocates and as arbiters. However, the arbiters have to have some teeth with which they can work as well as a good incentive.

Many believe that the judiciary may not provide sufficient compensation to attract the best available legal minds. I submit that this program, however, has the means to provide compensation to the arbiters such that the best minds are attracted to become and remain participants. These smaller cases are therefore better considered, presented, and decided. This can only increase the party's belief in the program's efficacy. I submit that requests for trials de novo will decrease.

If you have any questions or would like to discuss any of these issues any further, please do not hesitate to call.

Very truly yours,

Michael A. Rosenauer

Michael A. Rosenauer

:mar

GEORGE T. BOCHANIS
LAW OFFICES

550 EAST CHARLESTON BLVD., SUITE C
LAS VEGAS, NEVADA 89104

GEORGE T. BOCHANIS, ESQ.
SCOTT R. SCHREIBER, ESQ.

JOHN E. HASTINGS
WORKER'S COMPENSATION ADMINISTRATOR

TELEPHONE (702) 388-2005
FACSIMILE (702) 388-0484

PERSONAL INJURY AND WORKER'S COMPENSATION LAW

December 10, 1992

Mr. A. William Maupin, Chairperson
ADR Implementation Committee
1100 East Bridger Avenue
Las Vegas, Nevada 89125-2070

Re: The New Court Annexed Arbitration Rules

Dear Mr. Maupin:

As a result of the form that I recently received from the State Bar of Nevada regarding the new Court Annexed Arbitration Program, I wish to express my concerns regarding this recently enacted program.

Since I personally participate in representing clients in arbitrations under N.R.S. Chapter 38 and now under the new Court Annexed Arbitration Program with a frequency of anywhere from three to eight times per month, I would like to provide my insight into the problems brought on by this arbitration program.

There is no doubt that the main problem with the new Court Arbitration Rules is allowing any party to the arbitration an unconditional right to a trial following the arbitration hearing. My experience in this matter has been whenever a party improperly evaluates a personal injury claim, and thus receives an adverse result, they immediately utilize this automatic right to a trial provision.

Additionally, I have been threatened by insurance companies time after time that if we do not agree to their settlement offers and if they are unsuccessful at the time of arbitration, they will file for a Trial De Novo.

Further, the ability to obtain an immediate Trial De Novo no matter what effort was placed into representing a party at an arbitration hearing, also diminishes this entire arbitration program. I have seen where various parties assert minimal effort at the arbitration hearing and then seek a Trial De Novo. I have also been informed by several insurance defense attorneys that they simply cannot make enough money representing these clients under the new arbitration program due to the fact that discovery is somewhat limited and this conduct is apparently influencing their clients to seek new trials.

GEORGE T. BOCHANIS, LTD.
LAW OFFICES

Just this week, I spoke with the branch claims manager of a large local casualty insurance company who informed me that the entire arbitration program was a "joke" and he felt the only justice that he would be able to obtain on behalf of his insureds would be before a Clark County jury. Therefore, he was instructing his attorneys to take such action if the arbitration award was not within a certain dollar amount of the insurance company's last offer.

The above true life illustrations truly reflect the problems that we have with the current arbitration rules as written. Prior to July 1, 1992, I have opposed Motions for Trial De Novo utilizing certain sections of N.R.S. 38 by placing a burden upon the party moving for a trial to show some type of bias, prejudice, improper conduct or improper action by the arbitrator prior to proceeding to trial.

Therefore, my suggestion would be that we do away with the entire current arbitration program since the allowance for an automatic Trial De Novo does not require any justification, thereby causing the numerous problems that I have outlined above. The obvious alternative is to require some type of showing by the party seeking a jury trial that the arbitration award was a result of or caused by either prejudice, bias or some abuse of discretion which would justify a subsequent jury trial after undergoing a full arbitration hearing on the merits of a particular case.

I do sincerely feel that these problems clearly diminish the effectiveness of the new arbitration program. Therefore, I would greatly appreciate you discussing my concerns with other members of the Alternative Dispute Resolution Committee.

Sincerely,

George T Bochanis

GEORGE T. BOCHANIS, ESQ.

GTB/sld

Law Office
of
William R. Brenske

WILLIAM R. BRENSKE
MEMBER: NEVADA AND CALIFORNIA BAR

JAMES R. CHRISTENSEN
MEMBER: NEVADA AND ILLINOIS BAR

December 11, 1992

A. William Maupin, Chairperson
ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

Dear Mr. Maupin:

In connection with the recent inquiry from the State Bar of Nevada, I have a couple of suggestions which I believe would improve the new Arbitration program. First, the ability to obtain a trial de novo in the District Court is too easy. The only disincentive is the possibility of an award of attorney's fees and costs. Attorney's fees and costs are always a concern, however, if competent counsel has filed an offer under NRCP 68 and/or NRS 17.115.

Second, the issue of awarding interest, fees and costs by the arbitrator should be addressed. The current rules do not address this issue in any depth, especially, as to the proper procedure to be followed.

I hope the above comments will be of some assistance in fine tuning the current arbitration system.

Very truly yours,

Law Office of William R. Brenske, Esq.

JAMES R. CHRISTENSEN, ESQ.

JRC/db

DEC 14 [illegible]

SECURITY PACIFIC BANK BUILDING, 233 SOUTH FOURTH STREET, SUITE 301, LAS VEGAS, NEVADA 89101
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COMBS & ENGLAND
ATTORNEYS AT LAW
704 SOUTH NINTH STREET
LAS VEGAS, NEVADA 89101

TELEPHONE (702) 388-9600
ABA/NET ABA16959
FACSIMILE (702) 385-2909

E. LESLIE COMBS, JR.
KATHLEEN J. ENGLAND
LONA L. MONSON
KRISTINA S. HOLMAN*
*OF COUNSEL

December 11, 1992

A. William Maupin, Chairperson
A.D.R. Implementation Committee
1100 E. Bridger Street
Las Vegas, NV 89125-2070

Dear Bill:

This letter is sent in response to the December 1, 1992, memo from the State Bar of Nevada. I have served as an arbitrator on several occasions and have found it a very rewarding experience. However, on several of the occasions, I thought I could do a much better job mediating the dispute rather than arbitrating it. I would suggest that your committee give some thought to an alternative plan where the parties would be encouraged to use mediation. Even if you decide this is not feasible, I think that the A.D.R. implementation committee should be complimented. I think that the arbitration program is a booming success.

Very truly yours,

E. Leslie Combs, Jr.

ELC/vlc

BURRIS & THOMAS

STEVEN M. BURRIS
ANDREW J. THOMAS
LAURENCE B. SPRINGBERG
WILLIAM F. BIRARDI

ATTORNEYS AT LAW
1605 SOUTH MARYLAND PARKWAY
LAS VEGAS, NEVADA 89104

AREA CODE 702
TELEPHONE 385-1200
FAX # 385-2849

December 14, 1992

ATTENTION: Bill Maupin

ADR Implementation Committee
1100 E. Bridger
Las Vegas, NV 89125-2070

Dear Mr. Maupin:

Per your letter dated December 1, 1992, the following are my suggestions regarding the Court Annexed Arbitration Program.

1. I think there should be a stronger deterrent to requesting a trial de novo. The current rules, although somewhat unclear, seem to indicate that the maximum penalty is only $3,000.00. By setting such a low limit on the attorney's fees and costs to be paid should one not later "beat" the arbitrator's award, this encourages insurance companies to file frivolous appeals. I have been told by one credible source that one insurance company branch office manager has stated that their company intends to ask for new trials on any award that does not suit them, since the perceived penalty is so minimal.

   If nothing else, it would be good to make clear the relationship of this $3,000.00 cap, vis a vis what someone might be obligated to pay under N.R.C.P. 68 or N.R.S. 17. No one seems to be clear on whether the $3,000.00 limit would prevent a judge from awarding more under N.R.C.P. 68.

2. I personally feel it would be better not to allow offers of judgment during the arbitration proceeding itself. I think, ultimately, this is going to create more problems that it might otherwise solve. It will be those same few attorneys in town, on both sides of the fence, who will vigorously pursue payment of their attorney's fees everytime they "prevail" in an arbitration proceeding, and this will inevitably result in more requests for new trials, as opposed to less.

3. There is some confusion in the rules as to deadlines when there are multiple defendants. Will the time limit start to run from the time the first defendant answer is filed, or the time the last defendant answer is filed? It might be well to clarify this.

Yours truly,

BURRIS & THOMAS

Steven M. Burris

SMB:me

LAW OFFICES
WANDERER AND WANDERER

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302 EAST CARSON AVENUE
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December 31, 1992

A. William Maupin, Chairperson
ADR IMPLEMENTATION COMMITTEE
1100 E. Bridger
Las Vegas, NV 89125-2070

RE: ADR Evaluation

Dear Bill:

This is in response to your ADR Evaluation Form which the committee per my suggestion sent to all members of the bar. I have canvased various employees in my office as well as the other attorneys who work with these matters and by and large the general opinion is that the system is too new for anybody to have developed any meaningful comments.

The only comment that I can make at the present time concerning the implementation is to give the committee some feel for the reaction of creditor/clients who I represent on a contingency fee basis. To date, most of the creditors with whom I have spoken, after being advised that they are liable for one half (1/2) of the costs and expenses of the arbitrator have been very negative about the program. To understand their negative attitude, one needs to understand the economics of the commercial collection practice. You are dealing with clients who are very hesitant about putting forth money to pay for litigation. The reason being is that the typical collection recovery rate in the industry is less than 20%. So you see a client knows that he has only a one in five chance of even collecting the debt. Now when you lay on top of that the fact that he is required to advance suit fees and a couple hundred dollars in Court costs to the lawyer in addition to which he now has somebody telling him that he will have to pay an arbitrator, the program just simply becomes an economic nightmare to the creditor.

Where it was initially envisioned that this program would cut the costs to the creditor, as presently structured, it is painfully obvious that nothing could be further from the truth. My preliminary indications are is that if this potential arbitrator's liability is disclosed to the creditor at the time when he has to authorize suit, there will be a large number of creditors who will make an economic decision not to file suit at all. What that means is that the system effectively will keep certain classes of Plaintiffs out of Court.

Another aspect of the whole program is that this is calculated to reduce the costs to attorneys. The committee needs to be aware of the economics of attorneys who work on these type of cases. Obviously if only one in five creditors hopes to collect anything on a commercial collection matter, the astute attorney is aware of that. He tries to minimize his costs. In these

matters, the attorneys costs is directly related to the time that the attorney spends on a file. Given the dismal prospects of collection in these cases and the essentially low contingent fee structure which is prevalent in the industry, the attorney working on these files must make very judicious use of his time. From what we have seen so far in this office, the arbitration proceeding as well as the 16.1 fastrack proceedings are simply requiring more of the attorney's time on these files. The recovery rate on the files and the fee structure to the attorneys cannot tolerate that. One can always say that the attorney therefore should go work on other files, that is fine, but always bear in mind that it is the creditor who ultimately bears the burden of all of this. And when the creditor can't collect his bad debts, he simply passes it on to the buying public.

Frankly, from our experience and from what we have seen, the best system is that which is in use in the Justice Court. They have simply cut out discovery. If you want discovery in Justice Court, you must make a showing as to why it is necessary. The net result is that a Complaint is filed, an Answer is filed, if the Plaintiff doesn't prevail on a Motion for Summary Judgment (presuming he files one) they just go to trial. We have noted few if any cases where any real discovery was required. And for that matter it is rare that any of the litigants even ask the JP for permission to conduct discovery. What that tells me is that the litigants are very happy without it.

I hope that what I have stated here is of some use. It really doesn't have anything to do with the actual workings of the system as much as it has to do with the effect of ADR on the interests Plaintiffs and the attorneys that work for them.

I look forward to your comments and the opportunity to further elaborate on these matters at forthcoming committee meetings.

Sincerely yours,

John P. Wanderer

JPW/wt
cc: Sally Loehrer

N:\DOC\WET\LETTER\MAUPIN.JPW 123192 Letter to A. William Maupin

DOUGLAS H. DRAKE
ATTORNEY AT LAW
555 Capitol Mall
Suite 766
Sacramento, California 95814

(916) 448-5951

January 27, 1993

A. William Maupin, Esq.
THORNDAL, BACKUS, MAUPIN & ARMSTRONG
1100 E. Bridger Avenue
Las Vegas, Nevada 89101

Re: Alternate Dispute Resolution

Dear Colleague:

Although a recent admittee to the fine state of Nevada, I have had 18 years of extensive experience in litigation in California. I guarantee you that the Alternate Dispute Resolution program providing for judicial arbitration will be a success. The first year of its use in California, the bar was adamantly opposed to arbitration, but now it is considered a godsend since it provides for quick resolution of small cases [meaning both the client and the lawyer get paid early]. The court maintains a list of very fine attorneys who volunteer to be paid $150.00 per half day to hear the cases.

Although the cap in California is $50,000.00, the program is now so popular that the courts routinely order the case "to arbitration with no cap." Virtually every civil case for damages goes to arbitration. This is why I know the system will be popular.

However, I am writing about one major problem that will prevent your program from attracting the high quality of arbitrators to ensure its success: <u>The glaring absence of immunity for the arbitrators</u>. Nevada's program contemplates incredible powers be vested in the arbitrators, including the power to issue injunctions or not issue injunctions and the power to issue writs or not issue writs. This must be remedied immediately as I cannot fathom an arbitrator taking on a case for $500.00 only to be sued. I suggest the same judicial immunity that judges enjoy be granted to arbitrators by statute.

Yours truly,

DOUGLAS H. DRAKE

DHD:bj

Also Admitted in Nevada and Hawaii

JAN 29

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY COURTHOUSE
200 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89155-0001

NANCY A. BECKER
CHIEF JUDGE

DEPARTMENT TWO
(702) 455-4645
FAX: (702) 386-9104

February 3, 1993

Douglas H. Drake, Esq.
555 Capitol Mall, Suite 766
Sacramento, CA 95814

Re: Alternate Dispute Resolution

Dear Mr. Drake:

Judge Jack Lehman forwarded your January 27, 1993 letter to me as I am the new Chief Judge of the Eighth Judicial District Court.

Thank you for your comments with regard to judicial immunity for arbitrators. I am forwarding your letter to our ADR Commissioner, Tom Biggar, as well as to Mr. Bill Maupin, who was one of the primary attorneys involved in developing the new rules, and Chief Justice Robert Rose of the Nevada Supreme Court.

It may be impossible at this time to get such an amendment passed at the legislature as they already have more requests for bills then they have personnel to draft them. I think your suggestion is an excellent one and I am sure it can be enacted in the future.

Sincerely,

NANCY A. BECKER
District Judge

NAB/sc
cc: Chief Justice Robert Rose
Thomas W. Biggar, Esq.
William Maupin, Esq.

RECEIVED
FEB - 5 1993
TBM&A

LAW OFFICES
WANDERER AND WANDERER

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302 EAST CARSON AVENUE
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FAX (702) 382-5786

October 27, 1992

A. William Maupin
Thorndal, Backus, Maupin & Armstrong
1100 East Bridger Avenue
Las Vegas, Nevada 89101

Re: Court Annexed Alternate Dispute Resolution
Implementation Committee Report

Dear Bill:

I read your report dated September 29, 1992 with fascination and some amazement. The ADR Program obviously must be fine tuned as it goes along and either develops or is killed in favor of some other program.

What concerns me the most is Commissioner Biggar's interpretation of Rule 16D concerning a limitation of attorney fees of $3,000.00. I believe that a clear reading of that section indicates that the $3,000.00 applies only in situations of offers of judgment where the party refusing the offer of judgment does not do better at arbitration. Certainly the Rule writers did not intend that on a $25,000.00 case the maximum attorney fee awarded to the winning party would be $3,000.00. There is a gross inconsistency in remuneration when in the next paragraph of your letter the Committee Report recommends paying the arbitrator a maximum of $1,000.00 per case for one (1) day of work and the prevailing party's attorney who has worked for six (6) months getting the case ready for arbitration is limited to an award of $3,000.00. Further, there are numerous contractual situations where the parties have contracted to full attorney fees to the prevailing party, actual attorney fees to the prevailing party or a percentage of the amount in controversy.

Article 1, Section 10 of the United States Constitution prohibits any State from making any law impairing the right of contract. This same prohibition is found in Nevada State Constitution, Article 1, Section 15. It is inconceivable that the writers of the ADR Rule intended what Commissioner Biggar interprets to be a absolute fee cap of $3,000.00 in any arbitration situation. It is also inconceivable that if in fact the $25,000.00 cap applies to each individual defendant and that there may be more than one liable defendant that the maximum attorney fees in a total arbitration award which could exceed $25,000.00 many times over would be limited to $3,000.00.

I also sympathize with Tom Collins' position regarding payment of arbitration fees up front.

However, in the commercial contract type action the Plaintiff will generally prevail and it would be my opinion that the total cost of arbitration which would include the total arbitrator's fee would be assessed against the defendant. Since the defendant has already failed to pay for the goods which it purchased from the plaintiff, the arbitrator will no doubt have just as equally difficult time getting paid his fee whether that fee be $500.00 or $1,000.00. However, it is certainly unjust to require a plaintiff to post or pay any portion of the arbitrator's fee up front. Even if the rule required each party to pay half (1/2) of the arbitrator's cost up front, in those situations where the defendant fails to appear or fails to pay his portion of the arbitrator's fee, the arbitrator will be required to expend considerable time, effort and money trying to collect his fee.

I do not believe that Tom Collins suggestion that the fees for arbitration be paid up front with the filing fee is a viable alternative as a great number of cases end in default. Another significant number of cases are settled short of any type of arbitration or trial.

Philosophically, as primarily a plaintiff's attorney, I am opposed to the plaintiff, in an action between $5,000.00 and $25,000.00, being required to pay any additional fee whatsoever to have his case arbitrated, when the plaintiff in a $26,000.00 case has access to the District Court for full litigation of his claim simply by paying the filing fee. I believe that the method of payment of arbitration is totally unfair to the litigant in the smaller case. I think that consideration should be given to arbitrators being paid directly by the Court out of court budgets. It is my understanding in a number of other states which use ADR, that the fee for the arbitrator is paid by the court system not by the parties to the arbitration.

Please be assured that as problems or difficulties are encountered along the path of arbitration that I will submit a report of those problems to the Committee.

Sincerely,

Sally Loehrer, Esq.

SL/lc

Attachment 2

UNIVERSITY OF NEVADA RENO

E.L. Cord Foundation Center
for Dispute Resolution
333 Holcomb Ave., #150
Reno, Nevada 89502-1648
(702) 784-1930
FAX: (702) 784-1952

January 14, 1993

A. William Maupin, Esq.
Thorndal, Backus, Maupin
& Armstrong
PO Drawer 2070
Las Vegas, NV 89125-2070

RE: NEVADA MANDATORY ARBITRATION TRAINING
June 4, 1992 (Reno)
June 5, 1992 (Las Vegas)

Dear Bill:

Pursuant to our meeting last week, I am appending a final accounting for the June Nevada Mandatory Arbitration Programs that we presented in Las Vegas and Reno. Please note that the $6,350 overhead contribution was a direct cost incurred by UNR's Division of Continuing Education. As I stated, this accounting does not reflect any staff time or operations expenditures incurred by the Center for Dispute Resolution for the development and presentation of these courses. We should have all invoices processed for the December programs in the next couple of weeks. I will forward to you that statement as soon as it is available. The evaluations for the December programs will also be sent under separate cover.

The Center for Dispute Resolution looks forward to the opportunity of continuing to provide this educational service in cooperation with the State Bar and Supreme Court. The overall evaluations for these programs have been high and I believe the changes in format that we talked about will only strengthen the offering. Please let me know if we can enter into an equitable cost and income sharing agreement with the State Bar to carry out the legislative and Supreme Court mandate for 1993.

Finally, I would like to repeat my offer to provide research and technical assistance to the ADR Implementation Committee and the Supreme Court in the field of dispute resolution. I hope you will consider the Center for Dispute Resolution as a resource as the need arises.

Best personal regards.

Sincerely,

Lansford W. Levitt
Executive Director

LWL/ds

Enc.

cc: Honorable Robert Rose

ARBITRATION

STARTING DATE: June 4, 1992
LOCATION: Reno/Las Vegas
MEETING PLANNER: Rebard
CLIENT: CDR

INCOME	PROJECTED			ACTUAL		
PAID REGISTRATIONS:	NUMBER	FEE	TOTALS	NUMBER	FEE	TOTALS
	99	$210.00	$20,790.00	253	$210.00	$53,130.00
				1	$105.00	$105.00
(Alt r)						
TOTAL:	99			254		
REGISTRATION INCOME:	.....		$20,790	.....		$53,235.00
ADDITIONAL INCOME:	.....		$0	.....		$0.00
(Alt a)						
TOTAL INCOME:	.....		$20,790	.....		$53,235.00
TOTAL EXPENSES:	.....		$11,719	.....		$18,545.75
OVERHEAD CONTRIBUTION:	.....		$2,475	.....		$6,350.00
NET OR (LOSS):	.....		$6,596	.....		$28,339.25

(Alt e)	PROJECTED					ACTUAL
EXPENSES	CODE	VARIABLE	FIXED	TOTAL	SUNK	EXPENSES
PROMOTION	1027			$0		
	1027					$977.48
MEETING ROOM RENTAL	1028			$500		
Cashman Field	1028					$105.00
	1028		$500			
AUDIO VISUAL RENTALS	1029			$0		
video equip.	1029					$315.00
IMS Tapes	1029					$26.00
SPEAKER FEES	1030			$2,000		
Faculty Consultants/RNO	1030		$1,000			
Faculty Consultants/LV	1030		$1,000			
Weller/consult	1030					$3,000.00
Hancock/consult	1030					$3,000.00
McNaught	1030					$1,000.00
SPEAKER TRAVEL	1033			$3,000		
Faculty/Planning	1033		$1,000			
Fac/Staff/RNO/LV/Air	1033		$2,000			$1,915.00
Per Diem	1033					$1,716.10
PHOTOCOPYING	1035			$0		
	1035					
FOOD & BEVERAGE	1036			$1,782		
Reno/LV	1036	$18.00				$4,489.17
LODGING	1037			$0		
G.Nugget/UI	1037					
UTILITIES & TELEPHONE	1038			$30		
	1038		$30			$60.00
PROGRAM MATERIALS	1042			$2,050		
binders/materials	1042	$3.00	$762	$762		$762.00
parking permits	1042	$0.00	$59	$59		$59.00
course materials	1042		$932	$932		$932.00
REGISTRATION MATERIALS	1044			$0		
	1044					
OTHER EXPENSES	1045			$416		
visa/mc	1045	$4.20	$0	$189		$189.00
CONTINGENCY	***			$0		
		VARIABLE	FIXED	TOTAL	SUNK	ACTUAL
	TOTALS	$25.20	$7,283	$11,719	$0	$18,545.75

OVERHEAD CONTRIBUTION COMPUTATION

The overhead has been computed as follows:

1. a fixed percentage of income	%:			$0		$0.00
2. a fixed percentage of expenses	%:			$0		$0.00
3. a fixed cost per registration	COST:		$25	$2,475	$25	$6,350.00
4. a fixed amount	AMOUNT:			$0		$0.00