

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT NO. 126

FILED

SEP 24 1993

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY J. Richards
CHIEF DEPUTY CLERK

ORDER AMENDING THE

NEVADA RULES OF ARBITRATION

WHEREAS, the Board of Governors of the State Bar of Nevada and this court's Alternative Dispute Resolution Implementation Committee have 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;

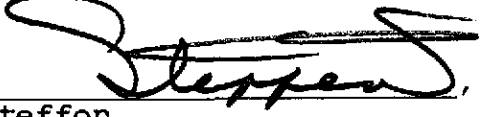
IT IS HEREBY ORDERED that the rules specifically set forth in Exhibit A, annexed hereto, and contained in Subpart A of Part V of the Nevada Supreme Court Rules, entitled: "Nevada Arbitration Rules," be and hereby are amended as set forth in Exhibit A;

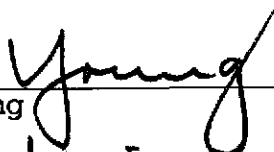
IT IS HEREBY FURTHER ORDERED that this order shall become effective thirty (30) days after its entry. Publication of this order shall be made by the mailing of a copy by the clerk of this court to each member of the State Bar of Nevada according to the clerk's official list of membership of such bar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

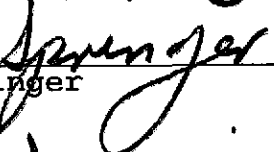
to the accomplishment of such mailing shall be conclusive evidence of the adoption and publication of the foregoing.

Dated this 24th day of September, 1993.


_____, C.J.
Rose


_____, J.
Steffen


_____, J.
Young


_____, J.
Springer

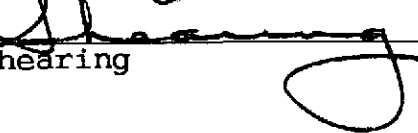

_____, J.
Shearing

EXHIBIT "A"

AMENDMENTS TO THE NEVADA
ARBITRATION RULES

(Expires by limitation on January 1, 1994.)

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 actions, divorce and other domestic relations actions, actions seeking judicial review of administrative decisions, actions concerning title to real estate, actions for declaratory relief, actions governed by the provisions of NRS 41A.003 to 41A.069, inclusive, 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 actions seeking equitable or extraordinary relief.

(1) While a case is in the program, the parties may, with the approval of the district judge to whom the case is assigned, stipulate, or the court may order that a settlement conference, mediation proceeding, or other appropriate settlement technique be conducted by [the district judge to whom the case is assigned,] another district judge, a senior judge, or a special master. The settlement procedure conducted pursuant to this subdivision will extend by no more than thirty (30) days the timetable set forth in these rules for resolving cases in the program.

Rule 5. [Exceptions] Exemptions 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, if a party believes that a case should not be in the program, that party must file with the discovery commissioner a request to exempt the case from the program and serve the request on any party who has appeared in the action. The request for exemption must be filed within twenty (20) days [of] after the filing of [any] an answer by [any party] the first answering defendant, 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) Any opposition to a request for exemption from arbitration must be filed with the discovery commissioner and served upon all appearing parties within five (5) days of service of the request for exemption.

(C) Where requests for exemptions from arbitration are filed, the discovery commissioner shall review the contentions, facts and evidence available and determine whether an exemption is warranted. The discovery commissioner may require that a party submit additional facts supporting the party's contentions. Any objection(s) to the commissioner's decision must be filed with the commissioner who shall then notify the district 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)] (D) The district judge to whom a case is assigned shall make all final determinations regarding the arbitrability of a case when that issue is disputed by any party, and may hold a hearing on the issue of arbitrability, if necessary. The district judge's determination of such an issue is not reviewable.

[(D)] (E) 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.

[(E)] (F) 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 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] filed with the discovery commissioner within twenty (20) days after the filing of [any] an answer [of any party] by the first answering 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 a stipulation is filed with the discovery commissioner [is notified of a stipulation] for a private arbitrator or the use of any other ADR procedure as provided above, or a request for exemption is filed, the discovery commissioner will serve [the parties] all appearing parties with identical lists of five (5) arbitrators selected at random from the panel of arbitrators assigned to the program.

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

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

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

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

(D) If a request for exemption is filed and denied, the discovery commissioner shall, within five (5) days 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] appear in 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, be served on all other appearing parties and [be] filed with the discovery commissioner, who will review the objections and render a decision. This decision may be appealed to the district judge to whom the case is assigned. 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 by the arbitrator selected from a case, the discovery commissioner shall repeat the process set forth in subdivision (C) of this rule to select an alternate arbitrator.

Rule 8. Authority of arbitrators.

(A) Arbitrators hear cases admitted to the program and shall render awards in accordance with these rules. The powers of the arbitrators shall include, but not be limited to the powers:

(1) To administer oaths or affirmations to witnesses;
(2) To relax all applicable rules of evidence and procedure 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 action of an arbitrator shall be filed with the discovery commissioner and served upon the other parties within ten (10) days of the date of the challenged decision or action. Any opposition to the challenge must be filed with the discovery commissioner and served upon the other parties within five (5) days of service of the challenge. The discovery commissioner shall rule on the issue in due course. Judicial review of the ruling of the discovery commissioner may be obtained by filing a petition for such review with the discovery commissioner within ten (10) days of the date of service of the discovery commissioner's 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 district judge to whom the case is assigned shall have the non-reviewable power to uphold, overturn or modify the ruling of the discovery commissioner, including the power to stay any proceeding.

Rule 11. Discovery.

(A) Within thirty (30) days after the appointment of the arbitrator, the parties must meet in the presence of the arbitrator to confer, exchange documents, 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.

(B) It is the obligation of the plaintiff to notify the arbitrator prior to the conference, if other parties have appeared in the action subsequent to the appointment of the arbitrator.

Rule 16. Form and content of award.

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

(B) The arbitrator shall determine all issues raised by the pleadings in cases that are subject to arbitration under the program, including issues of comparative negligence, if any, damages, if any, and costs. The maximum award that can be rendered by the arbitrator is \$25,000, exclusive of attorney's fees, interest 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) Attorney's fees awarded by the arbitrator may not exceed \$3,000, unless the compensation of an attorney is governed by an agreement between the parties allowing a greater award.

(F) After an award is made the arbitrator shall return all exhibits to the parties who offered them during the hearing.

Rule 17. Filing of award.

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

(B) Applications for relief under NRCP 68, NRS Chapter 17 or NRS 18.010, must be filed with the arbitrator and discovery commissioner and served on the other parties within ten (10) days after service of the award on the applicant. Responses to such applications must be filed with the arbitrator and discovery commissioner and served on the other parties within five (5) days after service of the application on the responding party. Rulings on applications under this subsection must be filed with the discovery commissioner by the arbitrator and served on all parties within seven (7) days after the deadline for responses to such applications. Service of applications for relief under this subsection toll the time periods specified in Rules 18 and 19 until the application is ruled upon by the arbitrator.

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

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

Rule 19. Judgment on award. Upon notification to the prevailing party by the discovery commissioner that [If] no party has file[s]d a written request for trial de novo within thirty (30) days after service of the award on the parties, the [clerk of the court shall, upon notification by the discovery commissioner, enter the arbitration award as a final judgment of the court] prevailing party may either submit to the clerk of the court for entry by the clerk a form of final judgment in accordance with the arbitration award, or submit to the district judge to whom the case was assigned a form of final judgment in accordance with the award to be signed by the judge and filed with the clerk. A judgment entered pursuant to this rule [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 23. Costs.

(A) The arbitrator is entitled to recover the costs, not to exceed two hundred fifty dollars (\$250), that the arbitrator reasonably incurs in processing and 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 such costs, the arbitrator must submit to the parties an itemized bill of costs within five (5) days of the date that the arbitrator [renders] serves the award in an action; within five (5) days of notice of removal of the case from the program by resolution or exemption; or within five (5) days of notice of change of arbitrator, whichever date is earliest.

(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 the arbitrator's costs. If any party fails to pay 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 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 the arbitrator's costs, and resolved by the discovery 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 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 the arbitrator [renders] serves an award in an action; within five (5) days of notice of removal of the case from the program by resolution or exemption; or within five (5) days of notice of change of arbitrator, whichever date is earliest.

(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 the fee. If any party fails to pay 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 the arbitrator's fee, and resolved by the discovery commissioner.