IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION OF RULE 16 OF THE NEVADA RULES OF APPELLATE PROCEDURE GOVERNING SETTLEMENT CONFERENCES IN CIVIL APPEALS.	)	ADKT NO. 244

FILED

SEP 23 1996

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY _____
CHIEF DEPUTY CLERK

OPPOSITION TO ADOPTION OF RULE 16 OF THE NEVADA RULES OF APPELLATE PROCEDURE

I oppose the petition filed in ADKT 244 because I cannot understand the procedures set forth in the proposed rule and because it will create interminable delay in the handling of appeals.

First, subparagraph (a) of the proposed rule states that a settlement conference "may be scheduled" if it "appears amenable to just and fair resolution by settlement." My first question is to whom must it appear that a given case is "amenable" to settlement? This detail is not covered by the proposed rule. A decision as to amenability to settlement must be made before a settlement conference judge is appointed to the case; and there is no provision in the rule stating how this judgment is to be made and by whom it is to be made. This is a fatal defect in the proposed rule.

Second, subparagraph (b) of the proposed rule requires that both appellants and respondents in all "civil matter[s]" file a "settlement statement." This means over one thousand of these documents being filed every year. Who is going to pore over these documents and decide which documents furnish evidence that the case

96-5

is "amenable" to settlement? What criteria is to be used in making this judgment? I see stacks and stacks of unread papers and an unnecessary burden and expense being placed on litigants and their attorneys.

Third, under subparagraph (c) the "[p]roduction of transcripts and the briefing schedule shall be suspended pending resolution of the settlement conference and further order of the court." "Suspending" cases in this way is completely unjustified. Under settlement conference practices presently being employed by the court, briefing and court processing go on as scheduled. There is no conceivable reason for interposing this added delay. I have no idea, under the rule, how many cases would be sorted out by some yet-to-be identified person as being "amenable" to settlement. I am very concerned, however, about putting any appreciable number of cases "on hold" while some "settlement judge" is conducting sixty to ninety-minute conferences and then preparing a "settlement conference report," which, under the proposed rule, is to be submitted to no one -- it is just "prepare[d] and file[d] with the clerk."

Fourth, the mandatory attendance by litigants, which is required in subparagraph (d) of the proposed rule, at a sixty or ninety-minute conference involving the technical legal points raised on appeal does not make sense to me; it puts an unnecessary burden on the litigants and adds to scheduling delays otherwise inherent in the rule.

I trust that almost anyone who reads the proposed rule will see that it is not only unworkable, it is incomprehensible. I move that we postpone further consideration of Justice Young's settlement conference rule until after the subject matter of the rule has been given more careful study and until after the election.

Springer, J.

Springer

Date: September 23, 1996