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JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

SUPREME COURT CLERK'S OFFICE
201 South Carson Street
Carson City, Nevada 89701

Re: Comment on the Supreme Court Settlement Program

ADKT 244

Dear Counsel:

I read with interest the Supreme Court's Order Scheduling Public Hearing and Allowing Public Comment on the Supreme Court Settlement Program, and the evaluation prepared by Nancy Yeend.

As a Supreme Court Settlement Judge, I have experienced considerable success at mediating settlements and have witnessed, first hand, the value of the program to litigants.

The Supreme Court obviously recognizes the success of the program, and acknowledges that it has exceeded expectations. Settling disputes is a complex endeavor involving many variables. I believe that much of the success of Nevada's Supreme Court Settlement program lies in the limited number of rules and regulations that might otherwise dictate the protocol and the creativity necessary to explore settlement opportunities. I fear that an endeavor to "tweak" an otherwise successful program, the Supreme Court might unwittingly impose a rule or policy that will bring the program inline with the expectations of its original detractors. I would encourage the Supreme Court to accept the proposition that part of the successes of the settlement program is its simplicity; changing the program for the sake of change alone is nonsensical.

One of the suggestions by Ms. Yeend is to require the use of standardized forms. While this proposal may appear reasonable, imposing only minor burden to the parties, in a practical sense, it will impose an unnecessary impediment to some settlements. For example, in certain instances parties are able to complete and execute necessary settlement documents at the conclusion of the conference. In other circumstances, it may be necessary for a City or County or Corporation to obtain board approval. Imposing strict compliance with certain approved settlement forms may impede the litigants comfort unnecessarily.

Another suggestion by Ms. Yeend, is to change the name of the Settlement Judges to Mediators. In my experience as a Settlement Judge, the parties demonstrate a level of respect as a

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result of their understanding that the Supreme Court has designated us as Supreme Court Settlement Judges. Further, we are not acting as independent mediators, therefore, I would recommend against changing the Supreme Court Settlement Judge's title to that of Mediator.

To the extent that a Supreme Court Settlement Judge is not successful, there should be a mechanism for removing them from the panel and/or recommending that they complete additional training. In all likelihood, the best measure of how a Settlement Judge is performing his or her responsibility is the number of cases that result in settlement. The exit polls should be given little weight. Imagine at the conclusion of a bench trial, if both sides were asked to complete a survey as to how they felt about the Judge. It is obvious that the party who won would give the Judge high marks, and the party that lost would be less than satisfied.

It is an axiom that if both sides are equally upset by the terms of a settlement, it was probably a good settlement. With that in mind, asking the parties to critique the work of the Settlement Judge in achieving a settlement is not a good measure. Instead I would suggest that the attorneys who participate in the program, be asked to report any unprofessional, unfair, or unethical conduct to the Settlement Program Coordinator. Then a review should be conducted of any Settlement Judge whose settlement rate falls below 50% to determine if that Settlement Judge should stay in the program.

Thank you for allowing me to comment. It is an honor and privilege to take part in such an outstanding program. I look forward to its continued success.

Very truly yours,

Patrick

PATRICK O. KING, Settlement Judge

POK/rrd