LEMONS, GRUNDY & EISENBERG

ATTORNEYS AT LAW
A Professional Corporation

Lakeridge Centre
6005 Plumas Street
Suite 300
Reno, Nevada 89509-6069
Telephone (775) 786-6868
Fax: (775) 786-9716

Edward J. Lemons
David R. Grundy
Robert L. Eisenberg
Christian L. Moore
Alice Campos Mercado
Michael R. Montero
Tiffinay B. Pagni
Douglas R. Brown
Joy R. Graber

March 16, 2005

FILED

MAR 17 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

Janette Bloom
Court Clerk
Nevada Supreme Court
201 South Carson Street
Carson City, Nevada 89710

Re: Public Hearing on Settlement Conference Program

ADKT 244

Dear Ms. Bloom:

Please extend my appreciation to the Justices for allowing settlement judges to participate in the public hearings dealing with the proposed changes in the Settlement Conference Program. And please put my name on the list of people interested in participating in the hearing on May 5.

My written comments, pursuant to the Court's order of March 14, 2005 (in ADKT 244), are as follows:

Recommendation No. 5 (removing the stay for transcripts and briefs):

I strongly disagree with recommendation 5. Parties often try to settle cases in order to save litigation expenses. If they are required to incur the expense of a transcript or the attorneys' fees for a brief, they may be less willing to settle. Avoiding future appellate fees/costs is a useful argument in trying to convince people to settle, and this recommendation seems to eliminate the argument.

Also, if other recommendations are approved regarding speeding up the settlement conference process, the justification for this recommendation goes away.

Recommendation No. 12 (changing title from "settlement judge" to "mediator":

I have not experienced any problems with the title "settlement judge," and I therefore do not see a real need to change it. If the Court decides to change our title, I do not really think the title "mediator" is adequate. I suggest "settlement officer." This would lend a bit of authority to the title.

RECEIVED
MAR 17 2005
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

05-25511

Recommendation Nos. 13 and 14 (eliminate ability of settlement judge to make recommendation regarding good faith participation):

As to No. 13, I agree that we should not be making recommendations on whether an appeal is frivolous, but I disagree regarding good faith participation. There needs to be something a settlement judge can do if there is a flagrant violation of the rules. For example, the settlement judge needs to be able to recommend sanctions if a party refuses to participate in scheduling the conference, refuses to provide a settlement statement, or refuses to attend the settlement conference (or sends someone with severely limited settlement authority so that the conference is meaningless), etc.

I certainly agree that there should not be sanctions for matters involving the negotiations themselves, but we must be able to do something about serious rule violations. Recommendation 13 seems to eliminate our ability to deal with these situations effectively.

No. 14 assumes that settlement judges now have "sanction authority." This is incorrect. All we have is authority to recommend sanctions. Thus, No. 14 is unnecessary.

Recommendation No. 20 (require a "case screening form"):

Parties are already required to fill out docketing statements within 15 days after appeals are docketed. This should be enough. We do not yet need another form.

Recommendation No. 26 (relating experience to types of cases assigned):

A settlement judge should be able to decide whether there are certain types of cases that he or she does not want to handle. From my own experience, I do not litigate divorce cases, labor law cases, workers' compensation cases, etc., yet I think I have had a reasonable amount of success in getting these cases settled. And I enjoy dealing with new areas of the law. A settlement judge simply needs to do some homework and some extra preparation in dealing with a settlement conference involving an otherwise unfamiliar area of the law. We should not be precluded from handling a certain type of case simply because our law practice experience does not include that area of the law.

Additional recommendation:

I did not see anything in the Yeend recommendations with regard to the timing of settlement statements. I have never liked the rule requiring a settlement statement to be filed within 15 days after docketing of the appeal. This is too early. From what I have observed, most settlement judges do not enforce this rule. We usually establish a due date for the settlement statement when we schedule the settlement conference. Most settlement judges request the settlement statement just a few days before the settlement conference, and this seems to work just fine.

Accordingly, I recommend that the first sentence of NRAP 16(d) should be amended to read as follows: "Each party to the appeal shall submit a settlement statement directly to the settlement judge within the time established by the settlement judge."

Please contact me if you have any questions regarding the comments in this letter, and thank you again for allowing input into the Court's evaluation of the program.

Sincerely,

Robert L. Eisenberg

ROBERT L. EISENBERG

RLE:vs