

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

JAN 18 2006

ORDER AMENDING RULE 16 OF THE
NEVADA RULES OF APPELLATE PROCEDURE

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

WHEREAS, this court adopted Rule 16 of the Nevada Rules of Appellate Procedure on December 27, 1996, and implemented the settlement conference program in 1997;

WHEREAS, although the program has been successful in meeting the court's original goals, an evaluation was needed to ensure the program meets the court's current goals;

WHEREAS, Nancy Neal Yeend of the John Paul Jones Group conducted a comprehensive review of the program and submitted a report with 32 recommendations;

WHEREAS, the report was submitted to the Settlement Judges Core Committee for comment;

WHEREAS, the court also solicited written comments from the settlement judges and the public at large and, on May 5, 2005, held a public hearing to receive oral comment on the report;

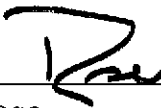
WHEREAS, the court entered an order on November 18, 2005, regarding those 32 recommendations; and

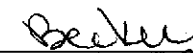
WHEREAS, it is necessary to amend Rule 16 of the Nevada Rules of Appellate Procedure to implement some of the policies and conclusions set forth in our November 18, 2005, order;

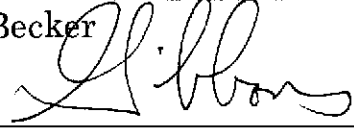
IT IS HEREBY ORDERED that Rule 16 of the Nevada Rules of Appellate Procedure be amended to read as set forth in Exhibit A.

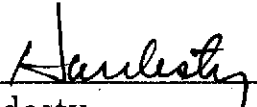
IT IS FURTHER ORDERED that this amendment shall become effective 90 days from the date of this order and shall be applied to appeals assigned into the settlement conference program on or after the effective date. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.


DATED this ~~18th~~ day of January, 2006.

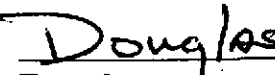
_____, C.J.
Rose


_____, J.
Becker

_____, J.
Gibbons

_____, J.
Hardesty

_____, J.
Maupin

_____, J.
Douglas

_____, J.
Parraguirre

cc: All Settlement Judges
Nancy Neal Yeend

EXHIBIT A
AMENDMENTS TO NEVADA RULE
OF APPELLATE PROCEDURE 16

RULE 16. SETTLEMENT CONFERENCES IN CIVIL APPEALS

[(a) Submission of Case to Settlement Conference; Removal of Case from Settlement Program. Any civil appeal may be scheduled for a settlement conference. The Supreme Court, or any person designated by the court, shall determine whether to schedule an appeal for a settlement conference. The settlement conference shall be presided over by a senior justice, senior judge, or other judicial officer appointed by the Supreme Court, who shall be designated the settlement judge.

The settlement judge may, for good cause shown, recommend that an appeal be removed from the settlement program. To recommend that an appeal be removed from the settlement program, the settlement judge shall file, within twenty (20) days from the date the settlement judge receives the case assignment, a report with the clerk of the Supreme Court setting forth the basis for the recommendation.]

[(b) Scheduling of Settlement Conference. The clerk of the Supreme Court shall notify the parties of the scheduling of a settlement conference, and of the name of the presiding settlement judge. No later than thirty (30) days from the date of the clerk's notice, the settlement judge will schedule the appeal for a settlement conference.]

[(c) Suspension of Rules. The clerk's issuance of a scheduling notice automatically stays the time for filing a request for transcripts under Rule 9, and for filing briefs under Rule 31.

Issuance of the notice also stays the preparation and filing of any transcripts ordered pursuant to Rule 9.]

[(d) Settlement Statement. Each party to the appeal shall submit a settlement statement directly to the settlement judge within fifteen (15) days from the date of the clerk's scheduling notice. A settlement statement shall not be filed in the Supreme Court and shall not be served on opposing counsel.

A settlement statement is limited to five (5) pages, and shall concisely state: (1) the relevant facts; (2) the issues on appeal; (3) the argument supporting the party's position on appeal; (4) the weakest points of the party's position on appeal; (5) the settlement proposal that the party believes would be fair or would be willing to make in order to conclude the matter; and (6) all matters which, in counsel's professional opinion, may assist the settlement judge in conducting the settlement conference. Form 10 in the Appendix of Forms is a suggested form of a settlement statement.]

[(e) Settlement Conference. The settlement conference shall be held at a time and place designated by the settlement judge. Counsel for all parties and their clients must attend the conference. The settlement judge may, for good cause shown, excuse a client's attendance at the conference, provided that counsel has written authorization to resolve the case fully or has immediate telephone access to the client.

The agenda for the settlement conference and the sequence of presentation shall be at the discretion of the settlement judge. A subsequent settlement conference may be conducted by agreement of the parties or at the direction of the settlement judge.

If a settlement is reached, the parties shall immediately execute a settlement agreement and a stipulation to dismiss the appeal, and shall file the stipulation to dismiss with the clerk of the Supreme Court.]

[(f) Failure to Participate in Settlement Conference; Frivolous Appeals. The failure of a party, or the party's counsel, to participate in good faith in the settlement conference process is grounds for sanctions against the party, the party's counsel, or both. The filing of a frivolous appeal is also grounds for sanctions. Sanctions include, but are not limited to, payment of attorney's fees and costs of the opposing party, dismissal of the appeal, or reversal of the judgment below.]

[(g) Settlement Conference Report. Within ten (10) days from the date of any settlement conference, the settlement judge shall prepare and file with the clerk of the Supreme Court a settlement conference report. Such report must state the result of the settlement conference, but shall not disclose any matters discussed at the conference. When the settlement judge determines that a party has failed to participate in good faith in the settlement conference process or that an appeal is frivolous, the report must state the basis for the determination and recommend an appropriate sanction. The Supreme Court may require a party to show cause why a recommended sanction should not be adopted by the court. The Supreme Court may defer acting on the recommendation until after it has rendered a decision on the appeal.]

[(h) Confidentiality. Papers or documents prepared by counsel or a settlement judge in furtherance of a settlement conference, excluding the settlement conference report, shall not be available for

public inspection or submitted to or considered by the Supreme Court. Matters discussed at the settlement conference and papers or documents prepared pursuant to this Rule shall not be admissible in evidence in any judicial proceeding and shall not be subject to discovery.]

(a) Assignment of Case to Settlement Conference Program. Any civil appeal in which all parties are represented by counsel and that does not involve termination of parental rights may be assigned to the settlement conference program. The settlement conference program administrator shall determine whether to assign an appeal to the settlement conference program. The settlement conference shall be presided over by a qualified mediator who has been appointed as a settlement judge by the Supreme Court.

(1) Settlement Notice; Suspension of Rules. The clerk shall issue a settlement notice informing the parties that the appeal will be assigned to the settlement conference program. The settlement notice automatically stays the time for filing a request for transcripts under Rule 9 and for filing briefs under Rule 31. The notice also stays the preparation and filing of any transcripts requested under Rule 9.

(2) Assignment Notice. The clerk of the Supreme Court shall issue an assignment notice informing the parties that a case has been assigned to the settlement conference program and the name of the settlement judge.

(3) Service. Papers or documents filed with the Supreme Court while a case is in the settlement program shall be served on all parties and the settlement judge.

(b) Early Case Assessment. The settlement judge shall conduct a pre-mediation telephone conference with counsel and file an Early Case Assessment Report within 30 days of assignment. In that report, the settlement judge shall inform the court whether the case is appropriate for the program.

or should be removed from the program. If the settlement judge reports that the case is not appropriate for the settlement conference program, the court may remove the case from the program and reinstate the timelines for requesting transcripts under Rule 9 and briefing under Rule 31.

(c) Scheduling of Settlement Conference. Unless the Supreme Court removes the case from the settlement conference program under Rule 16(b), the settlement judge shall schedule a settlement conference within 90 days of assignment. If the case involves child custody, visitation, relocation or guardianship issues, the conference shall be scheduled within 60 days of assignment.

(d) Settlement Statement. Each party to the appeal shall submit a settlement statement directly to the settlement judge within 15 days from the date of the clerk's assignment notice. A settlement statement shall not be filed with the Supreme Court and shall not be served on opposing counsel.

A settlement statement is limited to 10 pages, and shall concisely state: (1) the relevant facts; (2) the issues on appeal; (3) the argument supporting the party's position on appeal; (4) the weakest points of the party's position on appeal; (5) a settlement proposal that the party believes would be fair or would be willing to make in order to conclude the matter; and (6) all matters which, in counsel's professional opinion, may assist the settlement judge in conducting the settlement conference. Form 10 in the Appendix of Forms is a suggested form of a settlement statement.

(e) Settlement Conference. The settlement conference shall be held at a time and place designated by the settlement judge.

(1) Attendance. Counsel for all parties and their clients must attend the conference. The settlement judge may, for good cause shown, excuse a client's attendance at the conference, provided that counsel has written

authorization to resolve the case fully or has immediate telephone access to the client.

(2) Agenda. The agenda for the settlement conference and the sequence of presentation shall be at the discretion of the settlement judge. A subsequent settlement conference may be conducted by agreement of the parties or at the direction of the settlement judge.

(3) Settlement Conference Status Reports. Within 10 days from the date of any settlement conference, the settlement judge shall file a settlement conference status report. The report must state the result of the settlement conference, but shall not disclose any matters discussed at the conference.

(4) Settlement Documents. If a settlement is reached, the parties shall immediately execute a settlement agreement and a stipulation to dismiss the appeal, and shall file the stipulation to dismiss with the clerk of the Supreme Court. The settlement agreement does not need to be filed with the Supreme Court.

(f) Length of Time in Settlement Conference Program.

(1) Time Limits. Within 180 days of assignment, the settlement judge must file a final settlement conference status report indicating whether the parties were able to agree to a settlement. For cases involving child custody, visitation, relocation or guardianship issues, a final settlement conference status report must be filed within 120 days of assignment.

(2) Extensions. Upon stipulation of all parties or upon the settlement judge's recommendation, the settlement program administrator may extend the time for filing a final settlement conference status report. In cases not involving child custody, visitation, relocation or guardianship issues, the time may be extended for an additional 90 days. In cases involving child custody, visitation, relocation or guardianship issues, the time may be extended for an additional 60 days.

(3) Reinstatement of Rules. *At the discretion of the settlement program administrator, the timelines for requesting transcripts under Rule 9 and filing briefs under Rule 31 may be reinstated during any extension period granted under Rule 16(f)(2).*

(g) Sanctions. *The failure of a party, or the party's counsel, to participate in good faith in the settlement conference process by not attending a scheduled conference or not complying with the procedural requirements of the program may be grounds for sanctions against the party, the party's counsel, or both. If a settlement judge believes sanctions are appropriate, the settlement judge may file a settlement conference status report recommending the sanction to be imposed and describing the conduct warranting that sanction. Sanctions include, but are not limited to, payment of attorney's fees and costs of the opposing party, dismissal of the appeal, or reversal of the judgment below.*

(h) Confidentiality. *Papers or documents prepared by counsel or a settlement judge in furtherance of a settlement conference, excluding the settlement conference status report, shall not be available for public inspection or submitted to or considered by the Supreme Court. Matters discussed at the settlement conference and papers or documents prepared under this rule shall not be admissible in evidence in any judicial proceeding and shall not be subject to discovery.*