

TO: THE HONORABLE SUPREME COURT JUSTICES FOR THE STATE OF NEVADA

FILED

FROM: HELENE M. SILVERSTEIN, FMP MEDIATOR

DEC 01 2010

DATE: NOVEMBER 30, 2010 ADKT 0435

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
CLERK DEPUTY CLERK

RE: WRITTEN COMMENT REGARDING PROPOSED AMENDMENTS OF RULES FOR THE FORECLOSURE MEDIATION PROGRAM

Your Honors, I respectfully submit to you my concerns, and proposed remedy, regarding **Rule 3. Presiding Mediator/ 2. Assignment of presiding mediator.** "...the Administrator or designee shall randomly select and assign from the applicable geographic area a mediator to preside over the mediation."

As the FMP staff has repeatedly explained it to me *randomly select* involves/means the use of a *computerized program* (not an "Administrator or designee") that *randomly selects* a mediator's name without any logic or fairness. Essentially, it picks names on the luck factor -- a system similar to that of fishing out numbered bingo balls.

However, to a few, there also seems to be some favoritism when allocating cases. And, if true, this could easily be detected through an audit of the cases issued to all FMP mediators in 2010.

As I have only recently been made aware, FMP mediators can also, after submitting just one of their completed cases into the FMP, actually have their name(s) placed back into this *computerized random lottery* selection system, to be chosen, yet again, and issued another case -- while other mediators have yet to be assigned any cases.

The following email was sent to all FMP mediators on October 14, 2010:

"Case Assignments: Due to the possible slow down of NODs recorded and the recent reduction of cases to assign, at this time, mediators will be assigned 5 (five) cases when their name is randomly chosen from the assignment pool.

If a mediator's name is randomly selected twice in one week, the mediator will be assigned five cases in the first draw and five cases in the second draw, totaling 10 (ten) cases. Each time a mediator's name is chosen, five cases will be assigned, until that mediator reaches his/her maximum cap. Please note that maximum caseloads may change as per FMP discretion.

Thank you for your hard work and dedication to the FMP. We appreciate your patience during these uncertain times and changing circumstances."

RECEIVED
DEC 01 2010
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

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I had always been under the impression that a mediator could/would not be issued new cases before they had submitted ALL of their completed mediator's statements, and only after these cases had been signed off on by an FMP staffer. Having now learned that a mediator's name is actually put back into the *random computerized* pool, and can come up before someone, without cases, has yet to be drawn, is more than enough to convince me to how inequitable, and unfair, this *random select* system actually is.

Once a mediator has been trained and sworn in they are first issued five (5) cases. After they have completed these cases they are eligible to be issued ten (10) cases. Then twenty (20) cases. And finally, thirty (30) cases. However, as in my case, I have yet to be issued 30 cases during 2010, and I am not alone. Meanwhile, other mediators have been able to create a thriving cottage industry, through the FMP -- adding significantly to their corporate coffers.

I was trained in December 2009, and shortly after, sworn in by Judge Hardesty. However, I did not receive my initial 5 cases until after the March 2010 roundtable where I listened as several mediators spoke of having already mediated well over 60 cases. "*How could this be...?*" was the expression registered on a few faces -- showing me, early on, that there just might be a flaw in the FMP's mediator's case allocation system.

Some mediators can go months before being issued new cases. However, there *appears* to be a group of mediators who never seem to be without cases. In fact, some mediators tend to always have a backlog of cases. Whenever I've inquired as to the fairness of this, FMP staffers have repeatedly told me that this is due to the program's *random computerized dispersement system* and, that there is nothing that anyone at the FMP can do about it. That, if I am not happy with this current system, then I should submit, to you, a request for a rule change.

I have had to fight hard for the 40 cases that I have been issued this year. And yet, my cases do not tend to come up for judicial review, my agreements do not tend to fall apart -- making me think that someone like me should more prone to receiving, rather than fighting for, new cases -- versus those whose cases always tend to have problems.

And, as I always have a clear calendar when I contact lender's representatives, homeowners and/or their attorneys, to schedule their mutually convenient mediation dates and times, I am always able to work around everyone's respective schedules -- which is how it should be -- leaving little wiggle room should any party attempt a rescheduling of *their* chosen calendared mediation.

Initially I was under the misguided impression that once a mediator had submitted ALL of their completed cases, and only after an FMP staffer had signed off on the file, would their names be placed back into a *sequential rotation*. Meaning, that all names were added to the *end* of the list of available mediators. And, only when their name reached the top of this *sequential rotation* would they be contacted by an FMP staffer to discuss the amount of

cases they were next to receive. [e.g.: five (5) cases, ten (10) cases, twenty (20) cases, or thirty (30) cases.]

Also, if there are not enough cases to be fairly distributed among those mediators who have been patiently awaiting new case assignments, then why would the FMP continue to train more mediators?

As with all forms of gambling, or games of chance, the luck factor is huge. This is also true with the computerized *random selection* system. If you do not tend to run lucky, which I most definitely do not, then the odds of your name being *randomly chosen* by any *random select computerized process* is more akin to playing Megabucks, video poker, slot machines, lottery tickets, or any other game(s) of chance where the odds are definitely not in your favor. And, although I do enjoy a good game of poker, when it comes to my FMP cases, I'd prefer eliminating the gamble/luck factor.

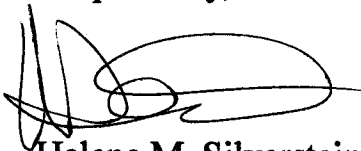
There is nothing *fair* about the way mediators are issued cases when the system performing case disbursements involves any *arbitrary random selection*. Therefore, I propose a system wherein FMP mediators are put into a *sequential rotation*. Perhaps even going as far as having this list of *sequential ordered* names posted online so that a mediator can log-on to check where their name stands. This would create full disclosure -- eradicating all negative impressions/experiences -- equalizing FMP case disbursements for all mediators.

By simply amending the Rules language to read: "A mediator's name would then go back into *sequential rotation only after ALL prior issued cases have been returned to, and signed off by, the FMP,*" would put all of the FMP's mediators on equal footing, and again, eliminating the luck factor.

Your Honors, life is a big enough crap shoot these days. So, all that I request is that you remove *the luck factor* in order to create a more equitable system for the dissemination of all FMP cases, effective January 2011.

Thank you for taking the time to consider my comments and requests, and I hope that you are all able to see the logic and reasoning behind my concerns in this matter.

Respectfully,



Helene M. Silverstein, FMP Mediator
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11.30.10

Tracie -

Thank you for seeing that
each Supreme Court Judge receives
a copy of my proposed Rules
Amendments.

All the best,

Debra M. Silverstein, FMR Mediator
702.897.9743

Enc. 3 copies

