C. Morgan
1285 Baring Blvd, #199
Sparks, NV 89434

December 10, 2010

Tracie Lindeman, Clerk of the Supreme Court
201 S. Carson St.
Carson City, NV, 89701

RE: Written Comments Regarding Proposed Rule Change to Modify the Rules on Exchange of Documents

ADKT 0435

To the Justices:

My understanding is that in a Deed of Trust State, such as Nevada, the Note is a Negotiable Instrument. It is governed by Article 3 of the Uniform Commercial Code and not by the Real Estate Laws of the State. So, when Real Estate Laws say that someone records a mortgage, the Deed of Trust is Recorded. That does not give anyone the right to collect the debt.

The Deed of Trust is a Security Instrument that follows the Note.

For many, perhaps for the majority, of Nevada homeowners facing foreclosure and participating in the Foreclosure Mediation program, by filing the Deed of Trust for each of those homeowners with MERS as the "nominee" of the Beneficiary, the Mortgage lenders have created a system that hides the identity of the Holder of the Note.

As I understand it, only the Holder of the Note is entitled to collect the Debt that is represented by the Note, therefore, it is essential that the Holder of the Note be identified during the Foreclosure Mediation in order to determine whether the foreclosure can legally proceed.

If the Homeowner if forced into foreclosure by a person or entity that is not the Holder of the Note, it is my understanding that that is illegal. In addition, if the homeowner agrees to a loan modification with a person or entity that is not the Holder of the Note, the homeowner may end up paying the wrong person/entity, and be exposing themselves to a DOUBLE LIABILITY.

I know the Justices want to ensure a fair and just process with the Foreclosure Mediation Program. It issue at hand is that the Mediators do not know how to identify the correct, legal documents and the banks are using sleight of hand to present documents that look legal, but are not. The Mediators need to be trained to recognize and identify when this is happening, so they can ensure a fair solution to the Mediation and so that they (the Mediators) can stop any foreclosure that is illegal.

Therefore, I ask the Justices to require, as part of the Rules, that the Mediators be so trained, so that when anyone attempts to Foreclose on Property pursuant to a Deed of Trust, they must be compelled to produce the Original Note, in order to prove that they are the Holder and have the authority to foreclose. The Mediator training is critical because the Homeowner generally does not have knowledge of how to identify fraudulent document, nor do most Homeowners have knowledge of their right or access to someone, such as an attorney, who has knowledge of their right.

10-32476

In addition, I submit the following comments regarding the Rule changes:

—The AB149 and the rules for that law should have teeth and help the homeowner, not muddle the situation by its lack of clarity and the fact that it can be easily misinterpreted.

—The mediators need to be trained to recognize fraudulent documents, including when they are signed by individuals who have no authority to be signing them because a person's home is their sanctuary. It's the largest investment most people will ever make. And to lose their homes and devastate their lives and the lives of their families because the mediator doesn't know how to identify fraudulent documents is wrong.

—It would provide a more level, a more fair condition for the homeowners, who generally do not have the financial ability to hire an attorney, if the State of Nevada would provide attorneys trained in identifying fraudulent loan documents to represent the homeowners at the Foreclosure Mediation because identifying fraudulent documents is too complex for the average homeowner to know how to do it on their own. If the State is serious about protecting homeowners and preventing further spread of the blight on the State's economy and our residential neighbors, as well as the devastation of families and their lives, then the State needs to step forward and ensure a fair playing field for its homeowners, otherwise the Foreclosure Mediation Program is simply a delaying tactic that puts money in the pockets of the Mediators.

—Furthermore, if the State really wants to protect its residents/homeowners and their families, then the state needs to stop all foreclosures NOW and implement a moratorium on foreclosures done by banks and other lenders until every single loan document has been examined by an attorney experienced in identifying mortgage fraud.

—In such cases as when the banks rescind an NOD and then file another NOD, which inevitably results in the homeowner and the bank in yet a 2nd or 3rd or more Foreclosure Mediation(s), it would be only just for the rules to read that the lender needs to attend each subsequent mediation in person and that person must be authorized to reach an agreement with the homeowner while in the Foreclosure Mediation. Furthermore, the Lender's authorized representative must attend the Foreclosure Mediation with a $200 check made out to the homeowner to cover the homeowner's cost of the subsequent (2^{nd}, 3^{rd}, 4^{th}, etc. Mediation), which must be awarded to the homeowner should the mediator find that the bank has attended the mediation not in good faith, with fraudulent documents, or with other documentation and/or information that demonstrates that the lender is not acting in good faith.

In addition, the lender's authorized representative should be required to attend the mediation with a $100 check in hand, for the mediator for wasting the mediator and the Foreclosure Mediation program's time. The Mediator also needs to be able to fine the lender for not showing up in good faith. It is preposterous that the bank can create an endless NOD cycle, repeatedly attending the Foreclosure Mediations in bad faith and draining the already cash-strapped homeowner's limited funds.

I trust that the Justices will review the rules with the comments in mind.

Sincerely,

C. Morgan