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FILED

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

June 7, 2012

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

ADKT 0435

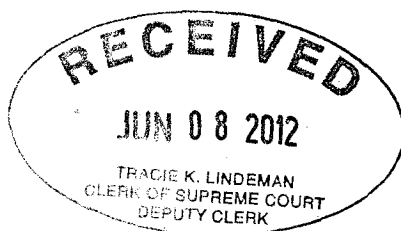
Dear Ms Lindeman:

Please submit, for the Court's consideration, the enclosed suggestions for changes to the Foreclosure Mediation Rules.

Respectfully,

David Campbell
Mediator

Enc:
Eight copies of suggestions



12-18279

Suggested Changes To FMP Rules

Rule 1.4

Suggestion: Include NRCP rules 6(a) and 6(e) in Rule 1.4. In the alternative, change Rule 1.4 to specify some more simple calculation, such as, "For purposes of computing time under these rules, each business day is a day, federal holidays do not count as days, and the day a requirement starts is not a day. Each business day ends at 5:00 PM Nevada time."

Rationale: Roughly 40%, in my experience, of the mediation participants are non-attorneys and many of them are not computer/internet capable. It is unreasonable to expect them to be able to retrieve the NRCP. In the alternative, the relatively complex rules of NRCP might be better avoided.

Rule 1.5

Suggestion: Re-number as Rule 19.3.

Rationale: It seems to fit logically into concerns for confidentiality.

Rule 4.4

Suggestion: Add "The Administrator or designee will provide to all mediators, in writing or electronic transmission, Nevada Supreme Court Court decisions likely to be relevant to mediator activities."

Rationale: The FMP is in the best position to monitor Court decisions for relevance.

Rule 4.9 (ADDED)

Suggestion: Add this rule.

"FMP personnel who supervise mediators must themselves be mediators, as defined by these Rules, and must perform one mediation per month under the supervision of an experienced FMP mediator. The FMP supervisor's mediation begins with the assignment of the case and ends with the filing of the Mediator's Statement. Case assignment to the FMP supervisor will be random except for assuring the case assigned is local to the FMP supervisor's normal work location. The FMP supervisor will not receive additional compensation for the mediation; the mediator's fee will be paid to the experienced mediator supervising the mediation."

Rationale: Currently, some personnel supervise mediators and the mediators' adherence to the FMP policies but have never experienced how the system works from the mediators' point of view. As a result, supervisors may not recognize inefficiencies in the system. Often, in mediator training sessions, mediators relate a scenario and the supervisors ask, "Does that really go on?" to which a number of mediators respond with variations of "Often!" Whatever outcomes result from a case, those outcomes will happen at the mediation and will be based, in part, on the mediator's preparation and skills. Supervisors should perform that preparation and exercise their skills "at the tip of the sword" of the system they supervise.

Rule 6

Suggestion: Add "Relief to the nondefaulting party normally will include a refund of the \$200 already paid."

Rationale: The nondefaulting party paid for mediation and none can occur. Because the defaulting party did not yet pay the \$200, the case will not have been assigned to a mediator. No mediator fees will be paid.

JUN 08 2012

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DEPUTY CLERK

Suggested Changes To FMP Rules

Rule 7.2

Suggestion: To the first sentence, add "on the date the notice of default and election to sell was recorded."

Rationale: Guidance was provided by FMP that the owner-occupant must reside in the property on the dates of the NOD and of the mediation. Rule 7, though, suggests that the homeowner, in order to be eligible for FMP, must use the property as a principle residence only on the day the NOD is filed. Here is why:

1. According to Rule 7.1, "The program applies to any ... homeowner who holds title of record and is the owner-occupant of a residence as to which a notice of default and election to sell has been recorded..." Note that the sentence does not mention occupancy on any particular date.
2. Rule 7.1 goes on to discuss a property in trust. In that case, the trustee or beneficiary must reside in the property on the date of the NOD. Rule 7.1 does not mention any other date that the trustee or beneficiary must reside in the property nor does any other part of Rule 7.
3. It is reasonable to infer that the Court intended to have the same requirements for homeowner-owned and trust-owned properties. For instance, the owner of record of my home is a living trust; my wife and I are trustees and beneficiaries of the trust. My neighbor's home is owned by Mr. Smith, the fellow who lives there. If Smith's house and my house are foreclosed upon, should the two not be treated equally by FMP?

Perhaps it was the legislature's and the Court's intention that the property must be owner-occupied on the date of the mediation in order to be eligible. The Rules do not say that, however.

FMP is not meant to protect rental properties in general. It is easy, however, to have a situation where the homeowner resided there on the date of the NOD but has a different mailing address now. The NOD could have been filed months ago; in the meantime, H/O accepted a short-term job elsewhere. If H/O's driver's license and voter registration remain at the property address, is it not the primary residence? While H/O is gone, is it anyone's business if the property is rented or not (assuming the rent is not claimed as an income)? And would it be good public policy to prohibit renting it out while gone but intending to return? The lender, of course, could take the owner's non-residence into account when negotiating if it chooses to. That is the lender's business.

Rule 10.1(a)

Suggestion: Change second sentence to "A beneficiary or its representative shall be physically present or may participate in the mediation by phone."

Rationale: Requiring beneficiaries to ask and mediators to approve is deadweight administrative overhead. Every one of the mediations I've handled, with only one exception, have had the beneficiary appear by phone. Telephonic appearance is to be expected because beneficiaries are scattered all over the country.

Suggested Changes To FMP Rules

Rule 11.2

Suggestion: The beneficiary should be required to provide required forms in blank together with instructions for their completion.

Rationale: Some of the forms may be internal to the beneficiary; others may be imposed by third parties such as Treasury, HUD, Fannie, etc., and some may have non-obvious requirements for their completion. The beneficiary is in the best position to know what forms are required, their current formats, where they may be obtained, and idiosyncratic requirements.

Rule 11.3

Suggestion: Change to read, "...deed of trust within 15 days of having received them."

Rationale: Some event must start the clock.

Rule 11.8(d)

Suggestion: Change "...Rule 11.6(a)." to "...Rule 11.7(c)."

Rationale: Typo

Rule 11.12

Suggestion: Change the last sentence to "...performed by an independent appraiser or broker."

Rationale: The present iteration requires an "independent appraiser," a specifically licensed practitioner.

Rule 13.2

Suggestion: Remove the first sentence.

Rationale: That topic is covered by Rule 11.1 et seq.

Rule 21

Suggestion: Add a second sentence "The Program shall notify, electronically or in writing, the mediator of the Program's decision."

Rationale: Beneficiary representatives and beneficiaries see a great number of mediations and resulting decisions. They have the opportunity, then, to develop expertise in predicting what the Program's decision will be in any given case. Mediators, though, are denied the opportunity to develop that expertise because they never are made aware of the end of the story. This unnecessarily tilts the power balance in favor of the beneficiary.

Rule 22

Suggestion: Re-number this rule so it is the last rule.

Rationale: This rule has nothing to do with the mediation process. Its current location interferes with the flow of the rules.

Suggested Changes To FMP Rules

Rule 23.2

Suggestion: Clarify what records must be kept by the mediator.

Rationale: Does the requirement include, for instance, all the documents that must be provided by the beneficiary at the mediation? Mediators' notes made while arranging calendaring? Notes made while arranging exchange of document? Notes (often scribbles) made during the mediation itself? The homeowner documents that include a tax return?

Rule 23.3 (Added)

Suggestion: Specifically protect the mediator from subpoenas arising from the proposed foreclosure.

Rationale: Rule 23.2 implies, because the records must be kept for 90 or 120 days vice the present not more than seven days, that the mediator can be subpoenaed together with the records.

Rule 25

Suggestion: Re-number this rule so that it appears between Rules 15 and 16.

Rationale: This rule impacts on the mediation itself and should be located among other such rules. Its present location does not support the flow of the rules.