

LAW OFFICE

# Patrick James Martin

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July 16, 2012

Tracie K. Lindeman  
Clerk of the Supreme Court  
201 South Carson Street  
Carson City, Nevada 89701

**FILED**

JUL 18 2012

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

RE: Rules for Foreclosure Mediations, ADKT No. 435  
Supplemental Materials Authorized by the Supreme Court  
RE: FMP Rules 3.5(a) and 22.5(b)

Dear Ms. Lindeman:

As authorized by the Supreme Court at the Hearing on the Foreclosure Mediation Program Rule Amendments on July 9, 2012, I now submit for filing my supplemental materials. I have enclosed eight hard copies as requested by the Court. I request that these Supplemental Materials, including this letter, be provided to the Nevada Supreme Court.

This submission is the material I referred to as my "recommendations/suggestions" in my July 2, 2012 submission and in my oral presentation at the hearing. The specific rules to which my comments are directed are: FMP Rules 3.5(a) and 22.5(b).

I am quite certain that I submitted several other Recommendations/Suggestions and all were posted to Sharepoint (until I was blocked from Sharepoint) and all were submitted to Deputy Director Campbell. I cannot locate copies at this time..

Respectfully submitted.

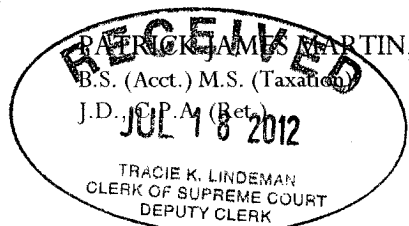
Very truly yours

*[Signature]*

PATRICK JAMES MARTIN

CPA<sup>sm</sup>

The CPA. Never Underestimate The Value<sup>sm</sup>



TO: Rule 22 Advisory Committee

**RECOMMENDATION NO. 1**

The Rule 22 Advisory Committee should consider soliciting Recommendations and Suggestions for the good of the FMP from all Mediators.

**RECOMMENDATION NO. 2**

All Recommendations and Suggestions should be submitted verbatim to The Rule 22 Advisory Committee.

Discussion: FMP Administrators should not be permitted to "deep six" or edit or change any submitted Recommendations or Suggestions. In the event the FMP Administrators do not agree with any given Recommendation or Suggestion they should state as much, with analysis, in a Memorandum to the Rule 22 Advisory Committee

**RECOMMENDATION NO. 3**

FMP Administrators should be prohibited from accepting ex parte telephone calls or other communications from parties to a mediation and ruling on such ex parte telephone calls or other communications once a mediation file has been assigned to a Mediator

FMP Administrators should be required to direct any party complaining of Mediator conduct of the mediation, to first take the complained of conduct up with the Mediator with copy to the other party.

FMP Administrators should be barred from interfering with the conduct of a mediation once it has been assigned to a Mediator until asked to do so by a complaining party after the complaint has been ruled upon by the Mediator.

**Discussion:** FMP Administrators routinely accept telephoned complaints from Counsel for Lenders/Beneficiaries/Serviceirs in the course of a mediation, and instantly rule on that complaint, and then order the Mediator to do or not do as desired by complaining Counsel without even consulting with the Mediator and considering what the Mediator is seeking to achieve in the management and administration of the file.

#### RECOMMENDATION NO. 4

Someone (perhaps an experienced real estate lawyer) with particular expertise in secured real estate transactions including familiarity with NRS Chapters, 40, 104, 106, and 107 (perhaps the recording statutes and some real property and contract law) should be available to handle these issues on behalf of FMP Administrators at Roundtables and Webinars and other training and information transmittal sessions)

Discussion: Until the session was "saved" by one Mediator there was an interminable and ill-informed effort to explain Promissory Note endorsements at one event. Secured Real Estate transactions are complex. It is unfair to expect lay persons to explain them. Even The Gods of Nevada Real Property Law, Emerson Wilson and Edward Everett Hale (who are no longer with us) and Jack McAuliffe (who thankfully is still with us) and perhaps some others I have missed might be hard pressed to explain them in this environment.

**RECOMMENDATION NO. 6**

Beneficiaries should be required to present an APPLICATION AFFIDAVIT TO MEDIATOR FOR LEAVE TO APPEAR BY TELEPHONE simultaneously with the 10-day document exchange. FMP Administrators should be required to develop an official FMP form for this purpose. Recommended wording is attached:

**Discussion:** The recommended Affidavit "speaks" for itself.

THERE IS NO RECOMMENDATION No 5



and my direct facsimile number is: \_\_\_\_\_

and my email address is: \_\_\_\_\_

4. That my immediate supervisor is: \_\_\_\_\_

and this person is located at this address: \_\_\_\_\_

\_\_\_\_\_

with this job title: \_\_\_\_\_

with this direct telephone number: \_\_\_\_\_

and this facsimile number: \_\_\_\_\_

and this Email address: \_\_\_\_\_

5. That the **Original** Beneficiary under the Deed of Trust that is the subject of this

Mediation is \_\_\_\_\_

with a physical business address of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. That the **Current** (foreclosing) Beneficiary under the Deed of Trust that is the

subject of this Mediation is \_\_\_\_\_

with a physical business address of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. That the **Original** Holder/Payee of the Promissory Note secured by the Deed of

Trust that is the subject of this Mediation

is \_\_\_\_\_



with a physical business address of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. That the **Current** (foreclosing) Holder/Payee of the Promissory Note secured by the Deed of Trust that is the subject of this Mediation

is \_\_\_\_\_

with a physical business address of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. That my employer has the following relationship(s) to the Deed of Trust:

Servicer \_\_\_\_\_

Beneficiary \_\_\_\_\_

Trustee \_\_\_\_\_

Other: \_\_\_\_\_ (explain)

10. That I have actual authority, which I may exercise on the spot during the Mediation without reference to any other person, to negotiate each and every one of the following separate possible components of a Mediation Agreement<sup>1</sup>:

**10.1 BORROWER RETAINS THE HOME**

Reinstatement

Repayment Plan

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<sup>1</sup> Please see State of Nevada Foreclosure Mediation Program Mediator Statement, PART 3

Extension

ARM to Fixed Rate

Amortization Extended

Interest Rate Reduction

Principal Forbearance

Other Forbearance

Principal Reduction

Refinance

Temporary Modification

Expiration Date : \_\_\_\_\_

Permanent Modification

Short payoff: \$ \_\_\_\_\_

When: \_\_\_\_\_

Conditions: \_\_\_\_\_

Gov't. Program: \_\_\_\_\_

Other: \_\_\_\_\_

## **10.2 BORROWER RELINQUISHES THE HOME**

Deed in Lieu of Foreclosure

Short Sale

Voluntary Surrender

Cash for Keys \$ \_\_\_\_\_

When: \_\_\_\_\_

Conditions: \_\_\_\_\_

Gov't. Program: \_\_\_\_\_

Other: \_\_\_\_\_

**11. The status of the loan at this time is:**

Original Principal amount of Loan: \$ \_\_\_\_\_

Principal balance of loan unpaid \$ \_\_\_\_\_

Interest Rate: \_\_\_\_\_

Late Payment Penalty \_\_\_\_\_

Original Loan Term \_\_\_\_\_

Original Date of Loan \_\_\_\_\_

Monthly Payment Amount \_\_\_\_\_

Number of payments in arrears \_\_\_\_\_

Amount of payments in arrears \$ \_\_\_\_\_

Amount of Late Payments Penalties \$ \_\_\_\_\_

**Foreclosure Fees and Costs:**

Attorney Fees \$ \_\_\_\_\_

Trustee Fees \$ \_\_\_\_\_

Costs \$ \_\_\_\_\_

Other Fees and Costs \$ \_\_\_\_\_

**12. In the event a Trial Period Plan (TPP) is agreed upon in this Mediation, Borrower will be required to provide the following detailed listing of additional**

items/documents/data before a Permanent Modification will be considered:

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13. The additional items described in Paragraph 10 should be mailed to:

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on or before \_\_\_\_\_

14 I have ready access to such reference material as:

**MAKING HOME AFFORDABLE PROGRAM**

**HANDBOOK FOR SERVICERS OF NON-GSE-MORTGAGFS Version 3.0**

As of December 2, 2010

and if applicable and necessary I will be able to reference this Handbook in helping to guide the Mediation. I understand the Mediator will have a copy of this Handbook available.

15. I have in my custody in my employer's files the following **ORIGINAL DOCUMENTS** relating to the property that is the subject of this mediation:

15.1 The Original Promissory Note

15.2 All Original endorsements of the Promissory Note

15.3 The Original Deed of Trust

15.4 All Original Assignments of the Deed of Trust

16. I request that I be allowed to appear at the mediation by telephone for the following good cause shown: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FURTHER AFFIANT SAYETH NAUGHT

AFFIANT SIGNATURE: \_\_\_\_\_

Subscribed and sworn to before me on this \_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
Notary Public in and for the County of \_\_\_\_\_,

State of \_\_\_\_\_

**RECOMMENDATION NO. 7**

If, for some reason, it is necessary for FMP Administrators to retain outside counsel to advise them in the administration of the FMP, the Rule 22 Advisory Committee should recommend that the outside counsel be totally independent (as opposed to retaining a law firm such as Fenemore Craig which represents (and has represented for many years) Wells Fargo a major player in the present foreclosure situation)).

**Discussion:** It is strange that there is any need for FMP Administrators to retain any outside counsel for any reason and no doubt, expend substantial sums of meager FMP funds on such. Is not The Supreme Court (and its Administrative Office of the Courts) the Administrator of the FMP? One understands that The Supreme Court has in its employ substantial numbers of first class permanent staff lawyers in addition to temporary (first in class?) law clerks. It would seem that one such lawyer could be assigned, perhaps for a half day each week, to advise the FMP Administrators in matters of law. The same lawyer could assist FMP Administrators with lectures and interpretations for Mediators during Webinars, Round Tables and the like. Of course, this thought does raise the interesting question of how, if the Supreme Court is the Administrator of FMP, it can also serve as the "court of last resort" on appeals on Petitions for Judicial Review from District Courts?

## **RECOMMENDATION NO. 8**

Recommendation No. 7 suggested the retention of truly independent outside counsel by FMP (or the use of a Supreme Court staff attorney) to provide legal advice to FMP Administrators. It is recommended that the Rule 22 Advisory Committee refer the following FMP Administrator's legal analysis for review by the new advising counsel. (It seems likely that the following legal comment/analysis may be a result of legal advice from Fennemore Craig.)

"Remember FMP mediations are non-judicial, and there is no ruling against ex-parte communications. We are not a court FMP, as we do not decide outcomes, and neither does the mediator". Sharepoint, 4/29/2011 4:17 p.m. sreedbotino

### **Discussion - Part 1:**

What is the basis for this statement? "... FMP mediations are non-judicial, ...":

By law, the Mediation Administrator must be either "the Administrative Office of the Courts, the District Court of the county in which the property is situated or any other judicial entity." AB 149, Section 8(a)

The Supreme Court has designated the Administrative Office of the Courts to serve as Mediation Administrator (FMR 2.1). The Administrative Office of the Courts is an entity under the direct supervision of the Supreme Court (NRS 1.330).

Each mediation must be conducted by a "senior justice, judge, hearing master, or other designee." NRS 107.086(4).

The mediators are subject to certain provisions of the Nevada Code of Judicial Conduct (FMR 4.1).

The Nevada Code of Judicial Conduct defines "judge" as "anyone who is authorized to perform judicial functions. Nevada Code of Judicial Conduct, sec. I(B).

Mediators are required to determine, for example, whether the representative of the beneficiary who appears at the mediation has authority to negotiate a loan modification and whether the beneficiary has participated in good faith. NRS 107.086(4), (5).

Both of these determinations require the application of law to fact.

It seems that making a determination requiring the application of law to fact is a judicial function.

### **Discussion - Part 2:**

What is the basis for this statement? "we do not decide outcomes, and neither does the mediator."

By law, mediators are required to make certain determinations, which dictate whether the foreclosure may proceed. Is this not "deciding the outcome"?

In practice, the FMP decides whether to issue a certificate permitting the foreclosure to proceed. How is this not "deciding the outcome"?



## RECOMMENDATION NO. 9

It is recommended that the Rule 22 Advisory Committee refer Dr. Campbell's April 12, 2011 Question (What does the Certificate mean?) be submitted to the recommended new counsel (Recommendation No. 7) for legal analysis and advice to all Mediators.)

**Discussion:** It is now 20 days since this important question was presented and there has been no FMP Administrator guidance.

Posted: 4/30/2011 11:59 PM by sstewart View Properties Reply

I have heard from a lender that the lenders have gotten together and determined that the vacate date is a "term of art" which determines when the certificate will issue, and has nothing to do with when the HO will vacate the house.

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Posted: 4/12/2011 8:52 AM by R. ElizaBeth Beyer View Properties Reply

My understanding is that the vacate date indicates to the FMP the date upon which, if nothing else gets worked out, when a certificate should issue. It might work out better to state, "HO agrees to vacate the premises no later than June 1st (or whatever specific date everyone has in mind)." Otherwise, you're right, it's a conundrum.

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Started: 4/12/2011 3:59 AM by Dave Campbell View Properties Reply

What Does The Certificate Mean?

I am not an attorney. Gimme some help here. It is my understanding that the home cannot be subject to a foreclosure sale until after (or as part of) the foreclosure. Further, the foreclosure cannot happen w/o the Certificate. Yet, the Rules state: 2. Any agreement to relinquish the home must include a date or measureable time frame for the borrower to vacate the premises (e.g., "Vacate 10 days after the foreclosure sale"). The date or measurable time frame, so identified shall be herein referenced as the "Vacate Date." The Administrator may issue the certificate on the day following the vacate date. How can the Certificate be issued after the foreclosure sale? How could there have been a foreclosure sale w/o the Certificate?

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## **RECOMMENDATION NO. 10**

It is recommended that Dave Campbell's suggestion (below) be submitted to the Rule 22 Advisory Committee for action.

**DISCUSSION:** This would appear to be particularly important since it appears the Mediator Statement will necessarily need to be (perhaps radically) changed if AB 300 is signed by the Governor. All of the "Official FMP Forms" should be made "filloutable/changeable/saveable" The Trustee Information Form as it presently stands has to be the worst form in the history of forms. The level of errors and misinformation on the TIF (and resulting waste of time for Mediators anyway) would be greatly reduced if the TIF was redesigned in light of experience thus far.

Started: 6/9/2011 10:41 PM by Dave Campbell View Properties Reply  
Stats and InDesign

Adobe's InDesign may be the answer to FMP's upcoming problem with statistical analysis of the Mediator Statements. It lets FMP put the Statement online where we can access it. We can complete it online, print a copy if desired, and keep a permanent offsite record. Here is the first magic part: when I click Save (I think), it goes into Adobe's system and Adobe can provide FMP with whatever statistics wanted. Here is the second magic part: Adobe does not charge for that service. Amazing! There would be a startup cost to design the form, decide what stats FMP wants, license the program, tell the system what stats to provide and in what format, etc. After that, though, there would be little ongoing expenses. It would be best, of course, to have the expert in on the design of the Statement rather than having to fit a the round peg into the square hole. If FMP likes, I can put someone in touch with a bona fide InDesign expert. Even though I don't use the program, I attend an InDesign users' group in Reno just because it is interesting. The fellow who runs it is an employee of a firm that specifically runs InDesign projects. He, for sure, knows what he is talking about. He is in the business and I'm sure his firm could give you a good handle on what is involved and likely costs. Whatever the InDesign costs are, they surely would be less than hiring a statistician. I have no interest except intellectual in Adobe, InDesign, or the expert's firm.

Posted: 6/10/2011 10:09 AM by Dave Campbell View Properties Reply

The Advisory Committee is one route but there are some obvious problems there. What committee? When will it meet/act? xxx OTOH, I had seen design of the Statement and its support system as an administrative concern. Further, it is pretty important to get the InDesign (or other IT designer) involved ASAP. Decisions made early on can produce major problems later on. And often those problems could have been avoided with a bit of expert input.

**RECOMMENDATION/SUGGESTION NO. 11:**

The Rule 22 Advisory Committee should advise the FMP Administrators to develop a systematic way of providing all Mediators with copies of all Nevada District Court and Nevada Supreme Court rulings/orders/judgements/decisions on all Petitions for Judicial Review since inception of the program and ongoing. See for example: Kuhl v. Carrington, Case No. CV 11-00325, Dept. No.1 Second Judicial District Court, March 7, 2011 and May 6, 2011 Orders. Similarly all Federal (Nevada) District Court Decisions having a bearing on foreclosures should be provided under the same system. See for example: Chief Judge Hunt's Decision in the Nye County Case.

**DISCUSSION:** FMP Administrators should be advised to provide reconciliation of their interpretations of the statute and rules and those of the District Court Judges where there are inconsistencies and Mediators should be instructed accordingly (i.e. follow FMP orders or follow District Court interpretations of the statute and rules, etc)

**ADDITION JULY 19, 2011**

This Recommendation/Suggestion No. 11 would appear to be made even more relevant in light of the Nevada Supreme Court's holdings in Leyva and Pasillas on July 7, 2011.

## Pat Martin

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**From:** Pat Martin <patmartinreno@charter.net>  
**Sent:** Thursday, August 11, 2011 9:36 AM  
**To:** vcampbell@nvcourts.nv.gov  
**Cc:** sreed-bottino@nvcourts.nv.gov; msommermeyer@nvcourts.nv.gov  
**Subject:** RECOMMENDATION/SUGGESTION NO. 12 SWUBMITTED TO DEPUTY DIRECTOR AS REQUESTED

### RECOMMENDATION/SUGGESTION NO. 12

It is respectfully suggested that the following items on the Advisory Committee Agenda for the Meeting on August 4, 2011 be posted on Sharepoint and critical input sought from the Mediators

#### E. Suggestions

1. Douglas Shaw Communication Dated 6/30/11
2. James Baker Communication Dated 6/30/11
3. James Baker Communication Dated 7/12/11
4. Stephen Ramos Communication Dated 3/2/11
5. Stephen Ramos Communication Dated 6/30/11
6. Phil A. Olsen Communication Dated 7/6/11
9. Patrick James Martin Recommendations/Suggestions No. 1-11(No 5)
10. Patrick James Martin Concerns - Teleconference with Deputy Director July 25, 2011

#### A. Summary of AB 273 and AB 284

Discussion: It would seem that the FMP would benefit greatly from any and all pro and con input from the rather large pool of over 200 mediators. If mediators knew what suggestions were in the hopper for evaluation by the Advisory Committee this might eliminate multiplication of the same suggestions. Witness the Webinar on August 9, 2011 where the FMP Administrator demonstrated considerable patience answering some of the same questions repeatedly presented at Roundtables and Webinars (most of which could have been answered by reading the statute and rules - granted the assignment of cases process is not covered in its present detail and form in the statute and rules).

Patrick James Martin  
Mediator

**From:** Pat Martin [mailto:[patmartinreno@charter.net](mailto:patmartinreno@charter.net)]

**Sent:** Thursday, August 18, 2011 7:35 AM

**To:** [vcampbell@nvcourts.nv.gov](mailto:vcampbell@nvcourts.nv.gov)

**Cc:** [sreed-bottino@nvcourts.nv.gov](mailto:sreed-bottino@nvcourts.nv.gov); [msommermeyer@nvcourts.nv.gov](mailto:msommermeyer@nvcourts.nv.gov); Charles M. Mc Gee Senior Judge ([judgemcgee@msn.com](mailto:judgemcgee@msn.com)); Malcolm Doctors

**Subject:** RECOMMENDATION/SUGGESTION NO. 13

RECOMMENDATION/SUGGESTION NO. 13

<http://www.mynews3.com/content/programming/local/facetoface/default.aspx>

The FMP should consider retaining the legal services of Phillip A. Olsen, Esq. to prepare and file an Amicus Curia brief in support of the constitutionality of the FMP Program/NRS 107.086 in pending bank appeals to the Nevada Supreme Court.

**Discussion:** In the recent Face to Face program, Mr. Olsen articulated an elegant defense of the constitutionality of the statute. According to the program moderator FMP declined to make a representative available and in the absence thereof, Mr. Olsen, in no uncertain terms made clear that the statute is constitutional. As a matter of courtesy FMP is encouraged to note that there are rather extreme time limits for the filing of an Amicus Curia brief under the NRAP.

Patrick James Martin

Mediator

## Pat Martin

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**From:** Campbell, Verise <vcampbell@nvcourts.nv.gov>  
**Sent:** Friday, September 09, 2011 4:12 PM  
**To:** 'Pat Martin'  
**Cc:** Reed-Bottino, Sandra; Sommermeyer, Michael; Charles M. Mc Gee Senior Judge; Malcolm Doctors  
**Subject:** RE: RECOMMENDATION/SUGGESTION NO. 14

Hi Pat - thank you for your suggestion below. We will invite them to share at the next roundtable.

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**From:** Pat Martin [<mailto:patmartinreno@charter.net>]  
**Sent:** Friday, September 02, 2011 3:28 PM  
**To:** Campbell, Verise  
**Cc:** Reed-Bottino, Sandra; Sommermeyer, Michael; Charles M. Mc Gee Senior Judge; Malcolm Doctors  
**Subject:** RECOMMENDATION/SUGGESTION NO. 14

RECOMMENDATION/SUGGESTION NO. 14

It is respectfully suggested that the Advisory Committee encourage the FMP Administrators to schedule a presentation at the next Mediator Roundtable by the two Mediators whose Mediator Statements were the subject of appeals in Leyva and Pasillas.

**Discussion:** The Mediator in the Pasillas case received a round of applause following his extemporaneous comments made during the most recent Mediator Roundtable. At least one Mediator who was not present to hear those comments has expressed an interest in hearing them or knowing what they were. It would seem that the work of two Mediators which resulted in two published opinions by the Nevada Supreme Court (that in itself being something unusual) would be beneficial to other Mediators and to the FMP. Perhaps this might reduce the volume of appeals (if indeed there are many appeals)

Patrick James Martin  
Mediator

## Pat Martin

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**From:** Campbell, Verise <vcampbell@nvcourts.nv.gov>  
**Sent:** Wednesday, October 05, 2011 9:25 AM  
**To:** 'Pat Martin'  
**Cc:** Reed-Bottino, Sandra; Sommermeyer, Michael  
**Subject:** RE: RECOMMENDATION/SUGGESTION NO. 17

Dear Pat - as always you raise some very interesting points. Your comments will be shared with the committee accordingly.

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**From:** Pat Martin [<mailto:patmartinreno@charter.net>]  
**Sent:** Tuesday, October 04, 2011 8:19 PM  
**To:** Campbell, Verise  
**Cc:** Reed-Bottino, Sandra; Sommermeyer, Michael  
**Subject:** RECOMMENDATION/SUGGESTION NO. 17

RECOMMENDATION/SUGGESTION No. 17

Dear Deputy Director Campbell:

I respectfully request that the following matter be placed on the Agenda for the Rule 22 Advisory Committee's next meeting;

As the Committee now knows FMP Administrators have finally acknowledged their gross misunderstanding of the "judicial proceedings" nature of the FMP mediations. This dogged mindset of "mediations-aren't-judicial-proceedings" has persisted since the inception of the program. Of course the logically related part of the misapplication of the law by the FMP Administrators is the equally dogged "mediators-aren't-judges" mindset that has controlled the FMP Administrators also since the beginning. The harm that has been done probably cannot be measured now without a complete review of every one of the hundreds of "Certificates" issued that have allowed foreclosures to proceed during the two years the FMP Administrators did not understand the nature of the proceedings and the role of the mediators.

The Code of Judicial Conduct defines a "judge" as "anyone who is authorized to perform judicial functions, including an officer such as a magistrate, court commissioner, special master, or referee." Since mediations are judicial proceedings, aren't mediators performing a judicial function when presiding over them? If mediators aren't judges, why does Foreclosure Mediation Rule 4(1) make mediators subject to the Code of Judicial Conduct, which governs judges?

Rule 2.2 of the Code says that, "A judge shall uphold and apply the law . . ." How can judges uphold the law if they are subject in their interpretation of the law to the control of FMP Administrators who are not even lawyers?

Almost three months ago, the Nevada Supreme Court stated in the Pasillas opinion that, "If any one of these violations [specified in NRS 107.068(5)] occurs, *the mediator must recommend sanctions.*" If the mediators are required to uphold and apply the law, why are they still prohibited from recommending sanctions against banks?

Why isn't the Code of Judicial Conduct discussed in the mediator's training? Are mediators aware of the Code of Judicial Conduct?

Why are judges (mediators) even subjected to "training" in the law by FMP Administrators untrained in the law? Perhaps the "training" should be limited to Training in filling out "Official" forms with studious avoidance of any unseemly effort to educate judges (mediators) in the law!

Patrick James Martin  
Mediator



**From:** Pat Martin [mailto:[patmartinreno@charter.net](mailto:patmartinreno@charter.net)]

**Sent:** Tuesday, November 01, 2011 10:25 PM

**To:** [vcampbell@nvcourts.nv.gov](mailto:vcampbell@nvcourts.nv.gov)

**Cc:** [sreed-bottino@nvcourts.nv.gov](mailto:sreed-bottino@nvcourts.nv.gov); [msommermeyer@nvcourts.nv.gov](mailto:msommermeyer@nvcourts.nv.gov); Charles M. Mc Gee Senior Judge ([judgemcgee@msn.com](mailto:judgemcgee@msn.com)); Malcolm Doctors

**Subject:** RECOMMENDATION/SUGGESTION NO. 19

RECOMMENDATION/SUGGESTION NO. 19

Dear Deputy Director Campbell:

1

I respectfully request , if you have not already done so based on Ms. Reed-Bottino's representation, that you submit the following matter to the Rule 22 Advisory Committee for its advice and counsel and opinion.

Dear Advisory Committee:

I respectfully recommend/suggest that the Rule 22 Advisory Committee issue a legal opinion for the guidance of Mediators (and FMP Administrators) addressed to the question presented in the following Sharepoint string:

“ So what is the official position of the FMP? Is an assignment/endorsement of a note with the payee blank acceptable?” See; 10/20/11 posting in Sharepoint string included below for reading convenience

Patrick James Martin

Mediator

## SHAREPOINT STRING

Posted: 10/31/2011 10:22 AM by sreedbottino View Properties Reply

## Pat Martin

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**From:** Pat Martin <patmartinreno@charter.net>  
**Sent:** Friday, December 02, 2011 9:06 PM  
**To:** vcampbell@nvcourts.nv.gov  
**Cc:** sreed-bottino@nvcourts.nv.gov; msommermeyer@nvcourts.nv.gov; Charles M. Mc Gee Senior Judge (judgemcgee@msn.com); Malcolm Doctors  
**Subject:** RECOMMENDATION/SUGGESTION NO. 20

Verise Campbell, Deputy Director, Chair, the Rule 22 Advisory Committee

Dear Ms. Campbell

Not having received a response from you to the following Email, I respectfully request that the issue of an FMP Procedure covering Administrative Office of the Courts staff including FMP staff, and the apparently existing "Mediator Procedure," be submitted to the Advisory Committee for its review and recommendations.

Patrick James Martin

Member of the Public

Dear Deputy Director Campbell:

Is there a "procedure" if FMP Administrators or FMP staff or anyone connected with the Administrative Office of The Courts or the Supreme Court Justices and staff have elected mediation under FMP on their personal residences?  
See: Below as to Mediator procedure?

In fact, have any FMP Administrators or FMP staff AOC or Supreme Court Justices or staff personally elected into the program since its inception?

Patrick James Martin

Mediator

6. "Electing into the FMP as Homeowner: I have notified mediators about this procedure several times in trainings and in communicative emails; however, several mediators have elected into the program without notifying the FMP administration. It is required that you notify the FMP (your coordinator is your first point of contact) when you elect into the program to meet with a lender in an FMP mediation. If a mediator elects into the program, we must remove him/her from the active case pool, as there is a conflict of interest when trying to save your home and being a neutral mediator for

the FMP. After your case is completed, you must notify your coordinator whether you will seek a PJR. You will be reactivated after the PJR timeframe has passed barring that the lender has not filed a PJR. If you do file a PJR, you will remain inactive until your case has concluded. “

## Pat Martin

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**From:** Pat Martin <patmartinreno@charter.net>  
**Sent:** Monday, December 12, 2011 8:40 PM  
**To:** Charles M. Mc Gee Senior Judge (judgemcgee@msn.com); Malcolm Doctors; vcampbell@nvcourts.nv.gov  
**Subject:** RECOMMENDATION/SUGGESTION NO. 21

The Honorable Charles M. McGee, Senior District Judge, Mediator Representative  
Malcolm Doctors, Mediator Representative  
Deputy Director Campbell:

Dear Judge McGee, Mr. Doctors, and Deputy Director Campbell:

I respectfully ask that the following matter be submitted to the Rule 22 Advisory Committee so that it may make a recommendation for a rule change to the Nevada Supreme Court

As the Rule 22 Advisory Committee knows, Rule 4 of the Amended Foreclosure Rules, in pertinent part, provides:

4. The Administrator or designee may suspend or terminate a mediator from the program without cause at any time and may recommend to the court revocation or suspension of the appointment. Any suspension of a mediator by the Administrator or designee is limited to a maximum of 60 days.

As any lawyer on the Rule 22 Advisory Committee knows, this rule is unconstitutional on its face.

It is respectfully recommended that this rule be amended to provide some modicum of notice to the involved mediator so that the rule will pass minimal constitutional muster

Patrick James Martin  
Member of the Public and Former Mediator

## Pat Martin

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**From:** Chuck McGee <judgemcgee@msn.com>  
**Sent:** Tuesday, September 06, 2011 3:24 PM  
**To:** patmartinreno@charter.net; Harris, Cheryl  
**Cc:** verise campbell; Sandra Reed-Bottino; msommermeyer@nvcourts.nv.gov; Malcom Doctors; Barbara Buckley  
**Subject:** RE: RSVP and Topic for Discdussion at roundtable

I try not to be as blunt as Mr. Martin, but his copy of this reply will let him know that the general topic of recommendations by Mediators, utilizing a checklist that tries to draw the reviewer into the areas of contemptuous conduct is under consideration by our Committee.

Judge McGee

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**From:** [patmartinreno@charter.net](mailto:patmartinreno@charter.net)  
**To:** [charris@nvcourts.nv.gov](mailto:charris@nvcourts.nv.gov)  
**CC:** [vcampbell@nvcourts.nv.gov](mailto:vcampbell@nvcourts.nv.gov); [sreed-bottino@nvcourts.nv.gov](mailto:sreed-bottino@nvcourts.nv.gov); [msommermeyer@nvcourts.nv.gov](mailto:msommermeyer@nvcourts.nv.gov); [judgemcgee@msn.com](mailto:judgemcgee@msn.com); [malcolmdrs@auburnassociates.com](mailto:malcolmdrs@auburnassociates.com)  
**Subject:** RSVP and Topic for Discdussion at roundtable  
**Date:** Sat, 3 Sep 2011 16:39:41 -0700

Dear Ms. Harris:

1. I wish to attend the Roundtable on September 22, 2011 at the Carson City venue
2. Here is my suggestion for a topic as requested by Ms. Reed Bottino:.

**Topic:** Conflict between Nevada Supreme Court and Program Manager.

**Question:** When pronouncements of the Nevada Supreme Court conflict with instructions from the Program Manager, do mediators follow the Supreme Court or the Program Manager?

**Explanation:** NRS 107.086(5) requires mediators to recommend sanctions against banks in certain situations. In *Leyva and Pasillas*, the Supreme Court stated that strict compliance with NRS 107.086 is required. In a memo to mediators dated April 23, 2010, the Program Manager instructed mediators that they may not recommend sanctions against banks. Do we follow the Supreme Court and recommend sanctions against banks or do we follow the contrary instructions from the Program Manager?

Patrick James Martin  
Mediator

PAT MARTIN'S "CONCERNS" REQUESTED BY DEPUTY DIRECTOR CAMPBELL

FOR TELEPHONE CONFERENCE MONDAY JULY 25, 2011 11.30 A.M.

1. The FMP is not following the law. The law requires mediators to recommend sanctions against banks in certain situations, but the FMP forbids mediators from doing so. This is placing Mediators in an untenable position. Mediators have sworn taken an oath to uphold the law but face reprimand from the FMP if they do.
2. Wells Fargo attorneys are advising the FMP. That explains why the FMP favors lenders. See: Patrick James Martin letter to Ron Titus dated July 16, 2010:

"6. Finally, I am sure I expressed my concern that the Program was favoring Lenders (kowtowing was probably the word I used or I might have used the term kissing arse) who were, in my view flipping off (giving the finger to or words of similar import) the State of Nevada, The Legislature, and the Program Administrators."
3. The FMP interferes with the impartiality and independence of the Mediators by instructing mediators how to perform their duties. The mediators are bound by the Nevada Code of Judicial Conduct which requires an independent judiciary but is not discussed at the mediator training.
4. FMP's demonstrated contempt (Mr. Sommermeyer's comments on Sharepoint) for the First Amendment is troubling. He has it wrong. The government, which includes the Supreme Court and FMP, has all the power, not the press. A free press is our most important protection against abuse of power by the government. It is the role of the press to shine light when government officials hide in darkness. Free and open discussion leads to truth. The FMP should not continue to prohibit mediators from speaking to the public and to the press about the Program. It is shocking that someone with Mr. Sommermeyer's contempt for the First Amendment is a spokesman for the Supreme Court. We, the people, rely on the Supreme Court to safeguard the First Amendment for us.
5. Deputy Director Campbell has no legal authority to exercise discretion in issuing Certificates. Under the law, her duties are purely ministerial. She must issue certificates in only three situations, none of which involve the exercise of her discretion. She may not issue a certificate in any other situation, even if she thinks in her mind that doing so is a good idea. Because her decision to issue a certificate is not made until after the deadline for a petition for review and since she does not notify the parties of her decision, the power she has assumed is unbridled. In the wrong hands, such power could be used to illegally manipulate the entire real estate market in Nevada. The legislature did not give her this power.
6. I should have been allowed to record our conference about my concerns about the FMP. The is a public agency of the

State of Nevada. There is no room for secrecy in government.

7. My concerns have been consistently articulated on Sharepoint but ignored.
8. The first Advisory Committee meeting was held in secrecy and there has been no effort to inform the public of the upcoming meeting. Why isn't the meeting mentioned on the Court's or the Program's website? Now it is already too late for the public to have a chance to provide meaningful input in anticipation of the meeting.

LAW OFFICE  
**Patrick James Martin**

CHARTERED  
POST OFFICE BOX 7453  
RENO, NEVADA 89510-7453  
(775) 223-5182  
e-mail: [patmartinreno@charter.net](mailto:patmartinreno@charter.net)

February 12, 2012

Via: USPS CMRR  
Email: [nvfmp@nvcourts.nv.gov](mailto:nvfmp@nvcourts.nv.gov)

Advisory Committee  
The State of Nevada Foreclosure Mediation Program  
200 Lewis Avenue, 17<sup>th</sup> floor  
Las Vegas, Nevada 89101

RE: Recommendation for consideration by The Advisory Committee

Dear Foreclosure Mediation Advisory Committee:

I served as a foreclosure mediator from the inception of the FMP until November, 2011. Near the conclusion of my term, I applied to serve another term. To my disappointment, I was not reappointed.<sup>1</sup>

I asked Chief Justice Saitta why I was not reappointed. She sent me the attached letter.

As you know, Foreclosure Mediation Rule 3(5)(a) states, "The Administrator, or designee, shall solicit and provide the Court with the names and qualifications of persons who have applied to become mediators. The Court shall review the qualifications and approve, deny, or continue the

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<sup>1</sup> I was "suspended" without my knowledge for a period during the initial term after I had processed six cases and was reappointed after I took the matter up with the then Director, Administrative Office of the Courts. I processed six cases (two recusals) on reappointment and was again "suspended" without my knowledge.

PATRICK JAMES MARTIN,  
B.S. (Acct.) M.S. (Taxation)  
J.D., C.P.A. (Ret.)

**CPA<sup>sm</sup>**  
The CPA. Never Underestimate The Value<sup>sm</sup>



Foreclosure Mediation Advisory Committee  
February 12, 2012  
Page 2

applicant's request to serve as a mediator."

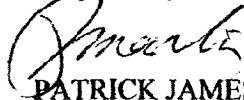
However, from the Chief Justice's letter, it appears the Administrator failed to provide the Court with my name and qualifications as required by Rule 3(5)(a). I therefore request that the Advisory Committee make the following recommendation to the Foreclosure Mediation Program:

***The Advisory Committee on Foreclosure Mediation hereby recommends that the Mediation Administrator follow the Foreclosure Mediation Rules, including Rule 3(5)(a).***

I will attend the Advisory Committee meeting on February 23, 2012 and hope to hear the Committee consider this matter.

Thank you for your assistance.

Respectfully



PATRICK JAMES MARTIN

Encl: Chief Justice Saitta's letter dated February 6, 2012

cc: The Honorable Chief Justice Nancy M. Sagitta  
The Honorable Charles M. McGee, Senior District Court Judge and Mediator Representative  
Malcolm Doctors, Esq, Mediator Representative

PATRICK JAMES MARTIN,  
B.S. (Acct.) M.S. (Taxation)  
J.D., C.P.A. (Ret.)

CPA<sup>sm</sup>  
The CPA. Never Underestimate The Value<sup>sm</sup>

SUPREME COURT OF NEVADA  
NANCY M. SAITTA, CHIEF JUSTICE  
201 SOUTH CARSON STREET  
CARSON CITY, NEVADA 89701-4702  
(775) 684-1530



February 6, 2012

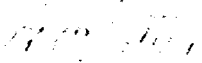
Patrick James Martin  
P.O. Box 7453  
Reno, NV 89510-7453

Dear Mr. Martin:

I write in response to your correspondence of November 17 and December 12, 2011. Please note that the Court does not participate in the FMP mediator selection process. If a particular mediator's name does not appear on the list sent to the Court for appointment, the Court makes no further inquiry and reviews the list as presented.

Therefore, I am unable to provide additional information regarding this matter.

Very truly yours,

  
Nancy M. Saitta  
Chief Justice