IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION)
OF RULES FOR FORECLOSURE) ADKT No. 435
MEDIATION)
)
_____)

MEDIATOR, SUSAN G. TRAUTMANN'S COMMENTS

In response to the Supreme Court of the State of Nevada's Order

Scheduling Public Hearing, Mediator, Susan G. Trautmann, respectfully submits

these comments regarding the most recent modifications to the amended

foreclosure mediation rules, revised February 25, 2010.

**Underlining and strikethrough denotes recommended changes.**

1. Under Rule 1, I am recommending that the *Purpose* be stated clearly
    without reference to the timeline. And that the proposed edit to the
    timeline be added to the new par. 4.

    Rule 1. The Foreclosure Mediation Program.

    2. *Purpose.* The purpose of these rules is to provide for the
    orderly, timely, and cost-effective mediation of owner-occupied
    residential foreclosures ~~which shall take place within 90 days~~ ....
    The Foreclosure Mediation Program will permit deed of trust
    beneficiaries (lenders) and homeowners, with the assistance of a
    mediator, to exchange information and proposals that may avoid
    foreclosure.

    3. ...

    4. *Time.* Each mediation shall **conclude** within 135 days
    following actual receipt by the Administrator of all ~~the~~ mediation
    fees ~~provided on behalf of the lender~~. For purposes of calculating
    time under these rules, ...

10-34225
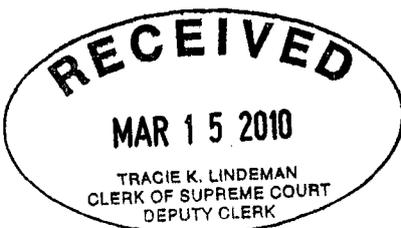
2.   Under Rule 2, I submit that there may be a typo and that it's the Administrator – not the mediator – that would have the responsibility of the program-approved forms complying with the Rules, as shown below:

> **Rule 2. Mediation Administrator.**
>
> 2. *Authority*. .... The ~~mediator~~ Administrator shall ensure all program-approved forms are in compliance with these rules.

3.   Under Rule 3, I recommend the following edits for clarity, as shown below (note that there is an existing form in which the mediator affirmatively accepts the assignment):

> **Rule 3. Presiding Mediator.**
>
> 1. *Assignment* .... No later than 10 days after receipt of the Election for Mediation, as provided in Rule 5(6), and all mediation fees, the Administrator or designee shall randomly select and assign from the applicable geographic area a court-approved mediator to preside over the mediation. The assigned mediator will have 2 business days after receiving the assignment to determine and notify the Administrator of a conflict requiring his or her recusal or affirmatively accept the assignment. ....

4.   In addition, regarding the last sentence of Rule 3, par. 1:

> **"Upon final selection of a mediator, the Administrator shall send notice of the assignment to the parties."**
>
> *See* **Exhibit A** (attached) - NOTICE OF APPOINTMENT OF MEDIATOR.

To date, the Administrator is not sending the Notice of Appointment of Mediator. I submit that these notices play an important role in facilitating the effectiveness of the mediation process by notifying the parties of their court-appointed mediator and providing all the parties with the proper contact information. Otherwise, the homeowner – upon contact – is initially very cautious, until convinced that the mediator is not another solicitor. If this Court, however, determines that this step is no longer rendered important, I recommend that this directive be struck.

5.   Also, as to Rule 3 and the Administrator's obligation to **"randomly select and assign,"** as part of the mediation process, I submit that the rules set forth a fair and equitable process. An assignment process that takes into consideration:

(a)   the Administrator's 10-day obligation within which to assign;

(b)   the proposed change in Rule 3(5) that <u>each mediation to commence within 45 days of assignment</u>; and

(c)   each mediator's capacity to mediate.

For example, timely case assignments must take into consideration the number of cases a mediator is capable of conducting weekly or at most on a bi-weekly basis. A random selection may be achieved by pairing up the next Election of Mediation with the next qualified mediator. Sequential case assignment is inherently random. As case assignments are presently conducted, some mediators consistently receive cases, while others infrequently receive cases – despite their desire and capacity to handle more.

Therefore, in order to ensure an orderly, timely, and cost-effective mediation process, cases must be timely assigned as they come in (first-in, first-out) to the next qualified mediator in line, which assignment would create a simple – yet inherently random – process.

6.   I recommend that Rule 4 be reconciled with the recently amended Nevada Code of Judicial Conduct, ADKT No. 427, order issued December 17, 2009. The Canons have been re-written and re-numbered and it's no longer clear as to which Canons apply to the foreclosure mediators.

In addition, two edits for clarity:
Rule 4. Conduct, Disqualification, and Recusal.
2. A mediator who has a personal <u>relationship,</u> or past or present significant professional relationship, with any of the parties or a financial interest in the matter of the mediation shall immediately recuse himself or herself as a mediator in the particular case.

7.   Under Rule 5, at (6)(c), it appears that the last sentence is no longer necessary with the new 135-day timeline; and in 8(d) a suggested grammatical edit.
Rule 5. Eligibility for the Foreclosure Mediation Program.
6. (c) …. ~~Any delay by the trustee in providing the required documents and information to the Administrator shall extend the time for mediation set forth in Rule 1(2).~~

…

8. (d) Unless extended for good cause by the presiding mediator or Administrator, the mediation shall be concluded within 135 days ....

8. Under Rule 7, please consider the following edits for clarity:

Rule 7. Documents to be Presented for the Mediation.

2. .... The mediator may accept a broker's price opinion letter (BPO) <u>in lieu of an appraisal</u>. The BPO must comply with the new provisions of NRS 645.2515, and in lieu of an appraisal.

3. ...

4. .... Mediations shall take place <u>commence</u> between the hours of 8:00 a.m. and 5:00 p.m. ....

9. Also as regards, **Rule 7 - Documents to be Presented for the Mediation.** I submit that the Mediator's Statement form be modified to reflect the following requirements: (a) that the parties timely exchanged the documents before mediation; (b) provided the requisite documents to the mediator; and (c) that the beneficiary brought to the mediation each document required.

10. Under Rule 11, clarification is needed as to who receives the Continuation Notice, please consider:

Rule 11. Continuances.

... or upon a written agreement of the parties and the mediator. Notice of such agreement shall be provided <u>to all parties</u> by facsimile, electronic mail ....

CONCLUSION

As a court-appointed foreclosure mediator, I appreciate the opportunity to submit these comments and participate in the hearing scheduled for March 16, 2010.

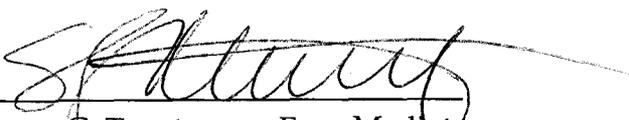Respectfully submitted this ___11___ day of March 2010.

Susan G. Trautmann, Esq., Mediator
Nevada Bar No. 8910
8717 Vista Ladera Court
Las Vegas, Nevada 89147

Exhibit A

STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM

NOTICE OF APPOINTMENT OF MEDIATOR

Assessor Parcel Number (APN) : _____

Property Owner(s)_____   Beneficiary_____

Trustee_____

Property Address_____   TS No._____

DoT_____ Book/Instr. No._____

APPOINTMENT OF MEDIATOR

TO: _____, Property Owner(s); and

TO: _____, Beneficiary; and

TO: _____, Mediator

_____ has been randomly selected as Mediator to preside over the mediation concerning the property listed above.

All mediations shall be completed no later than ten (10) days prior to the 90th day following the recording of the notice of default, unless otherwise approved by the presiding mediator.

The mediator shall have all required authority to conduct this mediation pursuant to the Foreclosure Mediation Rules, including the authority to determine whether the parties have