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November 26, 2013

FILED

DEC 04 2013

Nevada Supreme Court
201 South Carson Street, Suite 250
Carson City, NV 89701-4702

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

Re: Foreclosure Mediation Rules, ADKT 0435

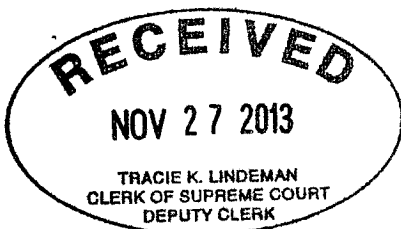
TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF
NEVADA:

I write in response to the Court's invitation contained in its Order Scheduling Public Hearing dated November 14, 2013, with a proposed change to the Foreclosure Mediation Rules. I also request an opportunity to address the Court at the hearing on December 5, 2013. I plan to attend in Carson City.

By way of background, I have submitted numerous suggested rule changes to the Advisory Committee on the Foreclosure Mediation Program over the past year. To my disappointment, none of my suggestions have found their way onto the Committee's agenda nor have any of them been discussed at any of the Committee meetings. My proposals rule changes have been comprehensive, addressing constitutional issues, inconsistencies between the current rules and the relevant statute (NRS 107.086), inconsistencies between the rules and the current practices of the Mediation Administrator, and even grammatical, typographical and other errors found in the current rules.

I am not including all of my suggestions into this letter, but instead am offering a single proposal of overriding concern because of the constitutional issue involved.

I am more than happy to speak with any of the justices at any time regarding this and other suggestions I have for the improvement of the Foreclosure Mediation Rules and the program in general. I would also be happy to provide the justices with the other written proposals I have made to the Advisory Committee if the justices wish.



13-36377

Proposed amendment to FMR 1(2):

1. Appointment. The Foreclosure Mediation Program Administrator (Administrator) shall be appointed by the Nevada Supreme Court (Court). The Administrator for the Foreclosure Mediation Program (Program) is the ~~Administrative Office of the Courts (AOC)~~ *district court of the county in which the property is situated*.

Statutory background.

NRS 107.086(8)(a) empowers the Supreme Court to designate an entity to serve as Mediation Administrator and also provides, “The entities that may be so designated include, without limitation, the Administrative Office of the Courts, the district court of the county in which the property is situated or any other judicial entity.”

Current rule and practice.

FMR 2(1) currently provides that the Administrative Office of the Courts is the Mediation Administrator. The Director of the Administrative Office of the Courts is the Court Administrator, who under the direct supervision of this Court. NRS 1.330. The Foreclosure Mediation Program Manager answers to the Mediation Administrator, i.e., the Administrative Office of the Courts. FMR 2(2).

Under the current practice of the Mediation Administrator, the Program Manager determines whether any given foreclosing party (trustee) may proceed with a foreclosure by trustee’s sale. She does so by either issuing a foreclosure certificate or declining to do so. She makes her determination at the request of the trustee and based on information provided to her by the mediator. Thus, no one may conduct a trustee’s sale on owner occupied residential property in Nevada without the permission of the Program Manager, who is under the supervision of this Court. The Program Manager makes her determination in the name and on behalf of this Court.

Jurisdiction of this Court.

In civil cases, this court has appellate jurisdiction only. Nev. Const., Art. VI, sec. 4. *See, e.g., Lyon Co. v. Esmeralda Co.*, 18 Nev. 166, 1 P. 839 (1883). Original jurisdiction in civil cases lies with the district court and the justices of the peace. Nev. Const., Art. VI, sec. 6.

Whatever title she holds and whatever label attaches to her decisions, it is undeniable that in determining who may and who may not foreclose the Program Manager is exercising a judicial function under the authority of this Court. *See, e.g., Delaware Coalition for Open Government, Inc. v. Strine* 733 F.3d 510, 515 (3rd Cir. 2013) [label attached to proceeding does not affect constitutional analysis].

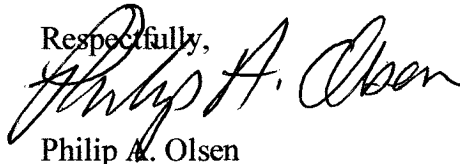
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Designating the district courts to serve as Mediation Administrator, as I propose, would place original jurisdiction in these civil cases where it belongs under the Nevada Constitution.

Further, in *Civil Rights for Seniors v. AOC*, 129 Nev. ___, ___ P.3d ___, 2013 WL 5872525 (Adv. Op. 80, October 31, 2013), this Court held that the records of the Mediation Administrator are not subject to public inspection because they are not "court records." Designating the district courts to serve as Mediation Administrator would make the Mediation Administration's records "court records," presumptively subject to public inspection under the Rules Governing Sealing and Redacting of Court Records.

This would have the desirable effect of exposing the operations of the Mediation Administrator to public scrutiny and would promote this "Court's belief in open government and our commitment to preserve the public nature of the business of the judicial branch, including its records," as expressed by Chief Justice Maupin in 2007. See AOC press release, December 31, 2007.

Respectfully,

A handwritten signature in cursive script that reads "Philip A. Olsen". The signature is written in black ink and is positioned above the printed name.

Philip A. Olsen