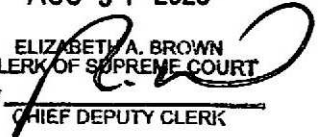


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF RESIDENTIAL
SUMMARY EVICTION ACTIONS AND
NOTICES DURING COVID-19

ADKT 567
FILED

AUG 31 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

PETITION

The undersigned hereby petition the Nevada Supreme Court to adopt rules relating to mediation of residential summary evictions and to amend the Nevada Justice Court Rules of Civil Procedure (JCRCP) respecting summary eviction notices. The background and bases for this petition are:

1. On March 12, 2020, Governor Sisolak declared a state of emergency in Nevada due to the COVID-19 pandemic. The next day, President Trump declared a nationwide state of emergency. To implement the emergency stay-at-home directives that followed, Governor Sisolak issued, on March 29, 2020, and June 25, 2020, Declaration of Emergency Directives 008 and 025, staying residential summary eviction actions.

2. The stay of residential summary eviction actions imposed by Emergency Directives 008 and 025 expires on August 31, 2020, at 11:59p.m.

3. The Nevada Legislature convened in special session from July 31 to August 7, 2020, to consider, among other matters, "[l]egislation to provide authority for the Judicial Branch to implement alternative dispute resolution measures for eviction[] actions to mitigate the harm resulting from the COVID-19 recession and the dramatic unemployment resulting from it." Governor Sisolak, Proclamation to Convene a Special

20-32070

Session of the Nevada State Legislature (Revised) (July 31, 2020). The result was the passage of Senate Bill (S.B.) 1, 2nd Special Session (Nev., Aug. 7, 2020), which provides, “If the Supreme Court or a district court or justice court establishes by rule an expedited program of alternative dispute resolution concerning the eviction of a tenant of any dwelling unit, apartment, mobile home, recreational vehicle or part of a low-rent housing program operated by a public housing authority, any such eviction proceedings pursuant to [NRS Chapter 40] may be stayed for not more than 30 days to facilitate the program of alternative dispute resolution.”

4. The court has inherent power to act in ways that are “reasonably necessary for the judiciary’s proper operation . . . in an emergency situation.” *Halverson v. Hardcastle*, 123 Nev. 245, 263, 163 P.3d 428, 441 (2007) (internal citations omitted). This includes the “power to take actions reasonably necessary to administer justice efficiently, fairly, and economically.” *See id.* at 260, 163 P.3d at 439 (internal quotation omitted).

5. The expiration of the stay against residential summary evictions imposed by Directives 008 and 025 will result in increased traffic in courthouses across the State, posing a threat to public health and safety, unless measures are taken to facilitate remote filing and virtual appearances in residential summary eviction cases. In addition, it appears that rental assistance funds and unemployment compensation due but not yet paid are available for tenants to pay landlords back-due rent, although the demands on those administering these funds have led to delays in processing requests for them.

6. To address these concerns, the Nevada Access to Justice Commission convened a working group consisting of apartment, realtor,

and landlord representatives; legal aid providers representing tenant interests; members of the Nevada Judges of Limited Jurisdiction Association; and other interested parties.

7. Consistent with S.B. 1 and the inherent authority of the court, the working group has developed and submitted two alternative versions of a proposed Supreme Court Rule to facilitate mediation in residential summary evictions during the COVID-19 emergency and its aftermath. Copies of the alternative proposed SCR are attached as Exhibits A and B. Although they contain differing provisions, both versions recognize the need to expeditiously connect landlords and tenants to untapped residential assistance funds and unemployment compensation for which legitimate claims have been submitted but not paid.

8. Summary eviction actions do not reach the court until the tenant files an answer. Attached as Exhibit C is a proposed amendment to JCRCP 101 that would require the notice demanding either the payment of rent or surrender of the premises, by which the landlord initiates the eviction process, to include information about rental assistance and mediation programs available.

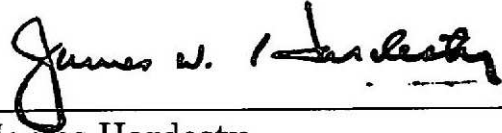
9. We request that the court place this matter on its administrative docket, solicit public comment, and consider the proposed alternative mediation rules, attached as Exhibits A and B, and the proposed amendment to JCRCP 101, attached as Exhibit C. This matter should be considered at the same time as, and in conjunction with, ADKT 564 and ADKT 562, which propose additional eviction-related amendments to the Las Vegas Justice Court Rules and the Henderson Justice Court Rules, respectively, and ADKT 566, which proposes amendments to the JCRCP concerning in forma pauperis filings in summary eviction actions.

Dated this 31st day of August, 2020

A handwritten signature in black ink, appearing to read "Kristina Pickering", written over a horizontal line.

Kristina Pickering

Supreme Court Chief Justice

A handwritten signature in black ink, appearing to read "James W. Hardesty", written over a horizontal line.

James Hardesty

Supreme Court Justice

(Note: Per JCRCP 2, "summary eviction actions" are governed by Rule 101 forward. Rule 106 is now "reserved" and could possibly be used. Otherwise, unless the new provision is added to one of the existing rules (Rules 101 to 105, or 110), it would be added after somewhere after Rule 110.)

EXHIBIT A

ADOPTION OF RULE ____ OF THE JUSTICE COURT RULES OF CIVIL PROCEDURE

RULE _____. MEDIATION OF SUMMARY EVICTION ACTIONS

(a) This rule applies to summary eviction actions filed pursuant to NRS 40.253. The court may at its discretion refer summary eviction actions filed pursuant to NRS 40.254 to mediation under this rule.

(b) "Mediation" means a process in which a neutral third-party acts to encourage and facilitate the resolution of a dispute between the landlord and tenant. It is an informal and nonadversarial process with the objective of helping the landlord and tenant reach a mutually acceptable and voluntary agreement to avoid eviction if possible. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues and resources, exploring settlement alternatives and evaluating settlement proposals, and fostering communication and joint problem solving.

(c) The court shall provide on its website information concerning the availability of:

- (1) An existing mediation program;
- (2) Government-sponsored rental assistance programs;
- (3) An electronic option for the filing of the tenant's affidavit; and
- (4) Civil legal aid programs, court self-help centers, or similar programs in the jurisdiction that may be able to assist the tenant with completing and filing a tenant's affidavit.

(d)(1) A tenant may request mediation of a summary eviction action by stating that request in the affidavit filed by the tenant in the matter pursuant to NRS 40.253(3). Such request must include:

(A) A preferred method of mediation, i.e., whether in person, or by telephone or video conference;

(B) The name of the tenant(s) who will be participating in the mediation; and

(C) Accurate contact information for each tenant including telephone number and email address for receiving notices from the Court and Mediator.

(2) A landlord may request mediation of a summary eviction action by stating that request in the complaint for eviction filed by the landlord in the matter pursuant to NRS 40.253(5). Regardless of whether the landlord requests mediation, the complaint for eviction must include:

(A) A preferred method of mediation, i.e., whether in person or by telephone or video conference;

(B) The name of the individual who has authority to settle the case and will be participating in the mediation; and

(C) Accurate contact information for the individual with authority to settle the case, including address, telephone number, and email address for receiving notices from the Court and Mediator.

(3) Court forms made available to landlords and tenants must include a simplified method for requesting mediation and providing required information to the court.

(e) If the landlord or tenant requests mediation of the summary eviction action, immediately upon the filing of the complaint by the landlord the court clerk will assign the matter to a mediator selected randomly or on a rotating

basis from a list of mediators approved and maintained by the court for that purpose, and will identify a date and time for the assigned mediator to conduct mediation of the matter.

(f) No hearing shall be held in the summary eviction action until either (1) thirty days after the filing of the complaint by the landlord or (2) the court receives notice from the selected mediator specifying the result of the mediation, whichever occurs sooner.

(g) Upon assigning a mediator, the court will serve a written order to the landlord, tenant, and assigned mediator that sets the date, time, location, and method of the mediation and subsequent summary eviction hearing. The order will provide the contact information of the mediator, landlord, and tenant and will require the landlord and tenant to contact the mediator immediately if the listed contact information has changed or another method of contact is preferred.

(h) At the mediation, the mediator shall meet with the landlord and tenant, and counsel if any, explain the mediation process and the mediator's role, and proceed with the process. The mediator shall discuss with the parties and counsel, if any, the facts and issues involved and assist the parties in identifying and resolving issues and exploring settlement alternatives and resources. The mediation will continue until a settlement is reached or the mediator determines that a settlement is not likely to be reached. If settlement is reached, the mediator will assist the parties in reducing their settlement agreement to writing, which writing shall be signed by both landlord and tenant.

(i) At least two judicial days prior to the scheduled court date, the mediator shall file with the court the result of the mediation, to include

whether either party failed to appear, whether or not a settlement was reached, and a copy of any written settlement agreement.

(j) At or before the scheduled summary eviction hearing, the court will review any report of the mediator of the result of the mediation.

(1) If the landlord fails to appear at mediation, the court may dismiss the complaint.

(2) If the tenant fails to appear at mediation, the court will proceed with the hearing on the summary eviction.

(3) If the parties entered into a written settlement agreement, the court will review the terms of the agreement and determine how the case should proceed.

(k) Statements and communications made during mediation are confidential, are not subject to discovery, are not admissible in a proceeding, and may not be disclosed to anyone other than the participants in the mediation unless all mediation participants agree in writing or a statute or court rule requires disclosure.

(l) Mediation shall be conducted at no cost to the landlord or tenant. Mediators shall be paid a fee established by the Access to Justice Commission and shall prepare an invoice outlining their services and submit such invoice to the Administrative Office of the Courts for payment.

(m) Notwithstanding the requirements of NRS 40.2545, the court shall gather and maintain statistical information sufficient to determine the number of summary eviction actions in which mediation was requested and whether requested by landlord or tenant, the number of actions submitted to mediation, the number of actions in which a settlement was reached, the number of actions in which no settlement was reached, and the number of evictions ultimately granted where no settlement was reached.

(Note: Per JCRCP 2, “summary eviction actions” are governed by Rule 101 forward. Rule 106 is now “reserved” and could possibly be used. Otherwise, unless the new provision is added to one of the existing rules (Rules 101 to 105, or 110), it would be added after somewhere after Rule 110.)

EXHIBIT B

ADOPTION OF RULE ____ OF THE JUSTICE COURT RULES OF CIVIL PROCEDURE

RULE _____. MEDIATION OF SUMMARY EVICTION ACTIONS

(a) This rule applies to summary eviction actions filed pursuant to NRS 40.253. The court may at its discretion refer summary eviction actions filed pursuant to NRS 40.254 to mediation under this rule.

(b) “Mediation” means a process in which a neutral third-party acts to encourage and facilitate the resolution of a dispute between the landlord and tenant. It is an informal and nonadversarial process with the objective of helping the landlord and tenant reach a mutually acceptable and voluntary agreement to avoid eviction if possible. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues and resources, exploring settlement alternatives and evaluating settlement proposals, and fostering communication and joint problem solving.

(c) The court shall provide on its website information concerning the availability of:

- (1) An existing mediation program;
- (2) Government-sponsored rental assistance programs;
- (3) An electronic option for the filing of the tenant’s affidavit; and
- (4) Civil legal aid programs, court self-help centers, or similar programs in the jurisdiction that may be able to assist the tenant with completing and filing a tenant’s affidavit.

(d)(1) A tenant may request mediation of a summary eviction action by stating that request in the affidavit filed by the tenant in the matter pursuant to NRS 40.253(3). Such request must include:

(A) A preferred method of mediation, i.e., whether in person or by telephone or video conference;

(B) The name of the tenant(s) who will be participating in the mediation;

(C) Accurate contact information for each tenant including telephone number and email address for receiving notices from the Court and Mediator;

(D) A statement describing how the tenant(s) is unable to fulfill rental obligations resulting from the COVID-19 pandemic. The requisite hardship is defined as: a significant loss of income, a significant increase in expenses for necessities, or the inability to work due directly or indirectly to the pandemic;

(E) A statement that the tenant(s) has attempted to engage the landlord in good faith to resolve the dispute and has not entered into a payment arrangement with the landlord;

(F) A statement as to whether the tenant(s) has previously applied for rental assistance from the Nevada Housing Division (housing.nv.gov);

(G) An indication as to whether the tenant(s) has previously requested mediation of a summary eviction action with the same landlord within the preceding 12 months and attach a copy of any written mediation agreement; and

(H) An indication as to whether the tenant(s) has entered into a repayment plan with the landlord for rental arrearages and attach a copy of any written repayment plan.

(2) A landlord may request mediation of a summary eviction action by stating that request in the complaint for eviction filed by the landlord in the matter pursuant to NRS 40.253(5). Regardless of whether the landlord requests mediation, the complaint for eviction must include:

(A) A preferred method of mediation, i.e., whether in person or by telephone or video conference;

(B) The name of the individual who has authority to settle the case and will be participating in the mediation; and

(C) Accurate contact information for the individual with authority to settle the case, including address, telephone number, and email address for receiving notices from the Court and Mediator.

(3) Court forms made available to landlords and tenants must include a simplified method for requesting mediation and providing required information to the court.

(e) If the landlord or tenant requests mediation of the summary eviction action, immediately upon the filing of the complaint by the landlord the court clerk will assign the matter to a mediator selected randomly or on a rotating basis from a list of mediators approved and maintained by the court for that purpose, and will identify a date and time for the assigned mediator to conduct mediation of the matter.

(f) A tenant is not entitled to mediation of the case if the tenant has previously:

(1) Entered into a written payment arrangement or lease addendum negotiated in good faith with the landlord for rental arrearages;

(2) Requested mediation with the same landlord in a summary eviction action within the preceding 15 months; or

(3) Applied for rental assistance, whether that application was approved or denied.

(g) No hearing shall be held in the summary eviction action until either (1) thirty days after the filing of the complaint by the landlord or (2) the court receives notice from the selected mediator specifying the result of the mediation, whichever occurs sooner.

(h) Upon assigning a mediator, the court will serve a written order to the landlord, tenant, and assigned mediator that sets the date, time, location, and method of the mediation and subsequent summary eviction hearing. The order will provide the contact information of the mediator and, landlord, and tenant and will require the landlord and tenant to contact the mediator immediately if the listed contact information has changed or another method of contact is preferred.

(i) Opposition to Mediation. Upon service of the mediation order, a landlord has five days to file an affidavit contesting the mediation citing reasons enumerated in subsection (e) of this rule or some other extenuating circumstance for the court's consideration in determining whether mediation is appropriate.

(j) At the mediation, the mediator shall meet with the landlord and tenant, and counsel if any, explain the mediation process and the mediator's role, and proceed with the process. The mediator shall discuss with the parties and counsel, if any, the facts and issues involved and assist the parties in identifying and resolving issues and exploring settlement alternatives and resources. The mediation will continue until a settlement is reached or the mediator determines that a settlement is not likely to be reached. If settlement

is reached, the mediator will assist the parties in reducing their settlement agreement to writing, which writing shall be signed by both landlord and tenant. Any settlement agreement resulting in a payment plan for rental arrearages should use the Lease Addendum/Promissory Note form developed by the Nevada Attorney General's Office whenever possible.

(k) At least two judicial days prior to the scheduled court date, the mediator shall file with the court the result of the mediation, to include whether either party failed to appear, whether or not a settlement was reached, and a copy of any written settlement agreement.

(l) At or before the scheduled summary eviction hearing, the court will review any report of the mediator of the result of the mediation.

(1) If the landlord fails to appear at mediation, the court may dismiss the complaint.

(2) If the tenant fails to appear at mediation, the court will proceed with the hearing on the summary eviction.

(3) If the parties entered into a written settlement agreement, the court will review the terms of the agreement and determine how the case should proceed.

(m) The court must summarily reject any motion to set aside or to stay an eviction order without consideration of its merits under the following circumstances:

(1) The tenant entered into a written mediation agreement that was negotiated in good faith with the landlord, the terms of which required the tenant to vacate the premises by a specific date and time, and the tenant failed to comply with the agreement;

(2) The tenant entered into a written mediation agreement that was negotiated in good faith with the landlord, the terms of which required the

tenant to make a specific payment by a specific date and time, and the tenant failed to comply with the agreement; or

(3) The tenant requested mediation and subsequently failed to appear at the mediation.

(n) Statements and communications made during mediation are confidential, are not subject to discovery, are not admissible in a proceeding, and may not be disclosed to anyone other than the participants in the mediation unless all mediation participants agree in writing or a statute or court rule requires disclosure.

(o) Mediation shall be conducted at no cost to the landlord or tenant. Mediators shall be paid a fee established by the Access to Justice Commission and shall prepare an invoice outlining their services and submit such invoice to the Administrative Office of the Courts for payment.

(p) Notwithstanding the requirements of NRS 40.2545, the court shall gather and maintain statistical information sufficient to determine the number of summary eviction actions in which mediation was requested and whether requested by landlord or tenant, the number of actions submitted to mediation, the number of actions in which a settlement was reached, the number of actions in which no settlement was reached, and the number of evictions ultimately granted where no settlement was reached.

(q) This rule is created for the purpose of allowing courts to handle a potential increased caseload as a result of the Governor's 2020 Emergency Directives 008 and 025 imposing and lifting, respectively, a moratorium on summary eviction actions and to assist and encourage landlords and tenants to resolve summary evictions actions through available CARES Act rental assistance programs. This rule will be in effect for sixty (60) days after the

pandemic is declared over by the lifting of the Governor's 2020 Emergency Directive 008 and will automatically sunset thereafter.

(r) If a justice court determines there is an ongoing need for a summary eviction mediation program, the chief judge of that court may, by administrative order, locally establish such a program by extending this rule and petitioning the Supreme Court for approval of any local procedural rules that are not in conflict with this rule. The chief judge of that court may thereafter terminate such a mediation program when it appears to the court that it is no longer needed.

EXHIBIT C

AMENDMENT OF RULE 101 OF THE JUSTICE COURT RULES OF CIVIL PROCEDURE

RULE 101. NOTICE REQUIREMENTS

(a) Notices required for summary eviction under NRS 40.253 and NRS 40.254 must be specific when alleging any ground for the existence of an unlawful detainer.

(b) *In addition to the requirements of NRS 40.253(3), a notice served pursuant to subsection 1 or 2 of NRS 40.253 must:*

(1) Advise the tenant of the availability of:

(A) An existing mediation program;

(B) Government-sponsored rental assistance programs;

(C) An electronic option for the filing of the tenant's affidavit;

and

(D) Civil legal aid programs, court self-help centers, or similar programs in the jurisdiction that may be able to assist the tenant with completing and filing a tenant's affidavit.

(2) A landlord may comply with the notice requirements of paragraph b(1) of this rule by including in the notice in bold type the following: "Tenants are advised that the [_____] Justice Court has information on its website concerning the availability of mediation, government sponsored rental assistance, electronic filing for the tenant affidavit, and legal aid and self-help centers to assist the tenant. A tenant may access this information at [here insert link]."

(c) In addition to the requirements of NRS 40.254(1)(c), a notice served pursuant to subsection 1 of NRS 40.254 must advise the tenant of the availability of any electronic option for the filing of the tenant's affidavit.