Washoe Legal Services

September 10, 2020

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701
Submitted via email: nvscclerk@nvcourts.nv.gov

Re: ADKT 0567 - Comments in Response to Proposed Rulemaking Relating to Mediation of Summary Residential Evictions

To whom it may concern:

I am submitting comments in response to the Supreme Court's Petition to adopt rules concerning the creation of a mediation program for summary residential evictions. **I strongly oppose adoption of the rules set forth in Exhibit B of the Court's August 31, 2020 Petition and strongly support adoption of the rules set forth in Exhibit A of that Petition.**

I am the Supervising Attorney for Washoe Legal Service's (WLS) Housing and Consumer Department. WLS is a non-profit legal aid agency that provides free legal assistance to some of Washoe County's most vulnerable populations. Our attorneys spend a significant amount of time defending indigent individuals in summary eviction proceedings and know first-hand the devastating effects that evictions can have on families and communities. As the current corona virus health crisis has financially impacted millions of citizens, evictions are expected to increase dramatically. For this reason, our legislature enacted SB1 to help tenants, landlords, and the courts deal with the looming eviction crisis. It is crucially important that a **comprehensive and effective** mediation program is established to help prevent the mass displacement of families. However, only of the proposed rules, the one in Exhibit A, is capable of achieving this goal.

Exhibit A proposes a mediation program that is simple and efficient. First, it allows **any** tenant who has been served with a non-payment of rent eviction to request mediation. In contrast, Exhibit B prevents **six** categories of tenants from participating in mediation:

- Any tenant who has applied for rental assistance (Section (f)(3));
- Any tenant who has previously participated in mediation (Section (f)(2));
- Any tenant who has previously entered into a repayment agreement (Section (f)(1));
- Any tenant who cannot explain how COVID-19 has impacted their finances (Section (d)(1)(D));

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299 South Arlington Avenue, Reno, NV 89501 Telephone: (775) 329-2727

- Any tenant who has not attempted to "engage" the landlord in a "good faith" attempt to resolve the dispute (Section (d)(1)(E)); and
- Any tenant who the court finds is ineligible for mediation pursuant to a landlord's filing of an objection to mediation based on any of the foregoing reasons or "other extenuating circumstances" (Section (i)).

As this list reveals, the numerous exceptions to eligibility gut the program and seem designed to ensure that as few tenants as possible actually make it to the mediator's table. Section (f)(3) of Exhibit B is the most concerning: if applying for rental assistance disqualifies a tenant from mediation, the tenant will be faced with two losing options: 1) apply for rental assistance, which often does not cover all rental arrearages and can still leave him/her vulnerable to eviction; or 2) forego rental assistance to qualify for mediation and attend a mediation in which he/she has no real bargaining power without financial assistance. Moreover, rental assistance programs are well underway in our state and many suffering tenants have already applied for assistance.

Second, Exhibit A is efficient as it reduces work for the courts. Because any tenant or landlord requesting a mediation is entitled to it, court personnel simply assign cases to a mediator (Section (e)). Exhibit B necessarily requires a court to make an initial determination that each affidavit filed does not fall into one the excluded categories before the case can proceed to mediation. Presumably, this task would fall to court clerks who would be responsible for reviewing affidavits and determining whether an affidavit complies with mediation eligibility requirements. Not only would this inquiry be incredibly time-consuming, but it would also create due process and access to justice issues. For example, tenants without legal counsel or those who simply don't understand the extensive and complicated eligibility criteria may incorrectly exclude themselves from mediation. Of course, that isn't the only inefficiency built into Exhibit B's rules. Since Exhibit B allows landlords to file an objection based on "extenuating circumstances," even when a tenant meets eligibility criteria and files a conforming affidavit, the result is that every affidavit will be subject to two levels of review and scrutiny before a mediation can be scheduled. This is contrary to the purpose of creating a mediation program to help alleviate the burden on courts from a wave of eviction filings. Exhibit B creates excess work for clerks, confusion for tenants and additional hearings for Judges. Further burdening our courts in this fashion will ultimately reduce access to justice for both tenants and landlords.

In conclusion, it has been proven that evictions have a destabilizing effect on families and communities. Exhibit A creates a simple, fair and effective mediation program that will reduce evictions while creating minimal burdens on the courts. Only by implementing Exhibit A's mediation program can we ensure that the looming eviction crisis doesn't cause irreparable harm.

Sincerely,
Rita Greggio
Washoe Legal Services