

From: Conway, James <JConway@washoecounty.us>
 Sent: Monday, October 5, 2020 10:57 AM
 To: Supreme Court Clerk
 Subject: Public Comment on ADKT 0567

FILED

OCT 05 2020

 ELI...
 CLERK OF SUPREME COURT
 BY *[Signature]*
 DEPUTY CLERK

Dear Ms. Brown:

I am the Court Administrator/Clerk of Court for Reno Justice Court and a member of the State Bar of Nevada (NV Bar No. 11365). I respectfully submit the following comments regarding ADKT 0567 and, specifically, the proposed Summary Eviction Mediation Rules attached as Exhibit A to the Administrative Order entered on September 29, 2020. I am not in a position to offer a comment as to whether, as a matter of public policy, this or any other state-wide mediation program should be created, and I therefore wish to remain neutral on that overall policy issue. However, should a program be created under the rules set forth in Exhibit A, I would like to note the following:

1. Exhibit A, Section 1 states that a "justice court may in its discretion refer summary eviction actions... to mediation under this rule." However, Section 6 provides that when either party requests mediation, "immediately upon the filing of the complaint by the landlord the court will serve a written order" referring the case to mediation. Section 1 implies that assigning cases to mediation is discretionary, but Section 6 seems to imply that it is mandatory. This apparent conflict could create confusion and inconsistent application across the state, and I suggest editing the rule to resolve any ambiguities as to whether this is a mandatory or discretionary program.
2. Section 8 provides that statements made during mediation "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..." (emphasis added). The emphasized portion of Section 8 seems to be a drastic expansion of the mediation privilege in Nevada. Although statements made during mediation are indeed inadmissible and protected from discovery under NRS 48.105 and NRS 48.109, I am unaware of any legal authority that would entirely prohibit any and all third party-disclosures whatsoever. Although a non-disclosure agreement is typically contained in an agreement to mediate, such agreements are generally freely and voluntarily entered into by the parties. However, an expansive restraint on free speech that is mandated by court rule in an apparently involuntary, court-ordered program is potentially invalid and unenforceable under the First Amendment to the U.S. Constitution. The confidentiality provision emphasized above may, therefore, create more problems than it solves, and the Court should consider deleting it.
3. Section 5(a)(5) requires a tenant to state whether he or she "has previously applied for rental assistance through housing.nv.gov..." My understanding of the housing.nv.gov website is that individuals do not necessarily submit applications through the site. Rather, the site simply directs tenants to the appropriate rental assistance agency (Reno Housing Authority, the Rural Housing Authority, etc.) in a tenant's specific geographic area. Thereafter, the tenant submits an application directly to that entity not to housing.nv.gov. Moreover, some tenants may never go to housing.nv.gov at all and, instead, may simply contact the appropriate entity directly. Thus, the reference to housing.nv.gov may create unnecessary confusion and lead to inaccurate information. Therefore, I suggest deleting the reference to housing.nv.gov and requiring tenants to disclose whether they have applied for rental assistance, the entity (or entities) to which an application was made, and the status of any such application(s).
4. The remainder of my comments are solely issues that appear to be typos and/or errors in grammar, formatting or syntax, and I offer the following edits:
 - a. Section 2(a): "The role of the mediator includes.... helping the parties to identify issues and resources, ~~explore~~ **exploring** settlement options, and ~~evaluate~~ **evaluating** proposals, and fostering..."
 - b. Section 3(c): "An electronic option for ~~the filing of the~~ a tenant's affidavit..."
 - c. Section 4(a)(3): "An electronic option for ~~the filing of the~~ a tenant's affidavit;"

- d. Section 5(a)(1): "A preferred method of mediation, i.e., whether in person, or by telephone or ~~video-teleconferencing~~ **video conference**;" See Section 5(b)(1) for the sake of consistency.

Thank you for considering my comments and please feel free to contact me at the number below if you have any questions.

Kind regards,



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