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

May 27, 2021

Via E-Mail

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

Re: In the Matter of Residential Summary Eviction Actions and Notices During COVID-19: ADKT 0567

Dear Ms. Brown and Honorable Justices of the Nevada Supreme Court:

Legal Aid Center of Southern Nevada provides the following comments in relation to the Court's review of the Temporary Residential Summary Eviction Mediation Rules.

As an initial matter, we thank the Court for its proactive and forward-looking leadership in developing and implementing the Residential Eviction Mediation Program. The program has benefited both landlords and tenants during this unprecedented and difficult time. It has allowed parties to develop creative solutions and alternatives to eviction while the state and federal eviction moratoriums have been in place, and it will be critical to a just and orderly return to normality as those protections lift. From firsthand experience, our attorneys and clients can attest to the value of the face-to-face interaction and the involvement of a skilled mediator that the program provides.

As of this writing, Assembly Bill 486, as amended, is working its way through the Nevada Legislature. Governor Sisolak has expressed his support for the bill; therefore, the bill is likely to be signed into law with an immediate effective date if it passes. As such, our comments with respect to the mediation rules are made in light of AB 486, its probable enactment, and its various provisions that could impact the mediation program.

Currently, Rule 1 of the mediation rules contemplates that summary eviction actions for nonpayment of rent will be mediated (if requested by the landlord or tenant) and that eviction actions for reasons other than nonpayment can be referred to mediation at the judge's discretion. Section 4 of AB 486, as amended, would expand the case types assigned to mediation to include all nonpayment evictions, both summary and formal unlawful detainer civil actions, as well as all summary evictions (under both NRS 40.253 and 40.254) where the tenant is in default in rent, excluding nuisance violations or sale of property. AB 486, as amended, does not contemplate mediation of formal unlawful detainer civil actions for reasons other than nonpayment of rent, commercial evictions, or removal of squatters. As such, should AB 486 become law, we respectfully request that the Court expand the scope of mediated case types under Rule 1 so as to avoid confusion or the necessity of duplicative programs.

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Rule 4(a) of the mediation rules requires that the landlord inform the tenant of the availability of mediation, rental assistance programs, and electronic filing options when the landlord serves the tenant with an eviction notice. Section 5 of AB 486, as amended, similarly would require the landlord to inform the tenant of the availability of rental assistance and mediation. It also would require the landlord to inform the tenant of the procedures contained in sections 2 to 4 of the bill, which address the tenant's ability to assert a pending rental assistance application as a defense to eviction to obtain a stay, as well as potential claims against landlords who proceed with eviction despite accepting rental assistance. Although Rule 4 and AB 486 would not necessarily be in conflict with respect to required disclosures, revising Rule 4 to include the additional disclosures contemplated by AB 486 might provide clarity and consistency for landlords and help ensure uniformity of information distributed to tenants.

Rule 5(a), 5(b), and Rule 6 of the mediation rules contemplate the availability of mediation when the landlord or tenant specifically requests mediation in the tenant answer or landlord complaint filed with the court. Under AB 486, as amended, there would be no requirement that the parties request mediation. Rather, certain evictions (including all summary evictions where rent is delinquent) would be stayed automatically and referred to mediation, obviating the need for a specific request from the parties. Removing that procedural requirement from Rules 5 and 6 would harmonize those rules with AB 486 should it pass.

Finally, Rule 11 of the mediation rules contemplates that the rules will remain in effect until the earlier of the exhaustion of funding or June 30, 2021. Section 9 of AB 486, as amended, states that its provisions expire on June 5, 2023. If AB 486 is enacted, we suggest that Rule 11 be revised to similarly sunset on June 5, 2023 or when funding is exhausted.

Again, we thank you for your creative and thoughtful leadership on this issue.

LEGAL AID CENTER OF SOUTHERN NEVADA

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