

IN THE SUPREME COURT OF THE STATE OF NEVADA

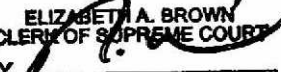
IN THE MATTER OF THE AMENDMENT OF  
THE RULES GOVERNING ALTERNATIVE  
DISPUTE RESOLUTION, THE NEVADA  
ARBITRATION RULES, THE NEVADA  
MEDIATION RULES, AND THE NEVADA  
SHORT TRIAL RULES.

ADKT No. 592

Consolidated with ADKT No. 575

FILED

MAR 23 2022

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

This response addresses the Eighth Judicial District's ("EJDC") position on ADKT 575 (consolidated herewith) filed by the Board of Governors of the State Bar of Nevada ("Board"), as well as the December 8, 2021 letter from the Nevada Justice Association ("NJA") filed with this Court January 25, 2022. The three proposals represent valid objectives but sometimes-divergent views regarding the ADR Governing Rules.

The EJDC recognizes that the three proposals do not represent the voices of all shareholders, however. The needs of other judicial districts, other constituent sectors of the bar, arbitrators, short trial judges, etc. should also be considered.

The Board, NJA, and certain judicial officers for the Second Judicial District Court ("SJDC") and EJDC have been in discussions for months prior to any of these filings regarding these issues. On August 5, 2021, EJDC Discovery Commissioners Erin Lee Truman and Jay Young urged the Board to ask this Court to form a Rules Committee by their letter of the same date attached hereto as Exhibit 1. That letter further explained why some of the proposals then by the Board and now proposed by the NJA were impractical as conceived.

On August 9, 2021, SJDC Judges Tammy Riggs and Connie J. Steinheimer expressed their concerns regarding some of the proposals by the Board and NJA by their letter of the same date attached hereto as Exhibit 2.

The divergent views represented by the proposals currently before the Court illustrate

22-09094

why the Rules Committee of the Eighth Judicial District Court (“Committee”) requested that this Court appoint a Nevada ADR and Short Trial Rules Committee (“Rules Committee”) to “seek input from all shareholders and to propose a unified single ADKT for consideration before approving any amendments to the ADR Governing Rules.” ADKT 592 at 5. The NJA apparently agrees with this proposal.<sup>1</sup>

The EJDC finds value in the proposal made by the Board and is largely in agreement with those proposals – as far as they go. The scope proposed by the EJDC is clearly more comprehensive than that of the Board. The EJDC also finds value in the NJA proposal and is in agreement with several of its proposals; with others, the EJDC has concerns. Likewise, it is anticipated that other district courts – and likely different constituent parts of the bar – may have concerns regarding the proposals made by the EJDC. The Committee hopes that through dialogue, all can come to an understanding and compromise in a way that considers all shareholders’ views and benefits all shareholders.

Respectfully submitted,

Dated this 21st day of March, 2022



~~AAA-AAG-1419-788F~~  
Linda Marie Bell  
District Court Judge

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<sup>1</sup> At the Eighth Judicial District Court’s February 8, 2022 Bench Bar Meeting, Reno attorney and NJA representative Robert Jensen agreed with Discovery Commissioner Jay Young’s suggestion that a state-wide Rules Committee should be formed.

## EXHIBIT 1



## **EIGHTH JUDICIAL DISTRICT COURT**

200 LEWIS AVENUE #2111  
LAS VEGAS, NEVADA 89155  
ADR: (702) 671-4493 • DISCOVERY: (702) 671-4486 • FAX: (702) 671-4484

**ERIN LEE TRUMAN**  
ADR/DISCOVERY COMMISSIONER

**JAY YOUNG**  
ADR/DISCOVERY COMMISSIONER

August 5, 2021

Board of Governors  
State Bar of Nevada  
3100 West Charleston Blvd., Suite 100  
Las Vegas, NV 89102

RE: Proposed Amendments to Arbitration, Mediation, and Short Trial Rules

Board Members:

We write in response to your invitation to comment on your proposed amendments to arbitration, mediation, and short trial rules. Although we have reviewed the proposal in our official capacity, we are writing in our individual capacities and not as representatives of the court. As some of you know, we have drafted our own proposed changes to these rules; although the Eighth Judicial District Court ("EJDC") has seen the proposed amendments, the EJDC has not yet approved the proposal and we are therefore not at liberty to share the same with you now.

We share your interest in improving these programs and therefore welcome proposals to revise the rules. As we have stated to many of you both publicly and privately, we urge the Board to refrain from proposing its current rule changes. We believe asking the Supreme Court to consider the formation of a Commission to Study the Rules Governing Alternative Dispute Resolution and the Nevada Short Trial Rules ("NSTR") is the most prudent course. We agree it is time to review all the rules dealing with ADR and short trial in Nevada and comprehensively rewrite them to ensure greater and more efficient use of the programs. While we agree with some of your proposals, others are unworkable even in our most populous counties and unthinkable in the rural counties. Further, the scope of your proposed changes is very narrow compared to the overall need for updated rules.

Let's start with our agreement. We agree that it is time to amend the rules, including: 1) increasing pay for neutrals (although we may disagree about the amount and caps); 2) increasing the amount of attorney fee awards allowed; 3) making more clear that offers of judgment apply in arbitration; 4) requiring new short trial judges to have jury trial experience as a prerequisite to appointment; and 5) amending the timeframe for short trials to allow counsel to use as much of their time as they like for voir dire.

Judge Riggs from the Second Judicial District Court ("SJDC") admirably articulated concerns that we share at the recent roundtable event. As she pointed out, some of the proposed rules seem ignorant of their impact on the courts. Of course, the courts were neither consulted nor part of your deliberative process when you drafted your proposals. Those concerns are discussed below.



The Board's proposed amendment of NSTR 3 – making the assigned district court judge the presumptive presiding judge for short trials – has been rejected by every judge with whom we have spoken. This change would effectively eliminate the program. The proposal turns the program from one where civil cases are removed from the district court's docket and resolved expeditiously, to one where matters will now be added to their crowded dockets.

The Board's proposed amendment to NSTR 20 makes it mandatory that the court provide an audio recording of the trial at no charge to the parties. It also requires that parties receive a transcript at no charge. At first blush, this rule may appear feasible in the EJDC where we have the JAVS system. However, even in the EJDC this proposal is unworkable. This proposal would require IT support and the presence of at least a court recorder for every trial. It is our concern that the EJDC does not have the personnel capacity to comply with this proposal.

Washoe County is our second most populated county, yet even the SJDC has no audio recording equipment. The SJDC made clear at our recent roundtable event that this proposed amendment is cost prohibitive and that it could not comply even if the amendment were adopted. We are unaware of any rural county that has official recording of proceedings. This proposal is too taxing on the court's resources in Clark County and it is impossible in others.

The Board's proposed amendment to NSTR 21 requiring two days to hold each short trial is also unworkable. As commissioners, we are already stretched to our limits to find available courtrooms for one judicial day for the short trials. Finding a courtroom or multiple courtrooms for two judicial days is logistically unworkable.

As mentioned above, we propose that the Board ask for a commission to study this matter and to gather input from all judicial districts within the state, as well as all interested stakeholders. We also believe the commission should consider making the following categories of changes to the rules:

1. Amending the Rules Governing Alternative Dispute Resolution and the Nevada Short Trial Rules ("NSTR") to make timing for deadlines consistent with the 2019 Nevada Rules of Civil Procedure ("NRCP"). Whereas the NRCP calculates time in increments of 7 days, the NAR, NMR, and NSTR currently adhere to the pre-2019 NRCP increments of 5, 10, 20, and 30 days.
2. The organizational numbering protocol between the NRCP, NAR, NMR, and NSTR are inconsistent. NSTR's numbering is consistent with the NRCP, but the Rules Governing Alternative Dispute Resolution are inconsistent with the NRCP. The Rules Governing Alternative Dispute Resolution should be amended to be consistent with the NRCP.
3. NAR 3 is entitled "Matters subject to arbitration", but much of the rule deals with exemptions from arbitration, which more naturally belongs in NAR 5, which is entitled "Exemptions from arbitration". We propose that all exemptions be moved to NAR 5.
4. NAR 4 should be amended to make clear which motions must be heard by the assigned arbitrator as opposed to the district court. As written, the rule is apparently confusing, as counsel frequently file motions with the district court that should be heard by the arbitrator.
5. NAR 5 should be amended to include all matters that are exempt from arbitration. That list should be augmented to include business court actions and construction defect actions. Further, the rule should be clarified. Apparently, the rule is confusing counsel, who mistakenly believe they are entitled to automatic exemption by merely claiming in the caption of their complaint that the matter in controversy exceeds \$50,000. Therefore, we believe the Rule should be clarified to clearly state that automatic exemptions may be claimed in the complaint, but permissive exemptions must be decided upon a request for exemption.



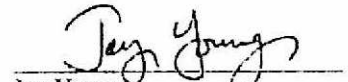
6. The commission should consider changes to NAR 5's amount in controversy. Some rural counties are said to have adopted their own rules with different amounts in controversy from the NAR. The rules may need to account for the difference in the reality of the types of cases heard by various jurisdictions.
7. NAR 7 should be amended to require arbitrators to complete 3 hours of CLE training in arbitration biennially. Further, the rule should be amended to make clearer that arbitrators are subject to the Nevada Code of Judicial Conduct and must disclose facts likely to affect the impartiality of the arbitrator, including those required by NRS 28.227. Further, the Rule should clarify that an arbitrator must recuse himself/herself for any reason that would disqualify a judge under the Canons, Rule 2.1 or NRS 38.226(2).
8. NAR 10 should be amended to clearly restate the Nevada Code of Judicial Conduct's standard regarding ex parte communications, rather than the less clear standard in the current rule.
9. NAR 11 should be amended to make clear that discovery in arbitration must be consistent with NRCP 26's proportionality standard. It should further clarify that all discovery disputes must be heard by the arbitrator, as some counsel are still filing discovery matters to be heard by the discovery commissioners.
10. NAR 12 should be amended to make clear that any request to extend the time to hold an arbitration beyond one year from the arbitrator's appointment must be heard by the district court.
11. NAR 14 should be amended to make clear that an arbitration may be held by video conference if necessary.
12. NAR Rules 16 and 19 should be amended to make clear the difference between an award, a decision, and an order on application for attorney fees and costs. This is an issue that vexes litigants and arbitrators constantly, requiring a rule change.
13. NAR 20 contains portions that more appropriately belong in the NSTR. Those portions should be moved to the NSTR.
14. NAR 22 should be amended to make clear that an arbitrator who finds a party fails to participate in the arbitration in good faith must make specific findings of fact supporting that conclusion. The rule should establish baseline standards against which behavior may be judged.
15. NAR 23 should be amended to make clearer that a party may not seek an arbitrator's fees or costs from the other party as part of a cost award. This amendment is necessary, as many parties frequently claim an arbitrator's fees as part of their request for a cost award.
16. NAR 24 should be amended to increase compensation for arbitrators. NAR 24 should be amended to allow an arbitrator to claim pro bono service hours for any uncompensated time.
17. The NAR should be amended to explicitly grant arbitrators the immunity provided in NRS 38.229 and 38.253.
18. NMR and NAR should be amended to explicitly grant mediators and arbitrators the immunity provided in NRS 38.229 and 38.253.
19. NSTR 3 should be amended to require short trial judges ("STJ") to have at least 10 years of civil trial experience, including participating in at least 2 jury trials. Further, Rule 3 should be amended to require STJ to complete 3 hours of CLE short trial training biennially.
20. NSTR 7 should be amended to make clearer that the STJ must hear and decide all motions as though the STJ were the district court.
21. NSTR Rules 17 and 18 should be amended to clarify how evidentiary objections to exhibits are to be handled by the STJ.
22. NSTR 19 should be amended to allow a party to recover expert witness fees consistent with NRS 18.005, whereas the parties are presently capped at \$500 per expert witness.
23. NSTR 23 should be amended to allow a party to spend as much of their presentation time on voir dire as they desire. Presently, a party is only allowed 15 minutes to conduct voir dire.

24. NSTR 27 should be changed to remove the limit on attorney fee awards. Awards should be limited only by the authority contained in a controlling contract, statute, or rule.
25. NSTR 28 should be amended to increase compensation for STJ. It should further be amended to allow a STJ to claim pro bono service hours for any uncompensated time.

This list is not exhaustive, but illustrates the need to comprehensively review all the ADR and short trial rules to improve the programs for the bench, bar, and community. We would welcome the opportunity to discuss the needs addressed in this letter.

Sincerely,

  
Erin Lee Truman  
ADR/Discovery Commissioner

  
Jay Young  
ADR/Discovery Commissioner

cc: Chief Justice James W. Hardesty  
Justice Elissa F. Cadish  
Justice Douglas Herndon  
Justice Ron D. Parraguirre  
Justice Kristina Pickering  
Justice Abbi Silver  
Justice Lidia S. Stiglich  
EJDC Chief Judge Linda M. Bell  
EJDC Presiding Civil Judge Nancy L. Allf  
SJDC Judge Connie Steinheimer  
SJDC Judge Tammy Riggs

## EXHIBIT 2





Second Judicial District Court  
Washoe County, State of Nevada  
75 Court St.  
Reno, NV 89501

August 9, 2021

**Via Regular Mail and Email**

Ann Morgan, Esq., President  
State Bar of Nevada  
3100 West Charleston Blvd., Suite 100  
Las Vegas, NV 89102

Re: Proposed Amendments to Arbitration, Mediation, and Short Trial Rules

Dear Ms. Morgan:

Congratulations on your recent election to the presidency of the State Bar of Nevada. We hope this letter finds you well.

Pursuant to the State Bar's request for comments regarding the Bar's draft proposed amendments to the Nevada Short Trial Rules and Nevada Arbitration Rules, please accept this letter as an expression of concern by the judges of the Second Judicial District Court regarding several of these proposed rules changes. Our concerns regarding the proposed amendments are addressed in numerical order below.

**Short Trial Rules (STR) Rule 3(a):** The State Bar's proposed amendment provides that a sitting district judge "shall" be assigned as the default option for a short trial, with a pro tempore short trial judge presiding only upon stipulation of the parties. Our bench opposes this amendment for many reasons, not the least of which is that we believe that requiring a district judge to sit in a short trial defeats the purpose of Nevada's Short Trial program, which was intended to provide quick and relatively inexpensive options for litigants in lower-value cases and provide efficiencies for district court caseloads; requiring the short trial program to assign cases to district judges will achieve none of those goals.

As you are aware, the Second Judicial District Court bench is a busy one, with each judge carrying, in addition to a full civil and criminal caseload, a portfolio of several court-wide (and some state-wide) administrative tasks. Currently, our court's business emphasis is to provide constitutionally timely jury trials to civil and criminal litigants who are entitled to one, which, especially during the current COVID crisis, consumes much of our court's time, physical space, and human resources. We expect to be clearing the civil and criminal backlogs well into 2023. If our judges were required to hear short trials, those trials would necessarily be given lower priority to our existing dockets and tasks, which would delay those trials well past the timeframes during which they must be heard which would, again, defeat the time and cost saving purposes of the program.

**STR Rule 20:** The State Bar's proposed amendment would require that all short trials "shall" be recorded by the court "at no charge to the parties." If approved, the Second Judicial District Court would be unable to comply with this rule change. None of the general jurisdiction courtrooms in our district have recording systems, and our court has no plan to install any. The rule change would also shift a litigation cost typically borne by the litigants to the court/taxpayers in an unfunded mandate. In addition, court staff would be required to operate the

Ann Morgan, Esq., President  
August 9, 2021  
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recording system, which would add a personnel and cost burden upon the court that does not exist under the current short trial program.

STR Rule 21: The State Bar's proposed amendment would change the time frame for short trials from one to two days. Our judges believe, as do the local short trial judges and attorneys with whom we have consulted, that this is an unnecessary change, as the short trial litigants and judges in our jurisdiction have not typically had difficulty completing their trials in one day. Adding a second day would also increase the court resources that must be dedicated to the trials, as well as costs to the litigants.

STR Rule 27(b)(4): The State Bar's proposed amendment would cap expert witness fees at \$500.00. In consultation with our short trial judges and attorney, we believe that this cap is too low under modern market conditions.

STR Rule 34: The State Bar's proposed amendment would require the court to designate a person to take control of the jury during sequestration following the presentation of evidence at trial. The prospect of judges assigning untrained civilians, rather than bailiffs, to take control of juries presents many issues, including one of statutory authority (see, NRS 3.310).

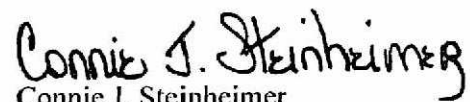
Nevada Arbitration Rules (NAR) Rule 16(e): Our bench, as well as the arbitration judges and attorneys we have consulted, are in favor of the State Bar of Nevada's proposed amendment to increase the attorney's fees limit to \$10,000, to reflect current market conditions (although some of our local bar members favor a lower increase).

NAR Rule 24: Our bench and local bar are in favor of the State Bar's proposed amendment to increase the limits on arbitrator fees.

If you have any questions or concerns regarding these comments, please feel free to contact Judge Tammy M. Riggs at [judge.riggs@washoecourts.us](mailto:judge.riggs@washoecourts.us) or by phone at (775)335-5900, or Judge Connie Steinheimer at [judge.steinheimer@washoecourts.us](mailto:judge.steinheimer@washoecourts.us) or by phone at (775) 771-7512. Thank you for considering our comments.

Sincerely,

  
Tammy Riggs  
District Judge  
ADR Commissioner

  
Connie J. Steinheimer  
District Judge  
Short Trial Program Commissioner

cc: Eric Dobberstein  
Chief Justice James W. Hardesty  
Justice Elissa F. Cadish  
Justice Douglas Herndon  
Justice Ron D. Parraguirre  
Justice Kristina Pickering  
Justice Abbi Silver  
Justice Lidia Stiglich  
EJDC Chief Judge Linda M. Bell  
EJDC Presiding Civil Judge Nancy L. Allf  
Board of Governors, State Bar of Nevada