

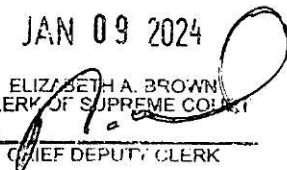
January 5, 2024

Via E-Mail: nvsclerk@nvcourts.nv.gov

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

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

Re: *ADKT No. 607*
In the Matter of the Nevada Justice Court Rules of Civil Procedure

To the Honorable Justices of the Nevada Supreme Court and Ms. Brown,

In 2023 there were over 80,000 summary eviction dispositions in Nevada. (*Annual Report of the Nevada Judiciary Fiscal Year 2023*, Appendix Table B6-2). There is one Legal Services attorney for every 4,800 Nevadans below the poverty line. (2017-2018 Nevada Statewide Study of Legal Needs and Economic Impact). The vast majority of tenants facing summary eviction are unrepresented.

Proposed Rule 110 requires tenants to file a motion to stay a summary eviction with their initial answer (affidavit) to the notice of summary eviction. However, it does not make sense for tenants to request a stay with the answer because, at the inception of the case, there is no order to be stayed. Moreover, among other issues, Proposed Rule 110 violates tenants' due process rights.

The Nevada Coalition of Legal Service Providers (the Coalition) therefore requests an amendment to proposed Rule 110, Motion to Stay Enforcement of a Summary Eviction Order, as contemplated in the Filed Amended Petition (Document 23-33053). The Coalition is comprised of Legal Aid Center of Southern Nevada, Northern Nevada Legal Aid, Nevada Legal Services, Volunteer Attorneys for Rural Nevadans, and Southern Nevada Senior Law Program. The Coalition objects to Proposed Rule 110 for the following reasons.

First, Proposed Rule 110 violates the due process rights of tenants. Currently, under NRS 70.010 and JCRCP 103, a stay is requested or *sua sponte* granted by the judge *AFTER* a judgment or eviction order has been rendered. *See* NRS 70.010 ("The court, or any justice thereof, may stay the execution of any judgment, including any judgment in a case of forcible or unlawful detainer, for a period not exceeding 10 days."); JCRCP 103 ("In any case in which the justice determines that a notice to the tenant has not or may not have been served as required, although the court may not have been informed of this fact until after the signing of a summary eviction order, the court may stall all proceedings until a hearing has been held.").

Second, Proposed Rule 110 violates the Nevada Constitution. Article 4, section 21 of the Nevada Constitution provides that "all laws shall be general and of uniform operation throughout the State." In *Lippis v. Peters*, 112 Nev. 1008, 921 P.2d 1248 (1996), the Nevada Supreme Court held JCRCP 106 unconstitutional for two distinct reasons, one of which is relevant to Proposed Rule 110. *Lippis* was an appeal by two justice courts from a district court judgment. In *Lippis*, JCRCP 106 denied

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the right of appeal from justices' courts to district courts to tenants subject to summary eviction. The Court held that treating summary eviction litigants differently than all other litigants in justice court violated article 4, section 21 of the Nevada Constitution. If the Court adopted Rule 110, then tenants in summary eviction cases would be required to act on an order that has not been entered, prior to the hearing where the court will assess the merits of the case, and even prior to the landlord filing a complaint. There is no other area of law under the jurisdiction of justice court where a litigant is required to act upon an order that has not been entered.

Third, Nevada's summary eviction process is confusing and places the burden on tenants to initiate the court case by filing an answer in the form of an answer. The proposed amendments to Rule 110 will further confuse tenants by requiring they preemptively file a motion to stay an order that does not exist. Requiring tenants to file a motion to stay an order that does not exist undermines the integrity of the courts and the rule of law. Tenants will understandably believe the outcome of the hearing is preordained and that their day in court is a farce.

Fourth, tenants do not know whether to seek a stay until after the issuance of a summary eviction order. Once a tenant files an answer, the landlord then must file a complaint. The timing of the complaint can drastically alter whether a tenant would need to file a motion to stay. Moreover, a tenant may decide to appeal a wrongful summary eviction order. A tenant appealing a summary eviction order based upon a deficient notice or other grounds would need to file a motion to stay pending appeal. If proposed provision (c) to Rule 110 is approved, then a motion to stay pending appeal will be prohibited after an eviction order has issued and summarily dismissed. This outcome unlawfully truncates the procedural due process rights of tenants.

The Coalition respectfully requests the following redlined amendments to the proposal:

RULE 110. MOTION TO STAY ENFORCEMENT OF A SUMMARY EVICTION ORDER

- (a) A tenant may file a motion to stay a summary eviction order pursuant to NRS 70.010 at any time after a notice for eviction is served upon the tenant. ~~Such motion must be included within the tenant's affidavit in response to the notice for eviction.~~
- (b) If such a motion is filed before the court issues a summary eviction order, the court must consider the motion and *if granted*, reflect in the summary eviction order, the time and date to which the order is stayed.
- ~~(c) If such a motion is filed after the court has already issued a summary eviction order, or after the sheriff or constable has already executed the summary eviction order, it is untimely and may be summarily dismissed.~~

Thank you for your consideration.

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