

TO: THE HONORABLE SUPREME COURT JUSTICES OF THE STATE OF NEVADA

FILED

FROM: HELENE M. SILVERSTEIN, FMP MEDIATOR

DATE: JULY 9, 2012

ADKT 0435

JUL 20 2012
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

RE: PROPOSED CHANGE(S) TO THE ADOPTION OF RULES FOR THE FORECLOSURE MEDIATION PROGRAM

Your Honors,

I submit to you my remedies for concerns under **RULE 5. FEES FOR PRESIDING Mediators, RULE 14. CONTINUANCES, RULE 21. ISSUANCE OF CERTIFICATES AND PETITION FOR JUDICIAL REVIEW, and PROPOSED RULE 23. POST-MEDIATION PROCEDURES**, that I addressed, in part, to you during the July 9, 2012 Public Hearing.

RULE 5. FEES FOR PRESIDING MEDIATORS.

Though I quickly brought this up at the end of my comments, I was encouraged to expound on this premise within my comments.

The advisory board overlooked the necessary change in **RULE 5** when suggesting changes in: **RULE 14. CONTINUANCES**. As **RULE 5** stands, the Mediator(s) are still to be compensated \$200 from the Homeowner and \$200 from the Lender. However, as all fees come directly out of the Mediator's pocket, this amount has proved to be insufficient.

The average **pre-mediation costs, per mediation**, consists of: 3-6 hours telephone and clerical responsibilities and, out-of-pocket expenses, **per mediation**, includes: one (1) ink cartridge/\$26, one (1) ream of paper/\$5, postage/\$10-\$15, \$5 gas to post office, along with, utilities, telephone lines, internet access... and so on.

Then there is the time that it actually takes to complete a mediation - usually 2- 4 hours **(this DOES NOT include the time and costs involved in rescheduling and CONTINUANCES -- OR, THE COST FOR ANY MEDIATION SPACE RENTALS)**, \$5 mileage to mediation and post office, ink and paper to produce Mediator's Statement and Agreement, \$26, paper/\$2.50, and refreshments, i.e.,

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water, coffee, and kleenex, etc/\$5. As you can quickly see, the average mediation costs, if done properly, and as per the Rules dictate, approximately \$85-\$100 per mediation.

The remaining \$300 is where rental space is subtracted, additional pre- and post-mediation clerical work, the actual per hour dollars for the actual mediation -- and this does not cover any continuances -- and why most mediators DO NOT CONTINUE. Now subtract from this the time for the pre-documents conferences, and you can easily see how compensation for time, on the low end, computes out to approximately \$18.75 per hour -- and on the high-end -- around \$25 per hour.

Therefore, I suggest that both parties pay \$350 to \$400, each, for their Mediator. I understand the original thought behind \$200, each, but after mediating dozens of foreclosure mediations, I assure you, Homeowners can afford \$400 -- as is routinely demonstrated by the fact that many Homeowners have already had one two mediations before they ever found themselves in a conference room with me. And it goes without saying that, the Lenders can also afford an increased filing fee. My concern is... that the lack of funds will, in the long run, garner you the poorest, or more desperate, of mediators -- and not the more well-trained mediators who are very good at mediating any type of dispute.

Which smoothly segues us into...

RULE 14. CONTINUANCES.

True, the advisory committee did spell out the terms and procedures for requesting a continuance, however, what they managed to not consider is that: during the continuance, the Homeowner's attorney is on the clock, the bank's legal representative is on the clock, and the servicer's telephonic representative is on the clock -- the only one not being on the clock, or being compensated for their additional time and additional expenses, is the Mediator. Are there any doubt as to why MOST Mediators Do Not continue their mediations? Would you, Your Honors, continue to hear cases when literally OFF the clock?

RULE 21. ISSUANCE OF CERTIFICATES AND PETITION FOR JUDICIAL REVIEW

Allowing a thirty (30) day cap for a Homeowner to petition for Judicial Review is totally one-sided and leaves the Homeowner in the lurch when, 120 to 180 days after their mediation -- and after an agreement between the Homeowner and

Lender has been agreed to and signed -- the Homeowner finds that their Lender has decided to NOT act in good faith -- and NOT accept their signed agreement. I have seen this happen even though the Homeowner has one hundred percent complied with the terms and conditions of their mediated agreement -- and once again finding themselves in Notice of Default hell -- with their trust and faith in the FMP, and the government, totally destroyed.

When preparing all of my agreements I conclude with a statement similar to: Provided the Homeowner complies completely with the terms and conditions of this temporary (trial) modification -- Lender will automatically convert this trial modification agreement into a permanent modification agreement -- the final monthly payment amount increasing or decreasing by a few dollars.

And yet, even after the Lender's representative(s) has completely agreed to the wording my the agreement, I now receive phone calls from Homeowners who are once again at their wits. They made their three (3) monthly trial payments timely, provided any/all additional documents their Lender required, continued to pay their mediated payment amounts after the initial three (3) payments were made -- only to now receiving correspondence stating that their "partial" mortgage payment is being applied to their loan -- but that they will be in default if they do not remit the entire amount -- the amount that had been due prior to their new, and fully complied with, mediated monthly payment modification.

As I see it, PJR is truly meant for the Lender, and not the Homeowner because, as I've demonstrated above, the Homeowner learns that their Lender has not acted in good faith only after the window for PJR has expired. Unfortunately, the system, as it is currently set-up, regularly puts Homeowners back into default hell when they have been lead to believe that they had a mediated agreement.

PROPOSED RULE 23. Post-Mediation Procedures.

Under 2. it is discussed that, Mediators shall retain their files for no more than 90 days if no Petition for Judicial Review has been filed. How would we know this? We are never advised that a PJR was petitioned.

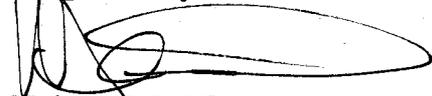
2. goes onto say that, if PJR is the next step for the Homeowner/Lender, we are to retain the documents for no more than 120 days. Again, how would we know this?

However, as I said when I spoke during the July 9th public hearing, I feel that this amount of days should be raised, at the very least, to 180 days -- along with the time allotted to petition for PJR -- in order to level the playing field -- allowing the Homeowner to petition the courts once they've awaked to the fact that their Lender has not acted in good faith.

Sure, Homeowners can repetition to the FMP for a mediation... but why should they have to when they've already entered into a valid, and hopefully enforceable, modification agreement? And why should they have to be forced to hire, and pay for, an attorney in order to fight for an issue that the Homeowner had unfortunately thought was settled... and well behind them?

Again, I thank you for taking the time to consider my comments.

Respectfully,



Helene M. Silverstein, FMP Mediator
2485 W. Wigwam Avenue, No. 92
Las Vegas, NV 89123
702.897.9743 or 702.498.6111

July 16, 2012

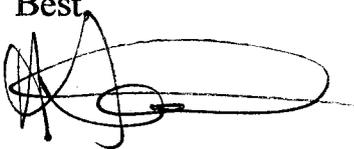
Tracie K. Kindeman
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

Hi Tracie:

I addressed the Justices today during the Foreclosure Mediation Public Hearing on July 9, 2012 and all of those who did were advised, by the Chief Justices, to submit eight (8) copies of our comments, in writing, within ten (10) days. But, as you request nine (9) total copies... I have enclosed nine (9) -- all originals.

Thanks for handling my proposed amendment rules at your end, Tracie;-}!

Best,



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