Southern Nevada
SLP
SENIOR LAW PROGRAM

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September 16, 2020

FILED
SEP 17 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY CHIEF DEPUTY CLERK

VIA E-MAIL ONLY
Elizabeth A. Brown
Clerk of the Supreme Court
201 S. Carson St.
Carson City, NV 89701
nvscclerk@nvcourts.nv.gov

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

Dear Ms. Brown,

My name is Jordan A. Doctors, Esq. and I am a licensed attorney with the Southern Nevada Senior Law Program. I am submitting my comments regarding the Supreme Court's proposed rules relating to mediation of summary residential evictions. As detailed below, I urge the Supreme Court to adopt Legal Aid Center's revised version of Exhibit A to allow all tenants to elect for mediation prior to a hearing.

General Comments

Southern Nevada Senior Law Program ("SNSLP") is a Title IIIB funded legal services provider that provides free legal advice and representation to individuals in Clark County over the age of 60. As an attorney at SNSLP, I frequently give advice to tenants and assist tenants with their eviction proceedings. Since the Governor's execution of COVID-19 Emergency Directive 025 lifting of the eviction moratorium, I have repeatedly seen landlords violating the Emergency Directives and attempting to circumvent the Directives with pretextual evictions. In addition, I have also had tenants who would be prime candidates for mediation and who have wanted to meet their obligations to the landlords only to be stonewalled by landlords who have refused to enter into repayment plans. These tenants see mediation as the only way they could have the possibility of staying in their houses, especially under the current circumstances where they cannot afford the costs – economic, health, and temporal – of finding new residences.

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SEP 16 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

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Specific Comments In Response To Mr. Kania's Comments.

1. **If Mediation Is Made Contingent On Both Parties Requesting Mediation And Only Applicable To Unpaid Rent Matters, The Mediation Program Would Be Equally Effective If It Did Not Exist.**

Mr. Kania's comments request that Mediation should only occur if both parties request it. However, the practical effect of Mr. Kania's request is that few, if any, mediations will occur. As Mr. Kania's own comments belie, Landlords will instead just opt to go to court to get an eviction instead of participating in the mediation process. Mediation must be made available by either party's request in order to ensure that the mediation program works as intended: providing landlords and tenants with a resolution of their disputes while easing the burden on the court system in order to prevent backlog and adjudicate these cases efficiently.

Furthermore, these mediations should not only be limited to rent-related evictions. In the past month, I have seen multiple landlords attempt to use Thirty-Day "No Cause" Evictions as a vehicle for evicting tenants who have fallen behind on rent payments. They have sent notices to tenants stating that due to the tenant's failure to pay rent, they were going to not renew the lease and therefore the tenants had 30 days to move. The underlying issue is the rent dispute; however, it is buried behind a Thirty-Day Notice. Similarly, I have seen landlords attempt to use the 5 Day Unlawful Detainer Notices claiming that these tenants are holdover tenants after the landlord has decided not to renew the lease because the tenant is behind on rent. Thus. if, as Mr. Kania proposes, the mediation program is limited to rent-related evictions, these cases will fall through the cracks because these evictions are stylized as evictions other than for non-payment of rent, when the underlying basis for the eviction remains the non-payment of rent.

2. **Litigating Whether The Tenant Has A Right To The Mediation Program Will Only Defeat The Purpose Of The Mediation Program.**

As stated in Paragraphs 4 and 5 of the Petition itself, the concerns with the expiration of the eviction moratorium includes, among other concerns, needing to administer justice efficiently and that there will be increased traffic in the courthouses, posing a threat to health and safety. Allowing litigation and disputes to occur to determine whether the tenant is eligible for mediation will not address the Courts' concerns. Once again, if landlords are given the option to challenge or deny the mediation from going forward, they have a strong incentive to do so, especially if there is no penalty for being wrong (e.g. that the tenant does qualify for mediation). As such, these cases will still be in front of the judges, packing the courtrooms full, while the judges have to determine whether the tenant is entitled to participate in mediation, and hear testimony related to the landlord and tenant's affidavits as to the tenant's eligibility. The mediation program was designed to resolve these cases out of the court system; however, the rules under Exhibit B will only keep these cases in the court system and further cause judicial inefficiency.

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3. **The General Disparity In Power Between The Landlord And Tenant Justifies The Different Penalties For Failing To Appear At Mediation. Furthermore, The Penalties Are Not Guaranteed For Landlords.**

First, Mr. Kania misrepresents the penalty for landlords. Under paragraph (j) of the proposed rules, the court ***may*** order the case dismissed. In law, "may" is permissive, not obligatory. Therefore, the current rules as proposed provides judges with the discretion to let landlords continue to pursue the summary eviction. Thus, if a landlord has good cause for failing to attend the mediation, they still have the potential to continue with the filed eviction proceeding.

Nevertheless, dismissal is an appropriate penalty because it is not a dismissal with prejudice. Nothing in the rules as written or in the Nevada Revised Statutes prevents the landlord from initiating a new summary eviction action. Thus, in effect, the landlord has the ability to remedy their defects in performance and still have access to the Court system.

In contrast, tenants generally only have one chance at avoiding eviction. If a summary eviction is granted, and a stay is not issued, tenants are generally evicted within the week. Once a tenant is out of the property, it is extremely hard, if not impossible, for the tenant to be able to recover possession of the property. Therefore, any penalty automatically granting the summary eviction is a significant penalty because it all but eliminates any chance for the tenant to have access to justice.

In short, if a landlord's summary eviction case is denied, they get to try again. If a tenant loses a summary eviction case, there is generally no second chance. Thus, even though the penalties appear to be lopsided, in effect the penalties for landlords and tenants under paragraph (j) ensure that both parties still have access to the court to litigate the eviction matter.

Specific Comments Related To The Proposed Exhibits Themselves.

1. **Penalizing Tenants For Taking Advantage Of The Mediation Program Multiple Times Ignores The Reality That The COVID-19 Pandemic May Last Until 2022.**

Under the Proposed Rules in Exhibit B, paragraph (f), a tenant would be denied mediation if they have previously entered into a payment arrangement or lease addendum; requested mediation within the preceding 15 months, or have ever previously applied for rental assistance.[1]

These requirements do not account for the fact that the pandemic is estimated to continue until 2022.[2] We could very well have tenants who entered into these payment plans in July of 2020 after Emergency Directive 025, complete their payment plan and pay off the arrears, and then lose their job

[1] As an aside, I wish to note that Paragraph (d)(1)(G) only requires evidence that the tenant has not previously requested mediation within the preceding 12 months, yet paragraph (f) denies tenants based on mediation within the preceding 15 months. If these are supposed to be intentionally different time periods, this will cause confusion for tenants who are determining whether they are eligible.

[2] Howard, J. "WHO Chief Scientist Says Pre-Covid Life May Not Return Until 2022" CNN Sep. 15 2020 Last Accessed Sep. 16, 2020 Available at https://edition.cnn.com/world/live-news/coronavirus-pandemic-09-15-20-intl/h_e3435bf2ed61a6afb1ad81c48eefe3c9.

once again because the pandemic is still ongoing. Why should these tenants be denied access to this program? They have complied and taken every step required of them, yet will still be penalized for issues out of their control, when, by successfully resolving their previous rental dispute, these tenants should be the ones most eligible for mediation.

2. **Rental Assistance Is Not Defined Under Exhibit B Paragraph (F).**

Of even more concern is the fact that Proposed Rules in Exhibit B paragraph (f) states that tenants are not entitled to mediation if the tenant has previously applied for rental assistance. There must be a definition for "rental assistance" within the rules. Are those in Section 8 housing or with Section 8 vouchers permanently barred from participating in the mediation program for their portion of rent? Are those who were previously in Section 8 housing or who received Section 8 vouchers but are no longer receiving Section 8 also barred from participating in mediation? If a tenant was previously unemployed a year before COVID and sought one month's rent from one of the numerous charities in town, are they – several years later – also barred from participating in this program? As written, this paragraph excludes countless individuals from ever participating in mediation, without any justifiable basis why, for actions taken potentially years in the past for matters entirely unrelated to the current pandemic.

3. **The Court Should Not Summarily Reject Any Motions To Set Aside Or Stay as written under Exhibit B paragraph (m).**

Under JCRCP 60(b)(5), the court may relieve a party from a final judgment, order, or proceeding if the judgment has been satisfied. In eviction proceedings, motions to set aside under JCRCP (60)(b)(5) generally occur if the Tenant has already vacated the premises, among other reasons. Here, by rejecting any and all motions to set aside, the rules as proposed by Exhibit B Paragraph (m) are unnecessarily harsh.

For example, a tenant could have needed an extra day to vacate the premises, and vacated the premises the day after they were supposed to have vacated under the agreement. The tenant has ultimately satisfied the terms of the agreement and the landlord's intended goal – that the tenant move out – and has done so prior to when an eviction order could have even been carried out by law. Therefore, the tenant's eviction should be set aside under the intent of JCRCP 60(b)(5) because it was satisfied prior to execution. Nevertheless, under paragraph (m), this eviction would not be set aside, and the eviction would remain on the tenant's record, impacting their future ability to find a new residence. This is neither just nor equitable, and the only way for these situations to be avoided would be to allow judges to hear these motions on their merits.

Specific Comments to Legal Aid Center of Southern Nevada's Revised Version of the Rules as Presented in Exhibit 1.

I have been made aware of Legal Aid Center of Southern Nevada's revised version of Exhibit A which they have also submitted in comments before the Court. I urge the Court to adopt this version of Exhibit A as it addresses areas that were not present in Exhibit A. Most notably, I believe that incorporating a mediation administrator will be beneficial to the operation of the mediation program. As Legal Aid Center of Southern Nevada notes, Home Means Nevada has successfully administered Nevada's foreclosure mediation program for years. Furthermore, a mediation administrator would reduce

the burdens on the court and be easily implemented statewide, as it will use a framework and system that has already been established.

Additionally, I believe that the other modifications to Exhibit A as proposed by Legal Aid Center further serve to establish the actual workings of the program. Addressing issues such as mediator training, interpreters, and the provision of documents in advance of mediation, prior to the establishment of the mediation program is beneficial to the implementation of the program, and further ensures that the mediation program is administered uniformly statewide. Consequently, these additional provisions submitted by Legal Aid Center should be adopted by the Court.

Conclusion

The goal of this program – as stated in paragraph (q) of Exhibit B – is to allow courts to handle a potential increased caseload, and to assist and encourage landlords and tenants to resolve summary evictions actions through alternative means. However, adopting Exhibit B and the changes Mr. Kania proposes would actively impede the stated goals. These versions of the proposed rules will reduce the number of cases that participate in mediation, increase the total amount of litigation between parties, and unnecessarily punishes tenants for situations beyond their control or for taking prudent actions when they were necessary. Consequently, adopting Exhibit A, as revised by Legal Aid Center of Southern Nevada's Exhibit 1, is necessary for ensuring that the mediation program as developed meets its intended goals and assist tenants and landlords.

Sincerely,

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