

# THE STATE OF COURT-CONNECTED ADR IN NEVADA

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## PREFACE

It is refreshing to see and hear that private mechanisms of alternative dispute resolution (ADR) and parties participating therein abound in Nevada. With more and more law schools acquainting law students with ADR concepts and devices early on in their education, as well as adding more ADR-related courses to their core curricula (as our own Boyd School of Law has done) and practical programs implementing use of ADR (such as the Saltman Center for Conflict Resolution at Boyd School of Law), the atmosphere of acceptance of ADR is ever-increasing.

Nevada is fortunate to have a robust population of trained, experienced and talented neutrals engaging in all private forms of ADR, and enlightened practitioners are utilizing them in the resolution of disputes. However, this article will focus on forms of court-annexed (connected) ADR administered by the ADR office, with particular emphasis on southern Nevada.

## ARBITRATION

The “granddaddy” of court-connected ADR mechanisms in Nevada is, of course, mandatory, nonbinding arbitration. Begun on July 1, 2002, as a result of the Legislature’s enactment of NRS 38.250 et. seq. in 1991, it became the policy of the state of Nevada that all civil cases of lesser value filed in District Court for damages, if the cause of action arises in the State of Nevada, must be first submitted to nonbinding arbitration. The Supreme Court implemented this policy when it adopted the Nevada Arbitration Rules (NAR) found in subpart B to the “Rules Governing Alternative Dispute Resolution,” contained in the Nevada Supreme Court Rules.

From the inception of the program through June 30, 2009, 62,165 cases entered the program in southern Nevada. That’s an average of 3,657 per year. Put another way, 56 percent of all civil cases in which an answer was filed were assigned to the arbitration program. In 2009, as of this writing, the ADR office has opened and assigned more than 2,600 cases to arbitrators, keeping the number of cases assigned to the program on track.

Southern Nevada’s arbitration program resolves more than 80 percent of the cases entering the program. This means that once a case is assigned to arbitration, more likely than not, it will be resolved in arbitration. Approximately 54

percent of cases assigned to arbitration are settled or otherwise resolved prior to the issuance of an award. Although requests for trial de novo are filed in about half of all cases in which an award is filed (with the defendant requesting de novo nearly twice as often as the plaintiff), many more cases are resolved soon after the request is filed.

There have been no significant changes to the NAR since 2005, when, *inter alia*, the threshold for cases entering the program was raised from \$40,000 to \$50,000 per plaintiff, and I do not hear nor have I been informed of any material changes being proposed in the immediate future.

The 40 mediators who comprise the panel of approved mediators for the program in southern Nevada are highly trained, skilled and experienced neutrals and have been referred to as a “dream team” of mediators.

Litigants should consider utilizing the court-connected mediation program as an alternative to mandatory, nonbinding arbitration in appropriate cases, including personal injury actions. In fact, approximately 80 percent of cases entering mandatory arbitration are personal injury in nature. If a personal injury action has been filed and all medical records, reports and other pertinent information have already been exchanged, try mediation instead of arbitration. At that



## MEDIATION

The Court Annexed Mediation Program, the “baby” of court-connected ADR programs in Nevada, became effective March 1, 2005, but has, as yet, been underutilized. The Nevada Mediation Rules make it clear that the mediation program is intended as a true alternative to mandatory arbitration and is made available to provide parties with a prompt, equitable and inexpensive method of dispute resolution for matters otherwise mandated into arbitration. Generally speaking, a mediation proceeding is less expensive, less complicated and concludes much more quickly than an arbitration.

Mediation, as defined in the rules governing alternative dispute resolution:

“...means a process whereby a neutral third person, called a mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues fostering joint problem solving, and exploring settlement alternatives.”

See Rule 1(B), Rules Governing Alternative Dispute Resolution.

point, all the essential cards are on the table; both sides should have a realistic knowledge of the relative strengths and weaknesses of their respective cases, and the case should be ripe to mediate. Granted, participation in the mediation program is purely voluntary, and should one side decide not to participate, the case will remain in arbitration. But litigants should give mediation a fair opportunity if they truly do not want to go through all that is required in non-binding arbitration.

## THE NEVADA SHORT TRIAL PROGRAM

Even though technically it is no longer considered a form of alternative dispute resolution, but an alternative form of trial in its own right, the Nevada Short Trial Program (STP) continues to be administered by the ADR Office. From its inception in 2000 by a committee composed of judges, neutrals and members of both the plaintiff's and insurance bars with incredibly innovative thinking, the STP showed signs of great potential. When implementation of the program began in earnest in June 2002 as purely voluntary but binding, and until January 1, 2005, when the Nevada Short Trial Rules (NSTR) were significantly amended, 252 cases were stipulated into the STP. Over that same period,

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## PRO BONO HONOR ROLL

The State Bar of Nevada Board of Governors and the Access to Justice Commission extend a special thanks to the following attorneys who generously accepted cases in August 2009 through the Legal Aid Center of Southern Nevada, Washoe Legal Services, Nevada Legal Services and Volunteer Attorneys for Rural Nevadans.

### Aholelei-Aongal, Mehi

Allen, W. West  
Alf, Nancy  
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Balboni, Denise  
Beller, Neil  
Bellon, Peter  
Blackham, Brian  
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Goldsmith, Dara  
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Harris, Daniel  
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Hempfen II, Robert  
Hofland, Bradley  
Tsai, Jennifer HW  
Jordan, Kenneth  
Kania, Edward  
Kelly, Patrick  
Kemp, James  
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Kern, Sam

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Polisenberg, Dan  
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Perez, Romero  
Perry, Mary  
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Salhanick, Beverly  
Sandusky, Jennifer  
**Tsai, Jennifer HW**

*BOLD honors multiple cases accepted or sessions conducted within the month.*

## COURT-CONNECTED ADR

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214 cases were resolved in the STP. 125 cases (58 percent) were settled or dismissed, and 89 cases (42 percent) were tried and resolved.

Effective January 1, 2005, when the STP became mandatory for cases unresolved in arbitration and mediation, the ADR office began to see a far greater number of cases enter the program. Since that date, 1,916 cases entered the STP, 1,653 from unresolved arbitration and/or mediation and 263 from stipulations. To date, 1,553 cases have been resolved; 1,224 have been settled and there have been 329 trials. The overall rate of settlement of cases in the STP is 64 percent.

Perhaps the most significant statistic is the fact that *all* of the cases tried in the STP were tried in just one day or less, with the average trial length being seven hours (including breaks). According to court statistics, these same cases, if utilizing conventional court resources, would have required two to three days for trial. The program accomplishes this feat by not only limiting the amount of time parties have to present their respective cases, but by streamlining presentation of evidence through, among other things, evidentiary booklets and the use of expert-witness reports in lieu of live testimony.

The STP has received national recognition by winning both the National Association of Counties Achievement Award and the Better Government Competition Award from the Pioneer Institute for Public Policy Research of Boston, Massachusetts, the latter in recognition of an innovative and concrete program which improves the quality and cost-effectiveness of government services.

### FORECLOSURE MEDIATION PROGRAM

Finally, I would like to express my deepest gratitude to all those of you throughout Nevada who have graciously offered your services as mediators in the newly-adopted Foreclosure Mediation Program. As a member of the Foreclosure Mediation Working Group appointed by the Supreme Court that assisted in drafting the new Foreclosure Mediation Rules and corresponding forms and instructions, I know how hard and efficiently the members of this group worked to complete this task timely, and realize the formidable task that lies ahead for the mediators who have literally stepped up to "home-plate" to help Nevada get through this crisis. [NL](#)

**CHRIS A. BEECROFT, JR.** is the ADR Commissioner for the Eighth Judicial District Court and oversees the court-connected arbitration and mediation programs as well as the Short Trial Program in Las Vegas, Nevada. Commissioner Beecroft participates in numerous CLE programs on arbitration, mediation and the Short Trial Program. He is a frequent speaker at the Saltman Center for Conflict Resolution at Boyd School of Law on the campus of UNLV and frequently makes presentations to law school externs.