IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF NRS 38.258 AND SHORT JURY TRIALS IN THE SUPREME COURT OF NEVADA.

ADKT No. 310

FILED

FEB 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AMENDING THE NEVADA SHORT TRIAL RULES

WHEREAS, on August 2, 2011, Justices Michael Douglas and Mark Gibbons filed a petition in this court to amend the Nevada Short Trial Rules, and

WHEREAS, this court held a public hearing on the proposed rule amendments on September 8, 2011, and

WHEREAS this court has considered additional comments from interested persons, and

WHEREAS, this court has concluded that amendment of the Nevada Short Trial Rules is warranted, accordingly,

IT IS HEREBY ORDERED that the Nevada Short Trial Rules shall be amended and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that this amendment to the Nevada Short Trial Rules shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating

copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

Dated this 8th day of February, 2012.

_____, C.J.
Saitta

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Pickering

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Constance Akridge, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Chris Beecroft, ADR Commissioner, Eighth Judicial District
Wesley Ayres, ADR Commissioner, Second Judicial District
Administrative Office of the Courts

EXHIBIT A

AMENDMENTS TO THE NEVADA SHORT TRIAL RULES

* * *

Rule 3. Presiding judge. A short trial may be conducted by either a district court judge or a pro tempore judge.

(a) Assignment of presiding judge. No later than 21 days after a case enters the short trial program, the commissioner shall assign a short trial judge to preside over the case. The presiding judge shall be selected by one of the following methods:

(1) By stipulation. The parties, within 15 days from the date a case enters the short trial program, may stipulate to have a particular short trial judge serve as the presiding judge. The judge must be selected from the panel of short trial judges and the judge must consent to the assignment. Except that the parties may also stipulate to have a particular district judge serve as presiding judge, provided that the district judge also consents to serve as such.

(2) Random selection. Absent a timely stipulation under subdivision (a)(1) of this rule, the commissioner shall randomly select the names of 3 judicial panelists and send the same to the parties. Each party may strike one name within 10 days, and the commissioner shall select the judge from the remaining name(s). For purposes of this rule, if several parties are represented by one attorney, they shall be considered as one party.

(b) Panel of short trial judges. The commissioner shall maintain a list of judges available to hear short jury trials. The list shall include all qualified pro tempore judges for the judicial district.

(c) Pro tempore judges. Pro tempore judges shall be selected and trained by a committee composed of the chief judge of the judicial district or the chief judge's designee, the commissioner, and a representative of the Alternative Dispute Resolution (ADR) Committee of the State Bar of Nevada. The selection committee shall seek to create a diverse group of qualified pro tempore judges. A pro tempore judge may be added to or removed from the panel of short trial judges pursuant to procedures adopted by each of the district courts. A pro tempore judge shall, however, meet the following minimum qualifications:

(1) Be an active member of the State Bar of Nevada;

(2) Have the equivalent of 10 years of civil trial experience or, in the alternative, be a retired jurist, or presently acting short trial pro tempore judge with a civil background;

(3) Fulfill at least 3 hours of accredited continuing legal education annually as deemed appropriate by the commissioner. Failure to do so may constitute grounds for temporary suspension or removal from the panel of short trial judges.

(d) Authority. While presiding over a case that is in the short trial program, the pro tempore judge shall have all the powers and authority of a district court judge except with respect to the final judgment. A final judgment is one that finally resolves all claims against all parties to the action and leaves nothing for the pro tempore judge's future consideration except for post-judgment issues such as attorney's fees and costs.

(1) Not later than 10 days after the rendering of a jury verdict in a jury trial or upon a decision by the presiding judge in a trial to the

bench, the judge pro tempore shall submit to the district court judge to whom the case is assigned a proposed judgment.

(2) The judge pro tempore shall provide written notice of the proposed judgment to the parties. Any objections to the proposed judgment shall be filed within 10 days after the written notice of the proposed judgment is served on the parties, and any responses to such objections shall be filed within 5 days after such objections are served.

(3) After reviewing the proposed judgment and any objection to the proposed judgment, the district court shall:

(A) Approve the proposed judgment, in whole or in part; or

(B) Reject the proposed judgment, in whole or in part, and order such relief as may be appropriate.

(4) A proposed judgment from a judge pro tempore is not effective until expressly approved by the district court as evidenced by the signature of the district court judge.

Rule 4. Matters subject to the short trial program.

(a) Mandatory participation in the short trial program.

(1) Trial de novo after arbitration. All cases that are subject to the mandatory court annexed arbitration program in which a party has filed a request for trial de novo shall enter the short trial program. The party filing the request for trial de novo must comply with N.A.R. 18 and must also pay to the district court clerk all applicable juror fees and costs at the time of filing of the request for trial de novo.

(2) Cases entering short trial program after unsuccessful mediation in lieu of arbitration. Cases that enter the mediation program in lieu of arbitration under the Nevada Mediation Rules but are not resolved in the mediation program shall enter the short trial

program. The applicable juror fees and costs shall initially be borne equally by the parties. The parties must pay all applicable juror fees and costs as directed by the commissioner.

(b) Voluntary participation in the short trial program. Parties may stipulate to participation in the short trial program as follows:

(1) Short trial in lieu of arbitration. In all cases that would otherwise qualify for the court annexed arbitration program, the parties may stipulate to enter the short trial program in lieu of the court annexed arbitration program. A written stipulation, together with all applicable juror fees and costs, must be filed with the district court clerk and served on the commissioner before the conference required under N.A.R. 11. An untimely written stipulation may be filed provided that the parties certify that all arbitrator fees and costs have been paid.

(2) Cases exempt from arbitration. Cases exempt from the court annexed arbitration program may, by stipulation of all parties, be placed in the short trial program. A written stipulation, together with all applicable juror fees and costs, must be filed with the district court clerk and served on the commissioner. The parties must also provide written notice to the department of the district court to which the case is assigned.

(c) Juror fees and costs. For purposes of this rule, costs and juror fees shall be calculated using a 4-member jury.

(d) Demand for jury trial. Any party who desires a trial by jury of any issue triable of right by a jury must file and serve upon the other parties a demand therefore in writing, and deposit with the district court clerk all applicable juror fees, no later than the following deadlines:

(1) Trial de novo cases. The demand for jury trial and deposit of juror fees by the party who did not request the trial de novo and additional fees for a jury panel larger than four persons must be made not later than 10 days after service of the request for trial de novo.

(2) Mediation cases. The demand for jury trial and deposit of juror fees must be made no later than 10 days after service of the mediator's report under N.M.R. 8.

(3) Voluntary participation cases. The demand for jury trial and deposit of juror fees must be made when the written stipulation is filed with the district court.

(e) Relief from waiver. Notwithstanding the failure of a party to demand a jury in accordance with this rule, the presiding judge, upon motion, may order a trial by a jury of any or all issues.

Rule 5. Removal of cases subject to mandatory participation in the short trial program.

(a) Demand for removal; time for filing. Any party may file with the district court clerk and serve on the other parties and the commissioner a written demand to remove the case from the short trial program. **[At]** Unless the district in which the action is pending has adopted a local rule pursuant to NRCP 83 declaring otherwise, at the time a demand is filed as required by this rule, the party demanding removal of the case from the short trial program shall deposit with the clerk an amount equal to the fees to be paid the trial jurors for their services for the estimated length of the trial and court costs. If more than one party demands removal of the case from the short trial program, those parties shall be equally responsible for the jury fees and court costs upon filing the demand.

(1) Trial de novo cases. A demand to remove a trial de novo case from the short trial program must be filed and served no later than 10 days after service of the request for trial de novo. For good cause shown, an appropriate case may be removed from the short trial program upon the filing of an untimely request for exemption; however, such filing may subject the requesting party to sanctions.

(2) Mediation cases. A demand to remove an unsuccessful mediation case from the short trial program must be filed and served no later than 10 days after service of the mediator's report under N.M.R. 8. For good cause shown, an appropriate case may be removed from the short trial program upon the filing of an untimely request for exemption; however, such filing may subject the requesting party to sanctions.

(b) Juror fees and costs. For purposes of this rule, costs and juror fees shall be calculated using an 8-member jury and costs shall be estimated at $1,000 unless the parties stipulate to another amount.

(c) Waiver of removal. A party's opportunity to remove a case from the short trial program is waived if that party fails to timely file and serve a demand to remove the case or fails to deposit the fees and costs required by this rule.

(d) Procedure after removal. After removal from the short trial program, the case shall proceed under the provisions of the Nevada Arbitration Rules governing trials de novo and the Nevada Rules of Civil Procedure.

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Rule 22. Size of jury. The parties may stipulate to a jury of 4 or 6 members. For good cause shown to the presiding judge, a party may request a jury of 8 members [~~and, unless otherwise stipulated, additional jurors' fees for an 8-member jury shall be paid by the party requesting the same within 10 days after approval by the presiding judge~~]. Should the parties fail to stipulate to a specific jury size, the jury shall be composed of 4 members.

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Rule 28. Fees for presiding judge[s].

(a) Allowable fees. Pro tempore judges shall be entitled to remuneration of $150 per hour, with a maximum per case of $1,500, unless otherwise stipulated.

(b) Itemized bill required. To recover fees, the judge pro tempore must submit to the parties an itemized bill within 10 days of the verdict or judgment in a bench trial, or within 10 days of notice of removal of the case from the program by resolution or otherwise, whichever is earlier. The judge pro tempore shall indicate the advance deposits paid by the parties and adjust the amount requested accordingly.

(c) Payment. The fees shall be paid equally by the parties unless otherwise stipulated. Any dispute regarding the requested fees must be filed within 5 days of the date that the judge pro tempore serves the itemized bill. The commissioner shall settle all disputes concerning the reasonableness or appropriateness of the fees. If a timely dispute to the itemized bill is not filed, the fees shall be paid within 10 days of the date that the judge pro tempore serves the itemized bill. If fees are

disputed, the parties shall pay the costs as determined by the commissioner within 5 days from the commissioner's decision.

(d) Exception for indigent party. If [~~, however,~~] one of the parties to the short trial is an indigent person who was exempted under NRS 12.015 from paying a filing fee, no fees for a short trial judge may be collected from any party to the short trial.

Rule 29. Costs for presiding judge.

(a) Allowable costs. Pro tempore judges are entitled to recover the costs, not to exceed $250, that the pro tempore judge reasonably incurs in presiding over an action within the short trial program. Costs recoverable by the pro tempore judge are limited to:

(1) Reasonable costs for facsimiles;

(2) Reasonable costs for photocopies;

(3) Reasonable costs for long distance telephone calls;

(4) Reasonable costs for postage;

(5) Reasonable costs for travel and lodging; [~~and~~]

(6) Reasonable costs for secretarial services[~~.~~];

(7) Reasonable runner's fees; and

(8) Reasonable e-filing fees.

(b) Itemized bill required. To recover such costs, the presiding judge must submit to the parties an itemized bill of costs within 10 days of the verdict or judgment in a bench trial, or within 10 days of notice of removal of the case from the program by resolution or otherwise, whichever is earlier. The presiding judge shall indicate the advance deposits paid by the parties and adjust the amount requested accordingly.

(c) Disputes. All disputes regarding the propriety of an item of costs must be filed with the commissioner within 5 days of the date that the presiding judge serves the bill reflecting the presiding judge's costs. The commissioner shall settle all disputes concerning the reasonableness or appropriateness of the presiding judge's costs. The parties shall pay the costs as determined by the commissioner within 5 days from the commissioner's decision.

(d) Exception for indigent party. If one of the parties to the short trial is an indigent person who was exempted under NRS 12.015 from paying a filing fee, the pro tempore judge may not collect costs from any party to the short trial.

Rule 30. Deposits; failure to pay. **[~~If required by the presiding judge, e~~]**Each party to a case within the short trial program shall deposit with the presiding judge, **[~~within 30 days of request by the presiding judge, a sum up to $750~~]** no later than 10 days after the mandatory discovery and settlement conference, $875 as an advance toward the presiding judge's fees and costs, unless the presiding judge is a district judge, in which case no payment of judge's costs or fees is required. If a party fails to pay the required advance, the district court shall, after giving appropriate notice and opportunity to be heard, hold the delinquent party in contempt and impose an appropriate sanction.

Rule 31. Allocation of fees and costs.

(a) Cases entered in short trial program by stipulation or following mediation. For cases that are entered in the short trial program by stipulation of the parties or after unsuccessful participation in the mediation program, jurors fees, [~~except as provided in Rule 22 for an 8-member jury,~~] presiding judge's fees and costs shall be borne equally by the parties subject to retaxation pursuant to Rule 27.

(b) Trial de novo cases. For cases that enter the short trial program following the filing of a request for a trial de novo:

(1) Juror fees[~~, except as provided in Rule 22 for an 8-member jury,~~] shall initially be borne by the party filing the request for trial de novo as provided in Rule 4(a)(1), subject to retaxation pursuant to Rule 27.

(2) Should the plaintiff requesting the trial de novo fail to obtain a judgment in the short trial program that exceeds the arbitration award, or should the defendant requesting the trial de novo fail to obtain a judgment that reduces the amount for which that party is liable under the arbitration award, all presiding judge's fees and costs incurred while the case is in the short trial program shall become a taxable cost against and be paid by the party requesting the trial de novo. In comparing the arbitration award and the judgment, the presiding judge shall not include costs, presiding judge's fees, attorney's fees, and interest with respect to the amount of the award or judgment. If multiple parties are involved in the action, the presiding judge shall consider each party's respective award and judgment in making the comparison between the arbitration award and the judgment.

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