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2 **JUSTICE COURT, LAS VEGAS TOWNSHIP**
3 **CLARK COUNTY, NEVADA**
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5 **IN THE ADMINISTRATIVE MATTER**
6 **REGARDING PILOT IMPLEMENTATION**
7 **OF MANDATORY MEDIATION IN**
8 **SMALL CLAIMS CASES**

ADMINISTRATIVE ORDER 11-07

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10 **WHEREAS**, on July 1, 2011, the jurisdictional limit in NRS 73.010 for small claims
11 cases increased to \$7,500.00; and
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14 **WHEREAS**, the Court has determined that defendants in small claims cases should be
15 required to file an Answer, and that the filing of an Answer should trigger mandatory mediation,
16 except in cases arising under NRS Chapter 97A or NRS Chapter 604A, and except in individual
17 cases where motions for exemptions may be granted; and
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19
20 **WHEREAS**, the requirement of mandatory mediation would increase access to justice
21 and increase parties' satisfaction with the outcome of their cases; and
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23 **WHEREAS**, the requirement of mandatory mediation would reduce future litigation and
24 make more efficient use of judicial resources; and
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26
27 **WHEREAS**, a formal amendment to the Justice Court Rules of the Las Vegas Township
28 (JCRLV) is warranted and will be pursued; therefore,

1 **IT IS HEREBY ORDERED** that all defendants in small claims cases must file a written
2 Answer in all small claims cases where the Complaint was filed on or after September 1, 2011,
3 and
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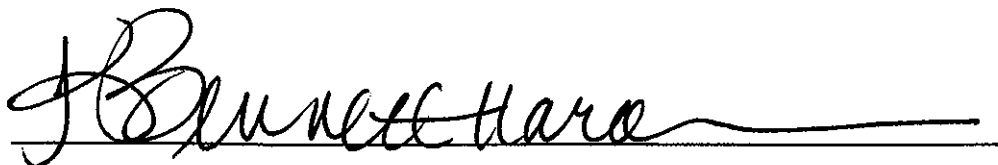
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6 **IT IS FURTHER ORDERED** that the filing of such an Answer will trigger mandatory
7 mediation, subject to the provisions and exceptions in Proposed JCRLV 48.5 (attached herein);
8 and
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10 **IT IS FURTHER ORDERED** that Proposed JCRLV 48.5 will be implemented on a
11 pilot basis to assess the feasibility and utility of the proposed rule; and
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14 **IT IS FURTHER ORDERED** that the Court will allow public comment and written
15 suggestions relating to Proposed JCRLV 48.5 before petitioning the Nevada Supreme Court for
16 formal adoption of the rule as required by Rule 83 of the Justice Court Rules of Civil Procedure
17 (JCRCPP); and
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20 **IT IS FURTHER ORDERED** that that pilot implementation of Proposed JCRLV 48.5
21 will not apply to any small claims Complaints or Answers filed after December 31, 2012,
22 unless the Nevada Supreme Court has formally approved the adoption of Proposed JCRLV 48.5.
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24 Dated this 7th day of July, 2011.

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28 **Karen Bennett-Haron, CHIEF JUSTICE OF THE PEACE**

Proposed Rule for Mandatory Small Claims Mediation in the Las Vegas Justice Court
(Draft)

Rule 48.5. Mandatory Small Claims Mediation Program.

- (a) Purpose. The Court hereby establishes the Mandatory Small Claims Mediation Program:
- (1) To increase access to justice;
 - (2) To increase parties' satisfaction with the outcome;
 - (3) To reduce future litigation by the same parties;
 - (4) To make more efficient use of judicial resources; and
 - (5) To expand dispute resolution resources available to the parties.
- (b) Definitions. For the purpose of this rule, the following definitions apply.
- (1) Mediation. A process in which a mediator facilitates settlement discussions between parties.
 - (2) Mediator. An impartial person who facilitates discussions between the parties to a mediation. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, reducing obstacles to communication, and providing the parties an opportunity for each to be heard in a dignified and thoughtful manner.
 - (3) Party. Any person whose name is designated on the record as plaintiff or defendant or any other person who has filed an appearance.
- (c) Scope and purpose.
- (1) The mediator's focus will be on encouraging and supporting the parties' presentations to and reception from one another allowing them to find a resolution that is appropriate.
 - (2) The mediator has no authority to make a decision or impose a settlement upon the parties.
 - (3) The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions.
 - (4) Any settlement is entirely voluntary.
 - (5) In the absence of settlement, the parties retain their rights to a resolution of their dispute through litigation.
 - (6) Mediation is based upon principles of communication, negotiation, facilitation, and problem solving that emphasize:
 - (a) The needs and interests of the parties;
 - (b) Fairness;
 - (c) Procedural flexibility;
 - (d) Privacy and confidentiality;
 - (e) Full disclosure; and
 - (f) Self-determination.
- (d) Pursuant to NRS 244.1607, the Las Vegas Justice Court utilizes the services of the Court-connected Neighborhood Justice Center (NJC) in Clark County. Except as otherwise provided in this rule:
- (1) All parties must attend mediation prior to the hearing or trial of any small claims case filed under NRS Chapter 73, where the defendant has filed an Answer to the Complaint. Such an Answer must be filed within twenty (20) calendar days of the date of service of the Complaint.
 - (2) The Court may at any time upon its own motion refer a case for mediation in other civil cases, including an action for the issuance of an order for protection, if the parties agree to participate.
- (e) Cases arising under NRS Chapter 97A and NRS Chapter 604A are automatically exempt from

the mandatory mediation requirement in small claims cases. A party who believes another type of case is inappropriate for referral to mediation may seek an exemption from mediation.

- (1) The party seeking an exemption must file a motion with the Court.
- (2) The motion should be filed with the initial pleading of the moving party.
- (3) The motion may be filed at a later time if new information is obtained supporting a motion.

(f) Attendance

- (1) The following persons shall attend a small claims mediation:

All individual parties must attend the mediation. Counsel shall attend the mediation unless otherwise agreed by the parties and the mediator, or unless otherwise ordered by the Court. If a party is a public entity it shall appear by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body or officer of the entity. If a party is an organization other than a public entity, it shall appear by the physical presence of a representative other than the party's counsel of record who has full authority to settle without further consultation. If any party is insured for the claim in dispute, that party shall also be required to have its insurer(s) present by the physical presence of a representative of the insurance carrier(s) who is not that carrier's outside counsel; this representative must have full settlement authority. The foregoing requirements of attendance may be varied only by stipulation of the parties or by order of the Court for good cause shown.

- (2) Default and dismissal in mandatory mediation small claims cases:

- (a) Default. If the case was scheduled for mandatory mediation in accordance with this rule and if the plaintiff or plaintiffs were in attendance and the defendant or defendants were not in attendance for the scheduled mediation, the matter shall be subject to default judgment.

- (b) Dismissal. If the case was scheduled for mandatory mediation in accordance with this Rule and if the plaintiff or plaintiffs did not attend the mediation, then the matter shall be subject to dismissal without prejudice.

- (3) Mediation proceedings under this rule are non-binding and shall not impair the right of the litigants to demand a hearing after the mediation. Any settlement reached at mediation shall be binding on the parties and entered as a judgment or dismissal, as appropriate. This rule does not prevent a party from filing a motion for further proceedings based upon non-compliance with the mediation agreement.

(g) Mediator Assignment. The Supervisor or designee of the Clark County Neighborhood Justice Center (NJC) shall assign a NJC mediator in a manner that accommodates the small claims case load of the Court.

(h) Disclosure of Conflict. Upon appointment in a case, the mediator shall disclose any circumstances likely to create a conflict of interest, an appearance of conflict of interest, a reasonable inference of bias, or other circumstance that may prevent the process from proceeding as scheduled.

- (1) If the NJC mediator withdraws, has a conflict of interest, or is otherwise unavailable, another NJC mediator shall be assigned by the NJC Supervisor or designee.

- (2) The NJC mediator bears the burden of disclosure. After appropriate disclosure, the NJC mediator may serve if both parties agree in writing to waive the conflict or appearance of conflict. If the NJC mediator believes or perceives that there is a clear conflict of interest, he or she should withdraw, regardless of the expressed desires of the parties.

(i) Impartiality. Impartiality shall be defined as freedom from favoritism or bias in word, action, and appearance.

- (1) The mediator shall aid all parties equally in moving toward an agreement. A mediator shall be impartial and shall advise all parties of any circumstances bearing on the mediator's possible bias, prejudice, or impartiality.

(2) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of the proposed options for settlement.

(3) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer be impartial.

(4) A mediator shall not give to, or accept from, a party, attorney, or any other person involved with the mediation, a gift, favor, loan, or any other item of value.

(j) Prohibitions. A mediator shall not provide counseling, professional or personal advice or therapy to any party during the mediation process. The mediator shall not use the mediation process to solicit or encourage future professional services with either party.

(k) Self-determination. A mediator shall assist the parties in reaching an informed and voluntary settlement. To that end, decisions during the mediation shall be made voluntarily by the parties.

(1) A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make a substantive decision for any party to a mediation process.

(2) A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.

(3) The mediator shall promote mutual respect between the parties throughout the process.

(4) While a mediator may propose or describe a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how a judge or referee would resolve the dispute.

(l) Non-represented Parties.

(1) When a mediator believes a non-represented party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the non-represented party that he or she may consult independent legal counsel.

(2) When a mediator disclosing an actual or potential conflict of interest believes a non-represented party does not understand or appreciate the conflict, the mediator shall advise the non-represented party that he or she may consult independent legal counsel before waiving any conflict.

(m) Confidentiality. A mediator shall preserve and maintain the confidentiality of all mediation proceedings. Any communication made during the mediation that relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation, is confidential.

(1) A mediator shall keep confidential from the other parties any information obtained from a party to the mediation unless that party permits disclosure.

(2) All memoranda, work products, and other materials contained in the case file of a mediator are confidential. The mediator shall render anonymous all identifying information when materials are used for research, training, or statistical compilations.

(3) In accordance with NRS 48.109, confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings, except for any of the following:

a. Where the parties to the mediation agree in writing to waive the confidentiality.

b. When a subsequent action for damages arises out of the mediation and the action is between the mediator and a party to the mediation.

c. When the mediator must defend against allegations of misconduct occurring during the mediation.

d. Where disclosure is required by law, including, but not limited to, situations where there are threats of imminent violence to self or others, or where child abuse or elder abuse must be disclosed.

(n) Inadmissibility of Mediation Proceeding. Information, evidence or the admission of any party shall not be disclosed or used in any subsequent proceeding subject to the exceptions listed in section (m) above. Partial settlements may occur and are subject to these rules. Additional information on partial

settlements can be found in section (o).

(1) Statements made and documents prepared by a party, attorney, or other participant in the aid of such proceedings shall be privileged and shall not be disclosed to any Court or construed for any purpose as an admission against interest.

(2) All mediation proceedings are deemed settlement conferences as prescribed by Court rule and the Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there has been a mediation proceeding.

(3) A mediator shall not be called as a witness in any subsequent proceeding relating to the parties' negotiation and participation except as set forth in Section (o)(3) of this rule.

(o) The outcome of mediation shall be submitted to the Civil Clerk's Office within three (3) judicial days after the conclusion of the mediation, as follows:

(1) If the mediation is successful in resolving the issues between the parties, the mediator shall so indicate on the Report of Small Claims Mediator form.

(a) The mediator will file the original copy of the Mediation Agreement form.

(b) The Civil Clerk's Office will enter the Mediation Agreement form as a consent judgment or Order for Dismissal, as appropriate.

(2) If agreement is not reached, the mediator shall so indicate on the Report of Small Claims Mediator form. The Clerk's Office will schedule the case before a Small Claims Referee for hearing.

(3) If a partial settlement is reached, the mediator shall so indicate and list those issues that remain unresolved on the Report of Small Claims Mediator form. Those issues that shall remain unresolved shall be scheduled before a Small Claims Referee for hearing.

(4) If one or both parties fail to appear at any mediation, the mediator shall list the identity of each person who failed to appear on the Report of Small Claims Mediator form. The Justice Court Civil Clerk's Office will thereafter route the Report of Small Claims Mediator form to a Small Claims Referee for signing any appropriate Order for Dismissal or Default Judgment.

(p) Parties or counsel may agree to use private mediation.

(1) If the parties knowingly and voluntarily agree to use private mediation, the agreement must be:

(a) A new agreement, not part of any previous agreement between the parties, and

(b) The agreement must be entered into at the time of the dispute, and

(c) The agreement must be in writing on the form entitled "Motion For An Order To Use Settlement Procedure Other Than Neighborhood Justice Center Mediation And Order."

(2) The parties are responsible for contracting directly with the neutral, third-party, private mediator, and the parties are responsible for:

(a) Paying all fees; and

(b) Scheduling any meetings or conferences needed for the private mediation.

(3) The neutral third party has a right to withdraw from any case.

(4) Within three (3) judicial days after the conclusion of the private mediation, the neutral third party must file a document entitled "Report Of Neutral Third Party Conducting Settlement Procedure Other Than Neighborhood Justice Center Mediation" with the Justice Court Civil Clerk's Office. This Report shall indicate the results of the private mediation.

(5) The Las Vegas Justice Court may approve and adopt forms for use by private mediators. The Court has the discretion to modify, amend, or supplement the existing forms.

(q) If an interpreter is needed for a party who does not speak English, or for a party with a communications disability, that party must file a written motion to request an interpreter, and the compensation for that interpreter shall be paid as provided by law. The interpreter's role shall be strictly limited to that of interpreting, not offering opinions or suggestions.

- (r) Phone/Video Appearances. A party living out of state or incarcerated in a prison or jail may participate by telephone conference or video conference. The party must contact the Neighborhood Justice Center in advance of the mediation to make necessary arrangements.
- (s) All mediators shall adhere to the Model Standards of Conduct for Mediators as jointly developed by the American Arbitration Association, American Bar Association, and Association for Conflict Resolution, as well as the Practice Standards developed by the National Association for Community Mediation.
- (t) Immunity. Because the mediator performs quasi-judicial functions and serves under the auspices of the Las Vegas Justice Court, each mediator has qualified immunity from suit in any subsequent proceeding relating to the parties' negotiations and participation in the mediation.
- (u) Complaints regarding a NJC mediator's performance shall be forwarded to the Supervisor of the NJC. The Supervisor of the NJC shall investigate the complaint and make a recommendation to the Chief Judge of the Las Vegas Justice Court for further action.