

LAW CLERK CORNER

By Moria E. Desmarais, Law Clerk, Second Judicial District Court

At the Second Judicial District Court, each department is assigned an exclusive and highly coveted special assignment. Department Eight is the arbitration department, led by the Honorable Barry L. Breslow. As the Law Clerk in the Arbitration Department, I have a backstage pass to the Court Annexed Arbitration Program and each day it presents challenges, frustrations, and reminders to count my blessings and be thankful that all of this is not as complicated as what happens in the foreclosure mediation department.

The Basics

The Nevada Supreme Court Annexed Arbitration Program originated in 1992 as a quick, economical, and just means to the end of a civil dispute. It is a program mandated in judicial districts with a population of 100,000 or more, e.g., Clark and Washoe Counties. NAR 1. Smaller counties can opt in. Id. The Program is governed by The Nevada Arbitration Rules (NAR), available on the legislative website. Generally, all civil cases where the amount in controversy is less than \$50,000.00 (not including interests and costs) are **presumed arbitrable** until a party seeks exemption and the Arbitration Judge approves the request. NAR 3(A); NAR 5(A).¹

An arbitration hearing is led by a court-appointed arbitrator. Arbitrators are some of the most experienced legal practitioners in the community, appointed based on the qualifications outlined in NAR 7. Hearings are considered less formal, but with all the bells and whistles of your typical evidentiary hearing. Acting like a *pro tem* judge, the arbitrator enters the ultimate ruling, giving an award of up to \$50,000 per plaintiff plus (capped) attorney fees and costs where appropriate.

What comes as a surprise to most parties is that arbitration is non-binding. This begs the question: why

bother? The answer: trial could be much worse. Civil trials in particular are the perfect storm: costly, exhausting, and unpredictable. Trial is a production and a half – a Greek tragedy that takes days of your time. It's often just not worth the hassle. Arbitration is fast (but not too fast), affordable(-ish), and approachable – much like a pre-owned 2010 Honda Accord.²

Nuances of the Second Judicial District Court

- The Arbitration Program for the Second Judicial District Court does not have a commissioner, as referenced in the NAR. Instead, we have an Arbitration Judge. The duty is assigned on a rotating basis. Judge Breslow became the Arbitration Judge in January 2018, a position held previously by Judge Lynne K. Simons.
- Upon filing of an Answer, the Arbitration Department reviews the Complaint and request for exemption to determine if the case should remain assigned to the Arbitration Program, pursuant to NAR 3. If you are requesting exemption from arbitration, be mindful of NAR 5 and proceed accordingly. Nothing is more frustrating than spending time and effort to assign a case to arbitration, provide a list of proposed arbitrators, review strike lists, and ultimately select an arbitrator, to then learn that counsel is requesting exemption from arbitration, but did not make a timely request pursuant to NAR 5. Failure to timely request exemption may result in you cutting a check to Washoe Legal Services for

\$250.00 as a sanction.

- One of the best unintentionally-kept secrets in the Arbitration Department is arbitrator selection. The list of proposed arbitrators is generated randomly. Five names are offered if there are two parties, with two names added for every additional party to the action represented by a separate attorney (or acting in *pro per*) thereafter. Each party may strike two names. On many occasions, one name remains and that person is appointed. If more than one name remains, the arbitrator who served least recently is appointed.

The Do's and Definitely Do Not's³

And now, for some pearls of wisdom from the Arbitration Department staff, some our most experienced arbitrators, and from the Arbitration Judge himself:

DO:

- Refer to the rules. The NAR is not intended to cover every possible scenario, but it does hit most. NAR 2(C). Oftentimes, arbitrators and attorneys call our department with questions that could have been answered by simply referring to (translation: reading) the rules. On that same note, department staff members are ethically prohibited from interpreting the rules for you and we do not give no-cost legal advice.
- Come to arbitration prepared. Organize the documents you plan to present to opposing counsel and/or the arbitrator and know where to locate them. Have your witnesses there and ready to go. If your

client requires an interpreter, make sure you have arranged for one – at your expense.

- Keep it professional. Be mindful that although an arbitration hearing is not as formal as a trial, it is a legal proceeding. Avoid looking at your phone, acting too casual, and other behavior that would be unacceptable in a courtroom, e.g., wearing jeans. (Not joking. It happens.)
- Your arguments should be short and sweet. Brief summaries that hit the high points and defend the weak points are most effective.
- Stay active and keep-up the momentum. Update the arbitration department on the status of your case through filings. If your case was resolved prior to arbitration, file something. If you want to get paid for your service as arbitrator, send your bill promptly (or risk being time-barred).

PLEASE, DO NOT:

- DO NOT file arbitration documents in the CV case. When a case is ultimately assigned to the Arbitration Program, it will be assigned a case number that begins with “ARB” – this moniker replaces “CV.” Arbitration documents belong in the ARB case. This is particularly true for lists striking potential arbitrators. DO NOT file this list in the CV case under “List/Stricken Short Trl Judge.”
- DO NOT mail or email the Arbitration Department directly. Any correspondence will be filed by our staff in the arbitration case. This creates unnecessary, extra work for the department. And we really don’t need more work. We have enough of our own.
- DO NOT treat your arbitration like a mediation. Parties who seek a mediation variation of alternative dispute resolution will ask for it

and many of those at the arbitration stage have been unsuccessful in that pursuit. The arbitration hearing is simply not a mediation.


Final Thoughts

The beauty of the Court Annexed Arbitration Program is that, at its core, those of us involved are reminded of the simplest lessons of legal practice: be kind, be organized, follow the rules, try hard, have fun, and run the bases right to left – a little league mantra in it for everyone. So if any of us take anything away from the Law Clerk Corner, let it be a little Arbitration 101 and a reminder of the beauty of sticking to the basics.


¹Some cases automatically qualify for exemption under NAR 3(A). For more information, visit NAR 3.

²Like the one I drove in the summer of 2014, so I know of what I speak.













³Please feel free to share the following tips and tricks with members of your staff - especially those who may handle filing and communicating with the Court.



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