

## STATUS OF ADR IN NEVADA (as of 8/22/22)

### I. Court System

#### A) Federal Courts:

The Ninth Circuit Court of Appeals has a Mediation Program designed to facilitate settlement of civil cases that have been appealed. Pursuant to Ninth Circuit Rules 3-4, 33-1, most cases in which parties are represented by counsel are eligible for the program. Ninth Circuit Rule 3-4 provides that within seven days after filing an appeal, appellant must, and the appellee can, fill out a mediation questionnaire. Following questionnaire review, a court mediator generally confers with parties' attorneys by phone and together they decide whether the dispute would benefit from mediation. Ninth Circuit Rules 3-4, 15-2, and 33-1 spell out additional procedures and logistics for handling mediations. For more information, *see* <https://www.ca9.uscourts.gov/mediation/the-mediation-process/>; *see also* [Ninth Circuit Court Rules](#).

In the federal District Court of Nevada, Local Rule 16-6 requires all employment discrimination cases to be mediated by magistrate judges through Early Neutral Evaluation (ENE) before they can be heard in court. The mediation occurs early in the case. Non-employment cases are not automatically referred to any type of ADR program, but Local Rule 16-5 permits the court to "set any appropriate civil case for settlement conference or other alternative method of dispute resolution (ADR) and may propose that the parties participate in the Short Trial Program." Such settlement conferences usually occur fairly late in the litigation process, and are typically presided over by a judge or magistrate other than the one who is assigned to hear the case. *See* [District Court of Nevada Local Rules](#).

The District Court of Nevada also has an Early Mediation Program to hear civil rights complaints filed by federal pro se prisoners. The program helps resolve inmate claims regarding such matters as religious rights, the alleged use of excessive force, medical treatment, and retaliation for exercising constitutional rights. Inmates may seek damages, injunctive relief or both. The goal of the program is to settle cases before either party begins motion practice or active discovery. Program volunteers act as a mediator between inmates, the Nevada Department of Corrections representatives, and the deputy attorney general. Our Boyd mediation clinic sometimes helps with these cases. <https://law.unlv.edu/clinics/mediation/public>.

The United States Bankruptcy Court for the District of Nevada has adopted a [Mortgage Modification Program](#) (MMP) for Las Vegas Chapter 13 bankruptcy cases filed on or after January 1, 2015. *See* Local Rule 3015.1. In addition, Local Rule 9019 allows the Bankruptcy Court, on its own initiative or at request of a party, to order that any matter be set for settlement conference or other ADR method. Pursuant to this rule, bankruptcy judges sometimes hold settlement conferences in each others' cases. *See* [Local Rules, Bankruptcy Court, District of Nevada](#).

#### B) State Supreme Court:

The Nevada Supreme Court adopted Nevada Rule of Appellate Procedure 16 which established the Settlement Conference Program in 1997. *See* [Nevada Rules of Appellate Procedure](#). Any civil appeal that does not involve the termination of parental rights and in which all parties have legal representation can be assigned to the Settlement Conference Program. Such disputes are assigned to “settlement judges,” also often called “mediators,” who attempt to help the parties and their attorneys settle their outstanding issues. Settlement proceedings are confidential and statements made in those proceedings may not be used in court if the case is not settled and is later heard by the Supreme Court. The mediators are usually experienced local attorneys. Approximately half of the cases assigned to this program have settled. *See* [Nevada Settlement Conference Program Overview](#).

In 2009 the Nevada Legislature created a Foreclosure Mediation Program, overseen by the Nevada Supreme Court, to assist homeowners in a collapsing housing market. The program is now run by the Nevada District Courts and by Home Means Nevada, Inc., – a state affiliated nonprofit organization. *See* <http://www.homemnv.org/foreclosure-mediation-program/>; *see also* [Foreclosure Mediation Rules](#).

#### C) State District Court:

The Nevada Supreme Court established the Court Annexed Arbitration Program (CAAP) in 1992. *See generally* [Nevada Arbitration Rules](#). CAAP mandates non-binding arbitration in judicial districts with populations greater than 100,000, i.e. Clark and Washoe counties, for all civil cases in which the amount does not exceed \$50,000 per plaintiff excluding attorney’s fees and court costs. [NRS §§ 38.250–259](#). To qualify as an arbitrator, attorneys must have 8 years in practice. *See* Nev. Arb. R. 7. Some non-attorneys with significant experience can also qualify as arbitrators. *See id.* The state bar performs background checks on applicants, and the court provides training. *See id.* The arbitrators are paid by the parties at rate of \$100 per hour, up to a maximum of \$1,000 per case, with each party equally sharing arbitrator costs. *See* Nev. Arb. R. 24. At the arbitrator’s discretion, the parties may be required to advance up to \$250 towards the arbitrator’s fee, but in no case can an arbitrator collect fees from the parties if one of the parties is an indigent defendant exempted under NRS § 12.015. *See id.* Arbitrations are to be completed and awards filed within six months of the arbitrator’s appointment. *See* Nev. Arb. R. 12. Parties who are dissatisfied with the arbitrator’s award may obtain a trial de novo by filing a written request within 30 days of the arbitration award’s service upon the parties. *See* Nev. Arb. R. 18. However, the arbitration result will be admissible at the hearing, and if the party who appealed does not substantially better their result (10 or 20%, depending on initial award), they must pay the opposing parties’ attorneys’ fees and costs associated with the appeal. *See* Nev. Arb. R. 20. In the Eighth Judicial District, covering Clark County, approximately 4,000 cases per year are sent to court-ordered arbitration, which is approximately two-thirds of the civil cases in the District in which answers are filed by defendants. *See* [Clark County Arbitration](#). This District “successfully” resolves 75% of these cases, meaning the parties do not seek a trial de novo. *Id.*

There has been some controversy surrounding the Court Annexed Arbitration Program. In 2009 in the case of *Zamora v. Price*, 125 Nev. 388 (2009), the appellant argued that the program was unconstitutional due to the fact that it violated the right to a jury trial and that the required case value of \$50,000 was constitutionally unfair. The Supreme Court of Nevada denied both of these claims.

The Eighth District also established a [Short Trial Program](#) (STP) in June 2002. When parties seek a de novo trial after a non-binding arbitration award has been made, they are funneled into the STP unless they affirmatively request a standard trial. The Nevada Short Trial Rules provide for an abbreviated trial, allotting 30 minutes for jury selection and 3 hours to each side to present its case. [N.S.T.R. 21](#). There can be between 4 and 8 jurors, and judgments are binding, subject to appeal only to the same limited extent as binding arbitration awards. Neither a bailiff nor a court reporter is used. Pro-tempore “judges” (local lawyers) hear the cases and are paid \$150 per hour, with a maximum per case of \$1,500. N.S.T.R. 28. These fees are paid by the parties. A listing of two panels of judges are maintained, one for torts and one for contracts; torts is by far the most used. The Rules also provide that Short Trials shall be completed within six months of filing. Furthermore, all judgments must be under \$50,000 unless the parties otherwise stipulate.

In 2005, the [Court Annexed Mediation program](#) was created. It is governed by the Supreme Court Rules Governing Alternative Dispute Resolution. Per [Nevada Mediation Rule 2](#), any case subject to the Arbitration Program can alternatively be placed into the Mediation Program by voluntary and mutual consent of the parties involved. Similar to the Arbitration Program, the cases in the Mediation Program involve \$50,000 or less in the amount in issue. In the Mediation Program, parties may request to use a private mediator. *See* N.M.R. 2. All mediators in the program must have the equivalent of at least 10 years of civil experience as a practicing attorney or judge, have at least 5 years of experience as a mediator, or be a senior judge or justice. *See* N. M. R. 4. Mediation must take place within 60 days from the mediator’s appointment. *See* N.M.R. 6. Mediators can earn up to \$1,000 per case with the costs being paid equally by both sides. *See* N.M.R. 10. While this particular mediation program is rarely used, the ADR Commissioner is trying to encourage attorneys to use it more frequently and usage is increasing. All unresolved matters from this program must enter the Nevada Short Trial Program. *See* N.M.R. 9.

With respect to family law, mediation is mandatory with respect to child custody or visitation issues in Nevada counties with populations greater than 100,000. N.R.S. §§ 3.475, 3.500. The mediation must occur prior to any court hearing on these matters. Such mediations do not include resolution of financial issues, and exceptions to the mandate are made where there is a history of domestic violence, child abuse, one party lives out of state, or pursuant to an exercise of judicial discretion in emergency situations. *See* N.R.S. §§ 3.475(2)(a-b); 3.500(2)(a-b). Such mediations are handled by the Family Mediation Center (FMC), our own Boyd clinic, or private mediators. Mediators must have specific training in divorce and child custody mediation, as well as three years of experience as a mediator handling child custody disputes. EDCR 5.106. The FMC charges fees on a sliding scale. EDCR 5.303(c). In addition, dependency mediation and family group conference services are sometimes provided in child welfare cases and those cases are referenced in NRS § 432B and the Adoption and Safe Families Act of 1997 PL 105-89. The 1st, 2nd, 4th, and 9th Judicial Districts also have similar programs.

With regard to dependency cases—where the state or a third party claims that a parent is unfit to care for their child or children—Nevada has implemented a [Statewide Juvenile Dependency Mediation Program](#) (JDMP). The program’s stated primary purpose is to decrease the termination of parental rights and to minimize instability in children’s lives. The process is informal, confidential, and may involve parents, social workers, children, and attorneys. Some dependency cases may result in an open adoption agreement. NRS 432B.5904. Boyd alum Jae Barrick, is the JDMP Administrator.

D) Las Vegas Justice Court:

For a time, mediation was mandatory in small claims cases brought in Nevada’s Justice Court. *See* Local Rules of Practice for Nevada Justice Court Rule 48.5. However, this Rule has now been revised, so that mediation of small claims cases is optional but not mandatory. *See* Administrative Order 16-04, Las Vegas Justice Court (December 19, 2016).

E) Neighborhood Justice Centers:

By statute, Nevada counties with a population of more than 100,000 must establish a neighborhood justice center. [N.R.S. § 244.1607](#). Thus, the NJC was established in 1991 as a “forum for the impartial mediation of minor disputes including, but not limited to, disputes between landlord and tenant, neighbors, family members, local businesses and their customers, hospitals and their patients, and governmental agencies and their clients.” *See id.* The NJC became a division of the Las Vegas Justice Court in 2006, and it provides mediations and conducts trainings throughout Clark County including Las Vegas, Henderson, Boulder City, North Las Vegas, and Mesquite. Some mediations occur as a result of a court order, and others are brought to the NJC voluntarily by disputing persons or entities. The Neighborhood Mediation Center in Reno provides similar services for Washoe County, though it is not housed within a court.

## II. ADR in the Nevada Revised Statutes & Nevada Administrative Code

ADR is addressed quite extensively in the N.R.S. and NAC.

Athletic Commission: Voluntary binding arbitration of contract disputes between boxer and his manager must be conducted by a commission representative pursuant to Uniform Arbitration Act. N.A.C. § 467.102.

Blind services: A complaint to Bureau of Services to the Blind & Visually Impaired against a licensed vending facility operator may be resolved by arbitration with mutual agreement of parties. N.A.C. § 426.475.

Business and Industry: The Director of the Department of Business and Industry may authorize any individual in the Department, or any person subject to his or her authority, to use alternative dispute resolution in any proceeding. N.R.S. § 232.548.

Contractors: Prime contractors or sub-contractors maintain the right to submit any controversy to arbitration even if they have stopped work or terminated an agreement. N.R.S. § 624.610, §

624.626. A contractor is a builder, except for a registered architect or licensed professional engineer. N.R.S. § 624.020. A prime contractor is a contractor who enters into an oral or written agreement to provide work, materials, or equipment for the work. N.R.S. § 624.6086. A subcontractor is an individual who has entered into an oral or written agreement with a higher-tiered contractor to provide work, materials, or equipment for the work. N.R.S. § 624.608.

Corrections: The Attorney General may create a program to mediate complaints from any person convicted of a crime and sentenced to imprisonment in the state prison concerning: an administrative act that is allegedly contrary to the law, or issues of health or safety. N.R.S. § 209.244, § 209.081.

Construction Defects: Mediation is mandatory prior to commencing construction defect actions unless both contractor and claimant provide written waiver. Exception is made for complex matters, which may be first filed with District Court. N.R.S. § 40.

Education: Arbitration is used for many different education-related disputes. For example, arbitration to resolve new contract terms is required if teacher salary negotiations are not completed by the annual report due date. N.R.S. § 387.303(1)(d). Arbitration, mediation, or negotiation may be used for settlement by private education administrators (private schools accredited by the state) to attempt to resolve verified complaints. N.R.S. § 394.520(2). The board of education regulations also call for mediation of disputes between parents and district over pupil placement. N.A.C. § 388.305. Also, participation agreements for qualified state tuition college savings program pursuant to 26 U.S.C. § 529 must include an arbitration clause to settle claims using A.A.A. rules. NAC § 353B.630. Arbitration is also allowed for disputes between different county school districts. N.R.S. § 387.551(1)(j).

Estate Taxes: If Nevada and another state are involved in a dispute over estate taxes, a board of arbitration will be created to oversee the proceeding. The board's determination of the decedent's domicile is final and binding. N.R.S. § 375A.650.

Eviction: In a designated eviction proceeding, a tenant or landlord may request that the dispute be resolved through mediation. Landlords may request mediation through their complaint, while tenants may request mediation pursuant to NRS § 40.253(3). *See [Order Approving Amendments to Eviction Mediation Rules for Designated Eviction Proceedings](#).*

Facilities: The State may act through the Board of County Commissioners to arbitrate any differences that arise in connection with facilities or any project that concerns the county or the State. N.R.S. § 244A.521. Such projects/facilities may include jails, libraries, museums, theaters, art galleries, welfare facilities, vehicles, road maintenance equipment, or administrative offices. N.R.S. § 244A.019.

Fire Protection: A Fire Protection District has the power to arbitrate claims. N.R.S. § 474.125, § 474.460.

Foreclosure: Mediation is allowed in a foreclosure sale if it affects an owner-occupied house. N.R.S. § 40.437. A sale of a house in default cannot go through unless the holder of the title of record is given notice of the right to enroll in the mediation program along with the notice of default. N.R.S. § 107.086.

Gaming: The disposition of evidence seized but not used in a case may be submitted to binding arbitration. N.R.S. § 465.110.

Guardianship: In counties with a population of less than 100,000, guardians ad litem must have training in mediation. N.R.S. § 432B.505.

Health and Human Services: The Governor's Consumer Health Advocate or designee, may mediate, arbitrate, or resolve an issue between patients and hospitals brought by either party

through other forms of alternative dispute resolution. This includes issues of charges between the hospital and patient. N.R.S. § 223.575.

Indian Disputes: The office of Indian affairs may mediate disputes between landowners and Indian tribes. N.R.S. § 383.160.

Insurance: Individual health insurance policies must include a procedure for resolving disputes involving independent medical evaluations by binding arbitration through the American Arbitration Association. N.R.S. § 689A.0403. Group health insurance policies may require binding arbitration according to AAA rules but must allow the member to decline to participate at the time of coverage, and must clearly state that by accepting arbitration, the member foregoes resolution in court. Provision is not unenforceable as an unreasonable contract of adhesion. N.R.S. § 689B.067. Group or blanket health insurance policies must include the procedure for resolving disputes involving independent medical evaluations by binding arbitration through AAA. NRS § 689B.270. Arbitration provisions in motor vehicle liability insurance policies are not binding on the insured. N.R.S. § 690B.017. Home insurance policies may include the procedure for resolving disputes by binding arbitration through AAA. Provision is not unenforceable as an unreasonable contract of adhesion. N.R.S. § 690B.155. Any dispute involving a matter that is directly or indirectly related to a contract that is associated with insurance for home protection may be submitted for binding arbitration on the approval of the Commissioner. *Id.* Non-profit medical service contracts insurance policies may require binding arbitration according to AAA rules but must allow a party to decline to participate at the time of coverage, and must clearly state that by accepting arbitration, the member foregoes resolution in court. Provision is not unenforceable as an unreasonable contract of adhesion. N.R.S. § 695B.181. Contracts for hospital or medical services and HMO's must include binding arbitration per AAA rules. N.R.S. § 695B.182, N.R.S. § 695C.265. HMO's may require binding arbitration according to AAA rules but must allow a party to decline to participate at the time of coverage, and it must clearly state the member foregoes resolution in court. Provision is not unenforceable as an unreasonable contract of adhesion. N.R.S. § 695C.267. A non-public entity managed care organization that has more than 100 insured must include a description of each complaint filed with or against it that resulted in arbitration or other legal proceeding if disclosure is legal. N.R.S. § 695G.220. The Insurance Commission allows that life and health reinsurance agreements entered into in conjunction with a trust agreement and the establishment of a trust account may permit award by arbitration. N.A.C. § 681A.320.

LPG: The Board for Regulation of Liquefied Petroleum Gas shall adopt regulations that provide for mediation of complaints by users of liquefied petroleum gas. These hearings must be open to the public and recorded on tape. The Board is responsible to provide prior notice by mail to anyone who requests to receive notice of the mediation hearings. N.R.S. § 590.515.

Labor Disputes: The Governor may, at the request of a party, intervene to settle organized labor disputes that are disruptive to business. The Governor may use mediation and conciliation and, if those are unsuccessful, arbitration. N.R.S. §§ 614.010–080. Regulations establish qualifications and training to serve as a hearing officer, which include knowledge of mediation techniques. N.R.S. § 616C.295. Disputes between a local government and employee organizations may be settled through mediation. N.R.S. § 288.

Metropolitan Police Departments: If a police department's funding apportionment plan is not approved, the plan or the disputed element must be submitted to an arbitration panel. N.R.S. § 280.190.

Mortgage Brokers and Mortgage Agents: A mortgage broker cannot include any provisions in a contract that require a private investor to participate in binding arbitration in disputes relating to a loan. N.R.S. § 645B.351, N.R.S. § 645B.352.

Nevada Equal Rights Commission: If, following an investigation, the Administrator finds that an unlawful practice has occurred, he or she shall mediate between the two parties. N.R.S. §§ 233.150, 233.170.

Nevada Real Estate Division (NRED): The NRED mandates ADR in disputes involving homeowners' associations (HOAs). Prior to any civil action involving disputes that relate to the governing documents of a HOA, the disputing parties must follow the ADR process under NRS § 38 and submit the claim to the NRED. If the HOA already provides for an ADR process, then the parties must follow the HOA-designated process before submitting the ADR claim to the [NRED](#).

Pharmacy: Parties must submit disputes regarding enforcement of statutory liens to binding arbitration in accordance with American Arbitration Association rules if the Board of Pharmacy is unable to resolve dispute informally. N.A.C. § 639.634.

Planned communities: The Division of Real Estate of the Department of Business and Industry may create a program, or refer individuals to an existing program, for mediation and arbitration for cases involving residential property including real estate in planned communities. N.R.S. § 38.300–360; N.R.S. § 116.

Property Rights: Individuals and Community Associations may use arbitration and mediation to resolve disputes. N.R.S. § 116B.850. The Division may subsidize binding arbitration proceedings, as long as the parties agree to binding arbitration and the funds are available in the Account for Common-Interest Communities and Condominium Hotels in the State General Fund. N.A.C. § 116.520. In common-interest communities, a management contract can stipulate mandatory binding arbitration. N.R.S. § 116A.620; N.A.C. § 116A. Disputes between a landlord and tenant can be resolved through arbitration or mediation. A landlord cannot use the results of this dispute resolution as a reason to terminate tenancy. N.R.S. § 118B.210.

Public Utilities: Contracts between customers and geothermal energy providers offering service to public must provide for submission of claims of damages resulting from disruption of service to binding arbitration pursuant to Chapter 38. Applications for operating a permit for the sale of energy from geothermal resources to the public must include a description of provisions for acting on requests for binding arbitration. N.R.S § 704.780. Complaints between telecommunication providers must be submitted to mediation, to be presided over by the director of regulatory operations of the Public Utilities Commission (PUC). N.A.C. § 704.68035–680365.

Public Welfare: The Public Welfare Division must attempt to settle complaints through arbitration, mediation, or negotiations. N.R.S. § 427A.175.

Public Works: The Public Works Board may appoint a board of appeals to attempt dispute resolution before initiating arbitration. N.A.C. § 341.025.

Sale of Motor Vehicles: Car dealers and other parties may mutually agree to arbitration. N.R.S. § 482.3638.

Statutory Liens: A lien claimant has the right to submit any controversy arising under a contract to arbitration to recover that amount. N.R.S. § 108.239. This arbitration may be binding. *Id.*

Telephone Solicitation: Procedures for processing complaints regarding telephone solicitation may include mediation by commission following Attorney General review. N.R.S. § 599B.025.

Trade Disputes: Any provision that requires arbitration or mediation of trade disputes must include specific authorization that shows the person affirmatively agreed to the provision, or it is void and unenforceable. N.R.S. § 597.995.

Trusts: Authorizes a fiduciary to settle or arbitrate claims regarding a trust. N.R.S. § 163.375.

Wildlife: The Wildlife commission must appoint an arbitration panel to resolve disputes of applicants for special incentive elk tags. N.R.S. § 502.142(1)(k); N.A.C. § 502.42283.

### **III. Private ADR**

In Nevada, as in other states, a great deal of ADR is conducted privately. The most frequently used ADR techniques are negotiation, mediation, and arbitration.

Negotiation occurs in virtually all cases, and at various stages of the lawsuit. It need not be mandated by a court or contract to occur. However, some contracts also require that negotiations be conducted, sometimes “in good faith” or between particular company representatives, before further legal action can be taken.

Mediation has become an increasingly popular tool for resolving disputes in a variety of areas. Even when it is not mandated by court, agency, or contract, parties or their attorneys may opt to try mediation. It has become particularly common with respect to family, employment, and business disputes.

Many contracts between two commercial entities require that all future disputes arising out of or relating to the contract will be resolved through binding arbitration, rather than through litigation. Some of these contracts also call for negotiation or mediation, sometimes as a prior step to arbitration.

In addition, companies increasingly mandate that their customers, patients, or employees resolve future disputes through arbitration. This phenomenon of “mandatory arbitration” has been quite controversial, but exists in Nevada as in other states. The practice of mandatory arbitration is generally permitted given the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and its interpretation by the U.S. Supreme Court. Initially, a few Nevada decisions placed limits on the practice in particular circumstances. *See, e.g., DR Horton, Inc. v. Green*, 96 P.3d 1159 (Nev. 2004) (holding that an arbitration provision in a contract for a home sale was procedurally and substantively unconscionable because it was inconspicuous, one-sided, and failed to advise the homebuyers that significant rights under Nevada law would be waived by agreeing to arbitration). *See also Gonski v. Second Judicial Dist. Court of State ex. rel. Washoe*, 25 P.3d 2010 (2010) (holding unconscionable an arbitration clause that purported to require homeowners to arbitrate construction defect claims against builder). However, these decisions were overruled by *U.S. Home Corp. v. Michael Ballesteros Tr.*, 415 P.3d 32 (Nev. 2018) (holding that the rules established in *DR Horton* and *Gonski* were preempted by the Federal Arbitration Act).

Nevada has passed various statutes governing private dispute resolution. For example, the Uniform Arbitration Act of 2000 is contained at N.R.S. § 38.306–248. Also, N.R.S. § 597.995 provides that a party is only bound by an arbitration agreement if they specifically and



affirmatively authorized arbitration. However, this requirement may be preempted by federal law. N.R.S. § 48.109 provides that statements made during mediation are not subsequently admissible in court. And, the Collaborative Law Act, adopted in 2011, allows an individual to hire an attorney exclusively for settlement, and allows this attorney to enter an agreement creating an open negotiation environment with opposing counsel. N.R.S. §§ 38.400–575.