

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 In Re:

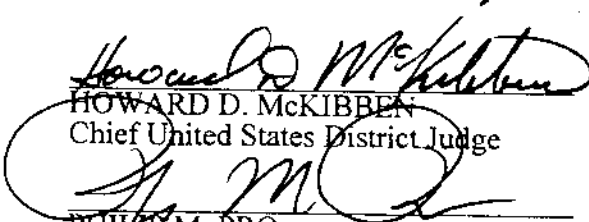
4 EARLY NEUTRAL
5 EVALUATION
6 PROGRAM

SPECIAL ORDER NO. 102

7 ORDER

8 The Court having reviewed and approved the attached Rules for a Court-Based Early
9 Neutral Evaluation Program in the District of Nevada, it is ordered that the Early Neutral Evaluation
10 Program is approved effective January 5, 1998.

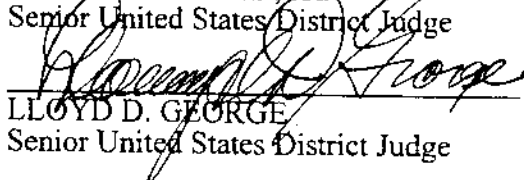
11 ADOPTED BY THE JUDGES OF THIS COURT ON THIS 29th. DAY OF _____
12 December, 1997.

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15 HOWARD D. MCKIBBEN
16 Chief United States District Judge

17 PHILIP M. PRO
18 United States District Judge

19 
20 DAVID W. HAGEN
21 United States District Judge

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23 EDWARD C. REED, JR.
24 Senior United States District Judge

25 
26 LLOYD D. GEORGE
27 Senior United States District Judge
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**U.S. DISTRICT COURT - DISTRICT OF NEVADA
RULES FOR A COURT-BASED
EARLY NEUTRAL EVALUATION PROGRAM**

1. PURPOSE AND SCOPE OF RULES

1-1. Title.

The following rules constitute the Early Neutral Evaluation (hereinafter, ENE) Rules in the United States District Court for the District of Nevada. These rules shall be referred to as "ENE R. ___."

1-2. Purpose and Scope.

(a) **Purpose.** The District of Nevada continually strives to reduce cost and delay and increase judicial access. The court, therefore, adopts these ENE Rules, utilizing magistrate judges as the neutrals, in order to (1) provide litigants in specific civil cases with an alternative form of case management which may result in reduced cost and a more timely disposition of their case, (2) study the effectiveness and desirability of court-based Early Neutral Evaluation in reducing the overall number of claims and defenses asserted by litigants, and (3) study the effectiveness of ENE in promoting the settlement of civil cases.

(b) **Scope.** These ENE Rules will apply to approximately one-half of the employment discrimination cases filed in the District of Nevada on or after January 5, 1998. One-half of the cases will be randomly selected at the time of filing for inclusion in the Early Neutral Evaluation Program. The remaining one-half of the employment discrimination cases will be assigned to a control group.

(c) **Description.** Early in a selected civil case, a magistrate judge, other than the magistrate judge presiding over the case, will hold an informal, off-the-record, privileged, and confidential ENE session with all parties and respective counsel. The evaluating magistrate judge and the parties will discuss the claims and defenses raised in the case and will seek to reach settlement at the ENE session.

(d) **Local Rules.** Nothing in these rules, unless specifically stated, shall be construed as superseding this district's Local Rules of Practice or the Federal Rules of Civil Procedure.

2. MAGISTRATE JUDGES

2-1. Magistrate Judges.

(a) **Duties.** The evaluating magistrate judge shall hold an ENE session for each case assigned to the Program. Additionally, all motions and other papers regarding ENE filed with the court will be submitted to the evaluating magistrate judge for disposition.

(b) **Authority.** Under these rules, each presiding magistrate judge will retain all jurisdiction and powers granted under 28 U.S.C. § 636, including the right to hold trial in civil cases upon the consent of all parties.

3. REFERRAL TO ENE PROGRAM

3-1. Case Assignment.

(a) **Case Type.** Each employment discrimination case (designated as Nature of Suit Code 442 on the Civil Cover Sheet) filed in the District of Nevada will be randomly assigned by the Clerk's Office to either the ENE Program or a control group. No other type of case will be assigned to the Program.

(b) **Notification Requirements.** All parties will be notified by the court within ten (10) days after their appearance in the case of assignment to the ENE Program.

(c) **Exception.** Motions for relief from referral to the ENE Program must be filed not later than ten (10) days after service by the clerk of the Notice of Referral to the ENE Program. Such motions will not be subject to L.R. 7-2. A response to the motion for relief from referral to the ENE Program must be filed within ten (10) days after service of the original motion. No reply will be allowed.

1) **Magistrate Judge.** The evaluating magistrate judge shall have final authority to grant or deny any motion requesting the removal of a case from the ENE Program and may *sua sponte* withdraw any case from the program. Such orders are not appealable.

4. ENE SESSION

4-1. ENE Session.

(a) **Scheduling.** Unless good cause is shown, the ENE session shall be held by the court not later than seventy-five days after the first responding party appears in the case.

(b) **Attendance at Session.** Unless excused by the evaluating magistrate judge, the parties with authority to settle the case and their counsel shall attend the ENE session in person.

4-2. Evaluation Statement.

(a) **Written Evaluation Statements.** Parties shall submit to the chambers of the evaluating magistrate judge their written evaluation statements by 4:00 p.m. five (5) court days prior to the ENE hearing. The written evaluation statement shall not be filed with the clerk or served on the opposing parties.

1) **Evaluation Statement Format.** Evaluation statements shall be concise and shall:

(A) Identify, by name or status the person(s) with decision-making authority, who, in addition to counsel, will attend the ENE session as representative(s) of the party, and persons connected with a party opponent (including an insurer representative) whose

presence might substantially improve the utility of the ENE session or the prospects of settlement;

(B) Describe briefly the substance of the suit, addressing the party's views on the key liability issues and damages;

(C) Address whether there are legal or factual issues whose early resolution would reduce significantly the scope of the dispute or contribute to settlement negotiations;

(D) Describe the history and status of settlement negotiations; and

(E) Include copies of documents, pictures, recordings, etc. out of which the suit arose, or whose availability would materially advance the purposes of the evaluation session, (e.g., medical reports, documents by which special damages might be determined).

2) Confidentiality. Each evaluation statement shall remain confidential unless a party gives the court permission to reveal some or all of the information contained within the statement.

4-3. ENE Session Content. Each evaluating magistrate judge shall:

(a) Permit each party (through counsel or otherwise), orally and through documents or other media, to present its claims or defenses and to describe the principal evidence on which they are based;

(b) Assist the parties to identify areas of agreement and, where feasible, enter stipulations;

(c) Assess the relative strengths and weaknesses of the parties' contentions and evidence, and carefully explain the reasoning that supports these;

(d) When appropriate, assist the parties through private caucusing or otherwise, to explore the possibility of settling the case;

(e) Estimate, where feasible, the likelihood of liability and the range of damages;

(f) Assist the parties in devising a plan for expediting discovery, both formal and informal, in order to enter into meaningful settlement discussions or to position the case for disposition by other means;

(g) Assist the parties to realistically assess litigation costs; and

(h) Determine whether some form of follow up to the session would contribute to the case development process or to settlement.