



September 27, 2018

Ms. Elizabeth A. Brown
Clerk of the Supreme Court
201 S. Carson St.
Carson City, Nevada 89701

Re: ADKT 0522:

I propose the incorporation of the language articulated in WDFCR 53(14)(b) into the NRCP.

NRS 3.475(2)(b) and NRS 3.500(2)(b) mandate rules conferring the discretion to exclude certain types of cases from mediation. All counties have complied, but none with such language as precise as that agreed upon by the Second Judicial District Court. WDFCR 53(14)(b) goes furthest, by mandating the exception from mediation if certain criteria apply; most importantly, where "a parent has serious psychological problems or has displayed severely anti-social modes of behavior", and especially where "the case is at the post-dissolution stage and has involved bitter conflict and frequent court appearances." The lion's share of communication this organization receives are from parents embroiled in high-conflict child custody litigation, and one of the chief points of contention are cases where mediation is mandated where it is not appropriate. This appears to be due to the naivete of certain members of the bar, the bench (typically, those newly elected) concerning both the motivations and objectives of high-conflict parents to exploit the process, and the unwillingness of parties to raise their objections to mediation without concrete authority backing the objections (typically for fear of looking like the party that does not want to "work things out.") WDFCR 53(14)(b) stands as a bulwark to back these objections, but the citizenry of other counties are unable to benefit from its wisdom. See NRCP 83 (forbidding the district courts from "regulat[ing] their practice in any manner [] inconsistent with [the NRCP].)

Sincerely,

A handwritten signature in blue ink that reads 'Alexander Falconi'. The signature is written in a cursive, flowing style.

Alexander M. Falconi
Administrator, Our Nevada Judges