

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION ON STATEWIDE
RULES OF CRIMINAL PROCEDURE.

ADKT 0491

FILED

JUN 07 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AMENDING SUPREME COURT RULES 250 AND 252

WHEREAS, this court created a Commission on Statewide Rules of Criminal Procedure and, on April 17, 2019, the Commission filed its first interim report and recommendations; and

WHEREAS, the Commission has recommended the adoption of modifications to Supreme Court Rule 250(4)(c) and statewide rules governing the use of settlement conferences in criminal cases; and

WHEREAS, this court sought comment on the recommendations from the bench, bar, and public, and conducted a public hearing on June 3, 2019; and

WHEREAS, this court concludes that adoption of the recommendations is warranted; accordingly,

IT IS HEREBY ORDERED that Supreme Court Rule 250(4)(c) shall be amended and shall read as set forth in Exhibit A; and

IT IS FURTHER ORDERED that the proposed statewide rules of criminal procedure shall be adopted and codified in Supreme Court Rule 252. Supreme Court Rule 252 shall be amended and shall read as set forth in Exhibit B; and

IT IS FURTHER ORDERED that these amendments shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication

of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

Dated this 7th day of June, 2019.

Gibbons C.J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Richard Pocker, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

EXHIBIT A

AMENDMENT TO SUPREME COURT RULE 250(4)

Rule 250. Procedure in capital proceedings.

* * *

4. Proceedings before trial.

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(c) **Notice of intent after filing of indictment or information.** No later than 30 days after the filing of an information or indictment, the state must file in the district court a notice of intent to seek the death penalty. The notice must allege all aggravating circumstances which the state intends to prove and allege with specificity the facts on which the state will rely to prove each aggravating circumstance. A defendant may extend the time in which the state must file a notice of intent to seek the death penalty by filing a written waiver no later than 30 days after the filing of an information or indictment. The purpose of allowing for this waiver is to provide additional time to gather potential mitigation evidence. Mitigation evidence may be provided to the state at the defendant's discretion to assist the state in its determination to file a notice of intent to seek the death penalty. If a written waiver has been filed, the state must file a written reservation of the right to seek the death penalty no later than 30 days after the filing of the waiver and a notice of intent to seek the death penalty no later than 180 days after the filing of the waiver.

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EXHIBIT B

AMENDMENT TO SUPREME COURT RULE 252

Rule 252. [A.] Settlement conferences.

1. Settlement conferences in civil cases. At any time in any civil case, the parties may request or the court may order that the parties and their attorneys meet in person with a judge other than the judge assigned to preside over the trial and attempt to settle the case.

~~[1.]~~ (a) Settlement conferences held pursuant to subsection ~~[(A)]~~ 1 of this rule shall be held before a senior justice or senior judge or other judge who is amenable to hearing the case.

2. Settlement conferences in criminal cases. The purpose of a settlement conference is to facilitate good faith discussions to resolve any criminal case before the district court in a manner that serves the interest of justice.

(a) In any criminal case before the district court, either party may request a settlement conference, or the trial judge may, on its own, recommend that counsel with settlement authority participate in a settlement conference. A case will not be referred to a settlement conference if any party objects. The defendant must consent on the record or in writing before a case is referred to a settlement conference. In all cases, the settlement conference must not be before the trial judge. If settlement discussions do not result in an agreement, the case must be returned to the trial judge.

(b) Beyond all else, participation in a settlement conference is voluntary by the parties, and no party has any right to an offer, or may raise any claim from any fact or circumstance that occurs during the settlement conference, including but not limited to the bad faith of the parties in participating in the

conference. Decision-making authority remains with the parties and not the settlement judge. The trial judge, the settlement judge, or any party may unilaterally terminate the settlement conference at any time.

(c) Settlement conferences must, in all respects, be confidential and not reported or recorded.

(d) Communications between the settlement judge and the trial judge. The settlement judge and the trial judge must have no contact or communication, except that the settlement judge may, without comment or observation, report to the trial judge that:

(1) The parties cannot reach an agreement;

(2) The parties have reached an agreement, and the agreement reached may be reduced to writing, signed by the prosecuting attorney, the defendant, and defense counsel and submitted to the court for approval;

(3) Meaningful attempt to settle is ongoing; or

(4) The settlement judge withdraws from further participation in potential settlements.

(e) Should the settlement conference result in a settlement agreement, the terms of the agreement must be reduced to a guilty plea agreement in accordance with NRS 174.063 and signed by the defendant, defense counsel (if any), and the prosecutor. The parties must file the guilty plea agreement with the trial judge. Any party may withdraw from an agreement before the trial judge accepts the plea.

(f) If the parties reach a guilty plea agreement that involves any stipulations, the trial judge agrees that such a settlement shall be conditioned on the trial judge's acceptance of and agreement to follow the stipulations. If the trial judge is unwilling to abide by the stipulations, then either side may withdraw from the guilty plea agreement.