Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

MEETING NOTICE AND AGENDA

Commission on Statewide Rules of Criminal Procedure
Videoconference

Date and Time of Meeting: May 15, 2020 at Noon
Place of Meeting: Remote Access via Blue Jeans

All participants attending via teleconference should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.

AGENDA

I. Call to Order
   A. Call of Roll
   B. Determination of a Quorum
   C. Opening Remarks

II. Public Comment

III. Review and Approval of Previous Meeting Summaries* **(Tab 1)**
   A. April 27, 2020

IV. Statewide Rules Discussion
   A. Local Rules of Practice
      i. Second Judicial District
      ii. Eighth Judicial District
   B. Rule 14: Sentencing **(Tab 2)**
   C. Rule 15: Continuances **(Tab 3)**
   D. Rule 2: Case Assignment **(Tab 4)**
   E. Rule 4: Initial Appearance and Arraignment **(Tab 5)**
   F. Rule 4.1: Setting of Cases **(Tab 6)**
   G. Rule 5: Pleas of Guilty or Nolo Contendere **(Tab 7)**
   H. Rule 6: Release and Detention Pending Judicial Proceedings **(Tab 8)**

V. Rules Finalized During Previous Meetings
   A. Rule 8: Pretrial Motions **(Tab 9)**
   B. Rule 17: Voir Dire **(Tab 10)**

I. Additional Rules for Commission Consideration
   A. Grand Jury
   B. Jury Commissioner
   C. Bail

II. Other Items/Discussion

III. Next Meeting Date and Location
   A. May 27, 2020 at Noon

IV. Adjournment

- Action items are noted by * and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Jamie Gradick, (775) 687-9808 - email: jgradick@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030)
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations**: Nevada Supreme Court website: www.nevadajudiciary.us

TAB 1

Supreme Court of Nevada

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Commission on Statewide Rules of Criminal Procedure

April 27, 2020
Noon
Summary prepared by: Kimberly Williams

Members Present
Justice James Hardesty, Chair
Justice Abbi Silver, Co-Vice Chair
Justice Lidia Stiglich, Co-Vice Chair
John Arrascada
Chief Judge Scott Freeman
Judge Douglas Herndon
Darin Imlay
Mark Jackson
Chris Lalli – *Proxy for Steve Wolfson*
Luke Prengaman – *Proxy for Christopher Hicks*
Lisa Rasmussen
Judge Jim Shirley
John Springgate
JoNell Thomas

Guests Present
Alex Chen
Sharon Dickinson
Alysa Grimes
John Petty

AOC Staff Present
Jamie Gradick
John McCormick
Kimberly Williams

I. Call to Order
- Justice Hardesty called the meeting to order at 12:00 pm.
- Ms. Gradick called roll; a quorum was present.
- Opening Comments: Justice Hardesty welcomed the committee and shared his goal for the rules to be completed by the end of May.

II. Public Comment
- There was no public comment.

III. Review and Approval of October 29, 2019, January 17, 2020, and February 28, 2020 Meeting Summary
- The October 29, 2019, January 17, 2020, and February 28, 2020 meeting summaries were approved.

IV. Work Group Updates

- Jury Instructions Work Group:
  - Chief Judge Freeman shared with the committee that the April meeting was rescheduled to May 21, 2020; this will be another 6-hour meeting.

V. Statewide Rules Discussion

- Rule 8: Pretrial Motions
  - Ms. Rasmussen presented the work group's draft of Rule 8 *(Please see meeting materials for additional information)* and explained how the work group came to the final draft.
    - Justice Hardesty asked if anyone had any comments or edits.
      - Ms. Dickinson commented that in the previous meeting the committee had agreed to remove "... and grant or deny it prior to the hearing." in subsection (b), last line *(page 1 of additional meeting materials)*.
        - The committee agreed the change should be included.
    - Ms. Dickinson suggested that (d) "Oppositions to motions" (page 3) be changed to "Oppositions and replies to motions" additionally including a subsection (iv) stating: "If a reply is to be filed you have 3 (or 4) days."
      - Ms. Rasmussen agreed with the change and suggested the title be "Oppositions to motions and replies."
        - Justice Hardesty suggested changing (e) "replies to motions" stating replies would have to be filed in 3 days.
        - Mr. Prengaman commented that a previous draft may already have language drafted for replies.
        - Ms. Rassmussen presented the following language: "A party may file a reply if a party believes a reply is necessary for the court to rule on the motion. A reply must be filed within 3 days of a filing of the opposition."
          - Mr. Petty suggested removing "...if a party believes a reply is necessary…"
          - The committee agreed.
    - Mr. Prengaman commented that (g) (iii) should be revised to coincide with the decision made in *Valdez-Jimenez v. State* and offered to supply amended language.
      - Justice Hardesty thanked Ms. Rasmussen for her work and requested she supply a redline version for the next meeting and for Mr. Prengaman to supply his suggested language on motions for pretrial release to Ms. Rasmussen.
- Rule 14: Sentencing *(page 56)*
  - Justice Hardesty asked for comments on if the rule should be included in the submission to the court and if so any suggested changes.
    - Mr. Lalli commented that the rule should be omitted.
    - Mr. Prengaman supported keeping the rule and including language on the disclosure of discovery or exhibits being utilized in sentencing.
    - Mr. Arrascada supported keeping the rule and changing the language in (b)(4) for it to remain in the specialty courts.
    - Ms. Thomas commented that a similar rule should be created outlining the limitations on victims or victim families.
    - Ms. Rasmussen is in support of keeping the rule and suggested language on deadlines for sentencing should be included.
    - Ms. Dickinson requested additional time to look into the rule.
    - Judge Herndon suggested a sentencing rule should be included; however, the rule as written is not optimal.
      - Justice Hardesty requested the members of the committee to submit an email to Ms. Gradick with suggestions *(in a structural standpoint)* on the subject matters that should be considered for the sentencing rule within 2 weeks. These will be included in a separate tab to be discussed in the next committee meeting.

- Rule 15: Continuances *(page 57-58)*
  - Justice Hardesty asked if the committee feels
    - Mr. Prengaman supported keeping the rule with new language.
      - Chief Judge Freeman and Mr. Lalli agreed.
        - Justice Hardesty requested the members of the committee to submit an email to Ms. Gradick for suggested subject matter to be considered in the drafting of the continuances rule within 2 weeks.
- Rule 17: Voir Dire (pages 71-76)
  - Justice Hardesty questioned the committee if the draft required any additional changes.
    - Ms. Dickinson commented that the definition of a panel is not included in section 1 and suggested the following language based on NRS 16.030 subsection 4: "The jury selection begins with the court using the venire list to call a number of names to form a panel of prospective jurors equal to the sum of the number of regular jurors and alternate jurors to be selected and a number of peremptory challenges to be exercised."
      - Justice Hardesty agreed.
  - Mr. Arrascada suggested removing the word "sound" on page 72, 1st paragraph, last sentence. Additional suggested changes include:
    - Section 3(a), 2nd to last line replace "make" with "made"
    - Section (3)(a)(i), second line replace "I writing" with "in writing"
    - Section 3(a)(ii), 3rd line replace "challenged" with "challenge"
    - Section 3(a)(iii), 2nd line, replace "panel" with "venire"
    - Section 3(c), line 4, replace "basis or race" with "basis of race"
    - Section 3(c), line 7, replace "pf" with "of"
    - Section 3(c), line 8, replace "as" with "has"
  - Justice Hardesty agreed.
  - Ms. Dickinson commented that section 3(a)(i) should read "The challenge to the venire must be made before the jury is sworn." as agreed in the previous meeting.
    - The committee discussed the change in language and agreed it should read: "The challenge to the venire must be made before the jury is sworn and made upon the record."
  - Mr. Arrascada suggested in section 6 (page 75), 12th line, the word 'may' to replace 'shall'.
    - After brief discussion among the committee members, Judge Herndon suggested the language be changed to: "The court shall retain alternate jurors for a return to duty, after the jury retires to deliberate."
      - The committee agreed with the suggestion.
  - Mr. Arrascada suggested in section 6, last line to be rewritten to: "...the court shall recall the jury, seat the alternate, and instruct the jury to begin its deliberations anew on all counts and charges regardless of whether a verdict is released on some counts."
    - Ms. Dickinson and Justice Stiglich raised concerns with the amended language and the committee discussed the language change further.
      - Justice Hardesty decided to table this change until additional research can be done to address the committee's concerns. Justice Hardesty requested Ms. Dickinson, Mr. Chen, Mr. Arrascada, and Mr. Prengaman's office to conduct the research to present in the next meeting.
        - Justice Silver provided additional cases for research: 2015 En Banc opinion by Justice Douglas (131 NV 43) and *Carroll v. State* (111 NV 371)
        - Mr. Chen provided additional cases for research *Simmons v. State* (129 NV 1151) and *Brake v. State* (113 NV 579).
  - Mr. Arrascada stated section 8 (page 76), line 4 should be changed to read: "... the alternate jurors must be present and listen to all the evidence and argument presented by counsel." Additionally in section 10, the last line 'their' should be replaced with 'your'.

- The committee agreed.

- Mr. Arrascada continued stating section 10 (page 76), Line 3 should be changed to: "...either by voice, phone, email, text, Internet, or other means of communication or social media;..."
  - Justice Hardesty suggested an additional change of the suggested language to "...either by voice, phone, email, text, Internet, social media or other means of communication;..."
    - The committee agreed.
- Justice Hardesty requested Ms. Dickinson to send a 'red line' to Mr. Petty on the appropriate inclusion of the definitions of a panel.
- Mr. Prengaman questioned if the language in section 5(g) (page 74) should be changed to "a criminal charge arising out of the state facts or circumstances as issued or alleged in the case." as reflected in the previous meeting notes.
  - The committee agreed.

VI. Rules Finalized During Previous Meetings

VII. Additional Rules for Commission Consideration

VIII. Other Items/Discussion

- Justice Hardesty commented that Justice Silver and Justice Stiglich could collaborate on a review of the subject matters submitted for Rules 14 and 15 and come up with a draft to submit to the committee to work on.
- Justice Hardesty expressed his desire to finalize rule 8 and 17 in the next meeting.
- Ms. Gradick and Justice Hardesty will review the remaining rules that have been submitted for consideration to present in the next meeting.

IX. Next Meeting

- May 15th at 12pm
- May 27th at 12pm

X. Adjournment

- The meeting was adjourned at 1:37 p.m.

TAB 2

Submitted by John Arrascada:

RULE 14. Sentencing.

1. Sentence must be imposed without unreasonable delay.

2. Counsel shall assist the court in setting a sentencing date. The State or the defense must notify the court at the time of the entry of plea, or as soon thereafter as is practicable, whether the sentencing hearing needs a special setting or time frame to present due to the nature of the case, witnesses, victim impact statements, or expert testimony. The court may set these special sentencing hearings on dates and times different from the department's customary sentencing calendar.

3. Counsel shall, unless otherwise permitted by the court, have all reports, sentencing memorandums, exhibits, written victim impact statements, and any other writing or documentation that counsel intends to rely upon at the sentencing hearing filed with the court and served on opposing counsel no later than three judicial days before the sentencing hearing date. Documents presented less than three judicial days from the sentencing date constitutes good cause by the non-offering party to continue the sentencing hearing.

4. Pending sentence, the court may commit the defendant to custody or continue or alter the bail.

Submitted by Luke Prengaman:

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3. Counsel shall, unless otherwise permitted by the court, have all reports, sentencing memorandums, exhibits, written victim impact statements, and any other writing or documentation that counsel intends to rely upon at the sentencing hearing filed with the court and served on opposing counsel no later than three judicial days before the sentencing hearing date.

a) Documents presented less than three judicial days from the sentencing date constitutes good cause by the non-offering party to continue the sentencing hearing.
b) If documents are offered less than three judicial days from the sentencing date and the non-offering party elects not to continue the sentencing hearing, the court shall not accept the documents as evidence for the sentencing hearing and the documents shall not be considered by the court.

4. The court shall not consider any ex parte communication, letter, report or other document but shall forthwith notify counsel for all parties, on the record, of any attempted ex parte communication or document submission.

~~4. Pending sentence, the court may commit the defendant to custody or continue or alter the bail.~~

5. Any witness who gives oral testimony at the sentencing hearing must be sworn before testifying.

TAB 3

Submitted by Chris Lalli:

Rule 15. Motions to continue trial settings.

(a) Any party may, for good cause, move the court for an order continuing the day set for trial of any cause. A motion for continuance of a trial must be supported by affidavit except where it appears to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion.

(b) If a motion for continuance is made on the ground that a witness is or will be absent at the time of trial, the affidavit must state:

(1) The name of the witness, the witness' usual home address, present location, if known, and the length of time that the witness has been absent.

(2) What diligence has been used to procure attendance of the witness or secure the witness' deposition, and the causes of the failure to procure the same.

(3) What the affiant has been informed and believes will be the testimony of the absent witness, and whether the same facts can be proven by witnesses, other than parties to the suit, whose attendance or depositions might have been obtained.

(4) The date the affiant first learned that the attendance or deposition of the absent witness could not be obtained.

(5) That the application is made in good faith and not merely for delay.

(c) No continuance may be granted unless the contents of the affidavit conform to this rule.

(d) Trial settings may not be vacated by stipulation, but only by order of the court. The party moving for the continuance of a trial may obtain an order shortening the time for the hearing of the motion for continuance. Except in an emergency, the party requesting a continuance shall give all opposing parties at least 3 days' notice of the time set for hearing the motion. The hearing of the motion shall be set not less than 1 day before the trial.

(e) When application is made to a judge, master or commissioner to postpone a motion, trial or other proceeding, the payment of costs (including but not limited to the expenses incurred by the party) and attorney fees may be imposed as a condition of granting the postponement.

Submitted by John Arrascada:

Rule 15. Motions to continue trial settings.

(a) Any party may, for good cause, move the court for an order continuing the day set for trial for~~of~~ any cause. A motion for continuance of a trial must be supported by affidavit except where it appears to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion.

(b) If a motion for continuance is made on the ground that a witness is or will be absent at the time of trial, the affidavit must state:

(1) The name of the witness, the witness' usual home address, present location, if known, and the length of time that the witness has been absent.

(2) What diligence has been used to procure attendance of the witness or secure the witness' deposition, and the causes of the failure to procure the same.

(3) What the affiant has been informed and believes will be the testimony of the absent witness, and whether the same facts can be proven by witnesses, other than parties to the suit, whose attendance or depositions might have been obtained.

(4) The date the affiant first learned that the attendance or deposition of the absent witness could not be obtained.

(5) That the application is made in good faith and not merely for delay.

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~~(e) When application is made to a judge, master or commissioner to postpone a motion, trial or other proceeding, the payment of costs (including but not limited to the expenses incurred by the party) and attorney fees may be imposed as a condition of granting the postponement.~~

Commented [AJL1]: I suggest deleting this part. Public Defense clients are indigent by definition and the costs would be coming out of a set budget. This is unreasonable and not fiscally responsible. Continuances under the rule are for good cause not planned by the moving party.

Submitted by Luke Prengaman:

Rule 15. Motions to continue trial settings.

(a) Any party may, for good cause, move the court for an order continuing the day set for trial of ~~any cause~~ **a criminal case**. A motion for continuance of a trial, **whether made by the prosecuting attorney or counsel for the defendant,** must be supported by affidavit except where it appears to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party ~~need only~~ **must** be sworn and orally testify to the same factual matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion.

(b) If a motion for continuance **of a criminal trial** is made on the ground that a witness is or will be ~~absent~~ **unavailable or absent** at the time of trial, the affidavit must state:

(1) The name of the witness, the witness' ~~usual home~~ **last known address and** present location, if known, ~~and the length of time that the witness has been absent~~ **the reason for the witness' unavailability or absence, and the length of time that the witness will be unavailable,**.

(2) What diligence has been used to procure attendance of the witness ~~or secure the witness' deposition, and the causes of the failure to procure the same~~.

(3) What the affiant has been informed and believes will be the testimony of the ~~absent~~ **unavailable** witness, and whether the same facts can be proven by other **witnesses**~~, other than parties to the suit, whose attendance or depositions might have been obtained~~.

(4) The date the affiant first learned ~~that the attendance or deposition of the absent witness could not be obtained~~ of the witness' unavailability **or absence**.

(5) That the application is made in good faith and not merely for delay.

(c) No continuance **of a criminal trial** may be granted unless the contents of the affidavit conform to this rule.

(d) Trial settings **in criminal cases** may not be vacated by stipulation ~~, but only by~~ **absent** order of the court. ~~The party moving for the continuance of a trial may obtain an order shortening the time for the hearing of the motion for continuance. Except in an emergency, the party requesting a continuance shall give all opposing parties at least 3 days' notice of the time set for hearing the motion. The hearing of the motion shall be set not less than 1 day before the trial.~~ **Stipulations or requests for the continuance of a trial shall be in writing, signed by counsel and the defendant. The court may waive the signature of the defendant provided counsel for the defendant certifies in writing in the stipulation or affidavit attached thereto that he or she has obtained the consent of the defendant to the continuance.**

~~(e) When application is made to a judge, master or commissioner to postpone a motion, trial or other proceeding, the payment of costs (including but not limited to the expenses incurred by the party) and attorney fees may be imposed as a condition of granting the postponement.~~

(e) A court may accept a stipulation of the parties or request for the continuance of a proceeding other than a criminal trial in open court, or may direct that such stipulations or requests be in writing, signed by counsel. Any such stipulation or request not made in open court must be in writing, signed by counsel.

To: Statewide Rules Commission
From: Clark County Public Defender's Office

Delete section (e) because it appears to be a rule for civil cases.

Rule 15. Motions to continue trial settings.

(a) Any party may, for good cause, move the court for an order continuing the day set for trial of any cause. A motion for continuance of a trial must be supported by affidavit except where it appears to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion.

(b) If a motion for continuance is made on the ground that a witness is or will be absent at the time of trial, the affidavit must state:

(1) The name of the witness, the witness' usual home address, present location, if known, and the length of time that the witness has been absent.

(2) What diligence has been used to procure attendance of the witness or secure the witness' deposition, and the causes of the failure to procure the same.

(3) What the affiant has been informed and believes will be the testimony of the absent witness, and whether the same facts can be proven by witnesses, other than parties to the suit, whose attendance or depositions might have been obtained.

(4) The date the affiant first learned that the attendance or deposition of the absent witness could not be obtained.

(5) That the application is made in good faith and not merely for delay.

(c) No continuance may be granted unless the contents of the affidavit conform to this rule.

(d) Trial settings may not be vacated by stipulation, but only by order of the court. The party moving for the continuance of a trial may obtain an order shortening the time for the hearing of the motion for continuance. Except in an emergency, the party requesting a continuance shall give all opposing parties at least 3 days' notice of the time set for hearing the motion. The hearing of the motion shall be set not less than 1 day before the trial.

(e) When application is made to a judge, master or commissioner to postpone a motion, trial or other proceeding, the payment of costs (including but not limited to the expenses incurred by the party) and attorney fees may be imposed as a condition of granting the postponement.

Commented [So1]: Delete. This appears to be a rule for civil cases.

TAB 4

Rule 2. Case assignment.

8th Rule 3.10. Consolidation and reassignment.

(a) When an indictment or information is filed against a defendant who has other criminal cases pending in the court, the new case may be assigned directly to the department wherein a case against that defendant is already pending.

(b) Unless objected to by one of the judges concerned, criminal cases, writs or motions may be consolidated or reassigned to any criminal department for trial, settlement or other resolution.

(c) In the event of negotiations being reached as to multiple cases having the same defendant, defense counsel and the prosecution may stipulate to having all of the involved cases assigned to the department having the oldest case with the lowest case number, and the court clerk shall then so reassign the involved cases. If the negotiations later break down, then the court clerk will again reassign the involved cases back to their respective department(s) of origin. The objection provision of subparagraph (b) hereinabove does not pertain to this present subparagraph (c).

2nd CR Rule 2. Case assignment.

Each criminal action shall be randomly assigned to a department of the court and shall remain in such department until final disposition of the action, unless:

(a) the action is brought against a defendant who is the subject of another pending or prior action in this court, in which case the action shall be assigned to the department of the most recent other action; or

(b) as otherwise ordered by the chief judge consistent with a plan of courtwide case management.

Comment: To the extent possible, cases involving a defendant who is the subject of another case in this district shall be assigned to the department of the other case. Otherwise, cases shall be randomly assigned.

2nd LR Rule 2. Organization of the court; chief judge; court administrator.

1. All civil and criminal cases shall be randomly assigned.
2. The district judges shall elect from among the general jurisdiction division and family court division judges a chief judge for a term of 2 years. The chief judge is the presiding judge as referred to in NRS 3.025 and the chief judge referred to in Supreme Court Rule 8.

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TAB 5

Rule 4. Initial appearance and arraignment.

2nd CR Rule 3. Initial appearance and arraignment.

(a) At the initial appearance of the defendant before the district court, the court shall:

(1) supply the defendant a copy of the indictment or information unless the charging document has previously been made available to the defendant through e-filing;

(2) if necessary, determine whether the defendant qualifies for appointed counsel and, if so, appoint counsel to represent the defendant. In such event, newly appointed counsel shall be given an extension of time of at least 5 days before entry of plea;

(3) arraign the defendant upon all charges in the indictment or information;

(4) subject to the conditions set forth in NRS 178.4853,[2] determine appropriate conditions for the defendant's release from custody or that detention is warranted;

(5) if the defendant enters a plea of not guilty, set the dates for trial, pretrial motions, evidentiary hearings or status conferences;

(6) specify any discovery obligations of the parties beyond those contained in Chapter 174 of the Nevada Revised Statutes.

(b) If the defendant enters a plea of guilty or nolo contendere, the court may transfer the action to the Second Judicial District Court (Washoe County) Specialty Courts, if appropriate, or order a presentence report and set a sentencing date consistent with the jail population management policies of the court and L.C.R. 9.[3]

(c) Subject to the provisions of NRS 176.135,[4] a presentence report may be waived and sentence imposed at the entry of a plea of guilty or nolo contendere.

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[2] **NRS 178.4853 Factors considered before release without bail.** In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

[3] L.C.R. 9 addresses sentencing.

[4] **NRS 176.135 Presentence investigation and report: When required; time for completing.**

1. Except as otherwise provided in this section and NRS 176.151, the Division shall make a presentence investigation and report to the court on each defendant who pleads guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of, a felony.
2. If a defendant is convicted of a felony that is a sexual offense, the presentence investigation and report:

(a) Must be made before the imposition of sentence or the granting of probation; and

Comment: The initial appearance is the occasion for the court and counsel to establish a meaningful schedule for the trial and all pretrial activity appropriate to each case. Except in unforeseen, extraordinary circumstances, the schedule will not be subsequently modified. Status conferences are conducted to monitor the progress of a case. Persons who enter a plea of guilty or nolo contendere and qualify for treatment in the Second Judicial District Drug Court may, if the department deems the defendant to be an appropriate referral, be immediately referred to such court without further proceedings in the department in which the criminal action is commenced.

(b) If the sexual offense is an offense for which the suspension of sentence or the granting of probation is permitted, must include a psychosexual evaluation of the defendant.

3. If a defendant is convicted of a felony other than a sexual offense, the presentence investigation and report must be made before the imposition of sentence or the granting of probation unless:

(a) A sentence is fixed by a jury; or

(b) Such an investigation and report on the defendant has been made by the Division within the 5 years immediately preceding the date initially set for sentencing on the most recent offense.

4. Upon request of the court, the Division shall make presentence investigations and reports on defendants who plead guilty, guilty but mentally ill or nolo contendere to, or are found guilty or guilty but mentally ill of, gross misdemeanors.

TAB 6

Rule 4.1 Setting of cases.

2nd LR Rule 4. Setting of cases.

1. All matters shall be set in the Office of the Administrative Assistants in the department where the case is filed. The office shall be open for that purpose from 9:00 a.m. to 12:00 noon, Tuesday through Thursday. All other calendaring shall be done by appointment. If any department wishes to deviate from this procedure it shall be responsible for setting its own calendar in a manner and at a time specified. The times and procedures for such calendaring shall be advertised by each department.
2. If any case may not be heard because of another case or the unavailability of the judge, it shall be the primary responsibility of that judge or the administrative assistant to arrange a transfer to another department with the agreement of the new department. In the event that the department cannot successfully transfer the case the matter shall be referred to the chief judge for resolution.
3. In every civil case, within 30 days after the last answer is filed, the parties must obtain a date for trial unless the judge waives this requirement for good cause shown. If the parties fail to obtain a trial date, the court may set the case for trial at its discretion.
4. All cases shall be set for trial within 12 months of the date that the setting occurs, unless ordered otherwise by the trial court.
5. Contested matters shall be set by each court department on dates agreeable to counsel. A 10-day notice to appear and set a time for trial may be given by any party upon certification that the case is at issue. At the time fixed in the notice, with showing of service upon all parties, a court department shall set the case for trial at a time certain. If fewer than all parties appear before a court department on an application for setting, and file with the court department a conformed copy of written notice to appear for setting at that hour and day, a court department shall set the matter to be heard on a date satisfactory to the counsel present. Time shall be computed as provided in N.R.C.P. 6. An individual court department may dispense with these procedures if necessary. Cases can be set via telephone conference or any other convenient method.
6. If the parties cannot agree on a trial date, a court department shall set the case for trial on the first available date in accordance with the judge's individual calendar.
7. All disputes concerning calendar settings shall be resolved by each court department in accordance with procedures established by that department.
8. Matters set in each department shall be heard in the order set unless otherwise ordered by the trial judge. Matters which cannot be heard in the department in which set because of a conflict with a prior matter, shall be assigned to another department, if one is available, by the affected department, to be heard at the same time as originally set. If a matter cannot be heard at the time originally set because of conflicts in all other departments, the matter shall be continued by order of the affected department. Thereafter, such matters shall be entitled to priority for resetting in accordance with the judge's individual calendar. Each court department shall determine the maximum allowed time that a matter can be set out on the calendar, subject to the 12-month setting rule.

9. All applications for setting shall be made on a printed form designated "Application for Setting," copies of which shall be available at each court department, unless this requirement is waived by the department. It shall be the responsibility of the applicant to produce for the court department one original and the necessary copies of the "Application for Setting" form on which the court department shall endorse the date and time of such setting. The applicant shall file the original and serve a copy upon counsel for each other party.
10. If there are multiple settings, each court department shall endorse on the application the priority of the case in numerical order.
11. Once set, a case may be removed from the calendar only with the consent of the trial judge or the chief judge, if the trial judge is unavailable.
12. When a trial judge or the chief judge signs an order in chambers setting forth a calendar date, a copy of said order shall be delivered by counsel to the individual responsible for calendaring cases in each court department, together with any "Application for Setting" form.
13. Effective January 2, 1992, the judge who determines that a certain criminal defendant is incompetent shall be responsible for impanelling the Sanity Commission.
14. Effective January 2, 1992, the District Attorney's Office shall be responsible for contacting each court department in succession to find someone willing to schedule the Grand Jury hearings.
15. Any questions arising under this Rule 4 which cannot be resolved by the individual court department shall be referred to the chief judge for decision.
16. Each district judge shall be willing and prepared to take overflow work from another department as each judge's calendar permits.

Submitted by Alysa Grimes:

Request for Submission Rule Draft

(a) Once a reply motion is filed or once the time to reply expires, or if no reply is made, once an opposition is filed or once the time to oppose a motion expires, either party may request to submit the matter for decision, or the court may consider the motion without further notification to the parties.
(b) Written requests for submission must be filed and served on all parties, and must
    1. Identify the party that filed the motion or other paper;
    2. State the exact name of the motion or other paper the party wants to be submitted;
    3. Include the date the motion or paper to be submitted was filed;
    4. State when the opposition and reply were filed and identify the party filing the documents;
    5. Certify that the motion is at issue, in that one of the following is true:
        A. The parties have stipulated to the submission;
        B. At least 14 days have passed since service of the motion and no opposition has been filed; or
        C. At least 7 days have passed after service of the opposition of the motion, regardless of whether any reply has been filed; and
        D. Include a proof of service on the other party.

Current Rules

The moving party may serve and file reply points and authorities within 5 days after service of the answering points and authorities. Upon the expiration of the 5-day period, either party may notify the calendar clerk to submit the matter for decision by filing and serving all parties with a written request for submission of the motion on a form supplied by the calendar clerk. A copy of the form shall be delivered to the calendar clerk, and proof of service shall be filed in the action.
NV DCR 13(4).

Upon the expiration of the time to oppose or reply, either party may notify the clerk to submit the matter for decision by filing and serving all parties with a written request for submission of the motion or the court may consider the motion without further notification to the parties.
NV ST J CT RURAL Rule 9(6).

The moving party may serve and file reply points and authorities within 7 days after service of the answering points and authorities. Upon the expiration of the 7-day period, either party may notify the filing office to submit the matter for decision by filing and serving all parties with a written request for submission of the motion on a form supplied by the filing office. The original of the submit form shall be delivered to the filing office. Proof of service shall be attached to the motion and response.
NV ST 2 DIST CT Rule 12(4).

The moving party may serve and file reply points and authorities within 5 days after service of the answering points and authorities.
Upon the expiration of the 5-day period, either party may notify the calendar clerk to submit the matter for decision by filing and serving all parties with a written request for submission of the motion. Proof of service shall be filed in the action.
NV ST J CT RENO Rule 11(d).

Upon the expiration of the time for filing a reply and points and authorities, the Judicial Assistant shall submit the matter to the Judge for decision.
A written or oral request for submission on the motion is unnecessary. If the parties have agreed to extend the time permitted to respond to the substance of the motion, such agreement must be submitted in writing to the court by letter prior to the date that the response to the motion is due.
NV ST 9 DIST CT Rule 6(d).

A reply memorandum in support of a motion shall be served and filed, and the motion submitted for decision, no later than 3 days after service of the opposition, but in no case later than 7 days prior to trial. On the date that the reply is filed, the moving party shall notify the filing office to submit the motion for decision by filing and serving all parties a written request for submission of the motion on a form supplied by the filing office. Should the moving party elect not to reply, the moving party shall notify the filing office to submit the motion in accordance with this rule within 3 days after service of the opposition.
NV ST 2 DIST CT CRIM Rule 7(f).

The moving party may serve and file reply points and authorities within 5 days after service of the opposing points and authorities. Upon the expiration of the 5-day period, either party may notify the calendar clerk to submit the matter for decision by filing and serving all parties with a written request for submission of the motion, except that dispositive motions must be set for hearing.
NV ST J CT LV Rule 11(c).

(a) Request to Submit. To have the judicial clerk submit a motion or other paper to the court for decision or review, a party must file a request to submit that must:
(1) Identify the party that filed the motion or other paper;
(2) State the exact name of the motion or other paper the party wants to be submitted;
(3) Include the date the motion or paper to be submitted was filed;
(4) State when the opposition and reply were filed and identify the party filing the documents;
(5) Certify that the motion is at issue, in that one of the following is true:
(A) The parties have stipulated to the submission;
(B) At least 14 days have passed since service of the motion and no opposition has been filed; or
(C) At least 7 days have passed after service of the opposition of the motion, regardless of whether any reply has been filed; and
(6) Include a proof of service on the other party.

(b) Exceptions for Ex Parte Motions. Ex parte motions are governed by 10JDCR 3.19, 10JDCR 3.20, or 10JDCR 6.10.
(c) Time for Filing. Unless submission is stipulated by the parties, the court will decline to consider a request to submit filed less than 14 days after the motion was filed.
(d) Separate Requests to Submit. A separate request to submit must be filed and served for each motion or paper the party wants to be submitted.
NV ST 10 DIST CT Rule 3.11

TAB 7

Rule 5. Pleas of guilty or nolo contendere.

2nd CR Rule 4. Pleas of guilty or nolo contendere.

(a) All pleas of guilty or nolo contendere entered pursuant to a plea bargain agreement shall be supported by a written plea memorandum, filed in open court at the entry of the plea, stating:

(1) the terms of the plea bargain agreement;

(2) the factual basis for the plea and an acknowledgment by counsel that the defendant has been advised of the discovery produced and the evidence the State intends to present at trial;

(3) the constitutional rights waived by the defendant;

(4) the maximum possible punishment for any charge which is the subject of the plea bargain agreement;

(5) whether probation is available and whether multiple or enhanced sentences can be concurrent or consecutive;

(6) the defendant's acknowledgment that the court is not bound by the plea bargain agreement; and

(7) the defendant's knowledge of and voluntary consent to the terms of the plea bargain agreement and the contents of the memorandum.

(b) The guilty or nolo contendere plea memorandum shall be signed by the defendant and counsel for all parties to the agreement.

Comment: The plea bargain memorandum is integral to the entry of a guilty or nolo contendere plea and must be completed, signed and filed when the plea is entered.

TAB 8

Rule 6. Release and detention pending judicial proceedings.

8th Rule 3.80. Release from custody; bail reduction.

(a) When an individual is arrested on probable cause or on an arrest warrant, any district judge may, on an emergency basis only, unilaterally, without contact with a prosecutor, grant a release upon the individual's own recognizance pursuant to NRS 178.4851[5] and 178.4853[6] or reduce the amount of bail below the standard bail, provided that the arrest is for a misdemeanor, gross misdemeanor, non-violent felony, or some combination thereof. Before the court may grant an own recognizance release or bail reduction, the court must be satisfied that the individual arrested will likely appear in court at the next scheduled appearance date and does not present a threat in the interim if released. Once the individual arrested makes an initial court appearance, all issues regarding custodial status shall be addressed by the judge assigned the case or any other judge specifically designated or authorized by the assigned judge. A judge designated or authorized by the assigned judge, or by court rule, may release an individual from a bench warrant for a misdemeanor, gross misdemeanor or non-violent felony, or some combination thereof.

(b) When an individual is arrested on probable cause for a violent felony offense or on a bench warrant for a violent felony offense issued by the district court, Justice Court, or municipal court, a district judge shall not grant an own recognizance

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[5] **NRS 178.4853 Factors considered before release without bail.** In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

[6] **NRS 178.4853 Factors considered before release without bail.** In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

release or reduce the amount of bail established unless the judge provides an opportunity pursuant to NRS 178.486[7] for the prosecution to take a position thereon by telephone or in person, either in chambers or in open court. A district court judge may unilaterally increase bail for an individual arrested for a violent felony if the court is satisfied that the individual arrested will not likely appear in court at the next scheduled appearance date or presents a threat to the community in the interim if released.

(c) Between the time of an individual's arrest on probable cause, a bench warrant, or an arrest warrant and his or her subsequent court appearance, ex parte contact between the court and any person interested in the litigation regarding the individual's custodial status shall be allowed.

2nd CR Rule 5. Release and detention pending judicial proceedings.

(a) The court shall determine appropriate conditions for release or that detention is warranted using the factors set forth in NRS 178.4853[8] and NRS 178.486.[9]

(b) All persons released from custody, on bail or otherwise, shall comply with any terms or conditions of release imposed by the court.

(c) The court shall order the pretrial release of a defendant on personal recognizance (subject to supervision by the court services department, or upon such additional conditions as the court deems appropriate) unless the court determines that such release will not reasonably assure the appearance of the defendant as required or will endanger the safety of any other person or the community.

(d) If the court determines that the release of the defendant pursuant to subsection (c) of this rule will not reasonably assure the appearance of the defendant as required or will endanger the safety of any other person or the community, the court shall

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[7] **NRS 178.486 When bail is matter of discretion, notice of application must be given to district attorney.** When the admission to bail is a matter of discretion, the court, or officer by whom it may be ordered, shall require such notice of the application therefor as the court or officer may deem reasonable to be given to the district attorney of the county where the examination is had.

[8] **NRS 178.4853 Factors considered before release without bail.** In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

[9] **NRS 178.486 When bail is matter of discretion, notice of application must be given to district attorney.** When the admission to bail is a matter of discretion, the court, or officer by whom it may be ordered, shall require such notice of the application therefor as the court or officer may deem reasonable to be given to the district attorney of the county where the examination is had.

consider the release of the defendant upon the least restrictive condition, or combination of conditions, that will reasonably assure the presence of the defendant as required and the safety of any other person or the community, which may include the condition that the defendant:

(1) remain in the custody of a designated person, who agrees to assume supervision and agrees to report any violation of a release condition to the court services department, if the designated person submits to the jurisdiction of the court and is able reasonably to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;

(2) maintain employment or, if unemployed, actively seek employment;

(3) maintain or commence an educational program;

(4) abide by specified restrictions on personal associations, place of abode or travel;

(5) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(6) report by telephone or in person on a regular basis to the court services department or a designated law enforcement agency or other agency;

(7) comply with a specified curfew;

(8) refrain from possessing a firearm, destructive device or other dangerous weapon;

(9) refrain from the use of alcohol or controlled substances;

(10) undergo a specified program of available medical, psychological, psychiatric or other counseling or treatment, and remain in a specified institution if required for that purpose;

(11) execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the defendant as required, and post with the court such indicia of ownership of the property or such percentage of the money as the court may specify;

(12) execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the defendant as required;

(13) return to custody for specified hours following release for employment, schooling or other limited purposes; and

(14) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of any other person and the community

(e) The court may at any time amend the order or conditions of release.

Comment: This rule adopts a release evaluation process primarily derived from 18 U.S.C. § 3142.[10]

[10] 18 U.S. Code § 3142 is lengthy and is therefore reproduced at the end of this document.

- Note that 2nd L.C.R. 7(i), "Pretrial Motions," provides that: "Motions made under L.C.R. 5 may be made orally in open court or in an on-the-record telephone conference with the court and opposing counsel."

TAB 9

Rule 8. Pretrial motions.

Motions.

(a) Time for filing.

i. Unless otherwise provided by law, by these rules, or by written scheduling order entered by the court in the particular case, all pre-trial motions, including motions to suppress evidence, to exclude or admit evidence, for a transcript of former proceedings, for a preliminary hearing, for severance of joint defendants, for withdrawal of counsel, and all other motions which by their nature, if granted, delay or postpone the time of trial, must be made in writing and served and filed not less than 15 days before the date set for trial.

ii. If a pretrial motion is filed 15 days or less prior to trial, it shall be served upon the opposing party on the date of filing by one of the following means: electronic mail, if the party being served consents in writing in the manner described in section iv; personal service; or e-filing.

iii. The court may decline to consider any motion filed in violation of this rule. The court will only consider a motion in limine made later than 15 days before the date of trial if there is good cause for making the motion at a later date. Good cause may include, but is not limited to, that an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial. A pretrial motion made later than 15 days before the trial date shall be accompanied by an affidavit or declaration demonstrating good cause for making the motion at the later date.

iv. In jurisdictions without electronic filing, a party may agree to accept electronic service by filing and serving a notice. The notice must include the electronic notification address(es) at which the party agrees to accept service.

(b) Hearing of motions in the Eighth Judicial District.

The court shall set a hearing for each motion. Unless an evidentiary hearing upon a motion is required by law, the court may consider a motion on its merits at any time after the reply is filed or after the time for filing an reply, with or without oral argument~~, and grant or deny it prior to the hearing.~~

(c) Hearings and Submissions of motions in judicial districts other than the Eighth Judicial District.

(i) Hearings on Motions

1. For all judicial districts other than the Eighth Judicial District, all motions shall be decided without oral argument unless 1) requested by a party and ordered by the court, or 2) ordered by the court of its own accord.

2. If a hearing upon a motion is required by law or requested by a party and a hearing for pretrial motions has not already been set in the case, the party seeking the hearing shall file a Notice of Request for Hearing on the date the motion is filed. The Notice of Request for Hearing shall identify the motion for which the hearing is requested, shall state whether the hearing is anticipated to be evidentiary or consist only of oral argument of the motion, and shall be filed in substantially the form set forth below.

CODE
ATTORNEY NAME
BAR NUMBER
ADDRESS
CITY, STATE, ZIP CODE
PHONE NUMBER
ATTORNEY FOR:

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR99-00000

RICHARD ROE,

Defendant. Dept. No. .....

[REQUEST FOR ORAL ARGUMENT OF MOTION]
[REQUEST FOR EVIDENTIARY HEARING UPON MOTION]

The Defendant hereby requests a hearing upon the Motion to Suppress Evidence filed on January 1, 2010. This hearing is anticipated to be evidentiary.

Sample Pleading

ii. Submissions of Motions

1. No submission of Motion is necessary in the Third, Fourth, Eighth or Ninth Judicial Districts

2. In the First, Second, Fifth, Sixth, Seventh, Tenth and Eleventh Judicial Districts a request for submission must be filed after a reply is filed, or after the time for filing a reply has expired. Any party may submit the motion for decision by filing and serving upon all parties a written request to submit the motion by

substantially the form set forth below. A request for submission must appear in substantially the form set forth below.

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR99-00000

RICHARD ROE,

Defendant. Dept. No. .....

REQUEST TO SUBMIT MOTION

It is requested that the MOTION TO SUPPRESS EVIDENCE filed on January 1, 2020, be submitted to the court for decision.

Sample Pleading

3. The court may decline to consider any motion that has not been submitted in accord with this rule.

(d) Oppositions to motions.

i. Within 10 days after the service of a motion, the opposing party must serve and file written opposition.

ii. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion is meritorious and a consent to granting of the same.

iii. If an opposition to a motion is filed 5 days or less prior to trial, it shall either be personally served upon the opposition on the date of filing or be e-filed.

~~iii.~~ (e) **Replies.**

Unless otherwise ordered by the court, any reply shall be filed on or before the judicial day which falls 3 calendar days after service of the response.

(~~e~~f) Points and authorities supporting motions.

Any pretrial motion and opposition shall contain or be accompanied by points and authorities in support of each ground thereof and any affidavits or declarations relied upon. The absence of such points and authorities may be construed as an admission that the motion is not meritorious, as cause for its denial, or as a waiver of any ground not so supported.

(~~f~~g) Rehearing of motions.

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i. No motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.

ii. A party seeking reconsideration of a ruling of the court must file a motion for such relief within 5 days after entry of the order or judgment, unless the time is shortened or enlarged by order.

iii. A motion for rehearing or reconsideration must be served, filed, and heard as is any other motion. A motion for rehearing does not toll any applicable period for filing a notice of appeal from a final order or judgment.

iv. If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument, or may restore it to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(~~g~~h) **Motions for pretrial release or to increase or decrease bail.**

i. Unless otherwise ordered by the court, all motions for pretrial release or to increase or decrease bail must be in writing, supported by an affidavit or declaration of the movant or the movant's attorney.

ii. In proceedings upon an information, proceedings upon the motion shall occur according to subsections (a)-(e).

iii. In proceedings upon an indictment, when no parallel proceeding in the justices courts preceded the indictment, if the motion is filed prior to or on the date of the defendant's first appearance, the court may 1) set the matter for hearing not less than 2 full judicial days from the date the motion is served and filed, or 2) order that proceedings upon the motion occur according to subsections (a)-(d). If the court sets the matter for hearing less than 10 days from the date the motion is served and filed, the opponent to the motion may respond orally in open court.

(~~h~~i) **Computation of time.**

In computing any period of time for this rule, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and nonjudicial days shall be excluded in the computation.

Relevant statutes

NRS 174.095 Defenses and objections which may be raised by motion. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

NRS 174.098 Motion to declare that defendant is intellectually disabled: When authorized; procedure.

1. A defendant who is charged with murder of the first degree in a case in which the death penalty is sought may, not less than 10 days before the date set for trial, file a motion to declare that the defendant is intellectually disabled.

2. If a defendant files a motion pursuant to this section, the court must:

(a) Stay the proceedings pending a decision on the issue of intellectual disability; and

(b) Hold a hearing within a reasonable time before the trial to determine whether the defendant is intellectually disabled.

3. The court shall order the defendant to:

(a) Provide evidence which demonstrates that the defendant is intellectually disabled not less than 30 days before the date set for a hearing conducted pursuant to subsection 2; and

(b) Undergo an examination by an expert selected by the prosecution on the issue of whether the defendant is intellectually disabled at least 15 days before the date set for a hearing pursuant to subsection 2.

4. For the purpose of the hearing conducted pursuant to subsection 2, there is no privilege for any information or evidence provided to the prosecution or obtained by the prosecution pursuant to subsection 3.

5. At a hearing conducted pursuant to subsection 2:

(a) The court must allow the defendant and the prosecution to present evidence and conduct a cross-examination of any witness concerning whether the defendant is intellectually disabled; and

(b) The defendant has the burden of proving by a preponderance of the evidence that the defendant is intellectually disabled.

6. If the court determines based on the evidence presented at a hearing conducted pursuant to subsection 2 that the defendant is intellectually disabled, the court must make such a finding in the record and strike the notice of intent to seek the death penalty. Such a finding may be appealed pursuant to NRS 177.015.

7. For the purposes of this section, "intellectually disabled" means significant subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and manifested during the developmental period.

NRS 174.105 Defenses and objections which must be raised by motion.

1. Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant.

2. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver.

3. Lack of jurisdiction or the failure of the indictment, information or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

NRS 174.115 Time of making motion. The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

NRS 174.125 Certain motions required to be made before trial.

1. All motions in a criminal prosecution to suppress evidence, for a transcript of former proceedings, for a preliminary hearing, for severance of joint defendants, for withdrawal of counsel, and all other motions which by their nature, if granted, delay or postpone the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial.

2. In any judicial district in which a single judge is provided:

(a) All motions subject to the provisions of subsection 1 must be made in writing, with not less than 10 days' notice to the opposite party unless good cause is shown to the court at the time of trial why the motion could not have been made in writing upon the required notice.

(b) The court may, by written order, shorten the notice required to be given to the opposite party.

3. In any judicial district in which two or more judges are provided:

(a) All motions subject to the provisions of subsection 1 must be made in writing not less than 15 days before the date set for trial, except that if less than 15 days intervene between entry of a plea and the date set for trial, such a motion may be made within 5 days after entry of the plea.

(b) The court may, if a defendant waives hearing on the motion or for other good cause shown, permit the motion to be made at a later date.

4. Grounds for making such a motion after the time provided or at the trial must be shown by affidavit.

NRS 174.135 Hearing on motion.

1. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

2. An issue of fact shall be tried by a jury if a jury trial is required under the Constitution of the United States or of the State of Nevada or by statute.

3. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

NRS 174.145 Effect of determination.

1. If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant had not previously pleaded. A plea previously entered shall stand.

2. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information or complaint, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time pending the filing of a new indictment, information or complaint.

3. Nothing in this section shall affect the provisions of any statute relating to periods of limitations.

TIME

NRS 178.472 Computation. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and nonjudicial days shall be excluded in the computation.

NRS 178.476 Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

1. With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or
2. Upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect,

Ê but the court may not extend the time for taking any action under NRS 176.515 or 176.525 except to the extent and under the conditions stated in those sections.

NRS 178.478 Motions; affidavits.

1. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof must be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application.
2. When a motion is supported by affidavit, the affidavit must be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.
3. A certificate of service must accompany each motion filed.

NRS 178.482 Additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon the party and the notice or other paper is served by mail, 3 days shall be added to the prescribed period.

TAB 10

To: Statewide Rules Commission

From: Clark County Public Defender's Office

Re: Rule 17(6) - Alternates

Rule 17(6): "If an alternate replaces a juror after deliberations have begun, the court shall recall the jury, seat the alternate, [and] instruct the jury to begin its deliberations anew."

NRS 175.061(4): "If an alternate is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the case to the jury."

1. ***No verdict – court removes regular juror and replaces with alternate requires court to direct the jury to start deliberations anew.***

- *Carroll v. State*, 111 Nev. 371 (1995). Court's failure to instruct the jury to begin deliberations anew was found to be reversible error. Jury deliberated for 2 days before court removed a regular juror and added the alternate.

- *Martinorellan v. State*, 131 Nev. 43, 47 (2015): "the failure to instruct the jury to restart deliberations when an alternate juror replaces an original juror is an error of constitutional dimension because it impairs the right to a trial by an impartial jury." *Id. at* 47-48. However, the *Martinorellan* Court found the error was not prejudicial because the jury deliberated significantly longer after the original juror was replaced by the alternate – 4 hours and 30 minutes. Before the juror was replaced the jury had only deliberated for 1 hour and 15 minutes.

2. ***Partial verdict – for example: jury indicates that it has reached a verdict or decision on 2 counts but is undecided on the remaining 2 counts on the verdict form and one juror needs to leave.***

Whether or not a trial court may accept a partial verdict, replace a juror with an alternate and then tell the jury to begin deliberations anew on all counts, or begin anew on the undecided counts, is a matter of statutory interpretation combined with constitutional requirements. The answer should be decided by the entire Nevada Supreme Court in the appropriate case.

However, in Nevada, a verdict is not rendered until the 12 jurors make an oral pronouncement in court. NRS 175.481 states: "The verdict shall be unanimous. It shall be returned by the jury to the judge in open court." Also, NRS 175.531 indicates that before a verdict is recorded any party or the court may ask that the jury be polled.

Rule 17. Jury Selection

(1) **Method of selection.**

The court shall summon the number of the jurors who are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted by law, and for all challenges for cause granted. -Jurors summoned will form the venire.

At the direction of the judge, the clerk shall call jurors in random order to form the panel. –The number of prospective jurors called to form the panel shall be equal to the sum of regular jurors, alternate juror and the number of peremptory challenges allowed. The judge shall hear and determine challenges for cause during the course of questioning. The judge may hear and determine challenges for cause outside the hearing of prospective jurors. At the request of any party, the judge shall hear and determine challenges for cause outside the hearing and presence of prospective jurors. After each challenge for cause sustained, another juror shall be called to fill the vacancy, and any such new juror may be challenged for cause.

After both sides have passed the panel for cause, the clerk shall provide a list of the prospective jurors remaining, and each side, beginning with the prosecution, shall indicate thereon its peremptory challenge to one juror at a time in regular turn, as the court may direct, until all peremptory challenges are exhausted or waived. Peremptory challenges shall be made outside the hearing of the prospective jurors.

The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court.

(2) **Voir Dire.**

Examination of prospective jurors. Before persons whose names have been drawn are examined as to their qualifications to serve as jurors, the judge or the judge's clerk shall administer an oath or affirmation to them in substantially the following form:

> Do you, and each of you, (solemnly swear, or affirm under the pains and penalties of perjury) that you will well and truly answer all questions put to you touching upon your qualifications to serve as jurors in the case now pending before this court (so help you God)?

The judge shall conduct the initial examination of prospective jurors and the defendant or the defendant's attorney and the prosecuting attorney are entitled to supplemental examination, which must not be unreasonably restricted. Prior to examining the prospective jurors, the court shall have the clerk read the charging document. The court shall state that every person charged with the commission of a crime is presumed innocent. Use of written questionnaires to prospective jurors or the examination of individual prospective jurors outside the presence of the other prospective jurors is within the court's ~~sound~~ discretion.

The purpose of voir dire examination is to determine whether a prospective juror can and will render a fair and impartial verdict on the evidence presented and apply the facts, as the prospective juror finds them, to the law given. Questioning must be designed to elicit information relevant to possible challenges for cause or enabling the defendant or the defendant's attorney and the prosecuting attorney to intelligently exercise peremptory challenges. The judge may in the exercise of discretion halt cumulative or abusive questioning of prospective jurors, assist in the narrative content of particular questions, preclude counsel from interrogating on issues of law or case specific facts, or preclude any questioning if the judge finds such questioning to be outside the purpose of voir dire examination.

(3) **Challenges to venire or individuals**.

A challenge may be made to the venire or to an individual juror.

(a) The venire is a list of prospective jurors called to serve at a particular court or for the trial of a particular action. A challenge to the venire is an objection mad~~k~~e to all prospective jurors summoned and may be made by either party .~~:~~

(i) The challenge to the venire must be made before the jury is sworn and made upon the record. ~~and must be I writing or made upon the record.~~ It shall specifically set out the facts constituting the ground for the challenge.

(ii) If a challenge to the venire is opposed by the adverse party, a hearing may~~ay~~ be held to try any question of fact upon which the challenge~~d~~ is based. The jurors challenged, and any other persons, may be called as witnesses at the hearing.

(iii) The court shall decide the challenge. If the challenge to the venire is sustained, the court shall discharge the venire~~panel~~ so far as the trial in question is concerned. If the challenge is denied, the court shall direct the selection jurors to proceed.

(iv) If written questionnaires to prospective jurors are being used, a challenge to the venire must be made no later than the trial confirmation hearing, or, if additional time is permitted by the court, no later than the judicial day prior to the day on which trial is set to commence.

(b) A party may contest the v~~V~~enire's composition that the venire does not represent a fair cross section of the community under the Sixth and Fourteenth Amendments of the United States Constitution. In contesting the venire's composition, the moving party has the burden of proof and must show a prima facie violation of the fair-cross-section requirement by exhibiting

(i) That the group alleged to be excluded is a "distinctive" group in the community

(ii) That the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community

(iii) That this underrepresentation is due to systematic exclusion of the group in the jury-selection process

~~(b)~~(c) A challenge to an individual juror may be either peremptory or for cause. A challenge to an individual juror must be made before the jury is sworn to try the case, except the court may, for good cause, permit it to be made after the juror is sworn but before any of the evidence is presented. Challenges for cause must be completed before any peremptory challenges.

~~(c)~~(d) A Batson challenge made during a peremptory strike must follow this three-step process: First, the opponent of the peremptory strike must make a prima facie showing that a peremptory challenge has been made on the basis of~~r~~ race or other recognized suspect classification. Second, if that showing has been made, the proponent of the peremptory strike must present a classification-neutral explanation for the strike. Third, the court must hear argument and determine whether the opponent of~~pf~~ the peremptory challenge has proven purposeful discrimination. The court shall clearly state the reasons supporting its determination regarding the peremptory strike.

Commented [AJL1]: Williams v. State 121 Nev.934(2005)

Commented [AJL2]: Duren v. Missouri, 439 US 357 (1979); Williams v. State, 121 Nev. 934,940 (2005).

(4) **Peremptory challenges**.

A peremptory challenge is an objection to a juror for which no reason need be given. If the offense charged is punishable by death or by life imprisonment, each side is entitled to eight peremptory challenges. If the offense is punishable by imprisonment for any other term or by fine or by both fine and imprisonment, each side is entitled to four peremptory challenges. The State and the defendant shall exercise their challenges alternatively, in that order. Any challenge not exercised in its proper order is deemed waived. When several defendants are tried together, they cannot sever their peremptory challenges but must join therein.

(5) **Challenges for cause**.

A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. Either side may challenge any individual juror for disqualification or for any cause or favor which would prevent the juror from adjudicating the facts fairly. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

(a) Want of any of the qualifications prescribed by law to render a person competent as a juror.

(b) Any mental or physical infirmity which renders one incapable of performing the duties of a juror.

(c) Consanguinity or affinity within the third degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted or the defendant.

(d) The existence of any social, legal, business, fiduciary or other relationship between the prospective juror and any party, witness or person alleged to have been victimized or injured by the defendant, which relationship when viewed objectively, would suggest to reasonable minds that the prospective juror would be unable or unwilling to return a verdict which would be free of favoritism. A prospective juror shall not be disqualified solely because the juror is indebted to or employed by the state or a political subdivision thereof.

(e) Having been or being the party adverse to the defendant in a civil action or having complained against or having been accused by the defendant in a criminal prosecution.

(f) Having served on the grand jury which found the indictment.

(g) ~~Having served on a trial jury which has tried another person for the particular offense charged.~~Having served on a trial jury which has tried another person for a criminal charge arising out of the same facts or circumstances alleged in the case being tried.

(h) Having been one of a jury formally sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it.

(i) Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

(j) If the offense charged is punishable with death, the juror's views on capital punishment would prevent or substantially impair the performance of the juror's duties as a juror in accordance with the instructions of the court and the juror's oath.

(k) Because the juror is or, within one-year preceding, has been engaged or interested in carrying on any business, calling or employment, the carrying on of which is a violation of law, where defendant is charged with a like offense.

(l) Because the juror has been a witness, either for or against the defendant on the preliminary examination or before the grand jury.

(m) Having formed or expressed an unqualified opinion or belief as to whether the defendant is guilty or not guilty of the offense charged, but the reading of newspaper accounts of the case shall not disqualify a juror either for bias or opinion unless the juror has formed a state of mind evincing enmity or bias based on a reading of newspaper accounts or from other media exposure.

(n) Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror views would prevent or substantially impair the performance of his duties as a juror in accordance with his instruction and oath.

(o) The existence of a state of mind in the juror evincing enmity against or bias to either party.

(6) **Alternate jurors.**

The court may impanel alternate jurors in order to replace any jurors who are unable to perform or who are disqualified from performing their duties. Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror. Alternate jurors shall not be informed of their status as an alternate juror during the pendency of the trial. If one or two alternate jurors are called, the prosecution and defense shall each have one additional peremptory challenge. If three or four alternate jurors are called, the prosecution and defense shall have two additional peremptory challenges. If five or six alternative jurors are called, the prosecution and defense shall each have three additional peremptory challenges. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors. The court shall retain alternate jurors for a return to duty, after the jury retires to deliberate. ~~may retain alternate jurors after the jury retires to deliberate.~~ The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the case to the jury. -The court shall admonish the jury as follows:

> Members of the jury, juror _____ is unable to continue to serve on the jury. –Alternate juror _____ is now a member of the jury. -You are instructed that all deliberations must be restarted in their entirety, any work performed in deliberations must start anew, _____ must be part of the deliberations from the beginning. Deliberations may not be resumed they must start anew. This case is resubmitted for deliberation.

~~If an alternate replaces a juror after deliberations have begun, the court shall recall the jury, seat the alternate, instruct the jury to begin its deliberations anew.~~

(7) **Reached verdicts**

Jurors may not deliberate anew a verdict already reached or entered during the guilt phase of the trial that has been entered upon the record and the jurors canvassed that the verdict is accurate. If an alternate juror is seated during the penalty phase, that alternate juror must be canvassed by the court and acknowledge on the record that the juror will accept the guilt phase verdicts rendered by the jury.

(8) **Deliberations in a Capital Case.**

Commented [AJL3]: NRS 175.061; Carroll v. State, 111 Nev. 371, 372, 892 P.2d 586, 587 (1995); Martinorellan v. State, 131 Nev. 43, 45, 343 P.3d 590, 591 (2015)

Commented [AJL4]: Martinorellan v. State, 131 Nev. 43, 45, 343 P.3d 590, 591 (2015); Brake v. State, 113 Nev. 579, 583–84, 939 P.2d 1029, 1032 (1997)

In a capital case, alternate jurors not selected to participate in the guilt phase deliberations must not be excused if the jury returns a guilty verdict of murder of the first degree. This rule governs their continued participation in the case. During the penalty phase of the trial, the alternate jurors must be present at the proceedings and listen to all the evidence and argument presented by counsel. When the jury retires to deliberate during the penalty phase, the alternate jurors may not participate in the deliberation. If a deliberating juror is excused during the penalty phase due to the juror's inability or disqualification to perform required duties, the court shall substitute an alternate juror in accordance with subsection 6. If an alternate replaces a juror who is discharged during the penalty phase deliberation, the court shall recall the jury, seat the alternative and instruct the jury to begin its penalty deliberations anew. The jurors may not deliberate anew a verdict already reached or entered during the guilt phase of the trial. If the alternate juror was not present during the entirety of the penalty phase presentation they may not be seated and a new penalty phase with a new jury must occur.

(9) **Juror oath.**

When the jury is impaneled, the court shall administer the juror oath in accordance with NRS 175.111.

(10) **Admonishment**

The judge shall during all recesses or breaks in the trial admonish the jury as follows:

> During this recess (or break) you must not (1) discuss or communicate with anyone, including fellow jurors, in any way regarding the case or its merits—either by voice, phone, email, text, Internet, or other means of communication or social media; (2) read, watch, or listen to any news or media accounts or commentary about the case; (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials; (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on yourtheir own.