

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

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Commission on Statewide Rules of Criminal Procedure

September 2, 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 Doug Herndon
Darin Imlay
Mark Jackson
Christopher Lalli
Luke Prengaman
Lisa Rasmussen
Judge Jim Shirley
John Springgate
JoNell Thomas

Guests Present

Chief Judge Linda Bell
Sharon Dickinson
John Petty
Judge Tierra Jones

AOC Staff Present

Jamie Gradick
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 opened the meeting with an overview of his plan to resolve any issues with Rule 4, vote on whether to include Rule 16, resolve any additional questions with Rule 2 and receive a status report from Justice Stiglich regarding the question raised for the Jury Commissioner. Justice Hardesty closed stating he would like to set a final meeting date to resolve any additional items outstanding from that day's meeting and ensured the committee this phase of the process is almost over and soon ready to be moved forward to the Supreme Court through an ADKT.
- II. Public Comment
 - There was no public comment.
- III. Review and Approval of August 5, 2020 Meeting Summary (*Tab 1; pages 4-9*)
 - The August 5, 2020 meeting summary was approved.

IV. Ongoing Reports / Status Reports

➤ Jury Instructions Work Group

- Chief Judge Freeman reported that the last scheduled meeting was unfortunately cancelled and is possibly recruiting additional people to join the subcommittee and plans to get back on track soon.

➤ Jury Commissioner

- Justice Stiglich reported that after collecting feedback from jury commissioners as well as other members on the subcommittee, she found that most previous issues or problems have been addressed or resolved. Justice Stiglich closed stating she doesn't believe a rule outside of the statute is required.
 - Mr. Lalli agreed.
 - Ms. Dickinson disagreed stating she is still having issues in one of her cases.
 - Justice Stiglich stated the statute is pretty clear, if you subpoena for information and don't receive it you should then file a motion to compel. An additional rule will not fix the "closing of the loop".
- Ms. Thomas commented that she recently became aware of a standing order in the 2nd district on the sealing of Jury Questionnaires and feels this is an issue that needs to be addressed and any other standing orders that may be involved on the subject matters the committee is addressing.
 - Justice Hardesty questioned if Chief Judge Freeman could offer any additional information.
 - Chief Judge Freeman stated he would have to review the order Ms. Thomas is referring to as he hasn't dealt with it.
 - Justice Hardesty questioned if Chief Judge Bell's district had anything similar.
 - Chief Judge Bell stated it does not.
 - Mr. Prengaman offered further clarification that the standing order Ms. Thomas is referring to is not limiting public access, it addresses the handling of the sensitive information.
 - Mr. Arrascada supported Mr. Prengaman's comment and explained the origin of the order's creation further.
 - Ms. Thomas referenced case *Stephens Media, LLC v. Eighth Judicial District Court*, 125 Nev. 849, 221 P.3d 1240 (2009) that states questionnaires are public record and a showing shouldn't be required. As far as council retaining a copy, they should remain in the defense's file and not returned to the trial court.
 - Justice Hardesty requested that Justice Stiglich find out from all the districts if any other administrative orders exist that establish criminal processes. Justice Hardesty requested Mr. Jackson, Chief Judge Bell, Chief Judge Freeman, and Judge Shirley to assist in gathering this information.

➤ Settlement Conferences (Tab 2; page 11)

- Justice Hardesty brought the committee's attention to the response (*Please see meeting materials for additional information*) Judge Shirley received regarding conducting settlement conferences in the rural districts.
- Chief Judge Bell reported that she conducted a settlement conference in the 5th district and shared that Nye County is moving forward with settlement conferences they just have a limited number of available judges.
 - Justice Hardesty questioned if Senior Judges have been requested to help, Chief Judge Bell was unaware.

V. Statewide Rules Discussion (*Please see meeting materials for additional information*)

➤ Rule 4: Initial Appearance and Arraignment (Tab 3; pages 12-14)

- Justice Hardesty started the discussion focusing on subsection b which was assigned to Justice Silver's workgroup.

- Justice Silver reported that the workgroup submitted two drafts that both Mr. Lalli (*Version 1; Page 13*) and Mr. Petty (*Version 2; Page 14*) felt strongly about, and suggested they both have the opportunity to speak supporting their respective drafts.
- Justice Hardesty confirmed the only difference between the two drafts is a ‘redline’ in version 2: *This presumption is rebuttable and the district court may change the pretrial detention conditions based on a change of circumstances.*
- Mr. Arrascada suggested defining a “change of circumstance” as “something unexpected and unanticipated carrying sufficient weight to warrant immediate action.” It would address an issue Chief Judge Bell had and Mr. Lalli’s draft would then be sufficient.
 - Chief Judge Bell shared her concerns with the use of “unexpected and unanticipated” in the additional language, stating it still binding. Chief Judge Freeman agreed and suggested it may invite additional argument from council.
 - Mr. Petty supported Version 1 with a well-defined *change of circumstance* because a *change of circumstance* could essentially mean anything. Keeping it well-defined helps keep everyone on the same page.
- Mr. Lalli explained that version 1 provides the judge the discretion to immediately adjust the bail conditions for pretrial release if warranted. Version 2 binds the judge to the terms previously set by a magistrate.
- Chief Judge Bell stated her concern is that circumstances can change and flexibility in the rule is warranted.
- Justice Hardesty suggested adding “...*stated on the record*” at the end of the sentence of version 1 to be compliant with Valdez requirements
 - Mr. Lalli agreed with the addition.
- Mr. Imlay suggested an additional change to the sentence prior “...*detention conditions shall ~~presumptively~~ remain the same as the pretrial detention conditions set in justice court.*” in addition to using Mr. Arrascada’s suggested language. Mr. Imlay felt this change will still allow for a *change of circumstance* to change the bail but would stop the District Attorney from possibly getting a second round in court without a defense attorney or defendant present.
 - Justice Silver questioned Mr. Imlay why public defenders are not present at indictment hearings. Mr. Imlay responded that they are not notified.
 - Mr. Arrascada supported Mr. Imlay’s statement.
 - Mr. Prengaman stated based off the statute it’s questionable if there is an entitlement to be present. Even if the bail is set differently it will be a very short setting until the defendant is in custody and brought forth for the first appearance. Mr. Prengaman supports Mr. Lalli’s draft as it gives the rule flexibility. In closing Mr. Prengaman suggested the provision be moved to the rule on setting bail
 - Justice Hardesty thanked Mr. Prengaman and agreed what has been discussed in Rule 4 may replace Rule 6.
 - Ms. Thomas questioned if it would be beneficial to have a rule that states ‘...if the prosecutor wishes to increase the bail that is presently set, then they shall provide notice to council prior to return of a truebill.’
 - Mr. Lalli stated that the issue with providing notice would essentially violate the statute for grand jury proceedings. Mr. Lalli continued by stating a judge is present and should be able to determine if the change of circumstances is warranted, additionally the conditions set are temporary based on a prompt Valdez Hearing.
 - Ms. Thomas commented that it’s possible for 3 or 4 days to pass before the next hearing and this can be detrimental to the person(s) in custody.
 - Mr. Jackson stated defining a *change in circumstances* doesn’t really help when applying it to the situations both Chief Judges mentioned when they did change bail

for pre-trial release. Additionally he reminded everyone that the committee was established to create procedure not to re-write the law.

- Justice Hardesty called for a vote on Version 1 with Mr. Arrascada's edit of defining *change of circumstances*.
 - Justice Hardesty voted no and explained that this is an area where the judge should exercise their discretion. Additionally gave his reason behind the suggestion of adding "...on the record". Justice Hardesty anticipates the rule expects that if the judge alters the conditions, the judge must state on the record how the position was overcome and what factors change it. This makes the decision reviewable.
 - Justice Silver agreed.
 - The committee voted not to include Mr. Arrascada's edit. (8 'no', 5 'yes')
- Justice Hardesty called for a vote on his suggestion of editing Version 1 to include "...as stated upon the record." At the end of (i)
 - The committee voted to include the edit unanimously.
- Justice Hardesty called for a vote on Version 1 with the edit voted on previously.
 - The committee voted to move forward with Version 1 with the edit "...as stated upon the record." At the end of (i) (11 'yes', 3 'no').
- Justice Hardesty moved the committee's attention to subsection (c) and asked the committee if anyone had any comments.
 - Justice Hardesty called for a vote on subsection (c) as drafted.
 - The committee voted yes unanimously.

➤ Rule 16: Sanctions (*Tab 4; pages 15-16*)

- Justice Hardesty questioned the committee if they feel it is necessary to adopt a rule that addresses circumstances and range for sanctions.
 - Mr. Prengaman suggested not including a separate rule for criminal sanctions.
 - Lisa Rasmussen stated the existing rules allow council to request sanctions.
 - Mr. Springgate agreed.
 - Mr. Lalli stated sanctions can cause discontent and would rather work directly with the other attorney than involve the court with a sanction.
 - Ms. Rasmussen, Ms. Thomas, and Mr. Arrascada agreed.
 - The committee choose not to include a rule on sanctions.

➤ Rule 2: Case Assignment (*Tab 5; pages 17-18*)

- Justice Hardesty informed the committee the rule was passed previously however Mr. Prengaman questioned if "bound over" should be used or "held to answer" as stated in the statute.
 - Justice Stiglich supported the use of "bound over" as it is the most common term.
- Justice Hardesty asked the committee if any objected from using the term "bound over". Hearing none he instructed Ms. Gradick to use the term "bound over".

➤ Rule 6: Release and Detention Pending Judicial Proceedings (*pages 26-31*)

- Justice Hardesty requested the committee email him with comments regarding any of the sections found in Rule 4 that they feel should be moved to Rule 6.

➤ Rule 8(h): Pretrial Motions (*pages 8-9*)

- This discussion has been tabled for the next meeting.

VI. Rules Approved During Previous Meeting

- Rule 2: Case Assignment (*Tab 5; pages 17-18*)
- Reviewed Rules (*Tab 6; pages 19-22*)

- VII. Other Items/Discussion
 - Rule Approval Process and Next Steps.

- VIII. Next Meeting
 - September 21st at 1:00 pm

- IX. Adjournment
 - The meeting was adjourned at 1:28 p.m.