

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:** September 21, 2020 @ 1:00 pm

**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. Review and Approval of Previous Meeting Summary\* **(Tab 1; pages 3-8)**
  - A. September 2, 2020
- III. Statewide Rules Discussion
  - A. Rule 4 *(As Revised)*: Initial Appearance and Arraignment **(Tab 2; pages 9-11)**
  - B. Rule 5 *(Formerly Rule 6)*: Release and Detention Pending Judicial Proceedings **(Tab 3; pages 12-13)**
  - C. Jury Commissioner **(Tab 4; pages 14-27)**
    1. Review of Standing Orders Dealing with Criminal Procedure Rules **(Tab 5; pages 28-29)**
- IV. Final Rule Status **(Tab 6; pages 30-33)**
- V. Next Meeting Date and Location
  - A. TBD
- VI. Adjournment

Supreme Court Building ♦ 201 South Carson Street, Suite 250 ♦ Carson City, Nevada 89701 ♦ (775) 684-1700 • Fax (775) 684-1723

Supreme Court Building ♦ 408 East Clark Avenue ♦ Las Vegas, Nevada 89101

- 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](mailto: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.nvcourts.gov](http://www.nvcourts.gov); Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Nevada Supreme Court, 408 East Clark Avenue.

# TAB 1

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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 2<sup>nd</sup> 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 5<sup>th</sup> 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 21<sup>st</sup> at 1:00 pm
  
- IX. Adjournment
  - The meeting was adjourned at 1:28 p.m.



# TAB 2

## Rule 4. Initial appearance and arraignment.

### Initial appearance and arraignment.

#### (a) Scheduling.

(1) Unless waived by the defendant, the initial appearance and arraignment shall be scheduled in the district court:

- (i) Within 3 judicial days of arrest for an in custody defendant charged by indictment or the date of bind over and charged by information;
- (ii) Within 10 judicial days of the return of indictment or the date of bind over for an out of custody defendant charged by indictment or information; or
- (iii) Within 15 judicial days of the date of the return of indictment or the date of bind over for a defendant in the custody of the Nevada Department of Corrections charged by indictment or information.

#### **(b) Defendant charged by information.**

- (1) If a defendant has been charged by information, at the initial appearance of the defendant before the district court, the court shall:
  - (i) Supply the defendant a copy of the information unless the charging document has previously been made available to the defendant through e-filing;
  - (ii) 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 upon the defendant's request, be given an extension of time of up to 5 days before entry of plea;
  - (iii) Arraign the defendant upon all charges in the information;
  - (iv) If the defendant enters a plea of not guilty, set the dates for trial, pretrial motions, evidentiary hearings or status conferences.

#### **(c) Defendant charged by indictment.**

~~(1) detention or release must be considered as follows:~~

- ~~(i) If the indictment addresses the same charges as a criminal complaint pending in a parallel proceeding in justice court, any pretrial detention conditions shall presumptively remain the same as the pretrial detention conditions set in justice court. This presumption is rebuttable and the district court may change the pretrial detention conditions based on a change of circumstances as stated upon the record.~~
- ~~(ii) If the indictment contains any additional or different charges from the criminal complaint pending in a parallel proceeding in justice court, and the State seeks to change the pretrial detention conditions set in the parallel proceeding in justice court, then the district court shall issue a summons or issue a warrant. Additionally, the district court shall determine pretrial detention conditions based on the information available to the district court at the time of the indictment return.~~
- ~~(iii)(i) If there is no criminal complaint pending in a parallel proceeding in justice court addressing the same charges as the indictment, then the district court shall issue a summons or issue a warrant. The district court shall also determine pretrial~~

~~detention conditions based on the information available to the district court at the time of the indictment return.~~

- (1) Following the indictment return hearing, at the initial appearance, the court shall:
  - (i) Supply the defendant a copy of the indictment unless the charging document has previously been made available to the defendant through e-filing;
  - (ii) 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, upon the defendant's request, be given an extension of time of up to 5 days before entry of plea; and,
  - (iii) Arraign the defendant upon all charges in the indictment;
  - (iv) If no prior adversarial hearing has been held for the defendant in a parallel proceeding in justice court or if a defendant's bail was increased or the conditions of release were altered at the indictment return hearing, conduct a prompt adversarial hearing to determine whether it is appropriate to adjust any conditions of release or bail; and,
  - (v) If the defendant enters a plea of not guilty, set the dates for trial, pretrial motions, evidentiary hearings or status conferences.

**(d) Sentencing or Transfer.**

- (1) If a defendant enters a plea of guilty, guilty but mentally ill, or nolo contendere, the court may transfer the action to a court or a department of the court for the purpose of assigning the defendant into an appropriate program or treatment plan, or order a presentence report and set a sentencing date.
- (2) Subject to the provisions of NRS 176.135, a presentence report may be waived and sentence imposed at the entry of a guilty, guilty but mentally ill, or nolo contendere plea.

# TAB 3

## Rule 5. Release and detention pending judicial proceedings.

### **(a) Defendant charged by indictment.**

- (1) At the indictment return hearing, conditions of pretrial detention or release must be considered as follows:
  - (i) If the indictment addresses the same charges as a criminal complaint pending in a parallel proceeding in justice court, any pretrial detention conditions shall presumptively remain the same as the pretrial detention conditions set in justice court. This presumption is rebuttable and the district court may change the pretrial detention conditions based on a change of circumstances as stated upon the record.
  - (ii) If the indictment contains any additional or different charges from the criminal complaint pending in a parallel proceeding in justice court, and the State seeks to change the pretrial detention conditions set in the parallel proceeding in justice court, then the district court shall issue a summons or issue a warrant. Additionally, the district court shall determine pretrial detention conditions based on the information available to the district court at the time of the indictment return.
  - (iii) If there is no criminal complaint pending in a parallel proceeding in justice court addressing the same charges as the indictment, then the district court shall issue a summons or issue a warrant. The district court shall also determine pretrial detention conditions based on the information available to the district court at the time of the indictment return.

### **(b) Motions to change the defendant's pretrial detention status.**

- (1) All motions to change the defendant's pretrial detention status following the defendant's initial post-arrest individualized detention determination shall be in writing, supported by an affidavit or declaration by the movant or the movant's attorney.

# TAB 4

## Jury Commissioner

Rule X.XX. **Availability of procedures.** The jury commissioner shall document, in writing, all procedures used by the jury commissioner's office in the selection of prospective jurors and make the procedures available to the public upon request.

Rule X.XX. **Jury sources.** The jury commissioner must utilize a list of persons who are registered to vote in the county, the Department of Motor Vehicles, the Employment Security Division of the Department of Employment, Training and Rehabilitation, and a public utility as required by NRS 6.045, and such other lists as may be authorized by the chief judge.

Rule X.XX. **Yearly reporting requirements.** The jury commissioner shall prepare and submit a yearly report that contains statistics from the records required to be maintained by the jury commissioner pursuant to NRS 6.045, including, without limitation, the name, occupation (where available), zip code and race of each trial juror who is summoned, each trial juror who appears for jury service, each trial juror who is selected, and each trial juror who is seated as a juror.

Rule X.XX. **Availability of documentation in master list.** All documentation collected by the jury commissioner and used to compile the master list must be made available to the parties to a jury trial upon request. A criminal defendant is entitled to information relating to the race, gender, occupation (where available), and zip code of the prospective jurors in the master list. The jury commissioner must also prepare a zip code report listing the number of prospective jurors in the master list by zip code to be given to the public upon request.

Rule X.XX. **Availability of documentation to the parties in a case.** All documentation collected by the jury commissioner from prospective jurors must be made available to the parties to a jury trial upon request. A criminal defendant is entitled to information relating to the race, gender, occupation (where available), and zip code of the prospective jurors assigned to his case, the prospective jurors reporting for jury service, and in the group of jurors summoned for jury on the date set for jury trial. This documentation must be made available, when requested, prior to beginning the jury selection process.

*Proposed by:*

*Clark County Public Defender's Office*

*Chief Deputy Tegan Machnich  
Chief Deputy Sharon Dickinson*

135 Nev. 463  
Supreme Court of Nevada.

**Keandre VALENTINE**, Appellant,

v.

The STATE of Nevada, Respondent.

No. 74468

FILED DECEMBER 19, 2019

### Synopsis

**Background:** After defendant's request for an evidentiary hearing regarding whether jury venire represented a fair cross-section of the community was denied, defendant was convicted in the District Court, Clark County, [Richard Scotti, J.](#), of multiple crimes stemming from five armed robberies. Defendant appealed.

**Holdings:** The Supreme Court, [Stiglich, J.](#), held that:

as a matter of first impression, an evidentiary hearing is warranted on a defendant's fair-cross-section challenge to a jury venire when the defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement;

defendant's allegations were sufficient to establish a prima facie violation of the fair-cross-section requirement;

evidence was insufficient to support two of

defendant's robbery convictions;

district court did not abuse its discretion in admitting graphs of DNA test results;

prosecutor's closing argument inviting jurors to make inferences not supported by DNA evidence was improper; and

prosecutor's improper closing argument was harmless.

Vacated and remanded.

**\*\*712** Appeal from a judgment of conviction, pursuant to a jury verdict, of seven counts of robbery with the use of a deadly weapon, three counts of burglary while in possession of a deadly weapon, two counts of possession of credit or debit card without cardholder's consent, and one count each of attempted robbery with the use of a deadly weapon and possession of document or personal identifying information for the purpose of establishing a false status or identity. Eighth Judicial District Court, Clark County; [Richard Scotti](#), Judge.

### Attorneys and Law Firms

Darin F. Imlay, Public Defender, and Sharon G. Dickinson, Deputy Public Defender, Clark County, for Appellant.

[Aaron D. Ford](#), Attorney General, Carson City; [Steven B. Wolfson](#), District Attorney, [Krista D. Barrie](#), Chief Deputy District Attorney, and [Michael R. Dickerson](#), Deputy District Attorney, Clark County, for Respondent.



BEFORE HARDESTY, STIGLICH and  
SILVER, JJ.

**\*464 \*\*713 BACKGROUND**

*OPINION*

By the Court, STIGLICH, J.:

**\*463** A defendant has the right to a jury chosen from a fair cross section of the community, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. This court has addressed the showing a defendant must make to establish a prima facie violation of this right. We have said little, however, about when an evidentiary hearing may be warranted on a fair-cross-section claim. Faced with that issue in this case, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement. Because the defendant in this matter made specific factual allegations that could be sufficient to establish a prima facie violation of the fair-cross-section requirement and those allegations were not disproved, the district court abused its discretion by denying Valentine's request for an evidentiary hearing. None of Valentine's other claims warrant a new trial. We therefore vacate the judgment of conviction and remand for further proceedings as to the fair-cross-section challenge.

Appellant **Keandre Valentine** was convicted by a jury of multiple crimes stemming from a series of five armed robberies in Las Vegas, Nevada. Before trial, Valentine objected to the 45-person venire and claimed a violation of his right to a jury selected from a fair cross section of the community. He argued that two distinctive groups in the community—African Americans and Hispanics—were not fairly and reasonably represented in the venire when compared with their representation in the community. Valentine asserted that the underrepresentation was caused by systematic exclusion, proffering two theories as to how the system used in Clark County excludes distinctive groups. His first theory was that the system did not enforce jury summonses; his second theory was that the system sent out an equal number of summonses to citizens located in each postal ZIP code without ascertaining the percentage of the population in each ZIP code. Valentine requested an evidentiary hearing, which was denied. The district court found that the two groups were distinctive groups in the community and that one group—Hispanics—was not fairly and reasonably represented in the venire when compared to its representation in the community. However, the district court found that the underrepresentation was not due to systematic exclusion, relying on the

jury commissioner's testimony regarding the jury selection process two years earlier in another case and on this court's resolution of fair-cross-section claims in various unpublished decisions. The court thus denied the constitutional challenge.

### DISCUSSION

#### *Fair-cross-section challenge warranted an evidentiary hearing*

Valentine claims the district court committed structural error by denying his fair-cross-section challenge without conducting an evidentiary hearing. We review the district court's denial of Valentine's request for an evidentiary hearing for an abuse of discretion. *See Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015) (reviewing denial of request for an evidentiary hearing on a postconviction petition for a writ of habeas corpus); *accord United States v. Schafer*, 625 F.3d 629, 635 (9th Cir. 2010) (reviewing denial of request for an evidentiary hearing on a motion to dismiss an indictment); *United States v. Terry*, 60 F.3d 1541, 1544 n.2 (11th Cir. 1995) (reviewing denial of request for an evidentiary hearing on fair-cross-section challenge to statute exempting police officers from jury service).

"Both the Fourteenth and the Sixth Amendments to the United States Constitution guarantee a defendant the right

to a trial before a jury selected from a representative cross-section of the community." *Evans v. State*, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996). While this right does not require that the jury "mirror the community and \*465 reflect the various distinctive groups in the population," it does require "that the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." *Id.* at 1186, 926 P.2d at 274-75 (internal quotation marks omitted). "Thus, as long as the jury selection process is designed to select jurors from a fair cross section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible." *Williams v. State*, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005).

A defendant alleging a violation of the right to a jury selected from a fair cross section of the community must first establish a prima facie violation of the right by showing

- (1) that the group alleged to be excluded is a "distinctive" group in the community;
- (2) 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;
- and (3) that this underrepresentation is due to systematic

*exclusion of the group in the jury-selection process.*

*Evans*, 112 Nev. at 1186, 926 P.2d at 275 (quoting *Duren v. Missouri*, 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979)). To determine “[w]hether a certain percentage is a fair representation of a group,” this court \*\*714 uses “the absolute and comparative disparity between the actual percentage in the venire and the percentage of the group in the community.” *Williams*, 121 Nev. at 940 n.9, 125 P.3d at 631 n.9. And to determine whether systematic exclusion has been shown, we consider if the underrepresentation of a distinctive group is “inherent in the particular jury-selection process utilized.” *Evans*, 112 Nev. at 1186-87, 926 P.2d at 275 (internal quotation marks omitted). Only after a defendant demonstrates a prima facie violation of the right does “the burden shift [ ] to the government to show that the disparity is justified by a significant state interest.” *Id.* at 1187, 926 P.2d at 275.

Here, Valentine asserted that African Americans and Hispanics were not fairly and reasonably represented in the venire. Both African Americans and Hispanics are recognized as distinctive groups. *See id.*; *see also United States v. Esquivel*, 88 F.3d 722, 726 (9th Cir. 1996). And the district court correctly used the absolute and comparative disparity between the percentage of each distinct group in the venire and the percentage in the community to determine that African Americans were fairly and reasonably represented in the venire but that Hispanics were not. *See Williams*, 121 Nev. at 940 n.9, 125 P.3d at 631 n.9

(“Comparative disparities over 50% indicate that the representation of [a distinct group] is likely not fair and reasonable.”). The district court denied Valentine’s challenge as to Hispanics based on the third prong—systematic exclusion.

**\*466** We conclude the district court abused its discretion in denying Valentine’s request for an evidentiary hearing. Although this court has not articulated the circumstances in which a district court should hold an evidentiary hearing when presented with a fair-cross-section challenge, it has done so in other contexts. For example, this court has held that an evidentiary hearing is warranted on a postconviction petition for a writ of habeas corpus when the petitioner has “assert[ed] claims supported by specific factual allegations [that are] not belied by the record [and] that, if true, would entitle him to relief.” *Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002); *see also Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Most of those circumstances are similarly relevant when deciding whether an evidentiary hearing is warranted on a defendant’s fair-cross-section challenge, given the defendant’s burden of demonstrating a prima facie violation. In particular, it makes no sense to hold an evidentiary hearing if the defendant makes only general allegations that are not sufficient to demonstrate a prima facie violation or if the defendant’s specific allegations are not sufficient to demonstrate a prima facie violation as a matter of law. *See Terry*, 60 F.3d at 1544 n.2 (explaining that no evidentiary hearing is warranted on a fair-cross-section challenge if no set of facts could be developed that “would be significant legally”). But unlike the

## Jury Commissioner

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Rule X.XX. **Jury sources.** The jury commissioner must utilize a list of persons who are registered to vote in the county, the Department of Motor Vehicles, the Employment Security Division of the Department of Employment, Training and Rehabilitation, and a public utility as required by NRS 6.045, and such other lists as may be authorized by the chief judge.

Rule X.XX. **Yearly reporting requirements.** The jury commissioner shall prepare and submit a yearly report that contains statistics from the records required to be maintained by the jury commissioner pursuant to NRS 6.045, including, without limitation, the name, occupation (where available), zip code and race of each trial juror who is summoned, each trial juror who appears for jury service, each trial juror who is selected, and each trial juror who is seated as a juror.

Rule X.XX. **Availability of documentation in master list.** All documentation collected by the jury commissioner and used to compile the master list must be made available to the parties to a jury trial upon request. A criminal defendant is entitled to information relating to the race, gender, occupation (where available), and zip code of the prospective jurors in the master list. The jury commissioner must also prepare a zip code report listing the number of prospective jurors in the master list by zip code to be given to the public upon request.

Rule X.XX. **Availability of documentation to the parties in a case.** All documentation collected by the jury commissioner from prospective jurors must be made available to the parties to a jury trial upon request. A criminal defendant is entitled to information relating to the race, gender, occupation (where available), and zip code of the prospective jurors assigned to his case, the prospective jurors reporting for jury service, and in the group of jurors summoned for jury on the date set for jury trial. This documentation must be made available, when requested, prior to beginning the jury selection process.

*Proposed by:*

*Clark County Public Defender's Office*

*Chief Deputy Tegan Machnich  
Chief Deputy Sharon Dickinson*

135 Nev. 463  
Supreme Court of Nevada.

**Keandre VALENTINE**, Appellant,

v.

The STATE of Nevada, Respondent.

No. 74468

FILED DECEMBER 19, 2019

### Synopsis

**Background:** After defendant's request for an evidentiary hearing regarding whether jury venire represented a fair cross-section of the community was denied, defendant was convicted in the District Court, Clark County, [Richard Scotti, J.](#), of multiple crimes stemming from five armed robberies. Defendant appealed.

**Holdings:** The Supreme Court, [Stiglich, J.](#), held that:

as a matter of first impression, an evidentiary hearing is warranted on a defendant's fair-cross-section challenge to a jury venire when the defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement;

defendant's allegations were sufficient to establish a prima facie violation of the fair-cross-section requirement;

evidence was insufficient to support two of

defendant's robbery convictions;

district court did not abuse its discretion in admitting graphs of DNA test results;

prosecutor's closing argument inviting jurors to make inferences not supported by DNA evidence was improper; and

prosecutor's improper closing argument was harmless.

Vacated and remanded.

**\*\*712** Appeal from a judgment of conviction, pursuant to a jury verdict, of seven counts of robbery with the use of a deadly weapon, three counts of burglary while in possession of a deadly weapon, two counts of possession of credit or debit card without cardholder's consent, and one count each of attempted robbery with the use of a deadly weapon and possession of document or personal identifying information for the purpose of establishing a false status or identity. Eighth Judicial District Court, Clark County; [Richard Scotti](#), Judge.

### Attorneys and Law Firms

Darin F. Imlay, Public Defender, and Sharon G. Dickinson, Deputy Public Defender, Clark County, for Appellant.

[Aaron D. Ford](#), Attorney General, Carson City; [Steven B. Wolfson](#), District Attorney, [Krista D. Barrie](#), Chief Deputy District Attorney, and [Michael R. Dickerson](#), Deputy District Attorney, Clark County, for Respondent.

BEFORE HARDESTY, STIGLICH and  
SILVER, JJ.

**\*464 \*\*713 BACKGROUND**

*OPINION*

By the Court, STIGLICH, J.:

**\*463** A defendant has the right to a jury chosen from a fair cross section of the community, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. This court has addressed the showing a defendant must make to establish a prima facie violation of this right. We have said little, however, about when an evidentiary hearing may be warranted on a fair-cross-section claim. Faced with that issue in this case, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement. Because the defendant in this matter made specific factual allegations that could be sufficient to establish a prima facie violation of the fair-cross-section requirement and those allegations were not disproved, the district court abused its discretion by denying Valentine's request for an evidentiary hearing. None of Valentine's other claims warrant a new trial. We therefore vacate the judgment of conviction and remand for further proceedings as to the fair-cross-section challenge.

Appellant **Keandre Valentine** was convicted by a jury of multiple crimes stemming from a series of five armed robberies in Las Vegas, Nevada. Before trial, Valentine objected to the 45-person venire and claimed a violation of his right to a jury selected from a fair cross section of the community. He argued that two distinctive groups in the community—African Americans and Hispanics—were not fairly and reasonably represented in the venire when compared with their representation in the community. Valentine asserted that the underrepresentation was caused by systematic exclusion, proffering two theories as to how the system used in Clark County excludes distinctive groups. His first theory was that the system did not enforce jury summonses; his second theory was that the system sent out an equal number of summonses to citizens located in each postal ZIP code without ascertaining the percentage of the population in each ZIP code. Valentine requested an evidentiary hearing, which was denied. The district court found that the two groups were distinctive groups in the community and that one group—Hispanics—was not fairly and reasonably represented in the venire when compared to its representation in the community. However, the district court found that the underrepresentation was not due to systematic exclusion, relying on the

jury commissioner's testimony regarding the jury selection process two years earlier in another case and on this court's resolution of fair-cross-section claims in various unpublished decisions. The court thus denied the constitutional challenge.

### DISCUSSION

#### *Fair-cross-section challenge warranted an evidentiary hearing*

Valentine claims the district court committed structural error by denying his fair-cross-section challenge without conducting an evidentiary hearing. We review the district court's denial of Valentine's request for an evidentiary hearing for an abuse of discretion. *See Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015) (reviewing denial of request for an evidentiary hearing on a postconviction petition for a writ of habeas corpus); *accord United States v. Schafer*, 625 F.3d 629, 635 (9th Cir. 2010) (reviewing denial of request for an evidentiary hearing on a motion to dismiss an indictment); *United States v. Terry*, 60 F.3d 1541, 1544 n.2 (11th Cir. 1995) (reviewing denial of request for an evidentiary hearing on fair-cross-section challenge to statute exempting police officers from jury service).

"Both the Fourteenth and the Sixth Amendments to the United States Constitution guarantee a defendant the right

to a trial before a jury selected from a representative cross-section of the community." *Evans v. State*, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996). While this right does not require that the jury "mirror the community and \*465 reflect the various distinctive groups in the population," it does require "that the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." *Id.* at 1186, 926 P.2d at 274-75 (internal quotation marks omitted). "Thus, as long as the jury selection process is designed to select jurors from a fair cross section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible." *Williams v. State*, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005).

A defendant alleging a violation of the right to a jury selected from a fair cross section of the community must first establish a prima facie violation of the right by showing

- (1) that the group alleged to be excluded is a "distinctive" group in the community;
- (2) 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;
- and (3) that this underrepresentation is due to systematic

*exclusion of the group in the jury-selection process.*

*Evans*, 112 Nev. at 1186, 926 P.2d at 275 (quoting *Duren v. Missouri*, 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979)). To determine “[w]hether a certain percentage is a fair representation of a group,” this court \*\*714 uses “the absolute and comparative disparity between the actual percentage in the venire and the percentage of the group in the community.” *Williams*, 121 Nev. at 940 n.9, 125 P.3d at 631 n.9. And to determine whether systematic exclusion has been shown, we consider if the underrepresentation of a distinctive group is “inherent in the particular jury-selection process utilized.” *Evans*, 112 Nev. at 1186-87, 926 P.2d at 275 (internal quotation marks omitted). Only after a defendant demonstrates a prima facie violation of the right does “the burden shift [ ] to the government to show that the disparity is justified by a significant state interest.” *Id.* at 1187, 926 P.2d at 275.

Here, Valentine asserted that African Americans and Hispanics were not fairly and reasonably represented in the venire. Both African Americans and Hispanics are recognized as distinctive groups. *See id.*; *see also United States v. Esquivel*, 88 F.3d 722, 726 (9th Cir. 1996). And the district court correctly used the absolute and comparative disparity between the percentage of each distinct group in the venire and the percentage in the community to determine that African Americans were fairly and reasonably represented in the venire but that Hispanics were not. *See Williams*, 121 Nev. at 940 n.9, 125 P.3d at 631 n.9

(“Comparative disparities over 50% indicate that the representation of [a distinct group] is likely not fair and reasonable.”). The district court denied Valentine’s challenge as to Hispanics based on the third prong—systematic exclusion.

**\*466** We conclude the district court abused its discretion in denying Valentine’s request for an evidentiary hearing. Although this court has not articulated the circumstances in which a district court should hold an evidentiary hearing when presented with a fair-cross-section challenge, it has done so in other contexts. For example, this court has held that an evidentiary hearing is warranted on a postconviction petition for a writ of habeas corpus when the petitioner has “assert[ed] claims supported by specific factual allegations [that are] not belied by the record [and] that, if true, would entitle him to relief.” *Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002); *see also Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Most of those circumstances are similarly relevant when deciding whether an evidentiary hearing is warranted on a defendant’s fair-cross-section challenge, given the defendant’s burden of demonstrating a prima facie violation. In particular, it makes no sense to hold an evidentiary hearing if the defendant makes only general allegations that are not sufficient to demonstrate a prima facie violation or if the defendant’s specific allegations are not sufficient to demonstrate a prima facie violation as a matter of law. *See Terry*, 60 F.3d at 1544 n.2 (explaining that no evidentiary hearing is warranted on a fair-cross-section challenge if no set of facts could be developed that “would be significant legally”). But unlike the



postconviction context where the claims are case specific, a fair-cross-section challenge is focused on systematic exclusion and therefore is not case specific. Because of that systematic focus, it makes little sense to require an evidentiary hearing on a fair-cross-section challenge that has been disproved in another case absent a showing that the record in the prior case is not complete or reliable.<sup>1</sup> With these considerations in mind, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement.<sup>2</sup>

<sup>1</sup> For the reasons stated herein, it was error for the district court to rely upon the jury commissioner's prior testimony in denying Valentine's challenge. That is not to say a district court may never rely upon prior testimony when appropriate.

<sup>2</sup> We note that, in order to meet the burden of demonstrating an evidentiary hearing is warranted, a defendant may subpoena supporting documents and present supporting affidavits. See *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Applying that standard, we conclude that Valentine was entitled to an evidentiary hearing as to his allegation of systematic exclusion of Hispanics. Valentine did more than make a general assertion of systematic exclusion. In particular, Valentine made specific allegations that the system used to select jurors in the Eighth Judicial District Court sends an equal number of jury summonses to each postal ZIP code in the jurisdiction without ascertaining the percentage of the population in each ZIP code. Those allegations, if true, could

establish underrepresentation of a distinctive group based on systematic exclusion. Cf. *Garcia-Dorantes v. Warren*, 801 F.3d 584, 591-96 (6th Cir. 2015) (discussing a prima facie case of systematic exclusion where a computer used a list to determine the percentage of jurors per ZIP code, but because of a glitch, the list included a higher number of persons from certain ZIP codes that had smaller proportions of African Americans than the community at large). And those allegations were not addressed in the jury commissioner's prior testimony that the district court referenced.<sup>3</sup> Accordingly, the district court could not rely on the prior testimony to resolve Valentine's allegations of systematic exclusion. Having alleged specific facts that could establish the underrepresentation of Hispanics as inherent in the jury selection process, Valentine was entitled to an evidentiary hearing.<sup>4</sup> Accordingly, the district court abused its discretion by denying Valentine's request for an evidentiary hearing.<sup>5</sup> We therefore vacate the judgment of conviction and remand to the district court for an evidentiary hearing. Cf. *State v. Ruschetta*, 123 Nev. 299, 304-05, 163 P.3d 451, 455 (2007) (vacating judgment of conviction and remanding where district court failed to make factual findings regarding motion to suppress and where record was insufficient for appellate review). Thereafter, Valentine's fair-cross-section challenge should proceed in the manner outlined in *Evans*, 112 Nev. at 1186-87, 926 P.2d at 275. If the district court determines that the challenge lacks merit, it may reinstate the judgment of conviction, except as provided below.

<sup>3</sup> Even if the jury commissioner's previous testimony addressed Valentine's specific allegations of systematic

exclusion, reliance on the old testimony would have been misplaced. In particular, the prior testimony mentioned that the system was “moving towards a new improved jury selection process” and legislative amendments regarding the juror selection process were implemented close in time to Valentine’s trial. *See* 2017 Nev. Stat., ch. 549, §§ 1-5, at 3880-84. While prior testimony relevant to a particular fair-cross-section challenge may obviate the need for an evidentiary hearing, a district court should be mindful that it not rely upon stale evidence in resolving such challenges.

4 It is unclear that Valentine’s allegations regarding the enforcement of jury summonses would, if true, tend to establish underrepresentation as a result of systematic exclusion. *See United States v. Orange*, 447 F.3d 792, 800 (10th Cir. 2006) (“Discrepancies resulting from the private choices of potential jurors do not represent the kind of constitutional infirmity contemplated by *Duren*”). Accordingly, he was not entitled to an evidentiary hearing as to those allegations.

5 We reject Valentine’s contention that the district court’s failure to hold an evidentiary hearing evinced judicial bias resulting in structural error.

### *Sufficiency of the evidence*

Valentine argues the State presented insufficient evidence to support his convictions for robbery with the use of a deadly weapon in counts 4 and 9. In considering a claim of insufficient evidence, we \*468 “view[ ] the evidence in the light most favorable to the prosecution” to determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)).

NRS 200.380(1) defines the crime of robbery as

[T]he unlawful taking of personal property from the person of another, or in the person’s presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property, or the person or property of a member of his or her family, or of anyone in his or her company at the time of the robbery.<sup>6</sup>

Additionally, we have held that the State must show that the victim had possession of or a possessory interest in the property taken. \*\*716 *See Phillips v. State*, 99 Nev. 693, 695-96, 669 P.2d 706, 707 (1983).

<sup>6</sup> The Legislature amended NRS 200.380, effective October 1, 2019. 2019 Nev. Stat., ch. 76, § 1, at 408. While the amendments do not affect our analysis in this matter, we have quoted the pre-amendment version of NRS 200.380 that was in effect at the time of the events underlying this appeal. 1995 Nev. Stat., ch. 443, § 60, at 1187.

The challenged robbery counts stem from a similar fact pattern. Beginning with count 4, Valentine was charged with robbing Deborah Faulkner of money; Valentine was also charged with robbing Darrell Faulkner, Deborah’s husband, of money in count 3. Valentine was convicted of both counts. However, when viewed in a light most favorable to the prosecution, the evidence produced at trial was insufficient to support a robbery charge as it related to Deborah.

While the evidence established that Valentine took \$100 that Darrell removed from his own wallet, the evidence demonstrated that Valentine demanded Deborah to empty her purse onto the ground but actually took nothing from it. There was no evidence that Deborah had possession of, or a possessory interest in, the money from Darrell's wallet.<sup>7</sup> Thus, the State presented insufficient evidence for count 4, and the conviction for that count cannot be sustained.

<sup>7</sup> We are unconvinced by the State's argument that the singular fact of Darrell and Deborah being married, without more, demonstrated that the money in Darrell's wallet was community property of the marriage such that Deborah had a possessory interest in it. *See NRS 47.230(3)*.

Similarly, in count 9, Valentine was charged with robbing Lazaro Bravo-Torres of a wallet and cellular telephone; Valentine was also charged with robbing Rosa Vasquez-Ramirez, Lazaro's wife, of a purse, wallet, and/or cellular telephone in count 11. Valentine was convicted of both counts. Yet viewing the evidence in a light most favorable to the prosecution, the evidence did not establish that Valentine robbed Lazaro. Specifically, Lazaro testified that he \*469 told Valentine he did not have cash or a wallet on him and that his phone, located in the center compartment of the truck, was not taken but was used by the couple after the incident was over. Conversely, Rosa testified that Valentine took her purse along with the items in it. The evidence presented by the State did not establish that Lazaro had possession of, or a possessory interest in, the items taken,<sup>8</sup> and thus the conviction for count 9 cannot be sustained.

<sup>8</sup> We again reject the State's argument that the mere fact

that Lazaro and Rosa were married demonstrated that Lazaro had a possessory interest in Rosa's purse or the items therein. *See id.*

#### *Prosecutorial misconduct regarding DNA evidence*

Valentine contends that the State engaged in prosecutorial misconduct during closing argument when discussing the deoxyribonucleic acid (DNA) evidence. In considering a claim of prosecutorial misconduct, we determine whether the conduct was improper and, if so, whether the improper conduct merits reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).

During the trial, the State presented an expert witness to testify about the DNA results from a swab of the firearm found in the apartment where Valentine was discovered. The expert testified generally about the procedures her laboratory uses for DNA analysis. She explained that samples are tested at the same 15 locations, or loci, on the DNA molecule and a DNA profile results from the alleles, or numbers, obtained from each of the 15 locations.<sup>9</sup> When complete information from each of the 15 locations is obtained, the result is a full DNA profile; anything less produces a partial DNA profile. The results of the DNA testing process appear as peaks on a graph, and it is those peaks that the expert interprets and uses to make her determinations. In considering the information on a graph, the expert indicated that her laboratory uses a threshold of

# TAB 5

Judicial District	Order	Comments
1 <sup>st</sup> Judicial District	N/A	No administrative orders relating to criminal procedure.
2 <sup>nd</sup> Judicial District		
3 <sup>rd</sup> Judicial District	N/A	No administrative orders relating to criminal procedure.
4 <sup>th</sup> Judicial District	N/A	No administrative orders relating to criminal procedure.
5 <sup>th</sup> Judicial District		
6 <sup>th</sup> Judicial District	N/A	No administrative orders relating to criminal procedure.
7 <sup>th</sup> Judicial District	N/A	No administrative orders relating to criminal procedure.
8 <sup>th</sup> Judicial District	<ul style="list-style-type: none"> <li>Assessment of Indigent Defense fees in criminal cases (AO 9-17)</li> <li>Mandatory criminal case e-filing (AO 12-02)</li> <li>Criminal homicide team pilot project (AO 17-05)</li> <li>Allows for dismissal of justice court cases at grand jury indictment (AO 17-10)</li> <li>Accepting bail bonds without review of a person's immigration status (AO 18-11)</li> </ul>	<p>"I don't recall now if this is in the rules, but it would be good to have some consistency statewide. I also have always thought these fees should be assessed at the time counsel is appointed so the defendant has the understanding of the amount of the fees and the ability to make a meaningful choice about hiring a lawyer or not." – Chief Judge Bell</p>
9 <sup>th</sup> Judicial District		
10 <sup>th</sup> Judicial District	N/A	Only Covid-19 related orders; using criminal settlement conferences to mitigate need for too many criminal jury trials.
11 <sup>th</sup> Judicial District	N/A	No administrative orders relating to criminal procedure.

# TAB 6

Rule	Status	Date/Source of Actions	Motions to Approve/Votes	Notes
Rule 2: Case Assignment	Approved	4/22/19 Commission Meeting 6/10/19 Commission Meeting 6/15/2020 Commission Meeting 7/01/2020 Commission Meeting 8/05/2020 Commission Meeting	Motion to approve Yes: 10 No: 3 Abstain/no vote: 1	6/15/2020: Judge Herndon and Judge Jones to review Commission's previous discussion on this rule. 7/01/2020: Commission members invited to submit drafts for review 8/05/2020: Approved (with minor revisions)
Rule 3: Appearance and Withdrawal of Attorney	Approved	9/27/19 Commission Meeting	Motion to approve, general consent vote. Motion passed	Rules 7.40 and 23 approved 9/27/19
Rule 4: Initial Appearance and Arraignment	Approved	6/10/19 Commission Meeting 6/15/2020 Commission Meeting 7/01/2020 Commission Meeting 8/05/2020 Commission Meeting 9/02/2020 Commission Meeting	4(b): Motion to approve version 1 with Mr. Arrascada's edits Yes: 5 No: 8 Abstain/no vote: 1 4(b): Motion to approve version 1 with Justice Hardesty's edit Yes: 11 No: 3 Abstain/no vote: 4(c): Motion to accept WCPD version Yes: 14 No: 0 Abstain/no vote: 0	8/05/2020: Rule divided into 3 parts; part one (as drafted by Mr. Prengaman) was approved without inclusion of Mr. Arrascada's (a)(1)(v) and (a)(2). 9/02/2020: section (b) approved; Mr. Lalli's "version 1" with inclusion of Justice Hardesty's "on the record" language. 9/02/2020: section (c) approved: WCPD version as submitted in 8/5/2020 materials
Rule 4.1: Setting of Cases	Removed	6/10/19 Commission Meeting 5/27/2020 Commission Meeting		5/28/2020: this rule will be removed from further agendas as it has been addressed in Rule 8 (request for submission sections)
Rule 5: Pleas of Guilty or Nolo Contendere	Removed	8/05/2020 Commission Meeting	Motion to rely on statute or draft new rule Statute: 11 New rule: 0 Abstain/no vote: 3	8/05/2020: Commission voted to rely on statute rather than develop new rule
Rule 6: Release and Detention Pending Judicial Proceedings	Ongoing			
Rule 7: Discovery/ Discovery Motions	Approved	6/10/19 Commission Meeting	Motion to approve, general consent vote. Motion passed.	Language added to 2 <sup>nd</sup> CR Rule 6

Rule 8: Pretrial Motions	Approved	10/29/19 Commission Meeting 1/17/2020 Commission Meeting 2/28/2020 Commission Meeting 4/27/2020 Commission Meeting 5/15/2020 Commission Meeting 5/27/2020 Commission Meeting 6/15/2020 Commission Meeting 7/01/2020 Commission Meeting	Motion to approve sections a-g. Yes: 13 No: 0 Abstain/no vote:1	Tentatively approved 2/28 pending changes; brought back for review at 4/27 meeting and 5/15 meeting. 5/15/20: Additional changes will be reviewed at 5/27/20 meeting. 5/27/20: sections a-g were unanimously approved; section h contested with 2 versions proposed. Commission will accept/review any additional drafts for this section at next meeting; otherwise both versions will be submitted to the Court for review. Per Justice Hardesty: Section 8(h) will be removed from Rule 8; pretrial detention will be address in Rule 6.
Rule 9: Pretrial Writs of Habeus Corpus	Approved	10/29/19 Commission Meeting	Motion to approve pending revisions, general consent vote.	10/29/19: Approved pending revisions as discussed.
Rule 10: Stay Orders	Approved	10/29/19 Commission Meeting	Motion to approve, general consent vote. Motion passed; 1 member opposed.	
Rule 11 and 12:	Approved	10/29/19 Commission Meeting	Motion to approve, general consent vote. Motion passed.	10/29/19: Approved pending slight revision
Rule 14: Sentencing	Approved	4/27/2020 Commission Meeting 5/27/2020 Commission Meeting 6/15/2020 Commission Meeting	Motion to approve Yes: 10 No: 3 Abstain/no vote: 1	Members to compile subject matter list to base draft on 5/27/20: Section 3(b) is only contested section 6/15/2020: Commission approved
Rule 15: Continuances	Approved	4/27/2020 Commission Meeting 5/27/2020 Commission Meeting 6/15/2020 Commission Meeting	Motion to approve Yes: 13 No: 0 Abstain/no vote: 1	Members to compile subject matter list to base draft on 5/27/20: Support for Mr. Prengaman's version 6/15/2020: Commission approved
Rule 16: Sanctions	Ongoing			
Rule 17: Voir Dire	Approved	1/17/2020 Commission Meeting 2/28/2020 Commission Meeting 4/27/2020 Commission Meeting 5/15/2020 Commission Meeting	Motion to approve Yes: 8 No: 0 Abstain/no vote: 6	Tentatively approved 4/27; subcommittee will make final changes and bring back for final review at 5/15 meeting



		5/27/2020 Commission Meeting		5/15/20: Additional changes made; will circulate for an email vote/approval Approved via email vote; approval announced at 5/27/20 meeting
Rule 18: Court Interpreters	Approved	10/29/19 Commission Meeting	Motion to approve, general consent vote. Motion passed.	10/29/19: Approved pending slight revision
Rule 19: Appeals	Approved	10/29/19 Commission Meeting	Motion to approve Yes: 8 No: 1 Abstain/no vote: 5	Email vote following 10/29/19 meeting to approve changes as discussed
Rule 20(a)	Approved	8/27/19 Commission Meeting	Motion to approve Yes: 11 No: 0 Abstain/no vote: 3	Replaced by 2 <sup>nd</sup> LR Rule 3(7) proposed by Mr. Arrascada
Rule 20(e)	Approved	9/27/19 Commission Meeting	Motion to approve, general consent vote. Motion passed.	9/27/2019: Approved draft as presented by Mr. Grimes
SCR 250(4)(c)	Adopted	6/07/19 ADKT 0491 – 1 <sup>st</sup> report		
SCR 252	Adopted	6/07/19 ADKT 0491 -1 <sup>st</sup> report 6/15/2020 Commission Meeting		6/15/2020: Amendment approved (as presented by Mr. Lalli)
Post-Convictions	Removed	1/29/2020: Work Group Conference Call 2/28/2020 Commission Meeting 8/05/2020 Commission Meeting	Vote on whether to include this rule Yes: 3 No: 8 Abstain/no vote: 3	Tabled for further discussion at 3/27/20 meeting 8/05/20: Commission voted not to include this rule
Jury Commissioner	Ongoing	8/05/2020 Commission Meeting		8/05/2020: Commission was split on whether to include a rule on this; Justice Hardesty decided to allow submissions for consideration.