

Supreme Court of Nevada

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Commission on Statewide Rules of Criminal Procedure

August 5, 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 Freeman
Judge Herndon
Darin Imlay
Mark Jackson
Christopher Lalli
Luke Prengaman
Lisa Rasmussen
Judge Jim Shirley
JoNell Thomas

Guests Present

Chief Judge Bell
Sharon Dickinson
John Petty

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 noted going forward he will be focusing on voting members of the commission and informed attendees that an ADKT Order was filed removing Mr. Wolfson and Mr. Hicks and instating Mr. Lalli and Mr. Prengaman as voting members.
- II. Public Comment
 - There was no public comment.
- III. Review and Approval of July 1, 2020 Meeting Summary
 - The July 1, 2020 meeting summary was approved.
- IV. Ongoing Reports / Status Reports
 - Settlement Conferences
 - Justice Hardesty summarized a call he received from Judge Stockard reporting that he and Judge Shirley have successfully completed most of the settlement conferences that they have

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referred to one another. Justice Hardesty questioned if any communication has been made with other rural judges to also assist on the cases.

- Judge Shirley responded that they had not.
 - Justice Hardesty suggested a conference call be held with other rural judges to discuss the possibility of participating.
- Chief Judge Bell shared with the commission that the 8th has been conducting four settlement conferences a week and are anticipating to expand to six a week. Most of the cases have settled successfully.
 - Justice Hardesty questioned if all the judges with criminal cases are involved.
 - Chief Judge Bell responded that she has conducted a few settlement conference trainings with court staff. Senior judges, hearing masters, and civil judges with criminal experience are also assisting with the settlement conferences.
- Chief Judge Freeman shared that most of the settlement conferences in the 2nd district have been successful. Mr. Arrascada suggested a robust settlement program with more formality be established to address more cases.
- Justice Hardesty stated he would like to communicate with the public the efforts the courts are taking to move cases along through settlement conferences and requested Judge Shirley, Chief Judge Bell, Chief Judge Freeman, and Mr. Jackson to speak with the judges in their respective districts and get statistics or additional information on the efforts put forth to conduct the settlement conferences.

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

➤ Rule 2: Case Assignment (*pages 10-15*)

- Justice Hardesty asked the commission if everyone had time to review the Rule 2 draft by Mr. Prengaman (*page 14*) and if they had any questions or comments.
 - Mr. Lalli commented that ‘as’ should be removed from (a), (ii) ‘~~as~~ otherwise ordered...’ and (b), (iii) ‘~~as~~ otherwise ordered...’
 - Justice Hardesty agreed.
 - Mr. Imlay stated the rule as written would require a fundamental restructuring of his office. Mr. Imlay proposed using the draft submitted by his office (*pages 12-13*) instead.
 - Mr. Lalli pointed to the ‘opt out’ clause which would give Mr. Imlay’s office the ability to continue as is.
 - Mr. Imlay stated the ‘opt out’ clause is dependent on whomever is the Chief Judge in the district and suggests to make the ‘opt out’ language as part of the rule so it’s not dependent on the chief judge’s discretion.
 - Ms. Thomas agreed with Mr. Imlay and questioned if the rule is necessary when it’s flexible enough to be changed by the Chief Judge.
 - Justice Hardesty called for a vote on Rule 2 as drafted by Mr. Prengaman and amended by Mr. Lalli.
 - The motion passed.

➤ Rule 4: Initial Appearance and Arraignment (*pages 16-23*)

- Justice Hardesty started the discussion by working off the draft submitted by Mr. Prengaman and questioned Mr. Arrascada if he had any additional comments or edits to the draft.
 - Mr. Arrascada suggested replacing (b)(1) (i) and (ii) with the language used in (b)(1) (i), (ii), and (iii) of the Washoe’s Public Defender’s Draft (*pages 17-18*). Additionally Mr. Arrascada would like to amend his draft for (c) (*page 19*), to the language used in Mr. Prengaman’s draft for (c) (*Pages 22-23*).
 - Justice Hardesty questioned Mr. Imlay if the changes offered by Mr. Arrascada to Mr. Prengaman’s draft would be acceptable in lieu of his office’s submission.
 - Mr. Imlay stated it would be acceptable and questioned if the language in (a)(1), (v) and (b)(1), (v) would be included.
 - Justice Hardesty questioned Mr. Prengaman if he omitted (v) purposely.

- Mr. Prengaman stated it was intentional as a separate rule already addresses it.
- Justice Hardesty called for a vote on the draft submitted by Washoe County Public Defender's office if the draft should include the language found in (a)(1), (v) and in (b)(1), (v).
 - The commission voted not to include the language found in (a)(1), (v) and in (b)(1), (v).
- Justice Hardesty questioned if anyone had questions or comments on the suggestion made by Mr. Arrascada of replacing (b)(1), (i) and (ii) with the language used in (b)(1) (i), (ii), and (iii) of the Washoe's Public Defender's Draft (*pages 17-18*).
 - Mr. Lalli shared concerns with the way the Washoe draft is written, suggesting that the bail has to be set right at the time the indictment is being unsealed and filed with the court. Further the rule doesn't allow for flexibility at a later date.
 - Mr. Petty offered further clarification:
 - (i) if an individual has been indicted and has previously been through the court system and a bail amount has been set this rule keeps the bail amount presumptuously set at what it was. This can be changed.
 - (ii) if an individual is indicted and bail has not been set; this rule states a *Valdez-Jimenez* hearing must be held in a reasonable amount of time.
 - (iii) if an individual has been indicted and new charges that warrant and increase in bail then a *Valdez-Jimenez* hearing must be held in a reasonable amount of time.
 - Mr. Lalli stated the issue is that the bail amount is set when an indictment warrant is issued either with or without the defendant in custody. This should be reflected in the rule.
 - Mr. Prengaman gave further explanation stating the typical practice in the 8th and the 2nd is to only ask for additional bail if the circumstances have changed. Mr. Prengaman suggested that Mr. Lalli is concerned the rule would bind the judge to maintain the same bail amount, Mr. Arrascada's draft does not allow for this flexibility.
 - Justice Silver questioned if (b)(1), (i) is just keeping 'status quo' until the trial court can hear the case.
 - Mr. Petty replied that yes the idea of (b)(1), (i) is to maintain 'status quo'. If the state would like to change the bail, they can submit a motion.
 - Chief Judge Bell agreed with Mr. Lalli over a gap in the time period between when an initial bail setting and the time where someone would appear in district court. Chief Judge Bell expressed concern if she were to receive a case with a bail amount already set and not have the ability to alter the bail amount. Additionally Chief Judge Bell requested a clearer definition for 'prompt' when referenced in (b)(1).
 - Justice Hardesty reminded the commission that a survey was done with the results that bail amounts are almost never changed after the bail is set. Justice Hardesty questioned for additional clarification on the 'gap'.
 - Chief Judge Bell stated the gap is not in the rule where the bail is set in the justice court, to the bail is set in an adversarial hearing. The 'gap' is where the judge is hearing the return to when the bail is set.
 - Mr. Lalli agreed with Chief Judge Bell and supplied further explanation using Mr. Prengaman's version where the defendant is charged by indictment
 - (i) defines what would happen at the grand jury return
 - (ii) discusses when and where the prompt hearing has to occur.
 - This is important information that Mr. Lalli feels is missing from Mr. Arrascada's draft.
 - Justice Silver commented that her questions during the oral argument for *Valdez-Jimenez*, were focused on the gap. Justice silver experience with the gap of time that elapsed from being booked on the warrant to being seen for the adversarial hearing.

- Justice Hardesty addressed Chief Judge Bell's comment on defining a prompt hearing stating that is Rule 8(h)'s intent. Justice Hardesty then questioned Mr. Petty or Mr. Arrascada how their draft of (b)(1), (i) is different from Mr. Prengaman's draft.
 - Mr. Jackson shared an example where a man was originally charged with open and gross lewdness. Once more information was collected the man was indicted for sexual assault.
 - In Mr. Arrascada's draft the defense would argue it's the same subject matter so the bail needs to remain the same until the case reaches district court.
 - In Mr. Prengaman's draft the bail may be increased by the presiding or chief judge who obtains the true bill.
 - Mr. Jackson closed stating Mr. Prengaman's draft allows more flexibility and takes the Valdez-Jimenez hearing into account.
 - After further clarification from Justice Hardesty, Mr. Jackson proposed '...or subject matter...' be taken out entirely in both drafts.
 - Mr. Prengaman gave three permutations for bail or pre-trial release that come out of an indictment.
 - The defendant who has a case and gets indicted and the bail stays the same, this individual has already had a *Valdez-Jimenez* hearing in Justice court therefore doesn't need another prompt hearing in district court, they just need the arraignment in (2)
 - The defendant that gets additional charges or the same charge with higher bail, this individual deserves a *Valdez-Jimenez* hearing.
 - The defendant that is indicted for the first time with no charges pending in Justice court, this individual needs a prompt hearing.
 - The rule as drafted also provides the presiding judge full discretion to decide the bail.
 - Chief Judge Freeman shared that he has only had to increase bail once after additional details came out after the victim testified. Mr. Prengaman's draft allows for this.
 - Ms. Dickinson questioned if one should automatically assume that the justice court has already had a Valdez-Jimenez hearing and pointed out the rule in (b) at the initial arraignment the court should first determine if the defendant has previously had a Valdez-Jimenez hearing. Additionally Ms. Dickinson asked whether what was done in Justice Court is considered the hearing.
 - Justice Hardesty replied stating he believed Ms. Dickinson was correct and reminded everyone that *Valdez* was an indictment case. It's the responsibility of the judge to find out.
 - Justice Hardesty shared his view that the judge receiving the true bill should be in the position to modify the bail at least until arraignment. Justice Hardesty continued stating he still doesn't completely understand the 'gap' issue as explained by Mr. Lalli.
 - Mr. Lalli offered additional information stating the 'gap' is addressed in Mr. Prengaman's draft, by inference it explains what happens when an indictment is returned vs the initial appearance on the indictment. Mr. Arrascada's draft does not address this issue.
 - Justice Hardesty created a subcommission with Justice Silver serving as chair and requested Mr. Lalli, Mr. Prengaman, Mr. Petty, Ms. Dickinson, and Chief Judge Bell work together to reconcile the gap language. Justice Hardesty offered a starting outline for (b)(1): if a defendant has been charged on an indictment then upon return of the true bill, the district court judge will set a detention status for the defendant. The language to follow is either Mr. Arrascada's draft or Mr. Prengaman's draft or a combination of the two.
- Rule 5: Pleas of Guilty or Nolo Contendere (pages 24-25)
- Justice Hardesty questioned the commission if anyone had any objections to the inclusion of the rule as drafted. (page 25)
 - Ms. Thomas made several suggestions regarding the language in the draft and ended stating a statute already exists and she doesn't believe an additional rule is necessary.

- Mr. Imlay referenced NRS 174.063 and stated the statute is very detailed and questioned if the rule is needed as well.
- Justice Hardesty agreed and questioned the representatives from the 2nd district if they also agreed.
- Mr. Prengaman agreed.
- Justice Hardesty asked the commission if they should abandon rule 5 or rely on the statute with a vote.
 - The commission voted to remove rule 5 and to rely on the statute.
- Rule 6: Release and Detention Pending Judicial Proceedings (*pages 26-31*)
- Rule 8(h): Pretrial Motions (*pages 8-9*)
 - This discussion has been tabled for the next meeting.

VI. Additional Rules for Commission Consideration

- Justice Hardesty called for a vote asking if the commission would like to include rules for Jury Commissioner, Grand Jury, and Post-Conviction Writs.
- Grand Jury
 - Ms. Dickinson commented on the need for the rule given problematic case law.
 - Justice Hardesty shared with the commission that he had received a report from Chief Judge Bell that included a revamp to the procedures with Grand Jury selection and that it has been adopted in the 8th district.
 - Mr. Lalli confirmed that a record is now kept in regards to jury selection demographics.
 - Justice Hardesty called for a vote on if the commission would like to include a rule for Grand Jury selection.
 - The commission voted not to include a statewide rule for Grand Jury.
- Jury Commissioner
 - Justice Hardesty called for a vote on if the commission would like to include a rule for the Jury Commissioner.
 - During the roll call vote Justice Silver questioned the reason why Justice Stiglich felt a rule was needed.
 - Justice Stiglich stated the courts have a number of cases challenging the venire and questions if a rule should be drafted to clearly define what demographics are being used to ensure proper representation in all districts.
 - Mr. Jackson stated in 2017 the legislature changed the procedure, requiring Jury Commissioners to collect name, occupation, address and race of each trial juror as described in NRS 6.045.
 - Justice Silver requested Ms. Dickinson's input as many of the appeals in the 8th involve jury selection issues.
 - Ms. Dickinson expressed the difficulty she has experienced when trying to obtain the information she needs from the Jury Commissioner for the evidentiary hearing.
 - Justice Hardesty requested the vote be continued.
 - The commission was split on if to include a statewide rule for Jury Commissioner.
 - Justice Hardesty stated since the commission is split he will allow people to submit draft rules for the commission to consider in the next commission meeting.
- Post-Conviction Writs
 - Justice Hardesty called for a vote on whether the commission should include a statewide rule for Post-Conviction Writs; the commission voted against inclusion of this rule.

VII. Other Items/Discussion

- Rule Approval Process and Next Steps.

VIII. Next Meeting

- September 2nd at Noon

IX. Adjournment

- The meeting adjourned at 1:50 p.m.