

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

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Commission on Statewide Rules of Criminal Procedure

July 1, 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 Douglas Herndon
Luke Prengaman – *Proxy for Christopher Hicks*
Darin Imlay
Mark Jackson
Lisa Rasmussen
Judge Shirley
John Springgate
Darin Imlay - *Proxy for JoNell Thomas*
Chris Lalli – *Proxy for Steve Wolfson*

Guests Present

Alex Chen
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 12:02 pm.
 - Ms. Gradick called roll; a quorum was present.
- II. Public Comment
 - There was no public comment.
- III. Review and Approval of June 15, 2020 Meeting Summary
 - The June 15, 2020 meeting summary was approved.
- IV. Ongoing Reports/Status Updates
 - Jury Instructions Work Group

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- Chief Judge Freeman reported the next 6-hour “retreat” will be held remotely on September 1st, 2020.
- Settlement Conferences
 - Justice Hardesty informed attendees that he filed a petition seeking approval of the amendment approved on during the last meeting. It is scheduled to be heard in the next *En Banc* conference being held July 8, 2020.

V. Statewide Rules Discussion

- Rule 8(h): Pretrial Motions (*Tab 2*)
 - Justice Hardesty shared with the committee that the Clark County district attorney’s office submitted a memo with views on the subject. Justice Hardesty additionally shared that he and Judge Shirley are also working on an additional draft rule and it will be circulated for the July 13th meeting.
- Rule 2: Case Assignment (*Tab 3*)
 - Justice Hardesty asked for Judge Herndon or Judge Jones to report if any concerns were found with the case assignment rule being implemented in Clark County.
 - Judge Herndon reported (b), as written, would accommodate Clark County’s case assignment system.
 - Justice Stiglich questioned if the rule includes closed cases or only pending cases.
 - Justice Hardesty expressed his understanding that it includes closed cases.
 - Justice Stiglich shared her concern that the point of the rule is to streamline the process and it should not include closed cases from prior years.
 - Chief Judge Freeman agreed with Justice Stiglich.
 - Justice Hardesty suggested striking ‘or prior action in this court’.
 - Mr. Jackson questioned if an additional violation that reopens a closed case be assigned to the previous judge or reassigned.
 - Justice Stiglich responded that the idea of the rule is to attribute to efficiency, to assist with resolving all cases currently pending and does not contribute to a random case assignment process. Justice Stiglich supported Justice Hardesty’s suggestion of striking the ‘prior action’ language.
 - Judge Herndon shared his concern on old cases that get reopened on the supreme court level now become pending or reopened cases.
 - Justice Silver supported Judge Herndon’s comment and added that once anything is filed in the 8th district, the case is reopened to the same judge.
 - Justice Hardesty suggested substituting “prior” with “re-opened”.
 - Mr. Imlay shared concerns regarding rule efficiency and maintaining the ability to modify the rule yearly.
 - Justice Hardesty reminded Mr. Imlay that the Chief Judge already has the ability to modify the rules at whim.
 - Mr. Lalli expressed support for the rule as written and commented that the challenge would be getting justice court compliance.
 - Judge Herndon agreed with Mr. Lalli and commented that the justice court assigns out all the cases and does not offer much flexibility in case management and tracking.
 - Justice Hardesty stated he would like the committee to consider submitting a recommendation to the Supreme Court that the case tracking issue be examined through a statewide study to develop a rule that transcends both courts.
 - Mr. Arrascada suggested looking at the case assignment process used in the 2nd district, and to reach out to Jackie Bryant for additional information.
 - Mr. Imlay suggested getting the justice courts involved in any tracking changes.
 - Justice Hardesty stated that was his understanding.
 - Mr. Prengaman commented on the value of the same judge handling future cases.

- Justice Hardesty stated that on
 - Chief Judge Freeman agreed and supported Mr. Lalli's comments.
 - Justice Hardesty requested Judge Herndon and Judge Jones confirm with Chief Judge Bell that the language used gives her the authority she needs. The rule will be edited from "prior" to "re-opened" and the draft will be addressed again in the July 13th meeting. **Any additional comments or edits for consideration must be submitted to Ms. Gradick no later than Wednesday, July 8th.**
 - Mr. Lalli questioned if something should be drafted to address multi-offender cases.
 - Justice Hardesty asked Chief Judge Freeman, Judge Shirley and Mr. Jackson to share how multi-offender cases are handled in their respective districts.
 - Chief Judge Freeman reported that in the 2nd district all offenders follow the defendant with prior history.
 - Justice Hardesty questioned what happens when 2 of the 3 have prior history in the justice system with different departments. How are cases assigned then?
 - Chief Judge Freeman stated he did not have the answer but would get one for Justice Hardesty.
 - Mr. Prengaman stated the rule is if you have two defendants with history in different departments the case goes to the one with the oldest history.
 - Judge Shirley stated that he receives all cases in his district and tries the defendants separately.
 - Mr. Jackson reported that back with the local rule used in the 9th district.
 - Ms. Dickinson questioned if the 8th Judicial District's Rule 3.10 was going to be considered.
 - Justice Hardesty expressed the understanding that the 8th district wanted more flexibility but offered it to be considered. He reminded the committee to submit any additional edits or comments to be sent to Ms. Gradick to be discussed in the July 13th meeting.
- Rule 4: Initial Appearance and Arraignment (*Tab 4*)
- Justice Hardesty requested Mr. Prengaman to share his draft with the committee.
 - Mr. Prengaman shared with the committee how the language was drafted.
 - Mr. Petty supported Mr. Prengaman's draft with slight edits and asked if discovery obligations were purposely omitted from Mr. Prengaman's draft.
 - Mr. Prengaman stated it was intentional the rule doesn't typically happen during arraignment and a criminal rule already addresses the discovery obligation.
 - Ms. Rassmussen questioned why '5 days' in (a)(2) the language "...shall be given an extension of time of at least 5 days before entry of plea;". Ms. Rassmussen additionally questioned why a bail increase is allowed once an indictment is obtained.
 - Mr. Prengaman responded that the '5 days' is simply language used from a previous rule and can be changed. (*Portions of this discussion were inaudible*)
 - Mr. Lalli stated that bail is rarely changed but should be addressed in the rule for the rare occasion that the charges change.
 - Ms. Rassmussen restates her concerns on the language used in (a)(2).
 - Justice Stiglich suggested they 'may request an extension of time'.
 - Mr. Lalli suggested the word 'granted'.
 - Justice Hardesty asked for opposition to "...may be granted an extension of time up to 5 days before entry of plea;"
 - None disagreed.
 - Justice Hardesty requested the commission review the discovery rule that it previously approved to ensure it addresses discovery obligations in relation to section (a)(6).

VI. Additional Rules for Commission Consideration (*Tab 7*)

- Grand Jury
- Jury Commissioner

VII. Other Items/Discussion

- Be prepared to address Rule 8(h), Rule 2 and Rule 4 in the July 13, 2020 meeting.
- Ms. Dickinson is to submit her draft of a post-conviction writs rule to Ms. Gradick for discussion at the July 13th, 2020 meeting.
- Any additional rules for consideration must be submitted to Ms. Gradick before the July 13, 2020 meeting.

VIII. Next Meeting

- July 13, 2020 at Noon
- August 5, 2020 at Noon (TBD)

IX. Adjournment

- The meeting was adjourned at 1:18 p.m.