

Supreme Court of Nevada

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**Commission on Statewide Rules of Criminal Procedure**

March 21, 2019

Noon

*Summary prepared by: Jamie Gradick*

**Members Present**

Justice James Hardesty, Chair  
Justice Abbi Silver, Co-Chair  
Justice Lidia Stiglich, Co-Chair  
Chief Judge Scott Freeman  
Darin Imlay  
Mark Jackson  
John Petty (*Proxy for John Arrascada*)  
Luke Prengaman (*Proxy for Christopher Hicks*)  
Lisa Rasmussen  
John Springgate  
JoNell Thomas  
Steve Wolfson

**Guests Present**

Sharon Dickinson  
Chris Lalli  
Nancy Lemcke  
Robert O'Brien  
Steve Owens

**AOC Staff Present**

Vicki Elefante  
John McCormick

- I. Call to Order
  - Justice Hardesty called the meeting to order at 12:03 pm.
  - Ms. Gradick called roll; a quorum was present.
- II. There was no public comment.
- III. Review and Approval of February 25, 2019 Meeting Summary
  - The February 25, 2019 meeting summary was approved.
- IV. Work Group Updates
  - Jury Instructions Work Group
    - Chief Judge Freeman provided attendees with a brief update on the work group's most recent efforts and referred attendees to the work group's meeting summary for additional details.

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- Life/Death Pretrial Practice Work Group
  - Mr. Chris Lalli presented each section of the draft “Criminal Settlement Conferences” rules.
    - Attendees discussed sections (1) and (2) of the document.
      - ❖ Justice Hardesty asked whether the work group discussed canvassing the defendant for approval. Attendees agreed with adding this to the rule.
      - ❖ Discussion was held regarding the need for written waiver or a canvas on the record; a comment was made that a written consent would be most efficient.
      - ❖ Justice Stiglich commented that this conflicts with the implication of the language in section (1); attendees agreed to change “order” to “recommend” in section (1).
      - ❖ Attendees agreed to add “defendant shall consent on the record” language into section (1).
      - ❖ Justice Stiglich commented that coercion could be avoided by changing the language to indicate the parties’ interest in participating in a settlement conference rather than the judge recommending the participation.
      - ❖ Mr. Prengaman suggested the addition of language allowing either party to decline participation in the settlement conference so one party cannot bind the other to participate; there was discussion as to whether this is addressed by section (1).
    - Attendees discussed section (4) of the document.
      - ❖ There was confusion over the purpose of subsection (c); Justice Hardesty requested that Mr. Lalli follow-up with Judge Herndon regarding the intent behind this section.
      - ❖ Attendees briefly discussed possibilities for settlement judge withdrawal from the process.
      - ❖ Attendees agreed to separate (c) into two separate subsections; withdrawal of the settlement judge will be subsection (d).
      - ❖ Mr. Jackson suggested that “trial court” and “trial judge” terminology be changed for clarity and consistency; the group agreed to choose one term and use it throughout.
    - Attendees discussed section (5) of the document.
      - ❖ Justice Stiglich asked whether there is a practical impediment to having a settlement judge take a plea.
      - ❖ Attendees discussed processes for settlement case assignment. In the Eighth JD, the assignment is random; setting cases on a “different track” would be “uncomfortable” for attorneys.
      - ❖ Attendees discussed the potential issues with a settlement judge handling the sentencing and the delay between the agreement and sentencing.
      - ❖ Attendees discussed constitutional issues and implications of Marsy’s Law in the process and the timing.
      - ❖ Justice Hardesty suggested that the document include a requirement that the prosecution disclose that it has informed the victim consistent with Marsy’s Law. Attendees discussed the language of Marsy’s Law; the right is “triggered” upon the victim’s request. Justice Hardesty commented that, should the victim make the request, there needs to be some assurance that the requirement is met.
      - ❖ A suggestion was made that the plea agreement include this assurance.

- ❖ Attendees discussed the “writing of settlement” and how it is meant to function. Is this meant to serve as the guilty plea agreement and, if so, how binding is it until it is accepted in court?
- ❖ Justice Hardesty commented that the subsection language should incorporate a reference to the statute (NRS 174.063); attendees agreed that the writing is the guilty plea agreement but either party can withdraw from the agreement before the trial court takes the plea. Once the agreement is negotiated, the matter goes to the trial judge.
- Attendees discussed section (6) of the document.
  - ❖ Attendees discussed the need for this section to serve as a “safeguard” in case the trial judge does not adhere to the guilty plea agreement.
  - ❖ There was brief discussion on when the parties can withdraw.
- Justice Hardesty requested that Mr. Lalli update the document to reflect the changes approved but the commission and forward to Ms. Gradick to distribute to the Commission for review.
  - Justice Hardesty proposed that each Commission member review the updated document and reply to Ms. Gradick with a “yes” or “no” vote in response to whether they approve the motion to recommend that the Nevada Supreme Court hold a public hearing and consider adopting the criminal settlement conference rules.
    - ❖ Justice Hardesty clarified that the petition would also ask the court to approve the SCR 250 language modification approved during the previous meeting.
    - ❖ Justice Hardesty commented that the petition will clarify that this is being done to purposefully adopt a rule that exempts felony cases from *Cripps*.
    - ❖ Attendees discussed which categories of cases this would include; a suggestion was made to apply this to all felony cases. Voting members in attendance were in agreement with this change.
    - ❖ The proposal was accepted.

#### V. Proposed Statewide Rules: Structure/Outline Discussion

- Mr. Prengaman presented the local rules comparison document.
  - Justice Hardesty asked attendees from the Eighth Judicial District if any rules have been left out of the document and requested that all attendees review the document for completeness.
  - Mr. Jackson commented that this document highlights the statewide inconsistencies. Rule 8, for example, was an issue area for the initial work group.
- Attendees reviewed and discussed Rule 2: Case Assignment
  - Justice Hardesty asked for input from Second Judicial District and Eighth Judicial District practitioners in attendance.
    - Mr. Prengaman explained the case assignment practice in the Second Judicial District; it is a random, one-judge approach unless there is a special circumstance to warrant assigning a different judge. If a defendant has “touched” a department in some manner, it breaks the case out of the random assignment and he/she goes back to that department.
    - Mr. Imlay and Mr. Lalli explained the case assignment practice in the Eighth Judicial District. Cases originating in justice court track randomly into designated district courts; consolidated cases to the lowest/oldest case number. It is not

uncommon to have a single defendant with multiple cases appear in multiple departments. It is different for the rural Clark County courts.

- ❖ Attendees commented that the actual practice does not follow the rule in the Eighth Judicial District.
  - ❖ Attendees expressed concern regarding this approach and issues with vertical representation and forum shopping.
  - ❖ Ms. Rasmussen commented that counsel can ask for transfer or consolidation (when appropriate) to keep cases for one defendant in the same department.
  - ❖ Justice Hardesty commented that the lack of formality in the process is part of the problem; practitioners new to the jurisdiction may not be aware of the informal process.
  - ❖ Mr. Imlay expressed concern regarding losing vertical representation in defense if cases are consolidated; Justice Hardesty commented that the rules could be set for the 98.5% of criminal cases that are not resolved by jury trial.
  - ❖ Justice Stiglich suggested the Commission focus agreeing developing principles and leave the details to be set by administrative orders consistent with those principles.
- Attendees briefly discussed case assignment practices in the rural jurisdictions.
- Many of these issues do not exist in the rural jurisdictions; however, case assignment is random in those rural jurisdictions that have more than one district court department.

#### VI. Additional Potential Areas for Commission Review

- This item was tabled for discussion at a future meeting.

#### VII. Other Items/Discussion

- In preparation for the next meeting, Justice Hardesty requested that Commission members from the Eighth Judicial District review the local rules document and send any missing rules to Ms. Gradick for inclusion in the next meeting's materials.
- Justice Hardesty requested that Mr. Imlay and Mr. Lalli meet with Judge Herndon and "bring him up to speed" on Commission's discussion from this meeting.
- Justice Hardesty requested Commission members review pages 44-53 and footnotes 356-366 of the Boyd School of Law's paper for discussion at the next meeting.

#### VIII. Next Meeting

- Justice Hardesty requested that Ms. Gradick survey the Commission membership for availability and schedule a meeting for next month.

#### IX. Adjournment

- The meeting was adjourned at 2:00 p.m.