

Supreme Court of Nevada

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Commission on Statewide Rules of Criminal Procedure

September 21, 2020

1:00 pm

Summary prepared by: Kimberly Williams

Note: This summary is in draft form and has not been formally approved by the Commission.

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

Alex Chen
Sharon Dickinson
Judge Tierra Jones
John Petty

AOC Staff Present

Kimberly Williams

- I. Call to Order
 - Justice Hardesty called the meeting to order at 1:00 pm.
 - Ms. Williams called roll; a quorum was present.
 - Opening Comments: Justice Hardesty thanked everyone for being available, the committee is down to the final set of rules and then the matter can be moved on to the Supreme Court.
- II. Review and Approval of September 2, 2020 Meeting Summary (*Tab 1; pages 3-8*)
 - The September 2, 2020 meeting summary was approved.
- III. Statewide Rules Discussion (*Please see meeting materials for additional information*)
 - Rule 4: Initial Appearance and Arraignment (*Tab 2; pages 9-11*)
 - Mr. Lalli asked for clarification on rule 8h's placement.
 - Justice Hardesty stated the rule was postponed and eventually moved into Rule 5.
 - Justice Hardesty reminded the committee that rule 4 was previously approved, however based off discussions in previous meetings and after consulting the Chief Judges; a revised rule 4 and 5 was drafted and approved. Notable changes in Rule 4(c)(1) is now part of Rule 5, Rule

4(d)(1) and (2) edited to include *guilty but mentally ill*, in Rule 5 added subsection B that requires a motion to change pretrial detention status. Justice Hardesty closed by asking for any questions, concerns or comments about the edits made to Rule 4 or the revision on 5.

- Mr. Lalli raised concerns over the time frames contained in Rule 4(a)(1)(i) and (iii). While achievable in some districts, the more rural districts may require more time. Additionally what is the remedy if a violation of the time frame is made?
 - Justice Hardesty stated the feedback received from Chief Judge Bell, was the time frames were in compliance.
 - Mr. Lalli responded that the information is true in the Las Vegas Justice Court but not in the other Justice Courts.
 - Mr. Jackson agreed with Mr. Lalli's concerns and gave additional supporting circumstances for the time frames being difficult to comply in rural districts and questioned why a rule is being created that conflicts with an existing statute NRS: 173.035.
 - Justice Hardesty questioned if Mr. Jackson agreed that the statute is silent regarding first appearances on indictments. Mr. Jackson agreed.
 - Mr. Imlay confirmed with Justice Hardesty that he understood how he was reading the rules. In closing Mr. Imlay asked if there is a change of circumstances the defense council will likely not be present when the conditions were changed, would defense then need to file a motion to get the original conditions back?
 - Justice Hardesty answered 'Yes'.
 - Judge Shirley agreed with Mr. Jackson and shared his concern with time frames found in Rule 4. The travel schedule cannot support the 3 judicial day time frame in the 11th, 7th, and 5th districts. Additionally it may take additional time to get a prisoner transferred from Ely or Vegas for example.
 - Justice Hardesty clarified this would be 3 judicial days after the bind over. He continued confirming in the rural counties where you have a defendant in custody that has been indicted and has been in the justice system previously also, separately most cases come to district court by way of bind over. In these circumstances when the person is in custody are they not available to the district court within 3 judicial days after bind over. Judge Shirley stated yes they are.
 - Judge Shirley gave further explanation that a law and motion is not conducted every week in the multi-county districts. Judge Shirley suggested the Justice Court be required to give notice of a bind over to the District Court in order to get the arraignment on the calendar quicker.
 - Justice Hardesty questioned if the rural counties outside of Douglas County, use grand jury indictments returned. Judge Shirley responded that it is rare.
 - Justice Silver questioned why it takes so long to file charges with an in custody bind over if a template exists in the computer, additionally what else the DA needs to supply to the District Court in the bind over.
 - Mr. Lalli clarified that the issue is not with his office, it's the rural courts that take five or more days.
 - Justice Hardesty questioned who creates the period of time. Justice Silver and Mr. Lalli both confirmed that the courts do.
 - Mr. Lalli explained it's the rural jurisdictions that have the delay and shared a common problem where the attorney will file information timely but the District Court won't have a case number available yet.
 - Mr. Jackson agreed with Mr. Lalli's comments and shared that all the rural districts work differently including different schedules, different documents, and different tracking processes.
- Justice Hardesty redirected the focus onto the defendant's pre-trial detention status evaluation. He suggested a separate early detention assessment of the defendant's status

outside of Justice Court, be made. This harkens back to Mr. Imlay's earlier clarification of what happens when there is no parallel proceeding and you move straight to the District Court. Justice Hardesty closed by asking the committee to comment.

- Mr. Prengaman (*Portions of this discussion were inaudible*) suggested omitting reference to the information and to edit Rule 4(c) to include "If a defendant is arrested or has a change of circumstance an arraignment and initial appearance must happen within three judicial days."
 - Mr. Arrascada, Mr. Lalli, and Mr. Springgate agreed.
- Mr. Thomas commented that in a fair number of cases the defendant is let out of custody once they enter a plea in district court and raised concerns over jail overcrowding and the defendants quality of life, if this can take up to fifteen days. Ms. Thomas continued stating in Rule 4(a)(1)(iii) that she doesn't have an issue extending the 15 days to deal with transportation issues.
- Justice Stiglich shared her concern of keeping someone in custody for 2 weeks after their bind over without seeing a judge. This should be a faster process without shifting the time and cost onto the sheriff and defendant for essentially processing paperwork or for convenience.
 - Mr. Imlay stated one of the problems is with an information and a bind over where there has been a Valdez determination made in Justice Court on a case that's been indicted. It can take 10-15 days to appear in front of a judge for a determination in regards to a person's custody status.
 - Justice Stiglich continued by stating everyone in custody should be brought in front of a magistrate as soon as possible, the case being presented could be very different than the one you had before you went into Justice Court. Mr. Imlay agreed.
 - Mr. Prengaman proposed to address the situation with 3 categories; a pure indictment with a defendant without a parallel proceeding, a defendant with a parallel proceeding or a change of circumstance, or where there hasn't been a prior prompt determination. Mr. Prengaman suggested going back to previously drafted indictment language and changing it a little. In closing Mr. Prengaman agreed with Justice Stiglich and suggested this be settled by Legislature.
 - Justice Hardesty questioned why not resolve the issue by rule.
 - Mr. Prengaman responded that it will be difficult to find a rule that works for all jurisdictions, also the bottom line is the state has 15 days to file.
 - Justice Hardesty commented that based on prior comments by the committee, he finds part of the issue is within the court system. These cases need to be processed in a time frame governed by court rules. Justice Hardesty agreed with Mr. Prengaman's language suggestion and questioned Mr. Imlay on his thoughts.
 - Mr. Imlay stated he likes the way the rule is drafted and moved to make a motion to vote.
- Mr. Imlay made a motion to adopt rule 4 and 5 as written. Ms. Thomas seconded the motion.
 - Justice Hardesty called for a vote to adopt Rules 4 and 5 as drafted.
 - Justice Hardesty stated his vote was no, to allow for other members of the committee to submit alternatives that address the comments and concerns addressed earlier in the meeting. Justice Silver, Justice Stiglich, and Chief Judge Freeman agreed.
 - The vote does not pass.
 - Justice Hardesty invited everyone to submit a draft on the subjects covered in Rule 4 and 5. All submissions need to take into consideration the concerns expressed by Justice Stiglich and others in regards to getting the process moving. Submissions must be turned in by October 5th by 4 pm PST. Ms. Gradick will send all the drafts out to be voted on via email on October 6th. If a majority vote is not reached, all

alternatives will be included, with the rest of the rules being submitted to the Supreme Court.

- Ms. Dickinson questioned when Justice Hardesty was discussing the time period of indictment and 3 days later at the initial appearance and arraignment; was he also suggesting there would be a time in-between to have a Valdez hearing where no one had received a hearing before.
 - Justice Hardesty stated that is what the discussion has been about. In instances where the detention status of the defendant set in a previous proceeding was changed by the District Court judge on return of the true bill, or instances when the defendant enters the district court system through an indictment and there has been no parallel proceeding. These are the area's others have commented on where an initial appearance time frame is needed as opposed to an arraignment.
 - Justice Hardesty stressed it's problematic that the defendant sits in jail while the court systems paperwork can take up to 3 weeks to get to a bind over judge. To the extent to the defendant that has not had a Valdez hearing, this needs to be addressed far earlier than those time frames. Justice Hardesty stated he understands the difficulty that this will bring however defendants shouldn't be taking up jail space and the case law developed so far would require a prompt adjudication of the defendant's custody status. Justice Hardesty again invites everyone to submit drafts that accommodate this objective or wait until the drafts are submitted and give your comments to the Supreme Court.
 - Ms. Dickinson stated she had a question; at the time when an indictment is returned, the paperwork is already in the district court so in that sense the 3 day judicial days of arrest for indictment means one doesn't have to wait for the paper work to get there.
 - Justice Hardesty stated that yes this is why the word *arrest* is in the draft.
 - Ms. Dickinson questioned if someone is arrested and the paperwork is there couldn't they technically could be brought to court earlier than three days.
 - Justice Hardesty stated they have had the debate on how quickly they have to be brought before a district court judge. When compared to the magistrate statute, 72 hours is the outside date. This is why 3 days was selected.
- Rule 5: Release and Detention Pending Judicial Proceedings (*Tab 3; pages 12-13*)
 - Ms. Dickinson commented that she was reviewing Rule 6 (now rule 5) in a previous draft and noticed the 8th district rule 3.80 is not found in Rule 5. Ms. Dickinson gave an example of when she had used the rule before and expressed concerns on omitting the rule.
 - Justice Hardesty stated a judicial discipline commission issues surface as a result of ex-parte communication between the District Court Judges and people who had been released from custody, this is the reason it's not there.
 - Ms. Dickinson questioned if there is a problem with the paperwork and they are arrested do they just have to wait until they can get into court?
 - Justice Hardesty responded with Yes, or one can call the DA's Office or get a stipulation. Ex-parte communications with District Court judges in cases where no one has heard anything dealing with the case raises ethical questions for the judges.
- Jury Commissioner (*Tab 4; pages 14-27*)
 - Justice Hardesty shared with the committee that he had received an email from Justice Stiglich indicating that after conducting a follow up she found it wasn't necessary to develop a rule for Jury commissioner selection. Justice Hardesty questioned Justice Stiglich if she had anything to add to the report.
 - Justice Stiglich reported that she and Ms. Gradick reached out to the rural jurisdictions to find any outstanding administrative orders. They received response from everyone besides the 9th and 5th. No one had any that related to the topic. Justice Stiglich maintains her previous opinion that a rule would be unnecessary.

- Justice Hardesty confirmed with Mr. Jackson that the 9th district did not have any Administrative Orders regarding the topics.
- Ms. Thomas stated she remained confused on the 2nd Judicial District Administrative Orders dealing with confidentiality of jury questionnaires.
 - Chief Judge Freeman responded that previously there was an issue, however a destruction order has been in place and that the questionnaires are to be destroyed after utilization.
 - Ms. Thomas stated her understanding is that the order states the council is required to submit their copies to the court clerk and if the public wanted to look at those copies they had to make a showing as to why it was necessary. If this is the case, Ms. Thomas feels it needs to be addressed.
 - Chief Judge Freeman stated he has never received that request and he is unaware if it is a requirement.
 - Mr. Arrascada stated the order came out in 1996 and believes the Administrative Order is currently in conflict with a Supreme Court Case (Sunrise Media). This may need to be revisited if it is contrary to law.
- Justice Hardesty requested that Chief Judge Freeman look further into the Administrative Order and to report back to the committee.

IV. Final Rule Status (*Tab 6; pages 30-33*)

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

V. Next Meeting Date and Location

- None

VI. Adjournment

- Justice Hardesty thanked everyone for their service on the Commission. Once Rule 4 and 5 have been voted on, Justice Hardesty will file a petition and will submit the materials and votes taken. A request will be made to the Chief Justice to set a public hearing on the rules. The committee may have to reconvene after the Supreme Court reviews the rules. If anyone would like to hold a meeting or has a question they may reach out to Justice Hardesty to discuss the concern and set up a meeting.
- Justice Hardesty thanked the committee again for their service and participation. He expressed that it has been an honor and a privilege to work with everyone on the various matters that exist in the criminal justice legal system.
- The meeting was adjourned at 2:21 p.m.