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: Wednesday, January 23, 2019 at Noon
Place of Meeting:

Carson City	Las Vegas	Washoe
Supreme Court Library Room 103 201 S. Carson Street Carson City, Nevada	Nevada Supreme Court Building Conference Room A/B 408 E. Clark Avenue Las Vegas, NV	Second Judicial District Court Room 214 75 Court Street Reno, NV
Teleconference Access:	Dial-In # 1-408-740-7256	Meeting ID 1110011234

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. Introduction of New Members
   B. Call of Roll and Determination of a Quorum
   C. Opening Remarks

II. Review and Approval of the October 08, 2018 Meeting Summary **(Tab 1)**

III. Work Groups: Status Updates and Next Steps
   A. Jury Instructions – *Chief Judge Scott Freeman* **(Tab 2)**
   B. Discovery – TBD
   C. Motions Practice - *Mr. John Arrascada* **(Tab 3)**
   D. Life/Death Pretrial Practice - *Mr. Steve Wolfson/Mr. Chris Lalli* **(Tab 4)**
      1. Eighth Judicial District Court Homicide Case Pilot Project Update – *Judge Douglas Herndon*

IV. SB5: Discussion **(Tab 5)**

V. Proposed Statewide Rules: Discussion

A. Draft Rules – *Judge Jim Shirley* **(Tab 6)**

B. Federal Rules of Criminal Procedure: 2018 Edition Available at https://www.federalrulesofcriminalprocedure.org/

VI. Commission Website/Public Presence Discussion

VII. Other Items/Discussion

VIII. Next Meeting Date and Location

IX. Adjournment

TAB 1

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Commission on Statewide Rules of Criminal Procedure
October 8, 2018
1:00 p.m.
Summary prepared by: Jamie Gradick

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Attendees Present
Justice Michael Cherry, Chair
Justice Michael Douglas, Chair
John Arrascada
Chief Judge Scott Freeman
Judge Douglas Herndon
Christopher Hicks
Mark Jackson
Chris Lalli (Proxy for Steve Wolfson)
Judge Jim Shirley

AOC Staff Present
Jamie Gradick

I. Call to Order
- Chief Justice Douglas called the meeting to order at 1:10 pm. A quorum was present.

II. The summary of the June 11, 2018 meeting was unanimously approved.

III. Work Group Status Updates and/or Recommendations
- Chief Judge Scott Freeman, as chair of the Jury Instructions Work Group, provided attendees with a brief overview of the work group's progress.
  - ➢ The work group continues to move through the pattern instruction book section by section. This is a slow process but necessary in order to achieve the work group's goal; the burglary section has finally been completed.
  - ➢ The work group has decided that it will not release its work product in a "piece-meal" fashion.
  - ➢ Attendees briefly discussed participation and the evolution of the work group's membership; Luke Prengaman and Deborah Westbrook have been instrumental in the work group's efforts.

- Mr. Mark Jackson asked for clarification on the work group's discussion on first-degree arson; attendees discussed conflicting authority. Chief Judge Freeman explained that the work group conducted significant research but, ultimately, decided to stick to the statutory framework until the Nevada Supreme Court changes the definition.

- John Arrascada, as chair of the Motions Practice Work Group, provided attendees with a brief overview of the work group's progress.
  - Since he is new to the work group and the Commission, Mr. Arrascada is in the process of familiarizing himself with the work group's efforts thus far.
  - Judge Shirley and Mr. Jeremy Bosler have worked together to create the draft language included in the material packet; the work group is still finalizing their draft and will bring this back for full-Commission consideration and input as necessary.
    - A suggestion was made that the work group also include instructions on what a uniform motion should look like.
    - Chief Justice Douglas commented that many jurisdictions still lack e-filing capabilities; this is a challenge to consider.
    - Attendees discussed the federal filing system and possible automated filing tools there that could aid in "decluttering" the current procedures.
  - Judge Shirley informed attendees that the work group went through the NRS to "pull out" the applicable rules, and compile/reorganize them into one, unified "master" chapter.
    - Attendees discussed what changes would need to be made through legislative effort and what changes could be made through Nevada Supreme Court rules.
  - Attendees discussed differences between federal rules; Nevada-specific rules would need to be justified.
    - Judge Shirley commented that there are significant system differences; concern was expressed regarding timing, process and resource differences between the two systems. For example, rural counties do not usually have standing grand juries.
- Judge Herndon, together with Mr. Chris Lalli and Mr. Steve Wolfson provided an overview/status update on the Eighth Judicial District Court Homicide Case Pilot Project.
  - The work group met for the first time in several months about 30 days ago to touch-base on the pilot project.
  - In 2018:
    - 111 cases assigned out
    - 159 resolved (plead, dismissed, tried), 60 still pending sentencing
    - 226 active cases: 51 capital
    - Ongoing status meetings with stakeholders to address concerns and evaluate progress
    - 20-25% of cases assigned out are codefendant cases; these are counted a single cases
  - Justice Cherry asked for clarification on the policy regarding assigning murder cases outside of the team; if this happens, only non-capital cases are assigned out (only 2 thus far this year).
  - Attendees discussed the response of the judge if the public defender cannot take more cases.

- Concern was expressed regarding how to handle defense requests to be taken off capital cases; Justice Cherry suggested that all four judges on the homicide team stick to the same policy on this issue.
- Judge Herndon explained that the team communicates on these issues consistently.

➢ Mr. Steve Wolfson commented that, overall, the program is successful. The numbers are not indicative of success because of the increasing homicide rate in Clark County; currently the rate is on track to break 2017's record.
  - Currently, there are no plans to end or significantly change the pilot program.
  - Attendees discussed the need for proper training and increased efficiency for the success of this program.

➢ Justice Cherry asked for the number for death verdicts since January 2018; Chris Lalli will have this data for the next meeting.

➢ Judge Herndon expressed concern regarding the addition of more judicial departments without adding more DA and PD attorneys.

➢ Chief Justice Douglas asked for murder stats for the other jurisdictions.
  - Mr. Hicks commented that Washoe County has had fewer than 10 murder cases this year; two active death penalty cases.
  - Mr. Jackson commented that Douglas County has three open murder cases and no death penalty cases.
  - Judge Shirley commented that there are no murder cases in his jurisdiction.

IV. Other Items/Discussion

- Rules of Criminal Procedure BDR
  - ➢ Chief Justice Douglas briefly discussed the Nevada Supreme Court's bill draft request *(please see materials)* and commented that this would allow for a two-year period for the Commission to develop statewide rules that could be, per statute, modified by the Nevada Supreme Court as necessary.
- Attendees briefly discussed the status of the Discovery Work Group.
  - ➢ A new work group chair will need to be appointed; the incoming chair for the full-Commission will decide whom to appoint to this position.
  - ➢ A suggestion was made that the Boyd Law School whitepaper be used as a starting point for the work group once a new chair is appointed.

V. Next Meeting

- Chief Justice Douglas requested the next meeting be scheduled for January 2019.

VI. Adjournment

- The meeting was adjourned at 2:08 p.m.

TAB 2

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*<u>*Note: Because this meeting focused on developing/editing a working document, this summary will only include the relevant discussion and action item portions of the meeting. Please see the edited jury instruction sections for work product completed during the meeting.</u>*

Commission on Statewide Rules of Criminal Procedure
Jury Instructions Work Group
October 4, 2018
Summary prepared by: Jamie Gradick, AOC

<u>Attendees</u>
Chief Judge Scott Freeman, Chair
Gina Bradley
Scott Coffee
Judge Nancy Porter
Luke Prengaman
Judge Connie Steinheimer
Pierron Tackes
Deborah Westbrook
Judge Nathan Tod Young

<u>Meeting Summary</u>

- Chief Judge Freeman welcomed attendees.
- Ms. Gradick called roll; a quorum was present.
- Section 13.01 – Burglary
  - ➢ Attendees discussed Mr. Prengaman's suggested version.
  - ➢ Ms. Westbrook presented her suggested changes for elementizing the instruction by adding "defendant willfully and unlawfully" before Mr. Prengaman's elements.
    - Attendees discussed the appropriateness of including "willfully and lawfully" in an instruction with specific intent. Ms. Westbrook commented that inclusion is not "mandatory" but it maintains consistency with previous structure used by the work group.
    - Chief Judge Freeman expressed concern regarding the possibility of adding an additional element for the prosecution to prove; a suggestion was made to not include elements unless they are elements of the specific crime being discussed.
  - ➢ Attendees agreed to not include "willfully and lawfully" language in the instruction.
    - Ms. Westbrook commented that leaving this language out was inconsistent with the language/structure agreed upon in previous sections.

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- Attendees discussed “intent” versus “specific intent to commit” language, how a jury is likely to interpret this language, and when this language should be given to a jury.
  - Chief Judge Freeman agreed with Mr. Coffee that, from a consistency perspective, the specific intent language should be included because this is a specific intent crime.
- Ms. Westbrook commented that the second paragraph should end with the “criminal intent” language from the *Adams* case.
  - Attendees discussed possible ways to state this in order to make it more user-friendly.
  - Ms. Tackes read the final version; attendees approved the instruction.
- Attendees discussed removing the bracket in the third paragraph; Ms. Westbrook commented that it does not accurately reflect the statute.
  - Judge Young commented that, as currently written, the language almost “encourages” the jury to find another crime.
  - Attendees agreed to eliminate this.
- Ms. Westbrook commented that the “force of entry” language should be revised to conform with *Merlino.*
  - Attendees discussed the inclusion of “air space” and agreed to leave it out for ease of understanding; since the case will be cited in the book as authority, a practitioner can refer to that for additional clarification on “air space” if needed.
- Ms. Westbrook suggested that the “absolute right to enter” language be modified to match the *White* case and the intent behind the case.
  - Attendees discussed what language is critical to the holding in the case and what language is surplus and should be removed. Mr. Prengaman commented that the language provides clarification and should be included.
  - Judge Young commented that “home” is problematic and “structure” or “property” would be a better word choice; attendees discussed the use of brackets in order to allow practitioner to insert the proper choice as applicable.
  - Chief Judge Freeman commented that much of this is a factual determination to be made at trial.
  - Mr. Coffee and Judge Porter supported deleting the definitions of relevant crimes in the body of the instruction. Instead, the instruction will refer practitioner to relevant sections.
  - Attendees agreed to include a “user note” informing the practitioner that the underlying offense definition and elements could be located elsewhere in the manual and should be included with the instructions given to the jury.

- Section 13.02 – Consent to enter not a defense
  - Chief Judge Freeman read the current Leavitt instruction; attendees discussed the supporting legal authority and whether this instruction is already encompassed by other sections.
  - Attendees discussed whether this conflicts with statutory language and whether this section should be removed.
    - Mr. Coffee commented that the NRS 205.060 definition of burglary contradicts the instruction; attendees discussed which parts of the instruction are correct statements of law and which need to be modified.
    - Chief Judge Freeman tasked Mr. Coffee with drafting a new version as 13.02(a). Mr. Coffee presented his proposed language and, after brief discussion (regarding inclusion of a footnote clarifying when this does not apply) and edits, attendees approved the instruction.
- Section 13.03
  - Attendees discussed whether this instruction is already covered in the other sections and should be omitted. The consensus of the group was to remove this section.

- Section 13.04 – Burglary with explosives
  - Chief Judge Freeman presented the current version of the instruction.
  - Attendees discussed word choice regarding the “crime” versus “offense” language and opted to remain consistent with previous wording.
  - Attendees discussed following the language of the statute, maintaining the wording and bracketing (for “building”) as used in the general burglary instruction, and how to “be true to the statute”.
    - Attendees agreed to include the language that the jury also be instructed on the underlying elements of the offense and directing the practitioner to its location elsewhere in the manual.
- Section 13.05 – Possession of tools to commit burglary
  - Attendees reviewed Mr. Prengaman’s proposed version.
    - Attendees discussed whether this is a specific intent crime and whether the statutory language in the instruction is clear enough to instruct the jury properly on the required intent element.
    - Concern was expressed with “amending” the language of the statute. The language is archaic but, in order to be true to the authority, attendees agreed to use the wording as presented in the statute.
    - A suggestion was made to include a clarification statement; Ms. Westbrook volunteered to prepare draft language for the work group’s consideration at the next meeting.

<u>Additional Action Items</u>

- Work group members will review through Section 16 for the next meeting; comments will need to be submitted to the drop box a week prior to the next teleconference meeting.
- Ms. Gradick will survey the work group members for availability and will schedule another work group teleconference for November.
  - Chief Judge Freeman stressed the importance of attendance and preparation in order to make the most efficient use of the meeting time.

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Commission on Statewide Rules of Criminal Procedure
Jury Instructions Work Group
November 28, 2018
Summary prepared by: Jamie Gradick, AOC

Attendees

Chief Judge Scott Freeman, Chair
Gina Bradley
Scott Coffee
Judge Nancy Porter
Luke Prengaman
Maizie Pusich
Judge Connie Steinheimer
Pierron Tackes
Deborah Westbrook
Judge Nathan Tod Young

Meeting Summary

- Chief Judge Freeman welcomed attendees.
- Ms. Gradick called roll; a quorum was present.
- Section 13.02 (a)
  - Attendees briefly discussed Mr. Coffee's revision and asked for clarification on Mr. Coffee's editorial edits; the proposed change was approved.
- Section 13.05 (a)
  - Attendees discussed Ms. Westbrook's suggested "reasonable doubt" language; the proposed language and supporting authority were adopted.
- Section 13.06: Burglary with Two or More People
  - Attendees discussed whether this instruction is necessary; the aiding and abetting instruction encompasses this instruction.
    - Attendees agreed to remove this instruction.
- Section 13.07: Establishing Defendant's Guilt
  - Ms. Westbrook commented that this instruction was subsumed into 13.01(a).
    - Attendees agreed to remove this instruction.

- Section 13.08: Establishment Open to the Public Not a Defense
  - ➢ Ms. Westbrook commented that this instruction was subsumed into 13.01(a).
    - Attendees agreed to remove this instruction.
- Section 13.09: Definition of Larceny
  - ➢ Attendees discussed whether 13.01(a) fully covers this.
    - Ms. Westbrook explained that her notes indicate that definitions were removed from 13.01 so this instruction is not completely subsumed by 13.01(a).
    - Attendees discussed where to include the definition of larceny and supporting authority; Chief Judge Freeman commented that this will likely come up in the larceny section.
    - Attendees agreed to remove this instruction from this section and revisit the definition language in the larceny instruction section.
- Section 13.10: Inference of Intent
  - ➢ Ms. Westbrook commented that existing 13.10 violates legal authority; Ms. Westbrook proposed an instruction using the legal authority cited by Mr. Prengaman.
    - Mr. Coffee expressed concern regarding the "unless" language.
    - Attendees discussed a conflict in the case law and the statutory language; the statute is problematic and contains unconstitutional language.
- Section 13.11: Definition of Trespass
  - ➢ Attendees agreed to omit this.
- Section 13.12: Invasion of the Home
  - ➢ Attendees discussed Mr. Prengaman's proposed 13.12(a).
    - Ms. Westbrook commented that this instruction contains several elements not in the original instruction and expressed concern regarding whether all the language is supported by legal authority.
    - Further review/discussion was tabled for the next meeting in order to allow Ms. Westbrook time to research the legal authority. Judge Freeman asked Ms. Westbrook to work with Mr. Prengaman to identify and address any issues.
- Sections 13.13 and 13.14 (Included in Mr. Prengaman's 13.12(b))
  - ➢ Attendees agreed that these instructions would be included in Mr. Prengamans's 13.12(b)
- Section 13.15: Omitted (incorrect statement of law)
- Section 13.16: Omitted (incorrect statement of law)
- Section 13.17: Invasion of the Home with Possession of a Deadly Weapon
  - ➢ Mr. Prengaman presented his proposed version; in order to be consistent, the deadly weapon definition should be removed and a note should direct the reader to the definition's location.
  - ➢ Mr. Coffee expressed concern with language that "comments on the evidence"; attendees agreed to bracket it since this language would apply on a case-by-case basis. (*Harrison*)
- Section 13.18: Burglary With a Deadly Weapon
  - ➢ Judge Steinheimer commented that the enhancement should be separate so they are not "lost" when changes are made.
  - ➢ Attendees agreed to include this instruction but in the same manner as 13.17.
- Section 14.01(a): Forgery
  - ➢ Mr. Prengaman presented his proposed draft and explained that he used language directly from NRS 205.090.
    - Ms. Westbrook suggested removal of references to forgery under a statute other than NRS 205.090.
    - Attendees discussed the removal of "to cheat, to overreach" from the defraud definition; the question is whether the Nevada Supreme Court has not defined it with that language.

- Judge Young expressed concern with including "overreaching" until the Nevada Supreme Court specifically includes it I the definition.
- Judge Freeman commented that since this will be reviewed on a case-by-case basis, removing this language does not overly benefit the defense or the prosecution.
- The consensus was to remove this language from the instruction.

➢ Judge Freeman proposed this instruction be separated into two instructions; discussion was held regarding where and how to separate the instructions.
- A suggestion was made to break out a separate utterance instruction; attendees discussed where to include the definitions.
- Attendees approved the inclusion of a definition from *Black's Law Dictionary* and discussed where to include the utterance definition.
- Mr. Prengaman provided updated versions (14.01(a) revised and 14.01(a)(2))

➢ Attendees discussed how to present the definitions; the consensus was to keep the various definitions/types of forgery together in order to present the practitioner with all the options.

- Section 14.01(b) (*Portions of this discussion were inaudible*)
  ➢ Mr. Prengaman presented his proposed draft.
  - A suggestion was made to make "Crime of forgery regarding a public record or account" a separate instruction.
  - Attendees agreed separate this into two instructions and discussed Ms. Westbrook's proposed organization.
  - Ms. Westbrook suggested revisions to/brackets for archaic language; those in attendees agreed to bracket the outdated language.
- Section 14.01(c) - The work group will begin here at the next meeting.

<u>Additional Action Items</u>

- Work group members will review through Section 16 for the next meeting; comments will need to be submitted to the drop box a week prior to the next teleconference meeting.
- Ms. Gradick will survey the work group members for availability and will schedule another work group teleconference for January
  ➢ Chief Judge Freeman stressed the importance of attendance and preparation in order to make the most efficient use of the meeting time.

TAB 3

ROBIN SWEET
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Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

Commission on Statewide Rules of Criminal Procedure
Motions Practice Work Group
October 14, 2018
Summary prepared by: Jamie Gradick, AOC

Attendees
John Arrascada, Chair
Kriston Hill
Mark Jackson

Meeting Summary
- Mr. Arrascada welcomed attendees; a quorum was not present.
- Mr. Arrascada asked attendees for input on next steps; attendees discussed how to refocus the work group's efforts.
  - Attendees agreed to cancel the December meeting and reschedule the January meeting for Jan. 9th.
  - In preparation for the January meeting, Mr. Arrascada asked Mr. Jackson to circulate an email with details on where the work group currently stands, what tasks/areas still need to be addressed, and suggestions for how to move forward.
  - Mr. Jackson commented that the work group needs to go through and work on the document compiled by Judge Shirley.
- Ms. Hill asked for an update on what occurred during the last full-Commission meeting; Mr. Jackson provided a brief summary of what the various work groups have been working on.

Action Items
- Based on Mr. Jackson's email, Mr. Arrascada will put together an agenda for the January 9th meeting and Mr. Gradick will circulate it to the work group membership. Mr. Arrascada will also email the group to get members on track and make them aware of what will be discussed and expected at the next meeting
- Ms. Gradick will update the memeting schedule and send notices to the work group membership.

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Commission on Statewide Rules of Criminal Procedure
Motions Practice Work Group
January 9, 2019
Summary prepared by: Jamie Gradick, AOC

Attendees
John Arrascada, Chair
Kriston Hill
Mark Jackson

Meeting Summary
- Mr. Arrascada welcomed attendees; a quorum was not present.
- Attendees discussed the January 23, 2019 full-Commission meeting.
  - Justice Hardesty's email from January 2 indicated that Judge Shirley has drafted a set of rules; the work group would like this included in the materials for the full-Commission meeting.
  - Discussion was held regarding reviewing the document and submitting another version before the January 23 meeting.
    - Ms. Gradick informed attendees that the meeting materials need to go this afternoon. Judge Shirley is trying to get the document to Ms. Gradick this afternoon; Ms. Gradick will forward the document to the work group once she receives it.
    - Attendees decided to address any issues with the draft during the Jan. 23 full-Commission meeting.

Action Items
- Once she receives Judge Shirley's revised document, Ms. Gradick will include it in the materials for the Jan. 23 full-Commission meeting and will distribute copies to the work group for review.

TAB 4

Commission on Statewide Rules of Criminal Procedure
Life/Death Pretrial Practice Work Group

Report and Recommendations

Work Group

Steve Wolfson, Chair
Scott Coffee, Vice-Chair
Marc DiGiacomo, Vice-Chair
Hon. Douglas Herndon
Drew Christensen
Chris Hicks
Alina Kilpatrick
Christopher Oram
David Schieck

Mission

The work group is dedicated to considering ways to improve Nevada's criminal practice and procedure in the most serious of cases. Recognizing that these cases are both complex and time consuming, the work group has focused upon potential ways to improve the efficiency with which these cases are processed while ensuring the accused receive due process.

Overview

Due process requires the parties to have adequate time and resources to prepare for trial. With this in mind, any effort to streamline the process itself must focus on reducing dead time, encouraging earlier preparation and enhancing opportunities of resolution.

Of the cases considered by this work group, those in which the death penalty may be sought are the most complex, time consuming and difficult to schedule. Recognizing that issues related to potential death penalty cases require the most resources, many of the suggestions from the work group are directed toward improving the efficiency of death penalty litigation. This issue is particularly critical to Clark County where the vast majority of Nevada's death penalty litigation takes place.

The Role of Nevada Supreme Court Rule 250

NV. Sup. Ct. Rule 250 governs many of the procedural aspects of Death Penalty litigation. NV Sup. Ct. Rule 250(1) states:

> This court places the highest priority on diligence in the discharge of professional responsibility in capital cases. The purposes of this rule are: to ensure that capital defendants receive fair and impartial trials, appellate review, and post-conviction review; to minimize the occurrence of error in capital cases and to recognize and correct promptly any error that may occur; and to facilitate the just and expeditious final disposition of all capital cases.

The work group has been ever mindful of this admonition in identifying potential areas where pretrial procedures might be improved and where efficiencies might be gained without jeopardizing trial preparation.

The following recommendations are made:

I. **Dedicated criminal judges and/or longer trial stacks for criminal cases in the Eighth Judicial District/Capital Litigation Supervising Judge.**

Death penalty cases are always time consuming and, therefore, difficult to schedule.

The problem is exacerbated in the Eighth Judicial District because many judges carry alternating civil and criminal calendars. These civil/criminal calendars are broken into five-week trial "stacks" which are dedicated exclusively either to civil or criminal trials. Five-week "stacks" work well for shorter trials; however, the "stacks" create issues when scheduling death penalty trials. Typically, the anticipated length of a death penalty trial often encompasses most - - if not all - - of the entire criminal "stack". An unintended consequence of this time constraint is that the inevitable continuance of a death penalty trial frequently results in a new trial date 12-18 months later. That is because there are dozens of other trials already scheduled; consequently, there is simply no such thing as a short delay.

Many states and/or metropolitan jurisdictions with populations similar in size to Clark County have dedicated civil and criminal judges (i.e., New York, Texas and Los Angeles).[1] One advantage of dedicated criminal judges is that cases do not have to be set around priority civil case settings. Another advantage is a bench more familiar with the particulars of each sort of case.

Absent dedicated judges, longer criminal trial stacks would allow for greater scheduling flexibility.[2] Another solution would be to allow for priority setting of capital cases including setting during civil stacks. To accomplish this solution, Death Penalty cases would have to be given priority over Medical Malpractice cases which currently have priority over all other cases.

If the dedicated criminal/civil split is not possible, courts in the Eighth Judicial District should not shy away from setting a capital trial, or any lengthy trial where the Death Penalty is not sought, which overlaps into a civil stack. Currently, the reluctance to such settings is due, in part, to capital cases having little chance of actually proceeding on the date set for trial.

In addition, irrespective of whether other recommendations are adopted, the chief judge or a designee should maintain a master list of pending capital cases which is updated regularly (i.e. monthly). The list should include, at minimum, trial dates, case numbers and the names of defense counsel so that the various parties and the courts have access to every court's capital trial settings.

The list would also be valuable be ensure that Defense counsel avoid setting multiple capital cases too close in time to one another. Such settings must be avoided because they virtually ensure that one trial date will be impossible to meet. It is currently a practice that happens all too often and gamesmanship should not play a role in capital trial settings.

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[1] In Texas, 13 District Courts are designated criminal district courts; some others are directed to give preference to certain specialized areas.

[2] For example, an eight-week stack allows for 6 potential start dates for a three-week trial as opposed to a five-week stack which would allow for only 3 potential start dates for a three-week trial. For longer trials, the numbers are even more compelling.

Possible impediments: Existing calendars; speedy trail settings; judicial resistance.

II. Issues directly related to scheduling

Avoiding unnecessary continuances is a key to improving scheduling efficiency. The nature of Death Penalty litigation dictates that there will be times when continuances are necessary. However, the early identification of issues necessitating a continuance minimizes inconvenience to the parties and the court and has the potential of reducing "dead time" by months.

The current structure of the system is near maximum capacity and workloads of many SCR 250 qualified attorneys contribute to the problem. In the average death penalty case, it takes many months to investigate and gather necessary mitigation documentation. Additionally, it takes an average of 2000 hours of attorney time to prepare and defend against the death penalty at trial. The simple import of this reality is: it is typically unrealistic to set a death penalty case for trial during the first year following arraignment and setting cases for a trial date which inevitably must be reset is counterproductive.

Given the foregoing, here are specific recommendations:

a. Create a Death Penalty oversight judge to track trial dates

Simply having a single source to keep trial dates for various death penalty cases will allows all parties to recognize and address potential issues before they become a problem.

b. Do not set overlapping Death Penalty cases for defense counsel

It is unrealistic for defense counsel to set multiple Death Penalty trials in close proximity of each other. If the goal is to minimize the number of "false trial dates" being set, court and counsel must make efforts to not set Death Penalty trials in an overlapping fashion because, inevitably, something will have to be continued. With this in mind, the committee recommends defense counsel maintain a minimum of 60 days between Death Penalty trial settings.

c. Avoid unrealistic trial settings and last minute delays

The current calendaring system often results in Death Penalty cases being set in "ordinary course," meaning the first free trial stack; often as soon as six months after arraignment. While it might seem that setting cases at the earliest available date is the best way to efficiently process the cases, the reality is very different. Clogging the calendar with a false trial dates benefits no one. The same is true for last minute continuances.

The reason life/death cases are delayed are often due to issues which, with adequate preparation and oversight, may be identified early. Some continuances may be avoided by simply having a schedule and staying on top of case preparation.

When a continuance is necessary, the sooner everyone is aware the better. Discovery and/or investigative issues, in particular, can often be addressed earlier than they currently are.[3] Recognizing early that a case is going to need to be reset saves resources by allowing the case to be reset sooner rather than later, providing the court the opportunity to set other matters in the time originally set aside for trial and avoids ancillary cost and inconvenience associated with last minute delays.

The work group has developed a model schedule with multiple oversight points to avoid unnecessary and unrealistic trial settings. It allows for early recognition of issues which might necessitate resetting the trial. A copy of the model schedule

[3] Discovery as used here is a broad term to describe information to which either party desires access. It is not meant to include merely the statutorily required disclosure of evidence by the State pursuant to NRS 174.435 or its constitutional obligations, but usually includes records from agencies that are not involved in the investigation or prosecution of criminal cases. Many of these institutional records are out of state and gaining compliance with Nevada subpoena requests can be time consuming. The Court needs to take a more active role in ensuring that both parties are actively engaged in attempting to locate, request and review the records at the earliest possible time. Once records are obtained there needs to be a timely review to determine if follow-up is needed. A court holding regular status checks to inquire that all parties are proceeding as expeditiously as required will help keep matter on track.

incorporating other recommendations of the sub-group is attached hereto as "Attachment 1."

Among the keys feature of a model trial schedule are 1) realistic setting of an initial trial date and 2) regular status checks which increase in frequency as the trials approaches.

i. Realistic trial date setting.

Based upon the experience of the committee members, Death Penalty trials have little chance of proceeding inside 18 to 24 months. The model schedule embraces a trial setting of two years from initial arraignment with the hope of eliminating false trial settings.

ii. *Regular status checks including discovery/investigation increasing with frequency as the trial date approaches.*

Once an initial trial date has been set, regular scheduled status checks would hopefully minimize the issues with discovery and investigation. While there is a cost associated with each status check, it is hoped that once regular status checks are uniformly in place, parties will schedule motions, and the like, on status check dates.

Possible impediments: Additional court appearances.

III. Create the opportunity for there to be a meaningful review of potential mitigation evidence prior to decision being made as to whether to file a notice of intent to seek Death Penalty.

The filing of a Notice of Intent to Seek Death Penalty escalates the cost and complexity of a case.

In certain instances, the district attorney's office makes a decision early in the process and without reference to potential mitigation. If death is not filed, investigative resources are saved from not having to prepare for the potential Death

Penalty case which is ultimately not filed. If death is filed, two counsel must be appointed and mitigation preparation should begin immediately.

In many other instances, the decision of whether or not to seek the Death Penalty is not so clear. Information concerning mitigation can be critical, but the State is often forced to make a decision of whether to file a Notice of Intent to Seek Death Penalty without the benefit of this information. The time constraints set by SCR 250(4)(c) do not allow defense counsel to engage in meaningful mitigation investigation.[4]

As the rule currently reads, there is no provision to allow a defendant to waive the 30 day requirements of SCR 250(4)(c) to gather information concerning possible mitigation and, where appropriate, provide it to prosecuting agency. There should be.

The committee recommends the following language, or something similar, be added to SCR 250(4)(c):

Defendant may waive the right to have Notice of Intent to Seek Death Penalty filed within 30 days after indictment or information. If the defendant so waives, no later than 30 days after the filing of an indictment or information, the state must file a declaration with the district court indicating that the case remains in consideration for the Death Penalty. If the case remains in consideration for the Death Penalty, the state will have an additional 180 days from the filing of the declaration to file a Notice of Intent to Seek the Death Penalty. The purpose of this waiver is to allow for the gathering and consideration of potential mitigation evidence and it is

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[4] SCR 250(4)(c) reads:

Notice of intent after filing of indictment or information. No later than 30 days after the filing of an information or indictment, the state must file in the district court a notice of intent to seek the death penalty. The notice must allege all aggravating circumstances which the state intends to prove and allege with specificity the facts on which the state will rely to prove each aggravating circumstance.

expected that mitigation will be actively investigated during this period. Mitigation evidence gathered may be provided to the State at the defense's discretion so as to facilitate a better informed decision as to whether or not to seek the Death Penalty.

IV. Issues related to defense counsel

a. Case Limits for active Death Penalty cases.

It goes without saying that the number of Death Penalty cases handled by an attorney at any given moment will limit flexibility in trial setting. Ultimately, attorneys should avoid overlaps between Death Penalty cases, but simply having too many of these type cases makes this goal difficult or impossible. Recognizing the time required to prepare the defense of Death Penalty cases, the work group recommends that capital defense attorneys have no more than three active Death Penalty cases set for trial at any given time.[5]

The counterpoint to the issue of case limits is that the most experienced and capable counsel are often the ones with the highest caseloads and, an experienced capital attorney can process cases with much greater efficiency than one who is inexperienced.[6]

> Possible impediments: Lack of well-trained capital defense counsel; could have fiscal impact/create unfunded mandate

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[5] An active case is one set for trial or waiting to be set for trial. It is not uncommon for SCR 250 counsel to participate in cases which are indefinitely delayed for issues such as competency proceedings (i.e. a long term commitment to Lake's Crossing) or decisions from a higher tribunal. Counsel must use their best discretion in determining whether such a case remains active in the sense of requiring on going resources similar to those cases which are set for trial.

[6] This recommendation does not suggest that an attorney assigned to more than three capital cases is in any manner ineffective. The purpose of the recommendation is to improve the efficiency with which a case processes through trial and it does not reflect a judgement on the quality of the representation where the case limits are exceeded.

b. Require Counsel to file a Certificate of Counsel with the district court in addition to the requirements to SCR 250(2)(h)

SCR250(2)(h) sets forth procedures for district courts to ensure that appointed defense counsel are qualified to accept appointment to a Death Penalty case.[7] To further ensure compliance with SCR 250, the committee recommends that, at the time of appointment to a potential capital case, the attorney shall file a certificate of compliance with the court stating: 1) qualifications pursuant to SCR 250; 2) list of all current capital case appointments including: cases set for trial including trial dates; cases on appeal and those which are procedurally inactive due to issues such as pending litigation in a higher tribunal or competency; 3) the number of death penalty specific CLE credits completed in the previous two calendar years with a presumptive minimum of 5 hours.

c. CLE requirements

In 2000, SCR 250 was modified to eliminate Death Penalty specific CLE requirements. The group recommends reinstating a minimal amount of Death Penalty specific CLE hours for attorneys appointed to Death Penalty cases. The recommendation is based upon the following:

i. The need for parallel preparation trial/penalty.

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[7] SCR 250(2)(h): Application forms and list of qualified counsel-Each judicial district shall maintain a list of qualified defense counsel and shall establish procedures to ensure that defense counsel are considered and selected for appointment to capital cases from the list in a fair, equal and consecutive basis. The judicial districts shall further arrange for the preparation and distribution of application forms to defense attorneys who wish to be included on the list. The forms must require specific information respecting the attorney's qualifications to act as defense counsel in a capital case and a complete statement of any discipline or sanctions pending or imposed against the attorney by any court or disciplinary body. Before appointing any attorney to act as counsel in a capital case, the district court to which the case is assigned shall carefully consider the information in the attorney's application form. [As amended; January 20, 2000.]

The work group has been informed of several instances in which defense counsel has either avoided hiring mitigation experts and/or investigation of mitigation evidence until the eve of trial. Such practice does not conform to current standards of professionalism expected in life/death cases as it almost invariably necessitates a continuance and/or places at jeopardy defense counsel's ability to provide effective assistance. This concern is somewhat addressed by the various provision of ADKT 411, but without adequate training specific to mitigation practices, inexperienced counsel can be at a loss as to where, how and when to begin mitigation preparation.[8]

ii. The need to stay current with recent developments in death penalty litigation

Capital litigation is an ever changing field of practice. Routinely, the in-depth published or unpublished opinions are issued in cases in which a jury has returned a verdict of death. This provides an ever changing landscape of what should be expected from defense counsel. Requiring CLE would create a mechanism to increase attorney awareness of emerging issues.

v. Mandatory settlement conferences 45 to 60 days before trial in capital case.

The work group is aware of the bright line rule prohibiting judicial participation in the plea negotiation process set forth by Cripps v. State, 122 Nev. 764 (2006). With that said, settlement conferences are common to civil cases and have been successfully used to reduce the number of pending capital cases in Maricopa County. The concerns set forth in Cripps, namely the coercive effect of judicial

[8] Mitigation experts are a recognized part to the defense team in capital cases. Both the Clark County Public Defender's Office and the Clark County Special Public Defender's Office have mitigation specialists on staff and the Clark County Office of Appointed Counsel regularly approves expenses for mitigation specialist as a matters course. Early appoint of mitigation specialists allows for the efficient preparation of Death Penalty cases and should be expected in all such cases.

participation in the plea negations process, might be minimized by use of senior judges rather than trial judges in such conferences. Additionally, rules could be adopted to minimize the coercive nature of judicial oversight in a settlement conference. The practical reality of how cases currently work through the system is that often times negotiations are not seriously discussed until the eve of trial. The hope is that by instituting settlement conferences resolutions might occur sooner.

Possible impediments: Cripps, *supra*; budget for senior judges to hear conferences.

V. **Other**

a. Contract an efficiency study of current practices.

Groups such as the National Center for State Courts are capable and experienced in conducting efficiency studies on court practices. Such a study is likely to identify ways to improve efficiencies that the work group might otherwise never contemplate.

Possible impediment: Cost of such a study is estimated at $50,000 to $75,000.

Attachment #1

Court Case Management Schedule for Death Penalty Litigation[1]

The goal is to set a trial schedule which avoids unnecessary continuances and allows for early resetting when continuances are necessary. Under the current system, Death Penalty (DP) cases are regularly set for trial on dates which have little or no chance of actually proceeding. Thereafter, resetting results in long delays and inconvenience for all parties involved, including the trial court.

Setting trial dates two years from initial arraignment was chosen as a goal in recognition of attorney hours required to prepare a DP case and time required to secure documents, such as school records, institutional records and criminal history. A schedule of two years from arraignment is based upon several assumptions about the working method of the capital defense attorneys, such as early retention of a mitigation expert and retaining/consulting with appropriate experts soon after documentation is in hand. Key among the assumptions are two things: (1) that appointed defense counsel have a limited number of active DP cases to ensure adequate time for proper preparation and (2) that defense counsel does not set overlapping DP trial dates.

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[1] Various studies place the total number of defense attorney hours required to resolve a capital case at around 2,000 hours. Given this time constraint and SCR 250 requirements of two counsel per DP case, the committee recommends that a capital defender have no more than 3 active pending DP cases.

In a 2012 report prepared by Dr. Terrence Miethe entitled "Clark County Estimates of Time Spent in Capital and Non-Capital Murder Cases: A Statistical Analysis of Survey Data from Clark County Defense Attorneys," Dr. Miethe put the combined time of 1st and 2nd chair attorneys at 1760 hours for pretrial and an additional 462 hours for trial, for a total of 2222 attorney hours not including appeal or post- conviction. Recognizing that not every filing of a DP notice results in attorney trial hours, 2000 hours appears to be a fair estimate of the average time to resolve a death penalty case. Split evenly between two counsel, this would be 1000 hours per attorney per DP case assigned.

Legislative study LA14-25 entitled "Performance Audit Fiscal Cost of the Death Penalty 2014" noted that defense attorneys reported "...pretrial costs are unpredictable and vary greatly depending upon the unique circumstances of each case." The average defense attorney and staff time cost, excluding experts, was around $200,000 pre-trial (DP sought and imposed $176,000; DP sought not imposed $230,000 [ex. 12 p. 21]) and $19,000 during trial (DP sought and imposed $20,000; DP sought and not imposed $18,000 [ex.14, p. 25]). The penalty phase adds an additional $5,000 to $8,000 in attorney/staff expenses. (ex. 18, p. 29).

All told, the total pre-appeal defense expense per LA14-25, excluding experts, is in the area of $230,000. This is in line with the total cost estimate from the Miethe study, which placed the defense cost through trial and post-conviction, excluding appeal, at $230,000 for Public Defenders and $287,000 for appointed counsel.

Also of note, Nevada's attorney time estimates are approximately 62 percent of the current 3,557 defense attorney hour average listed in a 2010 study prepared for the Judicial Conference of the United States as reported by the Marshal project for cases between 1998 and 2004. The report also found that the time defense attorneys spent on capital cases was on the rise having averaged 1,889 hours between 1989 and 1997.

The case management schedule set forth below is designed to keep everyone on track and allow for early recognition of scheduling issues. Obviously, if a defendant invokes the right to speedy trial, this schedule is inapplicable.

Example Date	Hearing	Issues
January 1	Initial Arraignment	Entry of plea Possible Waiver of Right Speedy trial Set first status check 30 days
February 1	1st Status Check (30 days or less)	Status check: **All Cases**: Inquire on filing of transcript for Writs Standard Discovery/Investigation inquiry Confirm no conflicts for attorneys Set SC at 150 days **If DP notice filed or reserved:** Certificate of Compliance by defense counsel Inquiry into mitigation specialist **If right to seek DP reserved:** File written reservation of right including Formal waiver by defendant
July 1	2rd Status Check (180 days)	If DP filed: Set trial date in 18 months Standard Discovery/Investigation inquiry Order File review Set Briefing schedule on Motions Motions in 6 months = Jan 1 Opps in 90 days = April 1 Replies in 45 days = May 15 Argument at next Scheduled status check = June 1 If DP confirm appointment of 2nd attorney
Oct 1	3rd Status Check (270 days)	Standard Discovery/Investigation inquiry including
Jan 1	4th Status Check (1 year)	Standard Discovery inquiry *Motions Due* Order File Review

April 1	5th Status Check (1 year plus 90 days)	Standard Discovery inquiry *Oppositions Due*
June 1	6th Status Check (1 year plus 150 days)	Standard Discovery inquiry *Argue Motions* Inquire on Expert Witness Issues Inquire on Witness Availability
August 1	7th Status Check (1 year plus 210 days)	Standard Discovery inquiry Order File Review
October 1	8th Status Check (1 year plus 270 days)	Standard Discovery inquiry Inquire on Expert Witness Issues Inquire on Witness Availability Set settlement conference 30 to 60 day pre-trial
November 1	9th Status Check (1 year plus 300 days)	Discovery inquiry (Note: Per NRS 174.285(2) Disclosure by each party of the various items listed in NRS 174.235 and NRS 174.245 is now due unless the court has issued a protective order pursuant to NRS 174.275) Inquire on Expert Witness Issues including status of all forensic testing Inquire on Witness Availability *Finalize any Juror Questionnaire*
December 17	Calendar Call (2 Weeks ahead of trial)	Standard Discovery inquiry Set trial schedule Set hearing to discuss questionnaires Insure record Re: Offers
Jan 1	Trial (2 years)	

TAB 5

SENATE BILL NO. 5–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 14, 2018

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to court rules of practice and procedure. (BDR 1-496)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to courts; clarifying and codifying the existing authority of the Supreme Court to adopt rules of practice and procedure; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the Legislature has enacted the Nevada Criminal Procedure
2 Law in Title 14 of NRS to govern procedure in criminal cases, and it has declared
3 that the law is intended to provide for the just determination of every criminal
4 proceeding and must be construed to secure simplicity in procedure, fairness in
5 administration and the elimination of unjustifiable expense and delay. (NRS
6 169.015, 169.025, 169.035) In addition, based on the constitutional separation of
7 powers, the judiciary has inherent power to adopt rules of procedure to govern
8 court proceedings in both civil and criminal cases. (*Whitlock v. Salmon*, 104 Nev.
9 24, 26 (1988); *State v. Second Jud. Dist. Court*, 116 Nev. 953, 959-63 (2000))
10 When the Legislature enacts a procedural statute relating to court practices, "the
11 courts may acquiesce out of comity or courtesy; however, such statutes are merely
12 legislative authorizations of independent rights already belonging to the judiciary."
13 (*Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1220 n.4
14 (2000)) Furthermore, when a procedural statute conflicts with a procedural rule, the
15 judiciary attempts to harmonize the conflicting provisions whenever possible, but if
16 there is an irreconcilable conflict, the rule generally takes precedence over the
17 statute to the extent of the conflict, unless the rule abridges, enlarges or modifies
18 any substantive rights. (*State v. Connery*, 99 Nev. 342, 344-46 (1983); *Berkson v.*
19 *LePome*, 126 Nev. 492, 498-500 (2010))
20 Under existing law, the Legislature has enacted statutes codifying the
21 judiciary's inherent rule-making authority in civil cases. In particular, existing law
22 provides that the Nevada Supreme Court may adopt rules regulating civil practice
23 and procedure to simplify such practice and procedure and to promote the speedy

24 determination of litigation upon its merits. Existing law also provides that the rules:
25 (1) must not abridge, enlarge or modify any substantive right or conflict with the
26 Nevada Constitution; and (2) must be published promptly upon adoption and take
27 effect on a date specified by the Nevada Supreme Court which cannot be less than
28 60 days after entry of the order adopting the rules. (NRS 2.120)
29 With regard to criminal cases, the Legislature has not enacted statutes codifying
30 the judiciary's inherent rule-making authority for such cases, and the Nevada
31 Supreme Court has not exercised its inherent power to adopt state rules of criminal
32 procedure that are similar to the Federal Rules of Criminal Procedure adopted by
33 the United States Supreme Court under federal law. (28 U.S.C. § 2072)
34 Nevertheless, when procedural issues arise in state criminal cases, the Nevada
35 Supreme Court often looks for guidance from federal court decisions interpreting
36 and applying the Federal Rules of Criminal Procedure. (*Stevenson v. State*, 131
37 Nev. Adv. Op. 61, 354 P.3d 1277, 1279-81 (2015); *Cripps v. State*, 122 Nev. 764,
38 767-70 (2006); *Middleton v. State*, 114 Nev. 1089, 1107-08 (1998); *Standen v.*
39 *State*, 99 Nev. 76, 78-80 (1983))
40 **Section 1** of this bill clarifies and codifies the existing authority of the Nevada
41 Supreme Court to adopt rules of civil or criminal practice and procedure, including
42 the Nevada Rules of Civil Procedure, Nevada Rules of Criminal Procedure and
43 Nevada Rules of Appellate Procedure. (NRS 2.120) **Section 1** further provides that
44 the rules: (1) must not abridge, enlarge or modify any substantive right or conflict
45 with the Nevada Constitution; and (2) must be published promptly upon adoption
46 and take effect on a date specified by the Nevada Supreme Court which cannot be
47 less than 60 days after entry of the order adopting the rules. Finally, **section 1**
48 provides that, to the extent possible, any statutory provisions that regulate civil or
49 criminal practice and procedure are intended to supplement the rules adopted by the
50 Nevada Supreme Court, and the statutory provisions must be given effect to the
51 extent that those provisions do not conflict with the provisions of the rules.
52 However, **section 1** states that if there is a conflict between the statutory provisions
53 and the provisions of the rules, the provisions of the rules take precedence and
54 control.
55 **Section 8** of this bill provides that the Nevada Supreme Court shall: (1) as soon
56 as practicable, adopt the initial Nevada Rules of Criminal Procedure to the extent
57 that it determines to be necessary or advisable; and (2) upon adoption of the initial
58 Nevada Rules of Criminal Procedure, transmit the rules to the Director of the
59 Legislative Counsel Bureau for transmittal to the Legislature. **Sections 2-6** of this
60 bill make conforming changes, which become effective on the date that the initial
61 Nevada Rules of Criminal Procedure first take effect. (NRS 49.015, 51.065,
62 169.025, 169.245, 239A.070)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 2.120 is hereby amended to read as follows:
2 2.120 1. The Supreme Court may make rules not inconsistent
3 with the Constitution and laws of the State for its own government,
4 the government of the district courts, and the government of the
5 State Bar of Nevada. Such rules ~~[shall]~~ ***must*** be published promptly
6 upon adoption and take effect on a date specified by the Supreme
7 Court which ~~[in no event shall]~~ ***cannot*** be less than 30 days after
8 entry of an order adopting such rules.

1 2. The Supreme Court, by rules adopted and published from
2 time to time, shall regulate [original] ***:***
3 ***(a) Original*** and appellate civil practice and procedure,
4 including, without limitation, pleadings, motions, writs, notices and
5 forms of process, in judicial proceedings in all courts of the State [,]
6 for the purpose of simplifying the same and [of] promoting the
7 speedy determination of litigation upon its merits. [Such]
8 ***(b) Original and appellate criminal practice and procedure in***
9 ***judicial proceedings in all courts of the State for the purpose of***
10 ***providing for the just determination of every criminal proceeding***
11 ***and securing simplicity in procedure, fairness in administration***
12 ***and the elimination of unjustifiable expense and delay.***
13 ***3. The*** rules [shall] ***adopted by the Supreme Court pursuant to***
14 ***subsection 2:***
15 ***(a) Must*** not abridge, enlarge or modify any substantive right ***.***
16 [and shall]
17 ***(b) Must*** not be inconsistent with the Constitution of the State of
18 Nevada. [Such rules shall]
19 ***(c) Must*** be published promptly upon adoption and take effect
20 on a date specified by the Supreme Court which [in no event shall]
21 ***cannot*** be less than 60 days after entry of an order adopting [such]
22 ***the*** rules.
23 ***(d) May include, without limitation:***
24 ***(1) The Nevada Rules of Civil Procedure.***
25 ***(2) The Nevada Rules of Criminal Procedure.***
26 ***(3) The Nevada Rules of Appellate Procedure.***
27 ***4. To the extent possible, any statutory provisions that***
28 ***regulate civil or criminal practice and procedure in judicial***
29 ***proceedings in the courts of the State are intended to supplement***
30 ***the rules adopted by the Supreme Court pursuant to subsection 2,***
31 ***and such statutory provisions must be given effect to the extent***
32 ***that those provisions do not conflict with the provisions of the***
33 ***rules. If there is a conflict between such statutory provisions and***
34 ***the provisions of the rules, the provisions of the rules take***
35 ***precedence and control.***
36 **Sec. 2.** NRS 49.015 is hereby amended to read as follows:
37 49.015 1. Except as otherwise required by the Constitution of
38 the United States or of the State of Nevada, and except as otherwise
39 provided in this title or title 14 of NRS, or NRS 41.071 or 463.120
40 or any other specific statute, ***and except as otherwise provided in***
41 ***the Nevada Rules of Criminal Procedure or the Nevada Rules of***
42 ***Civil Procedure,*** no person has a privilege to:
43 (a) Refuse to be a witness;
44 (b) Refuse to disclose any matter;
45 (c) Refuse to produce any object or writing; or

1 (d) Prevent another from being a witness or disclosing any
2 matter or producing any object or writing.
3 2. This section does not:
4 (a) Impair any privilege created by title 14 of NRS ***, the Nevada***
5 ***Rules of Criminal Procedure*** or [by] the Nevada Rules of Civil
6 Procedure which is limited to a particular stage of the proceeding; or
7 (b) Extend any such privilege to any other stage of a proceeding.
8 **Sec. 3.** NRS 51.065 is hereby amended to read as follows:
9 51.065 1. Hearsay is inadmissible except as provided in this
10 chapter, title 14 of NRS ***, the Nevada Rules of Criminal Procedure***
11 and the Nevada Rules of Civil Procedure.
12 2. This section constitutes the hearsay rule.
13 **Sec. 4.** NRS 169.025 is hereby amended to read as follows:
14 169.025 1. [This] ***Except as otherwise provided in the***
15 ***Nevada Rules of Criminal Procedure, this*** title governs the
16 procedure in the courts of the State of Nevada and before
17 magistrates in all criminal proceedings.
18 2. Except as otherwise provided in NRS 62C.330, this title
19 does not apply to proceedings against children conducted pursuant
20 to title 5 of NRS.
21 **Sec. 5.** NRS 169.245 is hereby amended to read as follows:
22 169.245 1. In all criminal actions or proceedings where a
23 bond or other undertaking is required by the provisions of this title
24 or by ***the Nevada Rules of Criminal Procedure,*** the Nevada Rules
25 of Civil Procedure or the Nevada Rules of Appellate Procedure, the
26 bond or undertaking [shall] ***must*** be presented to the clerk [,] of the
27 court in which the action or proceeding is pending [,] for the clerk's
28 approval before being filed or deposited.
29 2. The clerk of the court may refuse approval of a surety for
30 any bond or other undertaking if a power of attorney-in-fact, which
31 covers the agent whose signature appears on the bond or other
32 undertaking, is not on file with the clerk of the court.
33 **Sec. 6.** NRS 239A.070 is hereby amended to read as follows:
34 239A.070 This chapter does not apply to any subpoena issued
35 pursuant to title 14 or chapters 616A to 617, inclusive, of NRS ***or***
36 ***the Nevada Rules of Criminal Procedure*** or prohibit:
37 1. Dissemination of any financial information which is not
38 identified with or identifiable as being derived from the financial
39 records of a particular customer.
40 2. The Attorney General, State Controller, district attorney,
41 Department of Taxation, Director of the Department of Health and
42 Human Services, Administrator of the Securities Division of the
43 Office of the Secretary of State, public administrator, sheriff or a
44 police department from requesting of a financial institution, and the
45 institution from responding to the request, as to whether a person

has an account or accounts with that financial institution and, if so, any identifying numbers of the account or accounts.

3. A financial institution, in its discretion, from initiating contact with and thereafter communicating with and disclosing the financial records of a customer to appropriate governmental agencies concerning a suspected violation of any law.

4. Disclosure of the financial records of a customer incidental to a transaction in the normal course of business of the financial institution if the director, officer, employee or agent of the financial institution who makes or authorizes the disclosure has no reasonable cause to believe that such records will be used by a governmental agency in connection with an investigation of the customer.

5. A financial institution from notifying a customer of the receipt of a subpoena or a search warrant to obtain the customer's financial records, except when ordered by a court to withhold such notification.

6. The examination by or disclosure to any governmental regulatory agency of financial records which relate solely to the exercise of its regulatory function if the agency is specifically authorized by law to examine, audit or require reports of financial records of financial institutions.

7. The disclosure to any governmental agency of any financial information or records whose disclosure to that particular agency is required by the tax laws of this State.

8. The disclosure of any information pursuant to NRS 353C.240, 425.393, 425.400 or 425.460.

9. A governmental agency from obtaining a credit report or consumer credit report from anyone other than a financial institution.

Sec. 7. The amendatory provisions of this act relating to the adoption of rules by the Supreme Court pursuant to NRS 2.120, as amended by section 1 of this act, are a legislative pronouncement of already existing law and are intended to clarify and codify rather than change such existing law.

Sec. 8. 1. As soon as practicable, the Supreme Court, to the extent that it determines to be necessary or advisable, shall adopt the initial Nevada Rules of Criminal Procedure pursuant to NRS 2.120, as amended by section 1 of this act, and any other rules of practice and procedure that are needed to facilitate the adoption of the Nevada Rules of Criminal Procedure.

2. Upon adoption of the initial Nevada Rules of Criminal Procedure pursuant to subsection 1, the Supreme Court shall transmit the rules to the Director of the Legislative Counsel Bureau for transmittal to the Legislature.

1 **Sec. 9.** 1. This section and sections 1, 7 and 8 of this act
2 become effective upon passage and approval.
3 2. Sections 2 to 6, inclusive, of this act become effective on the
4 date that the initial Nevada Rules of Criminal Procedure adopted by
5 the Nevada Supreme Court pursuant to NRS 2.120, as amended by
6 section 1 of this act, first take effect.

⑳

Materials Coming Soon

TAB 6