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: January 17, 2020 at Noon
Place of Meeting:

Carson City	Las Vegas	Washoe
Supreme Court Law Library Room 107 201 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 220B 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. Call of Roll
   B. Determination of a Quorum
   C. Opening Remarks

II. Public Comment

III. Review and Approval of the October 29, 2019 Meeting Summary* **(Tab 1)**

IV. Work Group Updates
   A. Jury Instructions Work Group **(Tab 2)**

V. Statewide Rules Discussion
   A. Local Rules of Practice **(Tab 3)**
      i. Second Judicial District

ii. Eighth Judicial District

B. Rule 8: Pretrial Motions **(Tab 4)**
C. Rule 9: Pretrial Writs of Habeus Corpus **(Tab 5)**
D. Rule 17: Voir Dire **(Tab 6)**

VI. Criminal Case Management Plans **(Tab 7)**

VII. Rules Finalized During Last Meeting **(Tab 8)**
A. Rule 18: Court Intepreters
B. Rule 19: Appeals

VIII. Additional Rules for Commission Consideration **(Tab 9)**

IX. Other Items/Discussion

X. Future Meeting Dates
A. February 25, 2020 or February 28, 2020
B. March 27, 2020 or March 30, 2020

XI. Adjournment

- Action items are noted by * and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Jamie Gradick, (775) 687-9808 - email: jgradick@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030)
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations**: Nevada Supreme Court website: www.nevadajudiciary.us; Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Nevada Supreme Court, 408 East Clark Avenue.

TAB 1

ROBIN SWEET
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Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

Commission on Statewide Rules of Criminal Procedure
October 29, 2019
Noon
Summary prepared by: Kimberly Williams

Members Present
Justice James Hardesty, Chair
Justice Abbi Silver, Co-Vice Chair
Justice Lidia Stiglich, Co-Vice Chair
John Arrascada
Chief Judge Scott Freeman
Darin Imlay
Mark Jackson
Chris Lalli – *Proxy for Steve Wolfson*
Luke Prengaman – *Proxy for Christopher Hicks*
Lisa Rasmussen
Judge Jim Shirley
John Springgate
JoNell Thomas

Guests Present
Chief Judge Linda Bell
Alex Chen
Sharon Dickinson
Alysa Grimes
John Petty

AOC Staff Present
Jamie Gradick
John McCormick
Kimberly Williams

I. Call to Order
- Justice Hardesty called the meeting to order at 12:00 pm.
- Ms. Gradick called roll; a quorum was present.

II. Public Comment
- There was no public comment.

III. Review and Approval of September 27, 2019 Meeting Summary
- Mr. Lalli clarified that Mr. Alex Chen will be representing the Clark County District Attorney's office on the subcommittee addressing Rule 9.
- The summary was approved pending this clarification.

IV. Work Group Updates
- Jury Instructions Work Group:

- Justice Hardesty thanked Judge Freeman and his work group for their dedication and efforts.

V. Statewide Rules Discussion

➢ Rule 8: Pretrial Motions

- Justice Hardesty thanked Ms. Rasmussen and her subcommittee for their collective work.
- Ms. Rasmussen provided the committee with an overview of how the draft came about.
  - Attendees discussed NRS 174.125 filing deadlines before a trial.
  - Ms. Thomas stated she does not find it feasible to file everything within 30 days. Justice Hardesty stated that the rule could be crafted consistently with the statute but could allow for all other motions to be filed 30 days before trial.
  - Mr. Jackson informed attendees that the motions practice work group drafted language regarding this. Ms. Gradick will locate and circulate the draft to the subcommittee.
- Mr. Lalli expressed concern on the language in (b)(2) suggesting that it could be understood that if a party requests an evidentiary hearing that they get an evidentiary hearing.
  - Justice Hardesty agreed and requested it be redrafted.
- Chief Judge Bell stated the language in paragraph (h) could be simplified by following the language developed for the civil rules and using seven judicial days.
- Ms. Thomas is concerned with the language used in (b)(i). In the 8th judicial district, motions are decided with an oral argument.
  - Judge Freeman and Mr. Petty felt the language is sufficient to allow oral arguments to happen with the 'unless' clause.
  - Chief Judge Bell stated that her criminal courts prefer motions be decided with a hearing. Mr. Jackson and Judge Shirley supported Chief Judge Bell's statement that most motions are heard in oral argument.
  - Justice Hardesty requested Ms. Rasmussen create two drafts to address oral arguments both ways and asked Mr. Jackson to send Ms. Rasmussen a copy of the language in the 9th district's local rule 6.
- Ms Thomas stated that the (f)(iii) appeal process should be explained before a motion of rehearing is considered and the language could be edited to remove the excessive "thereto, thereof, and therefor" language without losing meaning.
- Mr. Lalli stated the language in (g)(i) should state all motions should be in writing.
- Justice Hardesty requested that the subcommittee review all suggestions from teh discussion and present a new draft for the next meeting.
- Ms. Thomas asked if all of the District Courts have e-filing.
  - They do not. Mr. McCormick stated the AOC is planning on conducting a study to see what would be required to create a statewide e-filing system.
  - Ms. Rasmussen stated California uses a contract service to do the statewide e-filing, she will find out the name of the company and supply Justice Hardesty with the information.

➢ Rule 9: Pretrial Writs of *Habeas Corpus*

- Justice Hardesty thanked Ms. Dickinson and her subcommittee for their collective work.

- Ms. Dickinson provided the committee with an overview of how the draft came about.
  - Mr. Jackson asked why the ex parte in (e) 2nd to last sentence was added. Ms. Dickinson stated that it should be deleted.
  - Discussion was held regarding whether the writ must be served upon the Sherriff. Justice Hardesty commented that he would reach out to the appropriate law enforcement associations and the Attorney General to question if they would like to continue to receive writs.
  - Justice Hardesty requested that the subcommittee make the revisions as discussed and bring the draft back to the next meeting for final approval.

➢ Rule 10: Stay Orders
- Justice Hardesty thanked Mr. Petty for his work on this rule and asked for any comments.
  - Ms. Dickinson expressed concern regarding a stay being used in the preliminary hearing.
  - Mr. Jackson provided an example where a stay in this circumstance is useful.
  - Justice Hardesty called for a vote; the rule passed with Ms. Dickinson and Mr. Imlay opposed.

➢ Rule 11 and Rule 12
- Ms. Rasmussen suggested the language in subsection 1's first line be revised to read "… or *upon* oral or written motion..."
  - The committee agreed with the change and the rule was approved pending this change.

➢ Rule 18: Court Interpreters
- Mr. Lalli commented on subsection B's second line 7/5 calendar day option.
  - Ms. Thomas suggested using a seven-day period.
  - Mr. Jackson stated that five days would be fine for some of the rurals but the smaller jurisdictions would need seven days. Justice Hardesty asked the committee if anyone disagreed with 7 days. No one disagreed.
- Mr. Imlay asked if a 48 hour notice is for every hearing or if the first appearance notification enough. Justice Hardesty stated that it is for every hearing or trial.
  - Mr. McCormick suggested a revision to the language "…council shall advise the court of the need for interpreter as soon as possible but not later than 48 hours prior to an initial hearing for a defendant in a county…" followed with a second sentence "Council shall provide notice pursuant to these requirements for witness for every hearing…"
  - Justice Hardesty asked Mr. McCormick to revise the text as discussed; pending this change, attendees approved this rule.

➢ Rule 19: Appeals
- Justice Hardesty thanked Judge Shirley and Ms. Grimes for providing the outline for handling appeals and asked for any comments or revisions.
  - Mr. Lalli suggested changing the first line of subsection (a) to "…Municipal or Justice Court…" Justice Hardesty agreed.
  - Ms. Thomas suggested revising (a)(1) to read"…Written Ruling…" Justice Hardesty agreed.
  - Additionally, Ms. Thomas suggested removing the reference to civil procedure law and adding in the langage of the rule to (b). Justice Hardesty agreed.

- Justice Silver advised Ms. Grimes to check with Chief Judge Cynthia Leung regarding municipal court policies on filing appeals to district court.
- Mr. Petty would like to rewrite (d)(3) to state the reply brief may be filed by appellant within 5 days. Mr. Prengaman would like to include that no new matters may be brought up in the reply brief.
- Mr. Jackson suggested to change the answering brief time in (d)(2) from 30 to 10 days. Chief Judge Bell suggested making the rules in separate subsections for simplicity.
- Justice Hardesty requested that Ms. Grimes revise the draft based upon the suggestions provided by the committee and bring it back for approval at the next meeting.

VI. Additional Rules for Commission's Consideration

- Justice Hardesty showed the committee a draft submitted by the Public Defender. Justice Hardesty and Ms. Gradick will compare the suggestions to a living list and address the results in the next meeting.

VII. Other Items/Discussion

- Add to next Agenda
  - Ms. Rasmussen's subcommittee's discussion on Rule 8
  - Mr. Arrascada's rule draft

VIII. Next Meeting

- Next meeting will be November 22nd at 11:00 am to 1:00 pm.
  - Justice Silver, Justice Stiglich and Judge Freeman will be unavailable.

IX. Adjournment

- The meeting was adjourned at 1:00 p.m.

TAB 2

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*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.

Commission on Statewide Rules of Criminal Procedure
Jury Instructions Work Group
November 18, 2019
Summary prepared by: Jamie Gradick, AOC

Attendees

Chief Judge Scott Freeman, Chair
Jacee Broadway
Judge Nancy Porter
Luke Prengaman
Judge Connie Steinheimer
Deborah Westbrook
Judge Nathan Tod Young

Meeting Summary

- Chief Judge Freeman welcomed attendees.
- Ms. Gradick called roll; a quorum was present.
- Attendees discussed the possibility of holding an "in-person" meeting in January or February.
  - The River Room at the Reno-Tahoe International Airport would be a convenient location.
  - It is uncertain whether the Nevada Supreme Court would fund travel costs for this meeting; Ms. Gradick will look into this.
- Attendees reviewed and finalized Section 10.
  - 10.01(b) - Ms. Westbrook presented her corrections and commented that the language needs to reflect the language of the case law.
    - Changes were accepted.
  - 10.01(c) - Ms. Westbrook presented her corrections.
    - Attendees discussed the use of "they" for a gender neutral, singular party; concerns regarding improper grammar were expressed.
    - Other changes were accepted.
  - 10.01(e) - Ms. Westbrook presented her corrections.
    - Attendees discussed the use of "has" and when the reasonable belief must occur; a suggestion was made that "had, at the time of penetration…" be added to clarify.
    - Changes were accepted.

- 10.01(f) - Ms. Westbrook commented that citations are missing for the cited cases; these will be added in.
- 10.03 - Chief Judge Freeman presented Ms. Westbrooks corrections/comments.
  - Ms. Westbrook commented that this instruction should look like the instruction adopted for 3.08(c).
  - Changed were accepted.
- 10.08(a) - Ms. Westbrook presented her corrections.
  - Ms. Westbrook commented that lewdness instruction appears to have been inadvertently removed from this section and suggested this instruction be added back in here.
  - A suggestion was made to made the instruction gender-neutral.
  - Changes were accepted.
- 10.10(a) - Ms. Westbrook commented that citations are missing for the cited cases; these will be added in.
- Attendees discussed a Nevada Supreme Court case that changed definitions and whether this that requires modification to the instruction language or just inclusion of a footnote.
  - Chief Judge Freeman commented that this new case law only applies in certain cases with certain facts; it's unclear that this is a matter of law definition.
  - Ms. Westbrook presented a proposed instruction; Mr. Prengaman expressed concern with the fact-specific reasoning behind the case law.
  - Chief Judge Freeman tabled this instruction and asked attendees to read the case and determine how best to address it; this will be discussed at the next meeting.
- 10.10(b) - Ms. Westbrook commented that citations are missing for the cited cases; these will be added in.
- 10.11(a) – Chief Judge Freeman presented Ms. Westbrook comments/corrections.
  - Changes were accepted.
- 10.12(b) - Chief Judge Freeman presented Ms. Westbrook comments/corrections.
  - Changes were accepted.
- 10.14(a-d) - Chief Judge Freeman presented Ms. Westbrook comments/corrections.
  - Changes were accepted; citations will be corrected.
- 10.15 - Chief Judge Freeman presented Ms. Westbrook comments/corrections.
  - Changes were accepted.
  - Judge Young suggested using "person" rather than identifying gender; attendees agreed to make these changes wherever applicable.
- 10.21(b) and 10.21(c) - Chief Judge Freeman presented Ms. Westbrook comments/corrections.
  - 10.21(c) replaced 10.21(b) during a previous meeting.
  - Attendees discussed how to properly title this instruction *(portions of this discussion were inaudible)*
  - Mr. Prengaman suggested titling it "Inference regarding acceptance of proceeds from a prostitute"; attendees discussed alternatives to "inference" and whether to include the "consideration" element.
  - Attendees decided to title this instruction "Inference regarding consideration…" and to include a footnote directing practitioner to use in conjunction with 10.21(a) when applicable.

- Attendees reviewed and finalized Section 11.
  - 11.00 - Chief Judge Freeman presented Ms. Westbrook comments/corrections.
    - Attendees discussed removing "if applicable" and adding "select all that apply" in brackets; attendees agreed to this change.
  - 11.01(a-c) - Attendees discussed legal authority and how best to cite.

- Robbery definition is statutory; string case cites are not all necessary.
- Attendees agreed to take out cites to robbery defined and move appropriate case cites to either (b) or (c).
- Attendees discussed how to title each of these instructions.

➢ 11.01(b) – Ms. Westbrook presented her additional comments/corrections. *(Portions of this discussion were inaudible)*
- Attendees discussed inconsistencies in the language ("presence"); this language is from the case law.

➢ 11.01(c) - Chief Judge Freeman presented Ms. Westbrook comments/corrections.
- Attendees discussed possible titles for this instruction.
- A suggestion was made to incorporate this section tin 11.01(b) – attendees agreed.

- Attendees reviewed and finalized Section 12.
  - ➢ 12.01- 12.02 – Ms. Westbrook commented that these instructions are not the versions the group adopted (they are formatted differently than 12.03 and 12.04).
  - ➢ 12.01(a) – This is addressed by 12.01 – Out
  - ➢ 12.03 – Ms. Westbrook presented her additional comments/corrections.
- Attendees reviewed Section 13.
  - ➢ Attendees will review Ms. Westbrook's newest versions for 13.01(a) in preparation for the next meeting.
  - ➢ Attendees discussed how to address the changes that will need to be made to reflect the law as of the July 1, 2020.
    - A suggestion was made to address these changes all at once; attendees agreed.

Additional Action Items

- The next meeting will continue the review of competed sections with the purpose of double-checking and finalizing revisions to these sections.
- Ms. Gradick will send a calendar invite for a meeting to be held on December 2, 2019.

TAB 3

[Proposed] CRIMINAL RULES OF PRACTICE of the DISTRICT COURT OF THE STATE OF NEVADA

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Blue = CRIMINAL RULES OF PRACTICE FOR THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

Green = Part III, "Criminal Practice," of the RULES OF PRACTICE FOR THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

Purple = RULES OF PRACTICE FOR THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

* *

Notes:

Under the prevailing scheme of court rules, the Rules of the District Courts of the State of Nevada (D.C.R.) "cover the practice and procedure in all actions in the district courts of *all districts where no local rule covering the same subject has been approved* by the supreme court. Local rules which are approved for a particular judicial district shall be applied in each instance whether they are the same as or inconsistent with these rules." D.C.R. 5. The D.C.R. address subjects such as the form of papers to be filed (D.C.R. 12), motions generally (D.C.R. 13, 15), motions for continuance (D.C.R. 14), and stipulations (D.C.R. 16).

The Second Judicial District has adopted the Rules of Practice for the Second Judicial District Court of the State of Nevada (WDFCR) and the Criminal Rules Of Practice For The Second Judicial District Court Of The State Of Nevada (L.C.R.). The WDFCR do not apply to "[c]riminal matters, except as otherwise expressly stated." WDFCR 1(2)(c). These Rules do contain a number of express provisions that apply to criminal matters. The L.C.R. "govern all criminal actions in the Second Judicial District Court of the State of Nevada." L.C.R. 1.

The Eighth Judicial District has adopted the Rules of Practice for the Eighth Judicial District Court of the State of Nevada (EDCR). These Rules "govern the procedure and administration of the Eighth Judicial District Court and all actions or proceedings cognizable therein." In terms of criminal practice, EDCR 1.10. Part I, "Organization of the Court and Administration," includes provisions for a criminal presiding judge (EDCR 1.31, "Presiding judge – family/civil/criminal divisions"), criminal division masters (EDCR 1.48), the assignment of criminal cases (EDCR 1.64), and the calendaring of criminal trial (EDCR 1.74). Part III, which includes Rules 3.01 through 3.80, specifically addresses criminal practice. Part VII, "General Provisions," is "applicable to all actions and proceedings commenced in the Eighth Judicial District Court" "[u]nless otherwise stated," EDCR 7.01, and addresses matters such as the form of papers for filing (EDCR 7.20), the service of order and other papers (EDCR 7.26), the custody of exhibits and records (EDCR 7.28), motions for trial continuances (EDCR 7.30), sanctions (EDCR 7.60), and voir dire examination (EDCR 7.70).

Taking the Second Judicial District as an example, there are three sets of rules that could potentially apply to a given situation in a criminal case – the D.C.R., the WDCR, and the L.C.R. The D.C.R. could apply if there is "no local rule covering the same subject" in the WDCR or L.C.R. The WDCR, which only applies to criminal matters if "expressly stated," does contain a number of provisions that expressly apply to criminal cases and therefore would preempt any corresponding provision of the D.C.R. The L.C.R. apply exclusively to criminal matters, but there is overlap with the WDCR, albeit incomplete, in the coverage of certain areas – jury instructions and continuances, for example. A careful practitioner in Washoe County would want to work from the L.C.R. to the WDCR to the D.C.R. to find and ensure compliance with any potentially applicable rule. The *Statewide Rules of Criminal Procedure: A 50 State Review* article criticized this type of overlap for the ambiguities and associated problems it creates for practitioners:

> Eight of the Nevada's eleven judicial districts have their own local procedural rules that either directly, or "if applicable" apply to criminal matters. The Second judicial district is the only district with separate criminal procedure rules. The ambiguity within local district rules creates even more problems for practitioners as it is not clear what civil/general local rules apply to criminal proceedings.[1]

It is suggested that it would be most useful to consolidate *all* district court rules that address procedures in criminal matters in a single set of rules, that any provisions touching upon criminal matters be eliminated from other sets of rules such as the D.C.R., the WDCR, and the EDCR, and that the scope of the other sets of rules, such the D.C.R. and EDCR, be expressly limited to civil matters or, in the alternative, that they expressly exclude criminal matters from their scope. Both practitioner and judge alike would then know that, as far as district court procedural rules are concerned, there is only one source to be consulted.

[1] *Statewide Rules* at p.4.

Rule 1. Scope, purpose and construction

8th Rule 3.01. Scope of rules.
The rules in Part III govern the practice and procedure in all criminal proceedings except in juvenile cases expressly provided for in Title 5 of NRS.

2nd CR Rule 1. Scope, purpose and construction.
These rules govern all criminal actions in the Second Judicial District Court of the State of Nevada. They are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. They shall be cited as "L.C.R." For good cause shown and when the interest of justice requires, the district court may modify these rules by court order, either pursuant to the motion of a party or sua sponte, to fit the facts and circumstances of a particular case pending before the court.

Comment: The purpose of these criminal rules is to provide uniformity in practice among the various judicial departments, however, each individual judge (should) retain discretion over how cases ultimately proceed in their courtroom. This rule strikes a balance between uniformity and judicial discretion. These rules do not apply to juvenile proceedings, post-conviction proceedings or habeas corpus actions. The statement of the purpose and construction of the rules parallels Rule 2 of the Federal Rules of Criminal Procedure.

Rule 2. Case assignment.

8th Rule 3.10. Consolidation and reassignment.

(a) When an indictment or information is filed against a defendant who has other criminal cases pending in the court, the new case may be assigned directly to the department wherein a case against that defendant is already pending.

(b) Unless objected to by one of the judges concerned, criminal cases, writs or motions may be consolidated or reassigned to any criminal department for trial, settlement or other resolution.

(c) In the event of negotiations being reached as to multiple cases having the same defendant, defense counsel and the prosecution may stipulate to having all of the involved cases assigned to the department having the oldest case with the lowest case number, and the court clerk shall then so reassign the involved cases. If the negotiations later break down, then the court clerk will again reassign the involved cases back to their respective department(s) of origin. The objection provision of subparagraph (b) hereinabove does not pertain to this present subparagraph (c).

2nd CR Rule 2. Case assignment.

Each criminal action shall be randomly assigned to a department of the court and shall remain in such department until final disposition of the action, unless:

(a) the action is brought against a defendant who is the subject of another pending or prior action in this court, in which case the action shall be assigned to the department of the most recent other action; or

(b) as otherwise ordered by the chief judge consistent with a plan of courtwide case management.

Comment: To the extent possible, cases involving a defendant who is the subject of another case in this district shall be assigned to the department of the other case. Otherwise, cases shall be randomly assigned.

2nd LR Rule 2. Organization of the court; chief judge; court administrator.

1. All civil and criminal cases shall be randomly assigned.
2. The district judges shall elect from among the general jurisdiction division and family court division judges a chief judge for a term of 2 years. The chief judge is the presiding judge as referred to in NRS 3.025 and the chief judge referred to in Supreme Court Rule 8.

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Rule 3 Appearance and Withdrawal of Attorneys

Rule 7.40. Appearances; substitutions; withdrawal or change of attorney.

(a) When a party has appeared by counsel, the party cannot thereafter appear on the party's own behalf in the case without the consent of the court. Counsel who has appeared for any party must represent that party in the case and shall be recognized by the court and by all parties as having control of the case. The court in its discretion may hear a party in open court although the party is represented by counsel.

(b) Counsel in any case may be changed only:

(1) When a new attorney is to be substituted in place of the attorney withdrawing, by the written consent of both attorneys and the client, which must be filed with the court and served upon all parties or their attorneys who have appeared in the action, or

(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon written motion, and

(i) If the application is made by the attorney, the attorney must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and the telephone number, or last known telephone number, at which the client may be reached and the attorney must serve a copy of the application upon the client and all other parties to the action or their attorneys, or

(ii) If the application is made by the client, the client must state in the application the address at which the client may be served with notice of all further proceedings in the case in the event the application is granted, and the telephone number, or last known telephone number, at which the client may be reached and must serve a copy of the application upon the client's attorney and all other parties to the action or their attorneys.

(c) No application for withdrawal or substitution may be granted if a delay of the trial or of the hearing of any other matter in the case would result.

Rule 7.42. Appearances in proper person; entry of appearance.

(a) Unless appearing by an attorney regularly admitted to practice law in Nevada and in good standing, no entry of appearance or pleading purporting to be signed by any party to an action may be recognized or given any force or effect by any district court unless the same is signed by the party, with the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.

(b) A corporation may not appear in proper person.

Rule 7.44. Presence of local counsel required.

(a) Unless otherwise allowed by the court, no attorney who is not a resident of Nevada and has not been admitted to the State Bar of Nevada may appear as counsel in

any cause pending in this district without the presence of associated Nevada counsel.

(b) If foreign counsel is associated, all pleadings, motions and other papers must be signed by Nevada counsel, who shall be responsible to the court for their content. Nevada counsel must be present during oral arguments and must be responsible to the court for all matters presented.

2nd LR Rule 3. Criminal trials; appearance and withdrawal of attorneys.

1. Judges shall set all criminal trials in accordance with their own individual calendars. Such cases shall be randomly assigned to each department, and shall stay with that department through final disposition, unless the case is reassigned by that judge with the concurrence of the court to which it is reassigned. All related cases on the same defendant shall be assigned to the same judge. This random assignment system shall also apply to all criminal appeals, material witnesses and all other miscellaneous criminal matters.
2. If more criminal trials are scheduled on any day than an individual judge can handle that judge shall find another department willing to take the overflow. If the calendar overflow problem cannot be resolved by the individual judge the matter shall be referred to the chief judge who shall assign the overflow trials to other judges as necessary.
3. Criminal arraignments shall be set by the individual judges. If a judge is conducting a criminal jury trial, criminal arraignments, motions, and other criminal matters which are also assigned to that department may be referred by that judge to a department which does not have a trial.
4. Criminal arraignments, motions, pleas, sentencing hearings, and other proceedings, shall be heard by each court department in accordance with their own individual calendars at a time and date specified by each department.
5. Except as may be otherwise ordered by the judge in writing all motions for probation revocation shall be set to be heard by the court as soon as possible and no later than 10 days after the incarceration of the defendant.
6. Attorneys representing defendants in criminal cases shall promptly serve written notice of their appearances upon the district attorney, and file the same with the filing office. When desiring to withdraw from a case, attorneys shall serve a motion upon the district attorney and their client, file the same with the filing office, and set the motion for hearing.
7. Effective January 2, 1992, any status conference and/or "Motions to Confirm" shall be held 1 week prior to the trial date. This will provide at least 5 days' notice of the status of a pending trial to all parties and the jury office. Prior to January 2, 1992, any such status conferences shall be held at least 3 days prior to trial.

Rule 23. Appearances; substitutions; withdrawal or change of attorneys.

1. When a party has appeared by counsel, that individual cannot thereafter appear on his/her own behalf in the case without the consent of the court. Counsel who has appeared for any party shall represent that party in the case and shall be

recognized by the court and by all parties as having control of the client's case, until counsel withdraws, another attorney is substituted, or until counsel is discharged by the client in writing, filed with the filing office, in accordance with SCR 46 and this rule. The court in its discretion may hear a party in open court although the party is represented by counsel.

2. Counsel in any case may be changed:

   (a) When a new attorney is to be substituted in place of the attorney withdrawing, by the written consent of both attorneys and the client, all of which shall be filed with the court and served upon all parties or their attorneys who have appeared in the action; or

   (b) By order of the court, upon motion and notice as provided in these rules, when no attorney has been retained to replace the attorney withdrawing;

      (1) If such motion is made by the attorney, counsel shall include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and counsel shall serve a copy of such motion and supporting papers upon the client and all other parties to the action or their attorneys; or

      (2) If such motion is made by the client, the client shall state therein the address at which the client may be served with notice of all further proceedings in the case in the event the application is granted, and shall serve a copy of the application upon the attorney and all other parties to the action or their attorneys.

3. Any form of order permitting withdrawal of an attorney submitted to the court for signature shall contain the address at which the party is to be served with notice of all further proceedings.

4. Except for good cause shown, no application for withdrawal or substitution shall be granted if a delay of the trial or of the hearing of any other matter in the case would result. Discharge of an attorney may not be grounds to delay a trial or other hearing.

5. A corporation may not appear in proper person.

Rule 4. Initial appearance and arraignment.

2nd CR Rule 3. Initial appearance and arraignment.

(a) At the initial appearance of the defendant before the district court, the court shall:

(1) supply the defendant a copy of the indictment or information unless the charging document has previously been made available to the defendant through e-filing;

(2) if necessary, determine whether the defendant qualifies for appointed counsel and, if so, appoint counsel to represent the defendant. In such event, newly appointed counsel shall be given an extension of time of at least 5 days before entry of plea;

(3) arraign the defendant upon all charges in the indictment or information;

(4) subject to the conditions set forth in NRS 178.4853,[2] determine appropriate conditions for the defendant's release from custody or that detention is warranted;

(5) if the defendant enters a plea of not guilty, set the dates for trial, pretrial motions, evidentiary hearings or status conferences;

(6) specify any discovery obligations of the parties beyond those contained in Chapter 174 of the Nevada Revised Statutes.

(b) If the defendant enters a plea of guilty or nolo contendere, the court may transfer the action to the Second Judicial District Court (Washoe County) Specialty Courts, if appropriate, or order a presentence report and set a sentencing date consistent with the jail population management policies of the court and L.C.R. 9.[3]

(c) Subject to the provisions of NRS 176.135,[4] a presentence report may be waived and sentence imposed at the entry of a plea of guilty or nolo contendere.

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[2] **NRS 178.4853 Factors considered before release without bail.** In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

[3] L.C.R. 9 addresses sentencing.

[4] **NRS 176.135 Presentence investigation and report: When required; time for completing.**

1. Except as otherwise provided in this section and NRS 176.151, the Division shall make a presentence investigation and report to the court on each defendant who pleads guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of, a felony.
2. If a defendant is convicted of a felony that is a sexual offense, the presentence investigation and report:

(a) Must be made before the imposition of sentence or the granting of probation; and

Comment: The initial appearance is the occasion for the court and counsel to establish a meaningful schedule for the trial and all pretrial activity appropriate to each case. Except in unforeseen, extraordinary circumstances, the schedule will not be subsequently modified. Status conferences are conducted to monitor the progress of a case. Persons who enter a plea of guilty or nolo contendere and qualify for treatment in the Second Judicial District Drug Court may, if the department deems the defendant to be an appropriate referral, be immediately referred to such court without further proceedings in the department in which the criminal action is commenced.

(b) If the sexual offense is an offense for which the suspension of sentence or the granting of probation is permitted, must include a psychosexual evaluation of the defendant.

3. If a defendant is convicted of a felony other than a sexual offense, the presentence investigation and report must be made before the imposition of sentence or the granting of probation unless:

(a) A sentence is fixed by a jury; or

(b) Such an investigation and report on the defendant has been made by the Division within the 5 years immediately preceding the date initially set for sentencing on the most recent offense.

4. Upon request of the court, the Division shall make presentence investigations and reports on defendants who plead guilty, guilty but mentally ill or nolo contendere to, or are found guilty or guilty but mentally ill of, gross misdemeanors.

Rule 4.1 Setting of cases.

2nd LR Rule 4. Setting of cases.

1. All matters shall be set in the Office of the Administrative Assistants in the department where the case is filed. The office shall be open for that purpose from 9:00 a.m. to 12:00 noon, Tuesday through Thursday. All other calendaring shall be done by appointment. If any department wishes to deviate from this procedure it shall be responsible for setting its own calendar in a manner and at a time specified. The times and procedures for such calendaring shall be advertised by each department.
2. If any case may not be heard because of another case or the unavailability of the judge, it shall be the primary responsibility of that judge or the administrative assistant to arrange a transfer to another department with the agreement of the new department. In the event that the department cannot successfully transfer the case the matter shall be referred to the chief judge for resolution.
3. In every civil case, within 30 days after the last answer is filed, the parties must obtain a date for trial unless the judge waives this requirement for good cause shown. If the parties fail to obtain a trial date, the court may set the case for trial at its discretion.
4. All cases shall be set for trial within 12 months of the date that the setting occurs, unless ordered otherwise by the trial court.
5. Contested matters shall be set by each court department on dates agreeable to counsel. A 10-day notice to appear and set a time for trial may be given by any party upon certification that the case is at issue. At the time fixed in the notice, with showing of service upon all parties, a court department shall set the case for trial at a time certain. If fewer than all parties appear before a court department on an application for setting, and file with the court department a conformed copy of written notice to appear for setting at that hour and day, a court department shall set the matter to be heard on a date satisfactory to the counsel present. Time shall be computed as provided in N.R.C.P. 6. An individual court department may dispense with these procedures if necessary. Cases can be set via telephone conference or any other convenient method.
6. If the parties cannot agree on a trial date, a court department shall set the case for trial on the first available date in accordance with the judge's individual calendar.
7. All disputes concerning calendar settings shall be resolved by each court department in accordance with procedures established by that department.
8. Matters set in each department shall be heard in the order set unless otherwise ordered by the trial judge. Matters which cannot be heard in the department in which set because of a conflict with a prior matter, shall be assigned to another department, if one is available, by the affected department, to be heard at the same time as originally set. If a matter cannot be heard at the time originally set because of conflicts in all other departments, the matter shall be continued by order of the affected department. Thereafter, such matters shall be entitled to priority for resetting in accordance with the judge's individual calendar. Each court department shall determine the maximum allowed time that a matter can be set out on the calendar, subject to the 12-month setting rule.

9. All applications for setting shall be made on a printed form designated "Application for Setting," copies of which shall be available at each court department, unless this requirement is waived by the department. It shall be the responsibility of the applicant to produce for the court department one original and the necessary copies of the "Application for Setting" form on which the court department shall endorse the date and time of such setting. The applicant shall file the original and serve a copy upon counsel for each other party.
10. If there are multiple settings, each court department shall endorse on the application the priority of the case in numerical order.
11. Once set, a case may be removed from the calendar only with the consent of the trial judge or the chief judge, if the trial judge is unavailable.
12. When a trial judge or the chief judge signs an order in chambers setting forth a calendar date, a copy of said order shall be delivered by counsel to the individual responsible for calendaring cases in each court department, together with any "Application for Setting" form.
13. Effective January 2, 1992, the judge who determines that a certain criminal defendant is incompetent shall be responsible for impanelling the Sanity Commission.
14. Effective January 2, 1992, the District Attorney's Office shall be responsible for contacting each court department in succession to find someone willing to schedule the Grand Jury hearings.
15. Any questions arising under this Rule 4 which cannot be resolved by the individual court department shall be referred to the chief judge for decision.
16. Each district judge shall be willing and prepared to take overflow work from another department as each judge's calendar permits.

Rule 5. Pleas of guilty or nolo contendere.

2nd CR Rule 4. Pleas of guilty or nolo contendere.

(a) All pleas of guilty or nolo contendere entered pursuant to a plea bargain agreement shall be supported by a written plea memorandum, filed in open court at the entry of the plea, stating:

(1) the terms of the plea bargain agreement;

(2) the factual basis for the plea and an acknowledgment by counsel that the defendant has been advised of the discovery produced and the evidence the State intends to present at trial;

(3) the constitutional rights waived by the defendant;

(4) the maximum possible punishment for any charge which is the subject of the plea bargain agreement;

(5) whether probation is available and whether multiple or enhanced sentences can be concurrent or consecutive;

(6) the defendant's acknowledgment that the court is not bound by the plea bargain agreement; and

(7) the defendant's knowledge of and voluntary consent to the terms of the plea bargain agreement and the contents of the memorandum.

(b) The guilty or nolo contendere plea memorandum shall be signed by the defendant and counsel for all parties to the agreement.

Comment: The plea bargain memorandum is integral to the entry of a guilty or nolo contendere plea and must be completed, signed and filed when the plea is entered.

Rule 6. Release and detention pending judicial proceedings.

8th Rule 3.80. Release from custody; bail reduction.

(a) When an individual is arrested on probable cause or on an arrest warrant, any district judge may, on an emergency basis only, unilaterally, without contact with a prosecutor, grant a release upon the individual's own recognizance pursuant to NRS 178.4851[5] and 178.4853[6] or reduce the amount of bail below the standard bail, provided that the arrest is for a misdemeanor, gross misdemeanor, non-violent felony, or some combination thereof. Before the court may grant an own recognizance release or bail reduction, the court must be satisfied that the individual arrested will likely appear in court at the next scheduled appearance date and does not present a threat in the interim if released. Once the individual arrested makes an initial court appearance, all issues regarding custodial status shall be addressed by the judge assigned the case or any other judge specifically designated or authorized by the assigned judge. A judge designated or authorized by the assigned judge, or by court rule, may release an individual from a bench warrant for a misdemeanor, gross misdemeanor or non-violent felony, or some combination thereof.

(b) When an individual is arrested on probable cause for a violent felony offense or on a bench warrant for a violent felony offense issued by the district court, Justice Court, or municipal court, a district judge shall not grant an own recognizance

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[5] **NRS 178.4853 Factors considered before release without bail.** In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

[6] **NRS 178.4853 Factors considered before release without bail.** In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

release or reduce the amount of bail established unless the judge provides an opportunity pursuant to NRS 178.486[7] for the prosecution to take a position thereon by telephone or in person, either in chambers or in open court. A district court judge may unilaterally increase bail for an individual arrested for a violent felony if the court is satisfied that the individual arrested will not likely appear in court at the next scheduled appearance date or presents a threat to the community in the interim if released.

(c) Between the time of an individual's arrest on probable cause, a bench warrant, or an arrest warrant and his or her subsequent court appearance, ex parte contact between the court and any person interested in the litigation regarding the individual's custodial status shall be allowed.

2nd CR Rule 5. Release and detention pending judicial proceedings.

(a) The court shall determine appropriate conditions for release or that detention is warranted using the factors set forth in NRS 178.4853[8] and NRS 178.486.[9]

(b) All persons released from custody, on bail or otherwise, shall comply with any terms or conditions of release imposed by the court.

(c) The court shall order the pretrial release of a defendant on personal recognizance (subject to supervision by the court services department, or upon such additional conditions as the court deems appropriate) unless the court determines that such release will not reasonably assure the appearance of the defendant as required or will endanger the safety of any other person or the community.

(d) If the court determines that the release of the defendant pursuant to subsection (c) of this rule will not reasonably assure the appearance of the defendant as required or will endanger the safety of any other person or the community, the court shall

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[7] **NRS 178.486 When bail is matter of discretion, notice of application must be given to district attorney.** When the admission to bail is a matter of discretion, the court, or officer by whom it may be ordered, shall require such notice of the application therefor as the court or officer may deem reasonable to be given to the district attorney of the county where the examination is had.

[8] **NRS 178.4853 Factors considered before release without bail.** In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;
5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;
9. The likelihood of more criminal activity by the person after release; and
10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

[9] **NRS 178.486 When bail is matter of discretion, notice of application must be given to district attorney.** When the admission to bail is a matter of discretion, the court, or officer by whom it may be ordered, shall require such notice of the application therefor as the court or officer may deem reasonable to be given to the district attorney of the county where the examination is had.

consider the release of the defendant upon the least restrictive condition, or combination of conditions, that will reasonably assure the presence of the defendant as required and the safety of any other person or the community, which may include the condition that the defendant:

(1) remain in the custody of a designated person, who agrees to assume supervision and agrees to report any violation of a release condition to the court services department, if the designated person submits to the jurisdiction of the court and is able reasonably to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;

(2) maintain employment or, if unemployed, actively seek employment;

(3) maintain or commence an educational program;

(4) abide by specified restrictions on personal associations, place of abode or travel;

(5) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(6) report by telephone or in person on a regular basis to the court services department or a designated law enforcement agency or other agency;

(7) comply with a specified curfew;

(8) refrain from possessing a firearm, destructive device or other dangerous weapon;

(9) refrain from the use of alcohol or controlled substances;

(10) undergo a specified program of available medical, psychological, psychiatric or other counseling or treatment, and remain in a specified institution if required for that purpose;

(11) execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the defendant as required, and post with the court such indicia of ownership of the property or such percentage of the money as the court may specify;

(12) execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the defendant as required;

(13) return to custody for specified hours following release for employment, schooling or other limited purposes; and

(14) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of any other person and the community

(e) The court may at any time amend the order or conditions of release.

Comment: This rule adopts a release evaluation process primarily derived from 18 U.S.C. § 3142.[10]

[10] 18 U.S. Code § 3142 is lengthy and is therefore reproduced at the end of this document.

- Note that 2nd L.C.R. 7(i), "Pretrial Motions," provides that: "Motions made under L.C.R. 5 may be made orally in open court or in an on-the-record telephone conference with the court and opposing counsel."

Rule 7. Discovery/Discovery Motions

8th Rule 3.24. Discovery motions.

(a) Any defendant seeking a court order for discovery pursuant to the provisions of NRS 174.235[11] or NRS 174.245[12] may make an oral motion for discovery at the time of initial arraignment. The relief granted for all oral motions for discovery will be as follows:

(1) That the State of Nevada furnish copies of all written or recorded statements or confessions made by the defendant which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known to the district attorney.

(2) That the State of Nevada furnish copies of all results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with this case which are within the possession, custody or control

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[11] **NRS 174.235 Disclosure by prosecuting attorney of evidence relating to prosecution; limitations.**

1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any:

(a) Written or recorded statements or confessions made by the defendant, or any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney;

(b) Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; and

(c) Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the State and which are within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney.

2. The defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.

(b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this state or the Constitution of the United States.

3. The provisions of this section are not intended to affect any obligation placed upon the prosecuting attorney by the Constitution of this state or the Constitution of the United States to disclose exculpatory evidence to the defendant.

[12] **NRS 174.245 Disclosure by defendant of evidence relating to defense; limitations.**

1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of the prosecuting attorney, the defendant shall permit the prosecuting attorney to inspect and to copy or photograph any:

(a) Written or recorded statements made by a witness the defendant intends to call during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant;

(b) Results or reports of physical or mental examinations, scientific tests or scientific experiments that the defendant intends to introduce in evidence during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant; and

(c) Books, papers, documents or tangible objects that the defendant intends to introduce in evidence during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant.

2. The prosecuting attorney is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is prepared by or on behalf of the defendant or the defendant's attorney in connection with the investigation or defense of the case.

(b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this state or the Constitution of the United States.

of the State, the existence of which is known or by the exercise of due diligence may become known to the district attorney.

(3) That the State of Nevada permit the defense to inspect and copy or photograph books, papers, documents, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody or control of the State, provided that the said items are material to the preparation of the defendant's case at trial and constitute a reasonable request.

(b) Pursuant to NRS 174.255,[13] the court may condition a discovery order upon a requirement that the defendant permit the State to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within the defendant's possession, custody or control provided the said items are material to the preparation of the State's case at trial and constitute a reasonable request.

2nd CR Rule 6. Discovery.

(a) The parties, through their counsel, without order of the court, shall timely provide discovery of all information and materials permitted by any applicable provision of the Nevada Revised Statutes.

(b) The content, timing, manner and sequence of any additional discovery shall be directed by the court at the initial appearance or as soon thereafter as reasonably practicable.

(c) Any discovery dispute shall be brought to the attention of the court expeditiously by telephone conference, on the record, with the court and all counsel, on oral application in open court or a written motion.

(d) The court may impose appropriate sanctions for the failure of a party or counsel to comply with any discovery obligation imposed by law or ordered by the court.

Comment: Subsection (a) of this rule eliminates the need for a discovery order unless the court orders discovery beyond that required by the statutes of Nevada. The other subsections of the rule promote prompt resolution of discovery disputes and require sanctions for non-compliance with any discovery obligation.

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[13] NRS 174.255 has been repealed.

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and [prior to] *before* or during trial, a party discovers additional material previously requested [or ordered] which is subject to discovery or inspection under [such] *those* sections, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with [such sections or with an order issued pursuant to such] *those* sections, the court may order [such] *the* party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

Sec. 8. NRS 174.255 and 174.265 are hereby repealed.

Rule 8. Pretrial motions.[14]

8th Rule 3.20. Motions.

(a) Unless otherwise provided by law or by these rules, all motions must be served and filed not less than 15 days before the date set for trial. The court will only consider late motions based upon an affidavit demonstrating good cause and it may decline to consider any motion filed in violation of this rule.

(b) Except as provided in Rules 3.24[15] and 3.28,[16] each motion must contain a notice of hearing setting the matter for hearing not less than 10 days from the date the motion is served and filed. A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported.

(c) Within 7 days after the service of the motion, the opposing party must serve and file written opposition thereto. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion is meritorious and a consent to granting of the same.

(d) Unless otherwise allowed by the court, all motions to increase or decrease bail must be in writing, supported by an affidavit of the movant or the movant's attorney, and contain a notice of hearing setting the matter for hearing not less than 2 full judicial days from the date the motion is served and filed. The opponent to the motion may respond orally in open court.

(e) Either the prosecutor or the defendant may place a matter on calendar by oral request to the clerk of the court made not later than 11:00 a.m. on the day preceding the date of the hearing. Such requests are to be used only to bring to the attention of the court a matter of an emergency nature or to place a case on calendar when the matter is to be resolved, such as by entry of a guilty plea or for dismissal. An oral request to the clerk to place a case on the calendar for the hearing of any other matter is improper.

8th Rule 3.28. Motions in limine.

All motions in limine to exclude or admit evidence must be in writing and noticed for hearing not later than calendar call, or if no calendar call was set by the court, no later than 7 days before trial. The court may refuse to consider any oral motion in limine and any motion in limine which was not timely filed.

2nd CR Rule 7. Pretrial motions.

(a) Except as otherwise ordered by the court, all pretrial motions, including motions in limine, shall be served and filed no later than 20 days prior to trial. Computation of time as set forth in this rule shall be in calendar days. If a pretrial motion is filed

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[14] The *Statewide Rules of Criminal Procedure: A 50 State Review* article specifically referenced the apparent conflict among the timeframes for filing motions in NRS 174.125, EDCR 3.28, and LCR 7. *See Statewide Rules* at p.22.

[15] Addresses discovery motions.

[16] Addresses motions in limine.

within 30 days prior to trial, it shall either be personally served upon the opposition on the date of filing or be e-filed.

(b) Every motion or opposition thereto shall be accompanied by a memorandum of legal authorities and any exhibits in support of or in opposition to the motion.

(c) All motions shall be decided without oral argument unless requested by the court or party.

(d) If an evidentiary hearing is required by law or requested by a party or ordered by the court and a hearing has not already been set, counsel for the movant shall, upon filing the motion, notify the opposing counsel and the department's administrative assistant of the need for the hearing. No later than 5 days after movant's filing of the motion, all counsel must meet with the department's administrative assistant and set the hearing.

(e) A legal memorandum in opposition to a motion shall be served and filed no later than 10 days after service of the motion, but in no case later than 10 days prior to trial. Failure of the opposing party to serve and file a written opposition may be construed as an admission that the motion is meritorious and consent to the granting of the same.

(f) A reply memorandum in support of a motion shall be served and filed, and the motion submitted for decision, no later than 3 days after service of the opposition, but in no case later than 7 days prior to trial. On the date that the reply is filed, the moving party shall notify the filing office to submit the motion for decision by filing and serving all parties a written request for submission of the motion on a form supplied by the filing office. Should the moving party elect not to reply, the moving party shall notify the filing office to submit the motion in accordance with this rule within 3 days after service of the opposition.

(g) Nothing in subsections (a), (d), (e), or (f) precludes a request for an extension of time upon good cause shown.

(h) Except as permitted by the presiding judge, legal memoranda in support of a motion, opposition, or reply shall not exceed 10 pages, exclusive of exhibits.

(i) Motions made under L.C.R. 5[17] may be made orally in open court or in an on-the-record telephone conference with the court and opposing counsel.

(j) If counsel for a party fails to comply with the time frames specified in this rule, the court, in its discretion, may order that said counsel be sanctioned in any manner the court deems appropriate, including, but not limited to, monetary sanctions.

Comment: The process and timing of motions and evidentiary hearings should enable disposition of pretrial issues substantially in advance of trial. Good cause for an extension may include the filing of two or more motions on the same date.

Rule 12. Motions; points and authorities and decisions.

1. Except as provided in Rule 1, all motions shall be accompanied by points and authorities and any affidavits relied upon. Motions for support or allowances and opposition thereto in divorce and separate maintenance actions shall include

[17] Addresses pretrial release.

disclosure of the financial condition of the respective parties upon a form approved by the court pursuant to Rule 40 of these rules.

2. The responding party shall file and serve upon all parties, within 10 days after service of a motion, answering points and authorities and counter-affidavits.
3. The District Attorney's Office shall have 21 days to respond to any motions to seal criminal records pursuant to NRS 179.245.
4. The moving party may serve and file reply points and authorities within 5 days after service of the answering points and authorities. Upon the expiration of the 5-day period, either party may notify the filing office to submit the matter for decision by filing and serving all parties with a written request for submission of the motion on a form supplied by the filing office. The original of the submit form shall be delivered to the filing office. Proof of service shall be attached to the motion and response.
5. Decision shall be rendered without oral argument unless oral argument is ordered by the court, in which event the individual court department shall set a date and time for hearing.
6. All discovery motions shall include the certificate of moving counsel certifying that after consultation with opposing counsel, they have been unable to resolve the matter.
7. Except by leave of the court, all motions for summary judgment must be submitted to the court pursuant to subsection 4 of this rule at least 30 days prior to the date the case is set for trial.
8. The rehearing of motions must be done in conformity with D.C.R. 13, Section 7. A party seeking reconsideration of a ruling of the court, other than an order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of entry of the order or judgment, unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed, and heard as is any other motion. A motion for rehearing does not toll the 30-day period for filing a notice of appeal from a final order or judgment.
9. If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument, or may restore it to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.
10. Drop box filing.
    (a) Papers eligible for filing. All papers and pleadings, including motions, oppositions and replies may be filed in the drop box located outside the Court Clerk's Office, with the exception of filings which require the payment of filing fees. Filings which require the payment of filing fees must be made directly with the Court Clerk's Office.
    (b) Procedure. Papers may be filed in the drop box during all hours the courthouse is open. Papers must be date and time stamped prior to being placed in the drop box. Drop box filings shall be deemed filed as of the date and time noted on the paper or pleading. If a drop box filing has not been date and time stamped, the paper or pleading shall be deemed filed at the time it is date and time stamped by the Court Clerk. of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge shall

be accompanied by a notice for the prosecutor to appear before the appropriate court department, at a specific date and time not less than 5 nor more than 10 days after filing such petition, to set the matter for hearing. The hearing on the writ shall be set within 21 days from the date the petition is filed.

Relevant statutes

NRS 174.095 Defenses and objections which may be raised by motion. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

NRS 174.098 Motion to declare that defendant is intellectually disabled: When authorized; procedure.

1. A defendant who is charged with murder of the first degree in a case in which the death penalty is sought may, not less than 10 days before the date set for trial, file a motion to declare that the defendant is intellectually disabled.

2. If a defendant files a motion pursuant to this section, the court must:

(a) Stay the proceedings pending a decision on the issue of intellectual disability; and

(b) Hold a hearing within a reasonable time before the trial to determine whether the defendant is intellectually disabled.

3. The court shall order the defendant to:

(a) Provide evidence which demonstrates that the defendant is intellectually disabled not less than 30 days before the date set for a hearing conducted pursuant to subsection 2; and

(b) Undergo an examination by an expert selected by the prosecution on the issue of whether the defendant is intellectually disabled at least 15 days before the date set for a hearing pursuant to subsection 2.

4. For the purpose of the hearing conducted pursuant to subsection 2, there is no privilege for any information or evidence provided to the prosecution or obtained by the prosecution pursuant to subsection 3.

5. At a hearing conducted pursuant to subsection 2:

(a) The court must allow the defendant and the prosecution to present evidence and conduct a cross-examination of any witness concerning whether the defendant is intellectually disabled; and

(b) The defendant has the burden of proving by a preponderance of the evidence that the defendant is intellectually disabled.

6. If the court determines based on the evidence presented at a hearing conducted pursuant to subsection 2 that the defendant is intellectually disabled, the court must make such a finding in the record and strike the notice of intent to seek the death penalty. Such a finding may be appealed pursuant to NRS 177.015.

7. For the purposes of this section, "intellectually disabled" means significant subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and manifested during the developmental period.

NRS 174.105 Defenses and objections which must be raised by motion.

1. Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant.

2. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver.

3. Lack of jurisdiction or the failure of the indictment, information or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

NRS 174.115 Time of making motion. The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

NRS 174.125 Certain motions required to be made before trial.

1. All motions in a criminal prosecution to suppress evidence, for a transcript of former proceedings, for a preliminary hearing, for severance of joint defendants, for withdrawal of counsel, and all other motions which by their nature, if granted, delay or postpone the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial.

2. In any judicial district in which a single judge is provided:

(a) All motions subject to the provisions of subsection 1 must be made in writing, with not less than 10 days' notice to the opposite party unless good cause is shown to the court at the time of trial why the motion could not have been made in writing upon the required notice.

(b) The court may, by written order, shorten the notice required to be given to the opposite party.

3. In any judicial district in which two or more judges are provided:

(a) All motions subject to the provisions of subsection 1 must be made in writing not less than 15 days before the date set for trial, except that if less than 15 days intervene between entry of a plea and the date set for trial, such a motion may be made within 5 days after entry of the plea.

(b) The court may, if a defendant waives hearing on the motion or for other good cause shown, permit the motion to be made at a later date.

4. Grounds for making such a motion after the time provided or at the trial must be shown by affidavit.

NRS 174.135 Hearing on motion.

1. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

2. An issue of fact shall be tried by a jury if a jury trial is required under the Constitution of the United States or of the State of Nevada or by statute.

3. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

NRS 174.145 Effect of determination.

1. If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant had not previously pleaded. A plea previously entered shall stand.

2. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information or complaint, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time pending the filing of a new indictment, information or complaint.

3. Nothing in this section shall affect the provisions of any statute relating to periods of limitations.

Rule 8.1 Papers which may not be filed

8th Rule 3.70. Papers which may not be filed.
Except as may be required by the provisions of NRS 34.730 to 34.830,[18] inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to that attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

[18] NRS 34.730 to 34.830 address petitions for postconviction relief.

Rule 9. Pretrial Writs of Habeas Corpus

8th Rule 3.40. Writs of habeas corpus.

(a) Each petition for a writ of habeas corpus based on alleged want of probable cause or otherwise challenging the court's jurisdiction to proceed to the trial of a criminal charge must contain a notice of hearing setting the matter for hearing 14 days from the date the petition is filed and served. In the event the judge to whom the case is assigned is not scheduled to hear motions on the 14th day following the service and filing of the petition, the notice must designate the next day when the judge has scheduled the hearing of motions.

(b) Any other petition for writ of habeas corpus, including those alleging a delay in any of the proceedings before the magistrate or a denial of the petitioner's right to a speedy trial, must contain a notice of hearing setting the matter for hearing not less than 1 full judicial day from the date the writ is filed and served.

(c) All points and authorities in support of the petition for writ of habeas corpus must be served and filed at the time of the filing of the petition. The prosecutor must serve and file a return and a response to the petitioner's points and authorities within 10 days from the receipt of a petition for a writ of habeas corpus based on alleged want of probable cause or otherwise challenging the court's jurisdiction to proceed to the trial of a criminal charge. The prosecutor may serve and file a return and a response to the petitioner's points and authorities in open court at the time noticed for the hearing on any other writ of habeas corpus.

(d) The court reporter who takes down all the testimony and proceedings of the preliminary hearing must, within 15 days after the defendant has been held to answer in the district court, complete the certification and filing of the preliminary hearing transcript.

(e) Ex parte applications for extensions of the 21-day period of limitation for filing writs of habeas corpus will only be entertained in the event that the transcript of the preliminary hearing or of the proceedings before the grand jury is not available within 14 days after the defendant's initial appearance. Such ex parte applications must be accompanied by an affidavit of the defendant's attorney that counsel has examined the file in the Office of the Clerk of the Court and that the transcript of the preliminary hearing or of the proceedings before the grand jury has not been filed within the 14-day period of limitation. Applications for extensions of time to file writs of habeas corpus must be for not more than 14 days. Further extensions of time will be granted only in extraordinary cases.

2nd LR Rule 22. Writs of habeas corpus.

1. Each petition for a writ of habeas corpus based on alleged want of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge shall be accompanied by a notice for the prosecutor to appear before the appropriate court department, at a specific date and time not less than 5 nor more than 10 days after filing such petition, to set the matter for hearing. The hearing on the writ shall be set within 21 days from the date the petition is filed.

2. Any other pretrial petition for writ of habeas corpus, including those alleging a delay in any of the proceedings before a magistrate or a denial of the petitioner's right to a speedy trial in justice court or municipal court, shall contain a notice of the hearing thereof setting the matter for hearing not less than 1 full judicial day from the date the petition is filed and served.
3. All points and authorities urged in support of the petition for writ of habeas corpus shall be served and filed at the time of the filing of the petition. The prosecutor shall serve and file a return and a response to the petitioner's points and authorities within 10 days from the receipt of a petition for a writ of habeas corpus based on alleged want of probable cause or otherwise challenging the court's rights or jurisdiction to proceed to the trial of a criminal charge (section 1 hereof). The prosecutor may serve and file a return and a response to the petitioner's points and authorities in open court at the time noticed for the hearing on a writ of habeas corpus covered under section 2 hereof.
4. Ex parte applications for extension of the 21-day period of limitation for filing writs of habeas corpus will only be entertained in the event that the transcript of the preliminary hearing or of the proceedings before the grand jury, as the case may be, is not available within 14 days after the defendant's initial appearance. Such ex parte applications shall be accompanied by a certificate of the defendant's attorney that the attorney has examined the file in the filing office and that the transcript of the preliminary hearing or the proceedings before the Washoe County Grand Jury has not been filed within the 14-day period (NRS 34.700(3)).[19] Applications for extension of time to file writs of habeas corpus shall be for not more than 14 days, except where the ground for such application is the unavailability of the transcript, in which case the extension may be for not more than 14 days after the transcript is available. Further extensions of time will be granted only in extraordinary cases.
5. Any writ filed on a criminal case at the district court level shall be assigned to the same department where the underlying criminal case is filed. If no such previous criminal case exists the writ shall be randomly assigned to a department.

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[19] **NRS 34.700 Time for filing; waiver and consent of accused respecting date of trial** 1. Except as provided in subsection 3, a pretrial petition for a writ of habeas corpus based on alleged lack of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge may not be considered unless:

(a) The petition and all supporting documents are filed within 21 days after the first appearance of the accused in the district court; and

(b) The petition contains a statement that the accused:

(1) Waives the 60-day limitation for bringing an accused to trial; or

(2) If the petition is not decided within 15 days before the date set for trial, consents that the court may, without notice or hearing, continue the trial indefinitely or to a date designated by the court.

2. The arraignment and entry of a plea by the accused must not be continued to avoid the requirement that a pretrial petition be filed within the period specified in subsection 1.

3. The court may extend, for good cause, the time to file a petition. Good cause shall be deemed to exist if the transcript of the preliminary hearing or of the proceedings before the grand jury is not available within 14 days after the accused's initial appearance and the court shall grant an ex parte application to extend the time for filing a petition. All other applications may be made only after appropriate notice has been given to the prosecuting attorney.

Rule 10. Stay Orders.

8th Rule 3.44. Stay orders.

An ex parte application for a stay of proceedings before a magistrate may only be made with the written consent of the State of Nevada. Any other application for a stay of proceedings before a magistrate may only be made after reasonable oral notice to the State.

Rule 11. Extending Time.

8th Rule 3.50. Extending time.

(a) When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; but it may not extend the time for taking any action under Rule 3.40,[20] except to the extent and under the conditions stated therein.

(b) Ex parte motions to extend time may not be granted except upon an affidavit or certificate of counsel demonstrating circumstances claimed to constitute good cause and justify enlargement of time.

8th Rule 7.25. Orders extending time; notice to opposing party.

No order, made on ex parte application, granting or extending the time to file any paper or do any act is valid for any purpose in case of objection, unless a copy thereof is served upon the opposing party not later than the end of the next judicial day.

2nd LR Rule 11. Extension or shortening of time.

1. All motions for extensions of time shall be made upon 5 days' notice to all counsel. Such motion shall be made to the judge who is to try the case, or, if the judge is not in the courthouse during regular judicial hours, to a judge on the same floor who shall set or cause the motion to be set for early hearing. (For the sake of this rule Department 10 is deemed to be on the second floor.)
2. Except as provided in this subsection, no ex parte application for extension of time will be granted. Upon presentation of a motion for extension, if a satisfactory showing is made to the judge that a good faith effort has been made to notify opposing counsel of the motion, and the judge finds good cause therefor, the judge may order ex parte a temporary extension pending a determination of the motion.
3. For good cause shown, the judge who is to try the case, or if the judge is not in the courthouse during regular judicial hours, the chief judge, may make an ex parte order shortening time upon a satisfactory showing to the judge that a good faith effort has been made to notify the opposing counsel of the motion.
4. Extensions to answer or otherwise respond to a complaint shall not exceed 40 days without court approval. The trial judge shall determine the appropriate sanction if this rule is violated.

[20] Addresses pretrial writs of habeas corpus.

Rule 12. Shortening Time.

8th Rule 3.60. Shortening time.

Ex parte motions to shorten time may not be granted except upon an affidavit or certificate of counsel describing the circumstances claimed to constitute good cause and justify shortening of time. If a motion to shorten time is granted, it must be served upon all parties promptly. In no event may the notice of the hearing of a motion be shortened to less than 1 full judicial day.

2nd LR Rule 11. Extension or shortening of time.

1. All motions for extensions of time shall be made upon 5 days' notice to all counsel. Such motion shall be made to the judge who is to try the case, or, if the judge is not in the courthouse during regular judicial hours, to a judge on the same floor who shall set or cause the motion to be set for early hearing. (For the sake of this rule Department 10 is deemed to be on the second floor.)
2. Except as provided in this subsection, no ex parte application for extension of time will be granted. Upon presentation of a motion for extension, if a satisfactory showing is made to the judge that a good faith effort has been made to notify opposing counsel of the motion, and the judge finds good cause therefor, the judge may order ex parte a temporary extension pending a determination of the motion.
3. For good cause shown, the judge who is to try the case, or if the judge is not in the courthouse during regular judicial hours, the chief judge, may make an ex parte order shortening time upon a satisfactory showing to the judge that a good faith effort has been made to notify the opposing counsel of the motion.
4. Extensions to answer or otherwise respond to a complaint shall not exceed 40 days without court approval. The trial judge shall determine the appropriate sanction if this rule is violated.

Rule 13. Jury instructions and exhibits.

2nd CR Rule 8. Jury instructions and exhibits.

(a) Prior to the submission of jury instructions, counsel for the parties shall meet and confer to avoid the submission of duplicate instructions. Jury instructions offered by the State shall be served on any opposing party and submitted to the court no later than 5:00 p.m. on the Wednesday before trial. Jury instructions offered by the defense shall be submitted in camera by Friday before trial.

(b) All proposed jury instructions shall be in clear, legible type on clean, white, heavy paper 8 1/2 × 11 inches in size and not lighter than 16 lb. weight with a black border line and no less than 24 numbered lines. The signature line with the words "District Judge" typed thereunder shall be placed on the right half of the page, a few lines below the last line of type on the last instruction. The designation, "Instruction No. ___" shall be near the lower left hand corner of the page.

(c) All original instructions, except pattern instructions, shall be accompanied by a separate copy of the instruction containing a citation to the form instruction, statutory or case authority supporting that instruction.

(d) The district court shall conduct a conference with all counsel to settle jury instructions as provided by NRS 175.161.[21] During that conference, the parties may submit additional jury instructions as needed. New instructions offered at that time must comply with subsections (b) and (c) of this rule.

(e) Any rejected instruction shall be made a part of the record as proposed and filed with the clerk marked as "Refused."

(f) Trial exhibits shall be marked in one numerical sequence, without regard to the offering party, at a conference scheduled by counsel with the court clerk. The conference shall be conducted during the week before trial. Once the clerk marks the trial exhibits, they shall remain in the custody of the clerk.

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[21] **NRS 175.161 Instructions.**

1. Upon the close of the argument, the judge shall charge the jury. The judge may state the testimony and declare the law, but may not charge the jury in respect to matters of fact. The charge must be reduced to writing before it is given, and no charge or instructions may be given to the jury otherwise than in writing, unless by the mutual consent of the parties. If either party requests it, the court must settle and give the instructions to the jury before the argument begins, but this does not prevent the giving of further instructions which may become necessary by reason of the argument.

2. In charging the jury, the judge shall state to them all such matters of law the judge thinks necessary for their information in giving their verdict.

3. Either party may present to the court any written charge, and request that it be given. If the court believes that the charge is pertinent and an accurate statement of the law, whether or not the charge has been adopted as a model jury instruction, it must be given. If the court believes that the charge is not pertinent or not an accurate statement of law, then it must be refused.

4. An original and one copy of each instruction requested by any party must be tendered to the court. The copies must be numbered and indicate who tendered them. Copies of instructions given on the court's own motion or modified by the court must be so identified. When requested instructions are refused, the judge shall write on the margin of the original the word "refused" and initial or sign the notation. The instructions given to the jury must be firmly bound together and the judge shall write the word "given" at the conclusion thereof and sign the last of the instructions to signify that all have been given. After the instructions are given, the judge may not clarify, modify or in any manner explain them to the jury except in writing unless the parties agree to oral instructions.

5. After the jury has reached a verdict and been discharged, the originals of all instructions, whether given, modified or refused, must be preserved by the clerk as part of the proceedings.

6. Conferences with counsel to settle instructions must be held out of the presence of the jury and may be held in chambers at the option of the court.

7. When the offense charged carries a possible penalty of life without possibility of parole a charge to the jury that such penalty does not exclude executive clemency is a correct and pertinent charge, and must be given upon the request of either party.

(g) When marking exhibits with the clerk, counsel shall advise the clerk of all exhibits that may be admitted without objection. Any stipulated exhibits or exhibits as to which there is no objection are deemed admitted and may be referenced by counsel in opening statement.

2nd LR Rule 7. Jury instructions.

1. This rule on jury instructions applies to both civil and criminal cases.
2. All proposed jury instructions shall be in clear, legible type on clean, white, heavy paper, 8 1/2 by 11 inches in size, and not lighter than 16-lb. weight with a black border line and no less than 24 numbered lines.
3. The signature line with the words "district judge" typed thereunder, shall be placed on the right half of the page, a few lines below the last line of type on the last instruction. (See NRS 16.110[22] and NRS 175.161.[23])
4. The designation "Instruction No. ....." shall be near the lower left hand corner of the page.
5. The original instructions shall not bear any markings identifying the attorney submitting the same, and shall not contain any citations of authority, except that such instructions may bear the numerical reference to Nevada Pattern Civil Jury

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[22] **NRS 16.110 Instructions to jury.**

1. The court shall reduce to writing the instructions to be given to the jury, unless the parties agree otherwise, and shall read such instructions to the jury. The court shall give instructions only as to the law of the case. An original and one copy of each instruction requested by any party shall be tendered to the court. The copies shall be numbered and indicate who tendered them. Copies of instructions given on the court's own motion or modified by the court shall be so identified. When requested instructions are refused, the judge shall write on the margin of the original the word "refused" and initial or sign the notation. The instructions given to the jury shall be firmly bound together and the judge shall write the word "given" at the conclusion thereof and sign the last of the instructions to signify that all have been given. After the instructions are given, the judge shall not clarify, modify or in any manner explain them to the jury except in writing unless the parties agree to oral instructions.

2. After the jury has reached a verdict and been discharged, the originals of all instructions, whether given, modified or refused, shall be preserved by the clerk as part of the proceedings.

3. Conferences with counsel to settle instructions may be held in chambers at the option of the court. In any event, conferences on instructions must be out of the presence of the jury.

[23] **NRS 175.161 Instructions.**

1. Upon the close of the argument, the judge shall charge the jury. The judge may state the testimony and declare the law, but may not charge the jury in respect to matters of fact. The charge must be reduced to writing before it is given, and no charge or instructions may be given to the jury otherwise than in writing, unless by the mutual consent of the parties. If either party requests it, the court must settle and give the instructions to the jury before the argument begins, but this does not prevent the giving of further instructions which may become necessary by reason of the argument.

2. In charging the jury, the judge shall state to them all such matters of law the judge thinks necessary for their information in giving their verdict.

3. Either party may present to the court any written charge, and request that it be given. If the court believes that the charge is pertinent and an accurate statement of the law, whether or not the charge has been adopted as a model jury instruction, it must be given. If the court believes that the charge is not pertinent or not an accurate statement of law, then it must be refused.

4. An original and one copy of each instruction requested by any party must be tendered to the court. The copies must be numbered and indicate who tendered them. Copies of instructions given on the court's own motion or modified by the court must be so identified. When requested instructions are refused, the judge shall write on the margin of the original the word "refused" and initial or sign the notation. The instructions given to the jury must be firmly bound together and the judge shall write the word "given" at the conclusion thereof and sign the last of the instructions to signify that all have been given. After the instructions are given, the judge may not clarify, modify or in any manner explain them to the jury except in writing unless the parties agree to oral instructions.

5. After the jury has reached a verdict and been discharged, the originals of all instructions, whether given, modified or refused, must be preserved by the clerk as part of the proceedings.

6. Conferences with counsel to settle instructions must be held out of the presence of the jury and may be held in chambers at the option of the court.

7. When the offense charged carries a possible penalty of life without possibility of parole a charge to the jury that such penalty does not exclude executive clemency is a correct and pertinent charge, and must be given upon the request of either party.

Instructions. No portion thereof shall be in capital letters, underlined or otherwise emphasized.

6. Authorities for any instruction must be attached to the original instructions by removable adhesive paper.
7. Any rejected instructions (i.e., submitted to the judge, but not delivered to the jury) shall be made a part of the case file as having been proposed.
8. Proposed jury instructions shall be submitted to the court by delivering the original to the judge's chambers no later than 5:00 p.m. on the Friday before trial. Proposed jury instructions shall be personally served upon opposing counsel, if counsel maintains an office in Washoe County, on the same day that they are submitted to the court. Otherwise, opposing counsel shall be served at the first day of trial. A judge may order jury instructions to be submitted to the court at a pretrial conference.
9. Plaintiff's attorney shall prepare the stock instructions.

Rule 14. Sentencing

2nd CR Rule 9. Sentencing.

(a) Counsel are required to assist the court in projecting the time required to conduct the sentencing hearing. Counsel anticipating any unusual matters affecting the length or other conditions of any sentencing proceeding shall advise the court prior to or at the setting of the sentencing date, or as soon thereafter as practicable. The court may set lengthy sentencing hearings on dates and times different from the department's customary criminal calendar.

(b) If the court deems the defendant to be an appropriate referral, the court shall,

(1) at arraignment, where legally permissible, transfer the case to Drug Court for all further proceedings. A defendant seeking entry into the Drug Court program must obtain conditional approval prior to assignment;

(2) pursuant to the provisions of NRS Chapters 453 and 458, at sentencing, transfer the case to the Second Judicial District Specialty Court; or

(3) at sentencing, order a defendant to complete Second Judicial District Specialty Court as a condition of probation and transfer the case for that purpose;

(4) the Specialty Court has jurisdiction of the matter until the defendant is terminated from Specialty Court at which time Specialty Court shall transfer the matter to the sentencing court for further action.

(c) The court shall not consider any ex parte communication, letter, report or other document but shall forthwith notify counsel for all parties, on the record, of any attempted ex parte communication or document submission.

Comment: If possible, the court should be aware of any unusual aspects of sentencing when the sentencing time and date are set. These may include anticipated delays in the provision of legal documents, the need for a restitution hearing, or lengthy testimony of witnesses. Except as otherwise required by law, counsel for all parties should be privy to any communications or materials submitted in mitigation or aggravation of sentence. The rule also clarifies the jurisdiction of the departments for cases assigned to Drug Court, Diversion Court and probation where Drug Court is a condition.

Rule 15. Continuances.

Rule 7.30. Motions to continue trial settings.

(a) Any party may, for good cause, move the court for an order continuing the day set for trial of any cause. A motion for continuance of a trial must be supported by affidavit except where it appears to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion.

(b) If a motion for continuance is made on the ground that a witness is or will be absent at the time of trial, the affidavit must state:

(1) The name of the witness, the witness' usual home address, present location, if known, and the length of time that the witness has been absent.

(2) What diligence has been used to procure attendance of the witness or secure the witness' deposition, and the causes of the failure to procure the same.

(3) What the affiant has been informed and believes will be the testimony of the absent witness, and whether the same facts can be proven by witnesses, other than parties to the suit, whose attendance or depositions might have been obtained.

(4) The date the affiant first learned that the attendance or deposition of the absent witness could not be obtained.

(5) That the application is made in good faith and not merely for delay.

(c) Except in criminal matters, if a motion for continuance is filed within 30 days before the date of the trial, the motion must contain a certificate of counsel for the movant that counsel has provided counsel's client with a copy of the motion and supporting documents. The court will not consider any motion filed in violation of this paragraph and any false certification will result in appropriate sanctions imposed pursuant to Rule 7.60.[24]

(d) No continuance may be granted unless the contents of the affidavit conform to this rule, except where the continuance is applied for in a mining case upon the special ground provided by NRS 16.020.

(e) No amendments or additions to affidavits for continuance will be allowed at the hearing on the motion and the court may grant or deny the motion without further argument.

(f) Trial settings may not be vacated by stipulation, but only by order of the court. The party moving for the continuance of a trial may obtain an order shortening the time for the hearing of the motion for continuance. Except in an emergency, the party requesting a continuance shall give all opposing parties at least 3 days' notice of the time set for hearing the motion. The hearing of the motion shall be set not less than 1 day before the trial.

(g) When application is made to a judge, master or commissioner to postpone a motion, trial or other proceeding, the payment of costs (including but not limited to the

[24] EDCR 7.60 specifically addresses sanctions.

expenses incurred by the party) and attorney fees may be imposed as a condition of granting the postponement.

(h) Motions or stipulations to continue a civil trial that also seek extension of discovery dates must comply with Rule 2.35.

2nd CR Rule 10. Continuances.

(a) The timing of proceedings as directed by the court at the initial appearance shall not be enlarged except upon a showing of good cause.

(b) Stipulations or requests for the continuance of any proceeding shall be in writing, signed by counsel and the defendant, and submitted to the court as soon as practicable but in no event later than 4:00 p.m. on the judicial day immediately preceding the event. The court may waive the signature of the defendant provided counsel certifies he or she has obtained the consent of the defendant to the continuance.

Comment: Continuances of any criminal proceeding are not favored, but, if requested, shall be presented to the court under the terms of this rule.

2nd LR Rule 13. Continuances.

1. No continuance of a trial in a civil or criminal case shall be granted except for good cause. A motion or stipulation for continuance shall state the reason therefor and whether or not any previous request for continuance had been either sought or granted. The motion or stipulation must certify that the party or parties have been advised that a motion or stipulation for continuance is to be submitted in their behalf and must state any objection the parties may have thereto.
2. If a continuance of any trial is granted, the parties must appear in the individual court department within 5 days and reset the case, unless the court waives this requirement. Failure to follow this rule may result in the court setting the trial date.

Rule 16. Sanctions.

Rule 7.60. Sanctions.

(a) If without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party on the call of a calendar, at the time set for the hearing of any matter, at a pre-trial conference, or on the date of trial, the court may order any one or more of the following:

(1) Payment by the delinquent attorney or party of costs, in such amount as the court may fix, to the clerk or to the adverse party.

(2) Payment by the delinquent attorney or party of the reasonable expenses, including attorney's fees, to any aggrieved party.

(3) Dismissal of the complaint, cross-claim, counter-claim or motion or the striking of the answer and entry of judgment by default, or the granting of the motion.

(4) Any other action it deems appropriate, including, without limitation, imposition of fines.

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

(1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.

(2) Fails to prepare for a presentation.

(3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

(4) Fails or refuses to comply with these rules.

(5) Fails or refuses to comply with any order of a judge of the court.

2nd LR Rule 21. Sanctions for noncompliance.

If a party or an attorney fails or refuses to comply with these rules, the court may make such orders and impose such sanctions as are just, including, but not limited to the following:

1. Hold the disobedient party or attorney in contempt of court.
2. Continue any hearing until the disobedient party or attorney has complied with the requirements imposed.
3. Require the disobedient party to pay the other party's expenses, including a reasonable attorney's fee, incurred in preparing for and attending such hearing.
4. Enter an order authorized by N.R.C.P. 37.

Rule 17. Voir Dire.

Rule 7.70. Voir dire examination.

The judge must conduct the voir dire examination of the jurors. Except as required by Rule 2.68, proposed voir dire questions by the parties or their attorneys must be submitted to the court in chambers not later than 4:00 p.m. on the judicial day before the day the trial begins. Upon request of counsel, the trial judge may permit counsel to supplement the judge's examination by oral and direct questioning of any of the prospective jurors. The scope of such additional questions or supplemental examination must be within reasonable limits prescribed by the trial judge in the judge's sound discretion.

The following areas of inquiry are not properly within the scope of voir dire examination by counsel:

(a) Questions already asked and answered.

(b) Questions touching on anticipated instructions on the law.

(c) Questions touching on the verdict a juror would return when based upon hypothetical facts.

(d) Questions that are in substance arguments of the case.

Rule 18. Court interpreters.

Rule 7.80. Court interpreters.

(a) Counsel must notify the court interpreter's office of a request for interpreter not less than 48 hours before the hearing or trial is scheduled. In criminal cases when the defendant has been declared an indigent, and in civil cases when a determination of indigency has been made pursuant to NRS 12.015, there may be no charge for available court interpreters. In all other cases, the party requesting the interpreter must pay any reasonable fees as may be set by the chief judge to the clerk in advance for the services of a court interpreter.

In exceptional cases, the fee schedule may be waived, increased or decreased, at the discretion of the court. When it is necessary to employ interpreters from outside Clark County, actual and necessary expenses shall also be paid by the party requesting the interpreter.

(b) An interpreter qualified for and appointed to a case must appear at all subsequent court proceedings unless relieved as interpreter of record by the court.

Rule 19. Appeals from municipal and justice courts.

2nd LR Rule 19. Appeals from municipal and justice courts.

1. All appeals from the municipal or justice courts in criminal cases shall be set for trial or hearing within 60 days of the date of application for setting. A setting beyond 60 days may be made only if approved in writing by the trial judge or the chief judge. If a trial setting is continued by order of the court, the case shall be reset within 60 days of the date of the order for continuance.
2. If multiple settings for appeal trials in any one court department exceed the capacity of that department, settings shall be made in the designated department scheduled to handle the overflow. If that court's calendar becomes full, assignment shall be made to any other available department.
3. Appeals in criminal cases shall be set for trial on Thursdays and Fridays, unless the trial judge or the chief judge grants permission to make such settings on other judicial days.
4. In civil appeals from the justice court, appellant shall file within 30 days after the filing of a notice of appeal a written brief containing a statement of the errors committed in the justice court with accompanying authorities which shall not exceed 5 pages. Within 20 days after the filing and service of appellant's brief, respondent shall file a written answering brief which shall not exceed 5 pages.

Rule 20. Miscellaneous provisions.

2nd CR Rule 11. Miscellaneous provisions.

(a) A pretrial status conference may be conducted if deemed appropriate by the court.

(b) Any withdrawal of counsel shall be in writing, approved by the court and served on opposing counsel and notice to the party affected.

(c) Substitutions of counsel shall be in writing and served on opposing counsel. Substituted counsel shall transfer all files and discovery to the defendant's new counsel within 5 days of the date of substitution.

(d) Transfer of primary responsibility for cases between attorneys within the same office requires the filing of a Notice of Appearance. This applies but is not limited to government agencies of the Washoe County District Attorney's Office, the Washoe County Public Defender's Office, and the Washoe County Alternate Public Defender's Office.

(e) Counsel shall not communicate with or attempt to influence a law clerk upon the merits of any contested matter pending before the judge to whom the law clerk is assigned.

Comment: Status conferences are conducted to monitor the progress of a case. The court shall not conduct settlement conferences in criminal cases.

18 U.S. Code § 3142. Release or detention of a defendant pending trial

(a) In General.—Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

(1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;

(2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

(b) Release on Personal Recognizance or Unsecured Appearance Bond.—

The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a), unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) Release on Conditions.—

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a); 1 and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) Temporary Detention To Permit Revocation of Conditional Release, Deportation, or Exclusion.— If the judicial officer determines that—

(1) such person—

(A) is, and was at the time the offense was committed, on—

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) such person may flee or pose a danger to any other person or the community;such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to

notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take such person into custody during that period, such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, such person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e)Detention.—

(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—
(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;
(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and
(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed—
(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;
(B) an offense under section 924(c), 956(a), or 2332b of this title;
(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;
(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or
(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

(f)Detention Hearing.—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—
(A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;
(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;
(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or
(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion in a case, that involves—
(A) a serious risk that such person will flee; or
(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(g) Factors To Be Considered.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
(2) the weight of the evidence against the person;
(3) the history and characteristics of the person, including—
(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) Contents of Release Order.—In a release order issued under subsection (b) or (c) of this section, the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and
(2) advise the person of—
(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;
(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and
(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) Contents of Detention Order.—In a detention order issued under subsection (e) of this section, the judicial officer shall—
(1) include written findings of fact and a written statement of the reasons for the detention;
(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;
(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and
(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) Presumption of Innocence.—

Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

TAB 4

Rule 8. Pretrial motions.

Motions.

(a) Time for filing.

i. Unless otherwise provided by law, by these rules, or by written scheduling order entered by the court in the particular case, all pre-trial motions, including motions to suppress evidence, to exclude or admit evidence, for a transcript of former proceedings, for a preliminary hearing, for severance of joint defendants, for withdrawal of counsel, and all other motions which by their nature, if granted, delay or postpone the time of trial, must be made in writing and served and filed not less than 15 days before the date set for trial.

ii. If a pretrial motion is filed 15 days or less prior to trial, it shall be served upon the opposing party on the date of filing by one of the following means: electronic mail, if the party being served consents in writing in the manner described in section iv; personal service; or e-filing.

iii. The court may decline to consider any motion filed in violation of this rule. The court will only consider a motion in limine made later than 15 days before the date of trial if there is good cause for making the motion at a later date. Good cause may include, but is not limited to, that an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial. A pretrial motion made later than 15 days before the trial date shall be accompanied by an affidavit or declaration demonstrating good cause for making the motion at the later date.

iv. In jurisdictions without electronic filing, a party may agree to accept electronic service by filing and serving a notice. The notice must include the electronic notification address(es) at which the party agrees to accept service.

(b) Hearing of motions.

Presumption that oral argument/hearing must be requested

i. All motions shall be decided without oral argument unless 1) requested by a party and ordered by the court, or 2) ordered by the court of its own accord.

ii. If a hearing upon a motion is required by law or requested by a party and a hearing for pretrial motions has not already been set in the case, the party seeking the hearing shall file a Notice of Request for Hearing on the date the motion is filed. The Notice of Request for Hearing shall identify the motion for which the hearing is requested, shall state whether the hearing is anticipated to be evidentiary or consist only of oral argument of the motion, and shall be filed in substantially the form set forth below.

CODE
ATTORNEY NAME
BAR NUMBER
ADDRESS

CITY, STATE, ZIP CODE
PHONE NUMBER
ATTORNEY FOR:

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR99-00000

RICHARD ROE,

Defendant. Dept. No. .....

[REQUEST FOR ORAL ARGUMENT OF MOTION]
[REQUEST FOR EVIDENTIARY HEARING UPON MOTION]

The Defendant hereby requests a hearing upon the Motion to Suppress Evidence filed on January 1, 2010. This hearing is anticipated to be evidentiary.

Sample Pleading

Presumption for oral argument/hearing of every motion

i. The court shall set a hearing for each motion. Unless an evidentiary hearing upon a motion is required by law, the court may consider a motion on its merits at any time after the opposition is filed or after the time for filing an opposition, with or without oral argument, and grant or deny it prior to the hearing.

(c) Oppositions to motions.

i. Within 10 days after the service of a motion, the opposing party must serve and file written opposition thereto.

ii. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion is meritorious and a consent to granting of the same.

iii. If an opposition to a motion is filed 5 days or less prior to trial, it shall be served upon the opposing party on the date of filing by one of the following means: electronic mail, if the party being served consents in writing consistent with subsection (a)(iv); personal service; or e-filing.

(d) Replies.

i. Within 3 days after the service of an opposition, the moving party may serve and file written reply thereto.

ii. A reply shall not address any point or issue not raised by the opposition.

iii. If a reply to an opposition is filed 5 days or less prior to trial, it shall be served upon the opposing party on the date of filing by one of the following means: electronic mail, if the party being served consents in writing consistent with subsection (a)(iv); personal service; or e-filing.

(e) Points and authorities supporting motions.

Any pretrial motion and opposition thereto shall contain or be accompanied by points and authorities in support of each ground thereof and any affidavits or declarations relied upon. The absence of such points and authorities may be construed as an admission that the motion is not meritorious, as cause for its denial, or as a waiver of any ground not so supported.

(f) Submission of motions.

i. Unless the clerk of the district court has provided alternative means of notifying the judicial department of the pendency of motions, after a reply is filed or after the time for filing a reply has expired any party may submit the motion for decision by filing and serving upon all parties: a written request to submit the motion on a form supplied by the filing office, a written pleading in substantially the same form, or a pleading in substantially the form set forth below. If the moving party does not file a reply, a motion may be submitted after an opposition has been filed or after the time for filing an opposition has expired.

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR99-00000

RICHARD ROE,

Defendant. Dept. No. .....

REQUEST TO SUBMIT MOTION

It is requested that the MOTION TO SUPPRESS EVIDENCE filed on January 1, 2020, be submitted to the court for decision.

Sample Pleading

ii. The court may decline to consider any motion that has not been submitted in accord with this rule.

(g) Rehearing of motions.

i. No motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.

ii. A party seeking reconsideration of a ruling of the court must file a motion for such relief within 5 days after entry of the order or judgment, unless the time is shortened or enlarged by order.

iii. A motion for rehearing or reconsideration must be served, filed, and heard as is any other motion. A motion for rehearing does not toll any applicable period for filing a notice of appeal from a final order or judgment.

iv. If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument, or may restore it to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(h) Motions for pretrial release or to increase or decrease bail.

i. Unless otherwise ordered by the court, all motions for pretrial release or to increase or decrease bail must be in writing, supported by an affidavit or declaration of the movant or the movant's attorney.

ii. In proceedings upon an information, proceedings upon the motion shall occur according to subsections (a)-(e).

iii. In proceedings upon an indictment, when no parallel proceeding in the justices courts preceded the indictment, if the motion is filed prior to or on the date of the defendant's first appearance, the court may 1) set the matter for hearing not less than 2 full judicial days from the date the motion is served and filed, or 2) order that proceedings upon the motion occur according to subsections (a)-(d). If the court sets the matter for hearing less than 10 days from the date the motion is served and filed, the opponent to the motion may respond orally in open court.

(i) Computation of time.

In computing any period of time for this rule, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and nonjudicial days shall be excluded in the computation.

Relevant statutes

NRS 174.095 Defenses and objections which may be raised by motion. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

NRS 174.098 Motion to declare that defendant is intellectually disabled: When authorized; procedure.

1. A defendant who is charged with murder of the first degree in a case in which the death penalty is sought may, not less than 10 days before the date set for trial, file a motion to declare that the defendant is intellectually disabled.

2. If a defendant files a motion pursuant to this section, the court must:

(a) Stay the proceedings pending a decision on the issue of intellectual disability; and

(b) Hold a hearing within a reasonable time before the trial to determine whether the defendant is intellectually disabled.

3. The court shall order the defendant to:

(a) Provide evidence which demonstrates that the defendant is intellectually disabled not less than 30 days before the date set for a hearing conducted pursuant to subsection 2; and

(b) Undergo an examination by an expert selected by the prosecution on the issue of whether the defendant is intellectually disabled at least 15 days before the date set for a hearing pursuant to subsection 2.

4. For the purpose of the hearing conducted pursuant to subsection 2, there is no privilege for any information or evidence provided to the prosecution or obtained by the prosecution pursuant to subsection 3.

5. At a hearing conducted pursuant to subsection 2:

(a) The court must allow the defendant and the prosecution to present evidence and conduct a cross-examination of any witness concerning whether the defendant is intellectually disabled; and

(b) The defendant has the burden of proving by a preponderance of the evidence that the defendant is intellectually disabled.

6. If the court determines based on the evidence presented at a hearing conducted pursuant to subsection 2 that the defendant is intellectually disabled, the court must make such a finding in the record and strike the notice of intent to seek the death penalty. Such a finding may be appealed pursuant to NRS 177.015.

7. For the purposes of this section, "intellectually disabled" means significant subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and manifested during the developmental period.

NRS 174.105 Defenses and objections which must be raised by motion.

1. Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant.

2. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver.

3. Lack of jurisdiction or the failure of the indictment, information or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

NRS 174.115 Time of making motion. The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

NRS 174.125 Certain motions required to be made before trial.

1. All motions in a criminal prosecution to suppress evidence, for a transcript of former proceedings, for a preliminary hearing, for severance of joint defendants, for withdrawal of counsel, and all other motions which by their nature, if granted, delay or postpone the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial.

2. In any judicial district in which a single judge is provided:

(a) All motions subject to the provisions of subsection 1 must be made in writing, with not less than 10 days' notice to the opposite party unless good cause is shown to the court at the time of trial why the motion could not have been made in writing upon the required notice.

(b) The court may, by written order, shorten the notice required to be given to the opposite party.

3. In any judicial district in which two or more judges are provided:

(a) All motions subject to the provisions of subsection 1 must be made in writing not less than 15 days before the date set for trial, except that if less than 15 days intervene between entry of a plea and the date set for trial, such a motion may be made within 5 days after entry of the plea.

(b) The court may, if a defendant waives hearing on the motion or for other good cause shown, permit the motion to be made at a later date.

4. Grounds for making such a motion after the time provided or at the trial must be shown by affidavit.

NRS 174.135 Hearing on motion.

1. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

2. An issue of fact shall be tried by a jury if a jury trial is required under the Constitution of the United States or of the State of Nevada or by statute.

3. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

NRS 174.145 Effect of determination.

1. If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant had not previously pleaded. A plea previously entered shall stand.

2. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information or complaint, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time pending the filing of a new indictment, information or complaint.

3. Nothing in this section shall affect the provisions of any statute relating to periods of limitations.

TIME

NRS 178.472 Computation. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and nonjudicial days shall be excluded in the computation.

NRS 178.476 Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

1. With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or
2. Upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect,

Ê but the court may not extend the time for taking any action under NRS 176.515 or 176.525 except to the extent and under the conditions stated in those sections.

NRS 178.478 Motions; affidavits.

1. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof must be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application.
2. When a motion is supported by affidavit, the affidavit must be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.
3. A certificate of service must accompany each motion filed.

NRS 178.482 Additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon the party and the notice or other paper is served by mail, 3 days shall be added to the prescribed period.

Service by Direct Email:

8th Judicial Court Rules (EDCR) 8.05(d)

TAB 5

TAB 6

Rule 17. Jury Selection

(1) **Method of selection.** The *court* shall use the following method of selecting the jury.

> The court shall summon the number of the jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted, and for all challenges for cause granted. At the direction of the judge, the clerk shall call jurors in random order. The judge shall hear and determine challenges for cause during the course of questioning. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. After each challenge for cause sustained, another juror shall be called to fill the vacancy, and any such new juror may be challenged for cause. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the prosecution, shall indicate thereon its peremptory challenge to one juror at a time in regular turn, as the court may direct, until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(2) **Examination of prospective jurors.** The court shall conduct the initial examination of prospective jurors and the defendant or the defendant's attorney and the prosecuting attorney are entitled to supplemental examination, which must not be unreasonably restricted. Prior to examining the jurors, the court may make a preliminary statement of the case or the court may direct the defendant or the defendant's attorney and the prosecuting attorney to make a preliminary statement of the case. Nothing in this rule precludes submitting written questionnaires to the prospective jurors or examining individual prospective jurors outside the presence of the other prospective jurors.

The purpose of voir dire examination is to determine whether a prospective juror can and will render a fair and impartial verdict on the evidence presented and apply the facts, as he or she finds them, to the law given. Including but not limited to whether a prospective jurors views and opinions would prevent or substantially impair the performance of his or her duties as a juror in accordance with his or her instructions and oath. Questioning must be designed to elicit information relevant to asserting a possible challenge for cause or enabling the defendant or the

defendant's attorney and the prosecuting attorney to intelligently exercise peremptory challenges where necessary.

(3) **Challenges to panel or individuals.** A challenge may be made to the panel or to an individual juror.

(a) The panel is a list of jurors called to serve at a particular court or for the trial of a particular action. A challenge to the panel is an objection made to all jurors summoned and may be taken by either party.

(i) The challenge to the panel shall be taken before the jury is sworn and shall be in writing or made upon the record. It shall specifically set forth the facts constituting the grounds of the challenge.

(ii) If a challenge to the panel is opposed by the adverse party, a hearing may be had to try any question of fact upon which the challenge is based. The jurors challenged, and any other persons, may be called as witnesses at the hearing thereon.

(iii) The court shall decide the challenge. If the challenge to the panel is allowed, the court shall discharge the jury so far as the trial in question is concerned. If a challenge is denied, the court shall direct the selection of jurors to proceed.

(b) A challenge to an individual juror may be either peremptory or for cause. A challenge to an individual juror may be made only before the jury is sworn to try the case, except the court may, for good cause, permit it to be made after the juror is sworn but before any of the evidence is presented. Challenges for cause shall be completed before peremptory challenges are taken.

(4) **Peremptory challenges.** A peremptory challenge is an objection to a juror for which no reason need be given If the offense charged is punishable by death or by imprisonment for life, each side is entitled to eight peremptory challenges. If the offense charged is punishable by imprisonment for any other term or by fine or by both fine and imprisonment, each side is entitled to four peremptory challenges. The State and the defendant shall exercise their challenges alternately, in that order. Any challenge not exercised in its proper order is waived When several defendants are tried together, they cannot sever their peremptory challenges, but must join therein.

(5) **Challenges for cause.** A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. Either side may challenge any individual juror for disqualification or for any cause or favor which would prevent the juror from adjudicating the facts fairly. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

(a) Want of any of the qualifications prescribed by law *to render a person competent as a juror.*

(b) Any mental or physical infirmity which renders one incapable of performing the duties of a juror.

(c) Consanguinity or affinity within the third degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted.

(d) The existence of any social, legal, business, fiduciary or other relationship between the prospective juror and any party, witness or person alleged to have been victimized or injured by the defendant, which relationship when viewed objectively, would suggest to reasonable minds that the prospective juror would be unable or unwilling to return a verdict which would be free of favoritism. A prospective juror shall not be disqualified solely because the juror is indebted to or employed by the state or a political subdivision thereof.

(e) Having been or being the party adverse to the defendant in a civil action, or having complained against or having been accused by the defendant in a criminal prosecution.

(f) Having served on the grand jury which found the indictment.

(g) Having served on a trial jury which has tried another person for the particular offense charged.

(h) Having been one of a jury formally sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it.

(i) Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

(j) If the offense charged is punishable with death, the juror's views on capital punishment would prevent or substantially impair the performance of the

juror's duties as a juror in accordance with the instructions of the court and the juror's oath.

(k) Because the juror is or, within one-year preceding, has been engaged or interested in carrying on any business, calling or employment, the carrying on of which is a violation of law, where defendant is charged with a like offense.

(l) Because the juror has been a witness, either for or against the defendant on the preliminary examination or before the grand jury.

(m) Having formed or expressed an unqualified opinion or belief as to whether the defendant is guilty or not guilty of the offense charged, but the reading of newspaper accounts of the case shall not disqualify a juror either for bias or opinion unless the juror has formed a state of mind evincing enmity or bias based on a reading of the newspaper accounts or from other media exposure.

(n) Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror views would prevent or substantially impair the performance of his duties as a juror in accordance with his instruction and oath.

(o) The existence of a state of mind in the juror evincing enmity against or bias to either party

(6) **Alternate jurors.** The court may impanel alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties. Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror. If one or two alternate jurors are called, the prosecution and defense shall each have one additional peremptory challenge. If three or four alternate jurors are called, each side shall have two additional peremptory challenges. If five or six alternate jurors are called, the prosecution and defense shall each have three additional peremptory challenges. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court shall recall the jury, seat the alternate and shall instruct the jury to begin its deliberations anew.

(7) **Deliberations in a Capital Case.** In a capital case, alternate jurors not selected to participate in the guilt phase deliberations must not be excused if the jury returns a

guilty verdict of murder of the first degree. This rule governs their continued participation in the case. During the penalty phase of the trial, the alternate jurors must listen to all the evidence and argument presented by counsel. When the jury retires to deliberate during the penalty phase, the alternate jurors may not participate in the deliberation. If a deliberating juror is excused during the penalty phase due to the juror's inability or disqualification to perform required duties, the court shall substitute an alternate juror in accordance with subsection 6. If an alternate replaces a juror who is discharged during the penalty phase deliberation, the court shall recall the jury, seat the alternative and instruct the jury to begin its penalty deliberations anew. The jurors may not deliberate a new a verdict already reached or entered during the guilt phase of the trial. If the alternate juror was not present during the entirety of the penalty phase presentation they may not be seated and a new penalty phase with a new jury must occur.

(8) **Juror oath.** When the jury is impaneled, the court shall administer the juror oath in accordance with NRS 175.111.

Rule 17. Jury Selection

(1) **Method of selection.** The court shall determine the method of selecting the jury and notify the parties at a pretrial conference or otherwise prior to trial. The following procedures for selection are not exclusive.

(a) Strike and replace method. The court shall summon the number of the jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted, and for all challenges for cause granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. After each challenge for cause sustained, another juror shall be called to fill the vacancy, and any such new juror may be challenged for cause. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the prosecution, shall indicate thereon its peremptory challenge to one juror at a time in regular turn, as the court may direct, until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(b) Struck method. The court shall summon the number of jurors that are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted and for all challenges for cause granted. At the direction of the judge, the clerk shall call jurors in random order. The judge may hear and determine challenges for cause during the course of questioning or at the end thereof. The judge may and, at the request of any party, shall hear and determine challenges for cause outside the hearing of the jurors. When the challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with the prosecution, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining jurors, or so many of them as shall be necessary to constitute the jury, including any alternate jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the court prior to voir dire.

(c) In courts using lists of prospective jurors generated in random order by computer, the clerk may call the jurors in that random order.

(2) **Examination of prospective jurors.** The court shall conduct the initial examination of prospective jurors, and the defendant or the defendant's attorney and the prosecuting attorney are entitled to supplement the examination by such further inquiry as the court deems proper. Any supplemental examination must not be unreasonably restricted. Prior to examining the jurors, the court may make a preliminary statement of the case. The court may permit the prosecution and the defense to make a preliminary statement of the case, and notify the parties in advance of trial. Nothing in this rule precludes submitting written questionnaires to the prospective jurors or examining individual prospective jurors outside the presence of other prospective jurors.

Commented [JM1]: NRS 175.031

Commented [JM2]: Arizona Rules of Criminal Procedure 18.5(d)

(a) The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit information relevant to asserting a possible challenge for cause or enabling a party to intelligently exercise the party's peremptory challenges. The following areas of inquiry are not properly within the scope of voir dire examination by counsel:

Commented [JM3]: Arizona Rules of Criminal Procedure 18.5(e)

i. Questions already asked and answered.
ii. Questions touching on anticipated instructions on the law.
iii. Questions touching on the verdict a juror would return when based upon hypothetical facts.
iv. Questions that are fact or substance arguments of the case.

(3) **Challenges to panel or individuals.** A challenge may be made to the panel or to an individual juror.

(a) The panel is a list of jurors called to serve at a particular court or for the trial of a particular action. A challenge to the panel is an objection made to all jurors summoned and may be taken by either party.

(i) A challenge to the panel can be founded only on a material departure from the procedure prescribed with respect to the selection, drawing, summoning and return of the panel.

(ii) The challenge to the panel shall be taken before the jury is sworn and shall be in writing or made upon the record. It shall specifically set forth the facts constituting the grounds of the challenge.

(iii) If a challenge to the panel is opposed by the adverse party, a hearing may be had to try any question of fact upon which the challenge is based. The jurors challenged, and any other persons, may be called as witnesses at the hearing thereon.

(iv) The court shall decide the challenge. If the challenge to the panel is allowed, the court shall discharge the jury so far as the trial in question is concerned. If a challenge is denied, the court shall direct the selection of jurors to proceed.

(b) A challenge to an individual juror may be either peremptory or for cause. A challenge to an individual juror may be made only before the jury is sworn to try the case, except the court may, for good cause, permit it to be made after the juror is sworn but before any of the evidence is presented. In challenges for cause the rules relating to challenges to a panel and hearings thereon shall apply. All challenges for cause shall be taken first by the prosecution and then by the defense alternately. Challenges for cause shall be completed before peremptory challenges are taken.

(4) **Peremptory challenges.** A peremptory challenge is an objection to a juror for which no reason need be given. If the offense charged is punishable by death or by imprisonment for life, each side is entitled to eight peremptory challenges. If the offense charged is punishable by imprisonment for any other term or by fine or by both fine and imprisonment, each side is entitled to four peremptory challenges. The State and the defendant shall exercise their challenges alternately, in that order. Any challenge not exercised in its proper order is waived. When several defendants are tried together, they cannot sever their peremptory challenges, but must join therein.

Commented [JM4]: NRS 175.051(1)

Commented [JM5]: NRS 175.051(2)

Commented [JM6]: NRS 175.051(3)

Commented [JM7]: NRS 175.041

(5) **Challenges for cause.** A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. Either side may challenge any individual juror for disqualification or for any cause or favor which would prevent the juror from adjudicating the facts fairly. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

Commented [JM8]: NRS 175.036(1).

(a) Want of any of the qualifications prescribed by law to render a person competent as a juror.

Commented [JM9]: NRS 16.050(1)(a). While this statute is codified in Title 2 Civil Practice, NRS 175.021 states that trial juries for criminal actions are formed in the same manner as trial juries in civil cases.

(b) Any mental or physical infirmity which renders one incapable of performing the duties of a juror.

(c) Consanguinity or affinity within the third degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted.

Commented [JM10]: NRS 16.050(1)(b)

(d) The existence of any social, legal, business, fiduciary or other relationship between the prospective juror and any party, witness or person alleged to

Commented [JM11]: This is similar to NRS 16.050(1)(c)

have been victimized or injured by the defendant, which relationship when viewed objectively, would suggest to reasonable minds that the prospective juror would be unable or unwilling to return a verdict which would be free of favoritism. A prospective juror shall not be disqualified solely because the juror is indebted to or employed by the state or a political subdivision thereof.

(e) Having been or being the party adverse to the defendant in a civil action, or having complained against or having been accused by the defendant in a criminal prosecution.

(f) Having served on the grand jury which found the indictment.

(g) Having served on a trial jury which has tried another person for the particular offense charged.

(h) Having been one of a jury formally sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it.

(i) Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

Commented [JM12]: These 5 subsections are better than NRS 16.050(1)(d)

(j) If the offense charged is punishable with death, the juror's views on capital punishment would prevent or substantially impair the performance of the juror's duties as a juror in accordance with the instructions of the court and the juror's oath.

(k) Because the juror is or, within one year preceding, has been engaged or interested in carrying on any business, calling or employment, the carrying on of which is a violation of law, where defendant is charged with a like offense.

(l) Because the juror has been a witness, either for or against the defendant on the preliminary examination or before the grand jury.

(m) Having formed or expressed an unqualified opinion or belief as to whether the defendant is guilty or not guilty of the offense charged, but the reading of newspaper accounts of the case shall not disqualify a juror either for bias or opinion.

Commented [JM13]: Added language is from NRS 16.050(1)(f)

(n) Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged, unless the judge is convinced the juror can and will act impartially and fairly.

Commented [JM14]: Similar to NRS 16.050(1)(g)

(6) **Alternate jurors.** The court may impanel alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties. Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror. If one or two alternate jurors are called, the prosecution and defense shall each have one additional peremptory challenge. If three or four alternate jurors are called, each side shall have two additional peremptory challenges. If five or six alternate jurors are called, the prosecution and defense shall each have three additional peremptory challenges. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court shall recall the jury, seat the alternate and instruct the jury to begin its deliberations anew.

(7) **Deliberations in a Capital Case.** In a capital case, alternate jurors not selected to participate in the guilt phase deliberations must not be excused if the jury returns a guilty verdict of murder of the first degree. This rule governs their continued participation in the case. During the penalty phase of the trial, the alternate jurors must listen to the evidence and argument presented by counsel. When the jury retires to deliberate during the penalty phase, the alternate jurors may not participate in the deliberation. If a deliberating juror is excused during the penalty phase due to the juror's inability or disqualification to perform required duties, the court shall substitute an alternate juror in accordance with subsection 6. If an alternate replaces a juror who is discharged during the penalty phase deliberation, the court shall recall the jury, seat the alternative and instruct the jury to begin its penalty deliberations anew. The jurors may not deliberate anew a verdict already reached or entered during the guilt phase of the trial.

Commented [JM15]: Modified from Arizona Rules of Criminal Procedure 18.5(i)

(8) **Juror oath.** When the jury is impaneled, the court shall administer the juror oath in accordance with NRS 175.111.

Rule 17. Voir Dire.

Rule 7.70. Voir dire examination.

The judge must conduct the voir dire examination of the jurors. Except as required by Rule 2.68, proposed voir dire questions by the parties or their attorneys must be submitted to the court in chambers not later than 4:00 p.m. on the judicial day before the day the trial begins. Upon request of counsel, the trial judge may permit counsel to supplement the judge's examination by oral and direct questioning of any of the prospective jurors. The scope of such additional questions or supplemental examination must be within reasonable limits prescribed by the trial judge in the judge's sound discretion.

The following areas of inquiry are not properly within the scope of voir dire examination by counsel:

(a) Questions already asked and answered.

(b) Questions touching on anticipated instructions on the law.

(c) Questions touching on the verdict a juror would return when based upon hypothetical facts.

(d) Questions that are in substance arguments of the case.

TAB 7

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Criminal
Case Management Plan

July 16, 2019

Draft, v4

Adopted

The Eighth Judicial District Court Felony and Gross Misdemeanor Case Management Plan is hereby adopted by vote of the Board of Judges on the __ day of _____, 2019.

_____

Honorable Linda Marie Bell, Chief Judge, Eighth Judicial District Court

Table of Contents

1 Statement of Purpose

The purposes of the Eighth Judicial District Court Criminal Case Management Plan are the following:

- Improve the predictability, efficiency, and timely disposition of criminal cases;
- Formalize existing and effective case management procedures and practices that promote continuity and regularity across the District Court;
- Ensure compliance with the provisions and aims of the Nevada Revised Statutes, Rules of the District Courts of the State of Nevada, and the Rules of Practice for the Eighth Judicial District Court of the State of Nevada (Local Rules), specifically the use of early and continuous judicial control to promote procedural justice;
- Recognize a defendant's right to a speedy trial and the public, including victims and witnesses, interest in a timely, fair, and just resolution of criminal cases by application of uniform and consistent time standards for the conduct of criminal cases; and
- Encourage collaboration between the court, the district attorney (DA), the public defender, and the private defense bar with a view toward a just and efficient disposition of criminal cases.

From the commencement of a case to its resolution, whether by trial or other disposition, any elapsed time other than reasonably required for pleadings, discovery, and court events is unacceptable and should be eliminated. To enable just and timely resolution of cases, the court will control the pace of litigation. A strong judicial commitment is essential to reducing delay and once achieved, maintaining a current docket.

Objectives

The Eighth Judicial District Court Criminal Case Management Plan (CMP) objectives include the following:

1. Identify and implement time to disposition goals and initiatives for efficient case processing and a backlog reduction which target a reduction in cases over one year in age;
2. Manage cases according to their nature and complexity, to ensure early disposition of appropriate cases, to allow adequate time for trial preparation and individual judge management of more complex cases;
3. Expedite disposition of cases for incarcerated defendants;
4. Encourage meaningful events in the case process that foster attorney preparation. Meaningful events are events which move the case to resolution; and
5. Ensure firm, credible dates for trials and other court events.

Case Management Standards

Nevada Revised Statutes and Eighth Judicial District Local Rules include a significant number of effective guidelines to help promote expedition and timeliness in case processing. Speedy trials and delay reduction are not goals unto themselves, but serve procedural justice and fair and just outcomes.

Speedy Indictment/Information and Trial

The following Nevada Revised Statutes provide parallel time limits for the filing of an indictment or information (15 days) and for the start of a trial following arraignment (60 days) – the first statute (NRS 174.511) by right of the State (prosecution), the second statute (NRS 178.556) by right of the defense.

A case must have formal charges (indictment or information) filed by the State within 15 days after the first appearance, or the court may dismiss the case. In most cases, an information is filed immediately after a preliminary hearing.[1] A case that is set for trial within 60 days of arraignment, by agreement of the State and the defense, is referred to as an invoked case. Either party may invoke their right to a speedy trial, although the court may grant more time if requested by the defense to prepare for trial. If both parties do not invoke the right to a speedy trial, the court may proceed with the setting of a trial as an ordinary case. The terms, "invoked" and "ordinary course," are customary usage in the Eighth Judicial District Court. All ordinary course cases will be referred to as "ordinary cases" throughout the case management plan.

NRS 174.511 Right of State to trial within 60 days after arraignment; exceptions.

The State, upon demand, has the right to a trial of the defendant within 60 days after arraignment. The court may postpone the trial if:

1. It finds that more time is needed by the defendant to prepare a defense; or
2. The number of other cases pending in the court prohibits the acceptance of the case for trial within that time.

NRS 178.556 Dismissal by court for unnecessary delay.

1. If no indictment is found or information filed against a person within 15 days after the person has been held to answer for a public offense which must be prosecuted by indictment or information, the court may dismiss the complaint. If a defendant whose trial has not been postponed upon the defendant s application is not brought to trial within 60 days after the arraignment on the indictment or information, the district court may dismiss the indictment or information.
2. If a defendant whose trial has not been postponed upon the defendant's application is not brought to trial within 60 days after the arraignment on the complaint for an offense triable in a Justice or municipal Court, the court may dismiss the complaint.

[1] Statutes refer to a preliminary hearing as a preliminary examination – determination of probable cause – on a felony or gross misdemeanor case. Preliminary hearing is conventional usage in the Eighth Judicial District Court.

Delay Reduction Standards

Local Rules include delay reduction standards for criminal cases. These are aspirational standards and serve as benchmarks for needed internal review and support.

Rule 1.90. Caseflow management.

(a) Delay reduction standards.

(1) Time to disposition. For criminal cases, the aspirational standard of the court is for 50% of all cases to be resolved within 6 months, 90% of all cases to be resolved within 1 year (with the last 10% being only life sentence or death penalty cases) and for 100% of the cases to be resolved within 2 years.

While these standards are aspirational, they represent the goals of the District Court for criminal cases. These standards are summarized as the following.

- 50% of all criminal cases resolved within 6 months
- 90% of all criminal cases except capital cases resolved within 1 year (365 days)
- 100% of all capital cases resolved within 2 years (730 days)[2]

While Local Rule 1.90 is moot on the start and stop dates for measurement, as well as provisions for suspending the counting of time for which the court is accountable, Table 1 below illustrates customary practice for counting time to resolution.

Table 1 – Criminal Cases Time to Resolution Standards

Case Time Start	Case Time Suspension Begins	Case Time Suspension Ends	Case Time Stop
Filing of the Indictment or Information at the Clerk of the District Court	Referral to Specialty Court by deferred prosecution	Denial of acceptance into a Specialty Court by deferred prosecution	**Final Resolution** ▪ Acquittal Verdict ▪ Sentence or Judgment Order ▪ Nolle Prosequi ▪ Dismissal ▪ Deferred Sentence Verdict
	Bench warrant issue date	Appearance of defendant in court after a bench warrant	
	Court order for mental health evaluation to stand trial	Receipt date of the court ordered mental health evaluation to stand trial	
	Interlocutory appeal filing date	Interlocutory appeal decision filed date	

[2] Note that the rule implies that 10% of all District Court cases are assumed to be capital cases. This percentage is considerably higher than the average (less than 2%) of active pending capital cases.

	Declaration of incompetency	Declaration of competency	

Other case management time standards in Local Rule 1.90 include time limits for pretrial motions, matters under submission to be decided by a judge, and entry of judgments. These standards are designed to mitigate delay from event to event on a case.

Rule 1.90. Caseflow management.

(a) Delay reduction standards.

(2) Time limits for pretrial motions. All pretrial motions shall be heard and decided no later than 15 days before the date scheduled for trial.

(3) Time limits for matters under submission. Unless the case is extraordinarily complex, a judge or other judicial officer shall issue a decision in all matters submitted for decision to him or her not later than 20 days after said submission. In extraordinarily complex cases, a decision must be rendered not later than 30 days after said submission. Following the decision of the judge or other judicial officer, the prevailing party shall submit a written order to the judge or judicial officer not later than 20 days from the date of the decision.

(4) Time limits for entry of judgments. Unless the case is extraordinarily complex, a judge or other judicial officer shall order the prevailing party to prepare a written judgment and findings of fact and conclusions of law and submit the same not later than 20 days following trial. In extraordinarily complex cases, the attorney for the prevailing party shall submit a written judgment and findings of fact and conclusions of law to the judge or judicial official not later than 30 days following the conclusion of trial.

2 Case Type Tracks

All felony and gross misdemeanor cases follow distinct tracks to resolution, defined by complexity and aligned with expected case processing steps and events that comply with state statutes and court rules and that are needed to reach a just resolution. Court events are closely tied to the severity of the crime(s) charged and the expected complexity of the case or demands for a speedy trial.

Recommendation 1 – Provide tools and reporting by tracks organized by complexity

Consider the use of a track system that is designed to provide judges with tools to manage their caseload by complexity. The goal of a track system is that each judge can manage and track their workload based on standardized expectations defined by the criminal code and the Nevada Revised Statutes. In reality, a small percentage of cases in each track may require additional time or even custom management. The timing of events and the expectation for resolution of most cases anticipates that 2% of cases in each track will be anomalous.

The tracks illustrated in Table 2 on the following page are grouped by expected events and expected duration for most (98%) of the cases to reach a resolution, consistent with Local Rule 1.90. These expectations are guidelines, not time standards. Cases may take more or less time, due to complexity or other factors, often leading to a trial. The guidelines are organized by tracks in order to structure reporting to a judge about the cases on their docket. The events listed are not absolute. Some Track 1 cases will require a motions hearing and more time to negotiate a plea. Some Track 3 cases may not require an evidentiary hearing or a motions hearing with oral argument. The expectations of timing are a baseline, designed to anticipate standard, needed time for most events to be meaningful and to promote attorney preparation. The expectations are calibrated to allow enough time for discovery on most cases in each track.

Tracks 5 and 6 are difficult to track in the same case management and reporting environment. The principles behind integrating these tracks into original cases are the following:

- Post-adjudication or reopened cases are defined as separate, unique cases or workload per the Model Time Standards[3] and the Bureau of Justice Statistics;
- Judicial review of post-adjudication or reopened cases is often very time-consuming, and judges appreciate a close accounting of these efforts and commitment;
- Specialty court cases are a key component of the Eighth Judicial District's strategic approach to cases and represent N% of the caseload. As a small, but significant, percentage of the overall caseload, these cases should be integrated into case management, even if a judge is only responsible for referrals from their docket.

[3] See, https://www.ncsc.org/Services-and-Experts/Technology-tools/~/media/Files/PDF/CourtMD/Model-Time-Standards-for-State-Trial-Courts.ashx.

Table 2 –District Court Criminal Case Track Events and Timing

Track	Events	Expectations
Track 1 **1A Gross Misdemeanors** **1B Invoked Cases**	Initial appearance (IA) File information Arraignment Trial	2 days/30 days after arrest/citation 15 days after IA 30 days after IA 45/90 days after arraignment **98% resolved in 120 days**
Track 2 **Categories D and E Felonies – Ordinary Cases**	Initial appearance (IA) Preliminary hearing/indictment Arraignment Pretrial conference Trial	2 days after arrest 15 days after IA 30 days after IA 90 days after arraignment 120 days after arraignment **98% resolved in 180 days**
Track 3 **Categories B and C Felonies – Ordinary Cases**	Initial appearance (IA) Preliminary hearing/indictment Arraignment Case management conference Pretrial conference Trial	2 days after arrest 15 days after IA 30 days after IA 180 days after arraignment 240 days after arraignment 300 days after arraignment **98% resolved in 365 days**
Track 4 **Category A Felonies – Ordinary Cases**	Initial appearance (IA) Preliminary hearing/indictment Arraignment Case management conference Pretrial conference Trial	2 days after arrest 15 days after IA 30 days after IA 180 days after arraignment 300 days after arraignment 365 days after arraignment **98% resolved in 730 days**
Track 5 **Post-Adjudication** Probation violations and revocations, and post-adjudication motions	Review hearing Final order for cases without new charges	15 days after filing 45 days after filing **98% resolved in 60 days** Except probation violations and revocations with new charges
Track 6 **Specialty Court Cases**	Referral Screening and admission/refusal Includes: Adult Drug Court, Felony DUI, Mental Health Court, Juvenile Drug Court, Veterans Court, Family Treatment Drug Court, OPEN Program, Gambling Treatment Diversion Court, Adult Drug Transitional Age Program (TAP)	When submitted 15 days after referral **Custom managed**

3 Case Management

The policies and procedures outlined in the Plan shall be implemented by the judges of the Clark County District Court on criminal cases to which they are assigned. All judges and staff have responsibility for compliance with the plan and the effective management of cases assigned to them, including adherence, where possible and in the interests of justice, to case time standards.

Assignment

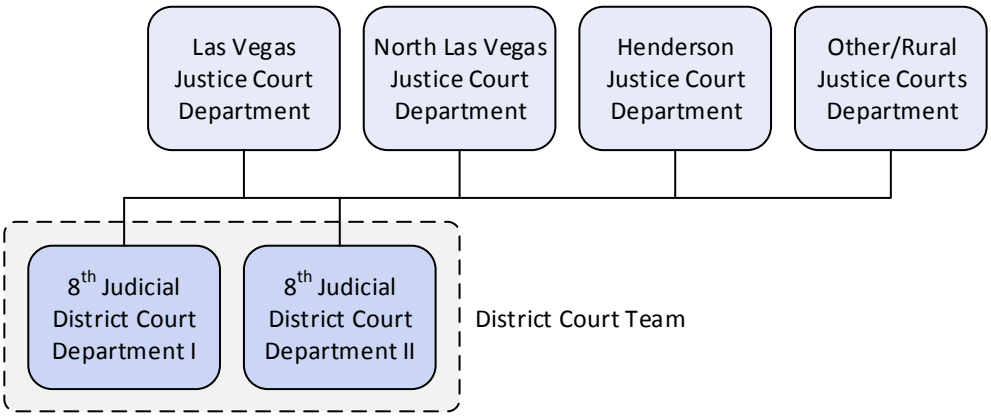
The Clark County District Court includes 20 departments (judges) assigned to criminal cases, out of 32 that are in the civil and criminal division. The District Court works on a track and team system, typically with two District Court departments functioning as a team, tracked with one Las Vegas Justice Court department (justice of the peace). In addition, one or more teams may be tracked with a North Las Vegas Justice Court department; and three District Court departments are exclusively assigned specialty court cases. See Rule 1.64 below. This approach for the typical team is diagrammed in Figure 1 below.

Rule 1.64. Assignment of criminal cases.

(a) Each criminal case must be randomly assigned to the criminal trial judge aligned with that department of justice court that initiated the case, in accordance with the track and team system. This rule does not apply to misdemeanor appeals.

(b) When an indictment is filed against a defendant who had the same case pending against him or her filed by complaint in justice court, the indictment must be assigned directly to the trial judge to whom the complaint had originally been tracked.

Figure 1 – Track and Team Assignment



The current criminal caseflow assignments are available by contacting the Chief Judge or the Clerk of the District Court. Cases are randomly assigned to a Justice Court department and then randomly assigned

to one of the two paired District Court departments. Random assignments are also designed to achieve a balanced workload among all of the judges.[4]

In addition, the track and team system is also utilized by the District Attorney and Public Defender, who assign teams to work with the District and Justice Courts track and team system. Both the District Attorney and Public Defender also have specially assigned teams to handle certain types of serious or complex cases, such as homicides or sex crimes, independent from the track and team system. This approach has significant positive benefits, including the vertical tracking of cases by the same prosecution and defense teams from Justice to District Court.

Each department, once assigned a case, is exclusively responsible for management of that case until disposition. Exceptions to individual assignment are arraignments on informations, which are master calendared before a judicial master appointed by the chief judge. At the arraignment, cases that are not resolved are set for trial in the assigned District Court department.

Recommendation 2 – Promote team collaboration and case management

Consider the expansion of the team and track system to promote judicial collaboration and joint case management. The team and track structure utilized in Clark County is focused on assignment and ensuring vertical prosecution and defense.[5] Joint case management might include consideration of the following additional opportunities:

- Possible first assignment of overflow cases to the paired department, if available;
- Quarterly or annual review and management of especially serious or complex cases;
- Inclusion of Justice Court justices in case management reviews with the District Court team pairs; and
- Pairing of senior and newer departments on teams for the purposes of case management training and support.

Other exceptions to individual assignment include reassignment by the chief judge to an overflow docket, typically an available judge, for the purposes of trial, to manage congested dockets, or to transfer cases due to recusal. The rules for reassignment are provided in Rules 1.60 and 1.90.

Post-Adjudication Matters and Consolidations

Post-adjudication matters, such as motions for post-conviction relief and probation revocations, are assigned to the sentencing judge. In addition, multiple cases for the same defendant may be assigned or consolidated to the sentencing judge for the oldest case. See Rule 3.10 below.

[4] Occasionally the assignment system must balance a department's workload or caseload in order to account for assignment transfers due to recusals, case consolidations, or other reasons.
[5] Without the track and team system, the defense and prosecution teams would not be able to track with the same cases from Justice Courts to District Court.

Rule 3.10. Consolidation and reassignment.

(a) When an indictment or information is filed against a defendant who has other criminal cases pending in the court, the new case may be assigned directly to the department wherein a case against that defendant is already pending.

(b) Unless objected to by one of the judges concerned, criminal cases, writs or motions may be consolidated or reassigned to any criminal department for trial, settlement or other resolution.

(c) In the event of negotiations being reached as to multiple cases having the same defendant, defense counsel and the prosecution may stipulate to having all of the involved cases assigned to the department having the oldest case with the lowest case number, and the court clerk shall then so reassign the involved cases. If the negotiations later break down, then the court clerk will again reassign the involved cases back to their respective department(s) of origin. The objection provision of subparagraph (b) hereinabove does not pertain to this present subparagraph (c).

Docketing

Docketing, also referred to as calendaring, is designed by rule to provide for mixed civil and criminal caseloads by the District Court judges.

Rule 1.70. Cases to be calendared to preserve track and team system.

The integrity of the track and team system must be preserved. The chief judge must appropriately modify the procedures when additional tracks are formed or additional judgeships created.

Rule 1.72. Calendaring of civil and criminal motions.

The trial judges, except those trial judges serving in the family division, and the chief judge will hear civil motions or criminal arraignments and motions Monday through Thursday. Special calendars or any other matters, as directed by the court, may be heard on Fridays. Motion times must be obtained from the clerk. A motion noticed for hearing on the wrong day may, at the discretion of the judge, be set over to the next appropriate day or vacated to be properly noticed.

In the Eighth Judicial District Court, the judge teams schedule law and motions (short cause) hearings on alternating Mondays and Wednesdays or Tuesdays and Thursdays for civil and criminal. For District Court judges, law and motions hearings refer to the first dockets in the morning[6] and typically consist of arraignments on indictments and pretrial motions. In addition, some judges will set pretrial conferences and sentencing hearings on these calendars. Again, this is designed to enable coverage for shared prosecutor and defense teams.

[6] The first dockets in the morning are typically set at 8:30 or 9:00 am, depending on the judge.

Reports

Under direction of the chief judge, the court administrator and designees provide regular case management reporting by judge, in large part as required by local rules.

Monthly

- List of cases set to begin trial each month and a report of disposition on cases that have been tried;
- Continuance reasons for trial continuances and the number of prior trial continuances for that case for any case not resolved at trial;
- List of all cases sent to overflow trial calendar and a report of disposition or reason for non-disposition and next case action date;
- List of motions and trials taken under advisement pending longer than 30 days;

Annually

- List of cases 48 months or older, with a status report within 30 days by each judge for each case listed;

Recommendation 3 – Expand reporting to include active case management tools

Consider expanding real-time case and workload reporting to each judge for their docket to provide tools for active case management across all cases while cases are active and after cases are resolved. The following reporting structure is designed to be keyed to each judge's docket and organized by track complexity in alignment with the case type tracks in Table 2 above. Reporting is most effective when it is real-time and enables a judge or their staff to drill down and review individual cases within each category.

Cases

1.1 Pending Inventory of Active Pending Cases (by track, by court, by judge)
1.2 Age of Active Pending Cases (by track, by court, by judge)
1.3 Clearance Rate - Filings & Dispositions (by track, by court, by judge)
1.4 Detail Filings & Dispositions (by track, by court, by judge)
1.5 Time to Disposition (by track, by court, by judge)

Pretrial Decisions

2.1 Bail Ordered and Revoked
2.2 Defendants in Jail
2.3 Defendants Diverted or Referred to Specialty Court

Events

3.1 Number of Events per Case
3.2 Number of Trial Settings per Case

3.3 Summary of Continuances
3.4 Detail of Continuances by Reason

Sanctions

4.1 Fines & Fees Summary
4.2 Fines & Fees Detail
4.3 Restitution
4.4 Jail as a Sanction
4.5 Alternatives to Jail
4.6 Probation as a Sanction
4.7 Violations of Probation

Outcomes and Causes

5.1 Recidivism Rates - All Cases
5.2 Specialty Court Recidivism
5.3 Poverty - Indigent Defendants by Assignment of Counsel
5.4 Homelessness & Criminal Justice
5.5 Mental Health & Criminal Justice
5.6 Substance Abuse and Criminal Justice

4 Court Case Events

Expected case events for original cases, Tracks 1-4, and the initiating steps for Tracks 5 and 6 cases, are illustrated in Figure 2 on the following page. The events are either statutory or discretionary, as determined by each judge in response to motions or other demands on each case. Judges and the judicial staff that support case management shall make every effort to ensure compliance with the parties' expectations and timing for the scheduling of each event. Good cause continuances, unavailability of docket space, discovery issues, and other factors may impact case processing for each case. Nevada Revised Statutes and the Local Rules govern the trials and all procedures for cases in the Clark County District Court.

Filing and Assignment NRS 171.1774; 178 and Rule 1.64

District Court cases are initiated in the Justice Court by the filing of a complaint by law enforcement following arrest, summons, or citation. At filing, a case is randomly assigned to a justice of the peace and subsequently to one of a pair of District Courts (judges) on a track and team system with each justice of the peace. An initial appearance is held typically within 12 to 14 hours for arrest cases that have not made bail or been released by pretrial services following a risk assessment. Defendants that have made bail, have received an administrative release, or who have been summoned to appear or set for an initial appearance within approximately 30 days. "When an indictment is filed against a defendant who had the same case pending against him or her filed by complaint in justice court, the indictment must be assigned directly to the trial judge to whom the complaint had originally been tracked." For consolidation and reassignment see discussion of Rule 3.10 above.

Probation Violation and Revocation Filings NRS 176A.500

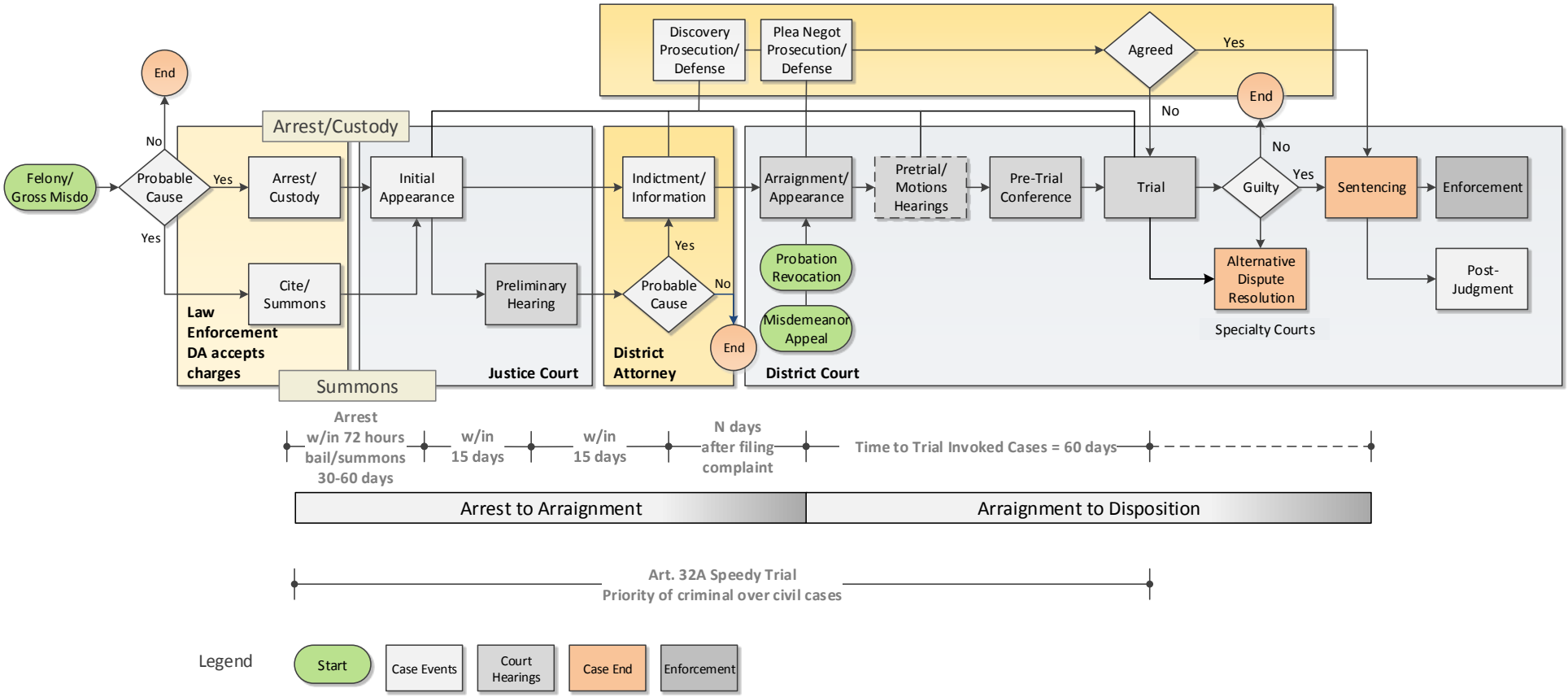
The majority of Track Five cases are probation violation and revocation filings. The ability to set these filings for a court hearing, after arrest or referral are currently dependent on the filing of the complaint by Probation and Parole, a state agency. The delay in review and submittal of the complaint has historically taken as long as 30-60 days. Recently, this has been reduced to an average of 14-20 days.

Recommendation 4 – Reduce initial appearances on probation revocations to 48 hours

Work closely with state Probation and Parole to reduce these filings and subsequent initial appearance to less than 48 hours. This is possible through the use of a response matrix to violations that enable probation officers to file complaints without close supervisor review at the state level. Stated another way, localize the response through standardization of responses to behavior and recommendations for graduated sanctions.

Probation revocation hearings shall be set on the date the defendant is arrested on a motion or order of the court. Cases shall be re-opened and assigned to the original sentencing court.

Figure 2 – Criminal Caseflow Map



Probation revocations will be set before the assigned judge or on a master calendar for an initial appearance within 24 hours of arrest for hearing or further disposition. The primary purpose of the initial appearance shall be the following in prioritized order:

- Determine probable cause for the arrest/summons – factual statement by the probation officer;
- Determine bail and/or release conditions;
- Set the case on a short track without new charges or a trailing track for new charges. Probation revocations may be included on a short track at the initial appearance, or, by agreement, with any other original cases or pending matters associated with the defendant.

Initial Appearance, NRS 171.178; 186

At the initial appearance, the complaint is provided to the defendant and probable cause for the arrest and complaint is determined. Gross misdemeanor and felony custody cases are set for a preliminary hearing within 15 days. Non-custody cases are set for a preliminary hearing within 30-60 days.

Justices of the peace hear initial appearances seven days per week, two times per day, typically within 12 to 14 hours after arrest, although allowed by statute up to 72 hours of arrest, excluding non-judicial days. At the initial appearance, the justice of the peace shall "inform the defendant of the complaint and of any affidavit filed therewith, of the right to retain counsel, of the right to request the assignment of counsel if the defendant is unable to obtain counsel, and of the right to have a preliminary examination." The justice of the peace also informs the defendant that "the defendant is not required to make a statement and that any statement made may be used against him or her." The magistrate shall allow the defendant reasonable time and opportunity to consult counsel, and shall set bail if allowed by law. In addition, for arrests made without a warrant or summons, the judge may determine probable cause. If the defendant is not represented by counsel the magistrate will make an indigency determination and if the defendant is indigent, the court will appoint an attorney.

If a defendant has made bail prior to the initial appearance or they have received a citation or summons in lieu of arrest, they are summonsed to appear at the initial appearance within 30-60 days. No arraignments are held at the Justice Court for gross misdemeanor or felony cases.

Recommendation 5 – State reasons for bail or release conditions on the record

Consider the requirement that justices of the peace or judges will state reasons for bail or release conditions on the record in order to communicate to the defendant and to subsequent judges hearing bail motions the reasons for the order. This recommendation will help ensure continuity in decision-making.

Preliminary Hearing (Examination), NRS 171.196

A preliminary examination is a probable cause hearing for felony and gross misdemeanor cases not triable at the Justice Court made by a justice of the peace in the Justice Court. A preliminary hearing is not required, if a defendant has been indicted, or if a defendant waives the preliminary hearing. If probable cause has been determined by the justice of the peace, the preliminary hearing has been waived, or the defendant is indicted, the defendant is immediately bound over to the District Court.

Defendants who are in custody are required by statute to have a preliminary hearing within 15 days of the initial appearance, or the court may dismiss their case. Out-of-custody defendants receive a preliminary hearing within 60-90 days maximum.

Justices of the peace schedule preliminary hearings on the same dockets with misdemeanor trials in the Justice Court. A significant minority of gross misdemeanor cases pleads to a misdemeanor at the preliminary hearing and is resolved at the Justice Court without being bound over to the District Court.

Indictment/Information, NRS 173

The DA may prosecute a case by indictment or by information. A case is not at issue in the District Court, until the DA has filed formal charges. Grand juries are predominantly used on serious felony cases, after which an indictment will be filed in the district court. Defendants must be provided a minimum of two days after service of the indictment to set the arraignment. Arrest of a defendant may have occurred prior to or after the filing of an indictment or information.

Arraignment, NSR 174.015; 035

At the arraignment, the indictment or information shall be read or the substance of the charge shall be stated to the defendant, and the defendant shall be asked to plead to the charges. The defendant shall be given a copy of the indictment or information before the defendant is called upon to plead.

Upon an unconditional waiver of a preliminary hearing, a defendant and the district attorney may enter into a written conditional plea agreement, subject to the court accepting the recommended sentence pursuant to the agreement.

Recommendation 6 – Enact plea negotiation guidelines

Prior to the arraignment, the assigned prosecutor will be expected to thoroughly review the case and arrive at a considered and educated plea agreement offer, at minimum on Track 1 and 2 cases. Said plea offer shall be conveyed to the defense prior to but no later than the arraignment. The defense attorney is expected to have thoroughly reviewed the state's file, to have consulted with the defendant, and to have begun any necessary investigation. At the arraignment, the defense attorney will be expected to convey the plea agreement offer to the

defendant and to present any motions necessary to complete investigation of the case. If case files in the DA's office are scanned and available digitally, then change procedure is for defense counsel to file an entry of agreement (EOA) and email the same to the assigned prosecutor. Upon receipt of EOA, the assigned prosecutor shall, within 15 days, email all reports and a plea offer to defense counsel for Track 1 and 2 cases. The same procedures shall apply at the case management conference for Tracks 3 and 4 cases.

Recommendation 7 – Issue written scheduling order at arraignment per guidelines

If no plea agreement is reached, a written scheduling order shall be issued for all tracks pursuant to the guidelines in Table 2 (see Appendix 1). All pro forma dates per the scheduling guideline shall automatically be entered on the order, adjusted to the nearest available docket or calendar for each assigned judge. This process is consistent with the announced trial setting for the assigned judge at the arraignment hearing, except that the order shall include standing dates for intervening events in Tracks 2-4, with a provision that all pretrial motions and discovery shall be complete by the case management conference on Tracks 3-4, with enumerated provisions for exceptional circumstances for delays.

For all tracks, attorneys will be required to notify the court in writing within fourteen (14) days about scheduling conflicts and requests for extensions of time. This notification will not preclude the parties and attorneys on Tracks 3 and 4 cases from requesting additional time for discovery at the arraignment or case management conference (CMC), as the case develops.

Written requests to modify the case schedule may be reviewed and administratively ordered by the court with notice to the parties. The scheduling order shall indicate that the time period for discovery may be extended for enumerated extraordinary reasons per the agreement of the parties, but that the court reserves the right to set an interim hearing to review the causes of the extension.

Motions and Motions Hearing NRS 174.125-145; 178.552; and Rules 3.20 - 3.70

The following rules apply to the filing and hearing of motions.

- Discovery motions may be made orally at the arraignment.
- The court may extend time for any action or trial for good cause.
- Ex parte motions to extend or shorten time must be made by written affidavit showing good cause.
- All motions must be filed not later than 15 days before the date set for trial.[7]
- Late motions may be considered upon filing of an affidavit.
- Opposition to motions must be filed within 7 days of service of the motion.
- Motions to modify bail must be set for a hearing within 2 days.

[7] Note that this Rule is inconsistent with other local rules.

- Motions *in limine* may be filed up to 7 days before the date set for trial.

A motions hearing shall be set on Tracks 1 and 2 cases and all invoked cases by motion of either party requesting a hearing at the court's discretion or for all motions to modify bail. The court may determine that evidentiary, discovery, or procedural motions shall require oral argument at a hearing. All pretrial motions on Tracks 3 and 4 ordinary cases shall be heard at the case management conference (see Recommendation 7 below). The procedures below do not restrict the parties from filing motions later in the case in compliance with the statutes and rules listed above, but parties are strongly encouraged to file timely pretrial and evidentiary motions and delay beyond the 7 and 15 days before trial will only be considered for good cause.

Recommendation 8 – Implement an omnibus case management conference

Consider the use of a case management conference (CMC) as an omnibus event per the scheduling guideline for Tracks 3-4 ordinary cases. See below for a description of the CMC.

Case Management Conference (CMC)

The CMC will be conducted in the assigned district court according to the track schedule in Table 2 above for Tracks 3-4 ordinary cases and will include all of the defendant's then pending cases. Later cases filed against a defendant will be scheduled with the earlier filed cases. Multiple cases with the same defendant shall be managed by the highest track. The goal of the CMC is to advance case preparation leading to resolution and trial.

The CMC will be the discovery deadline for most Tracks 3 and 4 ordinary cases. Any request for an extension of the discovery date deadline shall be submitted by written motion to the court seven (7) days in advance of the discovery date deadline, which is co-terminus with the case management conference. Such motions must provide a detailed, fact-based explanation of the need for the extension, along with a proposed order for the court's consideration. As with all motions, a courtesy copy of any motion for extension must be provided to the presiding judge in chambers via hand delivery, or by email to the court coordinator for the presiding judge. No continuances for lack of time for discovery will be approved unless received prior to the scheduled CMC and shall only be granted for extraordinary reasons.

For Tracks 3 and 4 cases, the court shall determine, based upon individual case factors, whether the schedule for a case needs to be extended after consultation with the parties. The schedule may be modified either ad hoc or by adopting a more complex case track, although the tracks shall remain associated with the misdemeanor or felony case type, or by custom setting subsequent events. The court shall determine whether the scheduling order issued at the arraignment requires amendment based upon the individual case factors.

Counsel shall be prepared to discuss all aspects of case management and scheduling, to include, without limitation, the following in prioritized order:

1. Reach and take a plea
2. Make any specialty court referrals;
3. Address and review all pretrial motions, pending or contemplated, to include filing deadlines, scheduling issues related to motions. This would include suppression motions, child hearsay motions, other pretrial motions;
4. Finalize any remaining discovery issues, including deadlines. At the CMC, the DA will be required to disclose, if not already disclosed, the existence of biological or other complex evidence the testing of which could require that the case be moved to a more complex track. Any agreed discovery must be determined before the parties are excused from the setting;
5. Resolve any expert witness issues;
6. Resolve any conflict issues concerning representation;
7. Resolve any competency issues;
8. Determine anticipated time to prepare for and conduct a trial (trial length);
9. Schedule pretrial conference;
10. Discuss plea possibilities;
11. Identify a plea cut-off date; and
12. Resolve any other issue affecting a timely resolution of the case.

Recommendation 9 – Issue a case management order at the CMC

Judges shall issue a case management order at the CMC for Tracks 3-4 ordinary cases (see Appendix 2). The case management order shall supplement the scheduling order and include final dates for all events up to and including the trial date, including the expectations for each event. The court shall provide written notice of the case management order to the defendants and parties.

Any modifications to the case management order shall be requested in writing within seven (7) days of the CMC or notice of parties and counsel.

Pretrial Conference

Some district courts utilize a pretrial conference one to six weeks in advance of the trial date. This case processing event has proven to be invaluable in many courts in order to promote trial preparation, to reduce continuances on the trial week, and to ensure that all plea negotiations have been finalized prior to trial. The pretrial conference on Tracks 2-4 ordinary cases shall be set 30-60 days in advance of the trial week on which the matter is set (see Table 2). The purpose of this setting is to ensure that the case is trial ready and to dispose of any pending motions. All pretrial motions shall be heard at this setting, all voir dire issues shall be ruled upon, and all record matters shall be conducted. The DA and defendant must file all non-constitutional motions no later than seven (7) days before the pretrial conference. At

the pretrial conference, the trial court may conduct a hearing on all remaining motions as requested by the parties. The parties must notify the court in advance if any motions may require oral argument and will take longer than the prescribed time for a standard pretrial conference.

Meaningful plea negotiations are encouraged at the pretrial conference. The court may accept negotiated and non-negotiated pleas of guilty. After the conference, the court may refuse to accept any negotiated guilty plea.

Recommendation 10 – Require a joint trial management agreement

If no plea of guilty is entered at the pretrial conference, the parties will be required to have completed in advance a joint trial management agreement (see Appendix 3). The defendant will also be expected to submit necessary trial motions, an application for probation, if applicable, and an election of punishment. The agreement shall include, at minimum, the following:

- Voir dire questions;
- Witness list;
- Evidentiary (in limine) motions;
- Proposed jury charges; and
- Proposed verdict form.

After completion of the pretrial conference, the final trial calendar shall be set. No continuances of a pretrial conference shall be granted without exceptional cause. Notices of trial conflicts shall be filed at least 15 days prior to the pretrial conference and the court shall make a determination of the existence of a conflict at the pretrial conference.

Trial NRS 175

Judge teams alternate five-week civil and criminal trial stacks throughout the year. Trial calendars are typically scheduled after law and motions calendars in the morning, Monday through Thursday, with varying timings for these calendars depending on the judge, and also on the duration of the law and motions calendars. This also enables coverage for shared prosecutor and defense teams. Trial stacks customarily involve the practice of scheduling 3-10 cases for trial each week for five weeks each for alternating civil and criminal cases. The typical average is 4-5 cases set for trial per week. The number of possible trials set per week determines the next available trial week for each judge when setting cases for trial at arraignment. Criminal cases are set for trial in the following prioritized order:

1. Invoked cases – 60 days from arraignment per speedy trial statutes. These cases, by statute, are set within the 60- day time frame regardless of any predetermined caps set by each judge.
2. Cases with defendants in jail pretrial, by statute, are second in priority to invoked cases.
3. Cases with defendants out of custody, when ordinary, are the lowest prioritized for trial.

These priorities are not inconsistent with NRS 178.594, which is generally used as a guide for the scheduling of the sequence of cases on a trial calendar, rather than scheduling at arraignment.

> **NRS 178.594 Order of disposing of issues on calendar.**
> The issues on the calendar must be disposed of in the following order, unless for good cause the court directs an action to be tried in a different order:
>
> 1. Prosecutions for felony, when the defendant is in custody.
> 2. Prosecutions for misdemeanor, when the defendant is in custody.
> 3. Prosecutions in which the State, upon determining that the physical, emotional or mental condition of the victim of, or a material witness to, an alleged felony or gross misdemeanor is deteriorating because of age, an illness or an injury to himself or herself or his or her spouse, has demanded a trial within 60 days after the arraignment of the person accused of the felony or gross misdemeanor pursuant to NRS 174.511.
> 4. Prosecutions for felony, when the defendant is on bail.
> 5. Prosecutions for misdemeanor, when the defendant is on bail.

When more than one case is set for trial on a trial week, trailing cases not reached for trial are placed on a stack, with the parties notified that they must be ready upon reasonable notice, per Rule 1.74.

> **Rule 1.74. Calendaring of civil and criminal trials.**
> More than one case may be set to be heard for trial at the same time or on the same date. In the event such trailing cases are left unresolved at the time or on the day of trial, the court may direct that they remain stacked behind the case being trailed in the order in which they are assigned for trial and that the parties, their attorneys and witnesses must stand ready to proceed to trial upon reasonable oral notification by the court to the attorneys involved.

The overflow case system is defined by local rule. In the Eighth Judicial District, customary practice is to assign overflow judges on a voluntary basis. In other words, if during a trial week, a judge's trial calendar opens up due to settlement of cases, either civil or criminal, judges voluntary place their names on an overflow list of available judges. A judge that has trailing cases each week that have not reached trial may contact an overflow judge from the list to request backup. This practice is defined in part by local rule.

> **Rule 1.80. Assignment of overflow cases.**
> An overflow judge or judges may be selected by the chief judge when appropriate. When a district judge is not presiding at the trial of a case, that judge shall take an overflow case of any type or description which the chief judge might assign to her or him. However, the chief judge shall assign to judges serving in the family division only overflow cases within the family division.

Recommendation 11 – Prioritize assignment of overflow cases to available paired judges

Consistent with Recommendation One, consider the prioritized assignment of overflow cases to available paired judges. A judge whose trial calendar becomes available each week would notify the other team for backup assignment as an overflow judge. This would result in a judge that may be in a civil trial week presiding over a criminal trial, and the reverse. This would also amplify the benefit of each team of judges reviewing case management together and possibly mitigate the punitive aspects of caseflow committee review.

Recommendation 12 – Consider the use of central assignment for overflow cases

Consider the use of a central assignment department working in the office of the chief judge to manage overflow cases and assignment. This approach would supplement or be used in lieu of Recommendation Two. Currently, available judges place themselves voluntarily on an overflow list. Central assignment would be responsible for managing this process. Removal from the overflow list would be by exception (i.e. due to illness, absence, or other commitment) rather than voluntary. This recommendation is consistent with the provisions in Rules 1.30, 1.60, and 1.80.

Sentencing NRS 176.015 – 161

Sentencing, per statute, must be at a prompt hearing, without unreasonable delay. The defendant must be permitted to make a statement, and any victims or surviving family members of the victim(s) must be provided sufficient notice to appear at the sentencing hearing.

A presentence investigation (PSI) and report is required for all felonies and for gross misdemeanors upon request of the court for which the defendant pleads guilty or nolo contendere or is found guilty, regardless of pleas of mental illness. If a PSI has been completed within the prior five years on another case, a new PSI is not required.

Recommendation 13 – Consider the use of short form PSI reports for lesser cases

Consider the use of short form PSI reports for lesser cases, especially including simple drug possession or other cases for which no aggravating or mitigating factors will impact the sentencing decision of the judge. Guidelines for short form PSI reports should be drafted and enacted with the joint participation of the court, Probation and Parole, and the Nevada Sentencing Commission.

Probation Hearing NRS 176A

Violations of probation and probation revocations are Track 5 reopened cases, often with new charges associated with a new case. Violations of probation that are administrative should be set within N days of the filing of a motion. New arrests are typically associated with new charges. The procedures for assignment, consolidation, and scheduling of these cases are provided above.

5 Policies and Other Procedures

The following district court policies include detailed procedures that may be enumerated in the codified laws or by administrative order referenced below.

Alternative Dispute Resolution

The following is a summary of the 10 specialty courts and dockets. Eligibility criteria and outcomes are linked, because the court aims to improve outcomes for defendants on selected types of criminal cases by assessing and improving screening and eligibility.

While some outcomes for specialty courts differ from cases that are conventionally adjudicated, the outcomes related to recidivism should be closely matched to the outcomes for all cases. See Reports, above. It is critical for the court to evaluate referrals, admission and success rates, and outcomes related to recidivism as they compare to similar adjudicated cases.

Table 3 – Clark County Specialty Courts and Dockets Eligibility Requirements
The following are examples of eligibility requirements. Each specialty court may be sufficiently unique to require a tabular narrative of requirements.

No	Specialty Court	Cost	Number of prior offenses	Jurisdiction of court	Addicted except	Mental illness diagnosis	Co-occurring disorders	No prior graduates	No co-family members	No co-defendants	Prohibitive medical/	Prior trafficking	No current drug charges	Exclude violent open
1	**Adult Drug Court**	$1,500												
2	**Felony DUI**	$554.40/mo												
3	**Mental Health Court**	$0												
4	**Juvenile Drug Court**	Ins + fees												
5	**Veterans Court**	$65/mo												
6	**Family Treatment Drug Court**	$0												
7	**OPEN Program**	$0												
8	**Gambling Treatment Diversion Court**													
10	**Adult Drug Transitional Age Program (TAP)**	$1,500												

P = prioritized
X = mandatory
*Per violent offender classifications
TBD = to be determined

Table 4 – Clark County Specialty Courts and Dockets Performance Measures

The following are examples of statistical and performance measures.

No	Accountability Court	Statistical Measures	Performance Measures			
			Retention	Behavioral Fidelity	In-Program Recidivism	Post-Exit Recidivism
1	**Adult Drug Court** Active pending = 320	Active pending; Referrals; Admissions; Graduations; Terminations	Rate of graduation Rate of terminations by type and length of stay	Drug screens; Terminations for drug use	New charge; AWOLs without recidivism as a statistical aggregate	Two-year arrests and convictions; Four-year arrests and convictions
2	**Felony DUI**					
3	**Mental Health Court**					
4	**Behavioral Health Court**					
5	**Juvenile Drug Court**					
6	**Veterans Court**	15/50				
7	**Family Treatment Drug Court**					
8	**OPEN Program**					
9	**Gambling Treatment Diversion Court**					
10	**Adult Drug Transitional Age Program (TAP)**					

Postponements

The Clark County District Court postponement policy shall comply with NRS 171.196; 174.515, Rule 3.50 Extending Time (see Motions above); and Rule 7.30; which shall take precedence over any conflicting policies and procedures below. A showing of due diligence is required in order for the district court to grant continuances. All trial continuances, if reset by the court, shall be reset within the same trial stack if possible, except for extraordinary circumstances on complex, custom-managed cases.

NRS 171.196 Preliminary examination: Waiver; time for conducting; postponement;

3 Except as otherwise provided in this subsection, if the magistrate postpones the examination at the request of a party, the magistrate may order that party to pay all or part of the costs and fees expended to have a witness attend the examination. The magistrate shall not require a party who requested the postponement of the examination to pay for the costs and fees of a witness if:
   (a) It was not reasonably necessary for the witness to attend the examination; or
   (b) The magistrate ordered the extension pursuant to subsection 4.

4 If application is made for the appointment of counsel for an indigent defendant, the magistrate shall postpone the examination until:
   (a) The application has been granted or denied; and
   (b) If the application is granted, the attorney appointed or the public defender has had reasonable time to appear.

NRS 174.515 Postponement: When and how ordered

1. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party by affidavit, direct the trial to be postponed to another day. In all cases where a continuance is granted upon the application of either party the court may require, as a condition of granting such continuance, that the party applying therefor consent to taking, forthwith, or at any time to be fixed by the court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken.
2. The court also may require all witnesses to enter into undertakings in such sum as the court may order, with or without sureties, to appear and testify on the day to which the case may be continued, but any witness who is unable to procure sureties for the witness's attendance may be discharged on the witness's own recognizance, upon giving a deposition in the manner prescribed in NRS 174.175 and 174.205.
3. If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the court may consider any adverse effect a continuance or other postponement might have upon the mental or emotional health or well-being of the child. The court may deny a continuance or other postponement if the delay will adversely affect the mental or emotional health or well-being of the child.

Rule 7.30. Motions to continue trial settings.

(a) Any party may, for good cause, move the court for an order continuing the day set for trial of any cause. A motion for continuance of a trial must be supported by affidavit except where it appears to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion.

(b) If a motion for continuance is made on the ground that a witness is or will be absent at the time of trial, the affidavit must state:

(1) The name of the witness, the witness' usual home address, present location, if known, and the length of time that the witness has been absent.

(2) What diligence has been used to procure attendance of the witness or secure the witness' deposition, and the causes of the failure to procure the same.

(3) What the affiant has been informed and believes will be the testimony of the absent witness, and whether the same facts can be proven by witnesses, other than parties to the suit, whose attendance or depositions might have been obtained.

(4) The date the affiant first learned that the attendance or deposition of the absent witness could not be obtained.

(5) That the application is made in good faith and not merely for delay.

(c) Except in criminal matters, if a motion for continuance is filed within 30 days before the date of the trial, the motion must contain a certificate of counsel for the movant that counsel has provided counsel's client with a copy of the motion and supporting documents. The court will not consider any motion filed in violation of this paragraph and any false certification will result in appropriate sanctions imposed pursuant to Rule 7.60.

(d) No continuance may be granted unless the contents of the affidavit conform to this rule, except where the continuance is applied for in a mining case upon the special ground provided by NRS 16.020.

(e) No amendments or additions to affidavits for continuance will be allowed at the hearing on the motion and the court may grant or deny the motion without further argument.

(f) Trial settings may not be vacated by stipulation, but only by order of the court. The party moving for the continuance of a trial may obtain an order shortening the time for the hearing of the motion for continuance. Except in an emergency, the party requesting a continuance shall give all opposing parties at least 3 days' notice of the time set for hearing the motion. The hearing of the motion shall be set not less than 1 day before the trial.

(g) When application is made to a judge, master or commissioner to postpone a motion, trial or other proceeding, the payment of costs (including but not limited to the expenses incurred by the party) and attorney fees may be imposed as a condition of granting the postponement.

All applications for continuances are addressed to the sound legal discretion of the court and, if not expressly provided for, shall be granted or refused as the ends of justice may require. In all cases the

presiding judge may, in his or her discretion, admit a counter-showing to a motion for a continuance and, after a hearing, may decide whether the motion shall prevail.

Good cause reasons for continuances, requested within the deadlines provided in the case management order, include the following:

- Reasonable scheduling conflicts for the defendant;
- Religious holidays for the defendant, with affidavit;
- Lack of notice to defendant within three days of an event, absent court documentation of notice being provided to counsel;
- Reasonable scheduling conflicts for counsel, except that the DA and defense counsel shall be requested, when known in advance, to assign associate counsel for non-trial events, where required by the court, and for the associate counsel to meet the requirements for preparation for each non-trial event;
- Unavailability of a witness for trial or other dispositive event;
- Unavailability of a victim; and
- Any other sufficient or good cause reason as determined by the court.

Good cause reasons for granting continuances, after the deadlines provided in the case management order for requesting a continuance or extension of time, include the following:

- The party is absent, and counsel is present to substantiate a good cause for his or her absence, including, but not limited to, illness or injury.
- Absence or serious illness of counsel;
- Absence of witness more than 100 miles from the court;
- Party, leading attorney, or material witness in attendance on active duty as member of National Guard or component of armed forces of the United States, with or without motion of the parties.
- Case not reached by the court at trial week.

Discovery

Parties shall promptly and completely comply with the requirements of by the specific discovery date deadline as set forth in the case management order in each defendant's case. Any supplemental discovery must be supplemented as soon as practicable, but in any event no later than five (5) business days after receipt of any additional information, documents, reports, or other matters which are subject to disclosure pursuant to applicable criminal discovery statutes.

Extensions. Any request for an extension of the discovery date deadline shall be submitted by written motion to the court by the discovery date deadline. Such motions must provide a detailed, fact-based explanation of the need for the extension, along with a proposed order for the court's consideration. As with all motions, a courtesy copy of any motion for extension must be provided

via hand delivery to the chambers of the presiding judge or by email to the court coordinator for the presiding judge.

Compelling Discovery. The parties are directed to comply with all discovery obligations. The parties are directed not to file "form" motions seeking an order compelling the generalized disclosure of discoverable materials or the general exclusion of evidence. Should a party need to file a motion to compel discovery, the party shall itemize the articulable and case-specific instances in which the party believes the opposing party has failed to comply with discovery obligations. Such motion may be filed any time after the discovery date deadline has passed and no later than the motions due date which is identified in the separate scheduling order entered in each defendant's case.

Judgments and Orders

It is the stated policy of the Clark County District Court that all judgments and orders be executed as soon as possible to minimize the adverse impacts of delay on the parties and other affected persons and entities.

Interpreters

It is the policy of the Nevada Judiciary to secure the rights of hearing impaired persons who, because of impaired hearing, cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of the courts, legislative bodies, administrative agencies, licensing commissions, departments, and boards of the state and its subdivisions unless qualified interpreters are available to assist them.

Procedure for Defendant. At the arraignment hearing or the entry of appearance of counsel, counsel shall advise the court by verbal motion of the need for an interpreter for a non-English speaking defendant.

Procedure for Witnesses or Other Parties to the Case. Upon verbal or written request, the court will provide an interpreter for any non-English speaking defendant. The request for an interpreter must be submitted in writing to the court coordinator for the presiding judge at least two weeks in advance of a hearing or trial date.

CLARK COUNTY JUSTICE COURTS
LAS VEGAS JUSTICE COURT

Misdemeanor
Case Management Plan

July 15, 2019

Draft, v2

Adopted

The Las Vegas Justice Court in Clark County, Nevada Misdemeanor Case Management Plan is hereby adopted on the . day of _____, 2019.

Honorable Suzan Baucum, Chief Judge, Justice of the Peace
Las Vegas Justice Court

Table of Contents

1 Statement of Purpose

The purposes of the Misdemeanor Case Management Plan (CMP) are the following:

- Improve the predictability, efficiency, and timely disposition of criminal cases;
- Formalize existing and effective case management procedures and practices that promote continuity and regularity across Justice Court;
- Ensure compliance with the provisions and aims of the Nevada Revised Statutes and the Local Rules of Practice for the Justice Court of Las Vegas Township;
- Recognize a defendant's right to a speedy trial and the public, including victims and witnesses, interest in a timely, fair, and just resolution of criminal cases by application of uniform and consistent time standards for the conduct of criminal cases; and
- Encourage collaboration between the court, the district attorney (DA), the public defender, and the private defense bar with a view toward a just and efficient disposition of criminal cases.

From the commencement of a case to its resolution, whether by trial or other disposition, any elapsed time other than reasonably required for pleadings, discovery, and court events is unacceptable and should be eliminated. To enable just and timely resolution of cases, the court will control the pace of litigation. A strong judicial commitment is essential to reducing delay and once achieved, maintaining a current docket.

Objectives

The Misdemeanor CMP objectives include the following:

1. Establish a common language regarding case management events, their purpose, and usage in order to promote consistency and continuity throughout the court and to consolidate by local rule the various administrative orders promulgated and revised related to criminal assignments and case processing;
2. Adopt and implement time to disposition goals and initiatives for efficient case processing and a backlog initiative in order to target a reduction in cases over the time standards;[1]
3. Manage cases according to their nature and complexity, to ensure early disposition of appropriate cases, to allow adequate time for trial preparation and individual judge management of more complex cases;
4. Expedite disposition of cases for incarcerated defendants;

[1] *Local Rule 22, Setting cases for trial*, requires a trial setting within 12 months, but appears only to apply to civil cases.

5. Encourage meaningful events in the case process that foster attorney preparation. Meaningful events are events which move the case to resolution; and
6. Ensure firm, credible dates for trials and other court events.

Case Management Standards

Nevada Revised Statutes include two guidelines to help promote expedition and timeliness in case processing. Speedy trials and delay reduction are not goals unto themselves, but serve procedural justice and fair and just outcomes. The filing of a complaint or citation by law enforcement in misdemeanor cases is sufficient for the purpose of prosecution.

NRS 171.1778 Citation filed with court deemed complaint for purpose of prosecution.
If the form of citation:
1. Includes information whose truthfulness is attested as required for a complaint charging commission of the offense alleged in the citation to have been committed; or
2. Is prepared electronically, then the citation when filed with a court of competent jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution.

Speedy Trial

The following Nevada Revised Statutes provide parallel time limits for the start of a trial following arraignment (60 days) – the first statute (NRS 174.511) by right of the State (prosecution), the second statute (NRS 178.556) by right of the defense.

A case must have formal charges (information) filed by the State within 15 days after the first appearance on arrest, or by misdemeanor citation (see NRS 171.1778 above); or the court may dismiss the case. In most cases, an information is filed at arraignment. A case that is set for trial within 60 days of arraignment, by agreement of the State and the defense, is referred to as an invoked case. Either party may invoke their right to a speedy trial, although the court may grant more time if requested by the defense to prepare for trial. If both parties do not invoke the right to a speedy trial, the court may proceed with the setting of a trial as an ordinary case. The terms, “invoked” and “ordinary course,” are customary usage in the Eighth Judicial District Court. All ordinary course cases will be referred to as “ordinary cases” throughout the case management plan.

NRS 174.511 Right of State to trial within 60 days after arraignment; exceptions.
The State, upon demand, has the right to a trial of the defendant within 60 days after arraignment. The court may postpone the trial if:
1. It finds that more time is needed by the defendant to prepare a defense; or
2. The number of other cases pending in the court prohibits the acceptance of the case for trial within that time.

NRS 178.556 Dismissal by court for unnecessary delay.

1. If no indictment is found or information filed against a person within 15 days after the person has been held to answer for a public offense which must be prosecuted by indictment or information, the court may dismiss the complaint. If a defendant whose trial has not been postponed upon the defendant s application is not brought to trial within 60 days after the arraignment on the indictment or information, the district court may dismiss the indictment or information.
2. If a defendant whose trial has not been postponed upon the defendant's application is not brought to trial within 60 days after the arraignment on the complaint for an offense triable in a Justice or Municipal Court, the court may dismiss the complaint.

While no other statutes or rules address time to disposition, the Model Time Standards[2] provide a useful benchmark for misdemeanor and traffic cases. All serious traffic cases are misdemeanors and will be measured by the standards for misdemeanor cases.

Misdemeanor Cases
75% within 60 days
90% within 90 days
98% within 180 days

Table 1 – Las Vegas Justice Court – Misdemeanor Time Standards

Type of Misdemeanor	% of Cases	Time Limits	Notes
Invoked Cases	100%	60 days	Invoked by either defendant or prosecution
Ordinary Cases	75% 90% 98%	60 days 90 days 180 days	Regardless of custody status
Post-Conviction and Reopened Cases	98%	180 days	Parallels original cases, especially for probation revocations

Time standards shall be measured by the events illustrated in Table 2, in alignment with the Nevada Revised Statutes.

[2] See *Model Time Standards for State Trial Courts*, National Center for State Courts, 2011, approved by the Conference of State Court Administrators, Conference of Chief Justices, American Bar Association, and National Association for Court Management, https://www.ncsc.org/Services-and-Experts/Technology-tools/~/media/Files/PDF/CourtMD/Model-Time-Standards-for-State-Trial-Courts.ashx.

Table 2 – Time Standards Start, Stop, and Suspension Events

Case Time Start	Case Time Suspension Begins	Case Time Suspension Ends	Case Time Stop
Initial Appearance (Arrest) or Arraignment Date (Citations)	Referral to specialty court or pre-prosecution diversion	Denial of acceptance into a specialty court or diversion or completion	**Sentence Date or Verdict Date** for the following dispositions: ▪ Acquittal ▪ Nolle Prosequi ▪ Dismissal ▪ Deferred Sentence
	Bench warrant issue date for failure to appear	Appearance of defendant in court after a bench warrant	
	Interlocutory appeal filing date	Interlocutory appeal decision filed date	
	Court order for mental competence or intellectual disability to stand trial	Receipt date of the court ordered competence or disability evaluation to stand trial	
	Declaration of incompetency	Declaration of competency	

2 Case Type Tracks

All misdemeanor cases follow distinct tracks to resolution, defined by complexity and aligned with expected case processing steps and events that comply with state statutes and court rules and that are needed to reach a just resolution. Court events are closely tied to the severity of the crime(s) charged and the expected complexity of the case or demands for a speedy trial.

Recommendation 1 – Provide tools and reporting by tracks organized by complexity

Consider the use of a track system that is designed to provide judges with tools to manage their caseload by complexity. The goal of a track system is that each judge can manage and track their workload based on standardized expectations defined by the criminal code and the Nevada Revised Statutes. In reality, a small percentage of cases in each track may require additional time or even custom management. The timing of events and the expectation for resolution of most cases anticipates that 2% of cases in each track will be anomalous.

The tracks illustrated in Table 2 on the following page are grouped by expected events and expected duration for most (98%) of the cases to reach a resolution. These expectations are guidelines, not time standards. Cases may take more or less time, due to complexity or other factors, often leading to a trial. The guidelines are organized by tracks in order to structure reporting to a judge about the cases on their docket. The events listed are not absolute. Some Track 1 cases will require a motions hearing and more time to negotiate a plea. Some Track 3 cases may not require an evidentiary hearing or a motions hearing with oral argument. The expectations of timing are a baseline, designed to anticipate standard, needed time for most events to be meaningful and to promote attorney preparation. The expectations are calibrated to allow enough time for discovery on most cases in each track.

Tracks 4 and 5 are difficult to track in the same case management and reporting environment. The principles behind integrating these tracks into original cases are the following:

- Post-adjudication or reopened cases are defined as separate, unique cases or workload per the Model Time Standards[3] and the Bureau of Justice Statistics;
- Judicial review of post-adjudication or reopened cases is often very time-consuming, and judges appreciate a close accounting of these efforts and commitment;
- Specialty court or specially assigned cases are a key component of the Las Vegas Justice Court's approach to cases. As a small percentage of the overall caseload, specialty court cases should be integrated into case management, even if a judge is only responsible for referrals from their docket.

[3] See, https://www.ncsc.org/Services-and-Experts/Technology-tools/~/media/Files/PDF/CourtMD/Model-Time-Standards-for-State-Trial-Courts.ashx.

Table 2 –District Court Criminal Case Track Events and Timing

Track	Events	Expectations
Track 1 **Invoked Cases**	Initial appearance (IA)/Arraignment Trial	2 days/30 days after arrest/citation 30-45 after IA/arraignment **100% resolved in 60 days**
Track 2 **Misdemeanor Citation Cases**	Arraignment Trial	30 days after citation 60 days after arraignment **98% resolved in 90 days**
Track 3 **Misdemeanor Arrest, DUI, and Domestic Violence Cases**	Initial appearance (IA) Arraignment Trial	2 days after arrest 30 days after release 120 days after arraignment **98% resolved in 180 days**
Track 4 **Post-Adjudication** Probation violations and revocations, and post-adjudication motions	Review hearing Final order for cases without new charges	15 days after filing 45 days after filing **98% resolved in 60 days** Except probation violations and revocations with new charges
Track 5 **Specialty Court Cases** (does not include specialized assignments or dockets)	Referral Screening and admission/refusal Includes: Veterans Court	When submitted 15 days after referral **Custom managed**

3 Case Management

The policies and procedures outlined in the Misdemeanor CMP shall be implemented by the fifteen (15) justices of the peace[4] of the Las Vegas Justice Court (Court) on misdemeanor cases to which they are assigned. All judges and staff have responsibility for compliance with the plan and the effective management of cases assigned to them, including adherence, where possible and in the interests of justice, to case time standards.

Las Vegas Justice Court are exclusively assigned misdemeanor cases from within Las Vegas' township limits that are filed by complaint or information by the District Attorney (DA). The justices are also assigned all felony and gross misdemeanor cases from within the township limits for the purposes of initial appearances and preliminary hearings. Felony and gross misdemeanor cases may be filed at six other justice courts with jurisdiction in other municipalities in Clark County. Each of the judges from the various other justice courts are paired with a team of two District Court judges.

Each judge manages cases with the following staff, who provide case management support. In addition, two law clerks are shared by 13 judges.

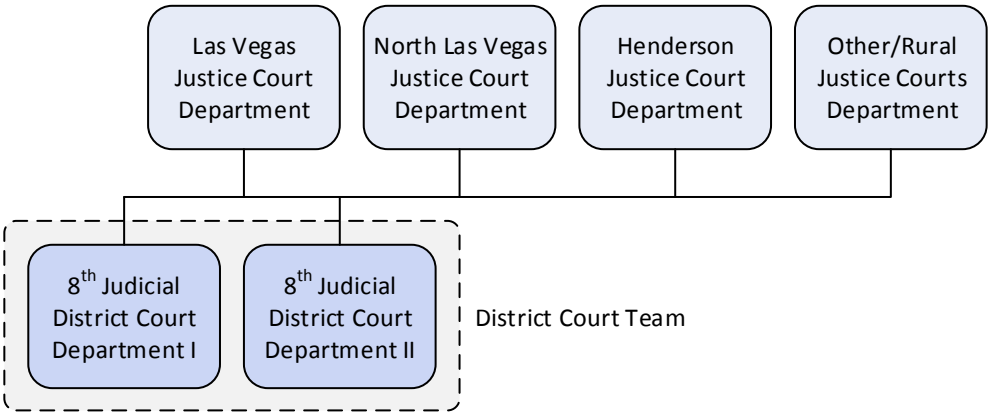
- Judicial assistant
- Marshal
- Court report
- Clerk and backup clerk from the Clerk's office

The District Court works on a track and team system, typically with two District Court departments functioning as a team, tracked with one Las Vegas Justice Court department (justice of the peace). In addition, one or more teams may be tracked with a North Las Vegas or other Justice Court department; and three District Court departments are exclusively assigned specialty court cases. See Eighth Judicial District Rule 1.64 below. This approach for the typical team is diagrammed in Figure 1 below.

> **Rule 1.64. Assignment of criminal cases.**
>
> (a) Each criminal case must be randomly assigned to the criminal trial judge aligned with that department of justice court which initiated the case, in accordance with the track and team system. This rule does not apply to misdemeanor appeals.
>
> (b) When an indictment is filed against a defendant who had the same case pending against him or her filed by complaint in justice court, the indictment must be assigned directly to the trial judge to whom the complaint had originally been tracked.

[4] Only 13 of the 15 departments are assigned criminal cases, but judges may rotate between civil and criminal.

Figure 1 – Track and Team Assignment



The current criminal caseflow assignments are available by contacting the Chief Judge or the Clerk of the District Court. Cases are randomly assigned to a Justice Court department and then randomly assigned to one of the two paired District Court departments. Random assignments are also designed to achieve a balanced workload among all of the judges.[5]

In addition, the track and team system is also utilized by the District Attorney and Public Defender, who assign teams to work with the District and Justice Courts track and team system. Both the District Attorney and Public Defender also have specially assigned teams to handle certain types of serious or complex cases, such as homicides or sex crimes, independent from the track and team system. This approach has significant positive benefits, including the vertical tracking of cases by the same prosecution and defense teams from Justice to District Court. Each department, once assigned a case, is exclusively responsible for management of that case until disposition. Disposition, for gross misdemeanor is bind-over to the District Court at a finding of probable cause, waiver of the preliminary hearing, indictment, or a dismissal due to a finding of insufficient probable cause at the preliminary hearing.

Recommendation 2 – Promote team collaboration and case management

Consider the expansion of the track and team track system to promote judicial collaboration and joint case management. The team and track structure utilized in Clark County is focused on assignment and ensuring vertical prosecution and defense.[6] Joint case management might include consideration of the following additional opportunities:

- Quarterly or annual joint review and management of especially serious or complex cases; and

[5] Occasionally the assignment system must balance a department's workload or caseload in order to account for assignment transfers due to recusals, case consolidations, or other reasons.

[6] Without the track and team system, the defense and prosecution teams would not be able to track with the same cases from Justice Courts to District Court.

- Inclusion of Justice Court justices in case management reviews with the District Court team pairs.

Other exceptions to individual assignment include reassignment by the chief judge to an overflow docket, typically an available judge, for the purposes of trial, to manage congested dockets, or to transfer cases due to recusal. The rules for reassignment are provided in Rules 1.60 and 1.90.

Initial Appearance

Initial appearances are assigned to one master calendared judge for the purposes of early review of all arrest cases. This docket is designed to consolidate 48-hour and 72-hour reviews, especially for defendants that have not made bail.

Pre-Prosecution Diversion

A pre-prosecution diversion program, after a citation/complaint has been filed, is utilized in the Justice Court. The DA will withhold prosecution, so the diversion is in place without an adjudication.

Recommendation 3 – Suspend case time at the order for diversion

Consider the suspension of case time on a misdemeanor case that has been ordered for diversion. While not an adjudication, the order de facto removes the case from the adjudication process. At termination or failure, case time will begin counting again. The length of selected case types is likely tied to diversion cases.

Special Assignments

Two special assignment dockets include driving under the influence (DUI) and domestic violence (DV). The DUI docket is currently assigned to one judge. The DV docket is only for intimate domestic violence cases (not including domestic violence between non-intimate partners). This docket is currently assigned to two judges.

Specialty Courts

Specialty courts in the Las Vegas Justice Court include the following. At least one department is specially assigned to each specialty court.

- Veterans Treatment Court
- Drug Court. This specialty court program requires that the defendant plead guilty.
- DUI Moderate Offender Program
- Community Court. A court that generally is designed for the homeless population involved in the criminal justice system.

Post-Adjudication Matters and Consolidations

Post-adjudication matters, such as motions for post-conviction relief and probation revocations, are assigned to the sentencing judge. In addition, multiple cases for the same defendant may be assigned or consolidated to the sentencing judge for the oldest case. Probation revocations, violations of probation, and other post-adjudication matters are assigned back to the original trial judge, whenever possible. In addition, a judge with an active case or a defendant that is still serving his or her sentence will be assigned a new case with the same defendant, wherever possible.

Reports

Currently, reports are provided to Justice Court departments about their pending dockets. Additional dashboard reports for judges' workload and performance indicators are not provided in the case management system.

Recommendation 4 – Expand reporting to include active case management tools

Consider expanding real-time case and workload reporting to each judge for their docket to provide tools for active case management across all cases while cases are active and after cases are resolved. The following reporting structure is designed to be keyed to each judge's docket and organized by track complexity in alignment with the case type tracks in Table 2 above. Reporting is most effective when it is real-time and enables a judge or their staff to drill down and review individual cases within each category.

Under direction of the judges, the Courts' administrators or supervisors and/or designees will provide regular case management reports as detailed below. Many of these reports are not currently available in the automated case management system and will require some time to be developed. All reports will be presented by court, track, and selected time period as required. All criminal judges will be able to see reports for their own docket, or for the whole court. Active pending case reports should be interactive and provide access from the report to highlighted cases.

Cases

1.1 Pending inventory of active cases (by track, by judge)
1.2 Age of active pending cases (by track, by judge)
1.3 Clearance rate - filings & dispositions (by track, by judge)
1.4 Detail filings & dispositions (by track, by judge)
1.5 Time to disposition (by track, by judge)

Pretrial Decisions

2.1 Bail ordered and revoked (by track, by judge)
2.2 Defendants in jail (by track, by judge)
2.3 Defendants diverted or referred to specialty court (by track, by judge)

Events

3.1 Number of events per case (by track, by judge)
3.2 Number of trial settings per case (by track, by judge)
3.3 Summary of continuances (by track, by judge)
3.4 Detail of continuances by reason (by track, by judge)

Sanctions

4.1 Fines & fees summary (by track, by judge)
4.2 Fines & fees detail (by track, by judge)
4.3 Restitution (by track, by judge)
4.4 Jail as a sanction (by track, by judge)
4.5 Alternatives to jail (by track, by judge)
4.6 Probation as a sanction (by track, by judge)
4.7 Violations of probation (by track, by judge)

Outcomes and Causes

5.1 Recidivism rates - all cases
5.2 Specialty court recidivism
5.3 Poverty - indigent defendants by assignment of counsel
5.4 Homelessness & criminal justice
5.5 Mental health & criminal justice
5.6 Substance abuse and criminal justice

4 Court Case Events

Expected case events for Tracks 1-3, misdemeanor cases and the initiating steps for Tracks 4 and 5 cases, are illustrated in Figure 1 on the following page. See Criminal CMP, for the felony and gross misdemeanor caseflow map. While most of the events are statutory, each judge has discretion, within limits, over the timing, resets, and the scheduling of status hearings to monitor case progress. Each judge and the judicial staff and clerks that support case management will make every effort to ensure compliance with the expectations and timing for the scheduling of each event. Good cause continuances, unavailability of docket space, discovery issues, and other factors may impact case processing for each case. The trials and all procedures for criminal cases are governed by the Nevada Revised Statutes and the Local Rules of Practice for the justice Court of Las Vegas Township.

Filing and Assignment NRS 171.1774; 178

Cases are initiated in the Justice Court by the filing of a complaint by law enforcement following arrest, summons, or citation. At filing, a case is randomly assigned to a justice of the peace. Defendants on misdemeanor cases that have made bail, have received an administrative release, or who have been summoned to appear are set for an arraignment within approximately 30 days. An initial appearance is held typically within 12 to 14 hours for arrest cases that have not made bail or been released by pretrial services following a risk assessment. Felonies and gross misdemeanors are subsequently assigned to one of a pair of District Courts (judges) on a track and team system with each justice of the peace.

At the initial appearance, the complaint is provided to the defendant and probable cause for the arrest and complaint is determined. Misdemeanor cases may be set for an arraignment and then subsequently for trial. Gross misdemeanor and felony custody cases are set for a preliminary hearing within 15 days. Non-custody felony cases are set for a preliminary hearing within 30-60 days.

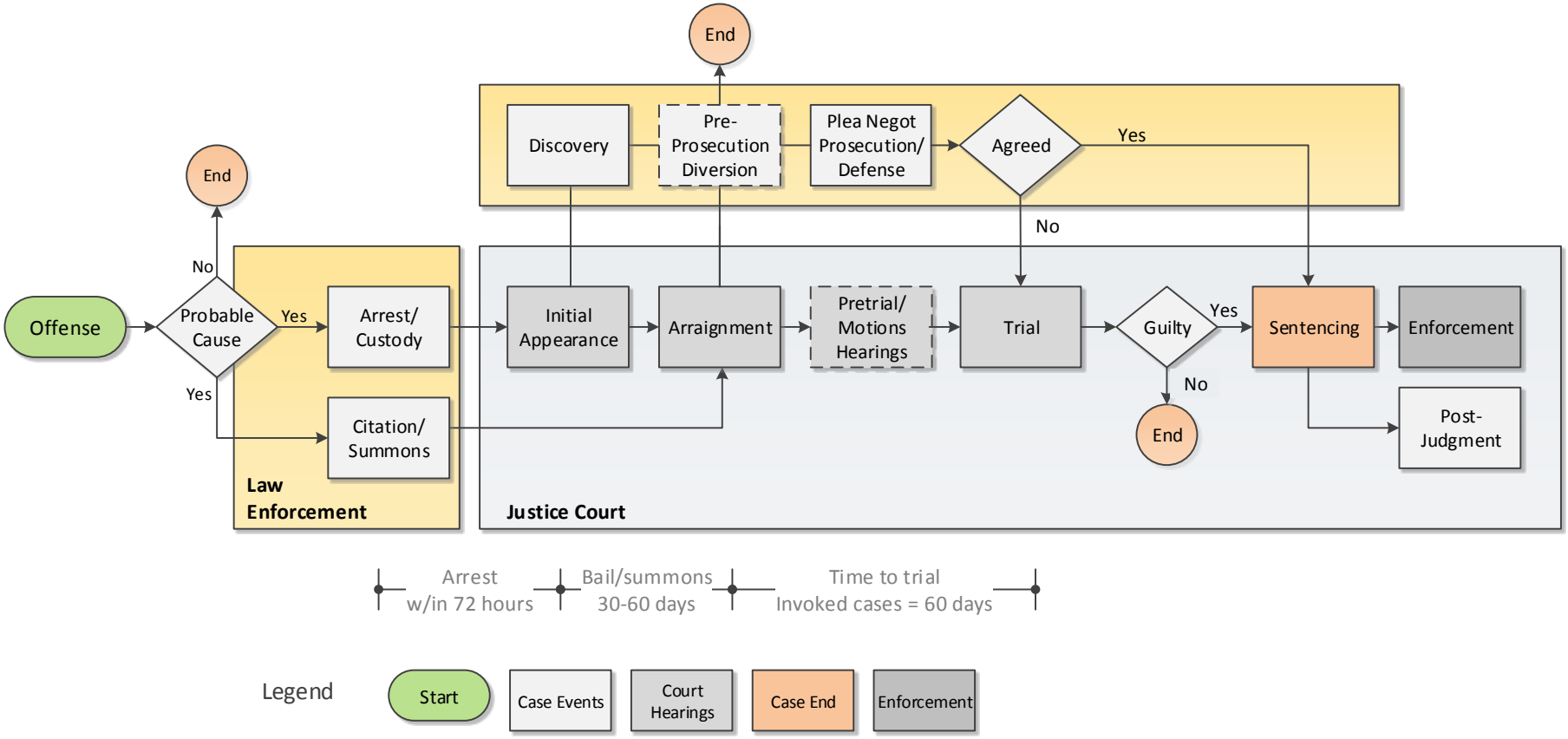
Probation Violation and Revocation Filings NRS 176A.500

The majority of Track Four cases are probation violation and revocation filings. The ability to set these filings for a court hearing, after arrest or referral are currently dependent on the filing of the complaint by Probation and Parole, a state agency. The delay in review and submittal of the complaint has historically taken as long as 30-60 days. Recently, this has been reduced to an average of 14-20 days.

Recommendation 4 – Reduce initial appearances on probation revocations to 48 hours.

Work closely with state Probation and Parole to reduce these filings and subsequent initial appearance to under 48 hours. This is possible through the use of a response matrix to violations that enable probation officers to file complaints without close supervisor review at the state level. Stated another way, localize the response through standardization of responses to behavior and recommendations for graduated sanctions.

Figure 2 – Misdemeanor Caseflow Map



Initial Appearance, NRS 171.178; 186

At the initial appearance, the complaint is provided to the defendant and probable cause for the arrest and complaint is determined. A judge shall set a case for an arraignment following the initial appearance on misdemeanor cases.

Justices of the peace hear initial appearances seven days per week, two times per day, typically within 12 to 14 hours after arrest, although allowed by statute up to 72 hours of arrest, excluding non-judicial days. At the initial appearance, the justice of the peace shall "inform the defendant of the complaint and of any affidavit filed therewith, of the right to retain counsel, of the right to request the assignment of counsel if the defendant is unable to obtain counsel, and of the right to have a preliminary examination." The justice of the peace also inform the defendant that "the defendant is not required to make a statement and that any statement made may be used against him or her." The magistrate shall allow the defendant reasonable time and opportunity to consult counsel, and shall set bail if allowed by law. In addition, for arrests made without a warrant or summons, the judge may determine probable cause. If the defendant is not represented by counsel the magistrate will make an indigency determination and if the defendant is indigent, the court will appoint an attorney. Plea or diversion offers on misdemeanors may be made by the prosecutor at the initial appearance.

Gross misdemeanor and felony custody cases are set for a preliminary hearing within 15 days. Non-custody cases are set for a preliminary hearing within 30-60 days. If a defendant has made bail prior to the initial appearance or they have received a citation or summons in lieu of arrest, they are summonsed to appear at the initial appearance within 30-60 days. No arraignments are held at the Justice Court for gross misdemeanor or felony cases.

Arraignment, NSR 174.015; 035

At the arraignment, the complaint or information shall be read or the substance of the charge shall be stated to the defendant, and the defendant shall be asked to plead to the charges. The defendant shall be given a copy of the indictment or information before the defendant is called upon to plead.

Upon an unconditional waiver of a preliminary hearing, a defendant and the district attorney may enter into a written conditional plea agreement, subject to the court accepting the recommended sentence pursuant to the agreement.

Recommendation 5 – Enact plea negotiation guidelines

At least 48 hours prior to the arraignment, the assigned prosecutor will be expected to thoroughly review the case and arrive at a considered and educated plea agreement offer for remaining cases. Said plea offer shall be conveyed to the defense prior to but no later than the arraignment. The defense attorney is expected to have thoroughly reviewed the state's file, to have consulted with the defendant, and to have begun any necessary investigation. At the

arraignment, the defense attorney will be expected to convey the plea agreement offer to the defendant and to present any motions necessary to complete investigation of the case. If case files in the DA's office are scanned and available digitally, then change procedure is for defense counsel to file an entry of agreement (EOA) and email the same to the assigned prosecutor. Upon receipt of EOA, the assigned prosecutor shall, within 15 days, email all reports and a plea offer to defense counsel for Track 1 and 2 cases. The same procedures shall apply at the case management conference for Tracks 3 and 4 cases.

Recommendation 6 – Issue written scheduling order at arraignment on select case types

If no plea agreement is reached, a written scheduling order shall be issued for all Track 3 cases pursuant to the guidelines in Table 2. All pro forma dates per the scheduling guideline shall automatically be entered on the order, adjusted to the nearest available docket or calendar for each assigned judge. The goal of finalizing a scheduling order will be to determine if any discovery issues will delay the trial and to ensure that both parties have committed to the trial date. If any motions hearings or a pretrial conference are needed to resolve discovery matters, these should potentially be discussed and included on the scheduling order.

For all tracks, attorneys will be required to notify the court in writing within fourteen (14) days about scheduling conflicts and requests for extensions of time. This notification will not preclude the parties and attorneys on Track 3 cases from requesting additional time for discovery at the arraignment or subsequent hearings, as the case develops.

Written requests to modify the case schedule may be reviewed and administratively ordered by the court with notice to the parties. The scheduling order shall indicate that the time period for discovery may be extended for enumerated extraordinary reasons per the agreement of the parties, but that the court reserves the right to set an interim hearing to review the causes of the extension.

Motions and Motions Hearing NRS 174.125-145; 178.552

The following rules apply to the filing and hearing of motions.

- Discovery motions may be made orally at the arraignment.
- The court may extend time for any action or trial for good cause.
- Ex parte motions to extend or shorten time must be made by written affidavit showing good cause.
- All motions must be filed not later than 15 days before the date set for trial.[7]
- Late motions may be considered upon filing of an affidavit.
- Opposition to motions must be filed within 7 days of service of the motion.

[7] Note that this Rule is inconsistent with other local rules.

- Motions to modify bail must be set for a hearing within 2 days.
- Motions *in limine* may be filed up to 7 days before the date set for trial.

A motions hearing shall be set by request of either party or at the court's discretion or for all motions to modify bail. The court may determine that evidentiary, discovery, or procedural motions shall require oral argument at a hearing. The procedures below do not restrict the parties from filing motions later in the case in compliance with the statutes and rules listed above, but parties are strongly encouraged to file timely pretrial and evidentiary motions, and delay beyond the 7 and 15 days before trial will only be considered for good cause.

Trial NRS 175

Typically, judges in departments that are assigned criminal cases, typically set misdemeanor trials on mixed calendars with preliminary hearings on felony and gross misdemeanors, Monday to Thursday in the morning,, following the arraignment calendar. Fridays are generally reserved for special assignments, motions, or other matters. For a significant number of gross misdemeanors, the defendant may plead to a misdemeanor, for which a justice of the peace may issue a judgment order. A significant proportion of misdemeanor cases plead at the arraignment or trial.

Justice Court departments may set 25 or more cases for preliminary hearings or trials on each weekday. Criminal cases are set for trial in the following prioritized order:

1. Invoked cases – 60 days from arraignment per speedy trial statutes. These cases, by statute, are set within the 60- day time frame regardless of any predetermined caps set by each judge.
2. Cases with defendants in jail pretrial, by statute, are second in priority to invoked cases.
3. Cases with defendants out of custody, when ordinary, are the lowest prioritized for trial.

These priorities are not inconsistent with NRS 178.594, which is generally used as a guide for the scheduling of the sequence of cases on a trial calendar, rather than scheduling at arraignment.

> **NRS 178.594 Order of disposing of issues on calendar.**
> The issues on the calendar must be disposed of in the following order, unless for good cause the court directs an action to be tried in a different order:
>
> 1. Prosecutions for felony, when the defendant is in custody.
> 2. Prosecutions for misdemeanor, when the defendant is in custody.
> 3. Prosecutions in which the State, upon determining that the physical, emotional or mental condition of the victim of, or a material witness to, an alleged felony or gross misdemeanor is deteriorating because of age, an illness or an injury to himself or herself or his or her spouse, has demanded a trial within 60 days after the arraignment of the person accused of the felony or gross misdemeanor pursuant to NRS 174.511.
> 4. Prosecutions for felony, when the defendant is on bail.
> 5. Prosecutions for misdemeanor, when the defendant is on bail.

Sentencing NRS 176.015 – 161

Sentencing, per statute, must be at a prompt hearing, without unreasonable delay. The defendant must be permitted to make a statement, and any victims or surviving family members of the victim(s) must be provided sufficient notice to appear at the sentencing hearing. A presentence investigation (PSI) and report is not required for misdemeanors, so sentencing is typically ordered immediately after a guilty plea or verdict.

Probation Hearing NRS 176A

Violations of probation and probation revocations are Track 4 reopened cases, often with new charges associated with a new case. Violations of probation that are administrative should be set within N days of the filing of a motion. New arrests are typically associated with new charges. The procedures for assignment, consolidation, and scheduling of these cases are provided above.

5 Policies and Other Procedures

The following Las Vegas Justice Court policies include detailed procedures that shall not supersede Nevada Revised Statutes or Local Rule.

Alternative Dispute Resolution (ADR)

Alternative dispute resolution in the Las Vegas Justice Court is provided through the use of the following procedures and programs:

- **Plea negotiation and recommendation** is a form of settlement between the parties. It is ADR, because typically a case is not adjudicated in a formal adversarial process at trial. Plea policies and procedures are interwoven into pretrial practices and are described in the baseline case processing procedures in Chapter 4.
- **Prosecutor or court diversion**, after a complaint or charges have been filed is a form of ADR.
- **Specialty courts**, utilizing deferred prosecution or deferred sentencing, are a type of program that is very similar to intensive supervision, only with ongoing and continuous monitoring by the court, usually by a specially-assigned judge. In some specialty courts, the program is offered as a condition of probation. See Tables 3 and 4 below for summaries of the eligibility and outcome measurements for these courts.

Table 3 – Justice Court Specialty Courts and Dockets Eligibility Requirements (template)

No	Specialty Courts	Cost	2-year jail sentence	Jurisdiction of court	Addicted except marijuana <12 mos	Mental illness diagnosis	Co-occurring disorders	No prior graduates	No co-family members	No co-defendants	Prohibitive medical/ mental disabilities	Prior trafficking conviction	No current drug charges	Exclude violent open charges
1	**Veteran's Treatment Court**													
2	**Drug Court**													
3	**DUI Moderate Offenders Program**													
4	**Community Court**													

P = prioritized
X = mandatory
*Per violent offender classifications
TBD = to be determined

Table 4 – Justice Court Specialty Courts and Dockets Performance Measures (template)

No	Accountability Court	Statistical Measures	Performance Measures				
			Retention	Sobriety	In-Program Recidivism	Post-Exit Recidivism	Units of Service
1	**Veteran's Treatment Court**	Referrals and admission rate; graduations; terminations; incentives; sanctions	Rate of graduations; Rate of terminations by type and length of stay	Drug screens; Terminations for drug use	New charge; AWOLs without recidivism as a statistical aggregate	New arrests within 4 years; New convictions within 4 years (preferred)	Length of program; treatment hours; home visits; referrals of service; total contacts
2	**Drug Court**						
3	**DUI Moderate Offenders Program**						
4	**Community Court**						

Continuances

The Las Vegas Justice Court continuance policy shall comply with 174.515; which shall take precedence over any conflicting policies and procedures below. A showing of due diligence is required in order for the district court to grant continuances. All trial continuances, if reset by the court, shall be reset within the shortest time frame possible, except for extraordinary circumstances on complex, custom-managed cases.

NRS 174.515 Postponement: When and how ordered

1. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party by affidavit, direct the trial to be postponed to another day. In all cases where a continuance is granted upon the application of either party the court may require, as a condition of granting such continuance, that the party applying therefor consent to taking, forthwith, or at any time to be fixed by the court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken.
2. The court also may require all witnesses to enter into undertakings in such sum as the court may order, with or without sureties, to appear and testify on the day to which the case may be continued, but any witness who is unable to procure sureties for the witness's attendance may be discharged on the witness's own recognizance, upon giving a deposition in the manner prescribed in NRS 174.175 and 174.205.
3. If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the court may consider any adverse effect a continuance or other postponement might have upon the mental or emotional health or well-being of the child. The court may deny a continuance or other postponement if the delay will adversely affect the mental or emotional health or well-being of the child.

Recommendation 7 – Enact uniform continuance polies for the Justice Court

Consider the following continuance policies for the Justice Court to be enacted by Local Rule.

All applications for continuances are addressed to the sound legal discretion of the court and, if not expressly provided for, shall be granted or refused as the ends of justice may require. In all cases the presiding judge may, in his or her discretion, admit a counter-showing to a motion for a continuance and, after a hearing, may decide whether the motion shall prevail.

Good cause reasons for continuances, requested within the deadlines provided in the case management order, include the following:

- Reasonable scheduling conflicts for the defendant;
- Religious holidays for the defendant, with affidavit;
- Lack of notice to defendant within three days of an event, absent court documentation of notice being provided to counsel;

- Reasonable scheduling conflicts for counsel, except that the DA and defense counsel shall be requested, when known in advance, to assign associate counsel for non-trial events, where required by the court, and for the associate counsel to meet the requirements for preparation for each non-trial event;
- Unavailability of a witness for trial or other dispositive event;
- Unavailability of a victim; and
- Any other sufficient or good cause reason as determined by the court.

Good cause reasons for granting continuances, after the deadlines provided in the case management order for requesting a continuance or extension of time, include the following:

- The party is absent, and counsel is present to substantiate a good cause for his or her absence, including, but not limited to, illness or injury.
- Absence or serious illness of counsel;
- Absence of witness more than 100 miles from the court;
- Party, leading attorney, or material witness in attendance on active duty as member of National Guard or component of armed forces of the United States, with or without motion of the parties.
- Case not reached by the court at trial week.

Discovery

Parties shall promptly and completely comply with the requirements of by the specific discovery date deadline as set forth in the case management order in each defendant's case. Any supplemental discovery must be supplemented as soon as practicable, but in any event no later than five (5) business days after receipt of any additional information, documents, reports, or other matters which are subject to disclosure pursuant to applicable criminal discovery statutes.

Extensions. Any request for an extension of the discovery date deadline shall be submitted by written motion to the court by the discovery date deadline. Such motions must provide a detailed, fact-based explanation of the need for the extension, along with a proposed order for the court's consideration. As with all motions, a courtesy copy of any motion for extension must be provided via hand delivery to the chambers of the presiding judge or by email to the court coordinator for the presiding judge.

Compelling Discovery. The parties are directed to comply with all discovery obligations. The parties are directed not to file "form" motions seeking an order compelling the generalized disclosure of discoverable materials or the general exclusion of evidence. Should a party need to file a motion to compel discovery, the party shall itemize the articulable and case-specific instances in which the party believes the opposing party has failed to comply with discovery obligations. Such motion may be filed any time after the discovery date deadline has passed and no later than the motions due date which is identified in the separate scheduling order entered in each defendant's case.

Interpreters

It is the policy of the courts to secure the rights of hearing impaired persons who, because of impaired hearing, cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of the courts, legislative bodies, administrative agencies, licensing commissions, departments, and boards of the state and its subdivisions unless qualified interpreters are available to assist them.

Procedure for Defendant. At the arraignment hearing or the entry of appearance of counsel, counsel shall advise the court by verbal motion of the need for an interpreter for a non-English speaking defendant.

Procedure for Witnesses or Other Parties to the Case. Upon verbal or written request, the court will provide an interpreter for any non-English speaking defendant. The request for an interpreter must be submitted in writing to the court coordinator for the presiding judge at least two weeks in advance of a hearing or trial date.

TAB 8

Rule 18. Court Interpreters.

a) The court shall provide, at no cost to the parties, a qualified, preferably certified, interpreter in all criminal proceedings in which any limited English proficiency (LEP) individual is involved as a defendant, witness, or juror.
b) When a defendant requires an interpreter, counsel shall advise the court of the need for an interpreter as soon as possible, but no later than 48 hours prior to an initial hearing or trial in a county whose population is greater than 100,000. In a county whose population is less than 100,000, notice shall be provided as soon as possible, but no later than 7 calendar days prior to an initial hearing or trial.
c) When an interpreter is required for a witness, counsel shall advise the court of the need for an interpreter as soon as possible, but no later than 48 hours prior to any hearing or trial in a county whose population is greater than 100,000. In a county whose population is less than 100,000, notice shall be provided as soon as possible, but no later than 7 calendar days prior to any hearing or trial.
d) Notice shall be made to the court interpreter office, court administrator, court clerk, judicial assistant, or any other person designated by the court to receive such notice.

a) *Notice of intent to appeal.* The party aggrieved by the decision of the justice or municipal court must file a Notice of Appeal within the following periods:

(1) A criminal defendant filing an appeal of a final judgment must file the Notice of Appeal within 10 days of the entry of the final judgment or the written ruling on a Motion for New Trial or the period set by statute.

(2) The State must file an appeal of a Motion to Suppress in the periods set by NRS 189.120.

(b) *Filing includes requirement to provide service.* Any document filed with the court must be served on the opposing party at the time of filing. A Certificate of Service must be filed with the court at the time of filing or within 5 days thereafter demonstrating service of the pleading unless the document is filed electronically and the opposing party is participating in the electronic filing program.

(c) *Perfection of appeal.* The following shall be filed with the court to perfect the appeal:

(1) *Defendant appeals.* A defendant appealing a final judgment must file, as required by NRS 189.065, a request for hearing with the court within 60 days in the format set forth in Request for Hearing form established in these rules. The court clerk must have the matter set for hearing within 150 days.
(A) Briefs.
i. The Defendant's opening brief must be filed within 45 days of filing the Notice of Appeal.
ii. The State's responding brief must be filed within 30[1] days of filing the opening brief.
iii. The Defendant's reply brief must be filed within 5 days of filing the responding brief. The reply must be limited to answering any new matter set forth in the responding brief.

(2) *State appeals.* For the State filing a Notice of Appeal of an order granting a suppression motion, the State must file a request for hearing within 10 days in the format set forth in Request for Hearing form established in these rules. The court clerk shall have the matter set for hearing within 70 days.
(A) Briefs.
i. The State's opening brief must be filed within 10 days of filing the Notice of Appeal.
ii. The Defendant's responding brief must be filed within 10[2] days of filing the opening brief.

The State's reply brief must be filed within 5 days of filing the responding brief. The reply must be limited to answering any new matter set forth in the responding brief.

[1]This number was edited after the vote to align with the meeting discussion.
[2]This number was edited after the vote to align with the meeting discussion.

TAB 9

Office of the Public Defender

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Darin F,. Imlay, Public Defender · **Virginia F. Eichacker**, Assistant Public Defender

Here are several proposed rules:

1. Bail
2. Jury Commissioner
3. Grand Jury
4. Postconviction Writ of Habeas Corpus

Bail

1) Determinations regarding pre-trial custody must be made promptly after arrest. "Prompt" means a time frame commensurate with that which a defendant could post standard bail or the bail fixed in an arrest warrant, but no later than 24 hours following arrest, including non-judicial days.
2) Custody determinations must be made by a judge at an adversarial hearing, with the accused and counsel present.
3) At any hearing on pre-trial custody, prosecutors must *specify* whether they are seeking to detain an individual pre-trial. If so, prosecutors must establish by clear and convincing evidence that pretrial detention is the least restrictive means of assuring a defendant's return to court and ensuring community safety.
4) In order for a defendant to be detained pre-trial, the reviewing judge must make findings, on the record, that prosecutors established that the defendant poses an unmanageable risk of flight and danger to the community, and that no release condition or combination of conditions can satisfy concerns regarding flight risk and community safety.
5) The failure to hold a custody hearing within the time frame specified herein shall result in the immediate release of the arrestee.

Proposed by the Clark County Public Defender's Office

Chief Deputy Nancy Lemcke

Jury Commissioner

Rule X.XX. **Availability of procedures**. The jury commissioner shall document, in writing, all procedures used by the jury commissioner's office in the selection of prospective jurors and make the procedures available to the public upon request.

Rule X.XX. **Jury sources**. The jury commissioner must utilize a list of persons who are registered to vote in the county, the Department of Motor Vehicles, the Employment Security Division of the Department of Employment, Training and Rehabilitation, and a public utility as required by NRS 6.045, and such other lists as may be authorized by the chief judge.

Rule X.XX. **Yearly reporting requirements**. The jury commissioner shall prepare and submit a yearly report that contains statistics from the records required to be maintained by the jury commissioner pursuant to NRS 6.045, including, without limitation, the name, occupation (where available), zip code and race of each trial juror who is summoned, each trial juror who appears for jury service, each trial juror who is selected, and each trial juror who is seated as a juror.

Rule X.XX. **Availability of documentation in master list**. All documentation collected by the jury commissioner and used to compile the master list must be made available to the parties to a jury trial upon request. A criminal defendant is entitled to information relating to the race, gender, occupation (where available), and zip code of the prospective jurors in the master list. The jury commissioner must also prepare a zip code report listing the number of prospective jurors in the master list by zip code to be given to the public upon request.

Rule X.XX. **Availability of documentation to the parties in a case**. All documentation collected by the jury commissioner from prospective jurors must be made available to the parties to a jury trial upon request. A criminal defendant is entitled to information relating to the race, gender, occupation (where available), and zip code of the prospective jurors assigned to his case, the prospective jurors reporting for jury service, and in the group of jurors summoned for jury on the date set for jury trial. This documentation must be made available, when requested, prior to beginning the jury selection process.

Proposed by:

Clark County Public Defender's Office

Chief Deputy Tegan Machnich
Chief Deputy Sharon Dickinson

Grand Jury

1. All procedures used by court for the selection process for grand jurors must be in writing and available to the public for review.

2. The district court shall keep all documents and statistics on the selection process for the grand jury and conduct periodic review to ensure the process allows for a grand jury drawn from the fair cross-section of our community.

2. A defendant is entitled to information relating to the composition of the grand jury in order to assess whether he has a viable constitutional challenge. A defendant may gain access to grand jury information by filing a motion in the district court where his Indictment is proceeding.

"Certainly, Nevada is not bound by this federal statute, and it does not have a state statute providing the right to inspect grand jury records. Nevertheless, this court is bound by Supreme Court precedent, and in *Adler,* we recognized that a defendant has a constitutional right to a grand jury drawn from a fair cross-section of the community. 95 Nev. at 347, 594 P.2d at 731. As the Supreme Court of Missouri noted when considering this same issue, "[t]his cross-section requirement would be without meaning if a defendant were denied all means of discovery in an effort to assert that right." *State ex rel. Garrett v. Saitz,* 594 S.W.2d 606, 608 (Mo.1980). Thus, we hold that Afzali is entitled to information relating to the racial composition of the grand jury so that he may assess whether he has a viable constitutional challenge." *Afzali v. State*, 130 Nev. 313, 317, 326 P.3d 1, 3 (2014).

Proposed by the Clark County Public Defender's Office

Postconviction Writ of Habeas Corpus

1. The court shall appoint post-conviction counsel for a petitioner who is unable to pay the costs of the proceedings or unable to employ counsel if:

(a) Petitioner was deemed incompetent at any time prior to conviction;
(b) Petitioner is deemed incompetent at any time after conviction;
(c) English is a second language for petitioner or petitioner is unable to fluently read English;
(d) Counsel is needed to facilitate discovery;
(e) Petitioner is unable to comprehend the proceedings;
(f) The consequences the petitioner is facing are severe;
(g) Issues presented in the case are difficult; or
(h) Based on any other reason the court deems meritorious.

2. If petitioner is in custody, petitioner will be allowed to be present telephonically for all hearings that do not involve the testimony of witnesses on his petition or other post-conviction motions. Court shall set up procedures to allow for telephonic communications between the court and the prison or other facility. Petitioner shall appear in person, rather than telephonically, for all hearings that will involve the testimony of witnesses.

Proposed by the Clark County Public Defender's Office