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: June 15, 2020 at Noon
Place of Meeting: Remote Access via Blue Jeans

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 Previous Meeting Summary* **(Tab 1)**
   A. May 27, 2020

IV. Ongoing Reports/Status Updates
   A. Settlement Conferences **(Tab 2)**

V. Statewide Rules Discussion
   A. Local Rules of Practice
      i. Second Judicial District
      ii. Eighth Judicial District
   B. Rule 8(h): Pretrial Motions **(Tab 3)**
   C. Rule 14(3)(b): Sentencing **(Tab 4)**
   D. Rule 15: Continuances **(Tab 5)**
   E. Rule 2: Case Assignment **(Tab 6)**

F. Rule 4: Initial Appearance and Arraignment **(Tab 7)**
G. Rule 5: Pleas of Guilty or Nolo Contendere **(Tab 8)**
H. Rule 6: Release and Detention Pending Judicial Proceedings **(Tab 9)**

I. Additional Rules for Commission Consideration **(Tab 10)**
A. Grand Jury
B. Jury Commissioner

II. Other Items/Discussion

III. Next Meeting Date and Location
A. July 1, 2020 @ Noon: Remote Meeting

IV. 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

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Commission on Statewide Rules of Criminal Procedure
May 27, 2020
Noon
Summary prepared by: Kimberly Williams

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

Guests Present
Alex Chen
Sharon Dickinson
John Petty
Alysa Grimes

AOC Staff Present
Jamie Gradick
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.
- Opening Remarks: Justice Hardesty requested Mr. Lalli or Mr. Imlay and Chief Judge Freeman to share an update on the installation of the settlement conference program for criminal cases.
  - Mr. Lalli reported the 8th Judicial District's first settlement conference case will be held on June 1st.
  - Chief Judge Freeman stated the 2nd Judicial District's settlement conference cases have been going very well. Chief Judge Freeman raised a concern with the committee regarding which judge should take the new plea after the settlement conference.
    - The committee discussed and agreed to amend the rule.
    - Justice Hardesty requested Mr. Lalli amend the rule and canvas for additional rule amendments.

II. Public Comment
- There was no public comment.

III. Review and Approval of April 27, 2020 and May 15, 2020 Meeting Summaries
- The April 27, 2020 and May 15, 2020 meeting summaries were approved.

IV. Work Group Status Update
- Jury Instructions Work Group
  - Chief Judge Freeman reported the subcommittee had a virtual retreat on May 21, 2020 with great results. The subcommittee has planned another retreat for July or August.
  - Currently, the work group has completed 18 of 26 chapters.

V. Statewide Rules Discussion
- Rule 8: Pretrial Motions *(Tab 2)*
  - Mr. Prengaman, Ms. Rasmussen, and Ms. Dickinson each presented language drafted for Rule 8, (h) *(Please see meeting materials for additional information).*
    - Justice Hardesty asked if anyone had any comments or edits to the final draft.
      - Mr. Prengaman raised his concern with Section 1 (Rasmussen Draft) stating a detention hearing being conducted within 12 hours is not attainable for most judicial districts. Additionally the release language is not in conformance with US Supreme Court case law.
        - Mr. Jackson agreed with Mr. Prengaman's comments.
        - Judge Shirley agreed with 12 hours not being reasonable for the rural districts.
      - Judge Herndon disagreed with the language used in section ii (a) part a and suggested bail or no bail option instead of an unattainable release condition or express detention order.
      - A motion was made that the committee to adopt the language as submitted by Mr. Prengaman for section (h).
        - The motion did not pass.
      - Justice Hardesty proposed that Mr. Prengaman, Ms. Rasmussen or Ms. Dickinson memos in support of their submitted changes. Justice Hardesty would like to submit the rule with all three drafts of the language along with the memos, to be presented to the Supreme Court for debate. Justice Hardesty will also include a memo explaining his concerns with Rule 8.
  - Attendees discussed whether sections (a-g) had been formally approved; Ms. Gradick informed attendees that the group had tentatively approved these sections during the February 28, 2020 meeting.
    - A suggestion was made that the sections be formally voted on.
    - Justice Hardesty called for a vote to approve the current language of sections (a - g).
      - The motion passed.

- Rule 14: Sentencing *(Tab 3)*
  - Justice Hardesty requested Mr. Prengaman to present his draft edits to the committee and questioned the committee members for any comments, questions or edits. *(Please see meeting materials for additional information)*
    - Mr. Prengaman presented his draft of Rule 14, Section 3(b), Section 4, and Section 5 *(Please see meeting materials for additional information*) and explained how he reached the current version of the draft.
      - Mr. Arrascada shared his concern of not being able to attain documents within the 3 day in advance timeframe and would like the documents to still be considered.
      - Mr. Imlay supported with Mr. Arrascada's comments.

- Justice Hardesty shared his concern of having the hearing postponed for new document consideration.
- Judge Herndon commented on the need of leaving the discretion with the judge.
- Mr. Lalli supported Mr. Prengaman's draft and the need to have procedure rules establishing good practices and suggests a good clause rule be included.
- Ms. Dickinson shared her concern of the judge not considering all documents submitted and does not support the 3-day rule.
- Justice Hardesty called for a verbal vote to approve the proposed language, as redrafted by Mr. Prengaman, of sections 4 and 5 only; the commission approved.
- Justice Hardesty tabled the remainder of the discussion for the next committee meeting due to lack of time.

VI. Rules Finalized During Previous Meetings

- Rule 17 – Justice Hardesty informed attendees that this rule has been formally approved via email voting; the final version in included in the meeting materials or reference.

VII. Additional Rules for Commission Consideration

VIII. Other Items/Discussion

- Please be prepared to discuss Rule 15 for the next committee meeting.
  - Attendees briefly discussed the language proposed by Mr. Prengaman and expressed support for this draft.
  - Justice Hardesty requested that attendees be prepared to vote on approval of this language at the next meeting.

IX. Next Meeting

- Justice Hardesty commented that he would to meet twice in June; Ms. Gradick will survey the group for availability.

X. Adjournment

- The meeting was adjourned at 1:38 p.m.

TAB 2

Rule 252. Settlement conferences.

1. Settlement conferences in civil cases. At any time in any civil case, the parties may request or the court may order that the parties and their attorneys meet in person with a judge other than the judge assigned to preside over the trial and attempt to settle the case.

(a) Settlement conferences held pursuant to subsection 1 of this rule shall be held before a senior justice or senior judge or other judge who is amenable to hearing the case.

2. Settlement conferences in criminal cases. The purpose of a settlement conference is to facilitate good faith discussions to resolve any criminal case before the district court in a manner that serves the interest of justice.

(a) In any criminal case before the district court, either party may request a settlement conference, or the trial judge may, on its own, recommend that counsel with settlement authority participate in a settlement conference. A case will not be referred to a settlement conference if any party objects. The defendant must consent on the record or in writing before a case is referred to a settlement conference. In all cases, the settlement conference must not be before the trial judge. If settlement discussions do not result in an agreement, the case must be returned to the trial judge.

(b) Beyond all else, participation in a settlement conference is voluntary by the parties, and no party has any right to an offer, or may raise any claim from any fact or circumstance that occurs during the settlement conference, including but not limited to the bad faith of the parties in participating in the conference. Decision-making authority remains with the parties and not the settlement judge. The trial judge, the settlement judge, or any party may unilaterally terminate the settlement conference at any time.

(c) Settlement conferences must, in all respects, be confidential and not reported or recorded.

(d) Communications between the settlement judge and the trial judge. The settlement judge and the trial judge must have no contact or communication, except that the settlement judge may, without comment or observation, report to the trial judge that:

(1) The parties cannot reach an agreement;

(2) The parties have reached an agreement, and the agreement reached may be reduced to writing, signed by the prosecuting attorney, the defendant, and defense counsel and submitted to the court for approval;

(3) Meaningful attempt to settle is ongoing; or

(4) The settlement judge withdraws from further participation in potential settlements.

(e) Should the settlement conference result in a settlement agreement, the terms of the agreement must be reduced to a guilty plea agreement in accordance with NRS 174.063 and signed by the defendant, defense counsel (if any), and the prosecutor. The parties must file the guilty plea agreement with the trial judge***, but any judge, other than the settlement judge, may accept the defendant's plea***. Any party may withdraw from an agreement before ~~the trial judge accepts the plea~~ ***the defendant's plea is accepted***.

(f) If the parties reach a guilty plea agreement that involves any stipulations, ~~the trial judge agrees that~~ such a settlement shall be conditioned on the trial judge's acceptance of and agreement to follow the stipulations. If the trial judge is unwilling to abide by the stipulations, then either side may withdraw from the guilty plea agreement.

TAB 3

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

> All motions for pretrial release or to increase or decrease bail made after the defendant's initial post-arrest individualized detention determination has been made must be in writing, supported by an affidavit or declaration of the movant or the movant's attorney.

The original draft of Rule 8(h) addressed the difference between defendants who get to district court by way of indictment rather than criminal complaint (bail already set in justice court), but Valdez-Jimenez obviated any distinction by requiring the same automatic, prompt initial detention hearing for all arrested defendants.

This is a rule that governs the procedure for making motions in the district courts. I Valdez-Jimenez does not address motions per se. It requires a court to conduct an individualized detention determination in each case after arrest; no motion need be filed for this to occur. Most cases get to district court from justice court, where bail will have already be established in accord with Valdez-Jimenez. As the committee has previously discussed and as the majority has previously agreed, any motion to alter the detention status already established in justice court should be by written motion.

For those defendants arrested upon an indictment, the district court will likewise conduct an individualized detention determination pursuant to Valdez-Jimenez promptly after arrest. This will occur, consistent with Valdez-Jimenez, without any motion being filed by either party. Once a detention status has been thus determined, any later motion to alter that status should be in writing, for the same reasons that apply to cases coming to district court from justice court.

In other words, any bail/detention status motion will necessarily occur after a threshold detention status determination has been made via the prompt Valdez-Jimenez hearing, and this will be true regardless of whether the case was initiated by complaint in the justice courts or indictment in district court. After Valdez-Jimenez, motions will only come into play after detention status has been determined in the first instance, and in this posture such motions will be analogous to a request to reconsider the status already set at the prompt Valdez-Jimenez hearing.

A rule regarding motion procedure in district court does not, accordingly, implicate the timeline within which the initial Valdez-Jimenez hearing must occur, and therefore the rule should not attempt to delineate this timeline.

Additionally, there are both legal and practical reasons not to impose a 12-hour deadline for the Valdez-Jimenez hearing (as the Clark County Public Defender's Office proposes). First, a 12-hour deadline is not required by Valdez-Jimenez, and I don't believe there is any basis in the decision for imposing such a fast timeline.

Valdez-Jimenez stated that the initial hearing must occur within a "reasonable time," and analogized to the NRS 171.178 "reasonable time" standard for the first appearance.[1] As is well known, NRS 171.178 does not designate a specific time for the first appearance, but it does not require it within 12 hours. And the statute does contain a touchstone that sheds light on the Legislature's intent regarding the presumptively reasonable time for the first hearing, which is well beyond 12 hours: it provides for inquiry by the court "[i]f an arrested person is not brought before a magistrate within 72 hours after arrest, excluding nonjudicial days . . ."

Even more significantly, however, Valdez-Jimenez embraced the federal Bail Reform Act standards with approval and embraced/adopted the federal Bail Reform Act standard for a "prompt" detention hearing, since it is well known that the federal Act has been upheld as constitutional.[2] The Act allows at least 3 days for the

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[1] The Court, to illuminate the meaning of "prompt," observed that, "[g]enerally, such a hearing occurs at the initial appearance, or arraignment," then went on to state that while "'[t]here is no statutory designation of a specific time within which an arraignment shall be held after the arrest of an accused under an indictment,' this court presumes that an arraignment will be conducted within 'a reasonable time.'" Valdez-Jimenez, 136 Nev. Adv. Op. 20 at p.--, 2020 WL 1846887 at p.7 (2020) (quoting Tellis v. Sheriff, 85 Nev. 557, 559-60, 459 P.2d 364, 365 (1969)). The Court did not state or imply that the custody hearing had to be held at the same time as the arraignment; it merely analogized the "'reasonable time'" standard for conducting an arraignment to the "prompt" requirement for the custody hearing. The Court was stating, in other words, not that arraignment and custody hearing had to coincide, but simply that, as the section heading for this subject indicates, "*[a]n individualized bail hearing must be held within a reasonable time after arrest for defendants who remain in custody.*" Id. at p.6.

[2] Valdez-Jimenez, 136 Nev. Adv. Op. 20 at p.--, 2020 WL 1846887 at p.8 ("In Salerno, the United States Supreme Court upheld the constitutionality of pretrial detention provisions in the Bail Reform Act of 1984 . . .") (citing United States v. Salerno, 481 U.S. 739, 107 S. Ct. 2095 (1987)). Even without resort to cannons of construction, it is clear from the express language employed in Valdez-Jimenez that the court approved the constitutionally vetted and approved standard for "prompt" described in *Salerno*. The rules of interpretation only serve to highlight the obvious, which that the Nevada Supreme Court adopted the "several protections identified by Salerno in the federal Bail Reform Act" with their existing constructions. C.f. Ybarra, 97 Nev. at 249, 628 P.2d at 297–98 ("The general rule in Nevada is that a statute adopted from another jurisdiction will be presumed to have been adopted with the construction placed upon it by the courts of that jurisdiction before its adoption").

detention hearing to occur (after the first appearance, excluding weekends/holidays), without any showing of good cause; it is thus clear that due process allows at least 3 days for the detention hearing required by Valdez-Jimenez to occur.[3]

Additionally, a 12-hour deadline unfairly disadvantages the State in at least some of our jurisdictions. Valdez-Jimenez requires an adversarial, evidentiary hearing, and the decision imported the federal Act's clear-and-convincing burden of proof without importing the counterbalancing aspects of federal law, such as the various presumptions that exist under the Act. Regardless of what occurs in Clark County, prosecutors in some jurisdictions will not be able to gather necessary information or even run criminal histories for all defendants within 12 hours of arrest in order to be prepared for an adversarial evidentiary hearing where they bear a clear-and-convincing burden of proof. Counterbalancing a defendant's interests are the State's significant and compelling interests in public safety and ensuring the defendant's

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[3] See, e.g., United States v. Lee, 783 F.2d 92, 93–94 (7th Cir. 1986) ("Under 18 U.S.C. § 3142(f), the hearing must be held 'immediately upon the [defendant's] first appearance' unless the defendant or the government requests a continuance. These continuances are automatically available but are limited to five days at the defendant's request and three days at the government's request unless good cause is shown for a longer period") (emphasis added); United States v. Hurtado, 779 F.2d 1467, 1474 (11th Cir. 1985) ("The language of subsection (f) is unambiguous and admits of no exception. Congress provided that the determination to detain or release an accused must be made quickly – 'immediately upon the person's first appearance ' – except in three situations, all expressly provided for: 1) the government might ask for three days to prepare; 2) the defendant may have up to five days to secure counsel and marshal his defense; and 3) in exceptional cases 'for good cause' these time constraints may be relaxed. In this case the government asked for its three days; the petitioner did not request his statutory time allotment. Except for good cause, there is no provision for extending the continuance period beyond the statutorily-provided five days"); United States v. Melendez-Carrion, 790 F.2d 984, 991–92 (2d Cir. 1986) ("Nor is there merit to [defendant's] claim that it was error to grant his motion for a four-day continuance without written findings of good cause. The 'good cause' requirement of section 3142(f) applies only to a defendant's motion for a continuance in excess of five days"); United States v. Al-Azzawy, 768 F.2d 1141, 1144 (9th Cir. 1985) ("This length of time exceeded the number of days permitted for a defense continuance absent a finding of good cause"), abrogated on other grounds by United States v. Montalvo-Murillo, 495 U.S. 711 (1990); United States v. O'Shaughnessy, 764 F.2d 1035, 1038 (5th Cir.) ("If the Government moves, the defendant may avoid an immediate hearing at his first appearance before a judicial officer by invoking his right to a five day continuance, which can be extended for good cause. For its part, should the Government be uncertain about the need for detention, it may protect its position by moving for detention and invoking, at the first appearance, its right to a three day continuance which can be extended for good cause").

presence at all proceedings, and a 12-hour deadline unnecessarily and unfairly gives short shrift to those interests and the State's ability to pursue them.

A 12-hour deadline also undercuts the constitutional responsibility of providing notice of detention hearings to victims and affording them the opportunity to be heard.[4] The requirements of Nev. Const. art. I, § 8A are the supreme law of the State, but for many jurisdictions, a 12-hour deadline would make it infeasible to provide victims due notice of a detention hearings until the morning of the Valdez-Jimenez hearing.

Additionally, nothing in Valdez-Jimenez supports the provision for automatic release if the hearing is not held within 12 hours. Looking to federal practice in light of Valdez-Jimenez's heavy reliance upon the federal Act, the U.S. Supreme Court has held that there is no entitlement to release as a sanction for delay in holding the detention hearing. See United States v. Montalvo-Murillo, 495 U.S. 711, 717, 110 S. Ct. 2072, 2077 (1990).

The rule on motions governs, for instance, the procedure for filing Petrocelli motions, which, like Valdez-Jimenez, have a burden of proof component. Yet the rule does not attempt to incorporate the burden specified in the case law. There is no greater need or reason to single out detention hearings for more detailed treatment. It is therefore suggested that the rule be limited to its subject, the general procedure for filing motions, and provisions attempting to incorporate detention-hearing timelines or practice under Valdez-Jimenez, as well as provisions going well beyond what Valdez-Jimenez requires, be omitted.

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[4] See Nev. Const. art. I, § 8A sections (g) and (h). The responsibility of victim notice and providing the right to be heard cannot be shifted to the prosecutor. See Nev. Const. art. I, § 8A(2) ("This section [i.e., § 8A, the whole section] does not alter the powers, duties or responsibilities of a prosecuting attorney."). The cannons of construction for constitutional provisions are the same as for statutes. Landreth v. Malik, 127 Nev. 175, 180, 251 P.3d 163, 166 (2011). All provisions must be given effect, and interpretation shall not render any provisions nugatory. Banegas v. State Indus. Ins. System, 117 Nev. 222, 229, 19 P.3d 245, 250 (2001); Hobbs v. State, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011); Paramount Ins. v. Rayson & Smitley, 86 Nev. 644, 649, 472 P.2d 530, 533 (1970). Imposing the Nev. Const. art. I, § 8A(1)(g) & (h) duties or responsibilities of victim notification upon prosecutors would be an addition to, and thus an alteration of the "duties or responsibilities" of a prosecuting attorney, contrary to the specific provisions of § 8A(2).

TAB 4

Rule 14(3)(b) as drafted complies with well-established case law regarding judicial discretion in sentencing. In contrast, Mr. Prengaman's version of 14(3)(b) imposes by rule a limitation upon the court's exercise of discretion at sentencing.

"Few limitations are imposed on a judge's right to consider evidence in imposing a sentence, and courts are generally free to consider information extraneous to the presentencing report." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). "Further, a sentencing proceeding is not a second trial, and the court is privileged to consider facts and circumstances that would not be admissible at trial." *Id.* The only limitation upon what a court can consider is information that is supported solely by impalpable and highly suspect evidence. *Id*.

As drafted Rule 14(3)(b) establishes a best practices timeline for providing sentencing memorandum, expert reports and written victim impact statements. It allows the court to maintain the exercise of its discretion if a document is filed late. The court can decide to consider the document, allow the non-moving party additional time to rebut the information or determine that the information shall not be considered because it is impalpable and highly suspect evidence.

RULE 14. Sentencing.

1. Sentence must be imposed without unreasonable delay.

2. Counsel shall assist the court in setting a sentencing date. The State or the defense must notify the court at the time of the entry of plea, or as soon thereafter as is practicable, whether the sentencing hearing needs a special setting or time frame to present due to the nature of the case, witnesses, victim impact statements, or expert testimony. The court may set these special sentencing hearings on dates and times different from the department's customary sentencing calendar.

3. Counsel shall, unless otherwise permitted by the court, have all reports, sentencing memorandums, exhibits, written victim impact statements, and any other writing or documentation that counsel intends to rely upon at the sentencing hearing filed with the court and served on opposing counsel no later than three judicial days before the sentencing hearing date.

(a) Documents presented less than three judicial days from the sentencing date constitutes good cause by the non-offering party to continue the sentencing hearing. The non-offering party may however waive a continuance if there is no objection to the documents, in which case the sentencing hearing shall be held, and the court may consider the documents.

(b) If documents are offered less than three judicial days from the sentencing date and the non-offering party elects not to continue the sentencing hearing, but objects to the presentation of the documents, a court may, in the interest of justice, refuse to consider the documents or elect to consider the documents at sentencing over the objection or continue the sentencing hearing on its own motion.

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

5. Any witness who gives oral testimony at the sentencing hearing must be sworn.

6. Pending sentence, the court may commit the defendant to custody or continue or alter the bail.

TAB 5

Submitted by Luke Prengaman:

Rule 15. 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 criminal case**. A motion for continuance of a trial, **whether made by the prosecuting attorney or counsel for the defendant,** 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~~ **must** 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 **of a criminal trial** is made on the ground that a witness is or will be ~~absent~~ **unavailable or absent** at the time of trial, the affidavit must state:

(1) The name of the witness, the witness' ~~usual home~~ **last known address and** present location, if known, ~~and the length of time that the witness has been absent~~ **the reason for the witness' unavailability or absence, and the length of time that the witness will be unavailable,**.

(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~~ **unavailable** witness, and whether the same facts can be proven by other **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~~ of the witness' unavailability **or absence**.

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

(c) No continuance **of a criminal trial** may be granted unless the contents of the affidavit conform to this rule.

(d) Trial settings **in criminal cases** may not be vacated by stipulation ~~, but only by~~ **absent** 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.~~ **Stipulations or requests for the continuance of a trial shall be in writing, signed by counsel and the defendant. The court may waive the signature of the defendant provided counsel for the defendant certifies in writing in the stipulation or affidavit attached thereto that he or she has obtained the consent of the defendant to the continuance.**

~~(e) 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.~~

(e) A court may accept a stipulation of the parties or request for the continuance of a proceeding other than a criminal trial in open court, or may direct that such stipulations or requests be in writing, signed by counsel. Any such stipulation or request not made in open court must be in writing, signed by counsel.

TAB 6

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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TAB 7

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.

TAB 8

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.

TAB 9

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."

TAB 10

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

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