

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 in the Eighth Judicial District.

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 reply is filed or after the time for filing an reply, with or without oral argument, and grant or deny it prior to the hearing.

(c) Hearings and Submissions of motions in judicial districts other than the Eighth Judicial District.

(i) Hearings on Motions

1. For all judicial districts other than the Eighth Judicial District, 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.

2. 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

ii. Submissions of Motions

1. No submission of Motion is necessary in the Third, Fourth, Eighth or Ninth Judicial Districts
2. In the First, Second, Fifth, Sixth, Seventh, Tenth and Eleventh Judicial Districts a request for submission must be filed 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 by

substantially the form set forth below. A request for submission must appear in substantially the form set forth below.

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

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

(d) Oppositions to motions.

- i. Within 10 days after the service of a motion, the opposing party must serve and file written opposition.
- 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 either be personally served upon the opposition on the date of filing or be e-filed.

(e) Points and authorities supporting motions.

Any pretrial motion and opposition 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) 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.

(g) 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.

(h) 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,

È 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.