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: September 27, 2019 at Noon
Place of Meeting:

Carson City	Las Vegas	Washoe
Supreme Court 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 August 27, 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 11 and Rule 12 **(Tab 4)**
C. Rule 10: Stay Orders **(Tab 5)**
D. Rule 17: Voir Dire **(Tab 6)**
   i. Second Judicial District Court Bench Book
   ii. Utah Courts Rule
E. Rule 18: Court Intepreters **(Tab 7)**
F. Rule 19: Appeals **(Tab 8)**
G. Rule 20(e) **(Tab 9)**
H. Rule 3: Appearance and Withdrawal of Attorneys (continued)
   i. Rule 7.40 and Rule 23 Rewrite **(Tab 10)**
   ii. Rule 2nd LR 3(4) Rewrite/Scheduling Orders **(Tab 11)**

VI. Other Items/Discussion

VII. Next Meeting Date and Location

VIII. 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
August 27, 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
David Figler – *Proxy for Lisa Rasmussen*
Chief Judge Scott Freeman
Christopher Hicks
Darin Imlay
Mark Jackson
Chris Lalli – *Proxy for Steve Wolfson*
JoNell Thomas

Guests Present
Chief Judge Linda Bell
Sharon Dickinson
Steven Owens
John Petty
Luke Prengaman

AOC Staff Present
Jamie Gradick
John McCormick
Kimberly Williams

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

II. There was no public comment.

III. Review and Approval of June 10, 2019 Meeting Summary
- The June 10, 2019 meeting summary was approved.

IV. Work Group Updates
- Jury Instructions Work Group:
  - Chief Judge Freeman commented that great progress has been made in what little time has been available; he commended the team on the hard work everyone is doing.
- Life/Death Pretrial Practice Work Group:

- Mr. Lalli provided an update on the Supreme Court amended Rule 2 regarding settlement conferences.
  - Two cases have been handled in the 8th Judicial District, one successful and one un-successful; however, the process was helpful and informative. Mr. Lalli has received feedback regarding a possible amendment to the rule; he would like to gather more feedback over the next six months before suggesting changes.

V. Nevada Supreme Court's Authority to Adopt Rules

- Statewide Rules Discussion
  - Justice Hardesty informed the committee that he conducted a conference call with Justice Silver and Ms. Grimes, who volunteered to assist with rules 10, 11, 12, 17, 18, 19, and 20 in order to speed up the process a bit. Ms. Grimes created a spreadsheet with the feedback she received from interviews conducted regarding rules 10, 17, 18 and 20.
- Rules 11 and 12
  - Justice Hardesty requested Ms. Grimes combine the language and make a draft to present to the committee in the next meeting.
- Rule 19
  - Justice Hardesty asked Ms. Grimes to conduct interviews with the 2nd and 8th District, as well as the rural courts to understand how they handle appeals.
- Rule 10
  - Ms. Grimes informed attendees that the consensus received from the judges is that this is an unnecessary rule; they have never used it in the courtroom nor have they experienced these issues. Mr. Jackson agreed. Ms. Dickinson stated she has used this rule and provided an example.
    - Justice Hardesty asked Ms. Grimes to look into any other district court or justice court rule that requires exhaustion of a stay request to the magistrate; Ms. Grimes will report findings at the next committee meeting.
- Rule 17
  - Ms. Grimes informed the committee that the judges are split on this rule *(Please see meeting materials for additional information)*. Chief Judge Freeman expanded on his comments, leading Justice Hardesty to request Chief Judge Freeman share his bench book with Ms. Gradick to distribute to the group for further review/discussion..
    - Justice Hardesty surveyed the committee on their experience with *voir dire*. Mr. Jackson suggested that, in the next meeting, the committee look at Utah's Rule of Criminal Procedure, Rule 18. Justice Hardesty agreed and also requested that Mr. Arrascada, Mr. Jackson, Mr. Imlay and Mr. Figler (or Ms. Rasmussen) work on a draft of this rule to present at the next meeting.
- Rule 18
  - Ms. Grimes stated the general consensus of the judges is to only keep the first line. The committee discussed the ability of the rural districts to locate an interpreter.
    - Justice Hardesty requested that Mr. McCormick ask the rural judges for additional input. Additionally Justice Hardesty asked that Mr. McCormick and Ms. Grimes to redraft this rule for the committee to review in the next meeting.
- Rule 20

- (a): Ms. Grimes stated that the general consensus of the judges is that this rule is un-necessary and is at the discretion of the judge. After brief discussion, the commission voted to adopt Mr. Arrascada's revision of the language for 2nd LR 3(7) after replacing "motion" with "hearing."
- (b) and (c): Are covered in Rule 3, so these will be removed.
- (d): The Committee discussed and decided to remove this rule.
- (e): The Committee agreed that this should be a stand-alone rule. Ms. Grimes will review the civil case rule from Chief Judge Freeman for comparison to Rule 7.74 out of the 8th judicial district to present at the next meeting.

- Rule 19
  - Justice Hardesty surveyed the committee on how they individually handle appeals in their respective districts. After discussing with the committee, Justice Hardesty asked Ms. Grimes to contact Judge Scotti and ask if rule 19 is in conformance with what he is practicing in regards to appeals. Also, Ms. Grimes will survey rural judges on how they process the appeals. Mr. Jackson will also consult the judges in the 9th District.
- Rule 7.40 and Rule 23 Rewrite
  - Chief Judge Bell suggested replacing the word "affidavit" with "declaration" in 2(b)(i). Chief Judge Bell also suggested adding "Substituted counsel shall transfer all files and discovery to the defendant's new counsel within 5 days of the date of substitution." Ms. Thomas requested an additional revision adding "…or as ordered by the court" from Rule 20's subsection (c). Commission members agreed.
  - Justice Hardesty asked for additional comments and the committee discussed changing the last line from "corporation" to "entity". Ms. Grimes will look for case law that deals with this subject. Justice Hardesty asked if the rewrite of the rule, modified as discussed, is acceptable, the committee agreed.
  - Ms. Thomas asked for clarification on attorney's being withdrawn automatically or if they should file notices of withdrawal for each case. The committee discussed both options. Mr. Prengaman commented on an issue with probation violations and the attorney being automatically withdrawn. Justice Hardesty asked Ms. Grimes to review the rules of professional conduct to ensure no conflict exists in the proposed changes.
- 2nd LR Rule 3(4) Rewrite
  - Justice Hardesty asked the committee if they have edits or concerns. After the Committee discuss, Justice Hardesty decided to defer on the draft submitted and would like to work on a new submission.
    - Justice Hardesty asked Mr. Jackson send Ms. Gradick a copy of a scheduling order and Ms. Grimes will look at the rule Mr. Figler mentioned. Justice Hardesty will look for a rule in Arizona on scheduling order requirements that may address the issues brought up.

VI. Next Meeting

- Justice Hardesty requested that Ms. Gradick survey the Commission membership for availability and then schedule the next meeting.

VII. Adjournment

- The meeting was adjourned at 1:55 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
August 26, 2019
Summary prepared by: Jamie Gradick, AOC

Attendees

Chief Judge Scott Freeman, Chair
Jacee Broadway
Scott Coffee
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.
- Section 15.01(f)
  - Ms. Westbrook presented her proposed language/definition and explained that the draft corresponds with Mr. Prengaman's language for section 15.01(a).
  - Attendees discussed the "intent at the time of the taking" concept; Ms. Westbrook explained that this requirement was not included in any of the other instructions and comes directly from *Harvey*.
    - Chief Judge Freeman commented on the need to keep the instructions neutral and asked whether the instruction should also include the *Harvey* language clarifying when a taking does not amount to larceny.
    - A suggestion was made to bracket the language since it would not be applicable in all cases; attendees discussed removing the "in the mind of the defendant" language to make it clearer for the jury.
  - Attendees discussed whether bracketing would be misleading or "defense-heavy"; there was a general consensus to bracket for clarity.

- Ms. Westbrook requested that the "a taking with the intention to return the property…." language be added back into the instruction. Attendees agreed to cite to *Harvey* instead; this will direct the defense practitioner to the case law and will allow the instruction to remain more neutral.

- Section 15.01(g)
  - Ms. Westbrook presented her proposed definition and explained that the draft corresponds with Mr. Prengaman's language for section 15.01(e).
    - This instruction will need to be "fixed" to track with what was done with 15.01(f).
  - Attendees briefly discussed placement of this definition; like 15.01(f), this is not a "stand-alone" instruction and is meant to supplement Mr. Prengaman's instruction.
  - Judge Porter suggested the instructions be rewritten in active voice; attendees agreed.
- Section 15.03: Petty Larceny
  - Attendees discussed whether an instruction on this is needed.
  - Chief Judge Freeman commented that, if the basis of the case is value, then counsel may need/want a petty larceny instruction.
    - Attendees decided to draft/include a petty larceny instruction using the language already adopted for the grand larceny instruction.
    - Chief Judge Freeman's staff will draft this for review at the next meeting.
- Section 15.04: Subsumed by previous instruction.
- Section 15.04(a): Subsumed by previous instruction.
- Section 15.05: Inaccurate, out.
- Section 15.06: Subsumed by previous instruction.
- Section 15.07: Subsumed by previous instruction.
- Section 15.08: Subsumed by previous instruction.
- Section 15.09(a) and 15.09(a)(a): Possession of Stolen Property
  - Mr. Prengaman presented his proposed instructions.
    - Ms. Westbrook suggested including a footnote to direct readers to the previous determination of value instruction. Attendees discussed whether to include a separate instruction on this and agreed to include an instruction, as proposed, in this section.
    - Mr. Coffee expressed concern over language "lowering the burden of proof"; attendees discussed rearranging the clauses regarding "actual knowledge" language.
    - Judge Young suggested removal of "a person can be convicted of…" language. Mr. Prengaman proposed a draft; attendees accepted the proposed language.
    - Attendees discussed adding a footnote to indicate the amounts will change Oct. 2020.
    - Attendees agreed to use 15.09(a)(a) and incorporate agreed upon language changes.
- Section 15.09(b)
  - Mr. Prengaman presented his proposed language/definitions.
  - Mr. Coffee asked for clarification on language authority; Mr. Prengaman cited NRS 205.2757.
  - Attendees adopted Mr. Prengaman's version.
- Section 15.09(c)
  - Mr. Prengaman presented his proposed language.
  - Attendees adopted Mr. Prengaman's version.
- Section 15.09(d) *(Portions of this discussion were inaudible)*
  - Chief Judge Freeman presented Mr. Prengaman's proposed language, definitions, and authority.
  - Attendees adopted Mr. Prengaman's version.
- Section 15.10(a): Possession Defined

- Mr. Prengaman presented his proposed instruction.
  - Attendees discussed bracketing the constructive possession definition language, and changing the language to "dominion or control".
  - Attendees agreed to change "defendant" to "person" for consistency.
- Attendees reviewed Ms. Westbrook's suggestions/comments.

- Section 15.11(a)
  - Mr. Prengaman presented his proposed instruction.
  - Ms. Westbrook asked for confirmation that Mr. Prengman's 15.11(a) note will not be included in the book; Chief Judge Freeman confirmed that the note was included for the work group's information and not for inclusion in the final book.
- Section 15.12: Out
- Section 15.13: Out
- Mr. Coffee offered to review the group's completed work to see if the recently passed criminal reform bill will change anything.
  - Chief Judge Freeman clarified that the group will add footnotes if anything will change.
- Mr. Prengaman suggested the group revisit and "attack" self-defense instructions on a deeper level.
  - Attendees discussed whether to do this or just leave it "generic" so it can be applied on a case-by-case basis. Ms. Westbrook expressed concern regarding how contentious this area was last time it was addressed.

Additional Action Items

- Work group members will review through Section 17 for the next meeting; comments will need to be submitted to the drop box a week prior to the next teleconference meeting.
- Ms. Gradick will survey the work group members for availability and will schedule another work group teleconference for next month.

TAB 3

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

* *

RULE 1. SCOPE, PURPOSE AND CONSTRUCTION 3
RULE 2. CASE ASSIGNMENT. 4
RULE 3 APPEARANCE AND WITHDRAWAL OF ATTORNEYS 5
RULE 4. INITIAL APPEARANCE AND ARRAIGNMENT. 8
RULE 4.1 SETTING OF CASES. 10
RULE 5. PLEAS OF GUILTY OR NOLO CONTENDERE. 12
RULE 6. RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS. 13
RULE 7. DISCOVERY/DISCOVERY MOTIONS 17
RULE 8. PRETRIAL MOTIONS. 19
RULE 8.1 PAPERS WHICH MAY NOT BE FILED 25
RULE 9. PRETRIAL WRITS OF HABEAS CORPUS 26
RULE 10. STAY ORDERS. 28
RULE 11. EXTENDING TIME. 29
RULE 12. SHORTENING TIME. 30
RULE 13. JURY INSTRUCTIONS AND EXHIBITS. 31
RULE 14. SENTENCING 34
RULE 15. CONTINUANCES. 35
RULE 16. SANCTIONS. 37
RULE 17. VOIR DIRE. 38
RULE 18. COURT INTERPRETERS. 39
RULE 19. APPEALS FROM MUNICIPAL AND JUSTICE COURTS. 40
RULE 20. MISCELLANEOUS PROVISIONS. 41

* *

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.

***

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

Rules 11 and 12

Extending or Shortening Time

1. When an act must be done at or within a specified time, the court may extend or shorten the time period (by its own discretion, by motion, or by notice) if good cause is shown. A request to extend must be made before the time period would have originally expired.
2. All motions to extend or shorten time shall be made with X days' notice to all counsel. Motions shall be made to the presiding judge, or, if the presiding judge is not available, to the chief judge who shall set a hearing on the motion. All hearings on motions to extend or shorten time shall be held with at least one day notice to all counsel.
3. Ex parte motions to extend or shorten time shall only be granted upon affidavit or certificate of counsel demonstrating a good faith effort to notify opposing counsel and good cause to extend or shorten time. Ex parte orders must be served upon the opposing party by the end of the next judicial day.
4. The court may not extend time for writs of habeas corpus except as outlined under that rule.

TAB 5

Office of the Public Defender

309 So. Third St. · Second Floor · PO Box 552610 · Las Vegas NV 89155-2610

(702) 455-4685 · Fax (702) 455-5112

Darin F,. Imlay, Public Defender · **Virginia F. Eichacker**, Assistant Public Defender

Rule 10 – Stay Order Memo

Rule 10 – Stay Order

EDCR 3.44

- Only rule that I can locate that allows for a **stay of criminal proceedings in justice court** prior to adjudication or remand to district court.

- Sample of motion showing how Rule EDCR 3.44 has been used in the past is attached: State v. Pittman.

- Legal authority allowing for a stay of justice court proceedings in criminal cases:

    - *Clark v. Sheriff, Clark County*, 94 Nev. 364, 364–65, 580 P.2d 472, 472–73 (1978)(NSC directed the district court to grant petitioner's pre-trial writ of habeas corpus because justice court erred in granting a *Hill* or *Bustos* motion).
    - *Sheriff v. Blackmore*, 99 Nev. 827, 830 (1983)(*Hill* and *Bustos* requirements are jurisdictional thereby allowing the district court to grant a writ of habeas corpus if justice court improperly grants a continuance of a preliminary hearing);
    - *Trejo v. State*, unpublished 74074, 2018 WL 4776113, at *2 (Nev. App. Sept. 21, 2018)("[T]he district court may [only] review the legality of the detention on habeas corpus in circumstances where the continuance is alleged to have been granted in violation of the jurisdictional procedural requirements of *Hill* [*v. Sheriff*, 85 Nev. 234, 235, 452 P.2d 918, 919 (1969)] and *Bustos* [*v. Sheriff*, 87 Nev. 622, 623, 491 P.2d 1279, 1280 (1971)]")(other cite omitted).

DISTRICT COURT

CLARK COUNTY, NEVADA

— FILED IN OPEN COURT —

LORETTA BOWMAN, CLERK

By Evelyn Alcantara Deputy

THE STATE OF NEVADA Plaintiff vs. THOMAS EARLE PITTMAN Defendant.	CASE NO. DEPT. NO. III

EX PARTE MOTION FOR STAY ORDER

COMES NOW defendant THOMAS EARLE PITTMAN, by and through his attorney, SHARON A. G. DICKINSON, Deputy Public Defender, and moves this Honorable Court for an order staying all proceedings in Department III on the Justice Court of Las Vegas Township under Justice Court Case No. 5393-90F.

This motion is made and based upon all of the papers and pleadings on file herein, points and authorities in support hereof, and on such argument as the court may entertain at the hearing of this motion.

DATED this 11th day of January, 1991.

MORGAN D. HARRIS, NEVADA BAR #1879
CLARK COUNTY PUBLIC DEFENDER

By Sharon A. G. Dickinson
SHARON A. G. DICKINSON #3710
Deputy Public Defender

POINTS AND AUTHORITIES

Procedural violations which occur pre-preliminary hearing may be deemed waived if not litigated. Victoria v. Young, 80 Nev. 279, 392 P.2d 509 (1964), rev'd on other grounds Shelby v. Sixth Judicial District Ct, 80 Nev. 279, 414 P.2d 942 (1966). EDCR 3.44 authorizes this court to stay proceedings before a magistrate upon an ex parte application if (1) the State of Nevada consents in writing or (2) after reasonable notice is given to the State.

On January 9, 1991, Deputy District Attorney Karen Van De Pol was notified that Defendant would seek a stay of proceedings in Case No. 5393-90F. Ms. Van De Pol stated she would consent to the stay.

Respectfully submitted,

Sharon A. G. Dickinson

SHARON A. G. DICKINSON
Deputy Public Defender

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SHARON A. G. DICKINSON, being first duly sworn, deposes and says:

1) That she is an attorney duly licensed to practice law in the State of Nevada and is a Deputy Public Defender for Clark County; and

2) That the Public Defender of Clark County was appointed to represent the defendant in the above entitled matter, and has delegated this responsibility to his Deputy, your affiant; and

3) That affiant is familiar with the facts and circumstances of this case and believes that important procedural rights of the defendant have been consciously ignored by the State; and

4) That this deregation of the defendant's procedural rights has occurred before preliminary hearing which is now scheduled for January 24, 1991; and

5) That on January 9, 1991, affiant informed Deputy District Attorney for Clark County, Karen Van De Pol that she would appear in the chambers of the Honorable J. Lehman, Senior District Judge for the Eighth Judicial District of the State of Nevada, on January 11, 1991, at 8:45 a.m. to seek an order staying the preliminary hearing in this matter. Ms Van De Pol orally stated she would consent to the stay; and

///

///

6) This affiant will file a writ with the Honorable J. Paulikowski who is scheduled to hear the trial in this case.

Sharon A. G. Dickinson

SHARON A. G. DICKINSON
Deputy Public Defender

SWORN AND SUBSCRIBED before me this 10th day of January, 1990.

Dorothy Gruetzmacher

NOTARY PUBLIC in and for said County and State.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DOROTHY GRUETZMACHER
My Appointment Expires October 27, 1993

— FILED IN OPEN COURT —
JAN 11 1991
LORETTA BOWMAN, CLERK
Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA
Plaintiff
vs.
THOMAS EARLE PITTMAN
Defendant.

CASE NO.
DEPT. NO. III

ORDER TO STAY PROCEEDINGS

TO: The Honorable Daniel E. Ahlstrom
Justice of the Peace, Las Vegas Township

You are hereby directed to Stay proceedings, namely a preliminary hearing in the case of State of Nevada v. Thomas Earle Pittman, Case No. 5393-90F scheduled for January 24, 1991, at 9:00 A.M. This stay is ordered so that a Writ of Habeas Corpus can be first determined by the Eighth Judicial District Court.

DATED this 11th day of January, 1991.

JACK LEHMAN
DISTRICT COURT JUDGE

SUBMITTED BY:

MORGAN D. HARRIS, NEVADA BAR #1879
CLARK COUNTY PUBLIC DEFENDER

By Sharon A. G. Dickinson
SHARON A. G. DICKINSON #3710
Deputy Public Defender

RECEIPT OF COPY of the STAY ORDER is hereby acknowledged this 11th day of January, 1991.

CLARK COUNTY DISTRICT ATTORNEY

By _____

JUSTICE COURT

By _____

THOMAS EARLE PITTMAN
J.C. #90F05393x

Rule 10 – Stay Order

EDCR 3.44

- Only rule that I can locate that allows for a **stay of criminal proceedings in justice court** prior to adjudication or remand to district court.

- Sample of motion showing how Rule EDCR 3.44 has been used in the past is attached: State v. Pittman.

- Legal authority allowing for a stay of justice court proceedings in criminal cases:

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    - *Sheriff v. Blackmore*, 99 Nev. 827, 830 (1983)(*Hill* and *Bustos* requirements are jurisdictional thereby allowing the district court to grant a writ of habeas corpus if justice court improperly grants a continuance of a preliminary hearing);
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DISTRICT COURT

CLARK COUNTY, NEVADA

— FILED IN OPEN COURT —

LORETTA BOWMAN, CLERK

By Evelyn Villeretta Deputy

THE STATE OF NEVADA

Plaintiff

vs.

THOMAS EARLE PITTMAN

Defendant.

CASE NO.

DEPT. NO. III

EX PARTE MOTION FOR STAY ORDER

COMES NOW defendant THOMAS EARLE PITTMAN, by and through his attorney, SHARON A. G. DICKINSON, Deputy Public Defender, and moves this Honorable Court for an order staying all proceedings in Department III on the Justice Court of Las Vegas Township under Justice Court Case No. 5393-90F.

This motion is made and based upon all of the papers and pleadings on file herein, points and authorities in support hereof, and on such argument as the court may entertain at the hearing of this motion.

DATED this 11th day of January, 1991.

MORGAN D. HARRIS, NEVADA BAR #1879
CLARK COUNTY PUBLIC DEFENDER

By Sharon A. G. Dickinson
SHARON A. G. DICKINSON #3710
Deputy Public Defender

POINTS AND AUTHORITIES

Procedural violations which occur pre-preliminary hearing may be deemed waived if not litigated. Victoria v. Young, 80 Nev. 279, 392 P.2d 509 (1964), rev'd on other grounds Shelby v. Sixth Judicial District Ct, 80 Nev. 279, 414 P.2d 942 (1966). EDCR 3.44 authorizes this court to stay proceedings before a magistrate upon an ex parte application if (1) the State of Nevada consents in writing or (2) after reasonable notice is given to the State.

On January 9, 1991, Deputy District Attorney Karen Van De Pol was notified that Defendant would seek a stay of proceedings in Case No. 5393-90F. Ms. Van De Pol stated she would consent to the stay.

Respectfully submitted,

Sharon A. G. Dickinson

SHARON A. G. DICKINSON
Deputy Public Defender

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SHARON A. G. DICKINSON, being first duly sworn, deposes and says:

1) That she is an attorney duly licensed to practice law in the State of Nevada and is a Deputy Public Defender for Clark County; and

2) That the Public Defender of Clark County was appointed to represent the defendant in the above entitled matter, and has delegated this responsibility to his Deputy, your affiant; and

3) That affiant is familiar with the facts and circumstances of this case and believes that important procedural rights of the defendant have been consciously ignored by the State; and

4) That this deregation of the defendant's procedural rights has occurred before preliminary hearing which is now scheduled for January 24, 1991; and

5) That on January 9, 1991, affiant informed Deputy District Attorney for Clark County, Karen Van De Pol that she would appear in the chambers of the Honorable J. Lehman, Senior District Judge for the Eighth Judicial District of the State of Nevada, on January 11, 1991, at 8:45 a.m. to seek an order staying the preliminary hearing in this matter. Ms Van De Pol orally stated she would consent to the stay; and

///

///

6) This affiant will file a writ with the Honorable J. Paulikowski who is scheduled to hear the trial in this case.

Sharon A. G. Dickinson

SHARON A. G. DICKINSON
Deputy Public Defender

SWORN AND SUBSCRIBED before me this 10th day of January, 1990.

Dorothy Gruetzmacher

NOTARY PUBLIC in and for said County and State.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DOROTHY GRUETZMACHER
My Appointment Expires October 27, 1993

— FILED IN OPEN COURT —
JAN 11 1991
LORETTA BOWMAN, CLERK
Deputy

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Plaintiff

vs.

THOMAS EARLE PITTMAN

Defendant.

CASE NO.

DEPT. NO. III

ORDER TO STAY PROCEEDINGS

TO: The Honorable Daniel E. Ahlstrom
Justice of the Peace, Las Vegas Township

You are hereby directed to Stay proceedings, namely a preliminary hearing in the case of State of Nevada v. Thomas Earle Pittman, Case No. 5393-90F scheduled for January 24, 1991, at 9:00 A.M. This stay is ordered so that a Writ of Habeas Corpus can be first determined by the Eighth Judicial District Court.

DATED this 11th day of January, 1991.

JACK LEHMAN

DISTRICT COURT JUDGE

SUBMITTED BY:

MORGAN D. HARRIS, NEVADA BAR #1879
CLARK COUNTY PUBLIC DEFENDER

By Sharon A. G. Dickinson
SHARON A. G. DICKINSON #3710
Deputy Public Defender

RECEIPT OF COPY of the STAY ORDER is hereby acknowledged this 11th day of January, 1991.

CLARK COUNTY DISTRICT ATTORNEY

By _____

JUSTICE COURT

By _____

THOMAS EARLE PITTMAN
J.C. #90F05393x

TAB 6

The deputy district attorney assigned to prosecute this case, Mr./Ms. _____, will now explain to you the nature of the charge against the defendant and tell you the names of the witnesses that may be called to testify in this case.

There should also be a list which has been created for your review of any potential witness in this case. I am going to have the prosecutor read the names of the witnesses and, in a moment, I will ask you if you are familiar with any of the witnesses for any reason who will be potentially called in this case.

DEFENSE

Court: Mr./Ms. Attorney for defendant, will you please introduce yourself and your client.

[If applicable: Defense will identify on the witness list any defense witnesses which have not already been read out loud by the prosecutor]

INTRODUCTION TO VOIR DIRE AND ADMINISTRATION OF PROSPECTIVE JURORS OATH:

Court: Ladies and gentlemen, this court, the lawyers, and all persons involved in this case are committed in having this matter tried by a jury composed of 12 open-minded people who are completely neutral and who do not have any personal prejudices for or against either side.

In order to accomplish this result, it is necessary for me to ask you some questions. I have no desire to pry into your personal lives. My only objective is to determine whether or not there is any reason that each of you cannot sit as fair and impartial jurors in this case.

INTRO TO VOIR DIRE:

Court: Ladies and gentlemen, it is important that you know the significance of full, complete and honest answers to all the questions I am about to ask each of you. I caution you not to try to hide or withhold anything which might indicate bias or prejudice of any sort by any of you. Should you fail to answer truthfully or if you hide or withhold anything touching upon your qualifications, that fact may tend to contaminate your verdict and subject you to further inquiry by the court even after your discharge as jurors.

I am going to conduct a general voir dire, voir dire is latin which means 'to speak the truth', of all of you while you are seated in the audience.

who are selected past this bar]

I will then conduct an examination of those jurors after which the attorneys will be permitted to ask questions, and then be entitled to exercise what we call peremptory challenges. or jurors are excused from duty

The members of the outside audience, who are not brought in past the attorney bar, please listen to the questions so that if you are called up, you will be able to answer either "yes" or "no" to the prior questions which have been asked, even though you are sitting in the audience.

GENERAL QUESTIONS:

To the panel as a whole:

At the outset of the proceedings, the schedule for each day of trial, that it will conclude no later than 5:00 p.m. on the final day. I also advise there will be no evening or weekend sessions of the trial and under no circumstances will the trial exceed the time set.

Time

The Court is very concerned about your time. You are the most important people in the courtroom. We attempt to start on time and promptly, so that your time is not wasted. Therefore, please try to arrive 5 to 10 minutes before the stated time so we may commence the proceedings.

All of us realize that by being here today, you are missing important obligations in your family, your business and your jobs. However, despite these sacrifices, jury service is an obligation of every citizen and it is only because of your responding to the summons of the court to serve as jurors, our legal system is able to function.

questions

Are there any of you acquainted with the defendant _____ in this case?

Are any of you acquainted with the defendant's attorney, Mr./Ms. _____?

Are there any of you acquainted with the deputy district attorney _____?

Are there any of you acquainted with any of the witnesses whose names were previously mentioned?

Are there any of you that believe you may have heard about or read about this case before coming here today in any form of media?

Are there any of you who believe for whatever reason that you would be unable to serve as a fair and impartial juror in this case?

This case is expected to last _____ days. Are there any of you who, for whatever reason, could not serve for that period of time? Hardship ? Medical Hardship ? religious - spiritual Hardship

Have any of you served on a jury before?

If so, was it in state or federal court?

If so, very briefly state the subject of the case? Criminal v Civil

Was the jury able to reach a verdict?

Would your prior jury service have any bearing on you being a fair and impartial juror in this case?

Does anyone know anyone else seated with you in the front of the courtroom this morning?

(If so, ask each person (a) what is the nature of the relationship, (b) would you be able to accord the party of your independent judgment as a juror and not defer to the other person, merely because of this relationship.

Other than divorce cases, have any of you ever been a party to a lawsuit?

If so, please describe very briefly the subject of the case.

Is there anything about your participation in the case where your experience with the legal process would have any bearing in you being a fair and impartial juror in this case?

Do any of you have any family members, close friends or employers associated with law enforcement?

If so, would you be inclined to give any greater or lesser weight to the testimony of a witness, merely because he or she is employed by a law enforcement agency?

Can you be fair and impartial to both sides?

Have any of you ever been a victim of a crime? (if a potential juror even briefly eludes to being a victim of a crime of a personal nature, such as sexual assault, immediately stop the questioning and mention that the subject will be discussed with the juror in chambers). or side Bar ?

Was there a police investigation or formal criminal proceeding in the matter?

If so, how do you believe it was handled?

Based upon this experience, would it have any impact on you serving as a fair and impartial juror in this case?

Do you each understand that the lawyers are not witnesses and their statements, questions and arguments are not evidence in this case?

Do any of you know anyone associated with the district attorneys office?

Have you had any dealings with the district attorneys office in general?

Do any of these experiences have any bearing on your service as a fair and impartial juror in this case?

Do you each understand that although in a free society we are all entitled to express our views about the legal system, as jurors you must set aside your personal views and decide this case based only on the evidence received in the courtroom during the trial and the instructions of the court as to the law which applies to this specific case?

Do you each understand that the deliberation and decision in this case must be based only on the trial evidence and that you may not consult any other source or information, like (electronic devices, websites, and treatises, etc.)

Do you each understand that the information is simply a charge? It is not evidence of any kind against the accused.

The State has a burden of proving a charge by evidence beyond a reasonable doubt. The court will later define to you what "evidence beyond a reasonable doubt" means. Do you understand the burden of proof never shifts to the defendant? Do you understand the defendant never has any obligation to testify or present any witnesses or evidence?

Do you realize the defendant, as he sits right here, is presumed innocent? That presumption must be removed by proof beyond a reasonable doubt.

Under the Fifth Amendment of the United States Constitution, each citizen has a right not to be compelled to testify. In other words, if during this trial, the defendant does not testify, this fact may not be discussed with you during your deliberations, nor may it have any bearing on any nature of your decision. Do you understand this principle of law? Does anybody have any problem with that?

Do any of you know any of the parties, the witnesses, the lawyers whose names have been mentioned to you or that you have read?
(if so, inquire as to the nature of the relationship and whether it has any bearing on their service to be fair and impartial jurors.)

Based upon my questions, are there any other matter that may have occurred to you as to why you could not serve as a fair and impartial juror during this case?

The Court will be instructing you on the law. Will you follow all of the instructions of the Court on the law, even if it differs from your personal conceptions of what the law ought to be?

Are you aware the defendant does not have to present any evidence in order for you to return a verdict of not guilty?

Have any of you ever been accused of a crime?

INDIVIDUAL VOIR DIRE by the court

(Beginning with Juror seated in number 1)

Describe your employment, marital status, number of children and age(s) and length of residence in Washoe County.

Back to the whole panel

This crime involves _____. Does anybody have any concerns based upon the nature of the crime which would prevent you from being fair and impartial? Religious or Societal point of view sitting in judgement?

Would you want a juror in your present state and frame of mind as you are here today and judge you?

Do you have any reason why you could not be completely fair and completely impartial in doing equal justice to both the State of Nevada and the defendant in this case?

LAWYER QUESTIONS:

Each attorney will now ask you questions, keeping in mind the prosecutor goes first because he always has the burden of proof. - They will not repeat my questions
- no anticipated instructions
- no potential verdict
- no factor/substance arguments that are case specific

Mr./Ms. Prosecutor, please ask your voir dire questions.

Mr./Ms. Defense Counsel, please ask your voir dire questions.

Mr./Ms. Prosecutor, do you pass the panel for cause?

Mr./Ms. Defense Counsel, do you pass the panel for cause?

Pass for Cause?

I will now move to the phase called Peremptory Challenges. → Chambers for Peremptory Challenges

Excuse the remaining Venire Panel sitting in the Audience

Rule 18. Selection of the jury.

(a) **Method of selection.** The judge 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)(1) 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.

(a)(2) 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.

(a)(3) In courts using lists of prospective jurors generated in random order by computer, the clerk may call the jurors in that random order.

(b) **Examination of prospective jurors.** The court may permit counsel or the defendant to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court may permit counsel or the defendant to supplement the examination by such further inquiry as it deems proper, or may itself submit to the prospective jurors additional questions requested by counsel or the defendant. Prior to examining the jurors, the court may make a preliminary statement of the case. The court may permit the parties or their attorneys to make a preliminary statement of the case, and notify the parties in advance of trial.

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

(c)(1) 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.

(c)(1)(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.

(c)(1)(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.

(c)(1)(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.

(c)(1)(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.

(c)(2) 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 action, 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.

(d) **Peremptory challenges.** A peremptory challenge is an objection to a juror for which no reason need be given. In capital cases, each side is entitled to 10 peremptory challenges. In other felony cases each side is entitled to four peremptory challenges. In misdemeanor cases, each side is entitled to three peremptory challenges. If there is more than one defendant the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

(e) **Challenges for cause.** A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. 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.

(e)(1) Want of any of the qualifications prescribed by law.

(e)(2) Any mental or physical infirmity which renders one incapable of performing the duties of a juror.

(e)(3) Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted.

(e)(4) 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)(5) 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.

(e)(6) Having served on the grand jury which found the indictment.

(e)(7) Having served on a trial jury which has tried another person for the particular offense charged.

(e)(8) 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.

(e)(9) Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

(e)(10) 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 in subsection (h).

(e)(11) 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.

(e)(12) Because the juror has been a witness, either for or against the defendant on the preliminary examination or before the grand jury.

(e)(13) Having formed or expressed an unqualified opinion or belief as to whether the defendant is guilty or not guilty of the offense charged.

(e)(14) 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.

(f) **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. 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 must instruct the jury to begin its deliberations anew.

(g) **Juror oath.** When the jury is selected an oath shall be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between the parties, and render a true verdict according to the evidence and the instructions of the court.

Effective November 1, 2018

Advisory Committee Notes

TAB 7

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) Counsel shall advise the court of the need for an interpreter as soon as possible, but no later than 48 hours before a hearing or trial, unless local court rule or procedure require earlier notice.
c) 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.

TAB 8

Rule 19	1st JD	7th JD	8th JD	9th JD	10th JD
Does your court generally follow this rule's (the 2nd JD's) process? If not, how does your process differ?	Yes, chambers forwards a briefing schedule.	We follow Chapter 189 and the case law (Plankinton and Thompson).	No. And this court has different processes for courts of record and noncourts of record.	I do not follow the process outlined in this rule.	Appeals are filed with the Clerk's Office and then a reminder is set for 30 days out to check for the transcript from the trial or hearing at the lower Court. Once the transcript is filed, a briefing Order to the parties involved is issued. Based on the timelines in the Order, it is determined when the appeal goes under submission for the Court to rule. The order is then mailed out to the parties and a courtesy copy provided to the lower Court Judge. The case is remitted to the lower Court 30 days after the decision is rendered.
1		We require the application to be made within 60 days. Once that is done, we order briefing, which usually takes 60-90 days. No hearing is set until the briefs are reviewed, because the vast majority of cases are decided without a hearing. So for our purposes setting a hearing within 60 days would be a waste of resources, and really jam up the briefing schedule.	This court does not follow the 60 day hearing or trial rule. For courts of record: it might take longer than 60 days to obtain the transcripts. Then the briefing schedule is 75 days. The hearing is scheduled for approximately two weeks after the due date of the Respondent's brief. For noncourts of record: if the defendant does not invoke his/her speedy trial rights, the briefing schedule is 75 days and trial is set for about 15 days after, resulting in a trial about 90 days after arraignment. If the defendant does invoke, then everything will need to happen within 60 days.	I do not have a hearing on every appeal from justice court. I do not set a hearing until after briefing, and only if needed. Due to briefing, if a hearing is set it is apt to be more than 60 days after the request for hearing is made.	This rule is likely not followed because there is at least 30 days to obtain the transcripts. Once the transcripts are filed, the briefing schedule takes 75 days.
2			Only one judge handles these appeals. This assignment rotates on a two-year basis.		
3		It doesn't seem like a statewide rule should tell a court what days it will hear certain cases.	Hearings are currently set on Thursdays.	In our court, the hearings can and are set on any day of the judicial week. I would rather not be constrained to Thursdays and Fridays. This requirement seems more appropriate for a local rule, not a statewide rule.	
4	n/a	n/a	n/a	n/a	n/a

TAB 9

Rule 20(e) draft

No attorney may argue to, communicate with, or attempt to influence a law clerk on the merits of any contested matter pending before the judge or judicial officer to whom that law clerk is assigned.

TAB 10

Rules 7.40/23 (Rewrite following 8/27/19 Meeting)

... perhaps (3) should also include withdrawn counsel and take into consideration when a defendant chooses to self-represent.

Appearances; substitutions; withdrawal or change of attorneys.

1. When an individual has appeared by an attorney, that individual cannot appear on the individual's own behalf in the case without the consent of the court. An attorney 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: the attorney withdraws; another attorney is substituted; or the attorney is discharged by the client in writing, filed with the court. The court in its discretion may hear an individual in open court although the individual is represented by an attorney.

2. An attorney in any case may be changed:

(a) When a new attorney substitutes in place of the attorney withdrawing. In this circumstance, written consent of both attorneys and the client shall be filed with the court and served upon all parties or their attorneys; or

(b) When no attorney has been retained to replace the attorney withdrawing. In this circumstance, withdrawal must be requested by a properly noticed motion and ordered by the court.

(1) If the attorney makes the motion, the attorney shall include in a declaration the address, or last known address, phone number and email address at which the client may be served with notice of further proceedings. The attorney shall serve a copy of the motion and supporting papers upon the client and all other parties to the action or their attorneys.

(2) If the motion is made by the client, the client shall include the address, phone number and e-mail address at which the client may be served with notice of all further proceedings, and shall serve a copy of the application upon the attorney and all other parties to the action or their attorneys.

(c) When a direct appeal has been concluded or the time for filing a notice of appeal has expired, the attorney may file a notice of withdrawal.

3. The substituted attorney shall transfer all files and discovery to individual's new attorney within 5 days of the substation unless otherwise ordered by the court.

4. Any order permitting withdrawal of an attorney shall contain the address, phone number and email address at which the party is to be served with notice of all further proceedings.

5. 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.

6. An entity may not appear in proper person.

Footnote Draft: Constitutionality of subsection 6

Only licensed attorneys may "represent other persons and entities in court." *Sunde v. Contel of California*, 112 Nev. 541, 542-43, 915 P.2d 298, 299 (1996); *see also* NRS 7.285 (no person allowed to practice law in Nevada unless admitted to State Bar); *State v. Stu's Bail Bonds*, 115 Nev. 436, 436 n. 1, 991 P.2d 469, 470 n. 1 (1999) (noting that "business entities are not permitted to appear, or file documents, in proper person"); *Salman v. Newell*, 110 Nev. 1333, 1335, 885 P.2d 607, 608 (1994) ("Neither a corporation nor a trust may proceed in proper person.").

TAB 11

18-0014R

Case No. 18-CR-0123

Dept. No. I

RECEIVED
AUG 28 2018
Douglas County
District Court Clerk

FILED
2018 AUG 28 PM 2:25
DEBBIE R. WILLIAMS
CLERK
BY A. NEWTON DEPUTY

RECEIVED
AUG 28 2018
DOUGLAS COUNTY
DISTRICT ATTORNEY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

v.

CODY MARCUS EUGENE BRITTON,

Defendant.

ORDER CONFIRMING TRIAL DATES AND SETTING PRE-TRIAL CONFERENCE

The above-entitled matter is set for:

(XX) Trial by Jury

TO COMMENCE on: Monday, April 8, 2019 at 9:00 a.m. - Firm Setting

TIME ALLOWED: Eight (8) days

NOTE: **This trial will not be in session on Tuesday, April 9, 2019 and Tuesday, April 16, 2019, due to the Court's Law and Motion Calendar. Trial dates: April 8, 10-12, 15, 17-19, 2019.**

Motions Hearing set for: **Friday, February 22, 2019 at 9:00 a.m.**
Pre-Trial Conference set for: **Tuesday, March 26, 2019 at 9:00 a.m.**

The parties shall submit jury instructions and verdict forms to the court and each other by March 29, 2019. Any pre-trial motions shall be filed with the court and exchanged between the parties so they are ripe one day before the Motions Hearing date set forth above.

DATED this day of August 28, 2018.

NATHAN TOD YOUNG
DISTRICT JUDGE

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 2101
MINDEN, NV 89423

Copies served this day of August 28, 2018 to: Douglas County District Attorney's Office (hand delivery); Mathew Work, Esq. (clerk's mail).

Judicial Executive Assistant

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 2102
MINDEN, NV 89423

Case No. 19-CR-0049

Dept. No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA,

Plaintiff,

vs.

JOHN W. HAMRICK,

Defendant.
_____/

ORDERS SETTING TRIAL

The above-entitled matter is set for:

(xx) Trial by Jury

TO COMMENCE on **Tuesday, November 19, 2019 at the hour of 9:00 a.m. and continuing through Thursday, November 21, 2019**

Time allowed: 3 Days

Motions Hearings set for Monday, October 7, 2019 at 2:30 p.m.

Pre-Trial Conference set for Monday, October 7, 2019 at 2:30 p.m.

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THOMAS W. GREGORY
DISTRICT JUDGE
NINTH JUDICIAL
DISTRICT COURT
P.O. BOX 218
MINDEN, NV 89423

The parties shall submit jury instructions and verdict forms to the court and each other by Tuesday, November 12, 2019. Any pre-trial motions shall be filed with the court and exchanged between the parties by Monday, September 9, 2019.

DATED this 8th day of July, 2019.

THOMAS W. GREGORY
DISTRICT JUDGE

Copies served by hand delivered on July 8th, 2019, addressed to: Douglas County District Attorney's Office; Matthew Work, Esq.; Division of Parole and Probation

Erin C. Plante
Erin C. Plante

THOMAS W. GREGORY
DISTRICT JUDGE
NINTH JUDICIAL
DISTRICT COURT
P.O. BOX 218
MINDEN, NV 89423

18-0014B

Case No. 18-CR-0123
Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

v. PRE-TRIAL ORDER

CODY MARCUS EUGENE BRITTON,

Defendant.
_____/

GENERAL DISCOVERY AND INSPECTION:

1. Upon request of defense counsel the prosecuting attorney shall permit defense counsel to inspect and to copy or photocopy 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 this 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

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
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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.

NRS 174.235.

2. Upon the request of the prosecuting attorney the defense counsel shall permit the prosecuting attorney to inspect and to copy or photograph any:

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

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

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

NRS 174.245.

3. Where necessary, either prosecution or defense counsel may request a protective order and a ruling from the court on the need for disclosure.

NRS 174.275.

4. If, at any time before or during trial, the prosecution or defense discovers additional material

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previously requested which is subject to discovery or inspection under this order that party shall promptly notify opposing counsel or the court of the existence of said additional material. NRS 174.295.

5. In addition to the above requirements, the prosecuting attorney is directed to make timely disclosures of information favorable to the defense as required by *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny, and under the Constitutions of the United States of America and the State of Nevada and the Nevada Rules of Professional Conduct as described hereafter.

(a) The prosecuting attorney has a duty to learn of such favorable information that is known to others acting on behalf of the State of Nevada in this case, including law enforcement agencies, and should therefore confer with investigative and prosecutorial personnel who took any action in this case and review the prosecutor's own files and any such agency file directly related to the prosecution or investigation of this case.

(b) Favorable information could include, but is not limited to:

(1) Information that impeaches the credibility of a testifying prosecution witness, including (i) benefits, promises, or inducements, express or tacit, made to a witness by a law enforcement official or law enforcement victim services agency in connection with giving testimony or cooperating in the case; (ii) a witness's prior inconsistent statements, written or oral; (iii) a witness's prior convictions and uncharged criminal conduct; (iv) information that tends to show that a witness has a motive to lie to inculpate the defendant, or a bias against the defendant or in favor of the complainant or the prosecution; and (v) information that tends to show impairment of a witness's ability to perceive, recall, or recount relevant events, including impairment resulting from mental or physical illness or substance abuse.

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(2) Information that tends to exculpate, reduce the degree of an offense, or support a potential defense to a charged offense.

(3) Information that tends to mitigate the degree of the defendant's culpability as to a charged offense, or to mitigate punishment.

(4) Information that tends to undermine evidence of the defendant's identity as a perpetrator of a charged crime, such as a non-identification of the defendant by a witness to the charged crime or an identification or other evidence implicating another person.

(5) Information that could affect in the defendant's favor the ultimate decision on a suppression motion.

(c) Favorable information shall be disclosed whether or not it is recorded in tangible form, and irrespective of whether the prosecutor credits the information.

ALIBI:

In the event that the defense intends to offer evidence of an alibi, then the defense shall, not less than ten (10) days before trial, file and serve upon the prosecuting attorney a written notice of the defendant's intention to assert such claim. The notice must contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense and, as particularly as are known to defendant or the defendant's attorney, the names and last known addresses of the witnesses by whom the defendant proposes to establish the alibi.

Not less than ten (10) days after receipt of the defendant's list of witnesses, or at such other time as the court may direct, the prosecuting attorney shall file and serve upon the defendant the names and last known addresses, as particularly as are known to the prosecuting attorney, of the witnesses the State proposes to offer in rebuttal to discredit the defendant's alibi at the trial of the cause.

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Both the defendant and the prosecuting attorney have a continuing duty to disclose promptly the names and last known addresses of additional witnesses which come to the attention of either party after filing their respective lists.

NRS 174.233.

WITNESS DISCLOSURE:

Except as noted below, not less than five (5) judicial days before trial:

(1) The defendant shall file and serve upon the prosecuting attorney a written notice containing the names and last known addresses of all witnesses the defendant intends to call during the case in chief of the defendant;

(2) The prosecuting attorney shall file and serve upon the defendant a written notice containing the names and last known addresses of all witnesses the prosecuting attorney intends to call during the case in chief of the State.

(3) If a party intends to call during the case in chief of the State or during the case in chief of the defendant an expert witness, the party who intends to call that witness shall file and serve upon the opposing party, not less than 21 days before trial or at such other time as the court directs, a written notice containing:

(a) A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of the testimony;

(b) A copy of the curriculum vitae of the expert witness; and

(c) A copy of all reports made by or at the direction of the expert witness.

(4) After complying with the provisions of subsections 1 and 2, each party has a continuing duty to file and serve upon the opposing party:

(a) Written notice of the names and last known addresses of any additional witnesses that the party intends to call during the case in chief of the State

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or during the case in chief of the defendant. A party shall file and serve written notice pursuant to this paragraph as soon as practicable after the party determines that the party intends to call an additional witness during the case in chief of the State or during the case in chief of the defendant.

(b) Any information relating to an expert witness that is required to be disclosed pursuant to subsection 2. A party shall provide information pursuant to this paragraph as soon as practicable after the party obtains that information.

(5) Each party has a continuing duty to file and serve upon the opposing party any change in the last known address, or, if applicable, last known place of employment, of any witness that the party intends to call during the case in chief of the State or during the case in chief of the defendant as soon as practicable after the party obtains that information.

A party is not entitled, pursuant to the provisions of this section, to the disclosure of the name or address of a witness 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 of the Constitution of the United States.

NRS 174.234.

TO DEFENSE COUNSEL:

Defense counsel is obligated under both the Constitution of the State of Nevada and the United States Constitution to provide effective representation of defendant. Although the following list is not meant to be exhaustive, counsel shall remain cognizant of the obligation to:

(a) Confer with the client about the case and keep the client informed about all significant developments in the case;

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(b) Timely communicate to the client any and all offers in negotiation, and provide reasonable advice about the advantages and disadvantages of such offers, and about the potential sentencing ranges that would apply in the case;

(c) When applicable based upon the client's immigration status, ensure that the client receives competent advice regarding immigration consequences in the case as required under *Padilla v. Kentucky*, 559 U.S. 356 (2010);

(d) Perform a reasonable investigation of both the facts and the law pertinent to the case (including as applicable, e.g., visiting the scene, interviewing witnesses, subpoenaing pertinent materials, consulting experts, inspecting exhibits, reviewing all discovery materials obtained from the prosecution, researching legal issues, etc.) or, if appropriate, to make a reasonable professional judgment not to investigate a particular matter;

(e) Comply with the requirements of the Nevada Rules of Professional Conduct regarding conflicts of interest, and when appropriate, timely notify the court of a possible conflict so that an inquiry may be undertaken or a ruling made;

(f) Possess or acquire a reasonable knowledge and familiarity with criminal procedural and evidentiary law to ensure constitutionally effective representation in the case; and

(g) When the statutory requirements necessary to trigger notice from the defense are met (e.g., a demand, intent to introduce the evidence, etc.),

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comply with the statutory notice for the defense as required.

IT IS SO ORDERED.

DATED this day of August 28, 2018.

NATHAN TOD YOUNG
District Judge

Copies served by mail this day of August 28, 2018 to:

Douglas County District Attorney's Office (hand delivered); Mathew Work, Esq. (clerk's mail).

Judicial Executive Assistant

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

FILED
Electronically
CR19-0447
2019-07-29 09:52:22 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7398143

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA, Plaintiff, vs. WILBUR ERNESTO MARTINEZ GUZMAN, Defendant.	CASE NO.: CR19-0447 DEPT. NO.: 4

PRETRIAL ORDER

Good cause appearing and in the interests of justice, the Court hereby notices all counsel of the following supplemental requirements of trial in Department 4, to those found in DCR, LCR and Nevada Revised Statutes.

The procedures described in this pretrial order are designed to secure a just, speedy and timely determination of this case. If any party believes a procedure required by this Order will not achieve these ends, that party should seek an immediate administrative conference among all parties and the Court so an alternative may be discussed.

I. PRETRIAL MOTIONS

A. All motions must be in writing unless exigent circumstances exist to excuse this requirement. Any motion pertaining to venue, dismissal, suppression of evidence, limine, severance, prior bad acts or other act and/or motions to address how voir dire will be conducted shall be filed, and served through the e-flex system of the Court upon opposing counsel no later than November 1, 2019, answers shall be filed and served through the e-flex system of the Court on opposing counsel no later than November 19, 2019. The parties are to formally submit all motions

they want decided by the Court whether or not oral argument has been requested or an evidentiary hearing is required for resolution of the motion. The oral argument/evidentiary hearing is set for November 25, 2019 at 10:00 a.m. continuing to November 26, 2019, if necessary.

B. Any motion pertaining to jury view, and or special jury questionnaires must be filed and served through the e-flex system of the Court upon opposing counsel no later than February 3, 2020, answers shall be filed and served through the e-flex system of the Court on opposing counsel no later than February 10, 2020, The parties are to formally submit all motions they want decided by the Court whether or not oral argument has been requested or an evidentiary hearing is required for resolution of the motion. The oral argument/evidentiary hearing is set for February 14, 2020 at 10:00 a.m.

C. All notices of expert witnesses shall be filed and served through the e-flex system of the Court on opposing counsel no later than January 6, 2020 and objections to the notice shall be filed and served through the e-flex system of the Court on opposing counsel no later than January 16, 2020. The oral argument hearing, if an objection is filed, is set for January 24, 2020 at 10:00 a.m.

D. Motions to extend the deadlines set herein shall be made to the Court prior to the expiration of the deadlines and be accompanied by a showing of good cause or unforeseen circumstances in support of the extension.

E. Motions to continue the trial must be filed and served through the e-flex system of the Court upon opposing counsel no later than February 3, 2020. The hearing is set for February 14, 2020 at 10:00 a.m.

II. TRIAL STATEMENT

A. A trial statement on behalf of each party shall be filed and served through the e-flex system of the Court on opposing counsel no later than March 2, 2020.

B. The trial statement must address:

1. Any practical matters which should be addressed prior to trial (e.g., suggestions or special requests as to the order of witnesses or evidence, or request to use video conferencing for a witness, if not already presented to the Court).

2. All proposed general voir dire questions for the Court or counsel to ask of the jury shall be included. Failure to include could result in the Court greatly restricting counsel's verbal participation in the voir dire of the jury panel.

3. Any pending legal issues with appropriate citations to legal authorities on each issue, which has not already been resolved by the Court.

4. Any unique forms of evidence which are expected to be used at trial along with appropriate citations of authority.

III. JURY INSTRUCTIONS

A. All proposed jury instructions and verdict forms, for either side, whether agreed upon by both parties or proposed by a party individually, shall be filed and served through the e-flex system of the Court no later than March 9, 2020, objections to the proposed instructions must be filed and served on opposing counsel through eflex system by March 16, 2020, a hearing to preliminarily discuss the proposed jury instructions and verdict forms, if an objection is filed, is set for March 23, 2020 at 10:00 a.m.

B. All jury instructions should be short, concise, understandable, and neutral statements of law and gender. Argumentative or formula instructions are improper, will not be given, and should not be submitted.

C. Counsel are required to submit all proposed jury instructions in the below described format:

1. All proposed jury instructions and verdict forms must be prepared in Microsoft Word format, utilizing New Courier 12 point font.

2. All proposed jury instructions shall be in clear, legible type on letter (8 ½ by 11 inches) document paper size, with a black border line and no less than 26 numbered lines.

3. The last instruction only shall bear the signature line with the words "District Judge" typed thereunder placed on the right half of the page, five to ten lines below the last line of text.

4. The designation "Instruction No. ____" shall be on the last line, lower left hand corner of the last page of each instruction.

5. Each instruction shall bear the citation of authority on it, noting any modification made on the instruction from statutory authority, Ninth Circuit Criminal Instructions, CALJIC or other form instructions, specifically stating the modification made to the original form instruction, and/or statute, and the authority supporting the modification.

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D. At the close of evidence, the Court will convene outside the presence of the jury to determine the jury instructions and verdict forms that will be used. At that time, the Court will resolve any outstanding disputes over instructions and verdict forms, and consider the need for any additional instructions which were not foreseen prior to trial.

IV. MISCELLANEOUS

A. This case has been set for a **jury trial of eight (8) weeks, to commence on April 6, 2020 at 10:00 a.m.** A Motion to Confirm Hearing will be held on March 23, 2020 at 10:00 a.m. The Court expects that all counsel will cooperate to conclude the case within the time set. Trial counsel are strongly encouraged to meet and confer regarding the order of witnesses, stipulated exhibits and any other matters which will expedite trial of the case, including the jury instructions and forms of verdict to be used at trial.

B. The Court will allow notes to be taken by jurors during the trial unless a party objecting to this procedure includes such objection in their trial statement.

C. All exhibits whether demonstrative or evidentiary will be marked for identification purposes in one numbered series (Exhibit 1, 2, 3, etc.), no matter which party is offering the particular exhibit. In any case which involves fifteen or more document exhibits, the exhibits must be placed in a loose-leaf binder behind a tab noting the number of each exhibit. The binder (s) shall be clearly marked on the front and side with the case caption and number, but no identification as to the party producing the binder. When marking the exhibits with the Clerk, counsel must advise the Clerk of all exhibits which may be admitted without objection and which exhibits, if any, are being marked for demonstrative purposes only. Once trial exhibits are marked by the Clerk, they shall remain in the custody of the Clerk.

D. If any expanded jury questionnaire is approved by the Court, the entire prospective jury panel will be summoned for March 30, 2020, wherein they will be sworn as to their qualifications, fill out the questionnaires in the Courthouse, then be admonished and allowed to leave until their return April 6, 2020 at 10:00 a.m. Subsequently, the questionnaires will be copied and provided to counsel. On March 31, 2020 at 1:30 p.m., a hearing will take place outside the presence of the jury panel for counsel to exercise challenges for cause, and decide hardship

continuances of service. Further hearings are set for April 2, 2020 at 4:00 p.m. and April 3, 2020 at 4:00 p.m. to handle no show jurors and/or hardship that may have subsequently arisen with a potential juror.

E. Court will allow media use of pool cameras so long as the media request follows the Supreme Court Rule 230, unless counsel advises the Court in advance of an issue with open coverage.

DATED this 29 day of July, 2019.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CR18-0447

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 29 day of July, 2019, I filed the **PRETRIAL ORDER** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

_____**Personal delivery to the following: [NONE]**

__X__ **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

CHRISTOPHER HICKS, ESQ. for STATE OF NEVADA
MARILEE CATE, ESQ. for STATE OF NEVADA
JOSEPH GOODNIGHT, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
TRAVIS LUCIA, ESQ. for STATE OF NEVADA
KATHERYN HICKMAN, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
GIANNA VERNESS, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
JOHN PETTY, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
JOHN ARRASCADA, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
DIV. OF PAROLE & PROBATION
MARK JACKSON, ESQ. for STATE OF NEVADA

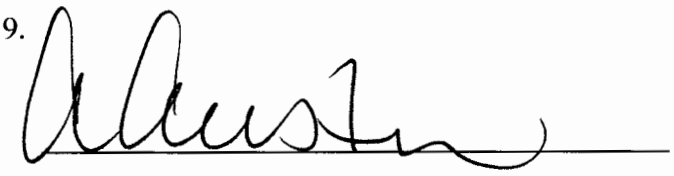
_____**Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

_____**Placed a true copy in a sealed envelope for service via:**

_____ Reno/Carson Messenger Service – **[NONE]**

_____ Federal Express or other overnight delivery service **[NONE]**

DATED this 29 day of July, 2019.



CODE 3696

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA, **Case No. CASE NO.**

Plaintiff, **Dept. No. IV**

vs.

DEFENDANT,

Defendant.

_____/

PRETRIAL ORDER

The procedures described in this pretrial order are designed to secure a just, speedy and timely determination of this case. If any party believes a procedure required by this order will not achieve these ends, that party should seek an immediate conference among all parties and this Court so an alternative order may be discussed. **Otherwise, failure to comply with the provisions in this order may result in the imposition of sanctions.** All references to "counsel" include self-represented litigants.

Good cause appearing and in the interests of justice, the Court hereby notices all counsel of the following supplemental requirements of trial in Department IV, to those found in DCR, LCR and Nevada Revised Statutes.

I. PRETRIAL MOTIONS

A. Counsel will file a stipulation with regard to Discovery and submit it to the Court for Order. If a stipulation cannot be reached between counsel, a motion for

discovery shall be filed within fifteen (15) days of the date of this Order. Opposing counsel shall have ten (10) days to respond. The moving party must formally submit the matter to the Court for the Court to consider the motion. If counsel wish an oral hearing on the matter they shall request one be set after an opposition has been filed or the time for filing an opposition has ended.

B. All motions must be in writing. Any motion which should be addressed prior to trial, including but not limited to motions to dismiss, motions to suppress evidence, motions in limine, motions to sever, motions for continuance, motions regarding jury selection, and motions regarding prior bad act or other act evidence shall be filed, personally served or served by the e-flex system of the Court upon opposing counsel no later than **DEADLINE TO FILE MOTIONS**, answers shall be filed and personally served or served by the e-flex system of the Court on opposing counsel no later than **DEADLINE TO FILE RESPONSES**, and replies shall be filed and personally served or served by the e-flex system of the Court on opposing counsel no later than **DEADLINE TO FILE REPLIES**. The parties are to formally submit all motions they want decided by the Court whether or not oral argument has been requested or an evidentiary hearing is required for resolution of the motion. The oral argument/evidentiary hearing is set for **DATE OF ORAL ARG/EVID. HEARING**, **at TIME OF HEARING p.m.**

C. All notices of expert witnesses shall be filed no later than **DEADLINE TO FILE NOTICE OF EXPERT WITNESSES** and objections to the notice shall be filed no later than **DEADLINE TO FILE OBJECTIONS TO THE NOTICE.** The oral argument hearing, if an objection is filed, is set for **DATE OF ORAL ARG/EVID. HEARING**, **at TIME OF HEARING p.m.**

D. Motions to extend the deadlines set herein shall be made to the Court prior to the expiration of the deadlines and be accompanied by a showing of good cause or unforeseen circumstances in support of the extension.

II. TRIAL STATEMENT

A. A trial statement on behalf of each party shall be filed and personally served or served by the e-flex system of the Court on opposing counsel no later than **3:00 p.m.** on **DEADLINE TO FILE TRIAL STATEMENTS**.

B. The trial statement must address:

1. Any practical matters which should be addressed prior to trial (e.g., suggestions or special requests as to the order of witnesses or evidence, view of the premises, or request to use video conferencing for a witness, if not already presented to the Court).

2. All proposed general voir dire questions for the Court or counsel to ask of the jury shall be included. Failure to include could result in the Court greatly restricting counsel's verbal participation in the voir dire of the jury panel.

3. Any pending legal issues with appropriate citations to legal authorities on each issue, which has not already been resolved by the Court.

III. JURY INSTRUCTIONS

A. All proposed jury instructions and verdict forms, whether agreed upon by both parties or proposed by a party individually, shall be delivered electronically to chambers no later than **3:00 p.m.** on **DEADLINE TO FILE JURY INSTRUCTIONS,** via email to Marci.Trabert@washoecourts.us and Audrey.Austin@washoecourts.us.

B. Unless otherwise ordered, counsel for the parties shall exchange all proposed jury instructions and verdict forms two weeks prior to the deadline to submit proposed jury instructions. Counsel should then meet, confer, and submit to the Court one complete set of agreed-upon jury instructions and verdict forms at the same time they submit their trial statements.

C. If counsel do not agree upon all proposed jury instructions or verdict forms, they shall jointly submit a set containing only those instructions that are mutually agreeable. Counsel for each party must submit individually any additional proposed jury instructions that have not been agreed upon and/or verdict forms at the same time they

submit their trial statements, with an attached memorandum of why the particular jury instruction or verdict form should be given to the Jury by the Court.

D. All jury instructions should be short, concise, understandable, and neutral statements of law and gender. Argumentative or formula instructions are improper, will not be given, and should not be submitted.

E. Counsel are required to submit all proposed jury instructions in the below described format:

1. All proposed jury instructions and verdict forms must be prepared in **Microsoft Word** format, utilizing **New Courier 12 point font**.

2. All proposed jury instructions shall be in clear, legible type on letter (8 ½ by 11 inches) document paper size, with a black border line and no less than 26 numbered lines.

3. The last instruction **only** shall bear the signature line with the words "District Judge" typed thereunder placed on the right half of the page, five to ten lines below the last line of text.

4. The designation "Instruction No._____" shall be on the last line, lower left hand corner of the last page of each instruction.

5. Each instruction shall bear the citation of authority on it, noting any modification made on the instruction from statutory authority, Ninth Circuit Criminal Instructions, CALJIC or other form instructions, specifically stating the modification made to the original form instruction, and/or statute, and the authority supporting the modification.

F. At the close of evidence, the Court will convene outside the presence of the Jury with counsel to determine the jury instructions and verdict forms that will be used. At that time, the Court will resolve all disputes over instructions and verdict forms, and consider the need for any additional instructions which were not foreseen prior to trial.

IV. MISCELLANEOUS

A. This case has been set for a **jury trial of LENGTH OF JURY TRIAL days, to commence on DATE OF JURY TRIAL, at 10:00 a.m.** A **Motion to Confirm Hearing** has been set for **DATE OF MOTION TO CONFIRM TRIAL DATE, at 9:00 a.m.** The Court

expects that all counsel will cooperate to conclude the case within the time set. Trial counsel are strongly encouraged to meet and confer regarding the order of witnesses, stipulated exhibits and any other matters which will expedite trial of the case, including as ordered above with regard to the jury instructions and forms of verdict to be used at trial.

B. The Court will allow notes to be taken by jurors during the trial unless a party objecting to this procedure includes such objection in their trial statement.

C. All exhibits will be marked in one numbered series (Exhibit 1, 2, 3, etc.), no matter which party is offering the particular exhibit. In any case which involves fifteen or more document exhibits, the exhibits must be placed in a loose-leaf binder behind a tab noting the number of each exhibit. The binder(s) shall be clearly marked on the front and side with the case caption and number, but no identification as to the party producing the binder. When marking the exhibits with the Clerk, counsel must advise the Clerk of all exhibits which may be admitted without objection and which exhibits, if any, are being marked for demonstrative purposes. Once trial exhibits are marked by the Clerk, they shall remain in the custody of the Clerk.

Dated this _____ day of MONTH, 2019.

_____
DISTRICT JUDGE