

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

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**Commission on Statewide Rules of Criminal Procedure**

January 23, 2019

Noon

*Summary prepared by: Jamie Gradick*

**Members Present**

Justice James Hardesty, Chair  
Justice Abbi Silver, Co-Chair  
Justice Lidia Stiglich, Co-Chair  
John Arrascada  
Chief Judge Scott Freeman  
Judge Douglas Herndon  
Christopher Hicks  
Darin Imlay  
Mark Jackson  
Lisa Rasmussen  
Judge Jim Shirley  
JoNell Thomas  
Steve Wolfson

**Guests Present**

Sharon Dickinson  
Chris Lalli  
Robert O'Brien  
Luke Prengaman

**AOC Staff Present**

Jamie Gradick  
John McCormick

I. Call to Order

- Justice Hardesty called the meeting to order at 12:05 pm. A quorum was present.
- Justice Hardesty commented on recent changes to the Commission membership and asked attendees to introduce themselves.
- Attendees discussed new Commission goals.
  - Justice Hardesty informed attendees that the Commission's goal is to submit draft rules to the Nevada Supreme Court by Sept. 1, 2019.

II. Review of October 8, 2018 Meeting Summary

- The summary was included in the meeting material packet for informational purposes; because of the new make-up of the Commission membership, a motion for approval of the summary was not appropriate.

III. Work Group Status Updates and/or Recommendations

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- Chief Judge Scott Freeman, as chair of the Jury Instructions Work Group, provided attendees with a brief recap/overview of the work group's progress.
  - The work group continues to move through the pattern instruction book section by section. This is a slow process but necessary in order to achieve the work group's goal.
  - The group meets monthly for 2 hours; Judge Freeman's law clerks aid in editing and maintaining the DropBox where all the instructions are housed.
  - Judge Freeman briefly addressed the evolution of the work group's membership and thanked Luke Prengaman and Deborah Westbrook for their instrumental efforts in the work group.
  - The Nevada Bar has agreed to publish the final pattern instructions.
- Attendees discussed the status of the Discovery Work Group; present work group members informed the Commission that the work group has not been meeting.
  - Justice Hardesty abolished the work group.
- John Arrascada, as chair of the Motions Practice Work Group, provided attendees with a brief overview of the work group's progress.
  - There have been challenges getting a quorum.
  - Justice Hardesty commented that the topics being addressed should be vetted by the entire Commission
  - Justice Hardesty abolished the work group.
- Mr. Steve Wolfson, together with Judge Douglas Herndon, provided an overview/status update on the Life/Death Pretrial Practice Work Group and the Eighth Judicial District Court Homicide Case Pilot Project.
  - Mr. Wolfson provided a brief recap of the work group's creation and efforts and explained that many of the issues the work group worked on are issues unique to Clark County.
  - Judge Herndon provided an overview of the homicide case project's efforts.
    - The administrative order creating the program is open-ended so there is no set end date for the program.
    - 2018 was the first full-calendar year of the program.
    - Between July 2017 and July 2018, the program saved the county approximately \$1.5 million in bed space at the jail.
    - In 2018: assigned out 137 new cases, closed 123, and tried 33 homicide cases.
  - Judge Herndon explained that there is a balance to active case management; each case has nuances to consider.
  - Judge Herndon commented that the homicide case program is running successfully and suggested that the Commission now look at other recommendations from the work group's report like Rule 250 changes and settlement conference requirements.
  - Justice Hardesty asked whether the case management recommendations from the work group's report could be applicable to other counties.
    - Mr. Jackson commented that they would not be applicable in Douglas County
    - Judge Shirley commented that they would not be applicable in the 11<sup>th</sup> Judicial District.
    - Mr. Hicks commented that some of the recommendations would help with resolution efficiency in Washoe County.
    - Judge Freeman commented that Washoe County does not have the same volume as Clark County so some of the recommendations will not apply but he does support

the settlement conference recommendation and suggests that the Commission consider this.

- Attendees discussed case management efforts for homicide cases as well as the death penalty cases. Judge Herndon explained that the homicide case program does this informally and allows the four homicide team judges a degree of flexibility.
- Justice Hardesty commented on the importance of having qualified and trained judges handling death penalty and homicide cases.
  - This is a recommendation that would have a statewide application.
  - Judge Freeman asked for clarification regarding how this type of training would be accomplished.
  - Justice Hardesty informed attendees that not all trainings in this area are helpful or address the correct things. Supreme Court Rule 250 sets out specific training expectations and requirements for attorneys, there should be similar requirements for judges.
  - Attendees agreed to keep this topic on the agenda for further discussion; Justice Hardesty asked Mr. McCormick and Ms. Gradick to research available judicial education on this topic.
- Justice Hardesty suggested that death penalty/homicide qualified judges from other districts could be assigned to try these cases in Clark County.
  - Judge Herndon commented that too many judges in the process impairs productivity and clarified that the homicide team judges are getting the cases trial-ready and are also trying the cases.
  - Mr. Darin Imlay expressed concern with “spreading attorneys too thin” as the Clark County Public Defender office cannot handle any expansion at this point. Ms. Thomas echoed Mr. Imlay’s concerns and commented that the system appears to be working well and they are “tweaking” things as necessary.
- Justice Stiglich asked for clarification regarding whether stacks and firm trial dates are issues in the 8<sup>th</sup> judicial district. Would it be possible to give priority to homicide cases?
  - Judge Herndon commented that trial dates are usually firm. When a continuance occurs, most of the time it is due to an evidentiary or witness issue.
  - Mr. Wolfson explained that the four homicide judges monitor their own calendars to shorten and decrease continuances.
  - Attendees discussed whether the “gentlemen’s agreement” to follow stipulated sentencing has helped move the cases long.
- Attendees discussed whether the Commission should consider the mandatory settlement conference recommendation from the report.
  - Judge Herndon clarified that the settlement conference would be presided over by a judge not assigned to the case; this would include senior judges and judges from other districts or departments.
  - Justice Hardesty explained that the ADKT process can change existing jurisprudence; recommending this to the Nevada Supreme Court for consideration could help with possible *Cripps* conflicts.
  - Attendees expressed concern with senior judges handling settlement conferences for these types of cases; there needs to be proper experience and training.
  - Attendees discussed what other case types could benefit from settlement conferences. Concern was expressed regarding mandatory conferences in every criminal case; a suggestion was made that the homicide cases require settlement

- conferences but other case types have the option of holding conferences as necessary.
- Mr. Hicks commented that victims' rights under Marsy's Law would also have to be considered.
  - Judge Herndon suggested the Commission consider putting forth an ADKT; Justice Hardesty asked Judge Herndon to work with other stakeholders as necessary to draft language for settlement conference rules for consideration at the next Commission meeting.
  - Justice Hardesty asked attendees for suggestions regarding S.C.R. 250 modifications recommendations; this discussion will be carried over for the next meeting. Attendees were asked to review the work group's recommendations on this topic for further discussion.

#### IV. SB5: Discussion

- Justice Hardesty asked attendees for input regarding Senate Bill 5, particularly whether this legislation is appropriate or should be withdrawn from legislative consideration.
  - Justice Hardesty informed attendees that he feels the bill should be withdrawn; there is already authority for the Nevada Supreme Court to exercise its inherent powers to adopt criminal procedure rules.
  - Mr. John McCormick explained that he has spoken with the LCB and the bill could be withdrawn easily.
  - Mr. McCormick commented that he believes there is value in the language addressing potential conflicts between statute and the contemplated rules; the rules will control.
    - Justice Hardesty commented that the Commission should avoid getting into a conflict with statute; rules that develop from this Commission's work should conform to statute.
    - Mr. Chris Lalli commented that there is already a good deal of criminal procedure in the NRS but it is not comprehensive; a "patchwork" of rules exists and conflicts are likely to arise.
    - Attendees discussed how best to address potential conflicts and whether the language in question should be kept. It may be most prudent to retain the conflict language portion of the bill and ask the legislature to "step out" and defer to the Court's rules.
    - Discussion was held regarding making adjustments to ambiguities through the administrative docket process rather than legislatively.
    - Mr. Mark Jackson reminded attendees that one of the original goals of this Commission was to address the lack of uniformity and the "hodge-podge" makeup of the current criminal procedure rules. SB5 could decrease the amount of litigation over conflicting rules and which rules will govern.
    - Ms. JoNell Thomas commented that there is ambiguity in terms of what are considered rules of criminal procedure versus what are considered substantive rules.
    - Justice Hardesty commented that the focus is on the procedural rules; there is no intent for this Commission to take us evidentiary rules.
    - Attendees discussed the ability of the Commission to decide which areas are procedural versus substantive and which areas it wants to address.

- Justice Hardesty called for a vote on whether the Commission membership supports retention of the concept as outlined in Section 1(4) of SB5; this would be the sole subject of SB5.
  - The Commission voted to support this motion (7- 4).
  - Justice Hardesty asked Mr. McCormick to amend SB5 accordingly.

V. Proposed Statewide Rules: Discussion

- Judge Shirley provided attendees with a brief overview of the document and the efforts behind its creation.
  - The Motions Practice Work Group reviewed the federal rules and the criminal procedure rules in other states and opted to model this draft after the state rules used in Utah and Arizona.
  - Justice Hardesty asked attendees to review this draft and the federal rules and be ready to discuss both at the next meeting.
    - The goal of that discussion will be to decide on a framework for reviewing and drafting the rules the Commission will ultimately propose.
    - Mr. Jackson explained that the work group had spent quite a bit of time research other rule models and discussing the best process for how to draft these rules.
    - Ms. Gradick has access to this document in Word format; she will distribute it to the Commission members.
    - Ms. Gradick will also find and distribute the links to Utah's and Arizona's criminal procedure rules.

VI. Commission Website

- Justice Hardesty informed attendees that, moving forward, the Commission's efforts would be publically documented on the Commission's website, similar to the way the Committee to Study Evidence-Based Pretrial Release's work has been documented.

VII. Other Items/Discussion

- The district attorney and public defender offices from both Washoe County and Clark County agreed to help with the Commission's research needs.

VIII. Next Meeting

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

IX. Adjournment

- The meeting was adjourned at 1:45 p.m.