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: April 27, 2020 at Noon
Place of Meeting: Remote Access via Blue Jeans *(Please see calendar imvite for access link)*

All participants attending via teleconference should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.

AGENDA

I. Call to Order
   A. Call of Roll
   B. Determination of a Quorum
   C. Opening Remarks

II. Public Comment

III. Review and Approval of Previous Meeting Summaries* **(Tab 1)**
   A. October 29, 2019
   B. January 17, 2020
   C. February 28, 2020

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 17: Voir Dire **(Tab 4)**
   C. Post-Conviction Writs **(Tab 5)**

D. Rule 14: Sentencing
E. Rule 15: Continuances

VI. Rules Finalized During Previous Meetings
A. Rule 8: Pretrial Motions **(Tab 6)**

VII. Additional Rules for Commission Consideration **(Tab 7)**
A. Grand Jury
B. Jury Commissioner
C. Bail

VIII. Other Items/Discussion

IX. Next Meeting Date and Location

X. 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

TAB 1

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

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

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

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

AOC Staff Present
Jamie Gradick
John McCormick
Kimberly Williams

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

II. Public Comment
- There was no public comment.

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

IV. Work Group Updates
- Jury Instructions Work Group:

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

V. Statewide Rules Discussion

➢ Rule 8: Pretrial Motions

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

➢ Rule 9: Pretrial Writs of *Habeas Corpus*

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

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

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

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

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

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

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

VI. Additional Rules for Commission's Consideration

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

VII. Other Items/Discussion

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

VIII. Next Meeting

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

IX. Adjournment

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

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Commission on Statewide Rules of Criminal Procedure

January 17, 2020
Noon
Summary prepared by: Kimberly Williams

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

Guests Present
Chief Judge Linda Bell
Alex Chen
Tim Dibble
Sharon Dickinson
Alysa Grimes
John Petty
Rich Suey
Judge Lori Walkley

AOC Staff Present
John McCormick
Kimberly Williams

I. Call to Order
- Justice Hardesty called the meeting to order at 12:03 pm.
- Ms. Williams called roll; a quorum was present.

II. Public Comment
- There was no public comment.

III. Review and Approval of October 29, 2019 Meeting Summary
- Approval of the October 29, 2019 meeting summary was tabled for the next meeting.

IV. Work Group Updates
- Jury Instructions Work Group: Update tabled until next meeting.

V. Statewide Rules Discussion
- Rule 8: Pretrial Motions (*Portions of this discussion were inaudible*)
  - Ms. Rasmussen presented her work group's draft of Rule 8.

- Subsection 2 of section A requires a statute change; the language has been changed from to 15 days to conform with the statutory requirements. However, the work group still suggests it be 30 days and be addressed in the next legislative session.
- Subsection 4 addresses direct service; electronic filings can be made via email if in a rural district.

- Mr. Lalli questioned why (Section A, Subsection iv) allows for service through email but also requires the other party to consent to receive the service.
  - Ms. Rasmussen explained that this allows people an opportunity to receive notice of who is served.
  - Discussion was held regarding applicability of this in the urban versus rural jurisdictions.
- Ms. Thomas expressed concern regarding a requirement (Section B) that hearings must be requested; this adds an unnecessary level of bureaucracy. There should be a presumption that motions will get a hearing.
  - Mr. Lalli agreed with Ms. Thomas and expressed concern regarding the ability to manipulate the system; the language of the rule is contradictory.
  - Mr. Prengaman shared that Second Judicial District clerks receive a hearing motion but they do not set a date. The clerk does not have the ability to schedule a hearing and does not notify the judge of any motions filed.
  - The committee discussed the pros and cons of presumption of oral argument/hearing on every motion filed and possible exceptions (party can waive or judge can decide without oral argument).
  - Attendees discussed notice requirements for an evidentiary hearing.
  - Judge Shirley cautioned against "jumping the gun" by setting a hearing on motions before the parties are done negotiating.
  - Justice Hardesty suggested the rule be modified to make the presumption in favor of argument on each motion; the debate is now on how to get the motion before the judge (example: submit motion). Justice Hardesty tasked Mr. McCormick/Ms. Gradick with canvassing how this is handled in the other districts.
- Justice Hardesty requested that Ms. Rasmussen and her work group revise the Rule 8 draft based upon the meeting discussion and the information gathered from the judicial districts.

➢ Rule 9: Pretrial Writs of *Habeas Corpus*
- Justice Hardesty asked Ms. Dickinson for clarification regarding the status of the rule.
  - Ms. Dickinson commented that she was under the impression that the rule had already been completed and accepted.

➢ Rule 17: Voir Dire (*portions of this discussion were inaudible*)
- Mr. Arrascada shared with the committee that Mr. Jackson reached out to the subcommittee with a proposed draft. Mr. Petty and Mr. Arrascada made additional changes to the draft and submitted a second option to the Commission as well. *(Please see meeting materials for additional information)*
- Mr. Arrascada and Mr. Jackson provided a brief overview of the differences between the two versions/methods presented.
  - Ms. Thomas agreed with Mr. Arrascada and Mr. Petty's draft.
  - Mr. Lalli agreed with the flexibility of Mr. Jackson's approach; as a general proposition, there will be more appellate concerns if the approach is too strict.
  - Chief Judge Bell commented that there is an unpublished Nevada Supreme Court (# 58972) case disapproving of the "strike and replace" method.
  - Mr. Petty explained the process used in the Second Judicial District.
  - Judge Shirley commented that the process in his district is similar to that followed in the 2nd JD.

- Mr. Prengaman supported the inclusion of a provision that requires the trial judge to notify the parties of which approach the court intends to use.
- Justice Hardesty suggested revisiting the NV Supreme Court case rationale; Ms. Gradick will circulate the case to the Commission members.
- Chief Judge Bell requested that the revision include gender-neutral language.
- Mr. Petty and Mr. Jackson presented their respective versions of subsection 2.
  - Discussion was held regarding case law and statutory authority.
  - Discussion was held regarding strengths and weaknesses of each version; Mr. Prengaman commented that Mr. Jackson's version complies with Nevada case law. Mr. Arrascada expressed concerns regarding subsection (a) limiting the court's discretion.
- Justice Hardesty called for a roll call vote to adopt subsection 2 of the Arrascada/Petty draft.
  - The vote did not pass.
  - Justice Hardesty requested that Mr. Arrascada and Mr. Petty work with Mr. Jackson to incorporate the two versions to address drafting errors and adhere to case law and statutory authority and requirements in accordance with the meeting discussion.
  - Justice Hardesty commented that the rule can be a "guidepost" – the admonitions are discretionary with the court.
- Ms. Thomas suggested the committee consider abolishing peremptory challenges and only utilizing cause challenges.
  - Justice Hardesty noted the concern and would like to revisit this at a later date.
- Due to time limitations, subsections 4-8 were tabled for the next meeting.

VI. Criminal Case Management Plans

- Justice Hardesty introduced Mr. Tim Dibble, Mr. Rich Suey, and Judge Lori Walkley and provided them with a brief overview of the Commission's focus thus far.
- Justice Hardesty informed attendees that he recently attended a presentation in Clark County dealing with criminal case management efforts and jail overcrowding issues.
- Attendees discussed the Las Vegas Justice Court and Eighth Judicial District Court Criminal Case Management Plans *(see meeting materials for more information)*
  - Chief Judge Bell commented that the judges of the 8th JD have decided to wait on adopting the case management plans until the Commission completes its work.
  - Mr. Dibble and Judge Walkley provided a brief overview of the history behind the creation of the case management plans.
    - Discussion was held regarding scheduling orders; the Commission has been discussing this topic. Justice Hardesty asked Mr. Dibble and Judge Walkley to provide input on how to implement scheduling orders within the context of the case management plans and recommendations.
    - Attendees discussed case complexity as an underlying issue behind the use of scheduling orders.
    - Mr. Suey suggested Commission members review the PowerPoint that was distributed prior to the meeting.
  - Justice Hardesty commented that the Commission will revisit this topic again at a later date.

VII. Rules Finalized During Previous Meetings

- Rule 18: Court Interpreters
- Rule 19: Appeals
- Rule 11: Extending Time
- Rule 12: Shortening Time

VIII. Additional Rules for Commission's Consideration

IX. Other Items/Discussion

- Action Items
  - Ms. Gradick will circulate a Supreme Court Case # 58972 to the Commission membership.
  - Justice Hardesty will hold a conference call with a subcommittee to discuss a post-conviction rule; the subcommittee will consist of Alex Chen, Chief Judge Bell, Sharon Dickinson, and Jennifer Noble (Luke Prengaman).

X. Next Meeting
- February 28th at 12pm
- March 27th at TBD

XI. Adjournment
- The meeting was adjourned at 2:09 p.m.

Supreme Court of Nevada

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Commission on Statewide Rules of Criminal Procedure

February 28, 2020
Noon
Summary prepared by: Kimberly Williams

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

Guests Present
Judge Tierra Jones
Alex Chen
Sharon Dickinson

AOC Staff Present
Jamie Gradick
John McCormick
Kimberly Williams

I. Call to Order
- Justice Hardesty called the meeting to order at 12:00 pm.
- Ms. Gradick called roll; a quorum was present.
- Opening Comments: Justice Hardesty directed the committee's attention to Rule 8, Rule 17, and Post-Conviction Writs and let the committee know that would be today's focus. Five rules will be left remaining. Justice Hardesty shared his hope that the rules could be submitted in the first week of March.

II. Public Comment
- There was no public comment.

III. Review and Approval of October 29, 2019 and January 17, 2020 Meeting Summary
- Approval of the October 29, 2019 and January 17, 2020 meeting summaries was tabled for the next meeting.

IV. Work Group Updates
- Jury Instructions Work Group:

- Chief Judge Freeman shared with the commission how beneficial an in-person group meeting was. The work group is planning three more months of 2-hour teleconferences and one more all day, in-person group meeting.

V. Statewide Rules Discussion

- Rule 8: Pretrial Motions (*Portions of this discussion were inaudible*)
  - Ms. Rasmussen presented the work group's draft of Rule 8 *(Please see meeting materials for additional information pages 80-83)* and explained how the work group came to this draft.
    - Chief Judge Freeman shared his support for motions (a), ii stating 20 days.
    - Mr. Arrascada commented the importance of statewide rules regarding oral argument.
    - Discussion was held regarding statewide rules for oral argument.
  - Justice Hardesty requested comments from additional committee members.
    - Justice Hardesty asked Mr. Jackson if Submission of Motions (f) (i) accommodates the rural districts that were identified on the survey.
      - Mr. Jackson responded that (f) (i) would allow the 3rd, 5th, 7th, and 9th districts to continuing practicing as they currently do.
    - Ms. Thomas suggested the rule be written along the lines of "In the 8th this is the rule. In the remaining districts this is the rule" This would accommodate the practitioner.
    - Mr. Lalli shared his concerns of practitioners of abusing and manipulating the system by enforcing a submission process.
    - Justice Stiglich commented that a motion to submit is a calendar management tool for some jurisdictions. Without a motion of submission some motions will be left unheard.
    - Mr. Imlay suggested on page 74 changing the language to "…with or without oral argument ~~and grant or deny it prior to the hearing~~."
      - The committee agreed with Mr. Imlay.
    - Justice Hardesty addressed Justice Stiglich's comment on request for submission being a calendar management tool. Justice Hardesty requested Ms. Gradick go back to the canvas and identify the districts that do not require request for submissions and list them in (f) (i) (page 74). This will accommodate the districts that do and don't.
    - Justice Hardesty proposes a vote for page 80, subsection (b), is to be rewritten to conform to subsection (c) on page 74. Submission of motions shall remain as drafted on page 81 and 82. (a), ii will stay at 15 days per statute.
    - The vote passes.
    - Justice Hardesty requested that Ms. Rasmussen edit Rule 8 with the changes as discussed and Ms. Gradick will send the survey results to Ms. Rasmussen.

- Rule 9: Pretrial Writs of *Habeas Corpus (Subcommittee report)*
  - Justice Hardesty tabled this report for the March meeting.

- Rule 17: Voir Dire (pages 88-94)
  - Justice Hardesty summarized how the rule currently stands. Subsection 3 through 8 are in agreement making the focus on subsection 1 and 2.
    - Mr. Arrascada agreed with the summary Justice Hardesty gave and expanded with an overview of how the subsection was drafted.
  - Mr. Lalli pointed out a correction needed in subsection 1, paragraph 2; "After each challenge for cause <u>is</u> sustained…"
    - The committee agreed with Mr. Lalli's correction.
  - Mr. Jackson suggested a change in subsection 1, paragraph 2; "The judge may, and at the request of any party shall, hear and determine challenges for cause outside the hearing."
    - Discussion was held regarding if the sentence should be discretionary or not.

- Justice Hardesty called for a vote on changing the language in subsection 1, paragraph 2 to: "The judge may, and at the request of any party shall, hear and determine challenges for cause outside the hearing."
  - The change was approved.
- Mr. Lalli suggested the sentence be reconstructed.
- Mr. McCormick made the suggestion of splitting the sentence into two instead. "The judge may hear and determine challenges for cause outside the hearing of the perspective jurors. At the request of any party the judge shall hear and determine challenges for cause."
  - The committee agreed with Mr. McCormick's suggestion.

- Mr. Jackson questioned if the language should be changed in the first sentence to "The court shall summon the number of the jurors who…"
  - The committee agreed with Mr. Jackson's suggestion.
- Ms. Dickinson commented on the definition of Panel actually being the definition of Venire. When reading through subsection 1 it requires the venire to be examined and present at challenges for cause. Ms. Dickinson suggested the language be altered or more specific.
  - Justice Hardesty asked if subsection 1 should be revised to "...challenges to the venire or individuals." "A challenge may be made to the venire or an individual juror."
    - The committee agreed with Justice Hardesty's suggestion.
- Justice Hardesty asked for additional comments for subsection 1, hearing none the committee moved on to subsection 2.
- Mr. Arrascada gave an overview of how subsection 2 was drafted.
  - Justice Hardesty asked for additional comments for subsection 2.
  - Mr. Jackson supported the draft as it is written.
  - Mr. Prengamen commented that in Mr. Jackson's previous draft of the rule it included district 8's rule 7.70 and felt the need to include its language of the rule in full.
    - Mr. Arrascada responded that the rule is blended from rules from two cases; Whitlock and Oliver.
    - Further Discussion was held regarding the draft including district 8's rule 7.70.
    - Justice Hardesty called for a vote on subsection 2, paragraph 3 on if the draft should be amended.
      - The language shall remain as drafted.
- Justice Hardesty felt gutsy and asked for any changes in subsection 3-8.
  - Ms. X commented on the use of the word panel.
    - Justice Hardesty stated that venire should replace panel in subsection 3.
  - Ms. Thomas questioned the language in subsection (3), (a), (i): (*Portions of this discussion were inaudible*)
    - (Las Vegas) suggested replacing subsection (3), (a), (i)'s first sentence with "The challenge to the venire must be made before the jury is sworn."
      - The rest of the committee agrees.
  - Mr Lalli asked how questionnaires would effect this rule.
    - Justice Hardesty asked if Mr. Lalli could draft a subsection to 3 to address the use of questionnaires or include language in subsection (a) and send to Mr. Arrascada.
  - Ms. Dickinson asked if she should submit a definition for panel for use in subsection 1
    - Justice Hardesty directed her to submit it to Mr. Arrascada for review.
- Justice Hardesty asked for comments for subsection 4.
  - Ms. Dickinson asked if *Batson* challenges will be included.
    - Justice Hardesty responded that he plans on addressing *Batson* once the rules are finalized.
- Justice Hardesty asked for comments for subsection 5.

- Mr. Lalli disagreed with the language used in (g).
  - Mr. Prengamen suggested "which has tried another person for a criminal charge (*inaudible)* and or circumstances alleged in the charge or particular case."
  - Mr. Lalli agreed with the language.
  - Justice Hardesty deferred the rewrite of (g) to Mr. Arrascada.

- Justice Hardesty asked for comments for subsection 6, 7 and 8.
  - Mr. Jackson stated in subsection 7, 4th line from the bottom it should read "the jurors may not deliberate anew on a verdict…"
    - The committee agreed with Mr. Jackson's correction.
  - Mr. Lalli suggested language that requires a judge to canvas an alternate and the alternate acknowledge on record that they agree to accept the verdict of guilt as rendered by the jury.
    - Justice Hardesty instructed Mr. Lalli to submit a draft to Mr. Arrascada and Mr. Jackson.
  - Ms Thomas asked if an alternate will know of their alternate status.
    - Justice Hardesty requested this be added to subsection 6.
      - Mr. Jackson suggested this be added to the end of subsection 5 instead.
      - The committee agreed.
- Justice Hardesty would like to add the *Batson* challenge in subsection 3, (d).
  - Discussion was held regarding where to place *Batson* challenge language.
    - Mr. Lalli suggested *Batson* challenges getting its own section.
      - The committee agreed with Mr. Lalli.
    - Ms. Thomas suggested section 7 to include capital and first degree murder.
      - The committee agreed with Ms. Thomas.
- Justice Hardesty asked that Mr. Arrascada red line all the edits for the next meeting.

VI. Rules Addressed or Finalized During Previous Meetings

VII. Other Items/Discussion
- Justice Hardesty asked that the committee members look at rules 14 and 15 for the next meeting.

VIII. Next Meeting
- March 27th at 10am
- April 27th at 12pm

IX. Adjournment
- The meeting was adjourned at 2:05 p.m.

TAB 2

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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RICHARD A. STEFANI
Deputy Director
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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 (Limited-attendance Retreat)
February 25, 2020
Summary prepared by: Jamie Gradick, AOC

Attendees

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

Meeting Summary

- Chief Judge Freeman welcomed attendees.
- Attendees made grammatical changes to section 13.17(a) and section 13.18(a) and added legal authority.
- Attendees reviewed and finalized Section 8.
  - Section 8.08(a)
    - Chief Judge Freeman presented Mr. Prengaman's proposed version.
    - Attendees discussed placement of brackets and inclusion of boldface; there is a need for consistency in addition to clarity. Attendees decided to leave the language bolded for the time being and reassess during the final editing process.
    - Ms. Westbrook commented that the group previously agreed to remove lines 13-14; this was removed from most of the other instructions.
    - Attendees briefly addressed punctuation and grammar issues.
    - Attendees discussed instruction titles and agreed to add "after July 1, 2020" to the title of the instruction. Ms. Westbrook commented that this came from AB60 which took effect July 2019; the law is current so the clarification should be "prior to July 1, 2019".
  - Section 8.08(b)
    - Chief Judge Freeman presented Mr. Prengaman's proposed version.
    - Attendees agreed to use "as appropriate" throughout the instructions.

- Attendees briefly addressed punctuation and grammar issues.

➢ Section 8.09(a)
- Chief Judge Freeman presented Mr. Prengaman's proposed version.
- Ms. Westbrook suggested removing the "feelings" language and adding a "dating relationship" definition. This is defined by NRS 33.018(3) and should be included with the definitions and the body of the instruction.
  ❖ Attendees discussed where to include this; it is only applicable in some situations so it would need to be bracketed and also added to the original instruction.

➢ Section 8.10(a)
➢ Chief Judge Freeman presented Mr. Prengaman's proposed version.
- Attendees incorporated the "dating relationship" definition as included in previous section.

- Attendees reviewed and finalized Section 11.
  ➢ Section 11.01(a)
  - Chief Judge Freeman presented the proposed version; attendees discussed removing "property" references from the parenthetical (on page 3) per statutory changes.
  - Ms. Westbrook suggested splitting the definition into two instructions: one for definitions and one for elements. Attendees discussed where the "taking" and "degree of force" language should be included and referenced the original instruction for guidance.
- Attendees reviewed and finalized Section 14.
  ➢ Section 14.01(a)(1)
  - Chief Judge Freeman presented the proposed instruction (forgery alleged pursuant to NRS 205.090).
  - Ms. Westbrook commented that the definition (page 3) was incorrect; attendees agreed to the corrections presented by Ms. Westbrook.
  - Ms. Westbrook commented that this instruction should include the definition of "defraud" and presented her proposed additional language; the additions were approved.

  ➢ Section 14.01(a)(1) Definitions - Attendees agreed to draft a separate instruction for definitions.
  - Discussion was held regarding organizational concerns and applicable legal authority; a suggestion was made to keep all authority together and insert after the definitions.

  ➢ Section 14.01(a)(2) and 14.01(a)(2) Definitions
  - Chief Judge Freeman presented the proposed instruction for uttering (alleged pursuant to NRS 205.090).
  - Attendees discussed organization and order for these sections; "to utter" was moved to the definition section. Discussion was held regarding bracket location and formatting.
  - "To defraud" was moved to the definition section.

  ➢ Section 14.01(b)(1) and 14.01(b)(1) Definitions
  - Chief Judge Freeman presented the proposed language.
  - Attendees discussed title and legal authority for this instruction.
    ❖ Title: "Forgery regarding a public record or account alleged pursuant to NRS 205.095(1) and (2)"
    ❖ Authority: NRS 205.105

  ➢ Section 14.01(b)(2) and 14.01(b)(2) Definitions
  - Chief Judge Freeman presented the proposed instruction.
  - Attendees discussed bracket placement; Judge Young's suggested revisions were approved; changes were made.
  - For uniformity, this instruction was broken into separate instructions for definitions and elements. Attendees agreed to go back and do this for 14.01(b)(1) as well.

- Attendees added applicable legal authority.

- Section 14.01(b)(3) and 14.01(b)(3) Definitions
  - Chief Judge Freeman presented the instruction.
  - Attendees made punctuation and organizational changes.
  - Legal authority for this will include NRS 205.105 and *Black's Law Dictionary*
- Section 14.01(c) and 14.01(c) Definitions
  - Chief Judge Freeman presented the proposed instruction.
  - Attendees discussed legal authority (NRS 205.100) and made conforming organizational changes.
  - Attendees discussed removing "As Nevada law provides" language or replacing it with "the law provides that you may…"
  - Judge Young commented that this is redundant; it the instruction comes from the Court, it is clearly Nevada law. Attendees agreed to use "you may but are not required to" in the presumption instructions going forward.
  - Attendees decided added authority and title.
- Section 14.01(e)(1) and 14.01(e)(1) Definitions
  - Chief Judge Freeman presented the instruction.
  - Attendees made conforming organizational and formatting corrections; discussion was held regarding what language to bracket/boldface.
  - Attendees discussed inclusion of repetitive definitions; Ms. Westbrook suggested including a note directing practitioner to the definition section rather than including the definition in the instruction again.
  - Judge Steinheimer commented that the Ninth Circuit has language that articulates which definitions to leave in; she will look this up and report back to the group.
  - Mr. Prengaman commented that definitions should go with corresponding elements; a universal definition list presents more risks.
  - Attendees decided to include a separate definition section with a note that definitions should not be given more than once.
    - ❖ Mr. Prengaman laid out the definitions that should be included in this section.
- Section 14.01(e)(2)
  - Chief Judge Freeman presented the instruction.
  - Attendees made changes consistent with previous discussion/decisions and discussed what definitions to include here and how to order them. The decision was made to incorporate the definitions as presented in the previous instruction.
  - Attendees decided to include *Black's Law Dictionary* and NRS 205.160 as legal authority
- Section 14.03(a)(1)
  - Chief Judge Freeman presented the instruction.
  - Attendees cited NRS 205.110 as legal authority and titled the instruction accordingly; attendees agreed to remove brackets and boldface.
  - Attendees discussed definitions; Mr. Prengaman proposed additional language regarding NRS 205.105 and commented that the language is laid out accurately in the original 14.03(a).
- Section 14.03(a)(2)
  - Attendees made the same changes as those in made in the previous section, as applicable.
- Section 14.03(a)(3)
  - Attendees discussed whether to include this as a stand-alone or include in the definitions where applicable; is this a definition or a presumption? A decision was made leave in the definitions and remove it as a stand-alone instruction.

- Section 14.03(a)(4) - Out
- Section 14.05 - Out
- Section 14.07(A)(a)(1)
  - Chief Judge Freeman presented the instruction.
  - Attendees decided to include two instructions: one for prior to July 2020 and one for offenses committed after 7/01/2020.
- Section 14.07(A)(a)(3)
  - Chief Judge Freeman presented the instruction.
  - Attendees included "gross misdemeanor" in the title for clarification.
  - Attendees decided to include two instructions: one for prior to July 2020 and one for offenses committed after 7/01/2020.
- Section 14.07(A)(a)(4)
  - Attendees finalized definitions and order.
- Section 14.07(B)(b)
  - Attendees discussed legal authority (NRS 205.103 as combined with the presumption statute and titling for this instruction.
  - Judge Steinheimer commented that, for consistency, this should be included with the definitions in both this and the other applicable sections.
  - Chief Judge Freeman clarified that this portion will not be a stand-alone and will be incorporated into the definitions for all sections addressing "issuance of a check or draft without sufficient funds or credit…".
  - Judge Young suggested "the drawee" be replaced with "[name of drawee]". Attendees discussed bracket placement and added "or holder of the instrument" to the bracketed portion.
- Section 14.08(A)(a)
  - Chief Judge Freeman presented the instruction.
  - Attendees clarified that the knowledge must be "at the time" not "after the fact"; Mr. Prengaman commented that the timing of the knowledge language is confusing (defendant's or casino's knowledge?)
    - ❖ Attendees discussed possible clarifications and agreed to replace "executed" with "issued".
- Attendees discussed intent; the "licensed" language causes confusion. Attendees agreed to remove the "licensed" language - it is irrelevant to the analysis and could be misleading.

- Attendees started final review of Section 15.
  - Section 15.01(a) *(Portions of this discussion were inaudible as multiple conversations were taking place at once)*
    - Ms. Westbrook provided a summary of the changes she made to the instruction and formatting.
    - Attendees discussed the revisions made to the version applicable to offenses committed prior to July 1, 2020; brief discussion was held regarding legal authority for this instruction.
    - Attendees discussed the "intent to permanently deprive" requirement and where to include this; concern was expressed regarding ambiguous language regarding "intent".
    - Judge Young expressed concern with the use of "shows" – the value of the property must be shown beyond a reasonable doubt; the language needs to reflect this requirement.
      - ❖ Mr. Prengaman commented that the jury won't see this so including that language is not necessary.

- ❖ Attendees discussed the value of including a verdict form in the footnote; a suggestion was made that the form be removed from the footnote and the jury just be instructed to make a value determination, in applicable cases. This could just be included as separate "value instruction".
- ❖ Attendees discussed instruction language; Judge Young suggested the instruction begin with "the verdict form should reflect …" and then include language stating value should be proven beyond a reasonable doubt. Mr. Prengman commented that this situation only applies if the state has charged an enhancement.
- ❖ Mr. Prengaman suggested a separate instruction to apply when the state is alleging an enhancement and was asked to draft this for the next meeting.

➢ Section 15.01(b)
- Chief Judge Freeman presented the instruction.
- Attendees titled the section and made conforming changes to formatting and bracketing.
- Judge Steinheimer expressed concern regarding the definition section following the instruction; discussion was held regarding organization.
  - ❖ Attendees discussed whether to include individual definitions for each instruction or to create a single, stand-alone definitional section for all of the applicable instruction.
  - ❖ Attendees agreed to make this a definition section and title it "Grand larceny definitions to be used as appropriate".

➢ Section 15.01(c)
- Chief Judge Freeman presented the instruction.
- Attendees discussed organization and adopted Ms. Westbrook's suggested revisions on this.
- A suggestion was made that the value instruction (to be drafted by Mr. Prengaman) be section 15.01(d).

Additional Action Items

- Ms. Gradick will schedule a teleconference for April; attendees will complete their final review of Section 15. Additional information will be provided later.

TAB 3

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

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

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

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

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Notes:

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

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

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

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

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

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

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

Rule 1. Scope, purpose and construction

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

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

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

Rule 2. Case assignment.

8th Rule 3.10. Consolidation and reassignment.

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

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

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

2nd CR Rule 2. Case assignment.

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

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

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

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

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

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

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Rule 3 Appearance and Withdrawal of Attorneys

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

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

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

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

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

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

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

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

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

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

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

Rule 7.44. Presence of local counsel required.

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

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

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

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

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

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

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

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

2. Counsel in any case may be changed:

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

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

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

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

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

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

5. A corporation may not appear in proper person.

Rule 4. Initial appearance and arraignment.

2nd CR Rule 3. Initial appearance and arraignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 4.1 Setting of cases.

2nd LR Rule 4. Setting of cases.

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

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

Rule 5. Pleas of guilty or nolo contendere.

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

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

(1) the terms of the plea bargain agreement;

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

(3) the constitutional rights waived by the defendant;

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

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

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

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

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

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

Rule 6. Release and detention pending judicial proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) maintain or commence an educational program;

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

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

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

(7) comply with a specified curfew;

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

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

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

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

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

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

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

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

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

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

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

Rule 7. Discovery/Discovery Motions

8th Rule 3.24. Discovery motions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2nd CR Rule 6. Discovery.

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

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

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

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

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

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[13] NRS 174.255 has been repealed.

1995 Statutes of Nevada, Page 266 (CHAPTER 174, AB 151)

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

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

Rule 8. Pretrial motions.[14]

8th Rule 3.20. Motions.

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

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

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

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

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

8th Rule 3.28. Motions in limine.

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

2nd CR Rule 7. Pretrial motions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 12. Motions; points and authorities and decisions.

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

[17] Addresses pretrial release.

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

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

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

Relevant statutes

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

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

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

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

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

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

3. The court shall order the defendant to:

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

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

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

5. At a hearing conducted pursuant to subsection 2:

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

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

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

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

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

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

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

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

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

NRS 174.125 Certain motions required to be made before trial.

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

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

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

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

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

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

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

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

NRS 174.135 Hearing on motion.

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

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

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

NRS 174.145 Effect of determination.

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

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

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

Rule 8.1 Papers which may not be filed

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

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

Rule 9. Pretrial Writs of Habeas Corpus

8th Rule 3.40. Writs of habeas corpus.

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

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

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

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

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

2nd LR Rule 22. Writs of habeas corpus.

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

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

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

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

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

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

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

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

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

Rule 10. Stay Orders.

8th Rule 3.44. Stay orders.

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

Rule 11. Extending Time.

8th Rule 3.50. Extending time.

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

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

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

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

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

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

[20] Addresses pretrial writs of habeas corpus.

Rule 12. Shortening Time.

8th Rule 3.60. Shortening time.

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

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

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

Rule 13. Jury instructions and exhibits.

2nd CR Rule 8. Jury instructions and exhibits.

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

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

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

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

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

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

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[21] **NRS 175.161 Instructions.**

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

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

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

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

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

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

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

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

2nd LR Rule 7. Jury instructions.

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

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

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

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

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

[23] **NRS 175.161 Instructions.**

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

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

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

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

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

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

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

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

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

Rule 14. Sentencing

2nd CR Rule 9. Sentencing.

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

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

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

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

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

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

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

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

Rule 15. Continuances.

Rule 7.30. Motions to continue trial settings.

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

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

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

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

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

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

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

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

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

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

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

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

[24] EDCR 7.60 specifically addresses sanctions.

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

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

2nd CR Rule 10. Continuances.

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

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

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

2nd LR Rule 13. Continuances.

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

Rule 16. Sanctions.

Rule 7.60. Sanctions.

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

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

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

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

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

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

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

(2) Fails to prepare for a presentation.

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

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

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

2nd LR Rule 21. Sanctions for noncompliance.

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

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

Rule 17. Voir Dire.

Rule 7.70. Voir dire examination.

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

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

(a) Questions already asked and answered.

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

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

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

Rule 18. Court interpreters.

Rule 7.80. Court interpreters.

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

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

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

Rule 19. Appeals from municipal and justice courts.

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

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

Rule 20. Miscellaneous provisions.

2nd CR Rule 11. Miscellaneous provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Release on Conditions.—

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

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

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

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

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

(iii) maintain or commence an educational program;

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

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

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

(vii) comply with a specified curfew;

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

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

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

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

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

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

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

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

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

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

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

(1) such person—

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

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

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

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

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

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

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

(e)Detention.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Presumption of Innocence.—

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

TAB 4

Rule 17. Jury Selection

(1) **Method of selection.**

The court shall summon the number of the jurors who are to try the cause plus such an additional number as will allow for any alternates, for all peremptory challenges permitted by law, and for all challenges for cause granted.

At the direction of the judge, the clerk shall call jurors in random order. The judge shall hear and determine challenges for cause during the course of questioning. The judge may hear and determine challenges for cause outside the hearing of prospective jurors. At the request of any party, the judge shall hear and determine challenges for cause outside the hearing and presence of prospective 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.

After both sides have passed the panel for cause, the clerk shall provide a list of the prospective 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. Peremptory challenges shall be made outside the hearing of the prospective jurors.

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 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.

(2) **Voir Dire.**

Examination of prospective jurors. Before persons whose names have been drawn are examined as to their qualifications to serve as jurors, the judge or the judge's clerk shall administer an oath or affirmation to them in substantially the following form:

> Do you, and each of you, (solemnly swear, or affirm under the pains and penalties of perjury) that you will well and truly answer all questions put to you touching upon your qualifications to serve as jurors in the case now pending before this court (so help you God)?

The judge shall conduct the initial examination of prospective jurors and the defendant or the defendant's attorney and the prosecuting attorney are entitled to

supplemental examination, which must not be unreasonably restricted. Prior to examining the prospective jurors, the court shall have the clerk read the charging document. The court shall state that every person charged with the commission of a crime is presumed innocent. Use of written questionnaires to prospective jurors or the examination of individual prospective jurors outside the presence of the other prospective jurors is within the court's sound discretion.

The purpose of voir dire examination is to determine whether a prospective juror can and will render a fair and impartial verdict on the evidence presented and apply the facts, as the prospective juror finds them, to the law given. Questioning must be designed to elicit information relevant to possible challenges for cause or enabling the defendant or the defendant's attorney and the prosecuting attorney to intelligently exercise peremptory challenges. The judge may in the exercise of discretion halt cumulative or abusive questioning of prospective jurors, assist in the narrative content of particular questions, preclude counsel from interrogating on issues of law or case specific facts, or preclude any questioning if the judge finds such questioning to be outside the purpose of voir dire examination.

(3) **Challenges to venire or individuals**.

A challenge may be made to the venire or to an individual juror.

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

(i) The challenge to the venire must be made before the jury is sworn and must be I writing or made upon the record. It shall specifically set out the facts constituting the ground for the challenge.

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

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

(iv) If written questionnaires to prospective jurors are being used, a challenge to the venire must be made no later than the trial confirmation hearing, or, if additional time is permitted by the

court, no later than the judicial day prior to the day on which trial is set to commence.

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

(c) A Batson challenge made during a peremptory strike must follow this three-step process: First, the opponent of the peremptory strike must make a prima facie showing that a peremptory challenge has been made on the basis or race or other recognized suspect classification. Second, if that showing has been made, the proponent of the peremptory strike must present a classification-neutral explanation for the strike. Third, the court must hear argument and determine whether the opponent pf the peremptory challenge as proven purposeful discrimination. The court shall clearly state the reasons supporting its determination regarding the peremptory strike.

(4) **Peremptory challenges**.

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

(5) **Challenges for cause**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) **Alternate jurors.**

The court may impanel alternate jurors in order 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. Alternate jurors shall not be informed of their status as an alternate juror during the pendency of the trial. 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, the prosecution and defense shall have two additional peremptory challenges. If five or six alternative jurors are called, the prosecution and defense shall each have three additional peremptory challenges. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court shall recall the jury, seat the alternate, instruct the jury to begin its deliberations anew.

(7) **Reached verdicts**

Jurors may not deliberate anew a verdict already reached or entered during the guilt phase of the trial. If an alternate juror is seated during the penalty phase, that alternate juror must be canvassed by the court and acknowledge on the record that the juror will accept the guilt phase verdicts rendered by the jury.

(8) **Deliberations in a Capital Case.**

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

(9) **Juror oath.**

When the jury is impaneled, the court shall administer the juror oath in accordance with NRS 175.111.

(10) **Admonishment**

The judge shall during all recesses or breaks in the trial admonish the jury as follows:

> During this recess (or break) you must not (1) communicate with anyone, including fellow jurors, in any way regarding the case or its merits—either by phone, email, text, Internet, or other means; (2) read, watch, or listen to any news or media accounts or commentary about the case; (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials; (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on their own.

TAB 5

Postconviction Writ of Habeas Corpus

1. The court shall appoint post-conviction counsel for a petitioner who is unable to pay the costs of the proceedings or unable to employ counsel if:

(a) Petitioner was deemed incompetent at any time prior to conviction;
(b) Petitioner is deemed incompetent at any time after conviction;
(c) English is a second language for petitioner or petitioner is unable to fluently read English;
(d) Counsel is needed to facilitate discovery;
(e) Petitioner is unable to comprehend the proceedings;
(f) The consequences the petitioner is facing are severe;
(g) Issues presented in the case are difficult; or
(h) Based on any other reason the court deems meritorious.

2. If petitioner is in custody, petitioner will be allowed to be present telephonically for all hearings that do not involve the testimony of witnesses on his petition or other post-conviction motions. Court shall set up procedures to allow for telephonic communications between the court and the prison or other facility. Petitioner shall appear in person, rather than telephonically, for all hearings that will involve the testimony of witnesses.

Proposed by the Clark County Public Defender's Office

Writ of Habeas Corpus Memorandum

Habeas corpus is considered a civil, not a criminal, action. It is guaranteed in Nevada under NRS § 34.360, which allows any person unlawfully restrained or incarcerated to prosecute a writ of habeas corpus.

Habeas corpus is also a protected right under the Nevada Constitution. Nev. Const. art. 1 § 5 prohibits the suspension of the privilege of a writ of habeas corpus except in limited circumstances.

Under NRS § 34.724: "[a]ny person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State...may... file a petition for a writ of habeas corpus to obtain relief...'.

A plaintiff's right to be present at a hearing in a civil matter under art. I, § 8 of the Nevada Constitution.

Nev. Const. art. I, § 8(1) states, "and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, *as in civil actions*" (emphasis added). The latter clause, "as in civil actions," implies that the Nevada Constitution grants the party a right to "be allowed to appear" in a civil action. As habeas corpus is a civil action, a party would therefore, under the plain language of the provision, have a right to appear in a petition for habeas corpus. Given the blanket nature of this provision, it is unlikely that it could mean that a person's right to appear does not apply if they happen to be incarcerated.

Right to counsel for post-conviction habeas proceedings. NRS 34.750.

A plaintiff seeking to file a petition for a writ of habeas corpus may receive appointed counsel as outlined in NRS 34.750(1).

> A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:
> (a) The issues presented are difficult;
> (b) The petitioner is unable to comprehend the proceedings; or
> (c) Counsel is necessary to proceed with discovery.

NRS 34.750(1). "[T]he decision whether to appoint counsel under NRS 34.750(1) is not necessarily dependent upon whether a pro se petitioner has raised claims that clearly have merit or would warrant an evidentiary hearing." *Renteria-Novoa v. State*, 133 Nev. 75, 77 (2017).

The Appellate Courts have reversed numerous cases involving the district court's failure to grant a post-conviction writ of habeas corpus when the court failed to appoint counsel for the petitioner. In reversing, the Courts have indicated that reversal was needed because "[t]he failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." The following cases outline some of the facts the Court used for concluding post-conviction counsel was required.

Language barrier.

- Petitioner needed a Russian court interpreter throughout the trial proceedings. *Lagerev v. State*, 66003, 2014 WL 6143401, at *1 (Nev. Nov. 13, 2014) (unpublished).

Language barrier, trouble understanding procedures and burdens, and was not given trial transcripts.

- Transcripts revealed that the petitioner did not understand procedures and burdens at the evidentiary hearing, he needed an interpreter to translate for him, he did not have trial transcripts to rely on, and court did not take into account all factors that would allow for the appointment of counsel. *Morga v. State*, 76887-COA, 2019 WL 4298067, at *1 (Nev. App. Sept. 10, 2019) (unpublished).

Language barrier and confusion over whether petitioner was appointed counsel.

- Appellant's petition was time barred because it was filed more than three years after issuance of the remittitur. Petitioner claimed he had good cause for the delay because he did not understand English and during part of the time period he mistakenly believed he was represented by counsel. "A language barrier may under certain circumstances provide good cause where a petitioner is unable to access legal materials in his native language or receive help in his native language because of inadequacies in the prison's resources. *See id; see also Bounds v. Smith,* 430 U.S. 817, 828 (1977) (discussing meaningful access to the courts), *limited by Lewis v. Casey,* 518 U.S. 343, 354–56 (1996); *Mendoza v. Carey,* 449 F.3d 1065, 1070 (9th Cir.2006) (recognizing that equitable tolling in the federal courts requires a non-English speaking petitioner demonstrate that during the time period, the petitioner was unable to procure either legal materials in his own language or translation assistance despite diligent efforts)...the petition is written in English with an attached supporting affidavit written in Spanish, for which there is no translation in the record. The district court's order contains no findings of fact or conclusions of law regarding appellant's claims of state interference and the effect of a potential language barrier, and thus, we cannot affirm the denial of the petition as procedurally barred...Further, it appears that the

district court should have appointed counsel to assist appellant after the filing of the petition... The district court previously determined that appellant had difficulties comprehending the proceedings when it ordered the appointment of counsel prior to the filing of the petition, and while the appointment of counsel was premature, the record supports the district court's initial determination that petitioner had difficulties comprehending the proceedings. Under these circumstances, on remand the district court should appoint counsel to assist appellant in the post-conviction proceedings..."*Urbina-Maldonado v. State*, 63330, 2013 WL 7158567, at *1–2 (Nev. Dec. 12, 2013) (unpublished).

Inability to read

- Many criminal defendants have little or no ability to read English even though English is their first and only language.

Documents in record showed the petitioner did not understand proceedings and other reasons.

- Based on documents filed in district court, court found that the petitioner did not comprehend the proceedings and "the failure to appoint postconviction counsel deprived Dumas of a meaningful opportunity to present his claims to the district court." *Dumas v. State*, 77778-COA, 2019 WL 3335563, at *1 (Nev. App. July 24, 2019)(unpublished).

- "Appellant filed a timely petition...Appellant, who is indigent and serving a significant sentence, moved for the appointment of post-conviction counsel. His petition arose out of a jury trial during which he was represented by counsel. Appellant raised several issues, some implicating an impaired ability to comprehend the proceedings and others requiring the development of facts outside the record. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Hernandez-Ayala v. State*, 126 Nev. 719, 367 P.3d 778 (2010) (unpublished).

- After district court found Appellant's petition was untimely, "[t]his court reversed and remanded that decision, concluding that an evidentiary hearing was warranted on appellant's allegation of good cause to determine whether appellant believed his direct appeal was still pending, whether that belief was objectively reasonable, and whether he filed his petition within a reasonable time after he should have known that his appeal had been resolved. *Azcarate v. State,* Docket No. 60872 (Order of Reversal and Remand, December 12, 2012). Further, this court noted that the district court had the discretion to appoint counsel to assist appellant in litigating this issue. *Id.* Upon remand, the district court did not appoint counsel but conducted an evidentiary hearing as to whether appellant demonstrated good cause. In announcing its decision, the district court did not make any findings in accordance with this court's May 17, 2012, order but instead "accepted" appellant's allegations regarding cause for the delay, then denied the petition as untimely because appellant failed to demonstrate "actual prejudice." ... we conclude that the district court erred in denying the petition without appointing post-conviction counsel...Appellant had moved for the appointment of post-conviction counsel. Appellant is indigent and was

represented by appointed counsel at trial and on appeal. His petition arose out of a jury trial, the result of which was a significant sentence: consecutive terms of life without the possibility of parole. Finally, appellant's claim that he was prejudiced because he was prevented from collaterally attacking his conviction suggests that he was unable to comprehend the complex issue of his procedural bar. The failure to appoint post-conviction counsel prevented the meaningful litigation of appellant's procedural bar and, ultimately, any post-conviction claims." *Azcarate v. State*, 63448, 2014 WL 495411, at *1–2 (Nev. Jan. 16, 2014) (unpublished).

Guilty plea with complex issues surrounding the advice of counsel, significant sentence, and petitioner sought a court appointed attorney to assist in his writ.

- "Appellant's petition arose out of a guilty plea with a potentially complex issue surrounding the advice of court-appointed counsel regarding appellant's ability to withdraw his guilty plea post-sentencing. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Santiago v. State*, 64577, 2014 WL 2625092, at *1 (Nev. June 11, 2014) (unpublished).

Court refused to provide transcripts at State expense and other reasons.

- Petitioner's sentence was significant, he was represented by appointed counsel at trial, he filed a motion seeking assistance of counsel for his habeas petition which was denied. "The failure to appoint postconviction counsel, coupled with the district court's earlier order denying Shelton's request for transcripts at the State's expense, prevented a meaningful litigation of the petition." *Shelton v. State*, 76762-COA, 2019 WL 2158331, at *1 (Nev. App. May 15, 2019)(unpublished).

Mental health and competency concerns plus other reasons

- Indigent defendant sought counsel to assist in post-conviction writ proceedings. His petition arose out of a trial with complex issues, he is serving a lengthy sentence, he had mental health problems and difficulty accessing medication. "Further development of claims related to mental health issues would require investigation and discovery by post-conviction counsel. Thus, we reverse the district court's denial of appellant's petition and remand this matter for the appointment of counsel to assist appellant in the post-conviction proceedings." *Battle v. State*, 64982, 2014 WL 3664268, at *1 (Nev. July 22, 2014) (unpublished).

- Appellant filed a timely petition claiming his attorney was ineffective for failing to investigate his competency, a possible insanity defense, and by not presenting this issue in district court. "Appellant asserted that months after he was convicted in this case, he was determined to be incompetent in another district court case. The district court denied the petition without appointing counsel or conducting an evidentiary hearing...We conclude

that the district court erred in denying the petition without appointing counsel…[because] Appellant moved for the appointment of counsel and claimed that he was indigent. More importantly, appellant's petition arose out of a trial with potentially complex issues related to his competency. Although the record contains indications that counsel and the court were aware of appellant's mental health issues, there was no competency evaluation conducted prior to trial in this case and the record is silent regarding the investigation and actions taken by counsel given appellant's prior mental health history. NRS 178.405(1) requires the suspension of trial proceedings "if doubt arises as to the competence of the defendant ... until the question of competence is determined." Also weighing in favor of the appointment of post-conviction counsel is the fact that appellant was adjudicated a habitual criminal and is serving a significant sentence of 8 to 20 years. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *McDonald v. State*, 63335, 2014 WL 702034, at *1 (Nev. Feb. 19, 2014) (unpublished).

- "Appellant filed a timely petition arising out of a trial involving potentially complex issues. Appellant was represented by appointed counsel at trial and is now serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. Moreover, appellant's mental health issues indicate that appellant may have difficulty comprehending the proceedings. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Leeds v. State*, 127 Nev. 1154, 373 P.3d 935 (2011) (unpublished).

Potentially complex issues or factual issues or ineffective assistance of counsel claims that may require factual development outside the record or an evidentiary hearing and other reasons.

- "[A]ppellant's conviction arose out of a jury trial with claims of ineffective assistance of counsel requiring factual development outside the record. The failure to appoint postconviction counsel prevented a meaningful litigation of the petition and resulted in appellant being unable to provide evidence supporting his claims at the evidentiary hearing." *Randolph v. State*, 440 P.3d 658 (Nev. 2019) (unpublished).

- Court found the failure to appoint counsel prevented a meaningful litigation of the defendant's claims because the petition arose out of a trial with potentially complex issues. *Tutt v. State*, 74944-COA, 2018 WL 5881629, at *1 (Nev. App. Nov. 6, 2018)(unpublished).

- "Appellant's petition challenges a judgment of conviction that was the result of a lengthy trial with potentially complex legal issues and factual issues that may require development outside the record. Appellant is indigent and was represented by appointed counsel at trial. Appellant is serving a significant sentence. Considering the relevant factors and circumstances, the failure to appoint postconviction counsel prevented a meaningful litigation of the petition." *Burns v. State*, 389 P.3d 1037 (Nev. 2017) (unpublished).

- Defendant raised several ineffective assistance of counsel claims which may require development outside the record. His conviction arose out of a jury trial and his sentence is significant. He alleged he was indigent and requested the appointment of counsel. *Uceda v. State*, 68525, 2016 WL 1092025, at *1 (Nev. Mar. 17, 2016) (unpublished).

- "We conclude that the facts in this case weighed in favor of appointing counsel. Appellant's petition arose out of a trial with issues that require development of facts outside the record. For example, there is nothing in the record regarding whether a plea offer was made by the State, and if a plea offer had been made, whether it was conveyed to appellant by his counsel. *See Missouri v. Frye,* 566 U.S. ——, 132 S.Ct. 1399 (2012). Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent." *Wright v. State*, 64117, 2014 WL 619884, at *1 (Nev. Feb. 13, 2014) (unpublished).

- "The determination of whether counsel should be appointed is not necessarily dependent upon whether a petitioner raises issues in a petition which, if true, would entitle the petitioner to relief. Appellant's petition arose out of a trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition…" *Cardenas v. State*, 61795, 2013 WL 3895830, at *1 (Nev. July 23, 2013) (unpublished).

- "Appellant's petition arose out of a capital murder trial with potentially complex issues and issues that may require further factual development outside the record. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence—two consecutive terms of life without the possibility of parole and two consecutive terms of 72 to 180 months. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition…" *Pearce v. State*, 128 Nev. 924, 381 P.3d 649 (2012) (unpublished).

- "Appellant filed a timely petition…Appellant's petition arose out of a lengthy trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Zana v. State*, 126 Nev. 771, 367 P.3d 837 (2010) (unpublished).

- "Appellant filed a timely petition …Appellant's petition arose out of a trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence. In addition, appellant provided documentation showing that he was indigent." *Washington v. State*, 126 Nev. 767, 367 P.3d 832 (2010) (unpublished).

- "Appellant's petition arose out of a trial with potentially complex issues, including double jeopardy and redundancy issues. Appellant also raised claims relating to a failure to

adequately investigate that may require factual development outside the record. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Lall v. State*, 128 Nev. 912, 381 P.3d 632 (2012) (unpublished).

- "Appellant moved for the appointment of counsel and included an inmate account statement demonstrating his indigency. Appellant was convicted of multiple offenses, including first-degree kidnapping with substantial bodily harm and first-degree murder, after a lengthy capital murder trial. Appellant's sentence was significant in that he was sentenced to serve two consecutive terms of life without the possibility of parole. Appellant was represented by appointed counsel at trial. While many of the claims raised by appellant in the petition were based on legal arguments and not difficult to resolve, appellant raised a potentially complex issue relating to whether counsel provided effective assistance of counsel in conceding to appellant's guilt of burglary, one of the enumerated felonies in this case for the felony-murder theory of first-degree murder, and the advisability of that concession based on trial counsel's admission that the argument was "novel" and was ultimately rejected by the district court in the settling of the jury instructions, after the concession had already occurred. *See Jones v. State,* 110 Nev. 730, 877 P.2d 1052 (1994). The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Rogers v. State*, 128 Nev. 930, 381 P.3d 657 (2012) (unpublished).

- "Appellant, who is indigent and serving a significant sentence, moved for the appointment of post-conviction counsel to which the State did not object. His petition arose out of a jury trial during which he was represented by appointed counsel. Appellant raised several issues, some requiring the development of facts outside the record. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Butler v. State*, 128 Nev. 885, 381 P.3d 598 (2012) (unpublished).

- "Appellant filed a timely petition...raising numerous claims of ineffective assistance of trial and appellate counsel. The district court denied the petition without conducting an evidentiary hearing or appointing counsel. We conclude that the district court erred in denying the petition without appointing counsel... Appellant's petition arose out of a trial with potentially complex legal issues. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition..." *Morales v. State*, 128 Nev. 920, 381 P.3d 643 (2012) (unpublished).

- "The district court denied the petition without appointing counsel. We conclude that the district court erred in denying the petition without appointing counsel... Appellant's petition arose out of a lengthy trial with potentially complex legal issues and several factual issues that appear to require development outside the record. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel. The failure to appoint post-conviction counsel

prevented a meaningful litigation of the petition." *Fergason v. State*, 128 Nev. 895, 381 P.3d 611 (2012)(unpublished).

- District court denied Appellant's timely petition without conducting an evidentiary hearing and without appointing counsel. "We conclude that the district court erred in denying the petition without appointing counsel...Appellant's petition arose out of a three-day jury trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant is serving a significant sentence pursuant to the provisions of NRS 207.010(l)(a). In addition, appellant moved for the appointment of counsel and claimed that he was indigent." *Lane v. State*, 128 Nev. 912, 381 P.3d 632 (2012) (unpublished).

- District court erred in denying the petition without holding an evidentiary hearing and without appointing counsel. "Appellant's petition arose out of a trial with potentially complex issues...[he] was represented by appointed counsel at trial...[and he] is serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Silva v. State*, 128 Nev. 934, 381 P.3d 662 (2012) (unpublished).

- "We conclude that the district court erred in denying the petition without appointing counsel...Appellant's petition arose out of a trial at which he was represented by appointed counsel, and he is serving a significant sentence. Appellant raised claims in his petition that may require factual development outside the record. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Irive v. State*, 62609, 2014 WL 494859, at *1 (Nev. Jan. 24, 2014) (unpublished).

- Petition was timely filed, arose out of a trial involving complex issues, including a voluntary intoxication defense. Appellant was represented by counsel at trial and received a significant sentence. Appellant sought counsel for the filing of the writ and claimed he was indigent. "The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Herrera v. State*, 127 Nev. 1141, 373 P.3d 921 (2011) (unpublished).

- The timely filed petition was denied by the court without holding an evidentiary hearing or appointing counsel, even though Appellant ask for the appointment of an attorney. "Appellant's petition arose out of a trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant was adjudicated a habitual criminal and sentenced to serve terms totaling 67 to 168 months." *Roberson v. State*, 126 Nev. 750, 367 P.3d 813 (2010) (unpublished).

- Appellant received six consecutive life terms for three counts of first-degree murder with the use of a deadly weapon. Appellant filed a timely petition and sought the appointment of counsel which court denied. "Appellant raised numerous claims in his petition including twelve claims of ineffective assistance of counsel: (1) failing to investigate appellant's innocence; (2) failing to investigate the identification by Celeste Palau; (3) failing to object

to bad act evidence; (4) failing to conduct scientific testing on blood stains; (5) failing to disclose a conflict of interest between counsel and appellant prior to the first day of trial; (6) failing to keep an unavailable witness's testimony from the preliminary hearing from being read to the jury; (7) conceding appellant's guilt in closing arguments; (8) failing to secure a handwriting expert; (9) failing to object to judicial misconduct; (10) failing to object to the instruction on first-degree murder; (11) failing to object to the instruction on credibility; and (12) failing to object to the reasonable doubt instruction. Appellant further claimed that he received ineffective assistance of appellate counsel because appellate counsel failed to raise the above underlying claims on direct appeal and failed to "federalize" his claims. Appellant also claimed that the State committed prosecutorial misconduct because the State failed to disclose a deal between the State and a key witness and because the State failed to call a witness referenced in opening statements. Finally, appellant claimed that the cumulative errors committed entitled him to relief. Our review of the record on appeal reveals post-conviction counsel should have been appointed in the instant case... Appellant's petition arose out of a lengthy trial with potentially complex issues and several of appellant's claims may require the development of facts outside the record. Appellant was represented by appointed counsel at trial....In addition, appellant moved for the appointment of counsel and claimed that he was indigent....The district court's failure to appoint postconviction counsel deprived appellant of a meaningful opportunity to litigate his claims in the instant case. As appellant is serving a significant sentence, is indigent, and there are potentially complex issues, we reverse the district court's denial of appellant's petition and remand this matter for the appointment of counsel to assist appellant in the post-conviction proceedings." *Budd v. State*, 125 Nev. 1022, 281 P.3d 1158 (2009) (unpublished).

- Appellant is serving two consecutive life terms for first-degree kidnapping and sexual assault. He filed a timely petition and asked counsel be appointed. Court denied both requests. "On appeal, Appellant claimed his trial counsel was ineffective in the following ways: 1) failing to present testimony from a nurse that there was no trauma or semen found on the victim; 2) failing to request blood samples of the victim that would show she had been on methamphetamines, 3) not allowing appellant to testify at trial; 4) failing to have an expert in serology and drug samples testify at trial; 5) failing to request an independent review of the audio tapes of his discussions with police; 6) failing to request video surveillance tapes from the Hard Rock Casino; 7) failing to present evidence that the victim had previously been convicted of drug charges and perjury; 8) failing to file appellant's proper person motions; 9) failing to seek production of materials including witnesses prior records, "specific evidence that undermined credibility," and prior inconsistent statements of witnesses pursuant to *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); and 10) failing to file a motion to set aside the guilty verdict because there was insufficient evidence presented for a conviction. Appellant also claimed that he received ineffective assistance of appellate counsel for failing to include the audio tapes of his interview with detectives on appeal. In addition to ineffective assistance of counsel, appellant claimed that he was subject to double jeopardy because the kidnapping was incidental to the sexual assault. Finally, appellant reraised each of his claims from his direct appeal. On appeal, appellant argues, among other things, that the district court abused its

discretion by failing to appoint counsel to represent him during the post-conviction proceedings in district court...We cannot affirm the denial of the petition in the instant case at this time. Appellant raised several ineffective assistance of counsel claims, including the failure to investigate, the failure to secure expert witnesses, and failures regarding his right to testify on his behalf at trial which appear to require discovery and investigation outside the record and which are beyond the capability of the average incarcerated person. The district court granted appellant's request to proceed in forma pauperis but declined to appoint counsel when appellant requested it after the petition was filed and again at the evidentiary hearing. Appellant indicated that he was unfamiliar with the law and procedure involved in litigating his claims. Notably, at the evidentiary hearing, appellant stated that he did not know how to proceed at the hearing, how to ask questions or what questions to ask. At the hearing, appellant appeared confused that he would have to waive his attorney-client privilege and appellant was unable to form specific or focused questions of his former counsel. Appellant's inability to ask specific questions made it difficult to receive clear answers from counsel. Further, appellant's sentence of two consecutive life terms is severe. Finally, appellant was appointed counsel five days after the evidentiary hearing which indicates that the district court determined that counsel was necessary pursuant to NRS 34.750. The lack of post-conviction counsel at the evidentiary hearing deprived appellant of a meaningful opportunity to litigate his claims and thus, this court cannot conduct a meaningful appellate review at this time." *Smith v. State*, 125 Nev. 1079, 281 P.3d 1219 (2009) (unpublished).

- Petitioner Ibert Aguilar is a habitual offender, serving two consecutive life terms without the possibility of parole for murder. On the remaining counts, he received a term of 40-100 years. Petitioner Dayomashell Aguilar is serving 20 years with the possibility of parole for murder; and, on the remaining counts 11-28 years. Both filed petitions in district court and requested appointment of counsel. Both were denied. "Our review of the record on appeal reveals that the district court abused its discretion in denying appellants' petitions without appointing counsel... In their petitions, appellants raised numerous claims of ineffective assistance of counsel. These claims included claims that counsel failed to investigate numerous State witnesses, interview numerous alibi witnesses, permitted the introduction of unreliable scientific and demonstrative evidence, failed to obtain physical evidence, and failed to litigate competency. These claims arose out of a nine-day trial that occurred roughly ten years before the district court conducted the evidentiary hearing in the instant case. Further, the evidentiary hearing that was held did not fully address appellants' claims despite the fact that it purported to do so. Moreover, the structure of the hearing appeared to improperly restrict the appellants' examination of witnesses. In particular, the district court arbitrarily limited the duration of each examination and inappropriately guided the examination of each witness. In addition, Gilbert Aguilar moved for the appointment of counsel and claimed that he was indigent. Dayomashell Aguilar requested counsel at the evidentiary hearing. Both appellants had been granted permission to proceed in forma pauperis. The district court's failure to appoint postconviction counsel deprived appellants of a meaningful opportunity to litigate their claims at the evidentiary hearing. As appellants are serving significant sentences, are indigent, have raised numerous claims that required the investigation of facts outside the record, and faced a significant impediment to litigating those claims with the district court's delay in resolving the

petitions, we reverse the district court's denial of appellants' petitions..." *Aguilar v. State*, 124 Nev. 1447, 238 P.3d 790 (2008)(unpublished).

- After Appellant filed a post-conviction writ and requested the appointment of counsel, the district court asked his appellate counsel to review the petition. His prior attorney told the court that there were no viable legal issues. The court then denied Appellant's writ and motion for the assistance of counsel. "The district court did, however, determine that an evidentiary hearing was necessary. At the evidentiary hearing, appellant requested additional time and the appointment of counsel to help him with subpoenas as his witnesses were not present for the hearing. The district court questioned the need for the witnesses, and denied the request for additional time and the appointment of counsel. While the district court proceeded to hear testimony from appellant's former trial counsel...appellant told the court that he was not ready to proceed because his witnesses were not present. The district court asked him if he wished to proceed, and appellant answered that he did not. The district court considered the petition withdrawn and closed the proceedings. Based upon our review of the record on appeal, we conclude that the district court erred in failing to appoint counsel for the reasons discussed...Appellant's petition arose out of a trial. Appellant was represented by appointed counsel in prior proceedings. Appellant is serving a significant sentence. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition. We are especially troubled by the district court's use of appellant's former appellate counsel as a barometer as to whether he should receive the appointment of counsel. The factors of NRS 34.750(1) govern the appointment of counsel, not the opinion of an attorney who has a potential conflict of interest as she represented him in the same proceedings that he was challenging. We are also troubled by the fact that appellant's petition was withdrawn without anyone informing him of the consequences of doing so. Thus, we reverse the district court's decision and remand this matter for the appointment of counsel to assist appellant in the post-conviction proceedings." *Adams v. State*, 128 Nev. 877, 381 P.3d 587 (2012) (unpublished).

Age and other reasons.

- Court denied petitioner's request for appointment of an attorney and denied his writ. "Our review of the record on appeal reveals that the district court abused its discretion in denying appellant's petition without appointing counsel... Appellant's petition arose out of a lengthy trial with potentially complex issues. Appellant was represented by appointed counsel at trial. Appellant is serving two consecutive terms of life in prison with the possibility of parole after ten years. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. Appellant had been granted permission to proceed in forma pauperis. Further, appellant was 15 years old at the time of the offense and 19 when the instant petition was filed. The district court's failure to appoint post-conviction counsel deprived appellant of a meaningful opportunity to litigate. As appellant is serving a significant sentence, is indigent, and there are potentially complex issues, we reverse the district court's denial of appellant's petition and remand this matter for the appointment of counsel to assist appellant in the post-conviction proceedings." *Ford v. State*, 281 P.3d 1172 (Nev. 2009) (unpublished).

- "[Untimely post-conviction petition for a writ of habeas corpus stemming from a conviction, pursuant to a guilty plea, of three counts of sexual assault and three counts of sexual assault with the use of a deadly weapon causing substantial bodily harm. In his petition, appellant...claimed that the six sentences of life imprisonment without the possibility of parole for three of the six counts were cruel and unusual punishment because Rogers was a juvenile when he committed his offenses. Rogers also claimed that the manner in which the sentences were imposed, with every sentence to be served consecutively, amounted to cruel and unusual punishment. The district court granted the petition in part, determining that the petition was procedurally barred, but that new caselaw applied retroactively and provided good cause to excuse the procedural default. To correct the sentences, the district court imposed three consecutive sentences of life with the possibility of parole after 10 years had been served. In this appeal, we consider whether the district court abused its discretion in failing to appoint counsel to assist Rogers in the post-conviction proceeding. Given the severity of the consequences, Rogers' indigency, and the difficulty of the issues presented related to the applicability and scope of the holding in *Graham v. Florida,* 560 U.S. ——, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), we conclude that the district court abused its discretion in failing to appoint counsel in the instant case...*See Bejarano v. State,* 122 Nev. 1066, 1072, 146 P.3d 265, 270 (2006) (recognizing that good cause may be established where the legal basis for a claim was not reasonably available)...Rogers' petition raised difficult issues relating to the applicability and scope of *Graham*...The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition in the instant case." *Rogers v. State*, 127 Nev. 981, 982–86, 267 P.3d 802, 802–05 (2011).

Actual innocence requiring an evidentiary hearing.

- Appellant filed an untimely petition alleging newly discovered evidence of a recantation and alleged actual innocence. "The district court denied the petition without appointing post-conviction counsel or conducting an evidentiary hearing." While the Court determined that the recantation was not newly discovered, the Court found: "district court's findings regarding the actual innocence claim, however, are not supported by the record...The fact that the recantation was not allegedly raised in a timely fashion does not resolve a claim of actual innocence presented to overcome application of the procedural bars. *Calderon v. Thompson,* 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo,* 513 U.S. 298, 327 (1995)); *see also Pellegrini v. State* . 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden,* 112 Nev. 838, 842, 921 P.2d 920, 922 (1996)... The district court has never conducted an evidentiary hearing on the credibility and weight to be given to the victim's recantation. For the reasons discussed below, we conclude that the district court abused its discretion in denying this petition without appointing post-conviction counsel...Appellant's petition raised a potentially complex issue relating to actual innocence—particularly in light of the fact that no court has ever considered the credibility or weight of the victim's recantation. Appellant was represented by appointed counsel at trial. In addition, appellant moved for the appointment of counsel and claimed that he was indigent. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Williams v. State*, 128 Nev. 945, 381 P.3d 676 (2012)(unpublished).

Numerous cases were reversed using the same or similar wording without discussing specific facts of the case. These cases said: "Appellant filed a timely petition... Appellant, who is indigent and serving a significant sentence, moved for the appointment of post-conviction counsel. His petition arose out of a jury trial during which he was represented by appointed counsel. Appellant raised several issues, some requiring the development of facts outside the record. The failure to appoint post-conviction counsel prevented a meaningful litigation of the petition." *Luna v. State*, 127 Nev. 1156, 373 P.3d 938 (2011)(unpublished).

- *Luna v. State*, 127 Nev. 1156, 373 P.3d 938 (2011)(unpublished).
- *Walters v. State*, 127 Nev. 1184, 373 P.3d 972 (2011) (unpublished).
- *Almy v. State*, 127 Nev. 1114, 373 P.3d 890 (2011) (unpublished).
- *Cina v. State*, 126 Nev. 700, 367 P.3d 757 (2010) (unpublished).
- *Jardine v. State*, 126 Nev. 727, 367 P.3d 786 (2010) (unpublished).
- *Ramet v. State*, 126 Nev. 749, 367 P.3d 811 (2010) (unpublished).
- *Adkins v. State*, 126 Nev. 688, 367 P.3d 743 (2010) (unpublished).
- *Tabile v. State*, 126 Nev. 761, 367 P.3d 826 (2010) (unpublished).
- *Walker v. State*, 126 Nev. 766, 367 P.3d 831 (2010) (unpublished).
- *Hampton v. State*, 126 Nev. 718, 367 P.3d 777 (2010) (unpublished).
- *Lopez v. State*, 126 Nev. 733, 367 P.3d 794 (2010) (unpublished)(week long jury trial),
- *Thomas v. State*, 126 Nev. 762, 367 P.3d 826 (2010) (unpublished)(serving 118 months to 336 months).
- *Modelfino v. State*, 126 Nev. 740, 367 P.3d 801 (2010) (unpublished) (potentially complex issues).

Submitted by:

Sharon Dickinson, Chief Deputy Public Defender, Clark County Public Defender's Office with the assistance of Nick D'Angelo, law clerk at Clark County Public Defender's Office.

14

NRS 34.750 Appointment of counsel for indigents; pleadings supplemental to petition; response to motion to dismiss.

1. A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:

(a) The issues presented are difficult;

(b) The petitioner is unable to comprehend the proceedings; or

(c) Counsel is necessary to proceed with discovery.

2. If the court determines that the petitioner is unable to pay all necessary costs and expenses incident to the proceedings of the trial court and the reviewing court, including court costs, stenographic services, printing and reasonable compensation for legal services, all costs must be paid from money appropriated to the office of the State Public Defender for that purpose. After appropriations for that purpose are exhausted, money must be allocated to the office of the State Public Defender from the Reserve for Statutory Contingency Account for the payment of the costs, expenses and compensation.

3. After appointment by the court, counsel for the petitioner may file and serve supplemental pleadings, exhibits, transcripts and documents within 30 days after:

(a) The date the court orders the filing of an answer and a return; or

(b) The date of counsel's appointment,

➥ whichever is later. If it has not previously been filed, the answer by the respondent must be filed within 15 days after receipt of the supplemental pleadings and include any response to the supplemental pleadings.

4. The petitioner shall respond within 15 days after service to a motion by the State to dismiss the action.

5. No further pleadings may be filed except as ordered by the court.

(Added to NRS by 1985, 1230; A 1987, 1218; 1991, 85, 1751, 1824)

133 Nev. 75
Supreme Court of Nevada.

Guillermo RENTERIA–NOVOA, Appellant,
v.
The STATE of Nevada, Respondent.

No. 68239
|
FILED MARCH 30, 2017

Synopsis
Background: Defendant filed a pro se postconviction petition for a writ of habeas corpus and moved for appointment of counsel after his jury conviction for multiple sexual offenses was affirmed by the Supreme Court, 2014 WL 4804213. The Eighth Judicial District Court, Clark County, Eric Johnson, J., and Charles Thompson, Senior Judge, denied petition. Defendant appealed.

[Holding:] The Supreme Court held that trial court abused its discretion by denying motion to appoint postconviction counsel for defendant.

Reversed and remanded.

West Headnotes (3)

[1] **Criminal Law**
Post-conviction relief

The Supreme Court reviews the district court's decision to deny the appointment of counsel on a petition for postconviction relief for an abuse of discretion. Nev. Rev. St. § 34.750(1).

144 Cases that cite this headnote

[2] **Criminal Law**
Right to counsel

Trial court abused its discretion by denying motion to appoint postconviction counsel for indigent defendant who had filed pro se his first petition for postconviction relief; defendant had limited English-language proficiency, defendant was facing severe consequences for his 36 convictions for sexual offenses, the petition was defendant's only opportunity to assert ineffective assistance of counsel and other claims that could not have been raised at trial or on direct appeal, and the pro se petition, although not well pleaded, might have required discovery and investigation of facts outside the record. U.S. Const. Amend. 6; Nev. Rev. St. §§ 34.745(1), (4), 34.750(1).

15 Cases that cite this headnote

[3] **Criminal Law**
Right to counsel

The decision whether to appoint counsel per statute on petitions for postconviction relief is not necessarily dependent upon whether a pro se petitioner has raised claims that clearly have merit or would warrant an evidentiary hearing. Nev. Rev. St. § 34.750(1).

15 Cases that cite this headnote

Appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Attorneys and Law Firms

Guillermo Renteria–Novoa, Carson City, in Pro Se.

Adam Paul Laxalt, Attorney General, Carson City; Steven B. Wolfson, District Attorney, Clark County, for Respondent.

BEFORE PICKERING, HARDESTY and PARRAGUIRRE, JJ.

OPINION

PER CURIAM:

***75** Appellant Guillermo Renteria–Novoa was convicted, pursuant to a jury verdict, of 36 felony sexual offenses and sentenced to a total term of life with the possibility of parole after 85 years. After the judgment of conviction was affirmed on direct appeal, Renteria–Novoa filed a timely pro se postconviction petition for a writ of habeas corpus in the district court and moved for the appointment of counsel. Under Nevada law, the appointment of postconviction counsel was discretionary with the district court because Renteria–Novoa had not been sentenced to death. *Compare* NRS 34.750(1), *with* NRS 34.820(1). Exercising that discretion, the district court declined to appoint postconviction counsel and denied the petition following a hearing at which Renteria–Novoa was not present.[1] This appeal followed. We take this opportunity to address the factors that are relevant to the district court's exercise of its discretion to appoint postconviction counsel under NRS 34.750(1). Because we conclude that the district court abused its discretion, we reverse and remand for further proceedings.[2]

***76** [1]Under NRS 34.750(1), the district court has discretion to appoint counsel to represent a petitioner who has filed a postconviction petition for a writ of habeas corpus if (1) the petitioner is indigent and (2) ****761** the petition is not summarily dismissed. The statute sets forth a nonexhaustive list of factors that the district court "may consider" in deciding whether to appoint postconviction counsel: the severity of the consequences that the petitioner faces, the difficulty of the issues presented, the petitioner's ability to comprehend the proceedings, and the necessity of counsel to proceed with discovery. We review the district court's decision to deny the appointment of counsel for an abuse of discretion.

The threshold requirements for the appointment of postconviction counsel were met in this case. First, the district court necessarily found that Renteria–Novoa was indigent when it granted him permission to proceed in forma pauperis in the postconviction proceedings. Second, the petition was not subject to summary dismissal as it was Renteria–Novoa's first petition challenging the validity of his judgment of conviction and sentence. *See* NRS 34.745(1), (4).

[2]In briefly considering some of the factors identified in NRS 34.750(1), the district court noted in its written order that Renteria–Novoa had not demonstrated that the issues were difficult, that he was unable to comprehend the proceedings, or that discovery was needed. We disagree.

The motion for appointment of postconviction counsel generally tracked the factors set forth in NRS 34.750(1) without much explanation. With respect to Renteria–Novoa's ability to comprehend the proceedings in particular, the motion recited that he had "very limited knowledge of the law and process thereof." The petition made a similar representation, but it also indicated that Renteria–Novoa has limited English-language proficiency. The potential language barrier is further supported by the trial record, which shows that Renteria–Novoa had the assistance of a Spanish language interpreter throughout the trial proceedings. The use of an interpreter throughout trial indicates that Renteria–Novoa may be unable to comprehend the postconviction proceedings due to a language barrier. While the district court specifically found that Renteria–Novoa did not demonstrate an inability to comprehend the proceedings, this finding, which was made after a hearing where Renteria–Novoa was not present and which appears to have been based solely on the petition, lacks support in the record, particularly as the petition was not well pleaded and Renteria–Novoa had previously needed an interpreter.

The other factors identified in NRS 34.750(1) also weigh in favor of the appointment of counsel in this case. The consequences that Renteria–Novoa faces are severe: he has been convicted of 36 felony ****762** offenses following a jury trial and is serving what arguably is the ***77** functional equivalent of a life-without-parole sentence as he must serve approximately 85 years before being eligible for release on parole. This petition is Renteria–Novoa's only opportunity to assert ineffective-assistance and other claims that could not have been raised at trial or on direct appeal. The pro se petition, although not well pleaded, raised several ineffective-assistance-of-counsel claims, including the failure to investigate, which may require discovery and investigation of facts outside the record.

We also are troubled by the possibility that the district court's decision as to the appointment of counsel was influenced by the assertion in the State's responsive pleading that, quoting *Peterson v. Warden*, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971), Renteria–Novoa had

to "show that the requested review is not frivolous before he may have an attorney appointed." The quoted language from *Peterson* referred to former NRS 177.345(2). That provision addressed the appointment of counsel to assist a petitioner on appeal from the district court's judgment on a petition for postconviction relief. 1969 Nev. Stat., ch. 87, § 5, at 107. It provided for the appointment of appellate postconviction counsel only if the appellate court determined that the petitioner's appeal "is not frivolous." NRS 177.345(2) (1969). In contrast, the appointment of postconviction counsel to represent the petitioner in the district court proceedings was mandatory if the petitioner was indigent, with no regard for whether the allegations in the petition were frivolous. NRS 177.345(1) (1969). And, when the Legislature later made the appointment of postconviction counsel to represent the petitioner in the district court proceedings discretionary and added the factors that today appear in NRS 34.750(1), the Legislature did not include the "frivolous" language that previously had restricted the appointment of appellate postconviction counsel under NRS 177.345(2) (1969). *See* 1987 Nev. Stat., ch. 539, § 42, at 1230–31 (amending NRS 177.345(1)). For these reasons and because NRS 177.345 was repealed in its entirety effective January 1, 1993, 1991 Nev. Stat., ch. 44, § 31, at 92, the language in *Peterson* has no bearing on a district court's decision to appoint postconviction counsel to represent a petitioner under current Nevada law set forth in NRS 34.750(1).

[3]We take this opportunity to stress that the decision whether to appoint counsel under NRS 34.750(1) is not necessarily dependent upon whether a pro se petitioner has raised claims that clearly have merit or would warrant an evidentiary hearing. In some cases, such as this one where a language barrier may have interfered with the petitioner's ability to comprehend the proceedings, the petitioner may be unable to sufficiently present viable claims in his or her petition without the assistance of counsel. *See generally Woodward v. State*, 992 So.2d 391, 392 (Fla. Dist. Ct. App. 2008) (noting that the decision to appoint counsel "turns upon whether, under the circumstances ***78** of a particular case, the assistance of counsel is essential to accomplish a fair and thorough presentation of a defendant's claim(s) for collateral relief" (internal quotation marks omitted)); *cf. Martinez v. Ryan*, 566 U.S. 1, 11–12, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012) (recognizing inherent difficulties for prisoners in presenting claims of trial error without the assistance of counsel). In such cases, the district court's failure to appoint postconviction counsel may deprive the petitioner of a meaningful opportunity to present his or her claims to the district court.

In light of the severity of the consequences that Renteria–Novoa faces, the potential need for discovery, and Renteria–Novoa's questionable proficiency with the English language, we conclude that the district court abused its discretion in declining to appoint postconviction counsel to represent Renteria–Novoa. Accordingly, we reverse the district court's order denying Renteria–Novoa's petition and remand this matter for the appointment of counsel to assist Renteria–Novoa in the postconviction proceedings.[3]

All Citations

133 Nev. 75, 391 P.3d 760

Footnotes

1 Senior Judge Charles Thompson presided over the hearing on the postconviction petition and orally denied the petition and the motion for appointment of counsel. Judge Johnson entered the written order denying the petition and motion.

2 Although this matter was docketed before the amendments to the Nevada Rules of Appellate Procedure that allow parties appearing without the assistance of counsel to file briefs and other documents without seeking leave of court, *see* NRAP 28(k) (effective October 1, 2015); NRAP 46A (effective October 1, 2015), we have considered the pro se brief received on October 20, 2015, and the pro se informal brief received on February 12, 2016.

3 We express no opinion as to the merits of Renteria–Novoa's postconviction petition. Given our disposition of this matter, we deny the motion for appointment of appellate counsel submitted to this court or December 16, 2015.

End of Document

TAB 6

TAB 7

Grand Jury

1. All procedures used by court for the selection process for grand jurors must be in writing and available to the public for review.

2. The district court shall keep all documents and statistics on the selection process for the grand jury and conduct periodic review to ensure the process allows for a grand jury drawn from the fair cross-section of our community.

2. A defendant is entitled to information relating to the composition of the grand jury in order to assess whether he has a viable constitutional challenge. A defendant may gain access to grand jury information by filing a motion in the district court where his Indictment is proceeding.

"Certainly, Nevada is not bound by this federal statute, and it does not have a state statute providing the right to inspect grand jury records. Nevertheless, this court is bound by Supreme Court precedent, and in *Adler,* we recognized that a defendant has a constitutional right to a grand jury drawn from a fair cross-section of the community. 95 Nev. at 347, 594 P.2d at 731. As the Supreme Court of Missouri noted when considering this same issue, "[t]his cross-section requirement would be without meaning if a defendant were denied all means of discovery in an effort to assert that right." *State ex rel. Garrett v. Saitz,* 594 S.W.2d 606, 608 (Mo.1980). Thus, we hold that Afzali is entitled to information relating to the racial composition of the grand jury so that he may assess whether he has a viable constitutional challenge." *Afzali v. State*, 130 Nev. 313, 317, 326 P.3d 1, 3 (2014).

Proposed by the Clark County Public Defender's Office

130 Nev. 313
Supreme Court of Nevada.

Shafiq Ahmed AFZALI, Appellant,
v.
The STATE of Nevada, Respondent.

No. 54019.
|
May 29, 2014.

Synopsis

Background: Defendant was convicted in the Eighth Judicial District Court, Clark County, James M. Bixler, J., of lewdness with child, sexual assault of child under 14 years of age, kidnapping, and other crimes. Defendant appealed.

The Supreme Court, Hardesty, J., held that defendant was entitled to information relating to racial composition of three grand juries that indicted him and of 100–person venires from which grand juries were selected, in whatever form and by whatever means, so that he could assess whether grand juries were selected from fair cross-section of community.

Remanded.

Attorneys and Law Firms

1 Philip J. Kohn, Public Defender, and **Sharon G. **Dickinson**, Deputy Public Defender, Clark County, for Appellant.

Catherine Cortez Masto, Attorney General, Carson City; Steven B. Wolfson, District Attorney, Steven S. Owens, Chief Deputy District Attorney, and Parker P. Brooks, Deputy District Attorney, Clark County, for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, HARDESTY, J.:

*314 Appellant Shafiq Ahmed Afzali asserts that the district court violated his constitutional rights by obstructing his ability to challenge the racial composition of the three grand juries that indicted him.[1] Prior to his trial, Afzali requested information that would identify the racial composition of the three separate grand juries that indicted him, and the 100–person venires from which the grand jurors were selected. The district court denied him the requested information.

1 Afzali raises a number of additional issues on appeal. However, because we determine that a limited remand is necessary, we do not address those issues at this time.

Afzali argues that he had the right to challenge the grand jury selection process

under either the Equal Protection or the Due Process Clauses of the United States Constitution, but that he was unable to determine whether he had a viable challenge to the racial composition of the three grand juries that indicted him because the court failed to provide the information requested.

We conclude that Afzali has a right to the information he requested. Without this information, Afzali's ability to show a potential violation of his constitutional right to a grand jury drawn from a fair cross-section of the community is limited. Therefore, we conclude that a limited remand is necessary for the district court to conduct further proceedings consistent with this opinion.

*315 *FACTS AND PROCEDURAL HISTORY*

In July 2007, Afzali was charged by indictment with 17 felony counts regarding crimes of a sexual nature against 3 children. He **2 was then charged by a superseding indictment with 42 felony counts regarding crimes of a sexual nature based on his acts against the 3 child victims and the 25 images of child pornography he possessed. He was later charged by a final second superseding indictment with 63 felony counts regarding crimes of a sexual nature.

In October 2007, Afzali filed a motion requesting information on the selection process for the grand jury, the racial composition of the three grand juries that indicted him, and the racial composition of the entire 100–person venires from which those grand jurors were chosen. He stated that his request was being made to evaluate whether he had grounds to bring an equal protection or due process challenge to the make-up of the three grand juries or the grand jury selection process.

The district court held two hearings on the motion. During the first hearing, Afzali's counsel stated that she was concerned about the grand jury selection process and the ethnic background of the grand jury. The district court explained that it had no such information, but would inquire of the then-sitting chief judge about the procedure for obtaining the information Afzali was requesting. During the second hearing, the district court provided Afzali with information on the grand jury selection process; however, it explained that race information did not exist. It also explained that the records of all potential grand jurors were shredded, except for the records of those 50 potential grand jurors selected by the judges from the 100–person pool.[2]

2 Under NRS 6.110, the selection of the grand jury begins when the clerk of the court solicits 500 qualified persons at random and mails a questionnaire to those selected. The names of the first 100 persons who return the completed questionnaire to the clerk are submitted to the district court judges for that judicial district. NRS 6.110(1). The district court judges then select one name from the list until 50 persons have been selected, at which time the clerk issues a venire. NRS 6.110(2). Finally, the presiding district court judge selects 17 persons at random from the 50–person group to serve as the grand jury. NRS 6.110(3).

In November 2007, the Eighth Judicial District Court Administration (Eighth District) filed a motion to quash a subpoena

duces tecum served on the jury commissioner by Afzali's counsel. The subpoena sought the names and contact information for the 100–person venires for each of the three grand juries that indicted Afzali. The next month the district court conducted hearings on the Eighth District's motion to quash. Ultimately, the district court concluded that the Eighth District handled the information Afzali was requesting, not the jury commissioner; the personal information of the 50 potential grand jurors was destroyed but their contact information ***316** was preserved; and Afzali was "entitled to it." The district court granted the motion to quash as to the jury commissioner but denied it as to the Eighth District because only the latter had access to the information requested.

In January 2008, the district court conducted a hearing on the disclosure of the grand jury contact information. Afzali's counsel asserted that, if given the contact information for the 50 potential grand jurors, she would conduct an independent investigation on the racial composition of that group. The State objected, arguing that the disclosure would violate the secrecy of the grand jury. In a compromise, the district court asked Afzali's counsel to draft a questionnaire to be given to the 50 potential jurors. The district judge stated that he would then provide that questionnaire to the jury commissioner and the chief judge, who supervises the grand jury.

In March 2008, then-Chief Judge Hardcastle entered an order denying Afzali's request for the grand jury contact information. In denying Afzali's request, Judge Hardcastle reviewed Afzali's questionnaire and determined that "the proper procedure and notice to all interested parties to challenge the methods used to select the grand jury has not been followed." In June 2008, Afzali requested a hearing on Judge Hardcastle's order, arguing that he had followed the district court's direction in requesting the grand jury contact information. The district court did not grant the request, but admitted, "I don't know we know the procedure."

Afzali's trial took place in March 2009, and the jury ultimately found Afzali guilty as to ****3** counts 4–39, 42–54, and 56–63. The jury was hung as to counts 1–3, and found Afzali not guilty as to counts 40, 41, and 55. The district court entered its judgment of conviction in June 2009. This appeal followed.[3]

3 In November 2007, during the time Afzali was attempting to obtain the information on the grand jury, he also filed a petition for writ of habeas corpus. He argued that the district court's grand jury selection process violated his constitutional and statutory rights because the destruction of records concerning proposed grand jurors prevented him from obtaining the evidence necessary to support any challenge to the racial composition of the grand jury. The State filed a return, arguing that it was not part of the grand jury selection process and it thus could not address that process. In December 2008, prior to the filing of this appeal, the district court denied the petition.

DISCUSSION

Afzali contends that without access to information about the racial composition of the three grand jury pools that indicted him, he has no way to know whether he has grounds to bring a challenge to the grand

jury selection process under the Equal Protection Clause or the Due Process Clause. We agree.

The United States Supreme Court has held that "the criminal defendant's right to equal protection of the laws has been denied when he is indicted by a grand jury from which members of a racial group purposefully have been excluded." *Vasquez v. Hillery,* 474 U.S. 254, 262, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986). Furthermore, a person has the right to have the grand jury selected from a fair cross-section of the community. *Adler v. State,* 95 Nev. 339, 347, 594 P.2d 725, 731 (1979) ("[I]t is settled that a grand jury must be drawn from a cross-section of the community, and there must be no systematic and purposeful exclusion of an identifiable class of persons.").

A federal statute was enacted in order to squarely address a defendant's right to obtain the information necessary to mount challenges to the composition of the grand jury in federal court. *See* 28 U.S.C. § 1867(f) (2006) (allowing parties who are preparing a motion to challenge the grand jury composition to have access to "[t]he contents of records or papers used by the jury commission or clerk in connection with the jury selection process"). In analyzing this statute, the United States Supreme Court stated that its purpose was to ensure grand juries were selected at random from a fair cross-section and noted that "without inspection, a party almost invariably would be unable to determine whether he has a potentially meritorious jury challenge." *Test v. United States,* 420 U.S. 28, 30, 95 S.Ct. 749, 42 L.Ed.2d 786(1975).

Certainly, Nevada is not bound by this federal statute, and it does not have a state statute providing the right to inspect grand jury records. Nevertheless, this court is bound by Supreme Court precedent, and in *Adler,* we recognized that a defendant has a constitutional right to a grand jury drawn from a fair cross-section of the community. 95 Nev. at 347, 594 P.2d at 731. As the Supreme Court of Missouri noted when considering this same issue, "[t]his cross-section requirement would be without meaning if a defendant were denied all means of discovery in an effort to assert that right." *State ex rel. Garrett v. Saitz,* 594 S.W.2d 606, 608 (Mo.1980). Thus, we hold that Afzali is entitled to information relating to the racial composition of the grand jury so that he may assess whether he has a viable constitutional challenge.

Based on our holding, we conclude that a limited remand is necessary in order for the district court to make available to Afzali the information he requested. On remand, the district court should first determine whether information is available on the racial composition of the three grand juries that indicted Afzali and on the 100–person venires from which those jurors were chosen, in whatever ***318** form and by whatever means.[4] We recognize that during the prior district court hearings surrounding Afzali's request, there was some confusion as to what information was actually retained by the district court regarding ****4** the grand jury pools involved in Afzali's indictments. The record demonstrates that at least the contact information for the 50 proposed grand jurors was available. Once the district court obtains the information, it should be provided to Afzali so that he can determine

whether he has grounds for a fair cross-section challenge. If he determines that there is a viable challenge, he should make the challenge in the district court so that the court can resolve the matter and enter appropriate findings of facts and conclusions of law. This court can then review that decision, if challenged. If the district court is unable to provide the requested information after exploring all possible avenues, then the district court should enter appropriate findings and certify them to this court. This court will then determine whether the failure to provide this information requires reversal of the judgment of conviction. The district court shall have 90 days to conduct the necessary proceedings required as a result of the limited remand of this matter.

4 For example, contact information may be available through payroll records pertaining to grand jurors who served, *see* NRS 6.150 (grand juror fees), or from the transcripts of the grand jury proceedings. Thus, if the racial composition of those jurors is not otherwise known, the district court may need to contact the grand jurors in order to obtain the necessary information.

We concur: GIBBONS, C.J., PICKERING, PARRAGUIRRE, DOUGLAS, CHERRY, and SAITTA, JJ.

All Citations

130 Nev. 313, 326 P.3d 1, 130 Nev. Adv. Op. 34

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Jury Commissioner

Rule X.XX. **Availability of procedures**. The jury commissioner shall document, in writing, all procedures used by the jury commissioner's office in the selection of prospective jurors and make the procedures available to the public upon request.

Rule X.XX. **Jury sources**. The jury commissioner must utilize a list of persons who are registered to vote in the county, the Department of Motor Vehicles, the Employment Security Division of the Department of Employment, Training and Rehabilitation, and a public utility as required by NRS 6.045, and such other lists as may be authorized by the chief judge.

Rule X.XX. **Yearly reporting requirements**. The jury commissioner shall prepare and submit a yearly report that contains statistics from the records required to be maintained by the jury commissioner pursuant to NRS 6.045, including, without limitation, the name, occupation (where available), zip code and race of each trial juror who is summoned, each trial juror who appears for jury service, each trial juror who is selected, and each trial juror who is seated as a juror.

Rule X.XX. **Availability of documentation in master list**. All documentation collected by the jury commissioner and used to compile the master list must be made available to the parties to a jury trial upon request. A criminal defendant is entitled to information relating to the race, gender, occupation (where available), and zip code of the prospective jurors in the master list. The jury commissioner must also prepare a zip code report listing the number of prospective jurors in the master list by zip code to be given to the public upon request.

Rule X.XX. **Availability of documentation to the parties in a case**. All documentation collected by the jury commissioner from prospective jurors must be made available to the parties to a jury trial upon request. A criminal defendant is entitled to information relating to the race, gender, occupation (where available), and zip code of the prospective jurors assigned to his case, the prospective jurors reporting for jury service, and in the group of jurors summoned for jury on the date set for jury trial. This documentation must be made available, when requested, prior to beginning the jury selection process.

Proposed by:

Clark County Public Defender's Office

Chief Deputy Tegan Machnich
Chief Deputy Sharon Dickinson

454 P.3d 709
Supreme Court of Nevada.

Keandre VALENTINE, Appellant,
v.
The STATE of Nevada, Respondent.

No. 74468
|
FILED DECEMBER 19, 2019

Synopsis

Background: After defendant's request for an evidentiary hearing regarding whether jury venire represented a fair cross-section of the community was denied, defendant was convicted in the District Court, Clark County, Richard Scotti, J., of multiple crimes stemming from five armed robberies. Defendant appealed.

Holdings: The Supreme Court, Stiglich, J., held that:

as a matter of first impression, an evidentiary hearing is warranted on a defendant's fair-cross-section challenge to a jury venire when the defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement;

defendant's allegations were sufficient to establish a prima facie violation of the fair-cross-section requirement;

evidence was insufficient to support two of defendant's robbery convictions;

district court did not abuse its discretion in admitting graphs of DNA test results;

prosecutor's closing argument inviting jurors to make inferences not supported by DNA evidence was improper; and

prosecutor's improper closing argument was harmless.

Vacated and remanded.

*712 Appeal from a judgment of conviction, pursuant to a jury verdict, of seven counts of robbery with the use of a deadly weapon, three counts of burglary while in possession of a deadly weapon, two counts of possession of credit or debit card without cardholder's consent, and one count each of attempted robbery with the use of a deadly weapon and possession of document or personal identifying information for the purpose of establishing a false status or identity. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Attorneys and Law Firms

Darin F. Imlay, Public Defender, and **Sharon** G. **Dickinson**, Deputy Public Defender, Clark County, for Appellant.

Aaron D. Ford, Attorney General, Carson City; Steven B. Wolfson, District Attorney, Krista D. Barrie, Chief Deputy District Attorney, and Michael R. Dickerson, Deputy District Attorney, Clark County, for Respondent.

BEFORE HARDESTY, STIGLICH and SILVER, JJ.

OPINION

By the Court, STIGLICH, J.:

A defendant has the right to a jury chosen from a fair cross section of the community, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. This court has addressed the showing a defendant must make to establish a prima facie violation of this right. We have said little, however, about when an evidentiary hearing may be warranted on a fair-cross-section claim. Faced with that issue in this case, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement. Because the defendant in this matter made specific factual allegations that could be sufficient to establish a prima facie violation of the fair-cross-section requirement and those allegations were not disproved, the district court abused its discretion by denying Valentine's request for an evidentiary hearing. None of Valentine's other claims warrant a new trial. We therefore vacate the judgment of conviction and remand for further proceedings as to the fair-cross-section challenge.

***713** *BACKGROUND*

Appellant Keandre Valentine was convicted by a jury of multiple crimes stemming from a series of five armed robberies in Las Vegas, Nevada. Before trial, Valentine objected to the 45-person venire and claimed a violation of his right to a jury selected from a fair cross section of the community. He argued that two distinctive groups in the community—African Americans and Hispanics—were not fairly and reasonably represented in the venire when compared with their representation in the community. Valentine asserted that the underrepresentation was caused by systematic exclusion, proffering two theories as to how the system used in Clark County excludes distinctive groups. His first theory was that the system did not enforce jury summonses; his second theory was that the system sent out an equal number of summonses to citizens located in each postal ZIP code without ascertaining the percentage of the population in each ZIP code. Valentine requested an evidentiary hearing, which was denied. The district court found that the two groups were distinctive groups in the community and that one group—Hispanics—was not fairly and reasonably represented in the venire when compared to its representation in the community. However, the district court found that the underrepresentation was not due to systematic exclusion, relying on the jury commissioner's testimony regarding the

jury selection process two years earlier in another case and on this court's resolution of fair-cross-section claims in various unpublished decisions. The court thus denied the constitutional challenge.

DISCUSSION

Fair-cross-section challenge warranted an evidentiary hearing

Valentine claims the district court committed structural error by denying his fair-cross-section challenge without conducting an evidentiary hearing. We review the district court's denial of Valentine's request for an evidentiary hearing for an abuse of discretion. *See Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015) (reviewing denial of request for an evidentiary hearing on a postconviction petition for a writ of habeas corpus); *accord United States v. Schafer,* 625 F.3d 629, 635 (9th Cir. 2010) (reviewing denial of request for an evidentiary hearing on a motion to dismiss an indictment); *United States v. Terry,* 60 F.3d 1541, 1544 n.2 (11th Cir. 1995) (reviewing denial of request for an evidentiary hearing on fair-cross-section challenge to statute exempting police officers from jury service).

"Both the Fourteenth and the Sixth Amendments to the United States Constitution guarantee a defendant the right to a trial before a jury selected from a representative cross-section of the community." *Evans v. State,* 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996). While this right does not require that the jury "mirror the community and reflect the various distinctive groups in the population," it does require "that the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." *Id.* at 1186, 926 P.2d at 274-75 (internal quotation marks omitted). "Thus, as long as the jury selection process is designed to select jurors from a fair cross section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible." *Williams v. State,* 121 Nev. 934, 940, 125 P.3d 627, 631 (2005).

A defendant alleging a violation of the right to a jury selected from a fair cross section of the community must first establish a prima facie violation of the right by showing

> (1) that the group alleged to be excluded is a "*distinctive*" *group* in the community; (2) that the *representation of this group in venires* from which juries are selected *is not fair and reasonable* in relation to the number of such persons in the community; and (3) that this underrepresentation is *due to systematic exclusion* of the group *in*

the jury-selection process.

Evans, 112 Nev. at 1186, 926 P.2d at 275 (quoting *Duren v. Missouri*, 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979)). To determine "[w]hether a certain percentage is a fair representation of a group," this court ***714** uses "the absolute and comparative disparity between the actual percentage in the venire and the percentage of the group in the community." *Williams*, 121 Nev. at 940 n.9, 125 P.3d at 631 n.9. And to determine whether systematic exclusion has been shown, we consider if the underrepresentation of a distinctive group is "inherent in the particular jury-selection process utilized." *Evans*, 112 Nev. at 1186-87, 926 P.2d at 275 (internal quotation marks omitted). Only after a defendant demonstrates a prima facie violation of the right does "the burden shift [ ] to the government to show that the disparity is justified by a significant state interest." *Id.* at 1187, 926 P.2d at 275.

Here, Valentine asserted that African Americans and Hispanics were not fairly and reasonably represented in the venire. Both African Americans and Hispanics are recognized as distinctive groups. *See id.; see also United States v. Esquivel*, 88 F.3d 722, 726 (9th Cir. 1996). And the district court correctly used the absolute and comparative disparity between the percentage of each distinct group in the venire and the percentage in the community to determine that African Americans were fairly and reasonably represented in the venire but that Hispanics were not. *See Williams*, 121 Nev. at 940 n.9, 125 P.3d at 631 n.9 ("Comparative disparities over 50% indicate that the representation of [a distinct group] is likely not fair and reasonable."). The district court denied Valentine's challenge as to Hispanics based on the third prong—systematic exclusion.

We conclude the district court abused its discretion in denying Valentine's request for an evidentiary hearing. Although this court has not articulated the circumstances in which a district court should hold an evidentiary hearing when presented with a fair-cross-section challenge, it has done so in other contexts. For example, this court has held that an evidentiary hearing is warranted on a postconviction petition for a writ of habeas corpus when the petitioner has "assert[ed] claims supported by specific factual allegations [that are] not belied by the record [and] that, if true, would entitle him to relief." *Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002); *see also Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Most of those circumstances are similarly relevant when deciding whether an evidentiary hearing is warranted on a defendant's fair-cross-section challenge, given the defendant's burden of demonstrating a prima facie violation. In particular, it makes no sense to hold an evidentiary hearing if the defendant makes only general allegations that are not sufficient to demonstrate a prima facie violation or if the defendant's specific allegations are not sufficient to demonstrate a prima facie violation as a matter of law. *See Terry*, 60 F.3d at 1544 n.2 (explaining that no evidentiary hearing is warranted on a fair-cross-section challenge if no set of facts could be developed that "would be significant legally"). But unlike the postconviction context where the claims are

case specific, a fair-cross-section challenge is focused on systematic exclusion and therefore is not case specific. Because of that systematic focus, it makes little sense to require an evidentiary hearing on a fair-cross-section challenge that has been disproved in another case absent a showing that the record in the prior case is not complete or reliable.[1] With these considerations in mind, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement.[2]

1 For the reasons stated herein, it was error for the district court to rely upon the jury commissioner's prior testimony in denying Valentine's challenge. That is not to say a district court may never rely upon prior testimony when appropriate.

2 We note that, in order to meet the burden of demonstrating an evidentiary hearing is warranted, a defendant may subpoena supporting documents and present supporting affidavits. *See Hargrove,* 100 Nev. at 502-03, 686 P.2d at 225.

Applying that standard, we conclude that Valentine was entitled to an evidentiary hearing as to his allegation of systematic exclusion of Hispanics. Valentine did more than make a general assertion of systematic exclusion. In particular, Valentine made specific allegations that the system used to select jurors in the Eighth Judicial ***715** District Court sends an equal number of jury summonses to each postal ZIP code in the jurisdiction without ascertaining the percentage of the population in each ZIP code. Those allegations, if true, could establish underrepresentation of a distinctive group based on systematic exclusion. *Cf. Garcia-Dorantes v. Warren,* 801 F.3d 584, 591-96 (6th Cir. 2015) (discussing a prima facie case of systematic exclusion where a computer used a list to determine the percentage of jurors per ZIP code, but because of a glitch, the list included a higher number of persons from certain ZIP codes that had smaller proportions of African Americans than the community at large). And those allegations were not addressed in the jury commissioner's prior testimony that the district court referenced.[3] Accordingly, the district court could not rely on the prior testimony to resolve Valentine's allegations of systematic exclusion. Having alleged specific facts that could establish the underrepresentation of Hispanics as inherent in the jury selection process, Valentine was entitled to an evidentiary hearing.[4] Accordingly, the district court abused its discretion by denying Valentine's request for an evidentiary hearing.[5] We therefore vacate the judgment of conviction and remand to the district court for an evidentiary hearing. *Cf. State v. Ruscetta,* 123 Nev. 299, 304-05, 163 P.3d 451, 455 (2007) (vacating judgment of conviction and remanding where district court failed to make factual findings regarding motion to suppress and where record was insufficient for appellate review). Thereafter, Valentine's fair-cross-section challenge should proceed in the manner outlined in *Evans,* 112 Nev. at 1186-87, 926 P.2d at 275. If the district court determines that the challenge lacks merit, it may reinstate the judgment of conviction, except as provided below.

3 Even if the jury commissioner's previous testimony addressed Valentine's specific allegations of systematic exclusion, reliance on the old testimony would have

been misplaced. In particular, the prior testimony mentioned that the system was "moving towards a new improved jury selection process" and legislative amendments regarding the juror selection process were implemented close in time to Valentine's trial. *See* 2017 Nev. Stat., ch. 549, §§ 1-5, at 3880-84. While prior testimony relevant to a particular fair-cross-section challenge may obviate the need for an evidentiary hearing, a district court should be mindful that it not rely upon stale evidence in resolving such challenges.

4 It is unclear that Valentine's allegations regarding the enforcement of jury summonses would, if true, tend to establish underrepresentation as a result of systematic exclusion. *See United States v. Orange*, 447 F.3d 792, 800 (10th Cir. 2006) ("Discrepancies resulting from the private choices of potential jurors do not represent the kind of constitutional infirmity contemplated by *Duren*"). Accordingly, he was not entitled to an evidentiary hearing as to those allegations.

5 We reject Valentine's contention that the district court's failure to hold an evidentiary hearing evinced judicial bias resulting in structural error.

Sufficiency of the evidence

Valentine argues the State presented insufficient evidence to support his convictions for robbery with the use of a deadly weapon in counts 4 and 9. In considering a claim of insufficient evidence, we "view[ ] the evidence in the light most favorable to the prosecution" to determine whether *"any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State,* 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia,* 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)).

NRS 200.380(1) defines the crime of robbery as

> [T]he unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property, or the person or property of a member of his or her family, or of anyone in his or her company at the time of the robbery.[6]

Additionally, we have held that the State must show that the victim had possession of or a possessory interest in the property taken. ***716** *See Phillips v. State,* 99 Nev. 693, 695-96, 669 P.2d 706, 707 (1983).

6 The Legislature amended NRS 200.380, effective October 1, 2019. 2019 Nev. Stat., ch. 76, § 1, at 408. While the amendments do not affect our analysis in this matter, we have quoted the pre-amendment version of NRS 200.380 that was in effect at the time of the events underlying this appeal. 1995 Nev. Stat., ch. 443, § 60, at 1187.

The challenged robbery counts stem from a similar fact pattern. Beginning with count 4, Valentine was charged with robbing Deborah Faulkner of money; Valentine was also charged with robbing Darrell Faulkner, Deborah's husband, of money in count 3. Valentine was convicted of both counts. However, when viewed in a light most favorable to the prosecution, the evidence produced at trial was insufficient to support a robbery charge as it related to Deborah.

While the evidence established that Valentine took $100 that Darrell removed from his own wallet, the evidence demonstrated that Valentine demanded Deborah to empty her purse onto the ground but actually took nothing from it. There was no evidence that Deborah had possession of, or a possessory interest in, the money from Darrell's wallet.[7] Thus, the State presented insufficient evidence for count 4, and the conviction for that count cannot be sustained.

7 We are unconvinced by the State's argument that the singular fact of Darrell and Deborah being married, without more, demonstrated that the money in Darrell's wallet was community property of the marriage such that Deborah had a possessory interest in it. *See* NRS 47.230(3).

Similarly, in count 9, Valentine was charged with robbing Lazaro Bravo-Torres of a wallet and cellular telephone; Valentine was also charged with robbing Rosa Vasquez-Ramirez, Lazaro's wife, of a purse, wallet, and/or cellular telephone in count 11. Valentine was convicted of both counts. Yet viewing the evidence in a light most favorable to the prosecution, the evidence did not establish that Valentine robbed Lazaro. Specifically, Lazaro testified that he told Valentine he did not have cash or a wallet on him and that his phone, located in the center compartment of the truck, was not taken but was used by the couple after the incident was over. Conversely, Rosa testified that Valentine took her purse along with the items in it. The evidence presented by the State did not establish that Lazaro had possession of, or a possessory interest in, the items taken,[8] and thus the conviction for count 9 cannot be sustained.

8 We again reject the State's argument that the mere fact that Lazaro and Rosa were married demonstrated that Lazaro had a possessory interest in Rosa's purse or the items therein. *See id.*

Prosecutorial misconduct regarding DNA evidence

Valentine contends that the State engaged in prosecutorial misconduct during closing argument when discussing the deoxyribonucleic acid (DNA) evidence. In considering a claim of prosecutorial misconduct, we determine whether the conduct was improper and, if so, whether the improper conduct merits reversal. *Valdez v. State,* 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).

During the trial, the State presented an expert witness to testify about the DNA results from a swab of the firearm found in the apartment where Valentine was discovered. The expert testified generally about the procedures her laboratory uses for DNA analysis. She explained that samples are tested at the same 15 locations, or loci, on the DNA molecule and a DNA profile results from the alleles, or numbers, obtained from each of the 15 locations.[9] When complete information from each of the 15 locations is obtained, the result is a full DNA profile; anything less produces a partial DNA profile. The results of the DNA testing process appear as peaks on a graph, and it is those peaks that the expert interprets and uses to make her determinations. In considering the information on a graph, the expert indicated that her laboratory uses a threshold of

200—anything over 200 is usable information, while anything below 200 is not used "because it's usually not reproducible dat[a]," meaning if the sample was tested again, "it's so low that [she] might get that same information, [she] might not."[10] The expert maintained *717 that sometimes DNA information is obtained "but it's not good enough for us to make any determinations on. So in that case we call it inconclusive."

9 The expert added that her laboratory also looks at an additional location, the amelogenin, in order to determine the gender of the individual represented in the sample.

10 The expert also testified that anything below 40 indicated that there was no actual DNA profile. She explained that her laboratory uses the thresholds "to make sure that when we say that there is a good, usable DNA profile, that it's actually a good, useable DNA profile."

As to the results of the swab from the firearm, the expert testified that she "did not obtain a useable profile, so there was no comparison made." She stated that the laboratory thresholds were not met and thus "the profile was inconclusive." The only conclusion the expert was able to make was that the partial DNA profile obtained from the firearm swab was consistent with a mixture of at least two persons and that at least one of the persons was male.

During the expert's testimony, the State offered three exhibits: one was a summary, side-by-side comparative table of the DNA information collected from the firearm swab and from Valentine; and two were graphs of the specific information collected from the firearm swab and Valentine, both graphs showing peaks of information alongside a scale indicating the laboratory's threshold limits. Valentine objected to the admission of the graphs, arguing that they could be confusing to the jury, that the jurors should not be drawing their own conclusions from the graphs, and that he did not want the jurors to think they could discern something from the graphs that the expert could not. The district court overruled Valentine's objection, finding the graphs relevant to the expert's methodology and reliability.[11]

11 Valentine argues the district court abused its discretion in admitting the graphs. We cannot say the admission of the graphs to show methodology and reliability was an abuse of discretion. But while the graphs may have been relevant for such purposes, the manner in which the information was used by the State, as discussed below, strongly undermined the district court's reasoning for admitting the evidence. *See* NRS 47.110 (discussing the limited admissibility of evidence and, upon request, the need for an instruction to restrict the jury's consideration to the proper scope).

Regarding the summary, side-by-side table, the expert testified that every tested location of the firearm swab, save for the location used to determine gender, resulted in either an "NR," meaning no DNA profile was obtained from that particular location, or an asterisk, indicating information was present but "it was so low that [she was] not even going to do any comparisons or say anything."

Regarding the graphs, the State went through the tested locations of the firearm swab and, while continuously commenting that the results were below the laboratory's 200 threshold, asked the expert to identify the alleles for which there were peaks of information. In going through the peaks of information from the firearm swab, the State also intermittently mentioned the

corresponding locations and, ostensibly matching, alleles found in Valentine's DNA profile. During cross-examination, the expert repeated the 200 threshold and explained that she does not look at information below that threshold, even if it is close, because it could be incorrect. Valentine asked the expert if she had anything she wanted to add in response to the State's line of questioning regarding each of the locations tested, and the expert reiterated the following:

> [T]he profile [from the firearm swab] was inconclusive, and we call it inconclusive because there wasn't enough DNA.... [A]nd we call that inconclusive ... because if I re-ran that exact same sample, I don't know what kind of results I would come up with. It may be the same, it may be different. So that's why we're not saying that the DNA profile definitely came from the defendant, because it's inconclusive to me.
>
> ....
>
> [The thresholds] exist for a reason.
>
> ....
>
> Because we don't want to present information that may not be correct or overemphasize something, you know, saying yes, this person is there, when it may not be true because our data is not supporting that it's a strong DNA profile. So we want to be sure when we say there's a match, that it is, in fact, a match.
>
> We don't want to make the wrong conclusions on the item that we're looking at.
>
> ....

***718** Despite the expert's testimony, the State pointed to the two graphs and argued that the jurors could assess for themselves whether Valentine's DNA profile matched the DNA profile from the firearm swap. During closing argument, the State made the following comments:

> You heard about the DNA evidence in this case. Now, the scientist came in. She told you she could not make any results. The results that she had for the swab of the gun were below the threshold. But we went through every single one. *And that's something you need to also take a look at when you go back there, just to see what you think for yourself.* When we went through and looked at the items *below the 200 threshold,* but above the 40 threshold *this is what we found.* We found that the swab of the handgun revealed a 12 and a 13 allele. Mr, Valentine, a 12 and a 13 allele. The swab also [had] a 28 allele on the next [location]. A 28 allele on that same [location] for Mr. Valentine.

(Emphases added.) Valentine objected and argued that the State's own expert said that such a comparison was improper. The district court overruled the objection, finding the prosecutor was merely arguing that some weight should be given to the evidence and stating it was up to the jury to decide the weight to give the evidence. The State continued:

> [I]t's worth taking into consideration. You are here for two weeks. Look at all the evidence. This is part of the evidence. You heard that under each [location] there is a number of alleles. And here, though, yeah, maybe the threshold is under 200, *there's something here. But just consider for yourself.*
>
> Next, we have the [location] on the swab of the handgun, 15 and 16. Mr. Valentine also at 15 and 16. Next [location] at 7; Mr. Valentine also at 7. Next [location] at 12 and 13; Mr. Valentine also at 12 and 13. So on and so forth, *matching.*
>
> ....
>
> Ladies and gentlemen, it's just worth considering. Take a look at it. *See what you think. Make your own determination.*[12]

(Emphases added.)

12 In his closing argument, Valentine attempted to rebut the State's presentation of the evidence:

> The DNA analysis, she seemed to really know her stuff. State's expert. They put her on. What did she testify to? Well, she testified to a lot with the State and she looked extremely uncomfortable, which was clarified on cross that, a lot of this, well, the peaks, there's a little bit of peak that sort of matches him. She was very uncomfortable about that because as she said on cross, that's not how it works. It's not reliable under a certain level. They can't say inside—for scientific certainty that it's even possible. It's even plausible, because they might get totally different results if they ran it again. That's why she was uncomfortable testifying to that.

Without reservation, we conclude the prosecutor's closing argument was improper. "[A] prosecutor may argue inferences from the evidence and offer conclusions on contested issues" during closing argument, but "[a] prosecutor may not argue facts or inferences not supported by the evidence." *Miller v. State,* 121 Nev. 92, 100, 110 P.3d 53, 59 (2005) (internal quotation marks omitted). Here, the State presented an expert witness to testify as to the DNA results obtained from the swab of the firearm. *See United States v. McCluskey,* 954 F. Supp. 2d 1224, 1253 (D.N.M. 2013) ("[J]urors can understand and evaluate many types of evidence, but DNA evidence is different and a prerequisite to its admission is technical testimony from experts to show that correct scientific procedures were followed." (internal quotation marks omitted)). The purpose of expert testimony "is to provide the trier of fact [with] a resource for ascertaining truth in relevant areas outside the ken of ordinary laity." *Townsend v. State,* 103 Nev. 113, 117, 734 P.2d 705, 708 (1987); *see also* NRS 50.275 ("If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert... may testify to matters within the scope of such knowledge."). But after presenting its expert to testify about a subject outside the ordinary range of knowledge for jurors, the State disregarded that testimony and invited the jury to make inferences that ***719** the expert testified were not supported by the DNA evidence. The

State asked the jury to consider evidence about which the expert was emphatic she could make no conclusions, save for her overall conclusion that the evidence was consistent with a mixture of at least two persons, at least one of whom was male. The State then asked the jury to compare the unusable profile to Valentine's DNA profile. This is precisely what the expert said she could not do because it would be unreliable. *See Hallmark v. Eldridge,* 124 Nev. 492, 500, 189 P.3d 646, 651 (2008) (holding that expert witness "testimony will assist the trier of fact only when it is relevant and the product of reliable methodology" (footnote omitted)). No evidence was introduced, statistical or otherwise, regarding the significance or meaning of the data that fell below the 200 threshold. To the contrary, the only evidence presented was that such information produced an unusable profile and was not considered by the expert. It is hard to imagine what weight could be ascribed to evidence that was described only as inconclusive, unusable, and incomparable. Rather, the State's use of the expert's testimony can better be viewed as taking advantage of the "great emphasis" or the "status of mythic infallibility" that juries place on DNA evidence. *People v. Marks*, 374 P.3d 518, 525 (Colo. App. 2015) (internal quotation marks omitted). Simply put, the prosecution argued facts not in evidence and inferences not supported by the evidence. This was improper.

We nevertheless conclude that the improper argument would not warrant reversal of Valentine's convictions because it did not substantially affect the jury's verdict. See *Valdez,* 124 Nev. at 1188-89, 196 P.3d at 476. There was evidence presented that Valentine handled the gun and multiple victims identified Valentine as the perpetrator. Thus, the error was harmless, and Valentine is not entitled to a new trial based on the prosecutorial misconduct.[13]

13 We have considered Valentine's remaining contentions of error and conclude no additional relief is warranted.

CONCLUSION

The district court abused its discretion in denying Valentine's request for an evidentiary hearing on his fair-cross-section challenge. We therefore vacate the judgment of conviction and remand for the district court to conduct an evidentiary hearing and resolve the fair-cross-section challenge. None of Valentine's other arguments require a new trial. Accordingly, if the district court determines on remand that the fair-cross-section challenge lacks merit, it may reinstate the judgment of conviction except as to the convictions for counts 4 and 9, which were not supported by sufficient evidence.[14]

14 This opinion constitutes our final disposition of this appeal. Any future appeal following remand shall be docketed as a new matter.

We concur:

Hardesty, J.

Silver, J.

Bail

1) Determinations regarding pre-trial custody must be made promptly after arrest. "Prompt" means a time frame commensurate with that which a defendant could post standard bail or the bail fixed in an arrest warrant, but no later than 24 hours following arrest, including non-judicial days.
2) Custody determinations must be made by a judge at an adversarial hearing, with the accused and counsel present.
3) At any hearing on pre-trial custody, prosecutors must *specify* whether they are seeking to detain an individual pre-trial. If so, prosecutors must establish by clear and convincing evidence that pretrial detention is the least restrictive means of assuring a defendant's return to court and ensuring community safety.
4) In order for a defendant to be detained pre-trial, the reviewing judge must make findings, on the record, that prosecutors established that the defendant poses an unmanageable risk of flight and danger to the community, and that no release condition or combination of conditions can satisfy concerns regarding flight risk and community safety.
5) The failure to hold a custody hearing within the time frame specified herein shall result in the immediate release of the arrestee.

Proposed by the Clark County Public Defender's Office

Chief Deputy Nancy Lemcke