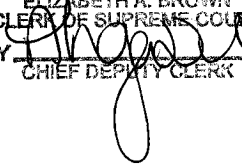


FILED

APR 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: THE COMMISSION ON
STATEWIDE RULES OF CRIMINAL
PROCEDURE

ADKT 0491

FIRST INTERIM REPORT AND RECOMMENDATIONS OF
THE COMMISSION ON STATEWIDE RULES OF CRIMINAL PROCEDURE

The Nevada Supreme Court convened the Commission on Statewide Rules of Criminal Procedure in early 2015 to address a lack of uniformity of criminal procedure rules across the state of Nevada. Commission membership is comprised of experienced legal professionals and members of the Nevada judiciary; the Commission is examining key criminal procedure concerns and making recommendations for improvement on a statewide level.

In January 2019, the Court appointed Justice James W. Hardesty to serve as chairperson of the Commission with Justice Abbi Silver and Justice Lidia Stiglich serving as co-vice chairs. Under this current leadership, the Commission held meetings on January 23, 2019; February 25, 2019; and March 21, 2019. From these meetings, the Commission has approved two recommendations for Nevada Supreme Court consideration.

- A. The Commission recommends the adoption of modifications to S.C.R. 250(4)(c), as presented by Exhibit A.
- B. The Commission recommends that Nevada join the approach taken by at least ten states¹ in adopting statewide rules governing the use of settlement conferences in criminal cases, as presented by Exhibit B. The Commission specifically intends to modify the standards governing the district court's participation in the plea negotiation process adopted in *Cripps v State*, 122 Nev. 764, 137 P.3d 1187 (2006), by the adoption of these rules.

¹In developing this recommendation, the Commission reviewed settlement conference statutes, rules, and procedures currently enacted in the following states: Alaska, Arizona, Colorado, Idaho, Kansas, Montana, New Mexico, Oregon, Utah, and Wyoming.

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Accordingly, the Commission on Statewide Rules of Criminal Procedure requests that the Nevada Supreme Court place this matter on its administrative docket and hold such public hearings as it deems necessary to consider the Commission's recommendations.

Respectfully submitted,

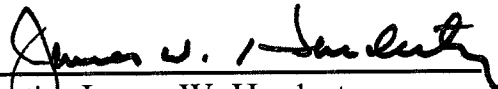

Justice James W. Hardesty

EXHIBIT A

Rule 250(4)(c) Notice of intent after filing of indictment or information.

No later than 30 days after the filing of an information or indictment, the state must file in the district court a notice of intent to seek the death penalty. The notice must allege all aggravating circumstances which the state intends to prove and allege with specificity the facts on which the state will rely to prove each aggravating circumstance. *A defendant may extend the time in which the state must file a notice of intent to seek death penalty by filing a written waiver no later than 30 days after the filing of an information or indictment.¹ If a written waiver has been filed, the state must file a written reservation of the right to seek the death penalty no later than 30 days after the filing of the waiver and a notice of intent to seek death penalty no later than 180 days after the filing of the waiver.*

¹*The purpose of allowing for this waiver is to provide additional time to gather potential mitigation evidence. Mitigation evidence may be provided to the State at the defendant's discretion to assist the State in its determination to file a notice of intent to seek the death penalty.*

EXHIBIT B

Criminal Settlement Conferences

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

- (1) In any criminal case before the district court, either party may request a settlement conference or the trial judge may, on its own, recommend that counsel with settlement authority participate in a settlement conference. A case will not be referred to a settlement conference if any party objects. The defendant must consent on the record or in writing before a case is referred to a settlement conference. In all cases, the settlement conference must not be before the trial judge. If settlement discussions do not result in an agreement, the case must be returned to the trial judge.
- (2) Beyond all else, participation in a settlement conference is voluntary by the parties and no party has any right to an offer, or may raise any claim from any fact or circumstance which occurs during the settlement conference, including but not limited to the bad faith of the parties in participating in the conference. Decision-making authority remains with the parties and not the settlement judge. The trial judge, the settlement judge, or any party may unilaterally terminate the settlement conference at any time
- (3) Settlement Conferences must, in all respects, be confidential and not reported or recorded.
- (4) Communications between settlement judge and the trial judge. The settlement judge and the trial judge must have no contact or communication except that the settlement judge may, without comment or observation, report to the trial judge:
 - (a) that the parties cannot reach an agreement;
 - (b) that the parties have reached an agreement, and the agreement reached may be reduced to writing, signed by the prosecuting attorney, the defendant and defense counsel, and submitted to the court for approval;
 - (c) that meaningful attempt to settle is ongoing; or,
 - (d) that the settlement judge withdraws from the further participation in potential settlements.
- (5) Should the settlement conference result in a settlement agreement, the terms of the agreement must be reduced to a Guilty Plea Agreement in accordance with NRS

174.063 and signed by the defendant, defense counsel (if any), and the prosecutor. The parties must file the Guilty Plea Agreement with the trial judge. Any party may withdraw from an agreement before the trial judge accepts the plea.

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