

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION ON STATEWIDE
RULES OF CRIMINAL PROCEDURE.

ADKT 0491

FILED

MAY 03 2019

*ORDER SCHEDULING PUBLIC HEARING
AND REQUESTING PUBLIC COMMENT*

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

On April 17, 2019, the Honorable James W. Hardesty filed a first interim report and recommendations of the commission on statewide rules of criminal procedure. The commission recommends the adoption of modifications to Supreme Court Rules (SCR) 250(4)(c). The proposed amendments are attached as Exhibit A. The commission also recommends the adoption of statewide rules governing the use of settlement conferences in criminal cases. The proposed rules are attached as Exhibit B.

The Nevada Supreme Court will conduct a public hearing on the petition on Monday, June 3, 2019, at 3:00 p.m. in the Nevada Supreme Court Courtroom, 408 East Clark Avenue, Las Vegas, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada.

Further, this court invites written comment from the bench, bar, and public regarding the proposed amendments. Comments may be submitted electronically or in hard-copy format to: Elizabeth A. Brown, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., May 24, 2019. Persons interested in participating in the hearing must notify the Clerk no later than May 24, 2019.

Hearing date: June 3, 2019, at 3:00 p.m.
Supreme Court Courtroom
408 East Clark Avenue
Las Vegas, Nevada 89101

Comment deadline: May 24, 2019, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 3rd day of May, 2019.


_____, C.J.

cc: Richard Pocker, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

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.