

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: THE COMMISSION ON  
STATEWIDE RULES OF CRIMINAL  
PROCEDURE

ADKT 0491

FILED

JUN 19 2020

*PETITION*

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
CHIEF DEPUTY CLERK

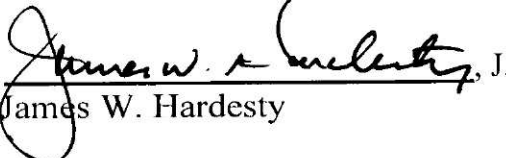
The Honorable James W. Hardesty, Associate Justice of the Nevada Supreme Court, petitions the Nevada Supreme Court on its administrative docket to consider amending S.C.R. 252(2)(e) to allow any judge, other than the settlement judge, to accept the defendant's plea as recommended by the Commission on Statewide Rules of Criminal Procedure. In support of the petition, petitioner asserts that:

1. 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.
2. 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.
3. On June 7, 2019, the Court entered an Order, in response to the Commission's recommendation, adopting rules to allow for settlement conferences in criminal cases.
4. The Commission on Statewide Rules of Criminal Procedure has continued to examine the success of criminal settlement conferences as outlined in the rule's enactment.
5. The Commission unanimously approves the recommendation that the Nevada Supreme Court amend the rule, as shown in Exhibit "A" attached, to allow any judge, other than the settlement judge, to accept the defendant's plea.

20-21854

Accordingly, petitioner on behalf 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 recommendation.

Respectfully submitted,

  
James W. Hardesty, J.  
James W. Hardesty

## EXHIBIT A

### **Rule 252. Settlement conferences.**

**1. Settlement conferences in civil cases.** At any time in any civil case, the parties may request or the court may order that the parties and their attorneys meet in person with a judge other than the judge assigned to preside over the trial and attempt to settle the case.

(a) Settlement conferences held pursuant to subsection 1 of this rule shall be held before a senior justice or senior judge or other judge who is amenable to hearing the case.

**2. Settlement conferences in criminal cases.** 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.

(a) 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.

(b) 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 that 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.

(c) Settlement conferences must, in all respects, be confidential and not reported or recorded.

(d) Communications between the 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 that:

(1) The parties cannot reach an agreement;

(2) 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;

(3) Meaningful attempt to settle is ongoing; or

(4) The settlement judge withdraws from further participation in potential settlements.

(e) 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, *but any judge, other than the settlement judge, may accept the defendant's plea.* Any party may withdraw from an agreement before ~~the trial judge accepts the plea~~ *the defendant's plea is accepted.*

(f) 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.