

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION
OF THE REVISED CRIMINAL RULES
OF PRACTICE FOR THE SECOND
JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA.

ADKT No. 470

FILED

NOV 15 2011

TRACEY L. LINDSEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER AMENDING THE CRIMINAL RULES OF THE SECOND
JUDICIAL DISTRICT COURT

WHEREAS, on September 28, 2011, the Honorable Connie Steinheimer, Chief Judge of the Second Judicial District Court filed a petition in this court seeking amendment of the Criminal Rules of Practice for the Second Judicial District Court; and

WHEREAS, this court has concluded that amendment of the rules is warranted, accordingly

IT IS HEREBY ORDERED that the Criminal Rules of Practice for the Second Judicial District Court are amended as set forth in Exhibit A.

IT IS FURTHER ORDERED that the amendments shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the State Bar of Nevada's official publication. The clerk shall publish this order by disseminating copies of it to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The

certificate of the clerk of this court that she has accomplished the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

Dated this 15th day of November, 2011.

Saitta, C.J.
Saitta

Douglas, J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Constance Akridge, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Laura Gould, Admissions Director, State Bar of Nevada
All District Court Judges
All District Court Clerks
Administrative Office of the Courts

EXHIBIT A

AMENDMENTS TO CRIMINAL RULES OF PRACTICE FOR THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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 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, 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 ~~[Washoe County Drug Court]~~ 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.

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

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 ~~[Washoe County]~~ 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.

* * *

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 ~~[15]~~ 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 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.

~~[(e)]~~ (d) If an evidentiary hearing is required by law or requested by a party or ordered by the court and [an-earlier] 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.

~~[(d) All motions shall be decided without oral argument unless requested by the court.]~~

(e) A legal memorandum in opposition to a motion shall be served and filed no later than ~~[5]~~ 10 days ~~[prior to trial]~~ 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. ~~[The]~~ 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.

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

~~[(h)]~~(i) 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.

(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 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 ~~Friday~~ 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 x 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. 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.

(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.

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 ~~[Diversion Court for all further proceedings]~~ the Second Judicial District Specialty Court; or

(3) at sentencing, order a defendant to complete ~~[Drug Court]~~ Second Judicial District Specialty Court as a condition of probation and transfer the case for that purpose. ~~[However, the sentencing department shall retain jurisdiction to decide all revocation proceedings.];~~

(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 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.