

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
Director and State Court
Administrator



JOHN McCORMICK
Assistant Court Administrator

MEETING SUMMARY COMMISSION ON NRAP

DATE AND TIME OF MEETING: April 30, 2025, 4 p.m.

PLACE OF MEETING: Remote Access via Zoom

Members Present:

| | | |
|--------------------------|-----------------------|-----------------------------|
| Chief Justice Herndon | Judge Tierra Jones | Judge Connie Steinheimer |
| Judge Tom Stockard | David Anthony | Scott Coffee |
| Mar DiGiacomo | Kate Hickman | Heather Proctor |
| Dave Neidert | | |
| GUESTS: | Nancy Lemcke | Randy Gilmer |

Call to Order, Welcome, and Announcements: Chief Justice Herndon welcomed everyone and called the meeting to order at 4:03 p.m. Justice Bell was unable to attend the meeting.

Roll Call and Determination of Quorum Status: Sharon Coates called the roll and a quorum was present.

Approval of Minutes of July 31, 2024, meeting: Chief Justice Herndon stated that he hoped everyone had a chance to review the minutes from the last meeting and asked if anyone had any edits or comments they wished to make. Marc DiGiacomo moved, and Heather Procter seconded to approve the minutes as presented. Motion passed unanimously.

Discussion items:

Subcommittee Reports

Qualifications and Training for Defense Counsel-Scott Coffee.

Scott Coffee gave the subcommittee report as Justice Bell and Chris Oram couldn't be there. The subcommittee proposes changing the attorney qualifications from three years of practice to five years. The subcommittee wanted to find a way to get attorneys SCR 250 qualified without incentivizing going to trial, since the goal in a capital case should be mitigation, not trial. **The proposed amendments are attached to the minutes as Exhibit A.**

He advised that it essentially breaks down to you must have been licensed to practice for five years and engaged in criminal practice as lead counsel in five felony trials, including one murder trial, tried to verdict. Language was added that in the event of conviction, it should be either through penalty phase or sentencing. The thought being that some penalty phase experience is better than none. Ten hours of CLE credit every two years in specialty training in capital representation is also proposed and is doable with courses like *Making the Case for Life* and DIDS' *Black Letter Murder* CLE offered last year. In addition, there are three different options, as lead or co-counsel proposed for a fourth requirement. (see 4 (i) through (iii)).

Chief Justice Herndon was concerned the amendments would make the requirements in an already overworked field harder to meet. Scott Coffee explained the two alternatives make it easier for attorneys to become SCR 250 qualified as negotiation and intensive practical training courses would be sufficient avenues of experience.

A lengthy discussion was held regarding the individual proposals, CLE, mitigation, and the estimate increase in SCR 250 qualified attorneys that may be expected from the changes.

Chief Justice Herndon asked David Anthony and Scott Coffee to meet and discuss the differences in making the CLE component three years versus two years and report back to the committee.

Timing and Appointment of Defense Counsel, Bill, and Advising Defendants who Hire Private Counsel—Judge Tierra Jones.

Judge Jones presented the proposed amendments to Rule 4(a) which are attached to the minutes as **Exhibit B.**

Judge Jones said there was some contention and discussion on the proposed amendment because the importance of appointing SCR 250 counsel may not be broadly known by the rural magistrates and justice court judges. Most of the time the courts are compliant, but it's usually accomplished in district court. Clark County has a death penalty committee, but the rural counties do not. Judge Jones said that she thought Mr. DiGiacomo was concerned about the proposed amendment.

Mr. DiGiacomo noted Clark County violates Rule 4(a) all the time. He said they do not have the ability to make a death penalty decision before the matters are heard in Justice Court. To address that, they have created a "Reservation of the Right to Seek the Death Penalty" form that is filed with every criminal complaint in a murder case. He further stated the proposed amendment will not do anything to solve the problem of not having enough SCR 250 qualified attorneys.

Chief Justice Herndon agreed that the proposed amendment would be very difficult for the Justice Court Judges to comply.

Scott Coffee suggested talking to the DIDS coordinator to get their perspective on the impact this would have on the rural counties and possibly find a way to tailor an amendment that helps them.

After a lengthy discussion on the implications of the proposed amendment, Chief Justice Herndon recommended rewriting the amendment to keep the language for appointing SCR 250 attorneys but remove the language precluding the death penalty if it's not declared in Justice Court.

Marc DiGiacomo spoke about the factors considered in the prosecutorial determination for seeking the death penalty. Kate Hickman raised concerns of the death penalty being used as a bargaining tool to pressure defense counsel and the defendants into accepting deals with the death penalty as a threat for not complying.

Chief Justice Herndon said it seemed the group felt there was not a need to have this type of requirement at the Justice Court level. Scott Coffee responded there should be some balance struck as there is mitigation that must be conducted on death penalty capital cases in Justice Court, so attorneys need some way to know if that will be necessary. Judge Jones said they would keep working on the draft amendment.

The next topic Judge Jones discussed was the addition of a new rule of admonishment in cases where it's possible the State may pursue the death penalty, and the defendant may have retained private counsel whom the court believes may not be death penalty qualified. A copy of the proposal is attached to the minutes as **Exhibit C**. The proposal addresses the possibility of the death penalty being pursued weighing the possible lack of attorney qualifications against the defendant's constitutional right to select their own attorney. There was a lengthy discussion about how often a capital murder defendant could truly afford to hire SCR 250 qualified counsel.

Judge Stockard suggested that a waiver form could be created that the retained attorney would have to go over with their client outlining the SCR 250 attorney standards and the fact they do not possess them. The defendant would have to acknowledge in writing they understood the risks of maintaining the retained counsel. The group then discussed concerns about lawyers who may not be completely truthful with their clients about their lack of qualifications. Randall Gilmer suggested this should be taken up by the State Bar Ethics Committee.

The group examined the ethics language concerning competent counsel and decided the unqualified lawyer should be required to file documentation under seal to the court acknowledging they are not SCR 250 qualified, and the reasons why they feel they can still fulfill their ethical obligations in providing competent counsel. Scott Coffee will take the lead in drafting that language.

Issues Related to Prosecutors and Judges—Chief Justice Douglas Herndon

Chief Justice Herndon presented an overview of the proposed Judicial and CLE qualifications, a copy of which is attached to the minutes as **Exhibit D**. He does not think the qualifications need to be tailored as strictly as attorney qualifications but having experience as the presiding judge in at least a certain number of felonies and jury trials, including murder is wise. He also stated that getting state sponsored CLE programs, like the court did with water law judges, on handling capital cases would be recommended to make sure we're getting judges in every district that are certified.

There was a discussion concerning the capabilities of different courts the Judges were working in to provide audio and visual transcripts alongside daily transcripts. Judge Steinheimer felt her court would really struggle due to a severe shortage of reporters.

Kate Hickman asked if the judicial requirements applied to those presiding over Justice Court and Chief Justice Herndon said no. Judge Stockard raised concerns about the rural courts struggling to properly handle these cases as some JPs are not attorneys. There was a discussion on how best to resolve this issue, but no clear answer was reached. Chief Justice Herndon cautioned that the rural JPs usually know everybody in the community, which makes it easier for them to appropriately handle 99% of their cases. When that infrequent homicide case comes in, it's different. He believes that SCR 250 was always geared toward the trial courts and if we start trying to regulate JPs, there will probably be pushback from the rural counties. They won't want to have to pay for a JP to come in from Las Vegas or Washoe to sit in for a preliminary hearing. He is not averse to discussing the issue but thinks it will involve more than what the rule was initially built around.

The consensus from the group was that Judges need to have presided over five felony jury trials including a murder trial to be SCR 250 qualified. If a sitting judge does not have those qualifications, a senior judge from Washoe or Clark County can be sent on loan for capital cases.

Mitigation and Execution—Judge Connie Steinheimer was unable to present the subcommittee's recommendations due to time constraints. A copy of the proposal is attached to the minutes as **Exhibit E**.

Upcoming Meetings: The next meeting will be scheduled after the Legislative Session.

The meeting was adjourned at 5:32 p.m.

ATTACHMENT A

Draft of Counsel Qualifications for Supreme Court Rule 250 Committee--Nov. 2024 meeting.

As the previous draft incorporated both proposed changes and then additional changes to those proposed changes, I thought it might be worthwhile to put together a draft without all the in between/back and forth variations.

To the best of my understanding the following is where we left things, with the proviso that to keep things consistent between sections I changed the term “counsel” to “An attorney”, also for clarity I switched the language in Sec. 2(b)(4)(i) from “...in at least two cases through plea and sentencing in which the death penalty was sought” to “...through plea and sentencing in at least two cases in which the death penalty was sought.”

Rule 250 - Procedure in Capital Proceedings

1. The scope and purposes of this rule. The provisions of this rule apply only in cases in which the death penalty is ~~or may be~~ sought or has been imposed, including proceedings for post-conviction relief from a judgment of conviction and sentence of death. This court places the highest priority on diligence in the discharge of professional responsibility in capital cases. The purposes of this rule are: to ensure that capital defendants receive fair and impartial trials, **including penalty phase**, appellate review, and post-conviction review; to minimize the occurrence of error in capital cases and to recognize and correct promptly any error that may occur; and to facilitate the just and expeditious final disposition of all capital cases.

2. Appointment and qualifications of counsel.

(a) Applicability. This section applies to all defense counsel including public defenders who are appointed to represent indigent persons in capital cases.

(b) Trial counsel. ~~Unless the district court determines pursuant to subsection (2)(e) that defense counsel otherwise has the competence to represent an indigent person in a capital case, a~~ An attorney appointed as lead counsel at trial at a minimum must have:

~~(1) acted as lead defense counsel in five felony trials, including one murder trial, tried to completion (i.e., to a verdict or a hung jury);~~

(1) been licensed to practice law and actively engaged in criminal practice for at least five years;

~~(2) acted as defense co-counsel in one death penalty trial tried to completion; and~~

(2) acted as lead defense counsel in five felony trials, including one murder trial, tried to verdict, including in the event of conviction, either penalty phase or sentencing.

~~(3) been licensed to practice law at least three years.~~

(3) in the past two years, completed a minimum of 10 credit hours of CLE training specifically focused on capital representation, a portion of which must be specifically related to the investigation and preparation of mitigation; and

(4) either:

(i) acted as defense co-counsel in one death penalty trial tried to verdict, including, in the event of conviction, either penalty phase or sentencing.

(ii) acted as defense counsel in three murder trials tried to verdict, including, in the event of conviction, either penalty phase or sentencing, and acted as

defense co-counsel through plea and sentencing in at least two cases in which the death penalty was sought, but which resolved prior to verdict.

(iii) acted as defense counsel in five murder trial tried to verdict, including, in the event of conviction, either penalty phase or sentencing and completed an intensive practical skills course in capital representation including training on jury selection and mitigation.

(e) ~~Counsel in post conviction proceedings in district court. Counsel appointed to represent a petitioner for post conviction relief in the district court must have acted as counsel in at least two post conviction proceedings arising from felony convictions and must otherwise satisfy the court that counsel is capable and competent to represent the petitioner.~~

(c) Counsel on direct appeal. An attorney appointed to represent an appellant on direct appeal must have:

(1) been licensed to practice law and actively engaged in criminal practice for at least five years;

(2) acted as counsel in at least five appeals arising from felony convictions, including one murder case; and

(3) in the past three years, completed a CLE course on capital appellate representation earning at least 10 credit hours

(d) ~~Counsel on direct and post conviction appeal. Counsel An attorney appointed to represent an appellant on direct or post conviction appeal must have acted as counsel in at~~

~~least two appeals of felony convictions and must otherwise satisfy the court that counsel is capable and competent to represent the appellant.~~

(d) Counsel in post-conviction proceedings in district court and on post-conviction appeal.

An attorney appointed to represent a petitioner for post-conviction relief in the district court or post-conviction appeal must have:

(1) been licensed to practice law and actively engaged in criminal practice for at least five years;

(2) acted as counsel in at least five post-conviction proceedings arising from felony convictions, including one murder case; and

(3) in the past three years, completed a CLE course on capital post-conviction representation earning at least 10 credit hours.

(e) ~~Exceptions. If an attorney does not satisfy the minimum requirements set forth in subsections (2)(b), (e), or (d) of this rule, or if the district court otherwise considers it warranted, the court shall hold a hearing to assess the attorney's competence and ability to act as defense counsel. The court shall thoroughly investigate the attorney's background, training, and experience and consult with the attorney on his or her current caseload. If satisfied that the attorney is competent and able to provide the representation, the court shall make that finding on the record and appoint the attorney.~~

(f) ~~Co-counsel. When the district court appoints defense counsel to provide representation at trial, it shall appoint two counsel, one of whom must be qualified under this rule to act as lead counsel in a capital case. When the court appoints defense counsel to provide representation in a direct appeal, a first post-conviction petition for a writ of habeas corpus,~~

~~or an appeal from such post-conviction proceeding, the court may only appoint one counsel who is qualified under this rule.~~

(e) Trial defense team. When the death penalty is sought, a minimum of two defense counsel shall be appointed to provide representation at trial, one of whom must be qualified under this rule to act as lead counsel in a capital case. Second counsel shall have been licensed to practice for at least 3 years and served as counsel in a minimum of 2 murder cases, including at least 1 of which proceeded to trial. Additionally, funds must be provided to retain a mitigation expert with experience in the preparation of capital mitigation, with the expectation that such expert shall be retained by the defense team within 90 days of the appointment of counsel.

(g) (f) Appointment of public defender. When the district court appoints an office of a public defender to provide representation in a capital case, any attorney assigned by the office to act as defense counsel shall prepare and file with the court the application form required by subsection (2)(h) of this rule.

(h) (g) Application forms and list of qualified counsel. Each judicial district shall maintain a list of qualified defense counsel and shall establish procedures to ensure that defense counsel are considered and selected for appointment to capital cases from the list in a fair, equal and consecutive basis. The judicial districts shall further arrange for the preparation and distribution of application forms to defense attorneys who wish to be included on the list. The forms must require specific information respecting the attorney's qualifications to act as defense counsel in a capital case and a complete statement of any discipline or sanctions pending or imposed against the attorney by any court or disciplinary body. Before

appointing any attorney to act as counsel in a capital case, the district court to which the case is assigned shall carefully consider the information in the attorney's application form.

[As amended; January 20, 2000.]

ATTACHMENT B

From: [Jones, Tierra](#)
To: [Coates, Sharon](#); [Bell, Justice Linda](#)
Subject: Submission from Timing Subcommittee
Date: Friday, September 13, 2024 1:20:36 PM
Attachments: [Timing Proposed Amendments.docx](#)
[draft of admonishment.docx](#)

[ATTENTION: This message originated outside of the Nevada Appellate Courts email system; please verify the identity of the sender.-- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

I have attached the documents to this email.

Here is what we have:

We are suggesting to add this timing clause in section 2(b), for appointment of trial counsel. Perhaps as the first sentence, before “An attorney appointed as lead counsel at trial at a minimum must have . . .”

Amendment to 4(a)

When the state seeks to initiate a charge of open or first-degree murder by the filing of a criminal complaint, the magistrate shall inquiry as to a potential intention to seek the death penalty. If counsel for the State indicates a potential intention to seek the death penalty, a death penalty qualified lawyer as required by this rule shall be appointed to serve as defense counsel during the preliminary hearing if the defendant is indigent. Appointed counsel must possess the qualifications specified in subsection 2(b) of this rule. Failing to declare a potential intention to seek the death penalty as required shall preclude the State from seeking the death penalty.

We are also proposing adding a new section, probably as no. 9, with no. 9 being changed to no. 10, for defendants who retain counsel if the attorney does not appear to meet the minimum qualification standards. SEE BELOW

9. Admonishment for defendant's who have retained counsel who does not meet the minimum qualifications under the rule. In those cases in which a defendant has retained counsel, but retained counsel does not appear to meet the minimum qualifications for trial in a capital case, the court should give an admonishment such as the following to the defendant:

“The State of Nevada has indicated that it may seek the death penalty in the event that you are convicted of first-degree murder.

You have stated that you intend to retain a private attorney to represent you for this case. You have a constitutional right to retain the attorney of your choice and the court will not interfere with that decision.

You are advised, however, that the attorney you have selected does not appear to meet the minimum requirements for defense counsel in a capital case. It is possible that you qualify for the appointment of an attorney to represent you. If you are unable to pay for the services of qualified

counsel, and would like counsel to be appointed, you would be entitled to have an attorney who meet the minimum qualifications that have been established for attorneys who handle death penalty cases.

Again, you have the constitutional right to retain, that is pay for, the attorney of your own choice, but if you would like to have an attorney who meets the qualifications for appointment in a capital case appointed on your behalf, you may inform the district court of this request. A hearing will be held outside the presence of the prosecutor to determine if your retained attorney meets the qualifications and whether you qualify for appointment of counsel."

Judge Tierra Jones

Eighth Judicial District Court

Department 10

200 Lewis Avenue

Las Vegas, NV 89155

Phone: (702) 671-4385

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TIMING

Amendment to 4(a)

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ATTACHMENT C

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Again, you have the constitutional right to retain, that is pay for, the attorney of your own choice, but if you would like to have an attorney who meets the qualifications for appointment in a capital case appointed on your behalf, you may inform the district court of this request. A hearing will be held outside the presence of the prosecutor to determine if your retained attorney meets the qualifications and whether you qualify for appointment of counsel.”

ATTACHMENT D

Rule 250 Commission

Judge / Prosecutor Subcommittee – Recommendations

As an initial matter, based on research done by the AG's Office through Heather Proctor, our Rule 250 appears to be pretty solid compared to the rules (or lack thereof) in other states.

Regarding prosecutors:

Rule 250 (4) (b-f) and (10) cover the applicable aspects of prosecutor issues such that no substantial modifications are being suggested.

We would point out however that some consideration should be given to addressing the time frame surrounding the filing of the notice of intent to seek the death penalty as contemplated under (4)© (30 days) as well as the extension deadline (180 days) where the defense has waived the 30 day initial timeline in order to provide potential mitigation evidence. Because of the volume of cases (at least in the south), both from the prosecution and defense side, those deadlines can be difficult to meet and a good, informed decision is better than a rushed one.

Judges:

We are suggesting a new section be added addressing qualifications of judges to hear capital cases. Similar to attorney qualifications, it would seem that before a judge should be presiding over a capital case, they should have tried at least 5 felony jury trials, including at least 1 murder trial, to completion. They should also have completed a course on Handling Capital Cases. We can look into getting a state sponsored CLE in place, much as we did in 2023 with our Water Law Program.

Other:

Section (2) re: Defense counsel:

We would also suggest amendment to the (2)(b)(2) requirement in that acting as defense co-counsel in at least one death penalty trial tried to completion can be a difficult requirement to meet for otherwise appropriate, competent counsel.

Additionally, we would suggest the (2)(b)(3) requirement be amended to being licensed at least 5 years.

Section (5) re: Procedure

(5)© needs to be amended to reflect the use of court audio / visual recording in addition to court reporting.

“If audio **or audio-visual** recording equipment is available, the district court may employ audio **or audio-visual** recordings **as backup to or** in lieu of a court reporter. If audio **or audio-visual** recording is used in lieu of a court reporter, the person responsible for the recording shall, **in capital cases:** give priority to **preparing** transcripts of pretrial **proceedings in capital cases;** furnish, as prescribed by the district court, **such the pre-trial proceeding** transcripts to the court and counsel prior to trial; and prepare, during trial **or post-conviction proceedings** (**do we need post-conviction proceedings to be part of DAILY transcripts?**) a daily transcript of all proceedings and deliver it to the court and counsel.”

****Suggested addition: With the permission of the district court, and upon a stipulation agreed to by counsel for both parties, the parties may waive the requirement of the preparation of daily transcripts, in whole or in part, during trial in exchange for receiving audio or audio-visual recordings of the daily proceedings on a digital storage device.”**

Section (8)(a) re: prebriefing conferences

Not sure what the logic of this was but it seems outdated and a cause of unnecessary work.

ATTACHMENT E

MEMORANDUM

TO: JUSTICE LINDA BELL
FROM: JUDGE CONNIE STEINHEIMER
SUBJECT: DRAFT LANGUAGE FOR DUTIES OF COUNSEL WITH RESPECT TO MITIGATION FROM RULE 250 SUB-COMMITTEE ON MITIGATION AND EXECUTION
DATE: SEPTEMBER 13, 2024
CC:

Supreme Court Rule 250 is amended to add a new section concerning mitigation as SCR 250(3), to be inserted between the current sections 2 and 3, with the numbering moved down thereafter;

3. Duties of counsel with respect to mitigation

(a) General duties. Defense counsel shall be familiar with and guided by the performance standards in the 2003 American Bar Association (ABA) Guidelines for the Appointment of and Performance of Defense Counsel in Death Penalty Cases, the 2008 ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, the 2008 Nevada Indigent Defense Standards of Performance for Capital Case Representation and Appellate and Post-Conviction Representation, and any other state or ABA guidelines that amend or replace these standards. Defense counsel shall retain, consult, and supervise the work of the defense team, including, but not limited to, mitigation specialists and experts. The defense team must conduct an ongoing, exhaustive and independent investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than death. Defense counsel shall determine whether the client needs an interpreter and, if so, take steps to secure one without delay for the duration of the proceedings.

(b) Special responsibilities relating to the representation of foreign nationals. Defense counsel at every stage of the case shall make efforts to determine whether any foreign country might consider the client to be one of its nationals. Defense counsel shall promptly advise the client of their right to communicate with the relevant consular office and obtain the consent of the client to contact the consular office. In cases where counsel is unable to secure informed permission, professional judgment should be exercised to determine whether it is nevertheless appropriate to inform the consulate. Defense counsel should discuss what special assistance the consulate may provide and to research, consider, and preserve any legal right the client may have on account of foreign nationality status. Defense counsel shall also conduct culturally competent investigations and case preparation as well as utilizing appropriate expert assistance.