EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE ADMINISTRATIVE MATTER REGARDING JURY TRIAL SETTINGS, CONTINUANCES, CALENDAR CALL AND CIVIL REASSIGNMENT CALENDAR	Administrative Order: 21-09 ADKT 0555

Due to the Covid-19 pandemic, the Eighth Judicial District Court is experiencing a significant backlog and delay in the disposition of civil trials. The Eighth Judicial District Court and the Nevada Supreme Court are working collaboratively to stress to Judges and attorneys the seriousness of the backlog, the adverse effect on the litigants and the importance of resolving matters in a safe, timely, and efficient manner. Notwithstanding the efforts of the bench and bar, however, the backlog has grown requiring additional initiatives to effectively resolve civil cases pending in the Eighth Judicial District. One useful case management tool is the use of a civil reassignment calendar, particularly where, as here, judicial resources are available to assist in the trial of pending, overflow civil cases. As outlined in this order, any case ready to go to trial but unable to be tried by the trial judge to whom the case is presently assigned will be reassigned to an available trial judge to ensure the prompt and timely disposition of civil cases.

The Nevada Constitution provides in Article 3, § 1 that, "The powers of the Government of the State of Nevada shall be divided into three separate departments, - the Legislative, - the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to

either of the others, except in the cases expressly directed or permitted in this constitution." The Nevada Supreme Court has also found that "In addition to the constitutionally expressed powers and functions of each Department, each (the Legislative, the Executive, and the Judicial) possess inherent and incidental powers that are properly termed ministerial. Ministerial functions are methods of implementation to accomplish or put into effect the basic function of each Department." *Galloway v. Truesdell*, 83 Nev. 13, 21, 422 P.2d 234, 237 (1967).

The judicial power is vested in the state Court system comprised of the Nevada Supreme Court, the Nevada Court of Appeals, District Courts, Justice Courts and Municipal Courts. Nev. Const. art. VI, § 1. The Nevada Constitution expressly recognizes the Chief Justice as the administrative head of the Court system. Nev. Const. art. VI, § 19. By expressly identifying the Chief Justice as the Court system's administrative leader, the Chief Justice has "inherent power to take actions reasonably necessary to administer justice efficiently, fairly, and economically." *Halverson v. Hardcastle*, 123 Nev. 245, 260, 163 P.3d 428, 439 (2007). Consequently, the Nevada Supreme Court, "through the Chief Justice, has the ultimate authority over the judiciary's inherent administrative functions." *Id.* at 260, 163 P.3d at 439.

Subject to the oversight and approval of the Chief Justice of the Nevada Supreme Court, the Chief Judge of the Eighth Judicial District Court supervises the District Court calendar, and reassigns cases as convenience or necessity requires, assuring the Court's duties are timely and orderly performed, and otherwise facilitating the business of the District Court. Nev. Const. art. VI, § 19; NSCR 16(3). Further, the Chief Justice shall expedite judicial business, equalize the work of district judges,

and provide for the assignment of any district judge to another district court to assist a judge whose calendar is congested. NRS 3.040(2).

This order continues the District Court's response to the COVID-19 pandemic. For purposes of clarity and to avoid confusion, this Order supersedes and amends, in part, AO 21-04 with respect to the setting, continuances, calendar call, and reassignment of civil jury trials and except where otherwise noted, this order takes effect upon filing.

Setting Trials

The Judges of the Eighth Judicial District Court are required to follow the Eighth Judicial District Court rules regarding the setting of civil jury trials as follows:

EDCR 1.90(b)(1) provides "It is the clear responsibility of each individual trial judge to manage the individual calendar in an efficient and effective manner. Each judge is charged with the responsibility for maintaining a current docket."

NRCP 40 requires "[t]he judicial district must provide by local rule for scheduling trials. The court must give priority to actions entitled to priority by statute."

EDCR 1.90(b)(4) requires cases to be "set for trial no later than 6 months from the date of the discovery cut-off date."

EDCR 1.90(b)(6) requires that "[e]ach department must set a minimum of 10 cases for each full week of a trial stack." For a five-week stack, this would be 50 cases. The rule further provides: "In determining the maximum number of cases to set, the judge should consider the following factors: the length of time between the filing of the trial order and the trial date, length of trial and fallout, or dispositions expected before trial date."

Continuing Trials

Additionally, Judges of the Eighth Judicial District Court are required to follow and enforce the Eighth Judicial District Court rules regarding the continuance of trials:

EDCR 1.90(b)(5) requires trials "shall go forward on the trial date or within the trial stack originally set, unless the court grants a continuance *upon a showing of good cause.* No trial shall be continued pursuant to stipulation of the parties without approval of the judge. At the time the continuance is granted, the judge must set a new trial date. The new trial date shall be set at the earliest available date within 9 months of the original trial date." (Emphasis added.)

EDCR 7.30(a) allows any party for good cause to request a continuance of trial. "A motion for continuance of a trial must be supported by affidavit except where it appears to the court that the moving party did not have the time to prepare an affidavit, in which case counsel for the moving party need only be sworn and orally testify to the same factual matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion."

EDCR 7.30(b) provides that "[i]f a motion for continuance is made on the ground that a witness is or will be absent at the time of trial, the affidavit must" include the name and address of the witness, the location of the witness, how long the witness has been absent, what efforts have been made to procure the witness, the expected testimony of the witness, and how long the declarant has known they would be unable to secure the deposition or attendance of the witness.

EDCR 7.30(c) provides that "if a motion for continuance [of a trial] is filed within 30 days before the date of the trial, the motion must contain a certificate of counsel for the movant that counsel has provided

counsel's client with a copy of the motion and supporting documents. The court will not consider any motion filed in violation of this paragraph and any false certification will result in appropriate sanctions imposed pursuant to Rule 7.60."

EDCR 7.30(f) prohibits trial settings to be vacated by stipulation. Trial settings may only be vacated by an order of the court granting a continuance upon a showing of good cause. "The party moving for the continuance of a trial may obtain an order shortening the time for the hearing of the motion for continuance. Except in an emergency, the party requesting a continuance shall give all opposing parties at least 3 days' notice of the time set for hearing the motion. The hearing of the motion shall be set not less than 1 day before the trial."

EDCR 7.40(c) provides that "no application for withdrawal or substitution [of counsel] may be granted if a delay of the trial or of the hearing in any other matter in the case would result."

EDCR 2.69 requires trial counsel to appear at calendar call with exhibits, jury instructions, original depositions, proposed voir dire questions, and any special equipment needed for trial. "Failure of trial counsel to attend calendar call and/or failure to submit required materials shall result" in possible dismissal/default judgment or other sanctions.

Calendar Call and Civil Reassignment Calendar

At calendar call, each judge shall set any trial that is ready to go forward even if other cases are set for trial at the same time. EDCR 1.74 provides that "[m]ore than one case may be set to be heard for trial at the same time or the same date." Any continuance granted must follow the

Eighth Judicial Court Rules, including clear findings of good cause for the continuance made in writing or on the record.

The trial judge should prioritize trials based on age, trials with priority settings, more complex matters, lengthy trials, and/or cases with a significant history of motion practice. The Chief Judge or Presiding Civil Judge may reprioritize cases in a department if necessary to ensure that the more involved matters are heard by the assigned trial judge.

Following calendar call, at least ten calendar days prior to the start of the trial stack, the trial judge shall provide a list of all trials set in the judge's department for that trial stack to the Chief Judge and the Presiding Civil Judge. After a case is set for trial, the case shall only be continued upon written motion and a finding by the Judge of extraordinary circumstances.

On the first business day of each week, any trial judge with multiple civil trials set to start the following week must provide a list of those cases to the Chief Judge and the Civil Presiding Judge and indicate which case the trial judge intends to retain for trial. The remaining cases will be placed on a weekly civil trial reassignment overflow calendar on Thursday at 9 a.m. The weekly civil trial reassignment calendar will be heard by the Chief Judge, Presiding Civil Judge, or another judge appointed by the Chief Judge to hear the calendar. At that calendar, the trials will be reassigned to judges in the civil/criminal division who are not presiding over trials. The assignment priority will focus on judges with the fewest trials conducted in the preceding twelve months. Per Supreme Court Rule 48.1(5), no peremptory challenges will be permitted. While no peremptory challenges are allowed by rule, the Chief Judge may develop procedures to be used for the reassignment of judges consistent with this order.

EDCR 1.80 provides that "overflow judge or judges may be selected by the chief judge when appropriate. When a district judge is not presiding at the trial of a case, that judge shall take an overflow case of any type or description which the chief judge might assign to her or him."

NSCR 48.1(5) provides "A notice of peremptory challenge may not be filed against any judge who is assigned to or accepts a case from the overflow calendar . . . ."

Once reassigned, the case will remain in the new department.

Settlement of Cases Prior to Trial

If a case has settled, the parties must provide a written stipulation and order to dismiss or, by consent, enter the agreement in the minutes in the form of an order all pursuant to EDCR 7.50. *See Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) (concluding that enforcement of a stipulation will be enforced if it is entered as a minute order or is in writing and subscribed to by the party against whom the stipulation is alleged); *Humana, Inc. v. Nguyen*, 102 Nev. 507, 509, 728 P.2d 816, 817 (1986) (stating that trial court could not properly consider an agreement that is neither reduced to a signed writing nor entered by consent as an order); *Power Co. Inc. v. Henry*, 130 Nev. 182, 188, 321 P.3d 858, 862 (2014) (holding that a case has been brought to trial within the meaning of NRCP 41(e) when parties entered into a binding settlement agreement that resolves all of the pending issues in the action). If the parties do not provide the court with a stipulation and order to dismiss the case prior to the time of trial but represent on the record that the case has settled, the trial judge shall set a status check to be conducted within 21

days to ensure that settlement documents are provided promptly and the case is dismissed.

Final Provision

This order shall be reviewed no later than December 31, 2022, and shall remain in effect until modified or rescinded by a subsequent order.

Dated this 30th day of December, 2021

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Linda Marie Bell
District Court Chief Judge
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Linda Marie Bell
District Court Judge

James W. Hardesty
Chief Justice
Nevada Supreme Court