

**MINUTES OF THE 2019-2020 INTERIM
NEVADA SENTENCING COMMISSION**

September 25, 2019

The meeting of the Nevada Sentencing Commission was called to order by Chair Hardesty at 10:03 a.m. at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via videoconference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada.

Exhibit A is the Agenda, and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (CARSON CITY):

Justice James Hardesty, Nevada Supreme Court; Chair
John Arrascada, Washoe County Public Defender
Christine Jones Brady, Second Assistant Attorney General, Office of the Attorney General
Christopher DeRicco, Chairman, Board of Parole Commissioners
Keith Logan, Representative of the Sheriffs' and Chiefs' Association
John McCormick, Assistant Court Administrator, Administrative Office of the Courts

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department; Vice Chair
Senator Nicole Cannizzaro, Senatorial District No. 6
Senator Keith Pickard, Senatorial District No. 20
Assemblyman John Hambrick, Assembly District No. 2
Assemblywoman Rochelle Nguyen, Assembly District No. 10
Russell Marsh, Representative of the State Bar of Nevada
Kimberly Mull, Victims' Rights Advocate
Jon Ponder, Representative, Offender Reentry
Tod Story, Executive Director, ACLU of Nevada, Inmate Advocate
Dr. Tiffany Tyler-Garner, Ph.D., Director, Department of Employment, Training and Rehabilitation
Judge Michael Villani, Eighth Judicial District Court

COMMISSION MEMBERS EXCUSED:

Anne Carpenter, Chief, Parole and Probation
Judge Scott Freeman, Second Judicial District Court
Christopher Hicks, Washoe County District Attorney
Darin Imlay, Clark County Public Defender
Dr. Elizabeth Neighbors, Ph.D., Division of Public and Behavioral Health
Dr. Emily Salisbury, Ph.D., Gubernatorial Appointee

STAFF MEMBERS:

Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau

Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau

Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

Justice James W. Hardesty (Nevada Supreme Court; Chair):

I will now open the second meeting of the Nevada Sentencing Commission. I would like to welcome everybody to this important meeting. The next item on the agenda is public comment. Seeing none, we will proceed with item IV. Are there any edits or comments to the meeting minutes of August 16 (Agenda Item IV)? Seeing none, is there a motion to approve?

MR. MCCORMICK MOVED TO APPROVE THE MINUTES OF THE AUGUST 16, 2019 MEETING OF THE NEVADA SENTENCING COMMISSION.

MR. ARRASCADA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Hardesty:

The primary purpose of today's meeting is to address the possibility of the selection of the Executive Director of the Department of Sentencing Policy. Prior to this meeting, I had the opportunity to discuss with Mr. Callaway, Vice Chair of the Commission, along with Mr. DeRicco, who is working with the Governor to stand up this new Department, and Mr. Anthony processes that are utilized by the Judicial Selection Commission, a constitutionally created commission that conducts interviews and selections of those persons who seek to be appointed to a judgeship when a vacancy occurs in a district court seat. That process has been tested over time ever since the Constitution was amended that created the selection commission. That commission has adopted a set of rules that outline the manner in which they conduct interviews and the process by which they evaluate applicants and the procedures that they consider when they are transmitting names to the Governor. They also utilize certain selection and tally sheets. I took it upon myself to draft from that working document a set of rules, basically two with subparts, for this Commission to consider adopting as the basis for our consideration, interview and selection of nominees for the position of Executive Director of the Department of Sentencing Policy. I thought it would be useful for us to have a set of guidelines, so in our

materials you have a draft entitled “Executive Director Selection Process” (Agenda Item V A-1). That draft includes two attachments. One is a tally sheet (Agenda Item V A-2) and the other is a ballot form that has been arranged to take into account the two applicants we have here today (Agenda Item V A-3). I think it’s worthwhile to have a structure, so I tender this to the Commission and would invite comment. If you are supportive of this idea or wish to make edits, we can do that, but ultimately my objective here was to adopt a set of rules, ballot sheets and tally sheets that could be used now and, perhaps if needed, in the future for handling this selection process. Does anybody have any questions or comments about the rules and the procedures that are outlined in the attachments?

Dr. Tiffany Tyler-Garner, Ph.D. (Director, Department of Employment, Training and Rehabilitation):

Thank you for your commitment to this process and offering this framework. One question I have is, was there any expectation that the position be based in Carson City, or was that just how the pool evolved organically?

Chair Hardesty:

I don’t know what individual Commissioners’ expectations were, but my belief would be that it’s a statewide seat. We would have facility issues. There perhaps is more space in Carson City than there is in the Sawyer Building. I don’t know, but I don’t think there was any limitation in the posting for location.

Christine Jones Brady (Second Assistant Attorney General, Office of the Attorney General):

I just wanted to note for the record that I work at the Attorney General’s Office with Mr. Hough. I don’t believe that there is a conflict of interest for me or that it would impact my judgment in this matter at all, but I wanted to let the Commission know that.

John McCormick (Assistant Court Administrator, Administrative Office of the Courts):

I also just wanted to put on record that both Ms. Malone and I work at the Nevada Supreme Court. However, I don’t think we interact in any sort of substantive way that would impact my decision-making ability.

Chair Hardesty:

I appreciate those disclosures. I’d like to return the group to the consideration of the selection process rules. If there are no questions or edits, I’d like to entertain a motion that the Commission adopt these rules and the ballots and tally sheets as the procedure for selecting an Executive Director position.

MR. LOGAN MOVED TO ACCEPT THE RULES AS WRITTEN.

MR. ARRASCADA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Hardesty:

All right, those will be adopted as the format for the process or the procedure that we use to conduct this selection process. I'll move now to agenda item VI. We have two applicants who have applied, which is fewer than the number of applicants that the statute expects us to transmit to the Governor. Under rule 2(b), if there are 3 or fewer qualified applicants, the Commission is presented with a choice. I would like to review those. We can either refer all the names to the Governor for consideration without taking a vote on the merits; we can postpone the interviews and selection process to solicit additional applicants to secure three or more; or we can, by a two-thirds vote, disqualify all applicants and begin the application and selection process anew. Before we get into any interviews with Mr. Hough and Ms. Malone, I think the Commission should discuss these options.

As you know, the posting period for this position was about 3 weeks. I did get one publication or notification through the State Bar email, but I am a little bit concerned about the breadth and extent to which the applications were made known to the public. To the comment earlier about north/south or location of the position, I think that is another issue that should be considered. I mean no disrespect to the two applicants. Both have exceptional backgrounds, but in the judgment of the Chair, I would suggest that the Commission consider postponing the interviews and extending the application period for another month. I realize and respect the fact that the statute requires us to convey to the Governor our choice before October 1 so that the Governor, which the statute actually provides, is supposed to select by October 1. Well, neither one of those can occur, practically speaking. I think the statute created an ambitious process. I'm weighing that requirement against the importance of this position and its role in this Commission's work. As I said, we are fortunate to have two excellent people who have submitted their applications, but I'm wondering if we shouldn't extend the period. I would like to begin with that discussion and get the thoughts of other Commissioners.

Christopher DeRicco (Chairman, Board of Parole Commissioners):

When I was tasked with putting this together by way of the Governor's Office, I just wanted to put out there that the Governor's Office had provided the assistance of the Finance Office in order to undertake finding space and working to get computer equipment and desks and everything. From the initial process, that was all indicated that that position

would be up in Carson City. In fact, to date, I've probably been on about seven site visits with Buildings and Grounds, and not to mention with the Governor's Finance Office and Enterprise Information Technology Services (EITS) as well for computer and office equipment. Where that stands right now is there is a location here in Carson City that is in the process of being moved forward on. There needs to be a little bit of an additional buildout. That process is working its way through. I did want to let you know that the Governor's Office was the ones that provided me with contacts up north for this position to move forward with in order to find space and a location for this new Executive Director.

Chair Hardesty:

Any comments or suggestions about how we should proceed under rule 2(b)?

Senator Nicole Cannizzaro (Senatorial District No. 6):

I would tend to agree. I think that perhaps a bit more time and publication for this particular position, given the seriousness of what we're trying to task this individual with, would be good. I don't mean that—I think I would agree with you, Justice, to in any way take that as a comment on the two applicants. I think they're both very qualified, but certainly I would want to make sure that we did leave this open so that if anybody were interested, they could apply. That would just be my preference.

Ms. Brady:

I have a question. So then, based on what Mr. DeRicco said, the Governor is contemplating this up north? I'm not sure if I heard that correctly.

Mr. DeRicco:

In this process, when it was getting going through myself and other agencies, the Governor's Finance Office was overseeing the location and the office space for this position. Nothing was ever talked about with Las Vegas. It was provided that that position—the only search has been in Carson City. I can't say that it was never stated it wouldn't be down south, but certainly it was directed and that process only went forward in Carson City with the anticipation of that being the case for this position, although never pointblank saying Carson City. The people that I was put in contact with directly indicated that the search expanded to Carson City only for this position and to be close to this area here, and that's what has been done thus far.

Senator Keith Pickard (Senatorial District No. 20):

I tend to lean in the same direction, that I don't know that 3 weeks was sufficient notice. I think that there are many ways of getting the word out and getting qualified applicants, not that—again, I share the thought that these two applicants appear quite qualified, but on the flipside, we want to make sure that, to the best of our ability, we follow the statute.

They're not guidelines; they're commands in many respects. I have not reviewed the statute. I'm wondering, is there language that allows us the flexibility, or is this a mandate that we are required to follow, and so we ignore it at the peril of—not that there are probably any teeth in it. Often there are none, but is there language in the statute that allows us to take this action without actually being in violation of the statute?

Chair Hardesty:

I'll defer that question to Mr. Anthony. I have a viewpoint about it, but I would first defer to Mr. Anthony, if he would point to the language in the statute, and then I'll address that issue. I would comment, though, that I think the Commission is not ignoring the statute in any way. The Commission is confronted with a pragmatic problem of a requirement that we forward three names, and we don't have sufficient applicants to be able to accomplish that objective, so I don't want anyone to suggest we are flaunting the statute or ignoring it.

Senator Pickard:

Before his response, I didn't mean "ignore" in terms of the derogatory interpretation of the word as much as just that we're passing over it. Hopefully there is some language in the statute that allows us that authority.

Nicolas Anthony (Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):

You are correct, Mr. Chairman, in that the statute as prescribed by Assembly Bill (AB) 80 of the 2019 Session does require this body to submit a list of 3 persons for the Executive Director to the Governor. With that said, the timeline that was set out in AB 80, the bill became effective upon passage and approval for purposes of preparatory tasks, including selection of the Director, with a default date becoming effective October 1 in its entirety. The statute does not say that the Executive Director must be appointed and up and running by October 1. The statute merely becomes effective on that date. I would opine that there is flexibility there for this Commission given the fact that there are not three applicants currently. That would be my opinion, Mr. Chair.

Chair Hardesty:

Okay, thank you. Any questions, Senator Pickard or other members of the Commission, based on Mr. Anthony's comments?

Senator Pickard:

Thank you, Mr. Chair. No, that satisfies me. As I said, I have not had a chance to review the statute in that context. That satisfies me. Thank you.

Chair Hardesty:

Any other Commissioners with any comments?

Judge Michael Villani (Eighth Judicial District Court):

I agree with Senator Cannizzaro that we should extend the period of time in which applications can be submitted. I think we should have more applicants. Also, I have a question. Is it appropriate for the Commission to reach out to the various district attorneys' offices or public defenders' offices as well as the criminal defense bar organizations to advise them of this position? I know it's posted, but oftentimes people don't look for the post and aren't even aware of the application process that's pending at this time.

Chair Hardesty:

Judge, I certainly hope it's appropriate because I've been doing that. Yes, I think so. I think, as Commission members, we should do everything we can to make the public and legal organizations aware of the opportunity that this presents.

Russell Marsh (Representative of the State Bar of Nevada):

My only question was whether while we have these applicants here we should go forward with the interviews or interview everybody at once if we are going to postpone. That was the only issue I wanted to raise.

Chair Hardesty:

What would be your personal preference?

Mr. Marsh:

I think initially I had thought that while they were here we should interview them, but thinking at it a little bit further, I think it might make sense to talk to everybody at the same time so that they all have an equal chance.

Chair Hardesty:

I think I share your view on that.

Dr. Tyler-Garner:

Just a comment. I would affirm extending the timeline to allow for a larger candidate pool. Given the fact that we have also maybe declared some perceived conflict of interest, being able to manage even that perception. I think it would be helpful to extend the pool.

Chair Hardesty:

Is that a motion?

DR. TYLER-GARNER MOVED TO EXTEND THE APPLICATION DEADLINE.

ASSEMBLYWOMAN NGUYEN SECONDED THE MOTION.

Kimberly Mull (Victims' Rights Advocate):

I was curious if there is anything in the statute that precludes us from doing a nationwide search for candidates or if we are just looking within the State of Nevada.

Chair Hardesty:

I know of nothing in the statute that limits the scope of the search. Mr. Anthony, do you know of anything different from what I have commented about? Except that it has to be a Nevada attorney. I think there is that requirement. There are lots of Nevada attorneys who are practicing in other jurisdictions that are admitted to the Nevada Bar, but the statute does require that the position be a Nevada-licensed attorney.

Mr. Anthony:

That is correct, Mr. Chair. That is the only requirement I am aware of is that they must be licensed to practice in the State of Nevada.

Chair Hardesty:

Are there any other comments on the motion? Dr. Tyler-Garner, you didn't specify a time. I had suggested an additional 30 days. Would that be acceptable to you?

Dr. Tyler-Garner:

Yes.

Chair Hardesty:

And Assemblywoman Nguyen, would that be acceptable to you?

Assemblywoman Rochelle Nguyen (Assembly District No. 10):

Yes.

Chair Hardesty:

Then I will treat that as an amendment to the motion that we will extend the posting period for an additional 30 days from now.

THE MOTION PASSED UNANIMOUSLY AS AMENDED.

Chair Hardesty:

I would like to ask Ms. Malone and Mr. Hough to come forward to the podium. They have been sitting here listening to this discussion. I don't want to completely waste their time today, but I would like to introduce to the Commission Ms. Malone and Mr. Hough, thank them for appearing here today and for their applications. As the Commission members noted, extending the application period is no reflection on you. I think you heard those comments. I don't want to be disrespectful, but we would like to have everybody interviewed at the same time if we get additional applications. I hope that you will both consider continuing your application until we next meet. Thank you both very much for being here today, and my apologies for the interruption in the process, but we are going to get to it, I hope, pretty soon.

Commission members, I had on the agenda item VII, a discussion concerning recommendations to the Governor for the appointment. That will no longer be necessary. We will proceed with item VIII. As to item VIII, I would like to defer item VIII until after our next meeting. I will schedule that meeting through a doodle poll with our staff once we have completed the posting period. I did want to offer an opportunity to any Commission members to offer any comment if they have any at this time about future topics. We certainly have a significant amount of time available to us between now and July 1 when the amendments to the statutes go into effect from AB 236, but there are several significant issues I think we need to place on the agenda for discussion that flow from previous Sentencing Commission meetings. I would expect to incorporate that list into this agenda item for our next meeting. I would expect our next meeting would be sometime around the end of October or the first couple of weeks of November. We will try to get a doodle poll out to all of you within the next few days to secure that date. Are there any general comments from Commissioners before we consider final public comment and adjournment?

John Arrascada (Washoe County Public Defender):

I was wondering if we should provide staff any direction as to publicizing the opening and reaching out to cast, in essence, a broader net than has been already cast.

Chair Hardesty:

I would ask Mr. DeRicco to comment on the process for state posting, and that has been handled through the state. I know that they go through a procedure and have fairly broad dissemination, but I think frankly the point that Mr. Pickard and Judge Villani and others made is that this needs to get into the professional associations' hands so that they can disseminate it. I'm not sure that those associations were targeted with this information. Mr. DeRicco, would you provide an overview of the process used by the state on these state postings?

Mr. DeRicco:

What I can tell you is this: once again working with the Governor's Finance Office, who in turn worked with state human resources, it was posted and opened as any other state position would be posted. Certainly now with the vote today, I will make sure that I get it posted. I'm going to try to get it reposted today, if I can, for an additional 30 days. I was looking at the calendar. If that is able to happen for another 30 days, that would actually put us to October 25, which is the Nevada Day holiday which is observed, and certainly that may not be the best day if it is that date, so if I can do that, I will probably see if I can have it close on October 28. With that said, we will need additional time to secure those applications and then not only post the agenda and timelines within statute. I know you mentioned the next meeting would likely be late October or early November. It is more likely the first or second week of November by the time everything is done and completed that needs to be followed.

Chair Hardesty:

Okay. With respect to dissemination, I would certainly welcome all of the Commissioners reaching out to these associations. I know we circulated a copy of the job description (Agenda Item VIII). We will do that again. To the extent that any of you are able to disseminate that to groups or organizations that you think might have interest in this position, we can also urge you to do that as well. I will reach out to the State Bar to do another couple of email blasts, and I will also ask the District Attorneys Association and the Criminal Defense Association to also circulate the job description.

Mr. DeRicco:

One additional thought that I think I better bring up right now: in the last application itself, we actually listed a day and a time of the hearing so that those individuals would have notice to be present. If that is something we want to do again, we would likely want to figure out that day and time here today for that next meeting so that it can be put in that job announcement so they can be available for that hearing. It's just a thought that I had.

Chair Hardesty:

I don't know if everybody has their calendars here. That is certainly a good point. I don't know what everybody's availability would be on November 12 or November 13. Do you all have your calendars with you? How does everyone's availability look for November 12 or November 13? We would need to check the availability of a room both here and in Las Vegas.

Assemblywoman Nguyen:

November 13 works better for me.

Chair Hardesty:

Okay. Let me ask if people can raise their hands. Would everybody be available on November 13? Could you raise your hand if you would be? That looks pretty good. We will have, of course, other Commission members who couldn't be here today that might be available then. Wait, we have a staff problem. We have room issues on November 13. How many of you would be available to attend—do you have a facility issue on November 14 or November 15? Both are good. How does everybody's calendar look on—would everybody be available at 9 or 10 a.m. on November 15? If you are, could you raise your hand? Not so good in Las Vegas. How about November 12? Those of you that would be available on November 12? Better. Let me try one more effort, November 8. Is there space on that date? Only in the morning. How about 9 a.m. on November 8? Would you be available at 9 a.m. on November 8? Well, it's not great, but November 8 or November 12 looks like the better days. I don't want to go into Thanksgiving week. I think that's really a mistake. I'll try one more date. November 6 or November 7 is going to be pretty tight if we end this. I don't think we'd be able to get it posted consistent with the Open Meeting Law requirements. November 11 is a court holiday and a state holiday, Veterans Day.

Mr. DeRicco:

Just so that we have what we used the last time, we closed the application on September 18 and here we are having this meeting on September 25, which is 1 week later. Depending upon when the application actually closed, we could do it 7 days later and still be within statute, but 8 to 9 days would probably be better just to afford more time to get everything done and not to be under the gun. With that said, if we were to happen to close, let's say, on October 28, we could probably do something around November 7 or November 8 and get that taken care of. I just wanted to bring that up.

Chair Hardesty:

Let me just try one other day, and that would be the afternoon of November 7, say, at 1:30 p.m. in the afternoon. How many of you all would be available on the afternoon of November 7 at 1:30 p.m.? That's a little more encouraging, but it is still problematic. I

think the most hands I saw was for November 12, so I will set it for November 12. Assemblywoman Nguyen, does the afternoon or the morning make a difference for you or did we just hit a bad day?

Assemblywoman Nguyen:

Are we talking about November 12?

Chair Hardesty:

Yes.

Assemblywoman Nguyen:

Yeah, just the whole day. Sorry. I don't think that works for Senator Cannizzaro as well. I don't think she's available that day as well.

Chair Hardesty:

Can I go back to November 15 again? That date was open, wasn't it? Yes, it was. Could I try November 15? Could people raise their hands on November 15 again? Mr. Callaway, how are you looking on November 15?

Chuck Callaway (Police Director, Las Vegas Metropolitan Police Department; Vice Chair):

November 15 is bad for me. All those other dates you mentioned I can do, but that one is bad for me.

Chair Hardesty:

Well, there were quite a number of hands who responded on November 15, and LCB has a date open on November 15. Let's set it for 9:30 a.m. on November 15. I apologize, Mr. Callaway, I'm just trying to do the best I can here.

Vice Chair Callaway:

I'll see what I can do with my schedule. I'll see what I can do to make it happen.

Chair Hardesty:

Okay. It looks like everybody else was available, so let's go with November 15 at 9:30 a.m. and we'll put that in the revised or amended job posting (Agenda Item VIII). Any other general comments or observations about the Sentencing Commission's future work that will take place over the course of the next 6 months at this time? Seeing none, is

there any public comment? Seeing none, I will close public comment. I apologize for the short meeting, but at least we have been able to establish our procedures and continue our effort to secure additional folks to apply for the position. I will now adjourn this meeting at 10:44 a.m.

RESPECTFULLY SUBMITTED:

Jordan Haas, Secretary

APPROVED BY:

Justice James Hardesty, Chair

Date: _____

DRAFT

Agenda Item	Witness/Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item IV	Jordan Haas, Secretary	Draft Minutes from the August 16, 2019 Meeting of the Nevada Sentencing Commission
Agenda Item V A-1		Executive Director Selection Process
Agenda Item V A-2		Voting Tally Sheet
Agenda Item V A-3		Voting Ballot
Agenda Item VI A-1	Dennis W. Hough	Application
Agenda Item VI A-2	Kerry Z. Malone	Application
Agenda Item VIII	Chris DeRicco, Chairman, Board of Parole Commissioners	Reposting of the Executive Director Position