

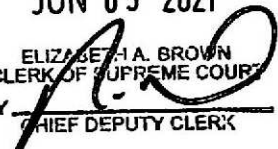


**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155

FILED

JUN 09 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

Heidi Almase
District Court Judge

Department X
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VIA REGULAR US MAIL AND EMAIL TO: nvsclerk@nvcourts.nv.gov

June 10, 2021

Elizabeth A. Brown, Clerk of the Supreme Court
201 So. Carson St.
Carson City, NV 89701

RE: ADKT 581 – Best Practices for Virtual Advocacy in Nevada’s Courts

To Whom it May Concern:

Please consider this my written comment related to ADKT 581, Creation of a Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts (Petition filed May 19, 2021). As noted in the Petition, interest has been expressed related to the continued use of remote/virtual option to conduct hearings and other court business. I write, at the outset, to express my concern and opposition for the reasons set forth herein.

I am a former Las Vegas Municipal Court judge and was recently elected to the Eighth Judicial District Court, Family Division, Department X. In addition to my service as an elected judicial officer, I have been a licensed attorney in Nevada for twenty-years.

Currently, a committee of family court judges is in the process of amending EDCR 1 and 5 related to practices in the Family Division of the Eighth Judicial District Court. Specifically, without a vote from the Family Division judges, the Committee, in concert with the Family Bench Bar, seeks to amend EDCR 5, in part, to make virtual hearings for law and motion matters via audio-visual means the default rather than in-person appearances. This effort appears to parallel efforts set forth in the ADKT 0581 Petition.

I am opposed to any rule change making hearings via audiovisual means the default. First, the courts have an established and liberally applied mechanism for parties and attorneys to appear for law and motions hearings via audio-visual means simply by filing a Notice of Intent to Appear by Audio-Visual Means. Additionally, the Nevada Supreme Court, in Labarera v. Wynn Las Vegas LLC, 134 Nev. 393, ___ P.3d ___ (2018), issued a decision setting forth a good cause standard for audiovisual appearance and testimony at trial. Thus, Nevada courts already have procedures in place which allow for audiovisual appearance *subject to the Court's discretion*. Specifically, the Court, ultimately, has authority to grant or deny an individual request based on the facts and circumstances in a particular case. As a separate branch of

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government, I am of the opinion the Court should retain discretion in the management of its assigned dockets.

Second, I am opposed to any rule making hearings via audiovisual means the default due to access to justice issues. In the Family Division, well over half of litigants are pro se. Many of the litigants lack the technology and/or technological experience to effectively navigate audiovisual appearances. In my opinion, the Covid-19 pandemic highlighted the fact not everyone has the same type of access to internet services let alone quality internet services. Additionally, in my experience, hearings are often delayed due to court-based technology issues which further prevent the efficient administration of the court's docket.

Third, best practices in several of the Family Division specialty branches mandate in-person appearances to include the appearance of children. See Nat'l Council of Juvenile and Family Court Judges, Child Abuse and Neglect, Permanency Hearing!. This reflects the seriousness of cases where parental rights may be terminated, for example, due to allegations of abuse and/or neglect and the Court's inherent authority to preside over these cases. To mandate only one type of appearance or otherwise prohibit a judicial officer from hearing these matters in person violates statute and recognized best practices as well as impermissibly interfering with a duly elected judicial officer's constitutional duty to manage his or her docket.

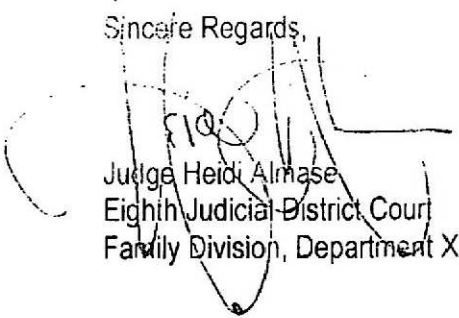
Fourth, courts and judicial officers should retain their constitutional duty to sit, administer justice and, ultimately, decide how matters proceed in their individual departments. As the panel is likely aware, some law and motions matters are best heard in person. This is a fact specific inquiry, likely based on the individual judge's determination and discretion of how best to handle a case. In the past year, since the courts went to remote (audiovisual) appearances, there has been a significant lack of formality in proceedings. In my opinion, the lack of formality ultimately damages the judiciary's function as a whole and erodes its constitutional duty.

Last, as the panel is likely aware, the Family Division handles civil/domestic matters and conducts only non-jury, bench trials. The Nevada Supreme Court, in Halverson v. Hardcastle, 123 Nev. 245, 163 P.3d 428 (2007), adopted a strong chief judge model. The Court concluded "[a] chief judge's authority, while broad, is not unlimited, however; it extends only so far as the express language of the rules or as is reasonably necessary in an emergency situation to ensure the district court system's proper functioning." Id. at 252, 163 P.3d at 433-34. There is no dispute Covid-19 was a worldwide emergency. However, as of June 1, 2021, Nevada and Clark County have, after reviewing the Centers for Disease Control directives, determined to fully open. To that end, while all are cautiously optimistic, no emergency currently exists. Thus, to the extent the proposed rule changes seek to extend emergency remote appearances to the default, I am opposed. Emergency control of the court should be reserved for specific, well-articulated situations which, as Halverson concludes, should be limited to only what is necessary to ensure the court's proper functioning. To that end, individual, duly elected judicial officers should have sole discretion as to whether a trial should be conducted in-person or via remote, audiovisual means to include requests for witnesses to appear via audiovisual means.

I realize my concerns may be more appropriate for the Committee itself, if formed. However, my concerns are significant particularly given the fact controlling administrative orders currently mandate continuing remote, audiovisual appearances. See AO 21-04 at p.4, ll.1-5 and p.11, ll.1-7.

Please do not hesitate to contact me should you have any additional questions or concerns.

Sincere Regards,



Judge Heidi Almase
Eighth Judicial District Court
Family Division, Department X

¹ <https://www.ncjfcj.org/bench-cards/permanency-hearing-bench-card-enhanced-resource-guidelines/> (related to case management and noting persons *who should be present* at a permanency hearing to include court staff, caseworkers, parents and children). See also <https://www.ncjfcj.org/bench-cards/detention-or-initial-hearing-enhanced-juvenile-justice-guidelines/> (mandating presence of child charged as a delinquent, parent and attorneys with the purpose of combining plea and pre-trial issues as a best practice). Of note, Family Division judges are required to attend one week of training conducted by the National Council of Juvenile and Family Court Judges within the first year of elected service.