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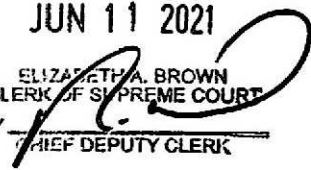
VIA REGULAR US MAIL AND EMAIL TO: nvsclerk@nvcourts.nv.gov

June 10, 2021

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

FILED

JUN 11 2021

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

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

To Whom It May Concern:

Please accept the following as my written comments regarding ADKT 581, “Creation of a Commission to Study Best Practices for Virtual Advocacy in Nevada’s Courts”. As you consider forming a committee tasked with creating a pathway for virtual hearings post-pandemic, I hope that you fully consider the negative consequences of any mandate or preference for virtual hearings in child abuse and neglect cases. I base my comments not only upon my current role as a Dependency Judge, but also upon the experience I have gained since my admission to the bar in 1991 and the many years I spent practicing in different roles in child welfare in Clark and Washoe Counties as well as in California, Utah, and Arizona.

The unique nature of dependency cases and the corresponding need for in-person participation by those most affected by these cases- the children- has long been recognized by the American Bar Association and the National Council of Juvenile and Family Court Judges. The ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, Section 9, adopted in August, 2011, provides that each child who is the subject of the proceeding has the right to attend and fully participate in all hearings. The ABA’s model act further provides that the Court shall

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determine at the hearing if the child was properly notified of the hearing. If the child desired to attend, but was not transported, the ABA directs that the matter shall be continued. This emphasizes the importance of the child being present in court at his or her hearing. Similarly, the NCJFCJ in its Children in Court Policy Statement, Key Principles for Permanency Planning, Adopted in January 2012, discussed the dependency Judge's role in ensuring child participation. The key principles focus on the Court's responsibility to "proactively engage with the children while creating opportunities for them to express their views and be heard." The NCJFCJ has also stated "children of all ages should be present in court and attend each hearing, mediation, pre-trial conference, and settlement conference unless the judge decides it is not safe or appropriate."

At the state level, NRS 432B.590(3) provides that the Court may require the presence of the child at the annual permanency hearing, thus recognizing the critical nature of decisions made at these hearings about the child's future. California Welfare and Institutions Code and Rules of Court, Rule 5.530(b) provide that children in that state have a right to attend all of their dependency hearings. Regarding the initial detention (removal) hearing, California notes it is especially important for the child to be present so that the child's attorney can immediately interview the child.

In April 2016, the ABA gathered data from the Courts that routinely included children for all or some of the phases of the dependency proceeding. The consensus was that the Judge learned more about the child and understood what the child wanted and why. This understanding was gained not only from what the child said to the court, but from observing how the child interacted with his or her parents, how the child interacted with his foster parent or relative care provider, and the child's overall demeanor. These observations simply cannot be made when the child is participating only telephonically or by video. 81% of judges in Kansas reported that the child's presence in Court impacted his or her decision and 64% indicated that he or she observed things about the child that were not reflected in the court report prepared by the Department of Family Services. The children who were present in front of their Judge also reported they felt better about their case and future. In New

Jersey, a staggering 99% of the children interviewed stated they wanted to come back to Court. In Vermont, 82% stated that they felt the Judge made better decisions if they were present in Court.

The ABA and NCJFCJ best practices policy is not debatable: children need to be in Court, seen and observed, by the Judicial Officer in dependency cases to effectuate best outcomes. It seems equally clear that parents should be uniformly and without question allowed to be present in court for all phases of their dependency case which in turn allows the Judicial Officer to observe and interact with the parent toward the goal of making fully informed decisions in the case. This is critical as the case can culminate with a termination of parental rights trial.

The Nevada Supreme Court recently addressed a parent's due process rights in a termination of parental rights trial. *In the Matter of the Parental Rights as to LLS*, 137 Nev. Adv. Op. (May 2021). If the parents are relegated to attending by telephone- or at best by video- most if not all of the many hearings along the way in their dependency case, the parents could literally never be seen in person by the Judge until they come to a termination of parental rights trial. They would then only be seen in person if the Judge has chosen to have in-person trials rather than conduct them virtually. It is also very possible that the parent may lack the resources to have a working cell phone much less access to a webcam and ability to join any hearing by video. In a "hearings by video world", this parent would therefore be left out entirely from the case involving their children. By not attending court in person, the parents also miss out on fully understanding the gravity of the case.

In-person hearings entail a degree of formality that cannot be duplicated in a video or telephonic hearing. While that aspect may not be as important in a construction defect case, it is extremely important in child abuse and neglect case in which the Court must make life-changing decisions daily about whether a child must be removed from his or her parent, with whom the child should be placed, what the needs of the child and the parents are, should the child be reunified with his or her parent, and should the parent's rights be terminated. Without in-person appearances, the Court also cannot see if the

parent appears to be doing well or appears to be under the influence. The Court cannot try to reign in a parent or other participant who is disregarding the rules of decorum or hold that participant in contempt for repeatedly violating courtroom rules. Instead of being a dignified institution for justice, the Court at times during video/telephonic hearings becomes a free-for-all mockery of the judicial system.

In the virtual dependency court world, not only does the Judge lose the ability to observe the parent and the child and meaningfully interact, the Department of Family Services' case worker and the parents lose opportunities to connect in person with each other. At the initial Preliminary Protective Hearing (at which time the Court reviews the child's initial removal from the home), having the case worker and the parent both present in court to connect in person before, during and after the hearing can make the difference between a child being placed back home or with grandma versus the child being placed in Child Haven or a foster home. At the disposition hearing, a parent attending only by phone does not have the chance to speak to his or her case worker in person after the hearing to ask that question about the services they must engage in to get their child back. The parent attending the review or permanency hearing only by phone while their child also only attends telephonically will not allow the Court to see if the parent and child have a bond with each other or if the child instead runs to his foster parent for comfort. Decisions by the Judge about changing permanency goals from reunification to termination of parental rights are then made largely based upon papers filed by the Department of Family Services without the intangible but critical added factor of witnessing real human interactions.

As the foregoing illustrates, dependency is a unique area of law that requires decisions to be made on a case-by-case basis every day by the Judge. Best practices as outlined by the ABA and NCJFCJ dictate that these hearings be held in person with participation by the child. Common sense and good judicial sense dictate that the parent too should be seen and observed by the Judge in person rather than as a dis-embodied voice over the phone. The Administrative Orders citing the requirement for virtual hearings reference *Halverson v. Hardcastle*, 123 Nev. 245, 260, 163 P.3d 428, 439 (2007) and the

Chief Justice's inherent power to "take actions reasonably necessary to administer justice efficiently, fairly and economically". Here, with the risk of termination of parental rights looming throughout much of the child abuse and neglect proceeding, the fair administration of justice means that the Dependency Judge have all necessary input to make a fully- informed decision at every hearing throughout the case which includes the ability to observe and interact in person with the child and parent. As we move forward in our post-pandemic life, it is imperative that we put the interests of the public whom we serve first rather than the convenience of the Court or attorneys.

Thank you for your time and consideration of these points as you consider whether to form a commission on post-pandemic virtual hearings and the topics such a committee should consider. I welcome any questions or comments you may have.

Sincerely yours,



Judge Stéphanie A. Charter
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