BRIAN K. BERMAN
ATTORNEY AT LAW
ADMITTED IN NEVADA AND OHIO

September 21, 2021

Justice James W. Hardesty
Nevada Supreme Court
201 S. Carson Street # 201
Carson City, NV 89701

Re: Video conference Hearings

Dear Justice Hardesty:

I write to share with you some of my thoughts about the proposal to make video conference hearings permanent after the cessation of the COVID pandemic.

I do not support this proposal for a number of reasons. These include technological challenges, which could not have been better demonstrated during the Bench-Bar Committee hearing on September 14, 2021. While your audio never paused, the video froze repeatedly. Both you and Professor Regalia appeared at the bottom of the screen instead of centered on camera.

There is a wide variety of practices among the District Court Judges as to how they handle video conferences. In some, the Judge's face is clearly visible. In others, you can see the Judge on the bench, but the Judge is either masked or not close enough to read their expressions. In some, the Court appears only by audio without any video.

I find all of this problematic. It takes decades for an advocate to hone the ability to "read" the Judge while making your arguments. If the Judge is not buying what I am selling, I use that invaluable input to adjust, or even abandon, my argument. That ability is largely lost with video conference hearings, much to my and my client's detriment.

Another technological challenge is reliable internet. This is not just a concern in rural areas. My office is located in the older part of downtown Las Vegas, where the equipment is old and internet outages are commonplace.

721 GASS AVENUE ~ LAS VEGAS, NEVADA 89101
PHONE: (702) 382-0702 ~ FAX: (702) 382-6450

21-28893

Except in extraordinary circumstances, the courtroom is supposed to be open to the public. The public's confidence in the judicial system is improved greatly if any random member of the public can stop by to observe the wheels of justice in action. This is impractical if not impossible with BlueJeans hearings.

Moreover, by statute, Court proceedings are "on the record." At the beginning of each in-person motion calendar, the Court inquires whether anyone desires to have their matter reported. I have never heard such a question during any of the multiple BlueJeans hearings I have participated in.

Another disadvantage is that the Courts generally now follow the calendar in order. When in-person hearings were the norm, most Judges took matters that could be disposed of summarily in advance of the rest of the calendar, saving hours of attorney time.

Additionally, I have received reports from colleagues that they suspect that defense counsel is coaching the witness via text message during video depositions. The video conferencing process is open to similar abuse.

Lastly, at times an attorney has matters set on the motion calendar in two departments simultaneously. The in-person solution is to check in in both departments and have the matter "trailed" in one. This is impractical with BlueJeans.

Having everyone in the same room at the same time levels the playing field and eliminates multiple channels of mischief and misconduct. That system prevailed for decades not because it was antiquated, but because it worked.

For those and many other reasons contained in professor Regalia's presentation, I favor the return to in-person hearings.

Thank you for your time and attention, and I trust that you will share my input with the other decision-makers on this issue.

Very Truly Yours,

BRIAN K. BERMAN, CHTD.

BRIAN K. BERMAN, ESQ.