

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION
OF A UNIFORM RULE GOVERNING
TELEPHONIC AND AUDIOVISUAL
PARTICIPATION IN CIVIL, CRIMINAL
AND FAMILY LAW CASES IN ALL
COURTS IN THE STATE OF NEVADA.

ADKT 0424

FILED

MAY 30 2012

TRACIE K. LINDEMAN
CLERK OF THE SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER SCHEDULING PUBLIC HEARING

On June 7, 2011, the Hon. Mark Gibbons, Associate Justice of the Nevada Supreme Court, filed a petition seeking amendment of Part IX of the Supreme Court Rules governing telephonic and audiovisual participation in the Nevada courts. After considering public comments made at previous hearings and submitted in writing, this court has proposed replacing the existing Part IX of the Supreme Court Rules with two new sets of rules, one governing telephonic appearances and one governing appearance using video transmission equipment. The proposed new rules for civil cases are attached as Exhibits A and B.

The Nevada Supreme Court will conduct a public hearing on the proposed new rules on Monday, July 9, 2012, at 3:30 p.m. in the Nevada Supreme Court Courtroom at 201 South Carson Street, Carson City, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, Regional Justice Center, 200 Lewis Street, 17th Floor, Las Vegas, Nevada.

The bench, bar and the public are invited to submit written comments on this matter. An original and 8 copies of written comments are to be submitted to: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., July 3, 2012. Persons interested in participating in the hearing must notify the Clerk no later than July 3, 2012.

Hearing date: July 9, 2012, at 3:30 p.m.
Nevada Supreme Court Courtroom
201 South Carson Street
Carson City, Nevada 89701

Comment deadline: July 3, 2012, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 30th day of *May*, 2012.

Cherry, C.J.

cc: All District Judges
All Justices of the Peace
Constance Akridge, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
All City Attorneys
All District Attorneys
Legal Aid Center of Southern Nevada
Nevada Legal Services
Volunteer Attorneys for Rural Nevadans
Washoe Legal Services
State Public Defender
Washoe County Public Defender
Clark County Public Defender
Washoe County Alternative Public Defender
Clark County Special Public Defender
Federal Public Defender
Administrative Office of the Courts

EXHIBIT A

PART IX.

(A). RULES GOVERNING APPEARANCE BY TELEPHONIC TRANSMISSION EQUIPMENT FOR CIVIL PROCEEDINGS

Rule 1. Definitions. In these rules, unless the context or subject matter otherwise requires:

1. "Telephonic transmission equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to one another, provided that all statements of all parties are audible to all persons present.

2. "Court" means a proceeding before a judicial officer, judge, master, or commissioner ~~or special master~~ for all civil proceedings in the State of Nevada.

3. "Party" shall include the plaintiff, defendant, petitioner, respondent, applicant, adverse party, obligee or obligor, and also apply to each party's attorney of record.

4. "Shall" is mandatory and "may" is permissive.

5. "Witness" shall mean a party or other person testifying in the court proceeding.

Rule 2. Policy favoring telephonic transmission equipment appearances. The intent of this rule is to promote uniformity in the practices and procedures relating to telephonic transmission equipment appearances. To improve access to the courts and reduce litigation costs, courts shall permit parties, to the extent feasible, to appear by telephonic transmission equipment at appropriate proceedings pursuant to these rules.

Rule 3. Application. These rules apply to all civil cases except family court proceedings pursuant to Chapters 122 through 130 of the Nevada Revised Statutes.

Rule 4. Appearance by telephonic transmission equipment.

1. **Circumstances in which appearance by telephonic transmission equipment shall be allowed.** Except as provided in subsection 3 of this Rule 4, parties shall be allowed to appear before a judicial officer or judge, master, commissioner or special master using telephonic transmission equipment in the following matters:

(a) Case management conferences, provided the party has made a good faith effort to meet and confer and has timely served and filed a case management statement before the conference date;

(b) Trial setting conferences;

(c) Hearings on law and motion, except motions in limine;

(d) Hearings on discovery motions, except where the discovery commissioner determines that it is necessary for parties to meet personally regarding discovery disputes or scheduling matters;

(e) Status conferences, including conferences to review the status of an arbitration or a mediation;

(f) Hearings to review the dismissal of an action;

(g) Any other hearing that is scheduled for not more than 15 minutes; and

(h) Any matters stipulated to by the parties and approved by the court.

2. All other matters require personal appearances or appearances by use of simultaneous audiovisual transmission equipment.

3. Court discretion to modify rule.

(a) **Applicable cases.** In exercising its discretion under this provision, the court should consider the general policy favoring telephonic transmission equipment.

(b) **Court may require personal appearances.** Upon a showing of good cause either by motion of a party or upon its own motion, the court may require a party or witness to appear in person at a proceeding listed in this Rule 4 subsection 1 if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the resolution of the particular proceeding or that the quality of the telephonic transmission equipment is inadequate.

4. Need for personal appearance. If, at any time during a proceeding conducted by telephonic transmission equipment, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance by a party or witness.

5. Notice by party.

(a) A party choosing to appear by telephonic transmission equipment at a proceeding under this rule must either:

(1) Place the phrase "Telephonic Transmission Equipment Appearance" below the title of the moving, opposing, or reply papers; or

(2) At least five court days before the appearance, notify the court and all other parties of the party's intent to appear by telephonic transmission equipment. If the notice is oral, it must be given either in person or by telephonic transmission equipment. If the notice is in writing, it must be given by filing a

“Notice of Intent to Appear by Telephonic Transmission Equipment” with the court at least five court days before the appearance and by serving the notice at the same time on all other parties by personal delivery, fax transmission, express mail, by electronic service through the court's online docketing system (if available), or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day. Copies of any exhibits that a party participating telephonically intends to present at the hearing shall be delivered to the court and all parties at least by noon on the court day ~~The parties shall deliver copies of any exhibits to be submitted prior to any such proceeding.~~

(b) If after receiving notice from another party as provided under subsection 5(a) a party that has not given notice also decides to appear by telephonic transmission equipment, the party may do so by notifying the court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of its intent to appear by telephonic transmission equipment. Copies of any exhibits that the party intends to present at the hearing shall be delivered to the court and all parties at least by noon on the court day prior to the scheduled hearing.

(c) If a party that has given notice that it intends to appear by telephonic transmission equipment under subsection 5(a) subsequently chooses to appear in person, the party must so notify the court and all other parties that have appeared in the action by telephonic transmission equipment, at least two court days before the appearance.

(d) The court, on a showing of good cause, may permit a party to appear by telephonic transmission equipment at a proceeding even if a party has not given the notice required under subsection 5(a) or (b) and may permit a party to appear in person even if the party has ~~not~~ previously given the notice required in subsection 5(c), provided that the party agrees to pay the applicable cancellation fee to the court or third-party provider of the telephonic transmission equipment.

6. Notice by court. After a party has requested a telephonic transmission equipment -appearance under subsection 5, if the court requires the personal appearance of the party, the court must give reasonable notice to all parties before the hearing and may continue the hearing if necessary to accommodate the personal appearance. The court may direct the court clerk, a court-appointed vendor, a party, or an attorney to provide the notification.

7. Private vendor; charges for service. A court may provide telephonic transmission equipment for court appearances by entering into a contract with a private vendor. The contract may provide that the vendor may charge the party appearing by telephonic transmission equipment a reasonable fee, specified in the contract, for its services. The court or the vendor may impose a cancellation fee to a party that orders services and thereafter cancels them on less than 48 hours notice. A court, by local rule, may designate a particular conference call provider that must be used for telephonic transmission equipment appearances.

8. Audibility and procedure.

(a) The court must ensure that the statements of participants are audible to all other participants and the court staff and that the statements made by a participant are identified as being made by that participant.

(b) Upon convening a telephonic proceeding, the judge shall:

(1) Recite the date, time, case name, case number, names and locations of parties and counsel, and the type of hearing;

(2) Ascertain that all statements of all parties are audible to all participants;

(3) Give instructions on how the hearing is to be conducted, including notice that in order to preserve the record speakers must identify themselves each time they speak.

9. Reporting. All proceedings involving telephonic transmission equipment appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

10. Information on telephonic transmission equipment appearances. The court must publish a notice providing parties with the particular information necessary for them to appear by telephonic transmission equipment at proceedings in that court under this rule.

11. Public access. The right of public access to court proceedings must be preserved in accordance with law.

EXHIBIT B

PART IX.

(B). RULES GOVERNING APPEARANCE BY SIMULTANEOUS AUDIOVISUAL TRANSMISSION EQUIPMENT FOR CIVIL PROCEEDINGS

Rule 1. Definitions. In these rules, unless the context or subject matter otherwise requires:

1. “Simultaneous audiovisual transmission equipment” means transmission accomplished through the use of:

a. One or more cameras at a location other than the courtroom that depict the witness in real time so that the parties, their counsel (or the government’s counsel), the court and the jury, if any, can see the witness to the same or greater extent they would see if the witness was present in the courtroom; and

b. One or more cameras in the courtroom that depict the parties, their counsel (or the government’s counsel), the prosecutor, the court and the jury, if any, in real time on a screen visible to the witness who is at another location.

2. “Court” means a proceeding before a judicial officer, judge, master, or commissioner ~~or special master~~ for all civil proceedings in the State of Nevada.

3. “Party” shall include the plaintiff, defendant, petitioner, respondent, applicant, adverse party, obligee or obligor, and also apply to such party’s attorney of record.

4. “Shall” is mandatory and “may” is permissive.

5. “Witness” shall mean a party or other person testifying in the court proceeding.

Rule 2. Policy favoring simultaneous audiovisual transmission equipment appearances. The intent of this rule is to promote uniformity in the practices and procedures relating to simultaneous audiovisual transmission equipment appearances. To improve access to the courts and reduce litigation costs, courts shall permit parties, to the extent feasible, to appear by simultaneous audiovisual transmission equipment at appropriate proceedings pursuant to these rules.

Rule 3. Application. These rules apply to all civil cases except family court proceedings pursuant to Chapters 122 thru 130 of the Nevada Revised Statutes.

Rule 4. Appearance by simultaneous audiovisual transmission equipment.

1. Required personal appearances or appearances by use of simultaneous audiovisual transmission equipment.

(a) Except as provided in subsection 3, a personal appearance or an appearance by use of simultaneous audiovisual transmission equipment for a party or witness is required for the following:

- (1) Trials and hearings at which witnesses are expected to testify;
- (2) Hearings on temporary restraining orders or temporary protection orders;
- (3) Settlement conferences;
- (4) Trial management conferences;
- (5) Hearings on motions in limine;
- (6) Any hearing in which a discovery commissioner determines that the presence of the parties or witnesses is necessary to resolve discovery disputes or scheduling matters; and
- (7) Any proceeding stipulated to by the parties and approved by the court.

(b) In addition, except as provided in subsection 3(c), a personal appearance is required for the following persons or parties:

- (1) Applicants seeking an ex parte order, if a hearing is held, unless the applicant is seeking an order:
 - (i) For permission to file a memorandum in excess of the applicable page limits;
 - (ii) For an extension of time to serve pleadings;
 - (iii) To set hearing dates on alternative writs and orders to show cause; or
 - (iv) By stipulation of the parties;
- (2) Persons ordered to appear to show cause why sanctions should not be imposed for violation of a court order or a rule; or
- (3) Persons ordered to appear in an order or citation issued under NRS Title 12 or Title 13.

2. Court discretion to modify rule.

(a) **Applicable cases.** In exercising its discretion under this provision, the court should consider the general policy favoring simultaneous audiovisual transmission equipment appearances in family court proceedings.

(b) **Court may require personal appearances.** Upon a showing of good cause either by motion of a party or upon its own motion, the court may require a party or witness to appear in person at a proceeding listed in this Rule 4 subsections 1 and 2 if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the resolution of the particular proceeding or that the quality of the simultaneous audiovisual transmission equipment is inadequate.

3. **Subsequent personal appearance.** If, at any time during a hearing, conference, or proceeding conducted by simultaneous audiovisual transmission

equipment, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance by the party or witness.

4. Notice by party.

(a) A party (or a witness for a party) choosing to appear by simultaneous audiovisual transmission equipment at a proceeding under this rule must either:

(1) Place the phrase "Simultaneous Audiovisual Transmission Equipment Appearance" below the title of the moving, opposing, or reply papers; or

(2) At least five court days before the appearance, notify the court and all other parties of the party's intent to appear by simultaneous audiovisual transmission equipment. If the notice is oral, it must be given in person. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Simultaneous Audiovisual Transmission Equipment" with the court at least five court days before the appearance and by serving the notice at the same time on all other parties by personal delivery, fax transmission, express mail, by electronic service through the court's online docketing system (if available), or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day. Copies of any exhibits that a party participating by simultaneous audiovisual transmission equipment intends to present at the hearing shall be delivered to the court and all parties at least by noon on the court day ~~The parties shall deliver copies of any exhibits to be submitted prior to any such proceeding.~~

(b) If after receiving notice from another party as provided under subsection 5(a), a party that has not given notice also decides to appear by simultaneous audiovisual transmission equipment, the party may do so by notifying the court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of its intent to appear by simultaneous audiovisual transmission equipment. Copies of any exhibits that the party intends to present at the hearing shall be delivered to the court and all parties at least by noon on the court day prior to the scheduled hearing.

(c) If a party that has given notice that it intends to appear by simultaneous audiovisual transmission equipment under subsection 4(a) subsequently chooses to appear in person, the party must so notify the court and all other parties that have appeared in the action by simultaneous audiovisual transmission equipment, at least two court days before the appearance.

(d) The court, on a showing of good cause, may permit a party to appear by simultaneous audiovisual transmission equipment at a proceeding even if a party has not given the notice required under subsection 4(a) or (b) and may permit a party to appear in person even if the party has ~~not~~ given the notice required in subsection 4(a), provided that the party agrees to pay the applicable cancellation fee to the court or third-party provider of the simultaneous audiovisual transmission equipment.

5. **Notice by court.** After a party has requested a simultaneous audiovisual transmission equipment appearance for the party or a witness under Rule 4, subsection 4, if the court requires the personal appearance of the party, the court must give reasonable notice to all parties before the hearing and may continue the hearing if necessary to accommodate the personal appearance. The court may direct the court clerk, a court-appointed vendor, a party, or an attorney to provide the notification.

6. **Private vendor; charges for service.** A court may provide simultaneous audiovisual transmission equipment for court appearances by entering into a contract with a private vendor. The contract may provide that the vendor may charge the party appearing by simultaneous audiovisual transmission equipment a reasonable fee, specified in the contract, for its services. The court or the vendor may impose a cancellation fee to a party that orders services and thereafter cancels them on less than 48 hours notice. A court, by local rule, may designate a particular audio visual provider that must be used for audio visual transmission equipment appearances.

7. Procedure.

(a) The court must ensure that the statements of participants are audible and visual to all other participants and the court staff and that the statements made by a participant are identified as being made by that participant. The court may require a party to coordinate with a court appointed person or persons within a certain time before the hearing to ensure the equipment is compatible and operational.

(b) Upon convening a simultaneous audiovisual transmission proceeding, the judge shall:

(1) Recite the date, time, case name, case number, names and locations of parties and counsel, and the type of hearing;

(2) Ascertain that all statements of all parties are audible and visual to all participants;

(3) Give instructions on how the hearing is to be conducted, including notice if necessary, that in order to preserve the record speakers must identify themselves each time they speak.

(4) Designate a person or persons with whom the party would coordinate/communicate about system requirements and compatibility; and

~~(5) Require party to coordinate with court appointed person or person within a certain time before the hearing to ensure the equipment is compatible and operational.~~

8. **Reporting.** All proceedings involving simultaneous audiovisual transmission equipment appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

9. **Information on simultaneous audiovisual transmission equipment.** The court must publish a notice providing parties with the particular information necessary for them to appear or have a non-party witness testify by simultaneous audiovisual transmission equipment at proceedings in that court under this rule.

10. **Public access.** The right of public access to court proceedings must be preserved in accordance with law.