

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 No. 424

FILED

SEP 24 2008

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

ORDER SCHEDULING PUBLIC HEARING

On April 2, 2008, the Hon. Mark Gibbons, Chief Justice of the Nevada Supreme Court, filed a petition in this court requesting the adoption of a uniform rule to govern telephonic and audiovisual participation in Nevada courts. Having previously conducted a public hearing on the petition, on June 2, 2008, this court has drafted a proposed uniform rule, which is attached as Exhibit A.

The Nevada Supreme Court will conduct a public hearing on the proposed rule on Tuesday, December 9, 2008, at 3:00 p.m. in the Nevada Supreme Court Courtroom, 200 Lewis Avenue, 17th Floor (Regional Justice Center), Las Vegas, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada.

The bench, bar and the public are invited to submit written comments on the proposed rule. 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., December 5, 2008. Persons interested in participating in the hearing must notify the Clerk no later than December 5, 2008.

Hearing date: December 9, 2008, at 3:00 p.m.
Supreme Court Courtroom
200 Lewis Avenue, 17th Floor
Regional Justice Center
Las Vegas, Nevada

Comment deadline: December 5, 2008, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 24 day of September, 2008.

1 Jandesty, J.

cc: All District Judges
All Justices of the Peace
Bruce Beesley, 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
Administrative Office of the Courts

PART VI. RULES GOVERNING APPEARANCE BY COMMUNICATION EQUIPMENT

Rule 251. Definitions. In these rules, unless the context or subject matter otherwise requires:

1. "Communication equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons present.
2. "Court" means either a general or limited jurisdiction court, but excludes municipal courts.
3. "Party" shall include and apply to such party's attorney of record.
4. "Shall" is mandatory and "may" is permissive.

Rule 252. Policy favoring communication equipment appearances

The intent of this rule is to promote uniformity in the practices and procedures relating to communication equipment appearances in civil cases. To improve access to the courts and reduce litigation costs, courts shall permit parties, to the extent feasible, to appear by communication equipment at appropriate conferences, hearings, and proceedings in civil cases.

Rule 253. Application

This rule applies to all cases except criminal, juvenile, and appellate proceedings.

Rule 254. Appearance by communication equipment.

1. **Circumstances in which appearance by communication equipment shall be allowed.** Except as provided in subsection 4(b), parties shall be allowed to appear before a court or master using communication 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;
- (e) Status conferences, including conferences to review the status of an arbitration or a mediation;
- (f) Hearings to review the dismissal of an action; and

(g) Any other hearing which is scheduled for not more than 15 minutes.

2. Required personal appearances. Except as provided in subsection 3(c), a personal appearance is required for hearings, conferences, and proceedings not listed in section 1, including the following:

- (a) Trials and hearings at which witnesses are expected to testify;
- (b) Hearings on temporary restraining orders;
- (c) Settlement conferences;
- (d) Trial management conferences;
- (e) Hearings on motions in limine; and
- (f) Hearings on petitions to confirm the sale of property under the Probate Code.

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

- (g) Applicants seeking an ex parte order, except when 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;
- (h) Persons ordered to appear to show cause why sanctions should not be imposed for violation of a court order or a rule; or
- (i) Persons ordered to appear in an order or citation issued under the Probate Code.

At the proceedings listed in (g), (h), and (i), parties who are not required to appear in person under this rule may appear by communication equipment.

3. Court discretion to modify rule.

- (a) In exercising its discretion under this provision, the court should consider the general policy favoring communication equipment appearances in civil cases.
- (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 to appear in person at a

hearing, conference, or proceeding listed in section 1 if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

- (c) Court may permit appearances by communication equipment. The court may permit a party to appear by communication equipment at a hearing, conference, or proceeding listed in section 2 if the court determines that a communication equipment appearance is appropriate.

4. **Need for personal appearance.** If, at any time during a hearing, conference, or proceeding conducted by communication equipment, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

5. **Notice by party**

- (a) A party choosing to appear by communication equipment at a hearing, conference, or proceeding under this rule must either:
 - (i) Place the phrase "Communication Equipment Appearance" below the title of the moving, opposing, or reply papers; or
 - (ii) At least three court days before the appearance, notify the court and all other parties of the party's intent to appear by communication equipment. The notice must be given either in person or in writing. If the notice is given in writing, it must be given by filing a "Notice of Intent to Appear by Communication equipment" with the court at least three 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, or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day.
- (b) If after receiving notice from another party as provided under (1) a party that has not given notice also decides to appear by communication 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 communication equipment.
- (c) If a party that has given notice that it intends to appear by communication equipment under (1) subsequently chooses to appear in person, the party must so notify the court and all other parties that have appeared in the action, by communication 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 communication equipment at a conference, hearing, or proceeding even if the party has not given the notice required under (1) or (2) and may permit a party to appear in person even if the party has not given the notice required in (3).

6. **Notice by court.** After a party has requested a communication equipment appearance under section 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 teleconferencing 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 communication equipment a reasonable fee, specified in the contract, for its services.
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 proceeding in which there is participation by communication equipment, the judge shall:
 - (i) Recite the date, time, case name, case number, names and locations of parties and counsel, and the type of hearing;
 - (ii) Ascertain that all statements of all parties are audible to all participants;
 - (iii) 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 communication equipment appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.
10. **Conference call provider.** A court, by local rule, may designate a particular conference call provider that must be used for communication equipment appearances.
11. **Information on communication equipment appearances.** The court must publish notice providing parties with the particular information necessary for them to appear by communication equipment at conferences, hearings, and proceedings in that court under this rule.
12. **Public access.** The right of public access to court proceedings must be preserved in accordance with law.