

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**

OCT 17 2012

TRACY K. LINDERMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER ADOPTING PART IX-A OF THE SUPREME COURT RULES

WHEREAS, on June 7, 2011, the Hon. Mark Gibbons, Associate Justice of the Nevada Supreme Court, filed a petition in this court requesting the amendment of Part IX of the Supreme Court Rules with rules governing telephonic appearances and appearances using video transmission equipment, and

WHEREAS, this court conducted public hearings on the proposed rules, and

WHEREAS, this court has concluded that adoption of a new section of the rules, applicable to criminal cases, is warranted, accordingly

IT IS HEREBY ORDERED that Part IX-A of the Supreme Court Rules is adopted as set forth in Exhibits A and B.

IT IS FURTHER ORDERED that these rules shall be effective January 1, 2013. The clerk of this court shall cause a notice of entry of this order to be published in the State Bar of Nevada's official publication. The clerk shall publish this order by disseminating copies of it to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The

certificate of the clerk of this court that she has accomplished the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

Dated this 17<sup>th</sup> day of October, 2012.

Cherry, C.J.  
Cherry

Douglas, J.  
Douglas

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Francis C. Flaherty, President, State Bar of Nevada  
Kimberly K. Farmer, Executive Director, State Bar of Nevada  
All District Court Judges  
All District Court Clerks  
Administrative Office of the Courts

**EXHIBIT A**  
**ADOPTION OF NEW SUPREME COURT RULES**  
**PART IX-A.**

**(A). RULES GOVERNING APPEARANCE BY  
TELEPHONIC TRANSMISSION EQUIPMENT  
FOR CRIMINAL 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, magistrate, judge, or master for all criminal proceedings in the State of Nevada.

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

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

5. "Shall" is mandatory, and "may" is permissive.

**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 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 criminal cases except juvenile and appellate proceedings. A court may follow the procedures set forth in these rules or in NRS 50.330 or NRS 171.1975.

**Rule 4. Personal appearances; appearance by telephonic transmission equipment.**

1. In all criminal proceedings or hearings, except trial, where a personal appearance is required, a party or a witness may request to appear by telephonic transmission equipment. Parties may stipulate to appearance by telephonic transmission equipment, but the stipulation must be approved by the court.

2. The personal appearance of a party or a party's witness is required at trial unless:

(a) The parties stipulate to allow the party or the party's witness to appear by telephonic transmission equipment, the defendant expressly consents to the use of telephonic transmission equipment, and the court approves the stipulation; or

(b) The court makes an individualized determination, based on clear and convincing evidence, that the use of telephonic transmission equipment for a particular witness is necessary and that all of the other elements of the right of confrontation are preserved.

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 appearances in criminal 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 or witness to appear in person at a proceeding listed in Rule 4(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.

(c) Subsequent 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 the party or witness.

4. Notice by party; opportunity to object.

(a) A party (or a witness for a party) wishing to appear at a criminal proceeding by telephonic transmission equipment under this rule shall, not later than 14 days before that proceeding, file a request that the court allow the party (or a witness for a party) to appear (or testify) at the proceeding through the use of telephonic transmission equipment. A party who requests that the court allow a party (or a witness for a party) to appear (or testify) through the use of telephonic transmission equipment shall provide written notice of the request to all other parties at or before the time of filing the request by personal delivery, fax transmission, express mail, electronic service through the court's online docketing system, if available, or by 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 the party participating by telephonic transmission equipment intends to present at the proceeding shall be delivered to the court and all other parties at least by noon on the court day prior to the proceeding.

(b) Not later than 7 days after receiving notice of a request that the court allow a party (or a witness for a party) to appear (or testify) at the identified proceeding through the use of telephonic transmission equipment, any opposing party may file an objection to the request. If an opposing party fails to file a timely objection to the request, that party shall be deemed to have consented to the granting of the request. If an opposing party timely files an objection to the request, the court shall hold a hearing and shall make specific findings on the facts and circumstances of the request.

(c) If a party who has requested a telephonic transmission equipment appearance for the party or a witness subsequently chooses to appear in person,

that party must so notify the court and all other parties at least 2 days before the appearance.

5. Notice by court. After a party has requested a telephonic transmission equipment appearance for the party or a witness, if the court requires the personal appearance of the party (or a witness for a party), the court must give reasonable notice to all parties before the proceeding and may continue the proceeding if necessary to accommodate the personal appearance. The court may direct the court clerk or a party to provide the notification.

6. 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 audiovisual provider that must be used for audiovisual transmission equipment appearances.

7. 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. The court may require a party to coordinate with a court-appointed person or persons within a certain time *before* the proceeding to ensure the equipment is compatible and operational.

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

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

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

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

(4) Place the witness under oath and ensure that the witness is subject to cross-examination.

8. 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.

9. Information on telephonic transmission equipment. The court must publish a notice providing parties with the particular information necessary for them to appear or have a nonparty witness testify by telephonic 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.





**EXHIBIT B**  
**ADOPTION OF NEW SUPREME COURT RULES**  
**PART IX-A.**

**(B). RULES GOVERNING APPEARANCE BY  
SIMULTANEOUS AUDIOVISUAL TRANSMISSION EQUIPMENT  
FOR CRIMINAL 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, the court, and the jury, if any, can see the witness to the same or greater extent than 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, 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, magistrate, judge, or master for all criminal proceedings in the State of Nevada.

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

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

5. "Shall" is mandatory, and "may" is permissive.

**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

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 criminal cases except juvenile and appellate proceedings. A court may follow the procedures set forth in these rules or in NRS 50.330 or NRS 171.1975.

**Rule 4. Personal appearances; appearance by simultaneous audiovisual transmission equipment.**

1. Except as set forth in Rule 3 and Rule 4(2), a party or witness may request to appear by simultaneous audiovisual transmission equipment in all other criminal proceedings or hearings where personal appearance is required. Parties may stipulate to appearance by simultaneous audiovisual transmission equipment, but the stipulation must be approved by the court.

2. Except as provided in NRS 50.330, the personal appearance of a party or a party's witness is required at trial unless:

(a) The parties stipulate to allow the party or the party's witness to appear by simultaneous audiovisual transmission equipment, the defendant expressly consents to the use of simultaneous audiovisual transmission equipment, and the court approves the stipulation; or

(b) The court makes an individualized determination, based on clear and convincing evidence, that the use of simultaneous audiovisual transmission equipment for a particular witness is necessary and that all of the other elements of the right of confrontation are preserved.

3. 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 criminal 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 or witness to appear in person at a proceeding listed in Rule 4(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 simultaneous audiovisual transmission equipment is inadequate.

(c) Subsequent personal appearance. If, at any time during a 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; opportunity to object.

(a) A party (or a witness for a party) wishing to appear at a criminal proceeding by simultaneous audiovisual transmission equipment under this rule shall, not later than 10 days before that proceeding, file a request that the court allow the party (or a witness for a party) to appear (or testify) at the proceeding through the use of simultaneous audiovisual transmission equipment. A party who requests that the court allow a party (or a witness for a party) to appear (or testify) through the use of simultaneous audiovisual transmission equipment shall provide written notice of the request to all other parties at or before the time of filing the request by personal delivery, fax transmission, express mail, electronic service through the court's online docketing system, if available, or by 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 the party participating by simultaneous audiovisual transmission equipment intends to present at the proceeding shall be delivered to the court and all other parties at least by noon on the court day prior to the proceeding.

(b) Not later than 7 days after receiving notice of a request that the court allow a party (or a witness for a party) to appear (or testify) at the identified proceeding through the use of simultaneous audiovisual transmission equipment, any opposing party may file an objection to the request. If an opposing party fails to

file a timely objection to the request, that party shall be deemed to have consented to the granting of the request. If an opposing party timely files an objection to the request, the court shall hold a hearing and shall make specific findings on the facts and circumstances of the request.

(c) If a party who has requested a simultaneous audiovisual transmission equipment appearance for the party or a witness subsequently chooses to appear in person, that party must so notify the court and all other parties at least 2 days before the appearance.

5. Notice by court. After a party has requested a simultaneous audiovisual transmission equipment appearance for the party or a witness, if the court requires the personal appearance of the party (or a witness for a party), the court must give reasonable notice to all parties before the proceeding and may continue the proceeding if necessary to accommodate the personal appearance. The court may direct the court clerk or a party 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 audiovisual provider that must be used for audiovisual transmission equipment appearances.

#### 7. Procedure.

(a) The court must ensure that the statements of participants are audible and visible 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 proceeding to ensure the equipment is compatible and operational.

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

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

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

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

(4) Place the witness under oath and ensure that the witness is subject to cross-examination.

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 nonparty 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.