

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

JUN 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
CHIEF DEPUTY CLERK

ORDER SOLICITING COMMENT

On June 24, 2015, the Honorable Mark Gibbons, Associate Justice, filed a petition seeking amendment of Section B, Part IX-A, Rules Governing Appearance By Simultaneous Audiovisual Transmission Equipment for Criminal Proceedings. A copy of the petition with the proposed amendments is attached to this order.

The Nevada Supreme Court invites written comment from the bench, bar and public regarding the petition. 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 10, 2015. Comments must be submitted in hard-copy format. Comments submitted electronically will not be docketed.

DATED this 24th day of June, 2015.

Mark Gibbons, C.J.

cc: Elana T. Graham, 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

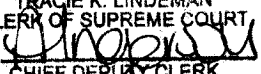
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

JUN 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

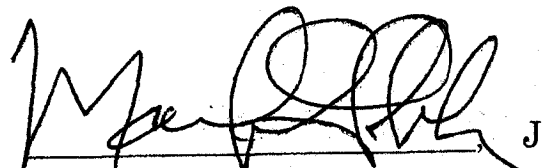
PETITION

COMES NOW, Mark Gibbons, Justice of the Nevada Supreme Court, who petitions the Nevada Supreme Court on its Administrative Docket to amend Section B of Part IX-A, Rules Governing Appearance By Simultaneous Audiovisual Transmission Equipment for Criminal Proceedings, originally adopted on October 7, 2012.

Whereas, the Audiovisual Rules Committee has proposed revisions to the current rule, and

Whereas, the undersigned submits that such revisions will improve and simplify the rule, accordingly,

The undersigned requests that the Court adopt the attached revisions to Section of Part IX-A, Rules Governing Appearance By Simultaneous Audiovisual Transmission Equipment for Criminal Proceedings.


Mark Gibbons J.

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, NRS 172.138, 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 unless the court determines that the personal appearance of the witness is necessary. ~~[Parties may stipulate to appearance by simultaneous audiovisual transmission equipment, but the stipulation must be approved by the court.]~~

2. 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 witness. ~~[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. A party wishing to offer the appearance of a witness at a criminal proceeding by simultaneous audiovisual transmission equipment under this rule shall, not later than 5 judicial days before that proceeding, notify the opposing party by certified mail in a form substantially similar to Exhibit A attached hereto, unless good cause is shown why such notice could not have been provided. [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.~~

~~(e) 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.]~~

4.~~[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.

5.[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.

6.[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.

7.[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.

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

Exhibit A

[FIRM HEADING/ATTORNEY NAME/CONTACT]

[ATTORNEYS FOR _____]

DISTRICT COURT

_____ County, Nevada

_____ PLAINTIFF,

CASE NO.:

VS.

DEPT. NO.:

_____ DEFENDANT,

DATE OF HEARING:

TIME OF HEARING:

**NOTICE OF INTENT TO APPEAR BY COMMUNICATIONS
EQUIPMENT**

**In accordance with the Order adopting Part IX of the Supreme Court
Rules effective March 1, 2009, [CLIENT NAME] intends to appear at the
above captioned hearing via [TELEPHONE OR ELECTRONIC DEVICE].
[CLIENT NAME] resides in [PLACE OF RESIDENCE]. [CLIENT NAME]
cannot appear at this hearing because [REASON CLIENT CANNOT
APPEAR FOR HEARING].**

**[CLIENT NAME] contact phone number for this hearing is
[_____].**

[CLIENT NAME] shall appear for the hearing via electronic device, by
way of
[MEANS OF ELECTRONIC TRANSMISSION]. The parties shall confirm
with the Court that the Court is capable of connecting to such electronic
device in advance of the scheduled time for the hearing.

Dated this day of , 20 .

Respectfully Submitted By:

[LAW FIRM] _____

Attorneys for _____