

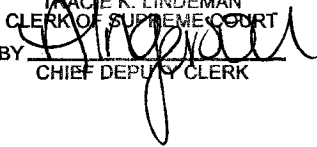
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

JUL 24 2015

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

*ORDER AMENDING SUPREME COURT RULE PART IX-A SECTION B
RULES GOVERNING APPEARANCE BY SIMULTANEOUS
AUDIOVISUAL TRANSMISSION EQUIPMENT FOR CRIMINAL
PROCEEDINGS*

WHEREAS, on June 24, 2015, the Honorable Justice Gibbons filed a petition seeking amendments of Supreme Court Rule Part IX-A, Section B Rules Governing Appearance By Simultaneous Audiovisual Transmission Equipment For Criminal Proceedings; and

WHEREAS, this court solicited comment from the bench, bar, and public on the proposed rule amendments, and

WHEREAS, this court has determined that proposed amendments to SCR Part IX-A Section B are warranted; accordingly,

IT IS HEREBY ORDERED that the Supreme Court Rules Part IX-A shall be amended as set forth in Exhibit A.

IT IS FURTHER ORDERED that this rule shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the

State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order 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 as to the accomplishment of 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 rule amendments.

Dated this 24th day of July, 2015.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Laurence P. Digesti, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
Administrative Office of the Courts

EXHIBIT A

AMENDMENT TO RULES 3 AND 4 AND ADOPTION OF FORM 1 OF
PART IX-A(B) OF THE SUPREME COURT RULES

PART IX-A.

* * *

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

* * *

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

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.~~

~~(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.]~~ 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.

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 Form 1 attached hereto, unless good cause is shown why such notice could not have been provided.

~~[6.]~~ 4. 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.] 5. 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.] 6. 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.] 7. 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.] 8. Public access. The right of public access to court proceedings must be preserved in accordance with law.

Form 1

[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 _____