

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

DEC 12 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
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 Rule 2 and Rule 4 of Part IX-A.(B) of the Rules Governing Appearance By Communication Equipment, adopted December 18, 2008, as follows:

1. In order to conform Nevada's procedural rules to United States Supreme Court and Ninth Circuit precedent, the Nevada Supreme Court should consider modifying said rule to accommodate the two-part test from *Maryland v. Craig*, 497 U.S. 836 (1990).

2. The current iteration of the rules governing the use of audiovisual transmission equipment and sponsoring the use of audiovisual transmission equipment should be modified. Currently, the rule states that audiovisual transmission equipment may be used "unless the court determines that the personal appearance of the witness is necessary." However, in order to use audiovisual transmission equipment in the place of live witness testimony at trial, the court should first have to make a finding of necessity, a finding currently not required under the rule.

18-908385

3. These modifications, as set out in Exhibit "A" attached hereto, would bring the procedural rules in accordance with standard practices and would mandate that courts implement those practices.

Wherefore, I request that the court authorize the amendment of the current rule as set forth above.

Dated this 12th day of December, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gibbons", written over a horizontal line.

MARK GIBBONS, JUSTICE

EXHIBIT A

PART IX-A.

* * * *

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

* * * *

Rule 2. Policy favoring allowing 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,~~ As provided in these rules, courts ~~shall~~ may permit parties, ~~to the extent feasible~~ a witness to appear by simultaneous audiovisual transmission equipment at appropriate proceedings, ~~pursuant to these rules~~ including trial.

* * * *

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

1. Except as set forth in Rule 3, a witness may appear by simultaneous audiovisual transmission equipment at trial if the court first makes a case-specific finding that (1) the denial of physical

confrontation is necessary to further an important public policy, and (2)
the reliability of the testimony is assured; and 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.

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 a witness.

* * * *

CERTIFICATE OF SERVICE

I hereby certify that I am the Clerk of the Nevada Supreme Court and that on the 12th day of December, 2018, I served a copy of the foregoing Administrative Docket Petition (ADKT 424), by causing said document to be placed in the United States Mail, first class postage prepaid, addressed to the following judicial and attorney members of the Audio Visual Committee:

Christopher Lalli, Assistant District Attorney
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John Petty, Chief Deputy Public Defender
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The Honorable Judge Alvin Kacin
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The Honorable Judge Kevin Higgins
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The Honorable Judge Max Bunch
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Elizabeth Brown, Clerk of Court
Nevada Appellate Courts