IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION OF NRCP 16.215

ADKT No. 0502

FILED

NOV 24 2014

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

PETITION

COMES NOW, Mark Gibbons, Chief Justice, and Nancy Saitta, Associate Justice of the Nevada Supreme Court, who petition the Supreme Court on its Administrative Docket to amend the Nevada Rules of Civil Procedure (NRCP) to adopt NRCP 16.215 as follows:

1. The Child Witness Committee of the State Bar of Nevada has developed a protocol for standardizing procedures to interview children.

2. The proposed procedure would be codified in a new procedure enumerated as NRCP 16.215, a copy of which is attached hereto as Exhibit 1.

3. The adoption of this proposed amendment is necessary to safeguard the interest of children during the interview process, while also balancing the due process needs of the parties.

Wherefore, we request that this court solicit public comment and consider approving the amendments of the Nevada Rules of Civil Procedure to adopt the NRCP 16.215, as shown by Exhibit 1 attached hereto.

Respectfully submitted this 24th day of November, 2014.

_____, C. J.
Gibbons

_____, J.
Saitta

EXHIBIT 1

RULE 16.215. CHILD WITNESSES

(a) General Guidelines.

When determining the scope of a child's participation in custody proceedings, the court should find a balance between protecting the child, the statutory duty to consider the wishes of the child, and the probative value of the child's input while ensuring to all parties their due process rights to challenge evidence relied upon by the court in making custody decisions.

(b) Definitions.

(1) "Alternative method." As used in this rule, "alternative method" shall be defined as prescribed in NRS 50.520.

(2) "Child witness." As used in this rule, "child witness" shall be defined as prescribed in NRS 50.530.

(3) "Third-Party Outsourced Provider." As used in the rule, "third-party outsourced provider" means any third-party ordered by the court to interview or examine a child outside of the presence of the court for the purpose of eliciting information from the child for the court.

(c) Procedure.

(1) Identifying Witnesses. A party shall identify and disclose any potential child witness who they intend to call as a witness during the case either at the time of the Case Management Conference / Early Case Evaluation, or through the filing of a Notice of Child Witness if the determination to call a child witness is made subsequent to the Case Management Conference / Early Case Evaluation.

(2) Notice of Child Witness. In the event a child witness is not identified and disclosed at the Case Management Conference / Early Case Evaluation, a Notice of Child Witness shall be filed no later than sixty (60) days prior to the hearing in which a child may be called as a witness unless otherwise ordered by the Court. Such notice shall detail the scope of the child's intended testimony, and provide an explanation as to why the child's testimony would aid the trier of fact under the circumstances of the case.

(3) Testimony by Alternative Methods. In the event that a party desires to perpetuate the testimony of a child witness through an Alternate Method he or she shall file a Motion to Permit Child Testimony Through Alternate Means, pursuant to the Uniform Child Witness Testimony by Alternative Methods Act contained in NRS 50.500 et seq., no later than sixty (60) days prior to the hearing in which the child may be called as a witness, or fifteen (15) days after the timely filing of

a Notice of Child Witness, whichever period last expires, unless otherwise ordered by the Court.

(d) Alternative methods.

(1) Available Alternative Methods. If the court determines pursuant to NRS 50.580 that an alternative method of testimony is necessary, the court shall consider the following alternative methods, in addition to any other alternative methods the court considers appropriate pursuant to the Uniform Child Witness Testimony by Alternative Methods Act contained in NRS 50.500 et seq.:

(i) In the event all parties are represented by counsel, the court may interview the child witness outside of the presence of the parties, with the parties' counsel present;

(ii) In the event all parties are represented by counsel, the court may interview the child witness outside of the presence of the parties, with the parties' counsel simultaneously viewing the interview via an electronic method;

(iii) Regardless of whether the parties are represented by counsel, the court may interview the child witness with no parties present, but may allow the parties to simultaneously view the interview via an electronic method if the court determines that the viewing is not contrary to the child's best interests; and

(iv) The court may have the child witness interviewed by a third-party outsource provider.

(2) Alternative Method Considerations. In determining which alternative method should be utilized in any particular case, the court should balance the necessity of taking the child witness's testimony in the courtroom with parents and attorneys present with the need to create an environment in which the child can be open and honest. In each case in which a child witness's testimony will be taken, courts should consider:

(i) Where the testimony will be taken, including the possibility of closing the courtroom to the public or hearing from the child witness on the record in chambers;

(ii) Who should be present when the testimony is taken, such as: both parents and their attorneys, only attorneys in the case in which both parents are represented, the child witness's attorney and parents, or only a court reporter;

(iii) How the child will be questioned, such as whether only the court will pose questions that the parties have submitted, whether attorneys or parties

will be permitted to cross-examine the child witness, or whether a child advocate or expert in child development will ask the questions in the presence of the court and parties or a court reporter; and

(iv) Whether it will be possible to provide an electronic method so that testimony taken in chambers may be heard simultaneously by the parents and their attorneys in the courtroom.

(3) Protections for Child Witness. In taking testimony from a child witness, the court shall take special care to protect the child witness from harassment or embarrassment and to restrict the unnecessary repetition of questions. The interviewer must also take special care to ensure that questions are stated in a form that is appropriate given the witness's age or cognitive level. The interviewer must inform the child witness in an age-appropriate manner about the limitations on confidentiality and that the information provided to the court will be on the record and provided to the parties in the case. In the process of listening to and inviting the child witness's input, the interviewer may allow, but should not require, the child witness to state a preference regarding custody or visitation and should, in an age-appropriate manner, provide information about the process by which the court will make a decision.

(e) Due Process Rights. Any alternative method shall afford all parties a right to participate in the questioning of the child witness, which, at a minimum, shall include an opportunity to submit potential questions or areas of inquiry to the court or other interviewer prior to the interview of the child witness.

(f) Preservation of Record. Any alternative method of testimony ordered by the court shall be preserved by audio or audio and visual recording to ensure that such testimony is available for review for future proceedings.

(g) Review of Record. Any party may review the audio or audio and visual recording of testimony procured from a child by an alternate method upon written motion to the court or stipulation of the parties, unless the court finds by clear and convincing evidence that review by a party would pose a risk of substantial harm to the child involved.

(h) Stipulation. The court may deviate from any of the provisions of this rule upon stipulation of the parties. The district courts of this state shall promulgate a uniform canvass to be provided to litigants to ensure that they are aware of their rights to a full and fair opportunity for examination or cross-examination of a child witness prior to entering into any stipulation that would permit the interview or examination of a minor child by an alternative method and/or third-party outsourced provider.

(i) Retention of Recordings. Original recordings of child interviews shall be retained by the interviewer for a period of seven (7) years from the date of their recording, or until six (6) months after the child witness emancipates, whichever is later, unless otherwise ordered by the court.