

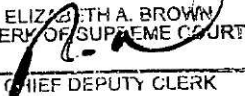
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION TO STUDY BEST
PRACTICES FOR VIRTUAL
ADVOCACY IN NEVADA'S COURTS.

ADKT 0581

FILED

NOV 09 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

*FINAL REPORT AND RECOMMENDATIONS OF THE COMMISSION
TO STUDY BEST PRACTICES FOR VIRTUAL ADVOCACY IN
NEVADA'S COURTS*

The Supreme Court established the Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts on August 13, 2021. The Commission was tasked with evaluating, and making recommendations regarding, applicable rules to govern the unified use of remote technology in Nevada's general and limited jurisdiction courts.

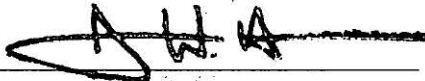
The Commission held six full-Commission meetings and numerous subcommittee meetings; it benefited from extensive participation of and guidance from judges, legal practitioners, and knowledgeable stakeholders. From these efforts, the Commission has developed and approved the attached "Preamble for Rules of Virtual Advocacy" and supporting "Presumptive Appearance Case Type" lists, attached herein as Exhibits A-D.

As the Commission has completed the task with which it was initially charged, Justice Douglas W. Herndon, Justice Patricia Lee, and Justice Ron D. Parraguirre, as Commission chairs, now, on behalf of the Commission to Study Best Practices for Virtual Advocacy in Nevada's

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Courts, request that the Nevada Supreme Court consider and adopt the rules as presented in the attachments. Accordingly, the Commission requests that the Nevada Supreme Court place this matter on its administrative docket and hold such public hearings as it deems necessary to consider the Commission's recommendations.

Respectfully submitted,



Douglas W. Herndon, Justice
Supreme Court



Patricia Lee, Justice
Supreme Court



Ron D. Parraguirre, Justice
Supreme Court

PREAMBLE FOR RULES OF VIRTUAL ADVOCACY

The rules for Virtual Advocacy in the courtroom were promulgated by the Commission to Study Best Practices for Virtual Advocacy to promote effective and efficient hearings by all Nevada courts, utilizing virtual means for select and defined court matters. The rules' purpose is to create time and cost savings, provide prompt hearings, and heighten access to justice for all parties.

The rules are designed to provide guidance for which court proceedings may presumptively be heard virtually through audio visual means. Because attorneys, their clients and the public should have the ability to attend court proceedings in person if they so desire, judicial officers should be present in the courtroom for any court proceeding.

These rules should be interpreted with reference to the purposes of legal representation and of the law itself. When participating in virtual court proceedings, attorneys and all parties must adhere to the Rules of Professional Conduct and conduct themselves in an appropriate and respectful manner as if they were physically present in court. A lawyer and their clients are also expected to always present themselves in a virtual court proceeding with the same standards, protocols, and guidelines as if they were physically present for the court proceeding. No provision of these rules should be construed to conflict with existing Supreme Court Rules or with Nevada Revised Statutes.

REMOTE/VIRTUAL HEARING PROCEDURES

In accordance with court rules, should any party wish to deviate from the presumptively in-person hearing format, as outlined in the attached "Presumptive Appearance Case Type" lists (Exhibits A-D), please refer to the following procedures to request accommodation from the Court.

If a party intends to deviate from the presumptively in-person hearing format, they are to provide notice to the Court and other parties 48 hours prior to the appearance unless otherwise dictated by Supreme Court Rule. In instances where 48-hour notice is not possible due to exigent circumstances, a party is to provide notice as soon as practicable.

If a case type is presumptively in-person, it is expected that all necessary parties will appear in person unless good cause is shown to justify a virtual appearance. Courts should give deference to virtual appearance requests by pro bono and/or appointed counsel appearing in cases outside of the county in which they reside, except that evidentiary hearings and trials shall be presumptively in-person.

The protocols to request, appear, and conduct virtual hearings will be managed according to the following procedures:

1. Scheduling

- a. For any virtual proceeding, the Court will notify the parties of the date and time of the hearing and will provide hearing access information.
- b. Parties (or counsel if represented) are to provide the Court with their current contact information prior to the occurrence of a virtual hearing.

2. Attendance

- a. Parties, counsel, and identified witnesses will access the virtual hearing by visiting the appropriate court's public website, or by contacting the Court and following its procedures and/or guidelines.
- b. Prior to the hearing date, it will be necessary for participants to access the appropriate remote platform on their electronic devices (computers, cell phones, or laptops).
 - All participants must test remote platform app functionality prior to their hearing date.
- c. Most judicial proceedings are presumptively open to the public. As it does for "in person hearings", the Court retains discretion to "close the courtroom" for the virtual hearing based on the applicable statutory justifications for doing so.
- d. Members of the public, including friends or family, who wish to attend a virtual hearing may do so through the court's website and/or by directly contacting the court, if necessary.
 - Family members, friends, and members of the public who "attend" the virtual hearing are considered non-participants just as they would be for in-person proceedings.

3. Conduct at Hearing

- a. If the Court authorizes a virtual hearing at which evidence will be presented, all exhibits to be referenced during the hearing must be presented in accordance with court rules and procedures, as applicable.
- b. All other pertinent statutes and court rules will apply to the hearing.

- c. Proper courtroom attire is required for parties, counsel, and witnesses.
- d. All participants must be able to be seen and heard by all other participants. All participants must have their camera ON when addressing the Court, unless excused.
- e. All participants must identify themselves with court-appropriate screen names.
- f. During the hearing, parties that are not testifying should have their microphones muted unless they are speaking.
- g. Participants utilizing the chat function should do so professionally and respectfully.
- h. Witnesses should be in a room alone during testimony, without access to any documents or papers other than copies of exhibits already provided to the Court and opposing parties.
- i. When the Exclusionary Rule is invoked, all parties shall be admonished accordingly to follow applicable court rules.
- j. Attorneys and parties who are in separate locations may communicate privately via text or email during the hearing, provided however, parties may not communicate with counsel while they are testifying.
- k. No one may communicate with witnesses privately during their testimony without the Court's permission.
- l. All participants must be in an office or room with proper lighting. There should not be any distractions (noise or other things) occurring in the background.
- m. Participants will be allowed to speak only when prompted by the Court.
- n. Participants should ask to sign off before signing off to make sure they do not have any other issues to resolve.
- o. Attorneys are responsible for advising clients and witnesses regarding appropriate behavior while participating.
- p. If a party's internet connection is poor and the Court is unable to view,

hear, or understand an attorney or litigant, the Court reserves the right to hear from the party telephonically, continue the matter, take the matter off-calendar, or pursue any other remedy that the Court deems appropriate.

4. Court Reporters

- a. Refer to local court rules and procedures for the use of court reporters during virtual hearings.

5. Court Interpreters

- a. Refer to local court rules and procedures for the use of court interpreters during virtual hearings.

EXHIBIT A

Presumptive Appearance Case Types for Civil Cases in District Courts

| Case/Hearing Types | Presumptively In-Person | Presumptively Virtual |
|---|----------------------------|--------------------------|
| Settlement Conferences <i>To be determined by the judicial officer at the time of setting, with input from parties</i> | NA | NA |
| Status Conferences/Trial Readiness | | X |
| Discovery Commissioner Motions | | X |
| Trials | X | |
| Involuntary Commitments | | X |
| Pretrial Conferences | | X |
| Hearings on Ex Parte Filing | | X |
| Evidentiary Hearings | X | |
| Probate Status Hearings | | X |
| Uncontested Probate Hearings | | X |
| Contested Probate Hearings | X | |
| Injunctive Relief Hearings | X | |
| Calendar Calls | | X |
| General Law and Motion | | X |

EXHIBIT B

Presumptive Appearance Case Types for Criminal Cases in District Courts

| Case/Hearing Types | Presumptively In-Person | Presumptively Virtual |
|--|-------------------------|-----------------------|
| General Arraignments | | X |
| Arraignments <i>Involving guilty pleas</i> | X | |
| General Motion Practices | | X |
| Motion Practices <i>Involving the presentation of witnesses and/or evidentiary items</i> | X | |
| General Status Checks | | X |
| Status Checks <i>Where a timely notice of a compliance issue has been provided</i> | X | |
| General Competency Hearings | | X |
| Competency Hearings <i>Involving dispositive motions, challenge hearings or any other hearings involving the presentation of witnesses and/or evidentiary items</i> | X | |
| General Specialty Court Hearings <i>Prosecution</i> | | X |
| General Specialty Court Hearings <i>Defense - First appearance</i> | X | |
| General Specialty Court Hearings <i>Defense - After First appearance</i> | | X |
| Specialty Court Hearings <i>Involving a timely notice of a compliance issue Prosecution and Defense</i> | X | |
| General Calendar Calls | | X |
| Calendar Calls <i>Involving a guilty plea</i> | X | |
| Trials | X | |
| Settlement Conferences | X | |

| Case/Hearing Types | Presumptively In-Person | Presumptively Virtual |
|--|----------------------------|--------------------------|
| General Sentencing Hearings | X | |
| Sentencing Hearings <i>Out-of-town/state defendant and a stipulation to probation and/or statutorily mandated probation</i> | | X |
| Post-Convictions/Writs | | X |
| Probation Revocation Hearings | X | |
| Miscellaneous Post-Conviction Appellate Motions | | X |
| Miscellaneous Evidentiary Hearings | X | |
| Grand Jury Proceedings | X | |

EXHIBIT C

Presumptive Appearance Case Types for Family Cases in District Courts

| Case/Hearing Types | Presumptively In-Person | Presumptively Virtual |
|---|----------------------------|--------------------------|
| ALL CASE TYPES | | |
| Evidentiary Hearings | X | |
| Orders to Show Cause | X | |
| Contested Prove-Ups | X | |
| Uncontested Prove-Ups | | X |
| Trials/Terminations | X | |
| Settlement Conferences <i>To be determined by the judicial officer at the time of setting, with input from the parties</i> | NA | NA |
| CIVIL/DOMESTIC | | |
| Case Management Conferences | | X |
| Adoptions | | X |
| Motions | | X |
| Return Hearings | | X |
| Status Checks | | X |
| In-Custody Hearings | | X |
| UCCJEA | | X |
| UIFSA and TPO Objections | | X |
| TEMPORARY PROTECTIVE ORDERS | | |
| Ex Parte Applications for TPOs (with hearing) | X | |
| Motions to Extend or Dissolve | | X |
| Unopposed Motions | | X |
| JUVENILE DEPENDENCY | | |
| Adoptions | | X |
| Preliminary Protective Hearings | X | |
| 432B Guardianships Citations | | X |

| Case/Hearing Types | Presumptively In-Person | Presumptively Virtual |
|--|--------------------------------|------------------------------|
| Contested Adjudicatory Hearings pursuant to NRS 432B.530 | X | |
| Uncontested Adjudicatory Hearings pursuant to NRS 432B.530 | | X |
| Panel Reviews | X | |
| Status Checks | | X |
| Unopposed Motions | | X |
| Disposition Hearings | | X |
| In-Custody Hearings | | X |
| Reviews/Permanency | | X |
| Case Closures | | X |
| JUVENILE DELINQUENCY | | |
| Detention Hearings | X | |
| Plea Hearings | X | |
| Detention Reviews and Objections | | X |
| Certifications | X | |
| In-Custody Hearings | X | |
| Reports and Dispositions | | X |
| FAMILY SPECIALTY COURTS <i>Including but not limited to:</i> <i>Family Preservation Court (4th JD)</i> <i>Family Treatment Court (2nd JD)</i> <i>Safe Babies Court (2nd JD)</i> <i>Juvenile Mental Health Court</i> <i>Juvenile Drug Court</i> <i>Juvenile Diversion Court</i> <i>Juvenile Restitution Court</i> <i>Juvenile Delinquency Court</i> <i>Dependency Mental Health Court</i> <i>Dependency Drug Court</i> | | |
| Poor Progress | X | |
| Good Progress | | X |
| Detention Alternative for Autistic Youth Court (DAAY Court 8 th JD) | X | |

| Case/Hearing Types | Presumptively In-Person | Presumptively Virtual |
|---------------------------------|--------------------------------|------------------------------|
| CHILD SUPPORT | | |
| Initial Child Support | | X |
| Modification Hearing | | X |
| Enforcement Hearing | X | |
| Motion Hearings | | X |
| In-Custody Hearings | | X |
| ADULT GUARDIANSHIP | | |
| All Adult Guardianship Hearings | | X |
| MINOR GUARDIANSHIPS | | |
| Citation Hearings | | X |
| Motions | | X |
| Status Check | | X |
| Compliance | | X |
| FAMILY MEDIATION | | |
| Parent/Child Observation | X | |

EXHIBIT D

Presumptive Appearance Case Types for Limited Jurisdiction Courts

| Case/Hearing Types | Presumptively In-Person | Presumptively Virtual |
|---|----------------------------|--------------------------|
| Criminal | | |
| Pre-trial Release Hearings | | X |
| Preliminary Hearings, Misdemeanor Trials, and Other Evidentiary Hearings | X | |
| Arraignments | | X |
| Contempt and Probation Revocation Hearings | X | |
| Status Checks | | X |
| Extraditions <i>Attorneys may appear virtually, for good cause shown</i> | X | |
| Jury Trials <i>Jury must appear in person</i> | X | |
| Motion Practices | | X |
| Confirmation of Council Proceedings | | X |
| Civil | | |
| Civil Infractions | | X |
| Small Claims | X | |
| Evictions | | X |
| TPOs | | X |
| Bail Hearings | | X |
| Motion Practices | | X |
| Trials | X | |
| Status Checks | | X |