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DEC 01 2023

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SECOND JUDICIAL DISTRICT COURT
STATE OF NEVADA
WASHOE COUNTY

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ADKT 613

November 30, 2023

Via email to nvscclerk@nvcourts.nv.gov

Elizabeth A. Brown
Clerk of the Supreme Court
201 S. Carson Street
Carson City, Nevada 89707

Re: Second Judicial District Court Comments on ADKT 0581 and ADKT 0613

Dear Chief Justice and Justices of the Nevada Supreme Court:

Thank you for the opportunity to provide comments to ADKT 0581 and ADKT 0613. The Second Judicial District Court ("SJDC") appreciates the work of the Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts ("Commission"). The SJDC, through its judges, court masters, and commissioners (collectively "Judges"), respectfully offers the following comments and suggestions for consideration, in addition oral information provided at the hearings on these matters.

ADKT 0581

ADKT 0581 petitions the Court to adopt the newly developed "Preamble for Rules of Virtual Advocacy" and supporting "Presumptive Appearance Case Type" ("Rules and Types," or as individually named). Overarching the more specific areas of discussion below are the following general comments:

- Any adopted Rules and Types should include an express provision allowing a district and/or each judge discretion in applying the Rules and Types.
- Any adopted Rules and Types should provide each judicial district should submit, by ADKT, local rules for virtual hearings as amendments to the local rules of practice subject to approval by the Nevada Supreme Court.

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- Technological, procedural and practical efficiencies and difficulties should be considered.

GENERAL JURISDICTION COMMENTS.

Preamble for Rules of Virtual Advocacy.

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.

General Comments:

A judicial officer should not be the only participant required by rule to be present in the courtroom.

In the SJDC, the calendar is posted on the website with information regarding whether a proceeding is held in-person or via the Zoom platform, giving the public and participants notice of and the link for access to the proceedings. In many instances, Judges file orders with the Zoom link information as well.

As discussed more specifically below, in many courtrooms, the Zoom technology is not as effective in courtrooms as it is in a conference room or chambers. This language should be revised to state "court premises." Also supporting cost savings, if matters are heard in chambers, a bailiff is not required. If heard in the courtroom, a bailiff must be present.

The public is entitled to observe court matters that are open to the public. However, the public should not be entitled to have both physical access to a courtroom and access to virtual court proceedings upon request. The public's access should be guided by the judicial officers' discretion.

If any judicial officers abuse their discretion regarding virtual hearings, referral can be made to the Nevada Commission on Judicial Discipline. The majority of judicial officers manage their in-person and virtual proceedings appropriately and honor their role of service to the public with dignity and respect.

Specific case types are discussed below, often the application Rules and Types overlap and the comments may be read in this spirit.

Criminal

Comment: For some hearing types in the SJDC, particularly Specialty Court Program hearings, the Judges appear via Zoom from chambers. This provides a closer view of

the Judges, allows participants to appear more efficiently from a remote location (usually during a break at work) and allows a better conversation to take place between the Judges and participants. The camera view of the bench in the courtrooms is from across the entire courtroom unless a separate Zoom system is used on a laptop. In these instances, there is no advantage to a member of the public observing from the courtroom rather than virtually. The Judges' appearance from chambers provides the superior experience for the participants, as well as the public.

Remote/Virtual Hearing Procedures.

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 outside of the county in which they reside, except that evidentiary hearings and trials shall be presumptively in-person.

Comment: This provision appears to give authority to litigants or the public to drive whether the proceeding will be in-person or virtual upon demand, without a discretionary court override. For instance, a party can wait to inform the court of the intent not to appear in a presumptively in-person hearing moments before the hearing (as long as "exigent circumstances" circumstances are cited for not informing the court forty-eight (48) hours in advance, as long as informing the court is actually "practicable" for them. The court is required to accommodate the non-presumptive virtual appearance, or presumably award a continuance. Further, simple "good cause" for a virtual appearance justifies non-appearance at a presumptively in-person hearing, at which point it may be construed the court is required to instantaneously provide the non-presumptive virtual hearing or grant a continuance. The court is also instructed to defer to requests to appear virtually for out-of-town attorneys representing pro bono or indigent defendants in all hearings (to include 30-day status conferences and motions to confirm) except evidentiary hearings and trials. SJDC has many Las Vegas attorneys appearing for SJDC matters, including evidentiary hearings.

Exhibit B: Presumptive Appearance Case Types for Criminal Cases in District Courts.

Comments:

- Rules and Types should be subject to an individual district's approved rule local rules because some designations do not apply to the SJDC or other districts, i.e.

general arraignments vs. arraignments, or general calendar calls vs. calendar calls.

- Arraignments (not involving guilty pleas): This Type allows defendant to plead “not guilty” virtually, which means those defendants would be make decisions (speedy trial waiver, subsequent plea offers, etc.) at a “critical stage of the proceedings” outside the presence of their attorney in indigent defendant cases, making these hearings ripe subject matter for review. This Type also does not allow for day-of-hearing drug testing or personal referral to the Pretrial Services’ office.
- General motion practice: Most criminal pretrial motions require the admission of evidence, which should make these hearings presumptively in-person.
- Specialty Court Program hearings: All hearings should be presumptively virtual unless changed in the discretion of the Judges or by administrative order.
- General calendar calls: These hearings should be in-person, with no hybrid option, as it eliminates potential delay resulting from counsel trying to communicate with indigent clients by telephone outside of the virtual proceedings. This will also avoid continuances for counsel to further explain matters. Hybrid hearings are difficult for technology management and treats individuals appearing in-person differently.
- Sentencing hearings for out-of-town/state defendants: This provision making sentencing hearings for out-of-state defendants who stipulate to probation presumptively virtual is contrary to law. Nevada law requires a defendant given the privilege of probation to remain in the state until and unless notice Interstate Compact has been granted by the receiving state’s probation authority, or until the defendant has been issued a physical travel pass to leave Nevada. In addition, in the SJDC, persons receiving probation or diversion with Specialty Court participation must immediately report to the Specialty Court Program office for further direction and to commence reporting for testing and to the Division of Parole and Probation in Washoe County. Persons desiring to transfer to other jurisdictions for Specialty Court programs may not do so until their first appearance in the SJDC. Further, simply because the parties stipulate to probation does not mean the Judges will grant supervision.
- Post-conviction hearings: These are usually evidentiarily dense hearings, with referral to trial and hearing transcripts, and should be presumptively in-person.

Civil

Exhibit A: Presumptive Appearance Case Types for Civil Cases in District Courts:

Comments: All appearances should be consistent with the written virtual/in-person appearance approved local rules in the particular district. Settlement conferences should be held virtually or in-person as preferred by the Judges. The court should retain the discretion to require any appearance to be in-person, including status/trial readiness conferences (30-day calendar calls).

Probate

Comment: The proposed Types as “presumptively in-person” and “presumptively virtual” appear appropriate. However, while the Remote/Virtual Hearing Procedures set forth how parties and counsel may elect to appear in-person for virtual hearings and how to obtain permission to appear virtually at presumptively in-person hearings, again, the court should retain discretion to require in-person hearings in any particular matter. Here, as written, the applicable Rules and Types could be interpreted to create a right or entitlement to a virtual hearing, restricting all court discretion.

FAMILY DIVISION COMMENTS.

Preamble for Rules of Virtual Advocacy Remote/Virtual Hearing Procedures

Comments:

- The preamble allows for parties to provide only 48-hours' notice to deviate from a presumptively in-person hearing. As explained in depth below, to properly review and adjudicate a request to appear virtually for a presumptively in-person proceeding, the Judges and staff should be afforded at least five (5) judicial days. In particular, the 48-hours' notice requirement for proceedings commencing on a Monday or the day after a holiday fails to afford the court or a self-represented litigant a meaningful opportunity to address and resolve the issue prior to commencement of the action.
- Under Section 1.b., parties or counsel are to provide the court with their current contact information prior to the virtual hearing. The intent of this section is unclear regarding what contact information is required and how the contact information is to be preserved as part of the record. Further, this information is required on any filing with the court and should already be available.
- Under Section 2.a., the language of concern is “by contacting the Court” to access the virtual hearing. SJDC's Family Court division provides notices of the

virtual hearing by either filing a court order or a notice of hearing. The concern is by allowing a party to contact the Court directly to access the hearing creates issues of inviting ex parte communications, which are not part of the record. The same concern is echoed in Section 2.d. in allowing members of the public, friends or family to also contact the court directly.

- Under section 3.a., SJDC's Family Court Judges usually outline in orders the expectation regarding presentation of evidence prior to the hearing. For this reason, adding "court order" before "court rules and procedures..." is requested as an option.
- Under section 3.c., adding "and behavior" after "attire" to reiterate proper behavior is also expected at virtual hearings is requested.
- Under section 3.g., the SJDC determined it was most appropriate to disable the chat function, but recognizes other courts allow the chat function, adding to the end of the sentence, "and only as authorized by the court" is requested.
- Under section 3.h., the Judges would prefer having some ability to issue any additional orders as to witness guidelines and would suggest adding at the beginning of the sentence, "Unless otherwise ordered by the court,..."
- Under section 3.l., as the Court often sees individuals appearing in their vehicles on a break as their only option, it is suggested replacing "an office or room" with "location," would allow some flexibility and availability for the individual litigant at the time of the hearing.
- In Exhibit C, as to Adoption hearings in Civil/Domestic and Juvenile Dependency, adding the language "To be determined by the judicial officer at the time of setting with input from the parties" is suggested as this is the usual course of business.
- In the same Exhibit C, as to Temporary Protective Orders, Ex Parte Applications for TPOs (with hearing) and the Motions to Extend and Dissolve should both be treated the same as either presumptively in-person or presumptively virtual. Several of the Judges believe these hearing types should be presumptively in-person to allow the right to confront witnesses and present evidence. Other of Judges voiced the need to balance the victim's trauma. Regardless, both hearings should have the same presumption of in-person or virtual for consistency.
- In the same Exhibit C, under Family Specialty Courts, SJDC no longer has a Family Treatment Court, and this does not apply.

ADKT 0613

ADKT 0613 petitions this Court to adopt a proposed rule amendment to Supreme Court Rules Part IX-B(A) Rule 4, the Rules Governing Appearance by Telephonic Transmission Equipment for Civil and Family Court Proceedings. The amendment, however, will leave unchanged Supreme Court Rules Part IX-B(A) Rule 1-3, defining terms including telephonic transmission equipment and addressing the policy favoring telephonic equipment appearances.

General Comments:

- If passed as written, the Petition also appears to leave Supreme Court Rules Part IX-B(B), Rules Governing Appearance by Simultaneous Audiovisual Transmission Equipment for Civil and Family Court Proceedings in place as written. This will create inconsistency and contradiction between the Supreme Court Rules, (particularly Supreme Court Rules Part IX-B(B)), the newly developed "Preamble for Rules of Virtual Advocacy," and supporting "Presumptive Appearance Case Type".
- The Judges suggest the Nevada Supreme Court decline to adopt the proposed rule amendment as set forth in Exhibit A to ADKT 0613 and allow the Commission to re-review Supreme Court Rules Part IX-B(A) and (B) and propose changes to both parts of Rule IX-B to avoid inconsistencies. If permitted, the Judges would appreciate an opportunity to propose changes to Supreme Court Rules Part IX-B(A) and (B) to create a clear, cohesive, and effective set of rules supporting the "Presumptive Appearance Case Type" lists and "Preamble for Virtual Advocacy" outlined in ADKT 0581.

Comments: Notwithstanding the overarching concerns outlined above, if the Court proceeds with review and modification of only Supreme Court Rules Part IX-B(A) Rule 4, pursuant to the proposed amendment set forth in Exhibit "A" to the Petition, the SJDC provides the following specific concerns outlined below and makes some suggested language changes as outlined in Exhibit "1" (proposed changes marked in red):

- Rule 4 proposed subsection 2. The proposed amendment appears to limit judicial discretion to modify the rule by limiting the right to modification only to circumstances where a party's internet connection is poor and the court is unable to view, hear, or understand an attorney or litigant. The rule should confirm the authority of judicial officers to exercise their discretion and modify the rule as deemed appropriate. While judicial officers may need to modify the rule in the event a party's internet connection is poor and the court is unable to view, hear or understand a participant, the court may also need to modify the rule if a participant has shown themselves unable or unwilling to comply with the rules or engage inappropriately with the court and/or other participants in past proceedings. The court must maintain judicial discretion to modify the rule as

deemed appropriate and to exercise necessary control over the court proceedings.

- Rule 4 proposed subsection 3(a). To properly review, address (by way of the papers or an expedited hearing) and adjudicate a request to appear virtually for a presumptively in-person proceeding, Judges and staff should be afforded at least five (5) judicial days. The 48-hours' notice, particularly for proceedings commencing on a Monday or the day after a holiday, will not afford the court a meaningful opportunity to address and resolve the issue prior to commencement of the action. Moreover, since the proposed rule requires the court to give notice to all parties before the hearing and continue a proceeding if necessary to accommodate personal appearance, if the request for virtual appearance is rejected, addressing these issues as quickly as possible prior to the proceeding is necessary to avoid gamesmanship. Under the proposed language a litigant can file a request for virtual appearance 48-hours prior to a trial, evidentiary proceeding, or contempt or other hearing. Although the rule requires good cause for granting, a litigant may simply indicate "good cause" exists even if no specific facts or justification for appearance via virtual means is given. Given the short timeline, the court would have no opportunity to address the request until the day of the hearing, at which point, the litigant is already appearing virtually in accordance with the request. Even if the court denies the request to appear virtually, the language of the rule would nonetheless force the court to also provide "reasonable notice" to the litigant, who appeared virtually, before the hearing can proceed which would result in continuances where a continuance would otherwise be impermissible. Moreover, nothing prevents this circumstance from repeatedly happening when an in-person hearing is set with a new request citing slightly different circumstances from the first, where a party has given notice that will clearly be rejected but is nonetheless used to secure a continuance they would not otherwise have been afforded. In addition, a party requesting to appear virtually for a presumptively in-person hearing should be required to give notice by way of a written request filed with the court to maintain a record of such request. Whether notice has been provided is often disputed and litigants, as well as courts, will have difficulty maintaining a clear record if notice was given by way of a fax transmission, electronic mail (email), or text message without filing a certificate or other proof or testifying under oath on the record. Further, the email addresses of numerous court staff including our court resource center, judicial assistants, filing office, court clerks, law clerks, and court reporters are available on our court website. If a self-represented litigant notifies the court by email to any one of these court email addresses, has notice been provided. Similarly, court staff and judicial officers, as members of our communities, have personal cell phone numbers that may be known to some litigants and attorneys. Is a text message to the personal cell phones of court staff and/or Judges permissible notice? The proposed rule amendment suggests that if the text message is reasonably calculated to ensure delivery to the court, the answer would be yes. How then are these text messages maintained as part

of the court record? The Judges respectfully suggest notice should be filed with the Court in a manner similar to the proposal outlined in Rule 4(3)(a) attached.

- Rule 4 proposed subsection 3(c). The proposed language, allowing the option of objections to be made orally at the time of the hearing, affords litigants an opportunity to play games and ambush the other party and the Court, particularly when the objection can so easily be used to secure a continuance.
- Rule 4 proposed subsection 3(d). The proposed rule allows appearance by video or telephonic transmission. The proposed rule should allow appearance by virtual means (requiring video and audio transmission) rather than just video. This is also the first mention of allowing appearance by telephone, which creates an inconsistency. As written, there is no specific notice requirement to appear by telephone, only appearance by virtual means (defined as real-time simultaneous audio and video).
- Rule 4 proposed subsection 3(e). If a party wishes to appear in-person for a presumptively virtual appearance, the party should also be required to give notice in a manner similar to the suggested changes to 3(a) outlined above. When possible, SJDC should, at its discretion, be allowed to permit a party to appear in-person without notice and have discretion to accommodate that party's appearance and participation in-person or via virtual means utilizing equipment provided at the courthouse. When the Judges are engaged in hearings via virtual means, they are in their courtrooms with only clerical staff. As members of the public are not expected to appear in-person, the bailiffs are redeployed to other areas of the Court (i.e., assisting with transport, relieving other bailiffs for breaks, offering additional court security, or providing backup to other courtrooms). When a litigant or counsel unexpectedly appears at the courthouse to appear in-person for a hearing set to be heard virtually, the Court attempts to accommodate the in-person appearance by obtaining a bailiff quickly. However, if a bailiff is not readily available, the court accommodates the party's participation by virtual means using designated rooms and/or devices set up for virtual appearance maintained at the courthouse, and the Court provides personnel to assist the litigant in using the Court's equipment. For the most efficient use of court resources, discretion to accommodate virtual participation at the courthouse by using court devices where available should be preferred. This would also alleviate the appearance of favoritism or bias, which can be perceived by the litigants, who believe that an in-person appearance will grant more favorable treatment. It is the practice of some Judges to require all parties to appear in-person or by virtual means to foreclose such arguments.

Probate

Comments:

- The proposed changes to Supreme Court Rules Part IX-B (A) Rules Governing Appearance by Telephonic Transmission Equipment for Civil and Family Court Proceedings. This may excise “telephonic” in favor of virtual hearings using “real-time simultaneous audio and video capabilities”. Hearings using audio and video capabilities are covered under Part IX-B (B) of the rules, thus it is unclear why the proposed Rule 4 of Part IX-B (A) replaces the rules regarding telephonic appearances with the term “Remote Appearance” which requires “audio and video capabilities.” The only time it would be permissible to allow a telephone-only appearance would be “if a party’s internet connection is poor and the court is unable to view, hear, or understand an attorney or litigant.” This is a dramatic departure from the current Rule 4, Section 1 provides eight different circumstances where telephone-only hearings are permitted.
- The Probate Court conducts its weekly calendar of uncontested probate matters via telephone in accordance with current Rule 4(1)(g), as these matters are scheduled for less than 15 minutes. Many of these uncontested matters are heard only to determine if a party wishes to appear to object to a pending matter. Most often, nobody at all appears for these hearings at all, so they take only a few seconds per case. A similar telephonic format is used by the Bankruptcy Court for the District of Nevada. The teleconference format is popular with the bar and with litigants, “interested persons,” and other stakeholders in our probate cases.
- Our Probate Commissioner elected to hold these hearings exclusively by telephone because it is very efficient for the court and for the parties in probate cases. More importantly however, telephone-only hearings promote greater access to justice because they require the least cumbersome and most widely available technological means (the telephone) to appear in a court proceeding.
- Probate cases involve not only a fair number of unrepresented parties, but numerous other “interested persons” who are not appearing parties in a case but who wish to observe the Court’s proceedings. These non-litigant stakeholders include heirs, creditors, prospective buyers of property, and many other persons from all socioeconomic backgrounds who are unlikely to have an attorney and may not have access to a reliable computer and internet connection. On any given weekly calendar, held by teleconference, there are more persons attending by telephone (between 30 and 40 people) than can be comfortably accommodated in our current courtrooms A or B. Insofar as the proposed changes to SCR Part IX-B (A) can be construed to limit the current practice of the Probate Court, the SJDC suggests maintaining the provisions of Rule 4(1)(g), or allowing another less restrictive rule regarding telephone-only appearances.

Thank you for the opportunity to provide comments on ADKT 0581 and ADKT 0613. We anticipate the undersigned and other judges from the Second Judicial District Court will attend the hearing next week.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynne K. Jones", with a stylized flourish extending to the right.

Lynne K. Jones
Chief District Judge

A handwritten signature in black ink, appearing to read "Cynthia Lu", with a stylized flourish extending to the right.

Cynthia Lu
Presiding Family Court District Judge

EXHIBIT 1

PART IX-B.

(A) RULES GOVERNING APPEARANCE BY TELEPHONIC TRANSMISSION EQUIPMENT FOR CIVIL AND FAMILY COURT PROCEEDINGS

Rule 1. Definitions. In these rules, unless the context or subject matter otherwise requires:

1. "Telephonic transmission equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to one another, provided that all statements of all parties are audible to all persons present.

2. "Court" means a proceeding before a judicial officer, judge, master, or commissioner for all civil proceedings in the State of Nevada.

3. "Party" shall include the plaintiff, defendant, petitioner, respondent, applicant, adverse party, obligee, or obligor and also apply to each 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 telephonic transmission equipment appearances. The intent of this rule is to promote uniformity in the practices and procedures relating to telephonic transmission equipment appearances. To improve access to the courts and reduce litigation costs, courts shall permit parties, to the extent feasible, to appear by telephonic transmission equipment at appropriate proceedings pursuant to these rules.

Rule 3. Application. These rules apply to all civil cases and family court proceedings pursuant to Chapters 122 through 130 of the Nevada Revised Statutes.

Rule 4. ~~Appearance by telephonic transmission equipment.~~ Remote Appearances.

~~1. Circumstances in which appearance by telephonic transmission equipment shall be allowed.~~ **A remote appearance is defined as a court appearance made by a party using a device capable of real-time simultaneous audio and video capabilities.** ~~Except as provided in Rule 4(3), parties shall be allowed to appear before a judicial officer or judge, master, commissioner, or special master using telephonic transmission equipment in the following matters:~~

~~—(a) Case management conferences, provided the party has made a good faith effort to meet and confer and has timely served and filed a case management statement before the conference date;~~

~~—(b) Trial setting conferences;~~

~~—(c) Hearings on law and motion, except motions in limine;~~

~~—(d) Hearings on discovery motions, except where the hearing master determines that it is necessary for parties or attorneys to meet personally regarding discovery disputes or scheduling matters;~~

~~—(e) Status conferences, including conferences to review the status of an arbitration or a mediation;~~

~~—(f) Hearings to review the dismissal of an action;~~

~~—(g) Any other hearing that is scheduled for not more than 15 minutes; and~~

~~—(h) Any matters stipulated to by the parties and approved by the court.~~

~~—2. All other matters require personal appearances or appearances by use of simultaneous audiovisual transmission equipment.~~

~~—3. 2. Court discretion to modify rule. The court maintains the right to modify this rule by written order as deemed appropriate for the economic and fair management of litigation and administration of justice. In exercising its discretion under this provision, the court should consider the Preamble for Rules of Virtual Advocacy and supporting Presumptive Appearance Case Type.~~

~~(a) Clear Record. In accordance with the Rules of Virtual Advocacy 3(a), 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 or witness telephonically, continue the matter or take the matter off-calendar or pursue any other remedy that the court deems appropriate.~~

~~(a) Applicable cases. In exercising its discretion under this provision, the court should consider the general policy favoring telephonic transmission equipment.~~

~~—(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 telephonic transmission equipment is inadequate.~~

~~—4. Need for personal appearance. If, at any time during a proceeding conducted by telephonic transmission equipment, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance by a party or witness.~~

~~—5. 3. Notice by party.~~

~~—(a) A party choosing may request to appear remotely for a presumptively in-person hearing as defined by the "Presumptive Appearance Case Type" lists, Exhibits A-D to the Rules of Virtual Advocacy, but must follow the procedure for making such a request as set forth within the Rules of Virtual Advocacy, and:~~

~~(a) A party must provide notice to all parties and the court as soon as practicable but at least 48 hours five (5) court days prior to the applicable hearing or trial. A party requesting to appear remotely that must set forth good cause for the party, attorney or witness to appear remotely, and either:~~

~~(1) Place the phrase "Remote Appearance" below the title of the moving, opposing, or reply papers; or~~

~~(2) Notify the court and all other parties of the party's intent to appear by simultaneous audiovisual transmission equipment orally on the record during a court proceeding or in writing by filing a "Notice of Intent to Appear Remotely" with the court (along with any formal submission of the "Notice of Intent to Appear Remotely" as may be required) and serving the "Notice of Intent to Appear Remotely" at the same time on all other parties by personal delivery, fax transmission, electronic mail, text message or by electronic service through the court's online docketing system (if available). The party providing notice must file an affidavit or declaration in lieu of affidavit and any proof of service with the Court~~

within 24 hours of filing a "Notice of Intent to Appear Remotely" identifying the manner in which the other party(ies) were provided notice.

~~(b) A party must give notice~~ by telephonic transmission equipment at a proceeding under this rule must either:

~~_____ (1) Place the phrase "Telephonic Transmission Equipment Appearance" below the title of the moving, opposing, or reply papers; or~~

~~_____ (2) At least 5 court days before the appearance, notify the court and all other parties of the party's intent to appear by telephonic transmission equipment. If the notice is oral, it must be given either in person or by telephonic transmission equipment. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Telephonic Transmission Equipment" with the court at least 5 court days before the appearance and by serving the notice at the same time on all other parties by personal delivery, fax transmission, express mail, electronic mail, text message or by electronic service through the court's online docketing system (if available), or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day and the court.~~

(b) Absent a court order directing otherwise, by at least noon on the court day prior to any such proceeding {C}copies of any exhibits that a party participating telephonically remotely intends to present at the hearing shall be:

1. Delivered to the Court personally, via fax transmission (where available) or filed with the court's online docketing system (if available). E-filing documents shall not waive a party's ability to object to any such document, nor does such filing mean the document is evidence until admitted as evidence by the court.

2. Delivered to all parties either by personal delivery, fax transmission or electronic mail, by at least noon on the court day prior to any such proceeding.

(c) A party may object to the virtual appearance by filing a written objection or may object orally at the relevant hearing.

~~_____ (b) If after receiving notice from another party as provided under Rule 4(5)(a) a party that has not given notice also decides to appear by telephonic transmission equipment, the party may do so by notifying the court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of its intent to appear by telephonic transmission equipment. Copies of any exhibits that the party intends to present at the hearing shall be delivered to the court and all parties by at least noon on the court day prior to the scheduled hearing.~~

~~_____ (c) If a party that has given notice that it intends to appear by telephonic transmission equipment under Rule 4(5)(a) subsequently chooses to appear in person, the party must so notify the court and all other parties that have appeared in the action by telephonic transmission equipment at least 2 court days before the appearance.~~

(d) The court, on a showing of good cause and at its discretion, may permit a party to appear by video or telephonic transmission equipment at a proceeding even if a party has not given the notice required under Rule 4(5)(a) or (b) Rule 4(3)(a) or (b) and may permit a party to appear in person even if the party has previously given the notice required in Rule 4(5)(c), provided that the party agrees to pay the applicable cancellation

fee to the court or third-party provider of the telephonic transmission equipment, virtually when exigent circumstances exist.

(e) A party wishing to appear in person as opposed to remotely for a presumptively virtual appearance may do so without giving notice. The court shall allow a party appearing in person for a presumptively virtual appearance to participate in the proceeding in person or via remote means from the courthouse using an approved court device (where available).

~~6. 4. Notice by court. After a party has requested a telephonic transmission equipment remote appearance under Rule 4(5), in accordance with the Rules of Virtual Advocacy, if the court rejects the request and requires the personal appearance of the party, the court must give reasonable notice to all parties before the hearing and may continue the hearing if necessary to accommodate the personal appearance. The court may direct the court clerk, a court-appointed vendor, a party, or an attorney to provide the notification.~~

~~7. Private vendor; charges for service. A court may provide telephonic 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 telephonic 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 conference call provider that must be used for telephonic transmission equipment appearances.~~

~~8. 5. Audibility and procedure.~~

~~(a) The court must ensure that the statements of participants are audible to all other participants and the court staff and that the statements made by a participant are identified as being made by that participant.~~

~~(b) Upon convening a telephonic remote proceeding, the judge shall:~~

~~(1) Recite the date, time, case name, case number, names and locations of parties and counsel, and the type of hearing;~~

~~(2) Ascertain that all statements of all parties are audible to all participants; and~~

~~(3) Give instructions on how the hearing is to be conducted, including notice that in order to preserve the record, speakers must identify themselves each time they speak.~~

~~9. 6. Reporting. All proceedings involving telephonic transmission equipment remote appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.~~

~~10. 7. Information on telephonic transmission equipment remote appearances. The court must publish a notice providing parties with the particular information necessary for them to appear by telephonic transmission equipment remotely at proceedings in that court under this rule.~~

~~14. 8. Public access. The right of public access to court proceedings must be preserved in accordance with law.~~