

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

MAY 28 2013

TRACEY K. ANDERMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER ADOPTING PART IX-B OF THE SUPREME COURT RULES

WHEREAS, on June 7, 2011, the Hon. Mark Gibbons, Associate Justice of the Nevada Supreme Court, filed a petition in this court requesting the amendment of Part IX of the Supreme Court Rules with rules governing telephonic appearances and appearances using video transmission equipment, and

WHEREAS, this court conducted public hearings on the proposed rules, and

WHEREAS, this court has concluded that adoption of a new section of the rules, applicable to civil and family law cases, is warranted, accordingly

IT IS HEREBY ORDERED that Part IX-B of the Supreme Court Rules is adopted as set forth in Exhibits A and B.

IT IS FURTHER ORDERED that these rules shall be effective July 1, 2013. The clerk of this court shall cause a notice of entry of this order to be published in the State Bar of Nevada's official publication. The clerk shall publish this order by disseminating copies of it 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 that she has accomplished 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 rules.

Dated this 28th day of May, 2013.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: Francis C. Flaherty, President, State Bar of Nevada
Kimberly K. Farmer, Executive Director, State Bar of Nevada
All District Court Judges
All District Court Clerks
Administrative Office of the Courts

EXHIBIT A
ADOPTION OF NEW SUPREME COURT RULES

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.

1. Circumstances in which appearance by telephonic transmission equipment shall be allowed. 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. Court discretion to modify rule.

(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. Notice by party.

(a) A party choosing to appear 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, 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. Copies of any exhibits that a party participating telephonically 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 any such proceeding.

(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, may permit a party to appear by telephonic transmission equipment at a proceeding even if a party has not given the notice required under Rule 4(5)(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.

6. Notice by court. After a party has requested a telephonic transmission equipment appearance under Rule 4(5), if the court 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. 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 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. Reporting. All proceedings involving telephonic transmission equipment appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

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

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

EXHIBIT B
ADOPTION OF NEW SUPREME COURT RULES

PART IX-B.

**(B) RULES GOVERNING APPEARANCE BY SIMULTANEOUS
AUDIOVISUAL TRANSMISSION EQUIPMENT FOR CIVIL AND
FAMILY COURT PROCEEDINGS**

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

1. "Simultaneous audiovisual transmission equipment" means transmission accomplished through the use of:

(a) One or more cameras at a location other than the courtroom that depict the witness in real time so that the parties, their counsel (or the government's counsel), the court, and the jury, if any, can see the witness to the same or greater extent they would see if the witness was present in the courtroom; and

(b) One or more cameras in the courtroom that depict the parties, their counsel (or the government's counsel), the prosecutor, the court, and the jury, if any, in real time on a screen visible to the witness who is at another location.

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 such 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.

6. "Good cause" may consist of one or more of the following factors as determined by the court:

(a) Whether a timely objection has been made to parties or witnesses appearing through the use of simultaneous audiovisual transmission equipment;

(b) Whether any undue surprise or prejudice would result;

(c) The convenience of the parties, counsel, and the court;

(d) The cost and time savings;

(e) The importance and complexity of the proceeding;

(f) Whether the proponent has been unable, after due diligence, to procure the physical presence of a witness;

(g) The convenience to the parties and the proposed witness, and the cost of producing the witness in relation to the importance of the offered testimony;

(h) Whether the procedure would allow effective cross-examination, especially where documents and exhibits available to the witness may not be available to counsel;

(i) The importance of presenting the testimony of witnesses in open court, whether the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully;

(j) Whether the quality of the communication is sufficient to understand the offered testimony; and

(k) Such other factors as the court may, in each individual case, determine to be relevant.

Rule 2. Policy favoring simultaneous audiovisual transmission equipment appearances. The intent of this rule is to promote uniformity in the practices and procedures relating to simultaneous audiovisual transmission equipment appearances. To improve access to the courts and

reduce litigation costs, courts shall permit parties, to the extent feasible, to appear by simultaneous audiovisual 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 simultaneous audiovisual transmission equipment.

1. Appearances by parties or witnesses through the use of simultaneous audiovisual transmission equipment may be made as follows:

(a) Trials, hearings at which witnesses are expected to testify, or hearings on preliminary injunction motions provided there is good cause as determined by the court in accordance with Rule 1(6);

(b) Settlement conferences;

(c) Trial management conferences;

(d) Hearings on motions in limine;

(e) Any hearing in which a hearing master determines that the presence of the parties or witnesses is not necessary to resolve discovery disputes or scheduling matters; and

(f) Any proceeding stipulated to by the parties and approved by the court in conformity with Nevada Rule of Civil Procedure 43(a) and other applicable rules or statutes.

2. In addition, except as provided in Rule 4(1), a personal appearance is required for the following persons or parties:

(a) Applicants seeking an ex parte order, if a hearing is held, unless the applicant is seeking an order:

(1) For permission to file a memorandum in excess of the applicable page limits;

- (2) For an extension of time to serve pleadings;
 - (3) To set hearing dates on alternative writs and orders to show cause; or
 - (4) By stipulation of the parties;
- (b) Persons ordered to appear to show cause why sanctions should not be imposed for violation of a court order or a rule; or
- (c) Persons ordered to appear in an order or citation issued under NRS Title 12 or Title 13.

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 family court proceedings.

(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) or (2) 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.

4. Subsequent personal appearance. If, at any time during a hearing, conference, or 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.

5. Notice by party.

(a) A party (or a witness for a party) choosing to appear by simultaneous audiovisual transmission equipment at a proceeding under this rule must either:

(1) Place the phrase "Simultaneous Audiovisual 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 simultaneous audiovisual transmission equipment. If the notice is oral, it must be given in person. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Simultaneous Audiovisual 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, 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. Copies of any exhibits that a party participating by simultaneous audiovisual transmission equipment 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 any such proceeding.

(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 simultaneous audiovisual 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 simultaneous audiovisual 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 simultaneous audiovisual 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 simultaneous

audiovisual transmission equipment at least 2 court days before the appearance.

(d) The court, on a showing of good cause, may permit a party to appear by simultaneous audiovisual transmission equipment at a proceeding even if a party has not given the notice required under Rule 4(5)(a) or (b) and may permit a party to appear in person even if the party has given the notice required in Rule 4(5)(a), provided that the party agrees to pay the applicable cancellation fee to the court or third-party provider of the simultaneous audiovisual transmission equipment.

6. Notice by court. After a party has requested a simultaneous audiovisual transmission equipment appearance for the party or a witness under Rule 4(5)(a) or (b), if the court 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 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.

8. Procedure.

(a) The court must ensure that the statements of participants are audible and visual 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 hearing to ensure the equipment is compatible and operational.

(b) Upon convening a simultaneous audiovisual transmission 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 and visible to all participants;

(3) Give instructions on how the hearing 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) Designate a person or persons with whom the party would coordinate and communicate about system requirements and compatibility.

9. 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.

10. 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.

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