

Past, Present, Future of Virtual Appearances in Nevada Family Law

BY MARSHAL S. WILICK, ESQ.



The Nevada Supreme Court has been encouraging “appearance by audiovisual transmission equipment” since 2009. Stated reasons included making it easier for Nevadans to afford to hire counsel of their choice, even if that lawyer lived in a different city.

The rules included a policy statement that their purpose was to “improve access to the courts and reduce litigation costs.” Courts were directed to “permit parties, to the extent feasible, to appear by audiovisual transmission equipment at appropriate conferences, hearing[s], and proceedings in civil cases.”

But the rules were largely ignored, especially in the rural districts, where permitting telephonic or audio/visual appearances would have made the most dramatic improvement in the economy of parties and ensuring access to counsel of choice.¹

Those trying to get courts to accommodate remote appearances ran into bureaucratic interference and often judicial indifference. In 2013, I lamented that although the equipment had been provided to courts throughout the state, there just was no “percentage” in it for the administrative personnel “to make it any easier for the public or the attorneys to actually use the equipment in the day-to-day representation of actual clients in actual cases.”²

Pleas for the Nevada judiciary to more forcefully require the rules to be followed and the equipment

to “actually be made available in some practical way to the great unwashed outside the judicial edifice” went nowhere.

All that changed overnight in March 2020, when the COVID-19 pandemic led to a series of lockdowns, administrative orders, court closures, and a dramatic pivot everywhere for virtual appearances in place of live appearances. Having been ordered to do so, the administrators for courts at every level made virtual appearances possible, and courts began facilitating the scheduling of hearings, conferences, and trials by way of audio-visual technology. Reports continued to surface, however, of some rural judges simply refusing to follow mandates or permit remote appearances because “that’s not the way we do it here.”

Four years later, most courts, lawyers, and the public have all adapted to virtual appearances.

Economics and Access to Justice

The pandemic forced a reconsideration of the economics of every court participant in “normal” court operations.

Traditionally, on a typical motion day in Clark County family court in “the before times,” each department had some five to eight hearings, each hour, on the law and motion calendar, usually for four to six settings per day.

Analysis revealed that about 480 hours of “waiting” time” were incurred – every hearing day, on top of the time spent actually attending to cases, resulting in some \$114,000 to \$228,000 of billable time being consumed every day just waiting for hearings. Even for the cases without counsel, the two- to four-hour travel/wait/appear/depart reality meant that every in-person hearing for each litigant normally required taking a day off of work, at the loss of an entire day’s wages.³

The impact of missed work was felt most severely in the lowest economic strata. Traditional in-person court hurt poor people most, whereas virtual appearances often permit litigants to work on the day set for hearings and take a break to attend them—as opposed to taking a day off—and permit counsel to be at their desks attending to other matters until called. The savings to litigants—i.e., “the public”—of default virtual hearings is in the many

millions of dollars per year. The parking nightmare is eliminated.

Family court has adopted uniform procedures whereby virtual hearings mirror, as closely as possible, the functionality of physical courtrooms. Typically, this includes a “static link” enabling anyone to “enter” the virtual courtroom as easily as they could walk into a physical courtroom. Efforts are underway to provide access to computer kiosks at various locations for those who lack equipment of their own, and virtual appearances have greatly increased access to justice for those living in remote locations far from the courthouse.

The Family Court Experience

The 2020 Eighth Judicial Court Rules (EDCR) 5 Revisions Committee “noted the enormous savings in time and money for litigants and counsel alike” of virtual appearances. The eventual rule, EDCR 5.609, made most hearings virtual by default even after the pandemic restrictions were lifted, excepting evidentiary hearings, trials, and show cause motions, reversing the prior practice of requiring permission for each virtual appearance.

The rule included a directive to provide public access for such hearings and provisions, permitting any party to request a mandatory in-person hearing. Some wealthier parties litigate just to increase the cost and inconvenience to the other party, so if such a request is made, the decision belongs to the judge, who can weigh the proffered rationale against the indisputable increase in expense and inconvenience.

Surveys of attorneys were overwhelmingly positive; most objections boiled down to lawyers whose business model depended on inefficiencies and waste of travel and waiting time to make their practices more profitable, which was not seen as legitimate.

The failure of some people to grasp the formality and decorum of proceedings when not physically in the courtroom is being addressed with pre-hearing notices

of courtroom etiquette; further steps may be attempted.

“Best Practices” Commission

In August 2021, the Nevada Supreme Court (through ADKT 582) appointed a commission to report on “best practices” for “virtual advocacy” in Nevada courts to “evaluate applicable rules to govern the unified use of remote technology” and consider applicable rule changes.

The commission looked at a lot of data, including the report from the National Center for State Courts that reached largely the same conclusions as the EDCR 5 Committee. The preamble to the final report⁴ noted that “The rules’ purpose is to create time and costs savings, provide prompt hearings, and heighten access to justice for all parties.” The family court list of default virtual appearances

largely mirrored the EDCR 5.609 list. Other courts have different lists.

The Supreme Court “Rules Governing Appearances by Simultaneous Audiovisual Transmission Equipment for Civil and Family Court Proceedings” (Supreme Court Rules Part IX-B) were altered in 2024 to favor virtual 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.”

Rural Courts

The reluctance or outright refusal of some courts to permit audio-video appearances, electronic filing, and other 21st century practices has been impeding access to justice for years.

Several such courts continue practices such as demanding not just in-person appearances at hearings, but original “wet” signatures on all documents and the personal delivery of all papers to their court clerks irrespective of any rational concern for authenticity.

These practices effectively deny equal access to justice to citizens of those

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locations who are then economically prohibited from employing counsel of their choice in any of the population centers where lawyers best suited to their cases are located. It makes no sense to have two lawyers from Las Vegas spend several hours of travel and waiting time to have a 15-minute motion hearing in Pahrump.

It has been suggested that these practices are intended as protectionist of local attorneys from competition, but they are in violation of both case law and Supreme Court Rules, and merit investigation and correction by judicial discipline, the bar, or both.

The Future

Modest advances in current technologies will soon permit immersive or holographic “appearances” at any distance, providing 360-degree “presence” anywhere as if physically present, perhaps starting with avatars and progressing to full-body scans.

At that point, folks used to current tech will have to return to being fully dressed for hearings, but the only distinction from personal appearances will be the manipulation of physical objects. Eventually, personal appearances may be as outdated as robes and wigs.

Back in 2013, I suggested that making audio-visual equipment available could be accomplished in 90 days if there was the will to do so. It is a pity that it took a world-wide pandemic to see that “real people actually get the benefit of the rules and equipment.” But at least it has now happened—in most Nevada courts. Hopefully, the remainder can be motivated to join as well in our increasingly virtual world.



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ENDNOTES:

1. See Legal Note Vol. 23 — What’s Up With Hooterville? (Aug. 18, 2010), posted at https://www.willicklawgroup.com/vol_23_whats_up_with_hooterville/.
2. See Legal Note Vol. 58 — Video Conference Rule (Nov. 19, 2013), posted at https://www.willicklawgroup.com/vol_58_video_conference_rule/.
3. For the detailed economic analysis, see Legal Note Vol. 74 — Why Court Appearances Should Be Remote By Default (Jan. 19, 2022), posted at https://www.willicklawgroup.com/legal_note_vol_74_why_court_appearances_should_be_remote_by_default/.
4. Posted at <https://nvcourts.gov>.



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