

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 No. 424

FILED

DEC 18 2008

TRACIE K. ANDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER ADOPTING PART IX OF THE SUPREME COURT RULES

WHEREAS, on April 2, 2008, the Hon. Mark Gibbons, Chief Justice of the Nevada Supreme Court, filed a petition in this court requesting the adoption of uniform rules to govern telephonic and audiovisual participation in Nevada courts, and

WHEREAS, this court conducted a public hearing on the proposed rules on Tuesday, December 9, 2008, and

WHEREAS, this court has concluded that adoption of the rules is warranted, accordingly

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

IT IS FURTHER ORDERED that these rules shall be effective March 1, 2009. 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 18th day of December, 2008.

Maupin, C.J.

Maupin

Gibbons, J.

Gibbons

Hardesty, J.

Hardesty

Parraguirre, J.

Parraguirre

Douglas, J.

Douglas

Cherry, J.

Cherry

Saitta, J.

Saitta

cc: Bruce Beesley, 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

ADKT 424 - Exhibit A

PART IX. RULES GOVERNING APPEARANCE BY COMMUNICATION EQUIPMENT

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

1. "Communication equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of all parties is audible to all persons present.
2. "Court" means either a general or limited jurisdiction court.
3. "Party" shall include and apply to such party's attorney of record.
4. "Shall" is mandatory and "may" is permissive.

Rule 2. Policy favoring communication equipment appearances. The intent of this rule is to promote uniformity in the practices and procedures relating to communication equipment appearances in civil cases. To improve access to the courts and reduce litigation costs, courts shall permit parties, to the extent feasible, to appear by communication equipment at appropriate conferences, hearings, and proceedings in civil cases.

Rule 3. Application. This rule applies to all cases except criminal, juvenile, and appellate proceedings.

Rule 4. Appearance by communication equipment.

1. Circumstances in which appearance by communication equipment shall be allowed. Except as provided in subsection 4, parties shall be allowed to appear before a court or master using communication 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 discovery commissioner determines that it is necessary for parties 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; and
- (g) Any other hearing that is scheduled for not more than 15 minutes.

2. Required personal appearances.

(a) Except as provided in subsection 3(c), a personal appearance is required for hearings, conferences, and proceedings not listed in subsection 1, including the following:

- (1) Trials and hearings at which witnesses are expected to testify;
- (2) Hearings on temporary restraining orders;

(3) Settlement conferences;
(4) Trial management conferences;
(5) Hearings on motions in limine;
(6) Hearings on petitions to confirm the sale of property under NRS Title 12; and

(7) Any hearing in which the discovery commissioner determines that the presence of the parties is necessary to resolve discovery disputes or scheduling matters.

(b) In addition, except as provided in subsection 3(c), a personal appearance is required for the following persons:

(1) Applicants seeking an ex parte order, except when the applicant is seeking an order:

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

(ii) For an extension of time to serve pleadings;

(iii) To set hearing dates on alternative writs and orders to show cause; or

(iv) By stipulation of the parties;

(2) Persons ordered to appear to show cause why sanctions should not be imposed for violation of a court order or a rule; or

(3) Persons ordered to appear in an order or citation issued under NRS Title 12.

At the proceedings listed in (1), (2), and (3), parties who are not required to appear in person under this rule may appear by communication equipment.

3. Court discretion to modify rule.

(a) In exercising its discretion under this provision, the court should consider the general policy favoring communication equipment appearances in civil cases.

(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 to appear in person at a hearing, conference, or proceeding listed in subsection 1 if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

(c) **Court may permit appearances by communication equipment.** The court may permit a party to appear by communication equipment at a hearing, conference, or proceeding listed in subsection 2 if the court determines that a communication equipment appearance is appropriate.

4. Need for personal appearance. If, at any time during a hearing, conference, or proceeding conducted by communication equipment, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

5. Notice by party.

(a) A party choosing to appear by communication equipment at a hearing, conference, or proceeding under this rule must either:

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

(2) At least three court days before the appearance, notify the court and all other parties of the party's intent to appear by communication equipment. If the notice is oral, it must be given either in person or by communication equipment. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Communication Equipment" with the court at least three 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, or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day.

(b) If after receiving notice from another party as provided under subsection 5(a) a party that has not given notice also decides to appear by communication 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 communication equipment.

(c) If a party that has given notice that it intends to appear by communication equipment under subsection 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 communication equipment, at least two court days before the appearance.

(d) The court, on a showing of good cause, may permit a party to appear by communication equipment at a conference, hearing, or proceeding even if a party has not given the notice required under subsection 5(a) or (b) and may permit a party to appear in person even if the party has not given the notice required in subsection 5(c).

6. Notice by court. After a party has requested a communication equipment appearance under subsection 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 teleconferencing 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 communication equipment a reasonable fee, specified in the contract, for its services.

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 or audiovisual 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;

(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 communication equipment appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

10. **Conference call provider.** A court, by local rule, may designate a particular conference call provider that must be used for communication equipment appearances.

11. **Information on communication equipment appearances.** The court must publish a notice providing parties with the particular information necessary for them to appear by communication equipment at conferences, hearings, and proceedings in that court under this rule.

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