

NEVADA SUPREME COURT AUTHORIZES LAWYERS TO ATTEND COURT BY TELEPHONE/VIDEO

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NEVADA SUPREME COURT

Lawyers who practice in courthouses throughout the state have frequently complained about the costs and time demands of traveling to other counties for what are often brief and routine hearings in civil cases. Many times lawyers have not taken cases because clients cannot pay for all of the travel and time involved in the numerous court appearances that many cases require.

These complaints come most frequently from attorneys who work in Reno or Las Vegas and wish to practice at the other end of the state. The result is that, in some cases, clients do not get the attorneys they want. In rural counties, where few attorneys practice, litigants are often left to fend for themselves because they cannot afford the travel costs for an out-of-county lawyer – even if the lawyer is willing to handle the case pro bono.

On March 1, 2009, a new Nevada Supreme Court rule went into effect, allowing attorneys and other parties to appear in court for many matters via conference telephone or other electronic device, such as a videoconference link. The rule applies only in civil cases, which include family law cases.

Currently, the rule does not allow remote appearances in criminal, juvenile and appellate cases. However, the Supreme Court may consider expanding the scope of the rule at a future date.

“This rule will allow the more efficient handling of certain civil cases by the courts, and provide cost savings for



litigants,” said Nevada Supreme Court Chief Justice James W. Hardesty. “I expect that this rule will benefit not only the lawyers and the parties, but the interests of justice as well.”

“I hope we will also see a dramatic increase in the availability of pro bono attorneys for litigants in our rural courts,” Hardesty said.

“At a time when many Nevadans are struggling financially and find themselves in court as a result, it would be nice to think that our legal community steps up and provides needed counsel at little or no cost to unfortunate litigants,” Hardesty said. “Many pro se litigants must rely on legal forms posted on the Supreme Court website, or tips available through self-help centers in Clark and Washoe Counties. These are very useful, but there is no substitute for the counsel of an attorney. We want to encourage attorney participation in pro bono work and reduce the cost to them for providing a valuable legal service for those in need.”

The Supreme Court has been working to establish an array of videoconference equipment and sites around Nevada that could be used for remote access court hearings.

“It was my belief that by expanding the way litigants and lawyers could attend court hearings, access to justice would be better served,” said Justice Mark Gibbons, who proposed the rule in 2008 when he was chief justice.

“With the advances in technology and the needs that technology can fill, it was an easy decision by the Supreme

Court to implement the new rule,” Gibbons said. “We believe that expanding audiovisual and telephonic appearances will open the doors of the courts wider than ever before.”

The Administrative Office of the Courts is currently conducting a statewide assessment of all Nevada courts to determine the type of equipment each courtroom can utilize, together with the costs.

While the new rule allows opportunities for court appearances by attorneys and others, it generally does not allow remote appearances for trials involving witnesses, hearings on temporary restraining orders, settlement conferences, trial management conferences, hearings on motions in limine and hearings on petitions to confirm the sale of property under NRS Title 12. However, judges have the discretion to allow remote appearances in these types of situations, “if the court determines that a communication equipment appearance is appropriate.”

Judges and discovery commissioners also have the discretion under the rule to require personal appearances if it is deemed that “a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.”

But if a judge does require personal appearance of a 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.” And the rule cautions that courts “should consider the general policy favoring communication equipment appearances in civil cases.”

The policy states: “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.”

The new rule states that a party wishing to appear in court telephonically or by video can inform the court and the parties of that choice either verbally or in writing. According to the rule, “A party choosing to appear by communication equipment at a hearing, conference, or proceeding” under this rule must either:

- Place the phrase “Communication Equipment Appearance” below the title of the moving, opposing or reply papers; or
- 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.

If after receiving notice from another party... 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.

If a party that has given notice that it intends to appear by communication equipment... 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.

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... and may permit a party to appear in person even if the party has not given the notice required.

To facilitate teleconferencing for court appearances, courts may enter into a contract with a private vendor that will charge the parties a fee for the teleconferenced court appearances.

While remote appearances are permitted, courts must report the proceedings as if the parties were all in the courtroom.

Public access to the court proceedings is also preserved under the rule.

The rule, which is available on the Supreme Court website, www.nevadajudiciary.org, was first sought in April 2008, in a petition filed by then-Chief Justice Gibbons. Some courts had allowed telephonic appearances of parties or witnesses in the past, but the new rule now formally advocates that approach.

A public hearing on the proposed rule was conducted on December 9, 2008. The rule was adopted unanimously by the Supreme Court on December 18, 2008, with an effective date of March 1, 2009. **NL**

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