

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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MEETING SUMMARY

Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts

December 2, 2022

2:00 p.m.

Summary prepared by: Almeda Harper

Members Present:

Justice Hardesty (Co-chair)
Justice Herndon (Co-chair)
Mr. John Arrascada
Judge Rebecca Burton
Judge Tara Clark Newberry
Judge Paige Dollinger
Mr. Darin Imlay
Judge Tierra Jones
Mr. Christopher Lalli
Ms. Alicia Lerud
Judge Lori Matheus
Ms. Leslie Nino-Piro
Ms. Jennifer Noble
Judge Alan Tiras
Judge Natalie Tyrrell

Guests Present:

Ms. Audrey Beeson
Judge Breslow
Ms. JoNell Thomas
Mr. Marshal Willick

AOC Staff Present:

Ms. Jamie Gradick
Ms. Almeda Harper

I. Call to Order

- Justice Hardesty, co-chair of the commission, called the meeting to order at 2:06 p.m.
- Ms. Harper called roll, a quorum was present
- Justice Hardesty thanked the members of the subcommittees for their work and the AOC staff for their assistance. He was very impressed with the responses from the attorneys and felt there were many similarities in opinions.
- Justice Herndon commented that he was very pleased to see the high volume of participation and also noticed many similarities in opinions.

II. Approval of previous minutes

- The summary for the April 15, 2022 meeting was tabled for a future meeting.

III. Public Comment

- Judge Breslow made the following public comments:

- ♦ Virtual hearings limit a judicial officer's ability to communicate effectively and thoroughly with their staff in real-time to obtain information, direct research, and assist a judicial officer in doing their job. It also interferes with the ability to get a true sense of the person testifying.
- ♦ Virtual hearings have significantly impaired the respect for the judiciary and the judicial process. People attending virtual court do not take the proceedings seriously and lack respect for the place and process.
- ♦ It also interferes with technology. Dropped calls are manageable but not optimal. Studies have shown that one's eyes and brain get tired while watching a screen full of people and trying to do one's job.
- ♦ Virtual hearings limit interactions. Judicial officers not only preside fairly over the matters brought to court but also provide community outreach. Tasks such as checking on the career paths of the law clerks and visiting local schools to inspire greatness in the students cannot be done from a virtual court.
- ♦ There is a need to do things remotely in many cases, but caution should be used when creating recommendations. Judges should take care not to diminish effectiveness while increasing access to justice.
- ♦ The default presumption for most civil and criminal cases should be in person to allow attorneys the opportunity to build their skills in the court.
- ♦ Final pre-trial conferences should be in person to show clients the layout of the building, brief them on proper procedures, and allow them to meet with their council.
- ♦ Criminal justice arraignments should be held in person in the event a custody status change is being requested. The judge will need to study the person who's resuming custody and the details of the new situation.
 - Justice Hardesty felt judges should be in their courtroom when conducting any type of hearing to allow the public and litigant the right to attend. He also felt that communication challenges between the judge and staff are eliminated while operating from the courtroom.
 - Justice Herndon agreed with Justice Hardesty adding that crime victims, criminal defendants, civil parties, etc., should have the right to come to court to work directly with the judge.
 - Judge Matheus asked if the panel feels judges should be in the courtroom for weekend bail hearings. Rural areas are struggling to cover when ill or in an emergency and with limited staff.
 - Justice Hardesty felt illness or 3 am warrants are exceptions to appearing in the courtroom. As for bail hearings, victims of the crime have a right to attend. There are also security issues in working with inmates.
 - Judge Breslow commented he has not handled bail hearings with inmates as they are usually covered by Justices of the Peace. If needed, they are held in person.
 - Mr. Imlay commented initial appearances for the Vegas Justice Court are held in person with all staff present in the courtroom, seven days a week. The rural courts hold them virtually with a mixture of staff appearing virtually and in person.
 - Mr. Lalli commented judges usually appear from the courthouse or their chambers.
 - Judge Tyrrell commented that early on, some hearings were being conducted from home offices. Currently, the judges are appearing in the courtroom, seven days a week.
 - Judge Matheus commented that Lion County courts are spread out and judges rotate every four weeks. On the weekdays, the judges appear in the courthouse. On the weekends they appear virtually. The jail cannot transport inmates to the courthouses due to staff and budget restraints.
 - Justice Herndon added that he was originally focusing on workweek hearings. He recognized there will be different requirements for weekend bail hearings.
 - Judge Clark Newberry commented that while the presumption is that judges should appear in a courtroom, there should be language allowing for judges' discretion in emergencies.
 - Judge Dollinger commented that some judges in the Second District may be conducting hearings from their homes, but most of the judges appear from the courtroom. Virtual

hearings work well for family court allowing the judges to see the living environments of the children. It also helps the children involved to feel more comfortable as courtrooms tend to make them nervous. She prefers in-person hearings for juvenile delinquency cases.

IV. Review of Subcommittee Reports

- Subcommittee on Uniform rules for Civil Cases
 - ♦ Justice Hardesty felt a presumption on settlement conferences wouldn't need to be addressed. The parties and judge can schedule them based on availability.
 - ♦ Status conferences and trial readiness
 - Judge Breslow agreed that status conferences and all other conferences leading up to the hearing can be held virtually. Trial readiness should be in person if it is the last meeting before the hearing.
 - Judge Clark Newberry explained trial readiness conferences in her department occur after discovery to ensure the case is ready for pre-trial workup and are best held virtually.
 - ♦ Probate
 - The second district is completely virtual.
 - The eighth district processes certain uncontested matters virtually. Contested matters are handled based on each department's preference with the judge and staff in the courtroom. Uncontested matters are all handled virtually by the probate commissioner.
 - ♦ Law and Motion
 - Judge Breslow commented that it depends on the case whether they are held in person or virtually.
 - The second district does not hold law and motion calendars every day.
 - The eighth district conducts oral arguments on all motions in civil cases. Each department sets its preferences with the master calendar regarding matters that will be heard in chambers versus those that are set for oral arguments.
- Subcommittee on Uniform Rules for Criminal Cases
 - ♦ Justice Herndon commented the subcommittee unanimously agreed on when cases/hearings should be presumptively in person or virtual with the idea that judges should have the ability to change the format if needed.
 - ♦ Ms. Thomas suggested looking into applying a monitoring system during virtual testimonies to eliminate the possibility of coaching. For example, a college student testing from home had to verify they were alone with a monitoring system.
 - ♦ Sentencing hearing involving out-of-town/state defendant and a stipulation to probation and/or statutorily mandated probation
 - Judge Breslow was concerned that if the offender is sentenced virtually, they cannot be detained immediately and may flee, in some cases, committing additional crimes. He felt these cases should be presumptively in person.
 - Judge Jones explained that judges usually know when someone will be taken into custody and should schedule the case to be held in person.
 - ♦ Ms. Nino-Piro asked the commission how they would allow the public to access virtual hearings via the internet.
 - Justice Herndon stated there is a presumption that the judges will be attending the virtual hearings from the courtroom to allow access to the public. During the covid shutdown, the offices were providing meeting links to victims and criminal defendants. If the public wanted to attend a virtual meeting, information could be posted to the court's webpage.
 - Judge Clark Newberry added that each department in the eighth district has one BlueJeans link for all virtual hearings. The link is provided in every notice of hearing, on the webpage, and to anyone who requests it. If there is an exclusionary rule, they require all attendees to identify if they are a witness and provide their information. Non-witnesses are removed from the virtual meeting.
- Subcommittee on Uniform Rules for Family Cases

- ♦ Judge Dollinger commented she defers to the family’s preference when addressing adoptions. At times, virtual hearings are used as an incentive for good behavior. She agreed with Ms. Thomas’ suggestion of using a monitoring system to confirm and maintain confidentiality during virtual hearings. Those cases seem to have more difficulty getting people to attend in person.
- ♦ Ms. Beeson asked why there was a differentiation between 432B Guardianship Citations which were presumptive in person and minor and adult which were presumptive virtual.
 - Judge Dollinger explained that in the second district, guardianship cases are processed through department 14. Family court does not process 432b cases. The line items were added by either Judge Burton or Judge Hill, so she was not able to offer any information.
 - Justice Hardesty commented hearing many complaints that rules and practices differing between each department causes hardship. He felt there should be more consistency between departments.
- ♦ Ms. Beeson commented juvenile dependency adjudicatory/plea hearings should be presumptive virtual due to the difficult nature of the cases and clients. She mentioned judges tend to hold the court in person without considering the needs of attorneys and clients.
 - Judge Dollinger recognized there are some discrepancies with the presumptive defaults in certain cases. She offered to review them with the other members of the subcommittee and report back to Ms. Beeson.
- Subcommittee on Uniform Rules for Limited Jurisdiction Cases
 - ♦ Preliminary Hearings
 - Judge Tyrrell felt it becomes more difficult for courts with larger caseloads to hold virtual hearings and that preliminary hearings should be presumptive in person. Short virtual hearings are held weekly but longer virtual hearings tend to have issues.
 - Judge Matheus also felt they should be held in person, the work product provided stated otherwise and should be corrected. She felt the difference in opinion between the subcommittee members was due to the size of the courts. Smaller courts with lighter caseloads were more inclined to hold hearings virtually.
 - Judge Tiras added that virtual technology is a tool that can improve or hinder a hearing. Court size seems to dictate how often virtual hearings are utilized. The benefits of virtual hearings seem to be court specific, and each court can exercise discretion when deciding whether a hearing should be in person or virtual. He prefers preliminary hearings to be virtual as they have been very successful, but he only encounters a few per month.
 - Justice Herndon asked how virtual preliminary hearings were conducted.
 - ♦ Judge Tiras explained that all attendees appeared virtually. Most evidence is documentary and exhibited through screen share, creating a video record of the evidence. In other trials where physical evidence was submitted, he required the attendees to appear in person.
 - ♦ Justice Hardesty asked the subcommittee members what it might take to get a consensus on the undecided case types.
 - The members suggested separating the columns into urban and rural categories.
- Justice Hardesty asked if the attorneys from the eighth district are required to file motions for virtual or in-person hearings.
 - ♦ Ms. Noble commented the procedures vary depending on the department for trial deputies. Most often the court will notify her if the hearing is virtual or in person. For capital cases, they are conducted in person and any requests for a hybrid hearing require a motion.
 - ♦ Mr. Lalli commented Clark is similar to Washoe in that each department may have different requirements.
 - ♦ Ms. Thomas added that most of her clients are in custody. The detention center struggles in going back and forth between virtual and in-person hearings. Most cases are in person as she prefers the attorneys to be with their clients. In rare cases where the client is ill or out of state, they will allow a virtual appearance. If the state would like to preserve the preliminary hearing testimony to be presented at trial, she would argue that the client’s confrontation rights were violated, absent some

compelling reason for them not to be in person. A minor witness would be fine for a virtual appearance, but an eye-witness ID should appear in person. Exceptions are made for high-risk transport clients and Covid cases.

- ♦ Mr. Imlay agreed with Ms. Thomas. Any hearings involving evidence are conducted in person. The witness needs to be in the courtroom and a request for a virtual hearing requires a motion. The motion can be submitted orally, in advance.
- ♦ Justice Herndon commented his subcommittee purposely did not address how to change a hearing from in-person to virtual. They started with the presumption that judges would be in the courtroom during the workweek and anyone can attend a presumptively virtual hearing, in person, at any time. Any request to switch from in-person to virtual can be done by verbal request. There shouldn't be a need for a motion.
- ♦ Judge Jones commented some judges in the civil department require motions. She has seen motions to have a witness testify virtually during a jury trial.
- ♦ Judge Clark Newberry commented there are civil judges in her district that require motions for virtual hearings. On judge also issues sanctions if someone fails to file a motion.

V. Other Items/Discussion

- Justice Hardesty commented that the Nevada Department of Corrections has received funding to update broadband in rural communities and to purchase COWs (computers on wheels). When inmates are transported, they must be escorted by three officers. Switching to virtual would be a significant step forward. Inmates have commented they would like to participate in hearings virtually.
 - ♦ Ms. Thomas commented she has found significant variations when viewing virtual trials. Some departments allow her to watch virtually while others require her to attend in person. She also stated most of her clients would like to appear virtually as leaving the jail can be very disruptive.
 - ♦ Judge Dollinger added virtual appearances are running smoothly for inmates. Most choose to appear virtually. If all parties are in agreement, she allows it. Since Covid has slowed down, transport has increased. The family court has reverted to telephonic appearances because transporting limits the number of staff available to run video equipment.
 - ♦ Ms. Lerud commented that for years Washoe County has had issues with incarcerated parents being able to speak to their council while going through dependency or TPR actions. It would be wonderful to grant them virtual appearances with their council.
 - Ms. Jonell added she has encountered this problem in the past especially if there is a new warden. If a client is at the Clark County Detention Center, she can call them in the video room. It would be ideal if the prison had a phone to do the same.
- Justice Hardesty commented the next step for the committee is to have the subcommittees draft rules based on the current work product, using examples from the National Center of the State Courts. It would be best to submit all documentation to the Justices at the same time for their consideration.
- Justice Herndon asked will the request for motions stop if the committee's recommendations for presumptive virtual hearings are granted.
 - ♦ Judge Clark Newberry stated that one of her colleagues takes a very strict position that the Nevada Supreme Court has a very strict rule that if someone wants to appear virtually, they must file a notice of appearance. Until a new rule is created, she will not allow anyone to appear virtually if they are not in compliance. The judge's sanctions become more egregious with every additional lack of compliance. The virtual appearances have been for items the subcommittee has identified as presumptively virtual. An interim administrative order suspending the strictness of the existing supreme court rule may alleviate the number of complaints.
 - ♦ Judge Breslow and Judge Dollinger both stated they have not seen anyone in the second district invoke the current Supreme Court Rule.
 - ♦ Justice Hardesty suggested considering and temporary suspension of that rule to alleviate hardship for attorneys.

- ♦ Judge Matheus stated justice and municipal courts are asking for motions to appear virtually in some cases. Clients must register and obtain approval to appear virtually. The process varies between courts. She felt this was due to the judge's personal preference, not the Supreme Court Rule. She is not a fan of holding preliminary hearings virtually but struggles with the attorneys appointed by the Department of Indigent Defense. They appoint attorneys from Clark and Elko County who refuse to drive to her in Fernley for a five-minute hearing. The refusal is understandable, and it would be beneficial to have staff appointed from local areas.
 - Justice Hardesty recognized there is a serious issue. Requests have been made to Legal Aid of Southern Nevada and Nevada Legal Services to assist with civil cases in rural counties. Requests have also been made for a pro bono council out of Clark County to assist with rural guardianship cases.

VI. Next Meeting

- TBD in 2023

VII. Adjournment

- There being no further comment, the meeting was adjourned at 4:14 p.m.