

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
Director and State Court
Administrator



JOHN MCCORMICK
Assistant Court Administrator

AGENDA

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

Date and Time of Meeting: July 11, 2023 at 10:00 AM

Place of Meeting: Remote Access via Zoom (see "Notices" for access information)

All participants attending remotely should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.

- I. Call to Order
 - A. Call of Roll
 - B. Determination of a Quorum
 - C. Welcome and Opening Remarks
- II. Public Comment
- III. Review and Approval of Previous Meeting Summaries (*Tab 1; pages 3-19*)
 - A. April 15, 2022
 - B. December 2, 2022
- IV. Review of Subcommittee Reports
 - A. Subcommittee on Uniform Rules for Civil Cases (*Tab 2; pages 20-23*)
 - B. Subcommittee on Uniform Rules for Criminal Cases (*Tab 3; pages 24-27*)
 - C. Subcommittee on Uniform Rules for Family Cases (*Tab 4; pages 28-30*)
 - D. Subcommittee on Uniform Rules for Limited Jurisdiction Cases (*Tab 5; pages 31-33*)
- V. Discussion on Next Steps
- VI. Other Items/Discussion
- VII. Next Meeting Date and Location
 - A. TBD

VIII. Public Comment

IX. Adjournment

Notices:

- Action items are noted by * and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Jamie Gradick, (775) 687-9808 - email: jgradick@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030)
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations:** Nevada Supreme Court website: www.nvcourts.gov; Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Nevada Supreme Court, 408 East Clark Avenue.

Teleconference Dial-in: 1-408-419-1715 or 1-408-915-6290

Meeting ID: 832 4358 5070

Participant Passcode: 370566

TAB 1

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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MEEING SUMMARY

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

April 15, 2022

1:30 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. Steve Grierson
Judge Kriston Hill
Ms. Alicia Lerud
Judge Cynthia Leung
Judge Lori Matheus
Leslie Nino-Piro
Ms. Jennifer Noble
Ms. JoNell Thomas
Ms. Jennifer Noble

Guests Present:

AOC Staff Present:

Ms. Jamie Gradick
Ms. Almeda Harper

- I. Call to Order
 - Justice Hardesty, being co-chair, called the meeting to order at 1:30 pm.
 - Ms. Gradick called roll, a quorum was present
 - Justice Hardesty thanked the members for providing detailed and thorough results for his request from the previous meeting.
- II. Public Comment
 - There was no public comment.
- III. Approval of previous minutes
 - The summary of the April 14, 2022 meeting was unanimously approved with the following changes;

- ♦ Judge Burton requested an edit regarding her comments on virtual hearings by inmates. She would like the record to state that virtual hearings by inmates is great when it occurs, but because of the eighth judicial district court's population there has been some competition for those spots.
- ♦ Mr. Arrascada would like to have his comments updated to replace the second sentence with the following: virtual hearings, when conducted, must keep in mind the Nevada Supreme Court case Chaparro vs. State and the sixth amendment rights for clients and the right of confrontation.

IV. Review of Local Orders, Rules, Policies/Procedures

- Justice Hardesty commented materials from previous meetings will be listed on the agenda, in the future, for reference only unless members have a need to discuss previous materials.

V. Jurisdictional Input: Review of Commission Membership Responses

- Justice Hardesty explained this section of the materials is a summary of the responses to the questions posed during the previous meeting. He asked each member present to comment on their input and add additional commentary if necessary.
- Mr. Arrascada explained an anonymous Google poll was conducted with nearly 50% participation. He found it to be remarkable that the responses were fairly uniform, although worded differently, in that the same critical stages of the criminal justice process should be in person. He also recognized virtual attendance as a benefit provided to clients by offering greater access to the courts without hindering their everyday lives.
 - ♦ Justice Hardesty requested more information on the IT challenges within the office.
- Mr. Arrascada commented IT was an issue in the past but has recently been corrected. He felt connectivity during the learning process was the main issue, noting a slow internet connection while staff work from home was a county related issue.
 - ♦ Justice Herndon asked the members to comment if their clients have trouble using the virtual platforms.
- Mr. Arrascada added it is a struggle to 'wrangle the client to Zoom'. Letters to clients were updated to include complete instructions on how to use Zoom. Some attorneys have spent upwards to 30 minutes prepping for virtual meetings, becoming a time-consuming process.
- Judge Dollinger commented in the beginning of the pandemic, becoming accustomed to the new virtual process was difficult. More time was spent educating and prepping clients on Zoom. Over time, clients and staff have become more comfortable and capable of operating Zoom. Judge Dollinger will keep an eye on the waiting room if she is running late. A vast majority of the people she has seen were indigent or transient with substance addictions and mental health issues, who often have major life struggles. Most of the clients have a smartphone, which offers a small level of access, but she feels a tablet or laptop would be ideal for virtual participation to allow clients to see the whole room and not just who's speaking.
- Mr. Arrascada added he appreciated Judge Dollinger's compliment to the tremendous amount of work their attorneys and staff perform in advance to ensure clients have smooth access to virtual court. He also added many clients do not have Wi-Fi access on their cell phones and struggle with finding free, local Wi-Fi through a library or casino.
 - ♦ Justice Hardesty commented this issue surfaced during the Ins of Court presentation recently. Our participants are the one struggling with the virtual attendance. Instead of becoming an access to justice, it may be a deprivation based on the limitations of

people's access to Wi-Fi or broadband. Hopefully through the work being done by the state, the broadband will be expanded to the same speed as urban communities. The project will cost roughly \$50 million and is hoped to improve connectivity, but there will still be Wi-Fi challenges.

- Ms. Noble commented on the topic of broadband quality across the state. She has heard comments from colleagues this is a critical issue they are continuing to struggle with while planning to implement the bail bill from the last legislative session.
 - ♦ Justice Hardesty commented that some people are attempting to meet the 48-hour requirement through virtual communications yet, not all communities have that capacity. Some outer-lying urban areas are struggling with connectivity.
- Judge Matheus commented being disappointed in only receiving six out of 30 surveys which were conducted with local practitioners and judges. When first utilizing Zoom, there was an educational hurdle. The Clerks and attorneys did a fantastic job instructing participants through the process. Most users were able to appear virtually which seemed strange for a rural area to have less problems than urban areas. The problem becomes maintaining the connection once set up. With the comparatively low case load, only around five defendants did not have access and the court compensated by providing Wi-Fi from the court's lobby.
- Judge Hill commented she is generally opposed to virtual hearings but had a great experience recently during a guardianship meeting with a mildly autistic little boy. He and his guardian appeared virtually and gave a tour of the home. She was able to see his living space and thought it was amazing to see a glimpse of his home life. Guardians can report what they like but to actually see into the home and from his point of view was great. There are many struggles in Elko County with internet connections, IT assistance, and equipment malfunctions. Recently she was instructed by IT staff to hot glue camera wires for a quick fix during a hearing. Unfortunately, she does not carry a hot glue gun in the office and suggested her bailiff take up chewing gum in the event of future mishaps.
 - ♦ Justice Hardesty asked what has been the general approach taken by the three district court judges in Elko between virtual, in-person, and hybrid hearings?
- Judge Hill stated they have been working in a hybrid situation where most of the staff expect to be in-person and have not denied access to appear virtually.
- Judge Clark Newberry commented the Eighth Judicial District's IT infrastructure in BlueJeans was already set up before the pandemic, although used sparingly. Since the onset of the pandemic, the IT department has made improvements to meet the courts needs. The current problems usually occur with parties outside of the court needing instruction on how to access hearings. There are many internet hot spots available to the public. Due to the high level of tourism, there are often many witnesses and defendants that reside elsewhere and find themselves involved in court proceedings. There has been a higher participation rate in victim speakers when conducting virtual hearings. Trials have also been quicker because witnesses and experts can appear virtually, eliminating the need for travel. There have been many positive improvements in the IT development and video conferencing abilities.
- Judge Jones commented their IT team has done a phenomenal job supporting the staff during the pandemic. A hybrid system would be ideal, unfortunately, it has been hard to determine when inmates should appear virtually or in-person. They do intend to bring inmates back for out-of-custodies. They have utilized BlueJeans to allow witnesses and victim families to watch trials from out of the state. BlueJeans has also cut down on using taxpayers' resources to purchase hotel rooms and plane tickets.

- ♦ Justice Hardesty asked Judge Jones to expand on the in-custody challenges for the eighth district and their jails.
- Judge Jones added, when the pandemic first hit, we had to go completely virtual. The case load was so large that the judges needed to split their calendars. Each criminal judge had two days per week for criminal calendars which were staggered throughout the day causing challenges when holding trials and ensuring staff receive breaks. Senior judges were asked to cover calendars while criminal judges were in trial which caused significant issues with in-custody situations. It was also difficult when inmates couldn't understand portions of the guilty plea agreement because the attorneys didn't have the ability to speak with them. There is only one phone, so time and resources are limited. It has been a hindrance in resolving probation revocations due to the difficulty for the attorney to communicate with their clients. Staffing shortages have also caused issues with the District Attorney and Public Defender's offices leading to last minute changes in assignments. Inmates are expected to return to the court room by April 25, 2022. The court will be open to the public and criminal calendars will move back to a morning schedule.
 - ♦ Justice Hardesty asked if there has been a similar challenge in the Second Judicial District as he heard there may have been objections from the Sheriff and staff to transport in-custody inmates to the courthouse.
- Ms. Lerud commented she feels all agencies have been struggling with staffing. The Sheriff's office was not opposed to conducting transports but struggle with how to do them. If the court holds in-person and virtual hearings in the same day, the Sheriff's office doubled their staff to ensure coverage at the jail and during transport. The sheriff's office was able to create two new virtual courtrooms at the jail. The spaces have not been ideal as they are small, and the walls are thin allowing for noise to carry between the rooms. Attorney-client communication continue to be a challenging. The public defender's office has been sending their attorneys back to the jail, solving some of the communication issues.
- Judge Hill commented she uses the courtroom in the jail. Her colleagues are holding hearings virtually and do not use the jail courtroom with inmates appearing both virtually and in-person.
- Judge Jones commented the detention center has been short staffed and overburdened with increased demand on their staff. She has been working with the Nevada Department of Correction to implement video conferencing and limit the need for transporting inmates.
 - ♦ Justice Hardesty commented he received an update from the Nevada Department of Corrections stating the process of procuring Cows (mobile video units) and improving connectivity issues has been delayed as prisons have now been included in the project. The prison will be ready to procure equipment as soon as EATS can complete the bandwidth expansion.
- Ms. Nino Piro commented she met with a couple of the Federal Magistrate judges and a representative from NDOC. They stated fiber was being installed in the NDOC facilities, which was the largest hurdle in installing the new virtual hearing equipment. The projected installation date was the end of June.
- Judge Burton commented a questionnaire was sent out to all judges in the Eighth District and she received a very large response. A local rule was put into effect for the family division making virtual hearings the default, with the exception of evidentiary hearings and contempt matters. For a year she conducted hearings virtually, finding trials to be difficult with the mask mandate. It was very hard to hear people in the courtroom when wearing masks, making virtual hearings the preferred method of holding hearings. There are human

components people seem to like regarding in-person hearings. The responses from juvenile court stated they liked the ability to look people in the eye. Judges felt they are better able to gain compliance, cooperation, and respect. It can sometimes help resolve a case in the family department. People, at one time, loved each other. Helping them to connect in the courtroom can help with a resolution. The civil domestic department agreed a majority of hearings can be done virtually. Juvenile court would like a hybrid system excluding day court, who have preferred in-person hearings due to the nature of their clients. The family support division and the District Attorney's office would like to hold remands in-person. Child support and juvenile delinquency would like to have transports, but the court is not fully open while Covid is still an issue. Holding TPR or divorce hearings virtually have been working very well. The Child Support District Attorney's office would like more virtual timeslots. TPO and juvenile delinquency have most of the time slots as they have a majority of the cases. Domestic violence takes precedence as TPO hearings have specific timelines to abide by. The court is prioritizing the best possible with the population and the limited space on the calendar. The criminal department mentioned communication with attorneys have been very difficult due to the vast number of people involved. Virtual hearings have gone well so far, other than the usual IT challenges, most of which occur outside of the court. She mentioned possibly creating a partnership with the local libraries or schools that might allow people to have easy access to a public computer dedicated to appearing virtually.

- Judge Leung commented the criminal misdemeanor universe is very specific and will lend itself to a more streamline process. Only a small number of attorneys responded to the request for information. In general, her jurisdiction prefers in-person hearings for anything being contested and treat hearings on a case-by-case basis. If parties request virtual hearings, and are in agreement, judges usually accommodate them. Internet issues have been occasional. There have been some issues when interacting with the jail but it's all under the umbrella of the city using outdated equipment. She has been working with them on upgrading equipment. Most parties prefer to have contested hearings in person. During the shutdown people were able to hold plea agreements via telephone conversations and put them on record with the agreement of the parties involved. Virtual hearings have been very helpful with out-of-state defendants, but that's when most of the connectivity issues occur. Explaining how to attend virtual hearings is a quick process and the court provides forms to the public and attorneys to assist in the process.
 - ♦ Justice Herndon inquired as to whether the judges have seen a difference between Zoom or BlueJeans?
- Judge Leung replied she believed the issue was that Zoom did not work with the JAVS or Court Smart recording programs. BlueJeans is the program they chose as it works with their recording systems. Sometimes BlueJeans has not work and the reasons for this is unknown as it doesn't seem to be consistent. When these problems occur, the hearing is continued on speaker phone so it will be captured on Court Smart.
- Mr. Grierson commented the Eighth District originally chose to use BlueJeans due to cost as it was not utilized often. There have been issues with network connections which affect their BlueJeans more than any other issue. Their IT department was able to integrate BlueJeans into the JAVS system which has made it a valuable platform for the Eighth District.
- Ms. Lerud commented the Second District uses Zoom with a bridge system allowing JAVS to record as well. Her predecessor investigated all virtual platforms, and at the time, Zoom was the best option. They have been very happy with it so far. Early on there were concerns regarding security, and that was her understanding of why some agencies chose BlueJeans

instead. There were disruptive issues with the chat function being used inappropriately and has since been shut down.

- Judge Hill commented they have normally used Zoom but were able to easily set up a BlueJeans meeting to accommodate an inmate.
- Judge Tires commented the Sparks Justice Court staff have been using a Zoom interface with JAVS very successfully for some time and recently upgraded with a new JAVS system. Judge Tires' court is relatively small, and use Zoom exclusively, although he has used JAVS as a backup. The quality of recording through Zoom has been far superior to the JAVS system. Zoom hearings have been very successful in all types except for jury trials. The court has been operating on a hybrid system, successfully holding virtual and in-person hearings at the same time. The system has been pieced together very inexpensively. The audio-visual components cost roughly \$3,000 and the two licenses with Zoom cost \$150 per year. Being a border town with a high tourist rate, they have been pleased to offer virtual proceedings for customers who reside out of the area, limiting the burden and hardship of traveling to a court hearing.
- Ms. Thomas commented early in the pandemic she acquired laptops and cameras for everyone in the office. The technology and internet have been working fine. The problem has been with thin walls and loud employees leading to conversations being overheard. Space was made available in the office for individuals with out internet access. Most clients have been in-custody but those who are not, especially the homeless, should not be expected to navigate virtual proceedings on their own. In her opinion, the magic happens when everyone appears in-person. This allows staff to ensure the clients emotional wellbeing, answer last minute question or getting the District Attorney's attention, all of which have been hard to do virtually. She would like to see status check move to a completely e-mail based format. She felt excited to get back to court, focus on the clients, and have afternoons open to visit clients or participate in investigations. Having staggered court hearings has been difficult, leaving staff with less time to complete job duties. There has been a need in the rural jurisdictions for virtual hearing, especially for 48-hour hearings. Certain situations lend themselves to appearing virtually, such as defendants in detention centers, clients who become ill and should not appear in-public, out-of-state clients, and sentencing. One positive outcome from virtual sentencing has been the lack of fights in the courtroom. Ms. Thomas believes better results are obtained when hearings, especially settlement conferences, can be held in-person. Clients feel they have been listened to and heard. Being able to drop in on a court proceeding simply to monitor the event has been very valuable from a management perspective. She would love the have the ability to watch trials and run the office at the same time although, there is conflict between running BlueJeans and the Elmo system simultaneously.
- Judge Jones commented her IT staff were able to correct the problem between BlueJeans and her recorder.
- Ms. Thomas added she was nervous about using YouTube as a viewing option as it undermines the exclusionary rule. Using BlueJeans requires login credentials, helping to maintain confidentiality. She would like to see better control measures on log-in names, at times outside parties have used profane language and were removed from virtual calls. She would also like to see more training to settle small details like muting microphones for people instead of constantly asking them to mute themselves. In-person hearings should be reserved for larger events to reduce the inconvenience of transporting clients who would need to quarantine afterwards.

- Justice Herndon added that he agreed with Ms. Thomas referring to the “magic” in the court akin to the New York stock exchange. The state of the court room prior to the Judge appearing being a state of good chaos where things can be resolved. He also felt a portion of the backlog could be due to negotiations falling apart during virtual meetings and lack of communication.
- Ms. Thomas commented the Clark County courts do not have a backlog at this time, having resolved more cases this year than ever before. They would have resolved more cases if they had met in-person. The ability to meet in-person, especially for clients that need an interpreter, is very important. She tries to hire and match Spanish speaking attorneys with clients as often as possible. It has been a good practice to have all parties involved in the same place. The detention center does not have a court room and counsel cannot go into the detention center to meet with clients before a calendar. Having the District Attorney in the court room with the judge while the rest of the attendees are at the detention center also has not been ideal in criminal cases.
- Ms. Nino Piro commented with civil cases, should be treated differently especially with inmates’ civil rights cases. Virtual hearings have put inmates on the same, equal footing as the attorney. Prior to the pandemic, during virtual hearings or settlement conferences, the attorney would be in court with the judge or mediator, and the inmate would appear virtually. Having everyone appear virtually helped facilitate settlements and streamlined the process. Another advantage of virtual hearings has been the ease of accessibility for language and disabilities, physical impediments, and medically compromised individuals. The overwhelming majority of the attorney’s were in favor of discovery hearings and non-dispositive motions appearing virtually and dispositive motion should be in-person. Some information was not listed in the overview of the information provided by the Attorney General’s office. Ms. Nino Piro will provide the missing information to Ms. Gradick to be added to the overview. It would be helpful to have uniform orders or standings sent out to participants regarding muting, exhibits, confidentiality, witness sequestration, centralized postings of virtual hearing links, additional IT staff, and training and resources for litigants.
- Justice Hardesty asked if inconsistencies among judges in the handling of virtual vs. in-person hearings have been problematic.
- Ms. Nino Piro commented that was part of the feed back she received from a District Attorney General. In criminal matters, courts should ask the defendant if they wish to waive their presence to appear via audio visual means. Not all departments were asking or offering the option.
- Mr. Arrascada commented he feels it is not inconsistencies by the departments, rather it is inconsistencies with how everyone approaches the process. Significant in-custody arraignments or sentencings were held via Zoom from the jail and attorneys would appear with their clients. Other times the attorneys would appear via Zoom if their schedule wouldn’t permit an in-person appearance. To echo what Ms. Thompson said earlier, the magic happens in the court room. All five senses are often needed for sentencing by sensing someone’s sincerity that may not come across virtually. Mr. Arrascada feels, with the new statewide rules for criminal procedure, arraignments can be don remotely. Under rule 17, an attorney cannot argue for an O.R. release for a client and then enter a plea. It needs to be raised by motion unless there is a stipulation with the pardon. In his opinion, this could be done virtually but he prefers sentencings to be done in-person.
- Ms. Noble commented in her area of practice, post-conviction litigation, there have been judges in the Second Judicial Court that continue to appear virtually and has not been

problematic, in fact, it can be easier depending on where the inmate is located. There have been some variations between departments when handling cases. For example, she had a cross examination of a petitioner and with the person's particular characteristics, appearing virtually would have made the meeting difficult. She does not see any problems with inconsistency in the Second Judicial District.

- Ms. Thomas commented the judges have a varied approach when it comes to virtual appearances and their schedule. Some call people to court first, others call virtual meetings first. Some judges choose not to appear on camera which Ms. Thomas feels should not be allowed.
- Justice Hardesty asked if there are any reasons why the judicial officers should not be present in the court room for all proceedings? There have been numerous concerns expressed from the public and lawyers regarding being able to enter a court room and observe a court proceeding. For one reason or another, some judges have been practicing from home most of the time. Operating a public courthouse and a public business, the public has a right to observe those proceeding. Should we return to a centralized courtroom?
- Justice Herndon commented there will be illnesses which might cause some exceptional circumstances. Generally speaking, the judges and court staff should always be present in the courtroom to ensure efficiency and the option to appear in-person should always be available.
- Judge Hill agreed with Justice Herndon stating it is important for judges to be present absent an emergency situation or a planned event which prevents the judge from being in the courtroom. A colleague from another district reached out with concerns regarding judges that hadn't appeared in a courtroom in two years.
- Judge Clark Newberry commented there have been exceptions and appearing virtually should be the exception. Appearing virtually made it possible for Judge Clark Newberry to continue to work during the pandemic as she has an immunocompromised family member. Once covid began to turn around, she was able to return to the courtroom in-person. Virtual appearances also limit the need to find coverage, allowing a judge on vacation to appear quickly from anywhere. She felt her staff work better together in-person, in the courtroom. The only time the courthouse was closed was when orders from the Chief Judge indicated it was necessary while the pandemic was peaking. In those situations, having the ability to appear virtually is very beneficial. Remote access and having a proper remote courtroom for each judge is important to maintain as it is unknown when these rooms will be needed.
- Judge Jones commented she agreed with many of the statements heard so far including the fact that it is time the judges return to court. In her experience with criminal cases, it has been difficult for the judges to not be present. Defendants haven't shown the correct level of respect and may not take the proceeding seriously. Judges have run into issues controlling their courtroom virtually yet command their in-person hearings without issue. It's important the judges be present, and the courtrooms be open to the public as there are individuals who do not have access to BlueJeans or own cell phones. During the Covid outbreaks, people were allowed into the courtroom one at a time, all the while maintaining a clean environment. It was difficult to close a public building and to deny public access to justice when they don't have access to modern technology.
- Judge Berton commented when she attends virtual hearing from her chambers. When she is in the courtroom, the camera placement is not optimal, making her seem very small and far away to the viewer. She also has a difficult time seeing others appearing virtually as the

screen is so far away. She will look into camera adjustments, if possible, but judges should be back in the courtroom.

- Justice Herndon commented when he was in virtual hearings, he was certain the other parties had his volume muted and were not paying attention. Judges have incredible sway by their conduct in a courtroom to create efficiency and resolution and move things along. This may not happen if the judge is sitting in their living room and doesn't feel like being productive.
- Judge Dollinger commented she agreed with Judge Clark Newberry's comments and felt, as a family court judge, the differences between family and criminal proceedings are vast. She feels judges should return to the courtroom. She has many of the same technological issues as Judge Burton and adjustments are needed in the different court rooms. She found she has more control over virtual hearings when appearing from her office vs. her courtroom, including the ability to mute other parties as a co-host. She also agreed with the report provided by Mr. Willock stating the information was spot on from a family court point-of-view.
- Ms. Lerud commented several of the Second District court judges continue to report remotely from locations outside of the courthouse. She felt judges should be appearing in-person and the option to appear virtually should be granted to the parties outside of the court staff. They are utilizing virtual appearances for expert witnesses instead of having them fly into the area. Technological upgrades to make the virtual process easier are expensive. The Second District has contracted to spend roughly one million dollars on IT updates throughout their 21 courtrooms.
- Mr. Grierson commented judges are appearing both in-person and virtually in the Eighth District. The district has solved most of their IT and budget issues. Two mobile court rooms were purchased to allow for virtual hearings anywhere in the valley.
- Judge Burton commented her experience with virtual hearings spanned well before the pandemic. She recently held a trial in which all parties except the expert witness appeared in-person and there were no issues.
- Judge Jones commented she has not experienced any challenges within the courtroom. Her IT staff are in the process of upgrading their BlueJeans account to allow family viewing of an upcoming death penalty trial.
- Justice Hardesty commented that the probate commissioner in the Second Judicial District has been using zoom for telephone calls as it has a superior connection. The commissioner has used this technique to review the consent calendar with many people on a reliable connection. Justice Hardesty asked the members if they have used the virtual applications in this capacity.
- Judge Jones stated people have successfully called in without video.
- Judge Berton added this happens often with self-represented litigants.
- Judge Clark Newberry commented they often have connectivity issues. If this occurs during a hearing, she will ask the party to turn off their video to make the audio connection stronger. If the connection is still bad, she will ask them to disconnect and call back using the phone option. The person has usually been sufficiently identified on record by this point. She intends to make BlueJeans available for all future calendars as it enhances transparency to the public and eliminates the barrier of transportation, infirmity, etc. The breakout sessions have been useful during confidential matters. She informed Justice Hardesty that she hears both criminal and civil cases.
- Judge Leung commented the judges in her district feel in-person operations work best. She has also turned off the video and only used audio if the connection is bad.

- Justice Hardesty announced the creation of four subcommittees for the Virtual Advocacy Commission. They will be uniform rules for criminal cases, uniform rules for civil cases, uniform rules for family cases, and uniform rules for limited jurisdiction cases. Each subcommittee will need to analyze the member input gathered (and included in the materials for the 4/15/22 meeting) to “reconcile the pros and cons” of virtual hearings and determine in which matter virtual hearings should occur by default and in which instances live hearings should occur by default. They were asked to present their opinions in either a general consensus or, if they cannot agree, to offer a majority view and a dissent. Justice Herndon has agreed to chair the criminal subcommittee with Judge Jones, Mr. Arrascada, Ms. Thomas, and Ms. Noble as members. Judge Dollinger and Judge Burton will co-chair the family subcommittee with Judge Hill as a member. Justice Hardesty will chair the civil subcommittee with Judge Clark Newberry and Judge Hill as members. Judge Saragosa and Judge Leung will co-chair the limited jurisdiction subcommittee. He also requested to have Ms. Lerud and Mr. Grierson provide administrative feedback to the subcommittees. The subcommittees should meet at least twice before the next general committee meeting. He also requested that Ms. Lerud ask Chief Judge Simons if she would like to recommend a member for the civil subcommittee. He asked the members attending the upcoming Judicial Leadership Summit to discuss the virtual advocacy subcommittees with their colleagues and collect additional members.

VI. Adjournment

- There being no further comment, the meeting was adjourned at 3:30 pm.

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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.

TAB 2

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

Subcommittee on Uniform Rules for Civil Cases

Draft of Presumptive Appearances

Case/Hearing Types	In-Person	Virtual	Exceptions	Comments
Settlement Conferences	XX	X		Maybe presumption for parties and counsel in person, but adjusters virtually? Case by Case judicial Discretion. Some are strongly in favor of virtual some are strongly in favor of in person
Status Conferences/ Trial Readiness	X	XXX		Locals can choose to be in person but default should be presumed Virtual
Entry of Plea	X			
Probation Revocation	X			
Order to Show Cause	X			
Bail Hearing	X			
Sentencing	X			
Motion Hearings (dispositive)	XX	XX		Case by Case Attorneys can choose
Discovery Motions		X		*
Trials	XXX		Witness availability Immunocompromised or Health Condition	Case by Case Judicial discretion Rule needs to incorporate emergency process for when a witness is ill morning of
Involuntary Commitment		X		Virtual appearances will allow appearances from hospitals without the need to transport
Term of Parental Rights (uncontested)		X		
Term of Parental	X			

Case/Hearing Types	In-Person	Virtual	Exceptions	Comments
Rights (contested)				
Adult Guardianship		X		
Minor Guardianship		X		
Pretrial Conferences		XXX		Not applicable to status checks
Hearing on Ex Parte Filing		X		
Mediation	X			
Evidentiary Hearing	XXX		Out of State Witnesses Immunocompromised or Health Condition	Rule needs to incorporate emergency process for when a witness is ill morning of
Probate Status Hrg		X		
Probate Uncontested		X		
Probate Contested	X			
Specialty Court Hrgs	X			Maybe virtual option for Group A participants, as a reward?
Competency Review	X			
Delinquency Review	X			
Detention Review	X			
Injunctive Relief	X		Witness availability if Evidentiary	
Calendar Call		X		*
Law and Motion Generally		X		*

Notes:

*The presumption should be virtual, however the rule should specify that the parties may opt to appear in person at their own discretion and without having to file a notice of intent to appear remotely or in person (I have yet to have anyone complain about someone appearing remotely when they have appeared in person or vice versa so the rule requiring a notice should be stricken as it is overly burdensome to the parties and to the clerks).

If an attorney has an evidentiary hearing starting later in the morning in another courtroom, they may appear in person for a “status check” or other presumptively remote matter because they are already in the courthouse.

I have many hearings where some attorneys are in person and some are virtual on the same matter, and it is not an issue. The IT in the 8th has made the screens so large and visible to the bench, sometimes you can see counsel on the TV clearer than in person and it should be left up to the attorneys as to whether it’s in their and their client’s best interest to appear in person or not.

Subcommittee Members:

- Justice James Hardesty
- Judge Tara Clark Newberry
- Judge Scott Freeman
- Judge Kriston Hill
- Chief Judge Jerry Wiese

TAB 3

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

Subcommittee on Uniform Rules for Criminal Cases
Draft of Presumptive Appearance Case Types

PREAMBLE FOR RULES OF VIRTUAL ADVOCACY (proposed)

The rules for virtual advocacy in the courtroom were promulgated by the Commission on Virtual Advocacy to promote effective and efficient hearings in Nevada’s courts, utilizing virtual means for select and defined court matters. The rules’ purpose is to create time and cost savings, while providing prompt hearings and heightening access to justice for all parties.

The rules are designed to provide guidance for the judicial proceedings which may presumptively be heard virtually in court through audio visual means. These rules should be interpreted with reference to the purposes of legal representation and of the law itself. This preamble provides guidance to attorneys, and structured professional etiquette for regulating attorney and client conduct in virtual legal proceedings.

When participating virtually in court proceedings, attorneys must adhere to the Rules of Professional Conduct and all parties must conduct themselves in a virtual proceeding as if they were physically present in court. Attorneys, their clients and any members of the public who participate in, or wish to observe, court proceedings are also expected to present themselves at all times in a virtual court proceeding with the same standards, protocols, and guidelines as if they were physically present for an in-person court proceeding.

Case/Hearing Types	Presumptively In-Person	Presumptively Virtual	Exceptions/Comments
General Arraignments		X	
**Arraignments involving guilty pleas	X		Should still be a virtual option for public and/or family of victim and/or defendant.
General Motion Practice		X	
**Motion Practice involving the presentation of witnesses and/or evidentiary items	X		Should still be a virtual option for public and/or family of victim and/or defendant.

Case/Hearing Types	Presumptively In-Person	Presumptively Virtual	Exceptions/Comments
General Status Checks		X	
**Status checks where a timely notice of a compliance issue has been provided	X		Should still be a virtual option for public and/or family of victim and/or defendant.
General Competency Hearings		X	
**Competency Hearings involving dispositive motions, challenge hearings or any other hearings involving the presentation of witnesses and/or evidentiary items	X		Should still be a virtual option for public and/or family of victim and/or defendant.
General Specialty Court Hearings - <i>Prosecution</i>		X	
General Specialty Court Hearings – <i>Defense</i>		X	<i>First appearance hearings in specialty court will be <u>presumptively in-person</u> for the client and the attorney.</i>
**Specialty Court Hearings involving a timely notice of a compliance issue	X		Should still be a virtual option for public and/or family of victim and/or defendant.
Calendar Calls		X	
**Calendar Calls involving a guilty plea	X		Should still be a virtual option for public and/or family of victim and/or defendant.
Trials	X		Should still be a virtual option for public and/or family of victim and/or defendant.

Case/Hearing Types	Presumptively In-Person	Presumptively Virtual	Exceptions/Comments
Settlement Conferences	X		Should still be a virtual option as appropriate for family of victim and/or defendant.
Sentencing Hrg.	X		Should still be a virtual option for public and/or family of victim and/or defendant.
**Sentencing Hrg. involving out of town/state defendant and a stipulation to probation and/or statutorily mandated probation		X	
Post-Conviction/Writs		X	
Probation Revocation Hearings	X		Should still be a virtual option for public and/or family of victim and/or defendant.
Misc. Post-Conviction Appellate Motions		X	
Misc Evidentiary Hearing	X		Should still be a virtual option for public and/or family of victim and/or defendant.
Grand Jury Proceedings	X		Witnesses can attend virtually if allowed by statute and circumstances dictate

Comments:

- Judges *shall* be present in-person, in court with court staff for all hearings
- Attorneys and clients may always choose to appear in-person even where matters are deemed presumptively virtual
- Attorneys should attend in person whenever clients are attending in person
- If there is a conflict with a detention facility in regard to the facility providing incarcerated defendants both virtually and in-person, the hearings will default to being held in-person
- Courts shall develop mechanisms, such as enforcing log-in credentials for public virtual viewing, to ensure adherence to the exclusionary rule where appropriate

Subcommittee Members:

- Justice Douglas Herndon
- Judge Tierra Jones
- Mr. John Arrascada
- Ms. Jennifer Noble
- ²⁷ Ms. JoNell Thomas

TAB 4

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

Subcommittee on Uniform Rules for Family Cases
Draft of Default Appearances

Case Types	Presumptive In-Person	Presumptive Virtual	Undecided	Comments
ALL CASE TYPES				
Evidentiary Hearings	X			Unless all parties agree to Virtual
Order to Show Cause	X			
Contested Prove-Ups	X			
Uncontested Prove-Ups		X		
Trials/Terminations	X			
Settlement Conferences			X	Judge’s Discretion
CIVIL/DOMESTIC				
Case Management Conference		X		
Adoptions			X	Judge’s Discretion
Motions		X		
Return Hearings		X		
Status Checks		X		
In-Custody Hearings		X		
UCCJEA		X		
UIFSA and TPO Objections		X		
TEMPORARY PROTECTIVE ORDERS				
Ex Parte Applications for TPOs		X		
Motions to Extend or Dissolve	X			
Unopposed Motions		X		
JUVENILE DEPENDENCY				
Adoptions			X	Judge’s Discretion
Preliminary Protective Hearings	X			
432B Guardianships Citations	X			
Adjudicatory/Plea Hearings	X			
Panel Reviews	X			
Status Checks		X		
Unopposed Motions		X		
Disposition Hearings		X		
In-Custody Hearings		X		
Reviews/Permanency		X		
JUVENILE DELINQUENCY				
Detention Hearing	X			
Plea Hearing	X			
Detention Reviews and Objections		X		
Certifications	X			
In-Custody Hearings	X			Important for children to appear in court
Report and Disposition		X		

Case Types	Presumptive In-Person	Presumptive Virtual	Undecided	Comments
FAMILY SPECIALTY COURTS including but not limited to: Family Preservation Court (4 th JD) Family Treatment Court (2 nd JD) Safe Babies Court (2 nd JD) Juvenile Mental Health Court Juvenile Drug Court Juvenile Diversion Court Juvenile Restitution Court Juvenile Delinquency Court Dependency Mental Health Court Dependency Drug Court				
Poor Progress	X			
Good Progress		X		As incentive
Detention Alternative for Autistic Youth Court (DAAY Court 8 th JD)	X			Held in person regardless of progress
CHILD SUPPORT				
Initial Child Support		X		
Modification Hearing		X		
Enforcement Hearing	X			
Motion Hearings		X		
In-Custody Hearings		X		
ADULT GUARDIANSHIP				
All Adult Guardianship Hearings		X		
MINOR GUARDIANSHIPS				
Citation Hearings		X		
Motions		X		
Status Check		X		
Compliance		X		
FAMILY MEDIATION				
Mediations		X		
Parent/Child Observation	X			

Issues:

- Breakout rooms with varied attendance. If attorneys are in the courtroom and need to have a breakout room, they can call into the meeting from a cell phone in another room. This technique is not possible if other attendees have called into the meeting from their cell phones.
- Ensuring confidentiality during virtual hearings is important. Creating guidelines or a checklist for the judge to review with attendees could be helpful.

TAB 5

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

Subcommittee on Uniform Rules for Limited Jurisdiction courts

Draft of Default Appearances

Case/Hearing Types	Presumptive In-Person	Presumptive Virtual	Undecided	Comments
Criminal				
Pre-trial release hearing			X	Judges Tiras, Bishop, and Matheus prefer virtual Judges Saragosa and Leung prefer in-person, virtual requires a motion with good cause
Preliminary Hearing			X	Judges Tiras, Bishop, and Matheus prefer virtual, would like to avoid filing a motion for every case Judges Saragosa and Leung prefer in-person, virtual requires a motion with good cause
Arraignment		X		
Contempt Hearing			X	Judge Tiras and Judge Bishop prefer virtual Judge Saragosa and Judge Leung prefer in-person
Status Check		X		
Misdemeanor Trial			X	Judge Tiras and Judge Bishop prefer virtual Judge Saragosa and Judge Leung prefer in-person
Testifying Witness			X	Judges Tiras, Bishop, and Matheus prefer virtual Judges Saragosa and Leung prefer in-person
Revocation Hearing			X	Judges Tiras, Bishop, and Matheus prefer virtual Judges Saragosa and Leung prefer in-person
Revocation Hearing - In Custody		X		Eliminates transport
Contested hearing		X		
Extraditions		X		
Jury Trial	X			Jury must be in-person. Witnesses, attorneys, etc. can appear virtually

Case/Hearing Types	Presumptive In-Person	Presumptive Virtual	Undecided	Comments
Civil				
Civil Infractions		X		
Small Claims			X	It depends on the evidence, Start as virtual, if an issue comes up, reschedule as in-person
Evictions		X		
TPO		X		
Bail Hearings		X		

The members agreed there is no policy in terms of a preference for virtual vs. in-person. It should be subject to each court's determination as to what's appropriate for that court given that particular matter. In the event a virtual proceeding is held, guidelines or best practices should be used. If a rule is created, the verbiage, "unless modified by local rule or order" should be included.

Create Guidelines to address the following:

- The court should be able to dictate which virtual platform is used as opposed to the attendee.
- Advanced notice/request if the court requires it; create a process/form for this.
- Evidence must be submitted electronically, before the hearing. If they are missing evidence, it should be treated as if they were attending court in person.
- Judges should be allowed to virtually cover for other judges when there is a conflict of interest and limit the ability to be challenged.
- The rule should state, virtual attendance means the person may appear virtually. They will not be required to appear virtually unless a motion is filed with good cause shown.
- The Judge should have the ability to terminate a hearing if attendees are acting inappropriately

Requirements for Virtual Appearances: Must meet and affirm all criteria with the Judge before the meeting

- Appropriate dress
- Quiet setting
- Isolation requirements
- Pre-check connectivity, cannot be mobile during the hearing (moving around, driving/traveling)
- Must have a camera, visual presence

Issues:

- Courts are limited to what is available through the county. Would it be possible to issue a Supreme Court Order to the county allowing Zoom?

In-person hearings are great and the best option, the BMW, if you will. We'd all like to be driving one and some of us have the means to buy, maintain and store one. Zoom hearings aren't quite as nice, but they're adequate, the Honda if you will. We can all afford one and they get us where we want to go. But we don't want to get fixated on the BMW when we have a perfectly good Honda. Good enough is just. We can't make the baseline the premium model.

This is a particular problem for those who do not have access to foreign mechanics (i.e., attorneys) to make the BMW go. If we make BMW the default, there are going to be a lot of broken-down BMWs in the rural not going anywhere.