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Chairman Raggio and Members of the Senate Finance Committee,

Chairman Arberry and Members of Assembly Ways and Means Committee,

Good afternoon.

My name is Deborah Agosti. I am here today on behalf of the Supreme Court of Nevada. Just a few weeks ago I assumed the duties of Chief Justice and so it is my privilege and my responsibility to speak to you today about the court, its proposed budget, its recent accomplishments and its future.

I particularly want to thank you for accommodating me in scheduling this presentation today. My colleagues and I appreciate your flexibility in arranging this time when I could be present.

Thank you.

I would like to introduce the others who are here with me today:

Ron Titus – State Court Administrator

Karen Baggett – Deputy Director of Administration at the AOC

Judy Holt – Manager of Budgets and Finance at the AOC

Jeannette Bloom – The Clerk of the Court at the Supreme Court and the real glue that keeps it all together for us at the court

Kathleen Harrington – recently appointed, since Susan Southwick's retirement, the law librarian for the State Law Library.

And my colleagues with whom I am so fortunate to serve:

(Miriam Shearing; Bob Rose; Mark Gibbons)

I want to just very briefly tell you a little bit about myself because I realize that for many of you, I am a new face.

I have just begun my 21st year as a judge. I served for two years as a justice of the peace in Reno Township and for fourteen years as a district judge in Washoe County. I am in my fifth year of service as a member of the Supreme Court. The duties of chief justice are rotated according to our state constitution. Since Justice Miriam Shearing and I are equal in seniority, we are equally eligible to serve as chief justice. Rather than flip a coin, or arm wrestle for the job, we have agreed to divide the term and as the junior justice, I got to go first - in the legislative year...

I am here today feeling, as I suspect do most Nevadans, concern for the future of our great state. This promises to be a difficult legislative session. You are going to be asked, as members of the legislature, to make extremely difficult decisions during this time of great financial difficulty. We at the court understand that times are tough. We have prepared a budget that reflects our understanding. We do not believe that any aspect of our budget is frivolous. We have seriously heeded the requests of Governor Guinn to cut back in Fiscal Year 2003 (which is and has been the year we are in) and to present a modest budget in this session.

The Supreme Court and the Administrative Office of the Courts were as hard hit as everyone else in the last biennium. In addition to the cut backs that we were asked to make and which we did make, we suffered additional budget stress when we experienced a significant downturn in revenues generated by administrative assessments imposed primarily upon misdemeanor convictions in the justices and municipal courts. In the last legislative session, our budget and the budget of the AOC were fixed based upon projections of administrative assessment revenues which, as it turns out, did not come to fruition. We have weathered the impact of that unanticipated downturn, and today we are before you presenting a budget which in part will again depend upon the realization of revenue the source of which we now know is unstable and can not be predicted with certainty.

This is a difficult position to be in. I will leave it to Mr. Titus who will also address you today to provide the sorry details of the downturn.

Before getting into the specifics of the budget presentation, I would like to briefly supply an overview of the court's progress in the last two years and describe for you where the court's future hopefully lies.

The Supreme Court and all the lower courts in Nevada have been busy.

After listening to the governor's speech last evening, you know that the district courts are busy experimenting with new and better ways to meet the

challenges confronting it. We have seen the development and advancement of therapeutic courts - drug court and mental health court and specialty courts like business court and in Washoe County the increased emphasis upon specialization for probate court cases.

At the Supreme Court level, we have been busy both administratively and in addressing the case load.

We commenced and completed the Jury Improvement Commission, the results of which we hope will benefit the courts and the public we serve in terms of cost savings and improvement in the procedures of trial which we hope will advance the cause of justice. We look forward to working with the legislature as you consider statutory changes in exemptions and the method of juror compensation that we will request as a result of the commission's work. We have worked closely with the State Bar Association on the multi-jurisdictional practice of law – making Nevada the first state in the union to adopt comprehensive rules regulating multi-state practice. We have revised our bar admission rules and will begin offering the bar examination two times a year as of 2004. We revised our rules governing the limited admission to practice in Nevada under circumstances which will benefit the work of legal services corporations and public service with the Attorney General and the public defender primarily in rural areas. In capital cases we

have adopted rules governing the appointment of panels in capital cases.

Many other projects were undertaken to address such areas as the management of construction defect cases, expansion of drug courts, expansion of alternative dispute resolution programs including the short jury trial program and mandatory arbitration. We have worked closely with the district, justices and municipal courts to revitalize the state and regional judicial councils. At the Supreme Court, we have extensively revised our internal operating procedures as we continue our efforts to expedite justice in our case dispositions. On that point, 1711 cases were filed in 2002. We have not experienced any increase in our annual filings over the five or six years. We have continued to attack the backlog, with further case reductions in the past two years of 341 cases. Our total case inventory is currently at 1363 cases. We can't properly call this a backlog anymore as many of these cases are not yet at issue; they are still in the pipeline – awaiting full briefing, or argument or disposition discussion.

The panel system has been very helpful in addressing the backlog, but as we gain experience with the panel process, so do the attorneys. As a result we are seeing the same case several additional times in the form of motions for rehearing by the panel and reconsideration by the en banc court and rehearing by the en banc court. We have prepared a chart – p 8 of your

hand-out - to show that the numbers of these kinds of motions are increasing. I'd like to emphasize that when a motion for rehearing or reconsideration is made, by its nature it activates a complete review of the case and the record by the court. These motions require then a great deal of time and resources to be handled responsibly.

We have given a great deal of thought to our aspirations for the institution of an Intermediate Appellate Court in Nevada. We consider the eventual creation of such a court an indispensable feature of the court system in Nevada in the future. However, we are cognizant of several realities. First, the filings of the court have not increased. As the chart on p 5 of the handout demonstrates the court's filings seem to increase and then level off, increase and level off, each time at a higher level. But while we are in a period of level filings and while we have done so much to decrease the backlog and expedite cases, we recognize that during this time of financial uncertainty and fragility, the citizens of Nevada may be hard pressed to agree to spend tax dollars to fund a new appellate court level. As Justice Bob Rose has said so many times in the past, in reference to the expected increase in Supreme Court's caseload, we know the train is on the track, we just don't know when it will get here. I can speculate as to a reason or two which explains the figures and if you wish me to provide you with those

thoughts, I will be happy to do so. (Settlement at the district court level and multiple plaintiff lawsuits.) So we will ask you to enact legislation authorizing the creation of an intermediate appellate court as a first time process. We will also change the language of the measure from the mandatory language used in the past, "the legislature shall create an IAC", to permissive language, "the legislature may create an IAC". We would then leave it to you to decide when the time is right and the money is available to create this court.

Our settlement program at the Supreme Court continues to support our efforts with the caseload. We could not deal effectively and expeditiously with the current incoming cases without the program. The money appropriated for the settlement program is money very well spent. Of the cases referred to the settlement program, we continue to experience a successful settlement rate of around 54%.

The court is right now at a pivotal point. We have worked very hard to address the legislature's concern for statistical information from all the courts of the state. We have commenced publication of annual reports which contain these statistics. We have worked closely with the legislative auditors to facilitate completion of the audit of the courts of Nevada. We have written a response to the audit and a detailed plan to implement its

recommendations. I would like to point out that the collection rate of administrative assessments at the Justices and Municipal court stands at 81% overall and is enviable by any standard and in excess of the collection rates of many other states. I would also point out that we do take issue with the report's conclusion that the district court's collections could be substantially improved. First, the district court assesses a much smaller assessment - \$25 per convicted criminal defendant. Of that amount, the district court is authorized to receive \$5. Unlike the clientele of the justices and municipal courts - people like you and me with traffic tickets - most felony defendants are indigent. Many are headed to prison. Those destined for a suspended sentence and probation are subject to multiple fees and fines including monthly supervision fees payable to parole and probation, substance analysis fees, genetic marker testing fees, substance abuse evaluation fees and therapy fees, anger management fees, psychological testing and therapy fees, restitution, and perhaps a fine. Under these circumstances, it is difficult to say, yet the audit said, that the district court's failure to collect the \$25 fee means these defendants have gone unpunished. I disagree. When I tell a defendant "I sentence you to life imprisonment without the possibility of parole, and a \$25 AA", I am sure the defendant believes he has been punished. I believe that greater efforts to collect the assessments at the

district court level will not meet with great success for the reasons mentioned and that we are better off directing our attention to the assessments ordered in the limited jurisdiction courts.

In addressing the audit, I hope the legislature will recognize that to accomplish the improvements that are recommended, the supreme court will need help in the form of additional staff. This is so because the recommendations place great responsibility in the hands of the court to provide training, technical assistance and advice to all the courts of the state.

We are requesting an auditor position to provide training to all the courts in all areas of financial management, minimum accounting standards, internal controls, the development of accounting policies and procedures.

In the area of statistical reporting, and in order to further respond to the concerns expressed in the audit, we are requesting a position in Planning and Analysis for an assistant court research analyst. We have requested this position twice in the past and now can not further improve the quality of our statistical reporting without such help.

At the heart of our proposed budget is technology. As I speak today, the court is in poor shape technologically speaking. With the institution of our IT committee, comprised of representatives of the AOC and staff and justices of the court, we have identified our areas of deficiencies and

extended our existing resources as best we could to address the deficiencies.

We are possibly the last state Supreme Court in the United States to go on line with a web site. That happened approximately one month ago. It is a small, static web-site. And you can not find it through an internet search – although I understand our techno-wizards are working on remedying that. The site does not allow for e-filing, access to the court's calendar, docket, schedule or records of cases or case status.

We have no e-filing at the Supreme Court. I have no ability to access briefs or pleadings filed by the parties electronically. Because of inadequate storage space, we do not require the parties to file seven copies of every document. So, if I want to see a brief in a case, because of a question that I have, I need to order the briefs up from the clerk's office. Aside from the stress this puts on the clerk's office to locate, pull and deliver the material requested, by the time it gets to me, some time has passed, I may be on to the next case, and I've forgotten my question.

In the daily use of our computers, we have no one readily available on staff to assist any of the Supreme Court's 84 staff members and justices in answering questions concerning the software we utilize much less to provide needed training in the software we all use daily like Word, or could use if we knew how to use it, like Excel and Powerpoint.

We have no one but the clerk and her hardware technical staff with sufficient knowledge of CMS to provide training to the justices, and the clerk and the hardware technicians are too stretched in their duties as it is to do other than answer questions when posed.

We rely upon AOC staff which we share with the rest of the courts in the state to assist when we experience glitches.

With respect to the internet and e-filing, the public and the legal community have come to expect and demand electronic services. And yet no member of the public can access our records here at the court, or as mentioned, our schedules, dockets, calendar or cases.

In preparing our budget to remedy these problems, we originally sought seven new positions. We have cut our request back to four after consideration of the state's financial picture. However, we fear that without those four positions the court will not be able to make any significant progress in electronic public access. In fact, even with these positions, we project that e-filing, a critical, essential and necessary development for the court, would still be two years away. I would also point out that these positions would relieve a great source of stress on the clerks staff at this time because with our records available electronically, we anticipate the number

of phone calls alone to the clerk asking about cases would be reduced significantly.

The four positions we are seeking are for:

1 a case management system programmer

we are seeking this position only in the second year of the biennium. The court did have a study performed and the recommendations of the Search analysis can not be implemented without this position. And without implementation of the recommendations, our CMS system will lose functionality and be useless to meet the court's needs.

2 a program information specialist to train and answer questions related to our software and to keep our software and hardware up and running. (We'd asked for 2 and deleted one of the positions from the budget)

3 a court business systems analyst – a person with advanced knowledge of both court operations and business systems and technological solutions to help us plan for the future and oversee the long term automation projects including e-filing.

4 an internet/intranet analyst for the further development implementation and maintenance of a website serving the Supreme Court – operating as the hub for public access.

I also want to say a word about the law library which has not asked for additional personnel since 1995 and does not ask for any today. The sole concern of Ms Harrington is that the rising costs of subscription services is forcing her to make tough decisions to discontinue valuable materials. She did choose to discontinue the subscription for the general digest and LCB for example was disappointed by the loss of that resource. The money she is requesting is not great, but is crucial to maintain the library's integrity.

Electronic access to legal materials is expensive. Free access exists but the materials are unreliable sources. I would point out that over 50% of the use of the law library is by the nonprofessional members of the public – the lay people who need assistance because of legal questions they have. We want to allow the public to access the library and so are concerned that the subscription money be approved.

With respect to the future of the courts in Nevada, I will convene two commissions this year.

Neither one is going to be a front page story - but both will help the courts to operate with integrity in the future and will allow us to plan for the future needs of the courts.

First, I plan a commission to achieve consensus in the application of administrative assessments and in their collections. It is important to the

integrity of the judicial system that people who are charged with infractions no matter how minor, be treated fairly and uniformly by the various courts. Right now there are differences in when administrative fees will be assessed and collected. I believe that if the lower courts can agree upon and then buy into a uniform process, the entire system will benefit and we will learn much about the volatility of this source of revenue and perhaps enhance its stability to some degree.

The second commission is to study the funding of every court in this state. The legislative audit pointed up the need for courts at all levels to have uniform collection practices. And yet, we know that all the courts of this state are not funded at the same level. Each municipal and justices and district court must seek its funding from its city council or county commission. As a result, some are better equipped than others to respond to requests to change and enhance local practices. But until we know more about the financial health of each court in this state we are not in a position to evaluate whether any possible changes are realistic to suggest. Also, because sooner or later we anticipate the discussion of whether Nevada should explore a unified court system will arise, we must have this baseline data and some preliminary recommendations from the commissions in order to intelligently evaluate what position the courts might take.

It is one thing to talk about the Supreme Court of Nevada as the administrative head of all the courts, it is quite another for the Supreme Court to attempt to exercise close supervision of the lower courts when we have no say so over and little knowledge of their financial health. For the courts to continue the great collegiality that has come to exist from working together, I believe we must respect the positions we might put the lower courts in if we tried to require them to do things they can not afford to do. So, I hope this commission on court funding will benefit the courts and the legislature in evaluating future changes in court structure.

I thank you for your time and patience.

I defer now to Mr. Titus who also has a presentation. I don't know if you would like to ask questions now or wait until you have heard his presentation.