

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-third Session
April 26, 2005**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:08 a.m. on Tuesday, April 26, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

COMMITTEE MEMBERS ABSENT:

Senator Mike McGinness (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joe Hardy, M.D., Assembly District No. 20

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Bradley Wilkinson, Committee Counsel
Ellie West, Committee Secretary

OTHERS PRESENT:

Robert Eglet, Nevada Trial Lawyers Association
Rick R. Loop, Eighth Judicial District Court; Nevada District Judges Association

Jay D. Dilworth, Municipal Judge, Municipal Court, Department 1, City of Reno;
Washoe Region, Judicial Council of the State of Nevada
Morgan Baumgartner, Nevada Court Reporters Association
Stephanie Koetting, President, Nevada Court Reporters Association
Lori K. Urmston, Certified Court Reporters' Board of Nevada
Pauline May, Treasurer, Certified Court Reporters' Board of Nevada
Gloria Perry, Associated Reporters

Chair Amodei called the meeting to order and opened the hearing on Assembly Bill (A.B.) 166. He invited Assemblyman Joe Hardy, M. D., Assembly District No. 20, to testify.

ASSEMBLY BILL 166 (1st Reprint): Revises certain provisions relating to offers of judgment in civil actions. (BDR 2-564)

Assemblyman Joe Hardy, M.D., Assembly District No. 20, said a commission was basically assigned by the Nevada Supreme Court to clarify the offers in judgment and how they should be viewed by the court. The report the commission submitted to the Supreme Court had a transposition of the words "offer" and "judgment." A law was enacted based upon the transposition of words, and it affected Rule 68 in the Supreme Court Rules. Assemblyman Hardy introduced Robert Eglet, Nevada Trial Lawyers Association, who gave a PowerPoint presentation regarding offer of judgment rules, which clarified the issue (Exhibit C).

Mr. Eglet spoke in support of Assemblyman Hardy's bill and read from his presentation, Exhibit C. He said the Nevada Trial Lawyers Association's goal was to settle lawsuits before trial. He referred to the current language of *Nevada Revised Statute* (NRS) 17.115, section 5, paragraph (a), and said it was good because it dealt with an offer where the court awarded costs. Post trial, the court had to compare the principal amount of the judgment with the amount of the offer, without inclusion of costs. He said NRS 17.115, section 5, paragraph (b) was where the problem arose, due to the transposition of the words "offer" and "judgment," which was unfair to the plaintiff because he or she could end up having to pay the defendant's costs and fees, even though the verdict was in his or her favor. Additionally, the plaintiff could be precluded from receiving an award of his or her own costs and interest on past damages.

Mr. Eglet said Assemblyman Hardy's proposed amendments to A.B. 166 rectified the problem by requiring the court to compare the amount of the offer with the sum of the principal amount of the judgment and the amount of the taxable costs that the claimant, who obtained the judgment, incurred before the date of service of the offer. This amendment corrected the error so whenever the verdict was more than the offer, the plaintiff would never have to pay the defendant's costs and fees, and the plaintiff would not be precluded from obtaining his or her own costs and interest on past damages.

Chair Amodei closed the hearing on A.B. 166 and opened the hearing on A.B. 237.

ASSEMBLY BILL 237 (1st Reprint): Revises jurisdiction of certain justices' courts. (BDR 1-1239)

Assemblyman Hardy said A.B. 237 addressed the issue of statutes precluding justice courts in rural Clark County and rural Washoe County from issuing temporary restraining orders (TRO). According to the current law, rural Clark County people had to go into the family court system in the downtown area of Clark County. It was a day's drive to get the restraining order application, a day to get it back and a day for the judge to rule on it, he said. He concluded the ability to get a TRO needed to be more expeditious. Incline Village had the ability to work outside the jurisdiction of the downtown court in Washoe County, and language was included in A.B. 237 to accommodate Wadsworth and Gerlach. Sparks was excluded. Assemblyman Hardy referred to a proposed amendment to A.B. 237 ([Exhibit D](#)). He enumerated the rural districts that would benefit from this amendment. Assemblyman Hardy concluded by explaining the proposed amendment to A.B. 237 allowed the justice courts in those rural districts to have jurisdiction in consultation with CMC Software, Incorporated's Blackstone judicial software to help them avoid overlaps in restraining-order issues.

Rick R. Loop, Eighth Judicial District Court; Nevada District Judges Association, said both the Second Judicial District and the Eighth Judicial District supported this legislation including the proposed amendment to A.B. 237. He said the intent was for judges from different districts to access and cross-reference information, using the Blackstone software, to determine jurisdiction to issue a temporary restraining order. If there was no case pending in the family court division, there was no original jurisdiction issue, and the justice of the peace

then issued a TRO in the rural districts, he explained. He concluded by stating Madelyn Shipman of the Nevada District Attorney's Association had voiced support of A.B. 237 on behalf of the Association.

Chair Amodei closed the hearing on A.B. 237.

Chair Amodei asked Nicolas Anthony, Committee Policy Analyst, in preparing the work session documents for later in the week, to make the letter from Ben Graham and Kristin Erickson ([Exhibit E](#)) part of the record for A.B. 21. For the record, Chair Amodei said Gary Peck, who represented the American Civil Liberties Union (ACLU) of Nevada, called and intended to give testimony on A.B. 166, so the Committee would address the issues Mr. Peck deemed relevant. The ACLU was aware of A.B. 166 and elected not to testify, Chair Amodei said. Also for the record, the Committee had an e-mail from Mr. Eglet ([Exhibit F](#), original is on file at the Research Library) regarding A.B. 166.

Chair Amodei opened the hearing on A.B. 157 and asked Jay D. Dilworth, Municipal Judge, Municipal Court, Department 1, City of Reno; Washoe Region, Judicial Council of the State of Nevada, to testify.

ASSEMBLY BILL 157 (1st Reprint): Authorizes senior justices of the peace or senior municipal court judges to serve temporarily in justice's court or municipal court regardless of residency requirements under certain circumstances. (BDR 1-528)

Judge Dilworth testified in support of A.B. 157. He gave some background information regarding the Nevada Supreme Court and the creation of Rule 12, which produced the position of senior limited jurisdiction judge. The idea was those judges would be appointed by the Supreme Court, their education would continue to be funded by the Administrative Office of the Courts, and there would be a value to all the limited jurisdiction judges throughout Nevada. When judges needed to take time off for illness or training or other obligations, other trained judges would be available to temporarily take their places. Judge Dilworth said Supreme Court Rule 12 indicated a senior municipal court judge could only sit as a municipal court judge in the city of his or her residence.

Assembly Bill 157 would authorize senior municipal court judges to sit in any municipal court in Nevada, notwithstanding any other statute. This provision allowed judges to help alleviate situations of crowded calendars, illnesses and

other situations, he said, and would apply to rural as well as urban areas. Senator Wiener said she noticed this bill was the first reprint and asked what changes remained in the Assembly.

Judge Dilworth said A.B. 157 originally only discussed municipal court judges because a justice of the peace, once elected, could serve in any justice court in Nevada, so there was no need for this specific legislation. However, the Committee wanted to be sure that in the Assembly they were not excluding justices of the peace so this bill would also allow a senior justice of the peace to sit in any justice court. By statute, they already could do that and only the municipal court judges had been restricted, Judge Dilworth said.

Senator Horsford referred to section 2, subsection 1 of the bill, which said "a municipal court judge may serve temporarily," and asked what criteria, such as a time line, was used to avoid an election to appoint a judge since this procedure would be in place.

Judge Dilworth replied the senior municipal court judge would be invited by the city municipal court judge, and there was no time limit. The bill did not require that the judge be invited, but if the elected municipal court judge wanted to have a senior municipal court judge, he could come. The length of service was open, he said, but it would be temporary. The Nevada Code of Judicial Conduct specifically addressed temporary judges, he stated, and they were allowed to do certain things that a full-time judge could not do.

Senator Horsford said he wanted to see the language and the criteria in A.B. 157 refined because if a judge was incapacitated and unable to serve, a special election needed to be held to appoint a new judge who represented the citizens. Senator Horsford said the bill needed to define the meaning of "temporary" and maintain the same intent we have now for our elected judges.

Judge Dilworth said a provision already required a judge to serve at least once in a 90-day period or he would be removed from office. If a senior judge was needed for 89 of the 90 days, continuity was preserved while the other judge was absent.

Senator Horsford requested the language in the bill be changed to indicate a judge could not be absent for more than 90 days. He said this would make him more comfortable with the use of the word "temporary." Judge Dilworth replied

he had no objection to Senator Horsford's request, since the position was not intended as a permanent assignment.

Chair Amodei asked Bradley Wilkinson, Committee Counsel, how to implement Senator Horsford's request. Chair Amodei asked if reference to the other provision was needed in the statute to address the judicial rule Judge Dilworth just mentioned.

Mr. Wilkinson said if it was a 90-day period, he presumed it meant a continuous 90-day period.

Chair Amodei said he was concerned about the wording of the new provision so it neither conflicted with the 90-day provision that already existed nor another provision in the statute.

Senator Wiener asked if most municipal cases got resolved within one day. Judge Dilworth replied trials normally lasted less than a day and usually took only a few hours. Senator Wiener inquired if a judge was at the end of his or her 90 days, was there a way to prevent the case from trailing to another judge. Judge Dilworth said there was no prohibition regarding length of time in the bill, and he only used 90 days in reference to the requirement for a municipal court judge to sit at least once during 90 days. The intent was to allow senior municipal court judges, from different cities, to sit in place of municipal court judges, he said, and he never considered a time period as important. He said once a judge heard a case, it became his or her case, and he or she would keep it until it was concluded.

Senator Wiener asked how a situation would be resolved where a judge, who needed to sit for one day in the 90-day period, would serve during another judge's trial. She asked if that judge would stop his trial, let the other judge sit for his one-day requirement on a new trial, and then the original judge resume his case the following day. Judge Dilworth said he had not thought of that scenario. The requirement to serve once in 90 days did not affect a senior judge; he said it only affected an elected judge. He recommended a time limit not be placed in the bill regarding this scenario because of the issues brought forth. Senator Wiener said she was not concerned with the 90-day requirement, but with a case trailing due to the requirement. She wanted to know what happened to that lingering case. Judge Dilworth did not think that scenario was a major issue for an elected judge because there was also a canon that required

you to be a judge. A judge could not just leave for 90 days without good reason or he would be disciplined, he emphasized.

Senator Care said he believed Senator Horsford's concern was judges were elected and should therefore serve as representatives of the people. Senator Care said in municipal court, you could have three trials in a day, and in justice court, a trial might take a half of a day at the most. Senator Care said he was not bothered by the use of the word temporarily in this bill because it usually only amounted to a day or two at most.

Chair Amodei closed the hearing on A.B. 157 and opened the hearing on A.B. 91.

ASSEMBLY BILL 91 (1st Reprint): Makes various changes relating to court reporters and court reporting firms. (BDR 1-472)

Morgan Baumgartner, Nevada Court Reporters Association, testified the Certified Court Reporters' Board of Nevada asked Assemblyman Bernie Anderson, Assembly District No. 31, to allow amendments to address housekeeping concerns in A.B. 91. She referred to section 2 through section 15 of the proposed amendment to the bill, and said those sections addressed their concerns. Hence, her testimony only considered section 1 of A.B. 91. She said Nevada court reporters received fees, set by statute, when their services were provided within the district court. If the services were provided outside the district court, the fees were subject to free-market pricing. The fees proposed in the amendment to A.B. 91 represented the first fee increase requested since 1999, and the fee increase requested was less than the cost of living increases that regular government employees received. The proposed fees were about 3 percent per year, Ms. Baumgartner said. Since the fees were not competitive in the public sector, many court reporters were less interested in working, she said. The intent was to bring the fees on a par with the fees outside the courtroom in Nevada, she said. Since the requested fee increases were reasonable, on the Assembly side there was no objection from the counties or Nevada Association of Counties.

She referred to A.B. 91, section 1, subsection 1, paragraph (a), which proposed the rate of pay for weekdays be increased from \$150 to \$170 per day, with an additional increase for Saturday and Sunday duty. She next referred to section 1, subsection 1, paragraph (c) of A.B. 91, regarding transcription and

copy fees, which also had a proposed increase. They did not change the fees for pro bono work, she stated. Ms. Baumgartner then moved through the remaining paragraphs of section 1, subsection 1 of A.B. 91 and stated they proposed an increase in the hourly fee paid to record civil matters from \$20 to \$30 per hour, in addition to the per diem rate of pay. Lastly, she said they simplified the language to make the requested fee structure increases more understandable.

Stephanie Koetting, President, Nevada Court Reporters Association, testified her group supported A.B. 91 with the proposed amendments.

Senator Wiener asked Ms. Baumgartner when the last time the fees were increased. Ms. Baumgartner replied the last increase was in 1999. Senator Wiener noted a slight increase in cost for the first copy, but the heftier increase of approximately 80 percent to 90 percent was for additional copies. Ms. Baumgartner verified it was a significant increase, and said these fee increases brought them in line with what the counties charged for copies.

Lori K. Urmston, Certified Court Reporters' Board of Nevada, testified her group supported A.B. 91. She referred to section 2 of A.B. 91 and said the proposed amendments were housekeeping matters. They, too, requested increased fees and referred to their increased costs for licensing and labor. Their budget fell short of their expenses, she said. She explained the need, on a temporary basis, for a court reporter to perform services in the rural counties with the approval of the Board.

Senator Care asked if there was such a thing as a court reporting firm of just one or two reporters. Ms. Urmston replied in the affirmative. Senator Care asked if they would still have to do this. Ms. Urmston stated that as a court reporter, you had to have continuing education and if you were the owner of a firm and you were a court reporter, you were already required to receive continuing education, as well as having to register as a firm owner with the Court Reporters' Board. Senator Care said there were court reporters who on a daily basis were in the courtrooms and also had firms that did depositions and similar activities.

Senator Care asked if there were also firms only available for depositions and that sort of service. Ms. Urmston explained the difference between firm and court reporter depended upon whether you were using other court reporters and

paying a commission. If an individual was a court reporter, and never hired another court reporter or paid a commission, then that individual would not have to register as a firm, she clarified. Senator Care asked how many firms had to register in Clark County. Ms. Urmston estimated no more than 30 firms. Senator Care asked about the continuing education language in the bill and when a court reporting firm encounters a conflict of interest. Ms. Urmston said there were situations where a court reporter was married to an attorney or a judge, or had some relationship with the litigants, or financial interest which had to be disclosed. Senator Care asked if it had any bearing on a situation such as a court reporter taking a deposition for him one day and the next day appearing for the deposition from the opposing counsel. She responded in the negative, and said it would have to be a close relationship that might give the impression of impropriety. She emphasized the importance of court reporters remaining neutral.

Pauline May, Treasurer, Certified Court Reporters' Board of Nevada, gave some detailed financial information. She stated fiscal years 2003 and 2004 left them with a combined operating budget deficit of \$24,000, in part due to a decrease in operating revenue, as well as an increase in operating expenses. For that reason, they asked for an increase in fees, she said. They had implemented cost-saving procedures to deal with the lost revenue and increased costs, but it did not made up for the shortfall in the budget despite their best efforts to conserve, she explained.

Gloria Perry, Associated Reporters, said she served on the legislative committee for the Court Reporters' Board and had nothing to add.

Chair Amodei closed the hearing on A.B. 91.

SENATOR WIENER MOVED TO DO PASS A.B. 91.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR MCGINNESS WAS ABSENT FOR THE VOTE.)

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There being no further business for the day, Chair Amodei adjourned the meeting at 9:56 a.m.

RESPECTFULLY SUBMITTED:

Ellie West,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____