

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
February 26, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 9:35 a.m., on Monday, February 26, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John C. Carpenter (excused)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst

Minutes ID: 340



Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Kathryn Mershon Conrad, Private Citizen, Las Vegas, Nevada
Paula Berkley, representing Nevada Network Against Domestic Violence, Reno
Keith M. Lyons Jr., Attorney at Law, Lyons Law Firm, Las Vegas, Nevada

Chairman Anderson:

[Meeting called to order and roll called.]

Before we turn to the agenda for the day, I have two bill draft requests (BDR) for Committee introduction.

BDR 41-104: Increases the amount of community service required for placing graffiti or otherwise defacing property.

BDR 15-467: Revises provisions governing the term of office for members of the State Gaming Control Board.

ASSEMBLYMAN HORNE MOVED FOR COMMITTEE
INTRODUCTION OF BDR 41-104 AND BDR 15-467.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION PASSED.

Let us turn to Assembly Bill 125 and its main sponsor, Mr. Manendo.

Assembly Bill 125: Makes certain changes concerning awards of temporary maintenance and alimony. (BDR 11-797)

Assemblyman Mark Manendo, Assembly District No. 18:

We all ran for office because we wanted to make a difference. We believed that one person could make a difference in our community and make a positive influence on law and policy in general. We hear from people all over the State who also see changes that need to be made. I cannot tell you how proud I am of the woman who is sitting here by me who believes that the system needs change. She came forth and actually contacted every member of both Houses. Quite a few people responded to her in the interim, so I commend my colleagues who spent the time getting to know this issue. When we went

around obtaining signatures, much of the groundwork was already done. I appreciate that all 42 members of our House and 17 of the 21 Senators signed onto this bill. The story you are going to hear from Kathryn Mershon Conrad is unfortunate. Before we go on, we will watch a video ([Exhibit C](#)).

Our intent is to correct the statutes that are absolutely silent on this issue. We hope that the court would take into consideration those acts of domestic violence when awarding alimony. This is the third most popular bill out there with 35 in favor, zero against. I have 10 or 12 emails that I can present to the Committee to be put in the record if you would like, Mr. Chairman.

Chairman Anderson:

Are you taking us through the bill?

Assemblyman Manendo:

Ms. Conrad is going to testify and then we can attempt to answer any questions. We are not sure why it was actually written this way. We know that there is someone from southern Nevada who is going to testify with some concerns, so we might want to hear those first. I wanted to make sure that the Committee knows what our intent is.

Kathryn Mershon Conrad, Private Citizen, Las Vegas:

[Read from prepared testimony ([Exhibit D](#)).]

Chairman Anderson:

Did you wish for your document to be entered into the official record for the day, along with the court document that is attached?

Kathryn Mershon Conrad:

Yes. I have included a copy of the court orders, and I have it flagged where it states that they are extending my restraining order against my ex-husband because of the criminal charges he was facing. I further point out that he has more assets than I do and that I am paying the bills and providing a benefit to the community. The final place I have flagged is where the judge orders me to pay him spousal support in the sum of \$500 for two months, a total of \$1,000.

Chairman Anderson:

The criminal part of your case was not decided when this was taken up. Is that the essence of the judge's determination?

Kathryn Mershon Conrad:

Yes. When I went to court to extend my restraining order, he was facing felony and misdemeanor charges, and the judge was aware of that. I had the same

judge from the beginning when I had my first emergency order issued. I then extended it twice because I obviously did not feel safe.

Chairman Anderson:

Nevada law applies to the gender neutral. Unlike many of the states that you have identified, where they take a position one way or another, Nevada has not traditionally done so. It is an unusual position to be in.

Are there any questions for Ms. Conrad or Mr. Manendo? [There were none.]

Is there anyone else you wanted us to hear from, Mr. Manendo?

Assemblyman Manendo:

Sue Meuschke from the Nevada Network Against Domestic Violence was going to be here to testify, but I do not see her.

Paula Berkley, representing Nevada Network Against Domestic Violence, Reno:

We support the intent of this bill. Domestic violence lifts its head in many ways, and this might be one of them that needs to be considered.

Chairman Anderson:

Has your group taken a position on this bill or the underlying question of changing the focus of the law?

Paula Berkley:

We support the intent of it. Certainly domestic violence should be considered in any divorce case, but we are open to negotiating on the word choices and that sort of thing.

Keith M. Lyons Jr., Attorney at Law, Lyons Law Firm, Las Vegas, Nevada:

I have practiced primarily in employment and family law for about 14 years, with about 60 percent of my practice being family law at the present time. I am also a member of the Nevada Trial Lawyers Association, and we have several concerns about this bill. As the law is currently written, although the goals behind the bill are laudable, we believe we have to oppose the bill. Ms. Conrad referred to fault states where adultery, marital fault, and conduct of the parties are taken into consideration in dividing marital property. Nevada is a no-fault state, and as a no-fault state, marital fault is not an issue in the division of property or the awards that the court makes. Having said that, the Nevada Supreme Court has set forth a series of factors in the *Sprenger* case [*Sprenger v. Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994)] called the Sprenger Factors. There are six different factors that the court set forth in determining how to award alimony. They have also addressed the fault issue in

the *Rodriguez* case [*Rodriguez v. Rodriguez*, 116 Nev. 993, 13 P.3d 415 (2000)].

There is no current factor that says the issue of domestic battery must be considered, but many of the courts already do consider it. Several years ago, Nevada set aside what was called the Interspousal Tort Immunity, which means that one spouse can sue the other. In this circumstance, there is already a remedy available for Ms. Conrad in that she can sue her ex-husband for battery. In many cases that I have been involved in, we will either file an action with the divorce case for battery or we will file an independent action separately. That would also deal with this issue without changing this law. I do not think any attorney would say to change the law so that it says that among the factors the court may consider is whether the recipient spouse has engaged in acts of domestic violence. I think that changing the law to this formal rebuttable presumption is going too far, and will add tremendous expense and litigation to the court process.

Chairman Anderson:

You represent the Nevada Trial Lawyers Association's opinion, and you speak for them?

Keith M. Lyons Jr.:

That is correct.

Chairman Anderson:

The factor would seem to be if there was already a predetermination of domestic violence and who has money. Is that correct?

Keith M. Lyons Jr.:

If you have two parties who each make \$30,000 per year, typically the court cannot make an alimony award. Since they have equivalent income, when they get divorced they are going to have the same lifestyle. In the 14 years I have been in practice, I have never seen a \$1,000 alimony award that is paid over two months. That is typically not how alimony is awarded, so there are probably some other factors in this case. Having said that, there is a set of six factors that the Nevada Supreme Court has set forth that may be considered by the district court judges down here, and it is not limited to those factors because the court has the discretion to consider any other factor that seems relevant.

Chairman Anderson:

I am trying to figure out if this is abnormal or if this is common practice.

Keith M. Lyons Jr.:

It is definitely not common practice in my experience or any other family law attorney whom I have talked to. Most attorneys that I deal with would consider this an issue in which you would raise an independent tort. Then, even if the judge was inclined to grant alimony, you would probably recapture that via the independent tort. This lady has testified that her foot was broken, she had medical bills, and there was obviously pain and suffering. This is the classic case for the independent tort action which would actually give her a much better remedy than would the statute she is proposing.

Assemblyman Horne:

Is it your belief or your experience with family law that, if there had been a conviction prior to this order for domestic battery, the judge would have ruled differently? There had not yet been a conviction in this case, so I am assuming that the judge could not make that determination himself.

Keith M. Lyons Jr.:

If there had been a prior conviction, a court would probably consider it, but it would not be the determinative ruling under our case law. Quite commonly in family law cases, you will have events that lead up to the divorce and one party will file a charge of domestic violence. That trial is set and keeps getting continued until the divorce trial takes place. In that case, there is not a determination on the criminal charges. You have a case where either a party exercises their Fifth Amendment rights in the divorce case, or they waive that and testify in the divorce case as to what happened with the domestic battery charge; it could go either way. The laudable goal for family courts, at least in Las Vegas, is to get a party divorced within six to nine months. Realistically, in a tremendously contested case, it is closer to nine months to a year. I have seen battery trials in Las Vegas take two years before they go to trial. If it is the precipitating event that leads to the divorce, very rarely would you have the criminal trial and a conviction for the family law judge to rely on. If there are numerous cases of domestic violence in the past where the party has been convicted, I would be shocked if any judge in this State would not consider that.

Assemblyman Segerblom:

It is my understanding that the Sprenger Factors are not actually set forth in the law. Are they just something that the Supreme Court has articulated?

Keith M. Lyons Jr.:

Considering that the Nevada Supreme Court's decision is final until the Legislature changes the factors, it is set forth in the law but not in the *Nevada Revised Statutes* (NRS).

Assemblyman Segerblom:

You indicated that you would not mind having spousal abuse added as a Sprenger Factor, correct?

Keith M. Lyons Jr.:

That is correct. I think that would be appropriate. That is a law set forth by the Nevada Supreme Court on an award of alimony. There are other factors and other cases, but that is one of the primary cases we rely on.

Assemblyman Segerblom:

It seems to me that we would want to set forth all of the Sprenger Factors and add this as a factor, as opposed to just having this as one factor in the law.

Keith M. Lyons Jr.:

I think that would be appropriate if we are going to add factors for the court to consider or we are going to codify anything as to alimony. I think we should set forth the factors that are present in the case law. I would like more input on that because I know there has been much debate over the years with alimony as to what factors are appropriate for the court to consider and put into law. I would be happy to talk to any of you about that and see if we could work something out.

Chairman Anderson:

I would like to mention to the members of the Committee that you might want to take a look back at Assembly Bill 52, which deals with those factors in part. We will take a look at the Sprenger question. You, the practitioner, would probably have a great knowledge of how those factors weigh. The issues raised here are similar to one that we heard last week, in which there was a murder-for-hire by a spouse that resulted from a child custody case. There is some need to look at the Sprenger Factors and see if we can bring some clarity here.

Assemblywoman Allen:

You indicated that you have been practicing law for 14 years. Is that in family law?

Keith M. Lyons Jr.:

Yes, primarily in family and employment law. Those are the only two fields I practice in.

Assemblywoman Allen:

In your experience, has a situation like this ever occurred? Is this an anomaly or is this something that can potentially happen again and again?

Keith M. Lyons Jr.:

It is something that could potentially happen. However, I have never had it happen, nor am I aware of any other cases in Las Vegas that it has happened. We heard some brief testimony that an advocate knew of over 100 cases. In 14 years, if there have been 100 cases, I would have to say they are an abnormality.

Chairman Anderson:

Are there more questions for Mr. Lyons? [There were none.]

Is there anyone else who needs to get anything on the record relative to A.B. 125? [There was no one.] I am closing the hearing on A.B. 125.

If we move forward with the bill, we will need to clarify the Sprenger Factors. I will ask research to look up some material for us. Are there any other questions anyone would like answered?

Assemblyman Mortenson:

One of the factors refers to the husband's continued education during the marriage. Would that apply to the wife's education also?

Risa Lang, Committee Counsel:

It was probably worded that way for this particular case, but it would probably work the other way if it was the husband who stayed home while the wife was going to school.

Assemblyman Horne:

I was just going to say the same thing as Ms. Lang. This is probably just gender specific because of that case, but it would apply to both sides.

Chairman Anderson:

I am reopening the hearing on A.B. 125. I am going to officially enter into the record an email that I just received from Sue Meuschke, Director of the Nevada Network Against Domestic Violence, in support of A.B. 125. She could not make it this morning due to the weather ([Exhibit E](#)).

The hearing on A.B. 125 is closed.
[Meeting adjourned at 10:27 a.m.]

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 26, 2007

Time of Meeting: 9:36 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Roll call sheet
A.B. 125	C	Assemblyman Manendo	Video
A.B. 125	D	Kathryn Mershon Conrad	Prepared testimony and court documents
A.B. 125	E	Susan Meuschke	Prepared testimony