

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

**Seventy-Fifth Session
February 27, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:21 a.m. on Friday, February 27, 2009, 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/75th2009/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 John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)
Assemblyman Tick Segerblom, Vice Chair (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Robert Gonzalez, Committee Secretary
Nicole Bailey, Committee Assistant

OTHERS PRESENT:

James W. Hardesty, Chief Justice, Supreme Court of Nevada
T. Arthur Ritchie Jr., Chief Judge, Eighth Judicial District, Las Vegas, Nevada
Connie J. Steinheimer, Chief Judge, Second Judicial District, Reno, Nevada
John Berkich, Assistant Manager, Washoe County, Reno, Nevada
Jeff Wells, Assistant County Manager, Clark County, Las Vegas, Nevada
Matthew Sharp, representing Nevada Justice Association, Reno, Nevada
Dean Hardy, Legal Aid Center of Southern Nevada, Las Vegas, Nevada
DeAnn Wiesner, Private Citizen, Las Vegas, Nevada
Lee Rowland, American Civil Liberties Union of Nevada, Reno, Nevada
Robert Lueck, Private Citizen, Las Vegas, Nevada
Jodi Tyson, Social Services Program Specialist, Grants Management Unit, Department of Health and Human Services
Denise Quirk, M.A., Member, Governor's Advisory Committee on Problem Gambling, Department of Health and Human Services, Reno, Nevada
Cheryl B. Moss, Judge, Eighth Judicial District, Las Vegas, Nevada
Douglas Crawford, Private Citizen, Las Vegas, Nevada
Helen A. Foley, representing Marriage & Family Therapist Association of Nevada, Las Vegas, Nevada
Judy Phoenix, representing Nevada Psychological Association, Reno, Nevada

Chairman Anderson:

[Roll called. The Chairman reminded everyone of the Committee rules.]

Mr. Carpenter has to leave early; therefore, we will take the bills slightly out of order in deference to Mr. Carpenter. He is concerned about Assembly Bill 65. I

see quite a few wish to speak on both A.B. 64 and A.B. 65. Let us open the hearing on A.B. 65, providing for the collection and disposition of additional court fees. Justice Hardesty, would you like to testify to this bill?

Assembly Bill 65: Provides for the collection and disposition of additional court fees. (BDR 2-372)

James W. Hardesty, Chief Justice, Supreme Court of Nevada:

Good morning, Mr. Chairman. Respectfully, I would like to suggest that you consider hearing presentations on both A.B. 64 and A.B. 65, with A.B. 65 first, simply because there is a direct connection between the two bills. I will present on A.B. 65 first, and the two judges with me today will testify on A.B. 64.

Chairman Anderson:

Chief Justice, it may seem redundant, but in order to keep our records straight, we need to address one bill before we address the next. We must complete all of A.B. 65 before we can turn to A.B. 64. I understand that it may be somewhat difficult to re-form your presentation, but we must begin with A.B. 65. Frankly, the bills are like two separate boats on a river. One could go, and one may stay. You never know. It is not a threat; it is just the reality of the situation.

James Hardesty:

We will proceed as directed. Mr. Chairman, we offer A.B. 65 to the Assembly Judiciary Committee. We offer it to you in an amended version, which I understand was distributed to the members of the Committee yesterday afternoon ([Exhibit C](#)). There is also an attachment ([Exhibit D](#)) provided to you this morning that addresses section 2, subsection 1(g) of the original bill.

Chairman Anderson:

This is the second time we have heard A.B. 65. We scheduled a hearing on Wednesday, February 11, and now we are back here again for the second time. The amendment was a little bit of a surprise. It was distributed this morning, so let us be sure we understand the purpose.

James Hardesty:

On February 11, we distributed what was referred to as the Judicial Business Plan ([Exhibit E](#)). My understanding is that all of the legislators have received a copy of this. That plan is intended to address both A.B. 65 and A.B. 64.

Beginning last June, recognizing the budget constraints that were imminent in the state and in the county, I met with the chief judge of the Second Judicial District, the incoming chief judge of the Eighth Judicial District, and the state's

judicial council, to formulate a plan to present to the Legislature that would provide a new funding source to address the serious and ongoing judicial needs of the Eighth Judicial District and the Second Judicial District and the additional funding needs for the other, rural, judicial districts in the state. As part of this program, we propose that the Legislature reexamine the civil filing fees that are embodied in A.B. 65. For the most part, these are fees that have not been reviewed since approximately 1993.

Our purpose in presenting this to you was also inspired by or suggested from testimony that was presented to the Legislative Commission's joint subcommittee studying chancery court. In that testimony, a number of attorneys indicated that the service needs for that court were important to an expansion of the success of that court and that they would be willing to pay additional filing fees in order to increase the continued success of the business court. We also felt that a plan was needed to create a funding source, not only for new judicial officers, but also for technology and facility needs in other parts of the state. We embarked upon a review of filing fees in other jurisdictions. But before I get to that, I would like to highlight a few provisions of the Judicial Business Plan that relate to A.B. 65.

If you look at section 3 of the business plan, we have summarized the filing fees in effect in November 2008 in the Eighth and Second Judicial Districts. As some of the more senior members of the Assembly are aware, civil filing fees have been accumulating over the years through the adoption of different statutory additions to Chapter 19 of *Nevada Revised Statutes* (NRS). I would like to give you one example if you have section 3 of the Judicial Business Plan open. The lead sheet contains official fees for the Eighth Judicial District Court. Directing your attention to "civil," which is midway down the page, you can see there that, to file a civil complaint in the Eighth Judicial District Court, one pays a fee of \$151. How do we get there? You see there NRS 19.013, NRS 19.020, NRS 19.030, NRS 19.031, NRS 19.0312, NRS 19.0313, and NRS 19.0315 all specify a certain filing fee and its use. This is a practice that has developed over years and probably predates the most senior members of your Committee. However, what is interesting is that the amounts reflected in many of these statutes have not been revisited by the Legislature since about 1993.

I would also note, in relationship to other jurisdictions, our civil filing fees are significantly below those of other states. I direct your attention to section 5. Section 5 of the Judicial Business Plan ([Exhibit E](#)) shows the amount of civil filing fees that are charged for different subjects in California, Arizona, Colorado, Washington, Oregon, Utah, and Nevada. On this sheet, you will note that the amount of the civil filing fee that is currently paid in Nevada is marked in yellow. The amount we propose be charged is marked in salmon. As you

can see, there are some new fees that are proposed to be charged if this bill were enacted, and there are increases in other fees as well. By way of example, the civil complaint in Nevada would go from \$151 to \$270, under the fee structure of A.B. 65, in two respects. One, there would be an increase of \$99 as proposed in the bill in section 2. Two, there is an optional \$20 fee for court security purposes that the county can decide to charge or not charge, based upon their own position.

These fees also reflect a trend that has occurred in many states and is continuing, where certain matters have a separate fee charged for that matter. A good example is a civil motion. Nevada proposes to charge a separate fee for certain motions. Why is that so? A considerable amount of judicial time is taken up in dealing with motion practice after the case is filed. A motion for summary judgment, for example, can take as much of the judge's time as the entire case, depending on whether it is dispositive. Additionally, you have certain motions, such as a motion to certify a class in a class action suit, which can take an enormous amount of the judge's time to decide. We also propose to charge a new and separate fee associated with business court and class action cases, recognizing the amount of judicial time that each requires.

This approach for providing a new revenue source to the judiciary is also being taken in other jurisdictions. I want to mention that, even this current chart, which shows Utah, does not reflect a bill pending in their legislature, as we speak, which would increase civil filing fees in that state. The hope of the chief justice of that state is that the legislature will enact this bill promptly so that the court system can avoid significant layoffs of their judicial employees. Utah has a unified system, so all of the employees are paid and hired through the state general fund. This is a real crisis in their state, and they have resorted to this approach to provide a new funding source for judicial resources.

Another area I would like to highlight is what these changes to the fee structure will generate. We will direct your attention to section 6. In section 6, you will see a calculation of the amount of revenue that is projected from these filing fee changes. There are a couple of amendments that should be removed, but in essence you can see the amount of revenue projected for the Eighth Judicial District. In section 8, we have the amount of revenue that is projected to be generated for the Second Judicial District. We have handed out to the Committee a separate sheet which is entitled "Estimated Revenue Increases in Rural Nevada" ([Exhibit F](#)). We distributed that sheet this morning. It is dated February 18. It is an estimate prepared by the Administrative Office of the Courts detailing the potential revenue from filing fees for rural Nevada courts throughout the state.

The other component of the bill is a somewhat unique provision. It is found in section 3 of the bill. Here, we have proposed a separate \$20 fee that can or cannot be imposed, depending upon the decision of the county commissioners, for the purpose of security. As you know, the security of the courts is a subject of significant importance throughout the state.

Chairman Anderson:

If we were to proceed with the bill as it is outlined, the \$99 increase is in addition to what is currently being paid as filing fees? This is all new money?

James Hardesty:

Yes, that is correct. Let me qualify your statement. The \$99 is new money, but it is added to the current \$151 filing fee. The other feature of A.B. 65 that is somewhat unique as compared with the filing fee bills in other states is section 2 of the bill. Paragraph 2 of section 2, on page 2 of the mock-up bill, creates a special account, as reflected in the amendment, administered by the county and maintained for the benefit of the court. The proceeds of the special account are to offset the county's costs for adding and maintaining new judicial departments approved in this session and for the facility costs associated with accommodating these new judges and judicial officers.

Chairman Anderson:

So that would be the nexus to A.B. 64?

James Hardesty:

That is correct. It is a direct correlation to A.B. 64 because, frankly Mr. Chairman, to be blunt, if the Legislature said, "We reject any notion of new judges," then there is no reason for you to consider additional filing fees. The problem that we point out is this: in the absence of these additional judicial resources, you will continue to have a substandard judicial system throughout the state. You will not address the serious caseload problem that we would like to present to you this morning. You will not be able to advance the recommendations that were proposed by the subcommittee on business court. And the judicial system will not be able to meet various statutory mandates for the resolution of medical malpractice cases and of a number of other cases for which you have requested statutory resolution within two- or four-year periods.

Chairman Anderson:

Sounds like the argument for A.B. 64.

James Hardesty:

It does not change. Part of the reason it does not change is we have not been able to keep up with the judicial demand and the need for judges. The

2007 Legislature added five new family court judges in the Eighth Judicial District and one civil judge. The impact has been clear and dramatic. We thank the Legislature for doing that. This bill is yet another step in the progression of trying to get caught up to the case load demand that exists in the largest and second largest counties in the state. This bill will also get us closer to American Bar Association (ABA) standards. The fundamental question is this: is it acceptable to the citizens of this state, and more particularly the citizens of Clark County, for civil cases to take three and a half years to go to trial? You can avoid the backlog, and you can create numerous opportunities at new case management, if you have sufficient judges to address the caseload issue on a proactive basis.

Chairman Anderson:

Chief Justice, I think you are crossing over into A.B. 64. I know it is hard not to do so in your thought process, and I appreciate the argument, but I want to bring us back to the question of your contention at the heart of A.B. 65 and, thus, the nexus to A.B. 64. You contend that there is no need for A.B. 65 if A.B. 64 is not enacted.

James Hardesty:

With one addition, Mr. Chairman. Not every judicial district in the state needs new judges, but I do not think there is any question that every judicial district in the state needs resources for technology, buildings, and courthouses—whether to be remodeled or to construct new facilities. This bill provides a funding source for those communities, once and for all, to address significant technology issues. Two weeks ago, when I visited with you and provided an overview of the judicial system, I mentioned to you that in a number of jurisdictions in this state, they do not have adequate phone equipment to conduct conference calls between lawyers in Las Vegas and the judge in Lyon County to hear cases there. There are numerous other examples where these funds can provide a new source to be able to address this issue. Again, I apologize, Mr. Chairman, if I am slipping over to the justification for the fee bill, but it is hard not to do so; therefore, I will revert back to the fee bill itself.

Assemblyman Horne:

In dealing with section 2, paragraph 2, and the fees described, I have a point concerning policy. These fees are going to be used to offset county costs in acquiring property, facilities, et cetera. But this is typically the purview of the county. This bill reflects the state imposing some fees so the county can do what the county is supposed to do anyway.

James Hardesty:

The civil filing fees go to the county, now. This is not a change; this is simply an additional fee to help the county meet those objectives. Existing civil filing fees go to the county, but they go to the county general fund.

Assemblyman Horne:

Are they typically used for capital improvements?

James Hardesty:

They are part of the general fund of the county, so there is no segregation. Chief Judge Ritchie and I met with the Chairman of the Clark County Commission and discussed this subject early on with a view towards a special enterprise fund. Such a fund is intended to try to target the advance of these goals, as well as facility needs. The current civil filing fees, all the ones that I just referenced that are described in section 2, go to the county and become part of the general fund. There is no way those fees are adequate to cover the budget of the court. Even these fees, while they would make a dramatic impact on the addition of nine new judges and aid in providing for the payment of these facility costs, still cannot pay for the expenses incurred in any one year. For example, the facility costs associated with these new judges will require Clark County to advance, or in effect make a loan to, this fund by billing the facility fees first, and having these fees retire the advancement of those sums. It allows the court to proceed with a major step forward with additional judges, and it designates these funds, instead of going to the general fund, to this special account to assure the retirement of those facility obligations. It helps the court system and the county to plan for the future.

I doubt seriously, Mr. Horne, with the amount of capital costs needed in Clark County to accommodate these needs, that you are going to see any addition to the accounts under subsection (3) of section 2 for probably three years. After that point, you begin to develop a fund whereby you can take major steps forward in improving and expanding court facilities. There are other court facilities throughout Clark County that are needed. It is not just the regional justice court; it is also the family court, where planning needs to be taking place, and other similar objectives. All we are doing is asking that the increase in funds be designated for these section 2 purposes, rather than be utilized in a different way.

One thing that might be of assistance to you is to calculate the percentage of revenue generated from the existing civil filing fees on an annual basis as contrasted with the overall court's budget that is advanced by Clark County. I think that what you will see is there is a substantial amount of money paid out of the county general fund that is vastly in excess of the civil filing fees paid to

date. A relatively small percentage of the overall court's budget is paid for out of civil filing fees today.

Chairman Anderson:

Chief Justice, I need to stop you here. Let me close the hearing on this bill for a moment. The Committee has been delivered a bill for potential Committee introduction. We need to get that to the Chief Clerk of the Assembly. I would ask for the introduction on behalf of the Judiciary Committee of bill draft request (BDR) 41-603.

BDR 41-603—Makes various changes concerning gaming. (Later introduced as [Assembly Bill 218](#).)

This act would change the regulation of gaming and provide for other matters. The reason it has priority is it is part of the Boyd School of Law's student group presentations. Boyd School of Law tries to put in a bill regarding the gaming industry during each session. This particular bill is the student group's presentation. Their class meeting is March 3, and they will have a bill draft to look at if we do it this weekend rather than wait. I have asked for a priority for this BDR. I ask for an introduction of BDR 41-603 on behalf of the Committee.

ASSEMBLYMAN MANENDO MOVED TO INTRODUCE
BDR 41-603.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYMAN OHRENSCHALL AND
ASSEMBLYMAN SEGERBLOM WERE ABSENT FOR THE VOTE).

Let me reopen the hearing on A.B. 65.

James Hardesty:

Mr. Chairman, Washoe County's court budget is about \$16.8 million, and filing fees represent \$1 million currently. The concern of the court in offering this bill and designating this special account is to assure that the additional civil filing fees are directed towards this particular resource rather than being placed in the county's general fund and putting the court at odds with the county over how these funds would be used and where they would be directed. I would like to state for the record that under no circumstances does the court system believe that this is the optimum way to pay for the judicial branch of government; however, in these difficult times, we must offer solutions.

We do believe that our civil filing fees are not commensurate with what is being charged in other jurisdictions. We do not want to suggest, however, that these fees are intended to defeat or restrict access to justice. In fact, there are substantial statutory remedies available—the court uses them every day—under NRS Chapter 12 to eliminate filing fees for parties or litigants who are unable to pay them. We frequently enter orders waiving all fees for such parties, and we will continue to do so. Nothing in this bill would change the remedies available to litigants, who are needy or unable to pay fees upon a showing of an appropriate affidavit, under existing statutes, to seek waivers of all fees, including this proposed new fee. In fact, in calculating the revenue number that has been provided to you, the court system took into account the number of waivers of fees granted on an annual basis to various litigants who come before the courts seeking this kind of relief. I would like to extend to the chief judge of the Eighth Judicial District and the chief judge of the Second Judicial District the opportunity to add anything on A.B. 65, only. Other than that, the three of us are open for questions.

Assemblyman Carpenter:

On page 2 of the amendment, in (f) at the top of the page, how many parties could possibly have to pay this fee? It says, "to be paid by the party commencing, answering or appearing in the action or proceeding thereto." How many people would this apply to?

James Hardesty:

The fee charged for paragraph (f) is applicable only to business court matters, not to any form of general civil litigation. This fee would be paid by the plaintiff and the defendant, regardless of the number of parties. This fee was proposed as a direct response to the subcommittee that studied the chancery court, which resulted in five recommendations to this Legislature asking for the addition of written opinions by business court judges, the expansion of the business court docket, and the like. In their presentation to the subcommittee, lawyers who represent businesses proposed a filing fee of \$5,000. Our fee proposal for a business court case in this bill is \$1,359. It would be paid by the plaintiff on the one hand and the defense or third parties on the other. At the request of the business court judges, the Supreme Court is about to issue an order that refines the business court case jurisdiction. In Clark County, business court jurisdiction would be limited to disputes that involved matters in excess of \$500,000 and/or other regulatory business cases. In the Second Judicial District Court, the jurisdictional amount would be \$250,000. You would be surprised at how many business court cases there are, nevertheless.

Chairman Anderson:

So, in answer to Mr. Carpenter's question, the minimum fees would be \$2,718, generated from both sides of the dispute. If there were additional defendants, they would each have to pay the fee. It is unknown how many parties there would be, but the minimum fees would be \$2,718.

James Hardesty:

That is right, but only in business court cases.

Assemblyman Carpenter:

Starting on page 4 of the amendment, all of the situations regarding minors have been stricken from the statute. I was curious as to the reason for that. Are they somewhere else?

James Hardesty:

Mr. Carpenter, if you see subparagraph (j), which has been stricken on page 2, the bill as submitted had proposed the imposition of a \$250 filing fee on petitions for leave to file compromise of minors' claims. Appropriately, the Nevada Judges Association brought to our attention that this fee would be egregious and create serious problems in petitions of that type. The judicial system agreed, and we removed it. When we removed it, it had the effect of striking section 4 from the bill. It does not mean that NRS 41.200 has been eliminated. *Nevada Revised Statute* 41.200 simply goes without amendment. *Nevada Revised Statute* 41.200 is the statute that provides for the processing of the petitions of compromised minors' claims. The only reason this language was in section 4 in the first place was we had proposed adding the fee. When we took the fee out, we took the amended language out, and that is the reason section 4 was stricken. The petition for minors' claims, provided for in Chapter 41 of NRS, remains as written.

Assemblyman Carpenter:

So, you are not going to try to strike NRS 41.200?

James Hardesty:

No, sir. More importantly, it would not even have been in this bill if it had not been for the fact that we had included that fee for that type of petition. It was an appropriate catch on the part of the Nevada Judges Association.

I have one final piece, Mr. Chairman. This bill, including these proposed fees, was circulated to the Nevada Supreme Court Bench-Bar Committee, consisting of over 33 lawyers around the state, as far back as September 2008. We have also circulated it to the State Bar Board of Governors. With adjustments, like the one we were just discussing, we have received favorable comment and

response from all of those groups and organizations. The Nevada Justice Association has also agreed with this bill.

Chairman Anderson:

Judge Steinheimer and Judge Ritchie, do either of you wish to testify first?

T. Arthur Ritchie Jr., Chief Judge, Eighth Judicial District, Las Vegas, Nevada:

I am going to try to avoid any of the statistical policy points related to A.B. 64, but I want to thank you for this opportunity and privilege to be able to address the Committee. Specifically, I would like to thank the Legislature for the tremendous contribution that occurred last session related to my district.

There was a plan that was implemented almost a year ago to participate in a process—which was a collaborative effort between lawyers, the county, and the courts—to try to solve this incredibly difficult issue. It is more difficult now than when we first started this process in April or May of 2008. Our goal was to try to figure out how to address resource issues through the creation of a special account for revenue from civil filing fees. The policy point consideration was to first look at what fees we were charging for civil litigants. In my district, our need was for judicial resources. We spent a lot of time trying to figure out what kind of revenue we generate now, what kind of revenue increases in fees would generate, and how we would best use this additional revenue to essentially give the benefit to the folks who were paying them: the litigants.

Chairman Anderson:

Chief Justice Hardesty did a very thorough job of explaining the position of the courts. Unfortunately, we have a great deal of business to process and very little time to work towards this goal. It appears to me that the judicial offices of both the Second and the Eighth Judicial Districts, as well as the justices at the district court level throughout the state, have indicated the need for this particular additional revenue stream in order to solve their fiscal problems pertaining to facilities and court function. Judge Ritchie, is there something else you feel is important for the Eighth Judicial District to get into the discussion?

T. Arthur Ritchie:

There is nothing left to be said on A.B. 65. I will be able to cover any other points when we discuss A.B. 64.

Chairman Anderson:

Very well. Justice Steinheimer?

Connie J. Steinheimer, Chief Judge, Second Judicial District, Reno, Nevada:

I am here to speak to you very briefly and encourage you to pass the bill that you are considering today. The increased filing fees will provide something different for every county and every judicial district. What is unique about this particular bill is it is a cooperative bill agreed to by the leadership of the Supreme Court and every judge in the district courts of the State of Nevada. Every judge considered all the issues of the counties. It really is a unique opportunity for the judiciary to come to the Legislature and tell you that we speak with one voice, along with the counties, in this regard.

Although we have many different issues, the biggest issue in this bill for Washoe County is getting the facilities that we absolutely, urgently need. In Washoe County, the district court is located in four different locations. We are not unified, and this would allow us in the future to become a unified court in one location. We also have the unfortunate reputation of having had some very severe security breaches in the recent past. We understand it, and our staff lives it every day. This will allow for the increased security options and will allow for the community to feel safer in their courthouse. We are located in Reno, and the main facility is in a courthouse that was started in 1910. Our new part of the building was built in 1963. We are trying to force 2009 security needs into a building that was built with the mind-set and society of 1910.

In addition to dealing with the issues considered in A.B. 64, this bill will allow the county to assist the judiciary in making this a safer, more usable facility. On behalf of the citizens that are served by the District Court of Washoe County, we urge you to pass this bill. Thank you.

Chairman Anderson:

I thought the Mills B. Lane Justice Center and the other family court center on the other side of the street was newer than 1963.

Connie Steinheimer:

The family court started out on the third floor of the justice court building, which is the north tower of the Mills Lane building. Municipal court is now in the south tower. We have now moved the justice court out and taken over most of the first floor. We are still spread out over multiple locations.

Assemblyman Carpenter:

The attack on the judge took place in the newest facility, and I thought it was created since 1963.

Connie Steinheimer:

It was. The new building was built in 1995.

Assemblyman Carpenter:

Questions from members of the Committee? Mr. Manendo?

Assemblyman Manendo:

How much money do you need to take care of your security needs?

Connie Steinheimer:

We are continually working on security issues. The Washoe County management has been very supportive, as has the Washoe County Sheriff. In Washoe County, we have a different process than we do in Clark County, in that the sheriff provides the bailiffs and screening at the entrances to our facilities and manages all security points. One of the issues that the sheriff has is the number of individuals that visit our facilities on a regular basis; how we can move them through the facilities. We currently need upgrades in that area. We do not know the exact costs. We have received some federal funding to increase our security in a bill that was passed by the Congress a year ago, and we are still just starting with that process. The first thing would be putting some film on the windows that would at least deflect bullets from coming in, but none of our buildings can be retrofitted with bulletproof glass. Although we are going to spend a lot of this money putting film on windows, it is not going to prevent bullets from going through from the outside into the buildings.

Chairman Anderson:

Mr. Manendo, as you know in Assembly Bill 99, which is also in our Committee, we are dealing with recommendations which also came from the Supreme Court, particularly because of what took place in Washoe County in the Second Judicial District court. Of course, when this newer facility was built, that was a cost question: the architect had suggested bulletproof glass initially, and the idea was rejected because of the additional, huge cost of bulletproof glass as compared with standard glass.

James Hardesty:

I want to augment the Chief Judge's response to Mr. Manendo. Under section 9 of the Judicial Business Plan, there is a computation of the court security fee. I assume, Mr. Manendo, your question was directed specifically to the \$20 court security fee and its use for security purposes.

Chairman Anderson:

Justice Hardesty, I presume you are talking about the initial bill.

James Hardesty:

I am sorry. In the Judicial Business Plan, Mr. Manendo, under section 9, you see a computation of the specific \$20 court security fee. It produces \$166,000. That is not overwhelming at all; in fact, it probably illustrates the point of how short we really are of the funds necessary to deal with this subject. It requires a combination of not only the court security fee but also the other civil filing fees to deal with some of those issues. We are hoping to create some flexibility county by county to use both to address some of these questions.

Assemblyman Manendo:

Thank you, Mr. Chairman. I appreciate that. I just wondered when you had mentioned that the sheriff's office is doing this, is the money intended to supplement or replace current fees?

James Hardesty:

The new fees will be in addition to the current fees. It specifically does not supplant the existing budget.

Chairman Anderson:

We will take the amendment that has been suggested, with the compromises that have been worked out, and submit them to the Research Division so that they will appear in the work session document when the bill comes forward to our work session. Any other questions from members of the Committee? Thank you very much, your honors.

Mr. Berkich, do you have any additional amendments that you wish to submit?

John Berkich, Assistant Manager, Washoe County, Reno, Nevada:

No, sir, I do not. We are supporting the amendments that you have just reviewed with the judges.

Jeff Wells, Assistant County Manager, Clark County, Las Vegas, Nevada:

Since the brief introduction of A.B. 65 to this Committee on February 11, the Chief Justice and I, and all of the other interested parties, have been working. I believe the amendment was filed yesterday. The proposed amendment is essentially a mock-up of the entire bill. Clark County stands fully behind and supports both A.B. 65 and A.B. 64, provided we can get these amendments approved. Without this new fee bill, there is no possible way for Clark County to afford the cost of the number of new judicial departments suggested in A.B. 64. Clark County now spends about \$71 million for the combined Eighth Judicial District and Las Vegas justice court. It is under a combined agreement between the courts and the county. That is the annual cost,

excluding construction. The construction portion, to which section 2 of this bill is related, even for the new judicial departments, would be about \$20 million. This is considering just the construction and does not take into account staffing costs. It is clearly important to Clark County to have this new fee bill move forward so we can satisfy the rest of the needs that the court has.

John Berkich:

Mr. Chairman, I just want it to be clear that Washoe County supports this bill according to the amendments that you have reviewed this morning.

Chairman Anderson:

Absolutely. It was made very clear from your first testimony. I see Mr. Wells indicate that as well. However, I am always disappointed when the counties are not carrying out their responsibilities. I consider it to be the fiscal responsibility of the county to carry out certain taxpayer mandates. I expect that part of the county funds are going to be used in supporting the important functions of the justice courts and the justice system, both at the county justice court level and at the district court level. I know that we do not have a unified court system in the State of Nevada, for good reason. I think that it has functioned very well under its current auspices, where the county and the justice courts watch each other. White Pine County always comes to mind. I have been at that courthouse, and I have seen that the lack of resources in a county can severely hamper the ability of the county to deliver judicial services. Are there any questions from members of the Committee? Thank you, gentlemen, for supporting the bill. Anyone else in support of the bill?

Mr. Sharp, I see that the Nevada Justice Association is supportive of the overall concept of the bill and its intent, but you have an amendment?

Matthew Sharp, representing Nevada Justice Association, Reno, Nevada:

There is a separate page ([Exhibit D](#)) to the amendment ([Exhibit C](#)) that the Chief Justice gave you. With those amendments, we are in support of A.B. 65. I would like to briefly back up and echo a few concerns. It is always a concern of ours when there are potential barriers to people getting access to justice. We had forwarded some of those concerns to the Chief Justice. He worked with us to resolve those concerns. I think the end result is, as the Chief Justice indicated, if you are not getting people into the court room and you are not trying cases, you are denying access to justice. We hope that this bill solves the access to justice problem by bringing in additional revenue so that the civil cases can be tried, particularly in Clark County. We hope to move forward with a more efficient justice system.

Chairman Anderson:

Your suggestion is reflected in the amendment that is submitted by Chief Justice Hardesty?

Matthew Sharp:

Yes. Basically, what our amendment says is that, in a case designated as complex, the fee is \$349 to be filed. We were just making that clear. When the answer or third party complaint is filed, that is a \$349 fee. We were making sure that it was not a \$349 fee per plaintiff. With that, we took the class action fee of \$349 and applied it at the time the case was moved for certification of the class, which is really at the point where the court's additional work comes into play.

Chairman Anderson:

And this has been agreed to by all the interested parties? I see nods.

James Hardesty:

Yes, Mr. Chairman.

Matthew Sharp:

The answer is yes, Mr. Chairman.

Assemblyman Cobb:

In reading your proposed amendment, I see the word "jointly" for plaintiffs. I do not see the word "jointly" for defendants. Does that mean that the amendment, as contemplated, would require that each individual defendant pay this \$349 fee? The plaintiffs would be required to pay only one joint \$349 fee?

Matthew Sharp:

Assuming it is a joint case, yes. The idea was that, in certain cases, you consolidate plaintiffs because the case is essentially the same for each of the plaintiffs against each of the same defendants. So, the fee for all plaintiffs combined is \$349. As you know, Mr. Cobb, typically the defendants would each be filing separate answers. They each have separate counsel. Therefore, they would each pay a \$349 fee.

Assemblyman Cobb:

I understand that. You are explaining the nature of how you file an action. It is just that we are already requiring people to pay fees just to be able to defend themselves in court. By this amendment we would be requiring one standard for people who sue someone and another standard for the people being sued, just to be able to defend themselves in court. Again, I am not talking about the specifics of how an action is filed. We all know the legal aspects of that. I am

talking about the aspect of just paying fees to the court. Would it not be more appropriate if there is just one fee on one side, meaning the plaintiffs, and one fee on the other side for all of the defendants together?

Matthew Sharp:

I hear what you are saying, and these are tough issues that we were contemplating on both sides, in terms of a per-plaintiff fee and in terms of a per-defendant fee. The way I understand it currently works, each defendant that answers has to pay a filing fee. I am talking about, of course, the Second Judicial District. Judge Steinheimer can correct me if I am wrong, but I believe each defendant pays a fee when they file an answer. I think that concept is continued in this bill. I echo your concern, generally, regarding the fees, but I also weigh that against the issue of our court system. Our courts need more civil judges to get cases to trial. I do not know if that has answered your question, but I hear your concerns.

Chairman Anderson:

Is there anyone else that feels compelled to speak? Mr. Hardy, I also have a submission of an amendment that I received yesterday from you. I will ask that it be submitted for the record ([Exhibit G](#)).

Dean Hardy, Legal Aid Center of Southern Nevada, Las Vegas, Nevada:

Thank you Mr. Anderson and members of the Committee. I come here in support of A.B. 65, with the amendment that we have provided to the Committee. I am president of the board of directors for the Legal Aid Center of Southern Nevada. I would like to thank Justice Hardesty and members of the court and judiciary around the state for bringing this bill and supporting the amendment, which provides for a portion of the filing fee increase to be utilized in funding legal services programs for low income Nevadans. The information that I have for you has been provided ([Exhibit H](#)). I do not feel it is necessary to go through this word for word. You have what my testimony is. There is a specific need for legal services for indigents throughout the state. The statistics have been provided for you. If you agree with the amendment, it would be appreciated. If you have questions and would like for me to speak to specifics, I am happy to do that.

Chairman Anderson:

Access to the courts for low income Nevadans is always a concern, but court access for these individuals is, in part, taken care of by groups such as the Legal Aid Center. I personally commend you for the time and dedication you put into groups like that. This amendment would help in solving part of that issue?

Dean Hardy:

I can say, generically, yes. Earlier Justice Hardesty aptly explained to this Committee that there are certain instances where individuals, who just simply do not have the funding to be able to respond to lawsuits, can have their fees waived. This aspect of the fee increase, where a portion would go to legal aid around the state, assists us in providing the services. There continues to be a Supreme Court Access to Justice Commission that Justice Hardesty could speak to far better than I. That commission did a civil legal needs survey around the State of Nevada. The findings were not so surprising to those of us who participate in the civil litigation arena, but there are individuals in Clark County, Washoe County, and throughout the state who have legal needs that are not met. What I mean by that is they do not have access to an attorney. The funding source for legal aid in Nevada is almost exclusively these filing fees. That is why we proposed the amendment. It was agreed on that a portion of the increase in the filing fees would go to help those individuals in our state that need it the most.

Chairman Anderson:

Questions for Mr. Hardy? I see none. I will enter the testimony of the Nevada Association of Counties (NACO) into the record ([Exhibit I](#)). Does anyone in Las Vegas feel compelled to speak in support of A.B. 65? Those people who wish to speak in opposition? Anyone in Clark County wish to speak in opposition to A.B. 65?

DeAnn Wiesner, Private Citizen, Las Vegas, Nevada:

Actually, I wanted to speak on A.B. 64, but after hearing A.B. 65, I would like to speak on both A.B. 64 and A.B. 65.

I applied for the pro bono program through Clark County. In 2005, I believe it was called the Clark County Legal Services Pro Bono Project. I believe Barbara Buckley oversees that program, and she does an excellent job. I was assigned to a pro bono attorney who smokes. I was required to come to her office. I am allergic to cigarette smoke. That was my bite at the apple. That concerns me. I do not believe that my health should be compromised, nor should the health of my two-year-old daughter, in seeking pro bono legal help because the lawyer I was assigned to smokes. I do wish that this additional funding would be passed by the Committee because there are many single parents that need help in the Eighth Judicial District court system. However, I do not think that we who apply should be given only one bite at the apple. I think more attention should be paid to individual applicants. And yes, I would like to comment at the end of the session, also.

Chairman Anderson:

It would appear that you are in support of the general position put forth by Mr. Hardy regarding the additional monies needed to provide legal services for people who cannot otherwise afford them. But, without this particular piece of legislation, there will be no additional dollars going into the court, or for the creation of additional access to the courts, because there will be fewer judges. That is the essence of the question. If I understand your complaint about this process, you feel that, in order to have access, there should be greater choices available to those who need to use legal services. You support the legal services program but wish there were greater choices so you did not have to put up with an infringement on your health. Would that be a fair summary?

DeAnn Wiesner:

That is a good summary.

Chairman Anderson:

Thank you very much. Anybody else from Clark County wishing to speak in support of or opposition to A.B. 65?

Lee Rowland, representing American Civil Liberties Union of Nevada, Reno, Nevada:

Mr. Chairman, I would like to withdraw the opposition by the American Civil Liberties Union (ACLU) of Nevada. We no longer have a position on the bill.

Chairman Anderson:

I will close the hearing on A.B. 65.

[Chairman called for a 5-minute recess.]

Let us open and return to the question of A.B. 64.

Assembly Bill 64: Increases the number of judges in the Second and Eighth Judicial Districts. (BDR 1-371)

Mr. Chief Justice, we will start with you again. You have already told us there is an economic need that A.B. 65 was designed to help alleviate. Now, we get to learn about the economic need.

James W. Hardesty, Chief Justice, Supreme Court of Nevada:

Mr. Chairman, in the interest of time, I would just note that the Judicial Business Plan we provided to the Committee (Exhibit E) contains information regarding the American Bar Association time-to-disposition statistics. I do not want to repeat what has been provided to you. What I

would rather you hear is the real-life statistical information from the two urban districts in the state. I will ask Chief Judge Ritchie to begin with his presentation on the needs for these judges.

Chairman Anderson:

I presume you are talking about tab 1 within the business plan, the section entitled "American Bar Association Standards: Eighth Judicial District Court Judicial Needs" and tab 2, the section entitled "Time to Disposition"? Is that where you are making your cross-references?

James Hardesty:

Yes.

T. Arthur Ritchie Jr., Chief Judge, Eighth Judicial District, Las Vegas, Nevada:

I will get right to the statistical points. Regardless of the difficult economic times in which we find ourselves, courts remain extremely busy. We analyzed the civil filings in civil cases. We are talking about: medical malpractice, personal injury, real estate that is non-construction related, construction defects, business disputes, contract disputes, probate, petitions for judicial review, and compromise of minors' claims; and on the civil side: child custody, divorce, name changes, termination of parental rights, guardianship, child support actions, and protective orders. This is what comprises civil matters that are handled by our courts.

In evaluating the number of cases that we have, we have seen some disturbing trends. From January 2008 to January 2009, we saw an increase in filings from 1,999 civil case filings, excluding probate, to 2,488 filings. This is a 24.46 percent increase year to date. In probate filings, which are a reflection of our young population in Clark County, there was a small increase of 2 percent between January 2008 and January 2009. Regarding medical malpractice cases, we have to take a specific view of them in Clark County. We had more than a 100 percent increase in actual filings if you consider the cases filed against the Endoscopy Center of Southern Nevada. Those medical malpractice filings were over 185 cases through January 2009. We have two judges handling business court in Clark County. They also manage civil caseloads, and Judge Gonzalez also has a criminal caseload. There are 700 pending cases, and over 500 cases were filed last year.

The difficulty we have is that it takes much too long for the citizens of our county to get resolution of their civil matters. We have mandates and specialized dockets for medical malpractice cases. We had 115 cases filed in 2008, excluding the 175 endoscopic cases filed that year that remain to be resolved. There were 111 cases in 2007, and that was in the two years that

we were supposed to resolve all cases. We had an additional 104 cases that are older than 2007. We just went through a status-check process in which we set these cases over the next two years. In dealing with all these various case types, the judges feel the pressure of trying the construction defect cases, the complex cases, and the medical malpractice cases, and of living up to our statutory obligations to promote business court and to help folks get expedited hearings. We find that the people who use our courts have to wait three and a half years before they can get resolution. You have heard the cliché that justice delayed is justice denied, but it is particularly important when we look at these medical malpractice cases where these plaintiffs need either closure through resolution of their cases or compensation.

We have done a business plan. We reached out to all of our partners to get support for the increase in the number of civil judges. We made a written commitment to the commission in Clark County that the judicial positions that would be created in January 2011 would be civil judges. We would advertise them as civil judges. We would let the bar and the public know that these judges would hear civil matters. They would enable us to enhance the ability to try these medical malpractice cases and construction defect cases and to provide resources to make the business court judges solely business court judges. But more importantly, the regular folks who have regular cases that do not fall into statutory mandates would not have to wait three or four years, on average, to get to trial.

In our district, we have case loads that approach 2,000 civil cases per judge for those who have only civil cases. We have judges who handle both civil and criminal cases. Each of them have about 900 to 1,000 civil cases and 900 to 1,000 criminal cases. Under that pressure of caseload, there is an argument it is just a degree of excess. You cannot possibly manage all of those cases. The number of judges that we have requested, which would be civil only, would be used to address this caseload issue and to improve the access to justice.

This business plan, this partnership to develop the resources, is an attempt to diversify revenue for courts, which is something we have strived to do. We had, in our most recent report, approximately 110 jury trials last year in the Eighth District, spread out among the judges that handled them. Even if we had judges who could handle that many cases, the backlog of cases that are more than three years old in the medical malpractice area exceeds 200. Just clearing that backlog would require even more judges than what we asked for in this bill.

I thank you for allowing me to present our goal to improve the access to justice for folks who file civil cases. We have been able to make significant progress in the family division by the addition of the five judges who started last month.

Additionally, we have an elected judge who is handling our specialty courts, all due to the fact that you have heard our request. The case I made for new judges in the 2007 Session was for the family division and for the specialized needs. I really cannot say that the need for civil judges in the Eighth Judicial District today is any less critical than those needs were. I am asking that you take this information into consideration and support the addition of new judges. A.B. 64 and A.B. 65 are related, which makes it difficult for the court and those who are advancing these policies to navigate the legislative process. As you said, Mr. Chairman, they are separate boats. If there are no questions, I will turn to Chief Judge Steinheimer.

Chairman Anderson:

Questions? Mr. Horne.

Assemblyman Horne:

Thank you, Mr. Chairman. We know that there is an overwhelming case load, not only civil cases but criminal cases as well. However, you said that these new judges would be used only for civil cases. They would not be used at all for any type of overflow? Typically, that is what happens: you get judges that are there for civil cases, but they end up with criminal cases. I have seen it more than once.

T. Arthur Ritchie:

In the discussions within the county, we talked about the practice of a civil judge being available to take criminal overflow. The way I would have to answer that is that there would be concern about whether or not there would be any kind of staffing impact on either the public defender or the district attorney (DA). We do not believe that this has ever been an issue when a civil judge has taken an overflow case. As you know, we have some judges who do just civil, some judges who do civil and criminal, and two judges who do just criminal cases. It is not uncommon for a judge, who is handling civil cases, if their matter settles, to take an overflow criminal case. The DAs and public defenders appear in court and try that case in front of that judge. I do not believe that there would be a fiscal impact. Certainly we do not support a situation in which a judge, who had a day available, would not take an overflow case. However, it would be fair to say that we have worked very carefully with the county to figure out what the staffing requirements are for the particular judges who handle particular matters. Those calculations are in the business plan.

Assemblyman Horne:

That is primarily my concern: the impact it would have on DAs and public defenders. In practical terms, both the DAs and the public defenders would be

impacted by having more cases that they would have to cover if there were more overflow judges. If they need more personnel, I do not know if that is just going to be absorbed by the county, or is the Legislature going to be seeing future bills regarding funding to get them more personnel to deal with the impact.

T. Arthur Ritchie:

In response to your question, we are obviously working with the county, and we would continue to work with them and make sure that there is no significant impact. In the business plan, we did look at what would happen if you had a judge who regularly heard a criminal calendar and who had a rotation like the judges that we have. We did account for that staff: I think it was five DAs and five public defenders in that calculation. We do not see that there would be a corresponding impact if a judge took an occasional overflow case. But this process involves those types of discussions.

We track our criminal case filings, as well. While there has been an almost 3 percent decrease in the total number of filings, we have had an increase in more violent crimes in Clark County. I would not say that we have had a reduced workload at all among the criminal cases, but the number of filings through the district court has actually gone down by 3 percent. When we started this process in April and May of 2008, the reason we included calculations for criminal judges was, at that time, we had not made any decisions within the court, and we wanted to make sure we covered every possible kind of judge that could be requested under A.B. 64. It became clear over the course of the past six to eight months that we would not be asking for a criminal judge. The criminal judges that we have, among the 25 civil/criminal judges that would still be there in 2011, would be enough to accommodate the criminal caseload needs. As it is now, we have two judges who just do criminal caseloads, we have judges who do both civil and criminal, and we have a handful of judges who do specialty courts and civil only. So, there is flexibility to make management decisions regarding the placement of these judges, even though we would make a commitment that those judges created in this session would be just civil.

Assemblyman Cobb:

Judge, in our discussion yesterday about this particular set of bills, when discussing the idea of raising fees and perhaps adding new judges to the Second Judicial District and Eighth Judicial District, the idea of more clearly defining the role of family court judges in NRS Chapter 3, in reaction to the *Barelli* decision (*Barelli v. Barelli*, 113 Nev 873, 944 P.2d 246 (1997)), came up. I suggested that perhaps it would be the role of the Legislature to more clearly define the intent of the Legislature in NRS Chapter 3 regarding the role of family

court judges. This would allow discretion for chief judges to assign family court judges to handle more cases of general jurisdiction, including hearings and such. That would take the caseload burden off of some of these other judges that you are describing. Has the court system considered this to be something that the Legislature should do?

T. Arthur Ritchie:

I think that the brilliance of the Nevada setup, to protect the family divisions in the Second and Eighth Judicial Districts, is to say that judicial resources will not be diverted from the family division to other needs. It says in the current law that no less than a certain number of judges would serve in the family division. I think that has protected folks who come before the family court from having judges transfer to civil cases, for instance, or to criminal dockets because of these types of pressures, specifically the pressure of the need to try civil and criminal cases. Within the family division, we have juvenile delinquency dockets, juvenile dependency dockets, civil/domestic dockets, and guardianship dockets. There is a myriad of assignments, so that the majority of the judges handle general, civil domestic cases. We make assignments for specialized areas of this domestic docket, just like the civil/criminal division might.

As a matter of practice in the Eighth Judicial District, we do have judges that have helped out. We have a very skillful elected judge who handled primarily family matters. She has been assigned to the adult drug court programs that cross over to some family court specialty programs. She also handles a civil docket. Judge Elliott technically is covering duties that were traditionally handled by Jack Lehman before he retired. After he left, senior judges took that docket for a while. Now, we have an elected judge who, technically, does not fall within the bailiwick of the NRS Chapter 3 exclusive jurisdiction that you are referencing. I hope that answered your question. Do you have anything specific related to the Eighth Judicial District that you would like to ask?

Chairman Anderson:

Mr. Cobb, Judge Ritchie is trying to fairly represent the Eighth Judicial District. Maybe your concern rests with those events that take place in the second judicial district. Your experience should apply to both districts, since they have the larger range of court activities in both specialty courts and business courts (for the eighth judicial district). I do not believe the second judicial district has done that yet. Mr. Cobb, did you get the answer to your question?

Assemblyman Cobb:

It seems like there is a need or desire, right now, for more latitude within the individual judicial districts. Perhaps the confusion about the *Barelli* decision, itself, is restraining that need for latitude and discretion. This would not be to

mandate that the family court judges leave the important role that they are playing right now, but to allow the latitude, through an agreement between the family court judge and the chief judge, to meet the needs of the overall district. Perhaps the Legislature needs to provide for this latitude that you seem to be enjoying right now in one district but they are not enjoying in the others.

James Hardesty:

I want to be delicate in my response, because there is a pending case before the Nevada Supreme Court which addresses the constitutional authority of a district court judge as a family court judge. That opinion should be published soon. I am not able to comment further, but the outcome of that decision may or may not influence the Legislature's need to become involved legislatively.

Assemblyman Cobb:

Thank you.

Chairman Anderson:

Thank you very much Judge Ritchie. Let us now hear from Judge Steinheimer.

Connie J. Steinheimer, Chief Judge, Second Judicial District, Reno, Nevada:

Thank you, Chairman Anderson. The judges in the Second Judicial District Court, both general jurisdiction division and family division, are jointly supporting this bill and encouraging your support of a new general jurisdiction judge for our court. The National Center for State Courts completed a workload assessment in 2007, which you all looked at when you proceeded with the action to add two new family court judges to our district. In that judicial assessment, it was noted that the general jurisdiction court needed 4.08 more judges, based upon the workload, and 3.6 new judges in family court. The Second Judicial District Court has always worked unified as much as possible. We saw the need in the family courts, and we asked for the judges to be assigned to the family division.

We are very thankful to this Legislature for the support that you gave to that bill and the support you gave to Washoe County to allow us to add these two new family court judges who began in January 2009. However, the general jurisdiction division is still understaffed. Civil filings in Washoe County are up—not to the extent of Clark County—but we have seen an increase in the last year of 9 percent in our civil filings. Our district is very active in judicially-assisted settlement as well as alternative dispute resolution (ADR) programs. However, in spite of these efforts, we are unable to keep up with the American Bar Association's (ABA's) standards for resolution. The additional judge will allow us to come much closer to meeting those ABA standards while still enhancing our efforts with the business court.

In relation to the business court, we established a business court, but it is only part of the judge's assignments. The judge assigned to business court presides over business court matters, civil matters, and criminal matters. Unlike the Eighth Judicial District Court, our court is not divided in the general jurisdiction as to civil or criminal judges. We all handle a mixed caseload, except that the primary responsibility for business court cases goes to one judge. If he is preempted for some reason, the matters are assigned to other departments. In fact, we have all heard business court matters.

In addition, we have a probate court which consists of a judicial officer who is a master, but he is overseen by one general jurisdiction judge who also carries a full civil and criminal caseload. The opportunity for us to utilize the new judicial officer in general jurisdiction for all case types has been discussed. Because we are not a segregated court similar to Clark County, we have looked at this and know that we will need this judge to operate in all areas. But business court legislation that may or may not be passed, new business court rules that are being worked on by the Supreme Court, and the demand by the litigants for a business court that is more responsive than what we can deliver in our current model, are going to require an increase in business court cases and supervision by a civil judge. So, this new position, if we were to secure a new judge, will allow us to enhance the services that we cannot currently provide in our current model; allow for the civil judge in business court to move these cases quicker and more completely; and allow for the written decisions that we anticipate may be coming out of the rule from the Supreme Court.

The necessity for the district court to have this additional resource is important. We have been operating at a deficit and would appreciate the opportunity to increase our services to the community. The district judges in our district have, from time to time, assisted in the family court. Regarding Mr. Cobb's comments about whether or not family court judges can come over and assist general jurisdiction judges, in the Second Judicial District Court, our experience has been that the general jurisdiction judges will be temporarily assigned to family court matters, rather than the other way around. We do that as necessary.

Chairman Anderson:

It is my belief that the position of the Second and Eighth Judicial Districts is to assign judges to the parts of the court that have the greatest need. I imagine that managing caseload assignments is not an easy task.

In the smaller district courts, the judges have to handle everything: family court questions, business court questions, et cetera. Your two districts have had the opportunity to become more specialized.

Connie Steinheimer:

We definitely will benefit from the ability to have another judicial officer. One of the reasons we are not as specialized as Clark County is that we have fewer officers. When you have fewer officers, you take the work as it comes. You are not able to segregate whole departments for one issue. The process that the judge goes through is probably very similar no matter what the case is. But there are other resources. As you can see in the business plan, we built in the staffing requirements for a new judge. The resources necessary for a business court, operating under either the chancery study or the proposed new rules from the Supreme Court, are significant. Tracking cases, processing cases, noticing cases, and moving these cases through is not an insignificant process. There is also a judicial component in writing published opinions, which is significantly more time-consuming than what we are currently doing.

Although we see the need in the civil caseload, we in the Second Judicial District Court will use this person as a general jurisdiction judge. We have committed to the county that we will not add another criminal department. Currently, our senior judge handles the criminal department. Perhaps we could at some point move the specialty court senior assignment to a new judge. However, we will never go beyond the nine judicial departments that are hearing criminal matters.

Chairman Anderson:

Is there a problem in that the more judges you have, the more specialized the courts become? Does that create an inherent problem, since judges may disagree about individual assignments?

T. Arthur Ritchie:

One of the things we did to improve the management of the court—that now has 42 district court judges—is to establish an executive committee, comprised of two representatives from each of the civil division, the specialty and family division, and the criminal division. They sit with the Chief Judge and work, on a monthly basis, to deal with management decisions. You could say it gives the Chief Judge support in dealing with the concerns of all of the judges, but it is a much better management model because the different concerns of the divisions are considered in that process. Actually, making assignments and trying to work out efficiencies to manage our caseload are matters we talk about all of the time. We consult with the Supreme Court in the management of those cases, as well.

James Hardesty:

The Second Judicial District finds itself in a unique position because its mental health court and its drug court are being serviced entirely by senior judges. We

need to plan for the fact that, eventually, Judge Blake and Judge Breen will retire. We need to replace them with an elected district court judge. It is a vital need for that district. With respect to Mr. Cobb's question, which is an excellent question, during the time when the Second Judicial District Court had a shortage of family court judges, and I was then Chief Judge, I assigned all non-child family court cases to the general jurisdiction judges in order to shorten the length of time to disposition for those family court cases. It had a huge impact. There is a lot of cross-referencing that the Chief Judge has to do on a daily basis in assigning cases.

Chairman Anderson:

Thank you Chief Justice. Other questions for the judges? All right, thank you. Anybody else wishing to testify in support of A.B. 64?

Jeff Wells, Assistant County Manager, Clark County, Las Vegas, Nevada:

We come before you to support this bill, with a couple of caveats. The first caveat is that we need A.B. 65 to move forward, as well, in order to be able to fund both the staffing and the construction costs that are associated with A.B. 64. I recognize your two-boat concept, and I request that we raise the sails on A.B. 65 faster than we do on A.B. 64. Our big fear is that both bills move forward and, at some point, A.B. 64 passes—and says, "Clark County, you get nine more departments"—but A.B. 65 does not pass. In light of today's economic conditions, I have no assurance that the county would be able to meet that need. I recognize that there is no way the Chairman of this Committee can control that; I am just offering it as a wish from Clark County.

Chairman Anderson:

I will indicate that A.B. 64, unlike A.B. 65, has already been sent to two committees. If we are to move on A.B. 65, it is the intent of the Chairman to refer it from here to the next committee that controls it, so the two boats will remain fairly close to each other and on the same river.

John Berkich, Assistant Manager, Washoe County, Reno, Nevada:

As the only non-attorney in this discussion, I will be very brief. We in Washoe County support A.B. 64 and the addition of one judge to the Second Judicial District, subject to the passage of A.B. 65. Thank you very much.

Assemblyman Cobb:

Have you determined the amount of the unfunded mandate to your two counties combined if A.B. 64 were to pass without A.B. 65?

John Berkich:

The estimate that we support that was developed by the Supreme Court puts the cost at \$1.2 million for the Second Judicial District.

Assemblyman Cobb:

Combined, how much is it?

Jeff Wells:

I believe that answer from Mr. Berkich was just for Washoe County. It would be \$28 million for Clark County without the passage of A.B. 65.

Chairman Anderson:

Anyone else compelled to speak in support of A.B. 64, pertaining to the creation of the additional judges for the Second and Eighth Judicial Districts?

DeAnn Wiesner, Private Citizen, Las Vegas, Nevada:

I would like to see more judges added, but the problems with the judicial system in this state are systemic. It is not due to the lack of judges, it is a systemic problem. It is a problem with the electronic system under which the eighth judicial system operates. It is a corrupt system. Odyssey and Blackstone, the programs that the judges rely upon to get their information to make rulings, are corrupt systems. The two programs do not network. Adding judges is not the answer. The entire system is broken.

Chairman Anderson:

So then, you are in opposition to the creation of additional judges in the Eighth Judicial District and the Second Judicial District, because creating additional judges does not solve the systemic problem in the judicial system.

DeAnn Wiesner:

No, I began by stating that I am in support of adding more judges because there is a shortage of judges. But, until the systemic problems are resolved, adding more judges will not solve the deeper issue. Thank you.

Chairman Anderson:

Thank you, Ms. Wiesner. Is there anyone else in support of the addition of the judges? Any in opposition? Mr. Lueck, the Committee will enter into the record pages 1 through 11 ([Exhibit J](#)); however, due to time constraints, the remainder of your written testimony will be excluded.

Robert Lueck, Private Citizen, Las Vegas, Nevada:

I am not entirely in opposition to A.B. 64. I have been in Nevada for 35 years, and I recognize the enormous caseloads under which our judges operate. We

do need some serious help in our courts; however, I disagree with the narrow-minded focus on simply adding new judges as the only means by which we can address these increasing caseloads and the demands on the judiciary. I have served as a family court judge and as a practicing lawyer, and I have seen this issue from different perspectives.

The trend towards addressing these caseloads and improving the delivery of services to the public does not lie with adding new judges, constantly, but it lies with expanding the jurisdiction or scope of what adjudication or dispute resolution services should be. A number of courts have now gone to mandatory mediation. I think it is irresponsible not to go to mandatory mediation for the property, debt, and financial issues in divorce cases. This Legislature passed the mandatory mediation requirement for custody and visitation matters over ten years ago. It has been remarkably successful. Close to 80 percent of full- and partial-parenting plans have been completed. It really helped out the courts and saved the trial judges enormous amounts of time. It is all done within about 60 to 90 days from the time a case is filed.

A number of courts have gone to mandatory mediation for the financial aspects, as well. If you want a good example of how this is done, look east to the State of Utah which went to mandatory mediation for all aspects of their divorce cases, by statute, in 2005. The Utah Supreme Court also made a rule in 2005 mandating mediation in all civil cases in their three largest judicial districts: Logan, Salt Lake City, and Provo. It has been remarkably successful. The settlement rates in Utah on divorce cases show that 60 percent are fully settled. For civil cases, mediation brings around a 50 percent settlement rate. A number of jurisdictions have really looked at their systems and gone to mandatory mediation.

Chairman Anderson:

Thank you, Mr. Lueck. I recall a large binder you provided to us in previous sessions regarding this issue. You remain an advocate for a different approach to the judicial process, with an emphasis on mediation rather than adjudication. I would recommend to the members of the Committee that Mr. Lueck's handout be included as part of their reading.

Robert Lueck:

Yes, Mr. Chairman. The only thing I want to add is that we really need to look for alternatives that would cost a great deal less than the millions of dollars A.B. 64 will cost. It is a real strain; it is not working well. I think we need to seriously consider some alternatives so that we may better serve the public and better serve the bench and bar. My methods will save millions of dollars. The other methods will not. Thank you.

Chairman Anderson:

Anyone else wishing to speak in opposition to A.B. 64? Before I close A.B. 64, Ms. Dondero Loop, do you need to make a disclosure?

Assemblywoman Dondero Loop:

Yes. Thank you, Mr. Chairman. I am aware that my husband, Rick Loop, lobbies for the Eighth Judicial District Court. I am hereby making a disclosure for the purposes of Assembly Standing Rule No. 23 and will abstain from voting on this bill. Thank you, Mr. Chairman.

Chairman Anderson:

Thank you, Ms. Dondero Loop. The Chairman recognizes the operation of the Standing Rule of the Assembly No. 23, where there is a potential conflict of interest.

Let me close the hearing on A.B. 64. Let us open the hearing on A.B. 102, even though I had indicated that there was a possibility we would not hear it. Since the primary people have not left the room, we will take up A.B. 102.

Assembly Bill 102: Revises provisions governing problem gambling.
(BDR 40-329)

**Jodi Tyson, Social Services Program Specialist, Grants Management Unit,
Department of Health and Human Services:**

Good morning, Mr. Chairman and members of the Assembly Judiciary Committee.

[Read from prepared text ([Exhibit K](#)).]

Chairman Anderson:

I would point out to you, Ms. Tyson, that the former Senate Judicial Chairman and I worked together to try to get people talking about problem gambling. I have had an interest in the issue for some time. Senator James and I were instrumental in trying to bring this, along with other addiction issues, to the attention of the Legislature. The question remains, and is probably part of the Judicial Business Plan, whether the court is supportive of putting in additional judges. That is one of the underlying questions.

Let me indicate that we have an amendment ([Exhibit L](#)).

Thank you for your testimony. Ms. Quirk, do you wish to testify?

Denise Quirk, M.A., Member, Governor's Advisory Committee on Problem Gambling, Department of Health and Human Services, Reno, Nevada:

Thank you, Chairman Anderson. I am a member of the Governor's Advisory Committee on Problem Gambling and its legal subcommittee, along with 19 other businesspeople, lawyers, and judges.

[Read from prepared text ([Exhibit M](#)).]

Chairman Anderson:

I will include the letter from Harold G. Albright as part of the record ([Exhibit N](#)) and include the letter to Mr. Andrew Clinger from Michael Willden ([Exhibit L](#)). Mr. Horne, do you have a question?

Assemblyman Horne:

Thank you. Ms. Quirk, while I am in favor of the program, it seems to keep citing only certified counselors and certified interns. That seems to be a limited universe of treatment providers. Is there any reason we would allow only these two groups to provide that treatment?

Denise Quirk:

Specifically, Mr. Horne, if I could take you back in history. The legislation a few years ago provided that the State of Nevada should have certified problem gambling counselors, experts in that area, under the jurisdiction of the Board of Examiners for Alcohol, Drug and Gambling Counselors, on which I served for four years. That requirement takes us to a higher level of expertise in order to be able to give the best possible treatment to problem gamblers and their families. Essentially, the State of Nevada agreed with us when the law was passed that there should be specifically trained experts in this area.

Assemblyman Horne:

I do not dispute your point, but is it your testimony today that there are no psychiatrists or psychologists or many other types of clinical workers who are certified to treat or are experts in treating problem gambling?

Denise Quirk:

Under the scope of practice for psychiatrists, psychologists, marriage and family therapists, social workers, and others also practicing in Nevada, they have the ability to treat problem gambling, but the specific expertise that certified problem gambler counselors have takes us to a higher level of expertise and makes us more appropriate in these cases.

Chairman Anderson:

Any other testimony?

Cheryl B. Moss, Judge, Eighth Judicial District, Las Vegas, Nevada:

I submitted a brief, written statement, but I do not want to read it ([Exhibit O](#)). I just want to make two points. My name is Judge Cheryl Moss. I am a District Court Judge in the Eighth Judicial District Court, Clark County, Family Division, Department I. I have presided over thousands of domestic relations cases since January 2001.

Although it addresses the criminal portion of the issue, I am still in support of this bill because it will have an impact on family court. I sit in family court, daily, and I understand what the impact will be on custody cases. Also, this bill will merely be an extension of services that are already provided for substance abuse, such as alcohol or drug use. We already have a referral network; we just want to make it official. I think that this is just a way of making things a little more specialized and getting these services out there for problem gamblers. As to my experience in family court, if we have A.B. 102, and those services are readily provided and handled in an efficient manner, then getting to a resolution and, basically, keeping criminals with problem gambling away from the jail system will certainly have an impact: some of them end up being in divorce court because the other spouse wants to take them there. Obviously, this will have an impact on the custody cases in my court room if problem gamblers do not get the needed services. I am the first judge in the State of Nevada to institute problem gambling assessments in my family court. My colleagues have followed me. I have had this problem gambling assessment system in place since 2001.

In closing, I would like to tell you a story about a case I had in my court room. Of course, real names will not be used.

I had a woman who came in, and I recognized that she clearly had symptoms of problem gambling. This lady left her four-year-old daughter in Sunset Station at the food court, and she disappeared for four hours. Security had the four-year-old girl until they located the mother. I sent her through a private referral assessment to see if she needed help with problem gambling. Months later, she came back into my court room. She thanked me because she got the help that she needed. She enrolled in treatment. She was just one of my success stories. I think that A.B. 102 will nail down a referral network, at least through the criminal system. Now, the problem gamblers go through the criminal courts and end up in my court. With A.B. 102, they will get the immediate help they need, rather than having to come to me in a separate court and doubling the work in the matter. This is why I wish to express my support for A.B. 102, and I thank you for your time.

Chairman Anderson:

Thank you, Judge Moss. Mr. Crawford?

Douglas Crawford, Private Citizen, Las Vegas, Nevada:

Good morning, Mr. Chairman. I am an attorney and have been practicing law in Nevada since 1985. I am currently suspended from the practice of law due to issues involving compulsive gambling, so I feel uniquely qualified to speak to this issue. I strongly support the passage of A.B. 102 for the specific purpose of protecting the public. As the elected representatives of our society, you are lucky to be put into the position to institute protections for members of the public. Early intervention in gambling cases is critical. Compulsive gambling impacts bad check cases, it impacts cases in family court, it impacts domestic violence cases, and all of these cases could benefit by early intervention and treatment. In my own case, it is painful to say, but had I had proper intervention earlier, I would have caused less harm to the people who suffered as a result of my compulsive gambling. Specialty courts work; the statistics support it. This is a narrow, somewhat esoteric area that needs that kind of special attention.

Chairman Anderson:

This might be a surprise, but as the Chairman of the committee that brought about the creation of the drug courts in this state, I think I have a general idea of the addictive behavior of problem gambling. I have been hearing these kinds of questions since as early as 1991. The reality is that, had you not run afoul of the law, you probably would not have recognized your addiction problem. That is the case in driving while intoxicated (DUI), it is the case in drug use, and, unfortunately, that addictive behavior is also demonstrated in gambling. We appreciate the gaming industry taking a very active role in trying to raise public awareness of the addictive nature of this problem. Mr. Mortenson?

Assemblyman Mortensen:

Thank you, Mr. Chairman. At any given time, of the population that is gambling in all of the casinos, what percent might be problem gamblers?

Cheryl Moss:

The number is about 6 percent. They have problem gamblers, and there are casino marker cases.

Assemblyman Mortensen:

Thank you very much.

Chairman Anderson:

Is there anyone else who wishes to testify? Ms. Foley?

Helen A. Foley, representing Marriage & Family Therapist Association of Nevada, Las Vegas, Nevada:

Our position on A.B. 102 is neither for nor against. I see that the Nevada State Conference on Problem Gambling is going to be having a conference in March 2009 for continuing legal education. Not only will the alcohol, drug, and gambling counselors receive continuing legal education credits, but so will the marriage and family therapists, the social workers, and the psychologists, because they all work in this field. All of these different counselors work in this area, and addictions are co-occurring disorders. Very rarely do you find someone who is a problem gambler who does not have many of the other issues. Section 2 of the bill says the term "certified counselor" has the meaning ascribed to it in NRS 641C.050. If you see that definition, it is actually all counselors in drug and alcohol abuse and problem gambling. You could conceivably have an alcohol and drug abuse counselor, who has no experience in problem gambling, still being considered as a certified problem gambling counselor. Our concern is that "certified counselor" has been very narrowly defined in this bill. It would only include these certified counselors or interns, rather than psychologists, psychiatrists, marriage and family therapists, or clinical social workers who all may be very well experienced in the area of problem gambling. Even nurses who have a specialty in problem gambling and have been recognized in their field would be excluded. Under NRS 641C.130, these professions are specifically excluded from the definition of "certified counselor."

Chairman Anderson:

Since this is an agency bill that came from the Health Division, and, in fact, was requested by Health and Human Services, did you have an opportunity to participate in the discussions prior to the submission of the bill?

Helen Foley:

Mr. Chairman, no we did not.

Chairman Anderson:

Have you had an opportunity to distribute your concerns or have your concerns been heard by any of the agencies that have an involvement? Is this the first time they are hearing about it?

Helen Foley:

This would probably be the first time.

Chairman Anderson:

I understand your concerns. I will enter your recommendations into the record ([Exhibit P](#)).

Helen Foley:

Mr. Chairman, to conclude, I know that any change to the court system is very taxing. That is a policy decision you need to make. If there is a change that provides for the treatment of problem gambling, we would like to be included as authorized treatment providers, along with the other disciplines that are equipped to handle it.

Chairman Anderson:

These are questions and issues you have raised on behalf of the family counselors in the past, and your similar concerns are noted.

Anyone else wish to speak on A.B. 102, either in support or opposition?

Judy Phoenix, representing Nevada Psychological Association, Reno, Nevada:

Our concerns are similar to the marriage and family therapy concerns: we just want to clarify the language of this bill. We want to clarify that the provisions in NRS 641C.430 also apply to the rest of the bill. It does not seem reasonable to allow us to do problem gambling counseling for the public and not be included in a bill that authorizes court established problem gambling treatment. In regard to giving us a chance to talk about this: we did not get a chance, either. Actually, we did not know who supported the bill. I think that is part of the problem.

Chairman Anderson:

Any questions? I see none. Anybody else? We will close the hearing on A.B. 102. As promised, we will go to public comment.

DeAnn Wiesner, Private Citizen, Las Vegas, Nevada:

I simply would like to state that adding more judges would certainly help the problem with the judicial system in the Eighth Judicial District, but I think accountability for adding new judges is necessary. Some sort of guidelines need to be set, because the judges are making rulings only as good as the information they get, and they are not getting all of the information. I have been advised that the court system is approximately five months behind in getting the records of the court to the judges' chambers. The custodian of records in the Eighth Judicial District has stated that a case is on the docket of a judge. You enter the court room, and the judge says it is not on his docket. You exit the court room, and you find out that agencies in Clark County in the eighth judicial district have made decisions accordingly.

Second, I would just like to state that, with regards to A.B. 65, there should also be accountability if the fees are increased. There should be some accountability for where those fees go. People that truly need help in the court

system should be given representation. I am speaking generically. I cannot afford it. I do not have representation. I need representation. The Eighth Judicial District Court system does not allow many of us who do not have representation to have the opportunity to get representation. Thank you.

Chairman Anderson:

Anybody else who feels compelled to speak? We are adjourned.

[Meeting adjourned at 11:32 a.m.]

RESPECTFULLY SUBMITTED:

Robert Gonzalez
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 27, 2009

Time of Meeting: 8:21 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda.
	B		Attendance Roster.
A.B. 65	C	Chief Justice James Hardesty	Proposed amendments to A.B. 65.
A.B. 65	D	Matthew Sharp	Proposed amendments to A.B. 65.
A.B. 65	E	Chief Justice James Hardesty	Nevada's Judicial Business Plan.
A.B. 65	F	Chief Justice James Hardesty	"Estimated Revenue Increases in Rural Nevada"
A.B. 65	G	Dean Hardy	Proposed amendment to A.B. 65.
A.B. 65	H	Dean Hardy	Written testimony in support of A.B. 65.
A.B. 65	I	Wes Henderson	Written testimony in support of A.B. 65.
A.B. 64	J	Robert Lueck	Written testimony concerning A.B. 64.
A.B. 102	K	Jodi Tyson	Written testimony in support of A.B. 102.
A.B. 102	L	Michael Willden	Memorandum with suggested amendments for A.B. 102.
A.B. 102	M	Denise Quirk	Written testimony in support of A.B. 102.
A.B. 102	N	Harold Albright	Letter in support of A.B. 102.
A.B. 102	O	Cheryl Moss	Written testimony in support of A.B. 102.
A.B. 102	P	Helen Foley	A photocopy of NRS 641C.430.