

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
February 8, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:03 a.m. on Tuesday, February 8, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Judi Anker-Nissen, Committee Secretary
Lynn Hendricks, Committee Secretary
Barbara Moss, Committee Manager
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

The Honorable Michael L. Douglas, Chief Justice, Nevada Supreme Court
Ben Graham, Administrative Office of the Courts
Linda Marie Bell, District Judge, Department 7, Eighth Judicial District
Melissa A. Saragosa, Las Vegas Township Justice Court, Department 4,
Clark County
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services; Washoe
County Senior Law Project; Legal Aid Center of Southern Nevada

CHAIR WIENER:

I have served on this Committee for eight sessions, and it is a pleasure to chair it this Session. I have learned, grown and finished each session looking forward to the next in hopes I could come back to this Committee. This is my final Legislative Session, and I look forward to serving with my distinguished colleagues who sit on the panel. Each member of this Committee brings a unique perspective to the complex subjects we will be discussing. Senators McGinness, Copening and I are returning. Four members are new—Senators Shirley A. Breeden, Don Gustavson, Ruben J. Kihuen and Michael Roberson.

The Judiciary Committee is one of the busiest policy committees in the Senate. In 2009, we processed 153 measures. In 2007, we heard 155 measures. The Judiciary Committee has a long tradition of comradery, professionalism and appreciation for one another. We treat each other, our staff and the public with respect. We encourage those who join us in the room to treat us with the same.

Senate Judiciary oversees a wide variety of subject areas including the courts; civil, criminal and family law; corrections; parole and probation; gaming; business associations; property rights; common interest communities; and many other chapters of the *Nevada Revised Statutes* (NRS).

I will read the Senate Committee on Judiciary Rules for the 2011 Session ([Exhibit C](#)).

SENATOR COPENING MOVED TO APPROVE THE SENATE COMMITTEE ON JUDICIARY RULES FOR THE 2011 SESSION.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

THE HONORABLE MICHAEL L. DOUGLAS (Chief Justice, Nevada Supreme Court):
The Supreme Court's obligation is to review actions of Nevada's citizens and noncitizens relating to the Nevada Constitution in both civil and criminal law. We are to provide a fair and impartial forum for resolution of disputes and to determine whether people go to jail or remain free.

Page 2 of the handout I provided shows the Nevada Supreme Court, district courts, justice courts and municipal courts ([Exhibit D](#)). The Nevada Supreme Court consists of seven justices. We sit en banc to hear matters of first impression and matters with little judicial interpretation. We also sit in three-justice panels, [Exhibit D](#), page 3. We are our own intermediate appellate court.

As of January 1, there are 82 district court judges throughout Nevada. Our justice and municipal courts are the busiest two courts. Justice courts hear matters involving up to \$10,000, [Exhibit D](#), pages 7 and 8. The justice courts determine whether there is sufficient information in felony cases to proceed in district court. Municipal courts handle the incorporated cities and their business. The number of cases coming before the justice and municipal courts is staggering, [Exhibit D](#), page 8. Nevada courts are the busiest in the Country.

I have provided you with a copy of *The Annual Report of the Nevada Judiciary* ([Exhibit E](#)). Our district courts hear jury trials and bench trials in civil and criminal cases. At the district court level, 10 percent of the cases judges hear are criminal cases, 51 percent are family cases, 28 percent are criminal cases and 11 percent are juvenile cases. At the Nevada Supreme Court, 33 percent of the cases are civil and 47 percent are criminal appeals. Family and juvenile cases comprise 3 percent of cases handled at the Nevada Supreme Court. Ballot initiatives and matters of that nature comprise 17 percent of cases at the Nevada Supreme Court.

The Constitution charges the courts with resolving disputes. In the last few years, we have been involved in specialty courts, [Exhibit D](#), pages 10 through 13. Drug courts were the first specialty court, as a high volume of drug problems in our communities were affecting families and individuals. Individuals can be put in drug court as part of their sentences. This is beneficial because these people can hold jobs and be productive members of society. As a direct benefit, they do not occupy the most expensive beds in Nevada—the Nevada Department of Corrections or the detention centers in Washoe and Clark Counties.

The specialty court program has expanded to mental health courts and driving under the influence courts. We have started veterans' treatment courts and have one functioning in Washoe County. This court runs a special docket for veterans where they can have their matter adjudicated. More important, it is a

partnership with the U. S. Department of Veterans Affairs and other veterans' services that gets them the help they need. It is not an additional burden on our system.

The justice and municipal courts run multiple offender courts that handle misdemeanors. They attempt to help multiple offenders change their behavior.

We have been active in the last three years with our Access to Justice Commission. We provide an opportunity for men and women to come before the court with legal representation. The legal services providers in Nevada meet and discuss how they will deliver service. There are problems in the rural areas because of the expanse. We have addressed those concerns through technology and allowing remote appearances of attorneys. This reduces travel time to rural areas. Attorneys can also counsel their clients through this technology.

We conducted a review of our legal services needs and discovered there were over 700,000 Nevadans below the federal poverty guidelines. That was before the mortgage foreclosure crisis and our economic decline. That number now is staggering. The legal services providers attempt to help individuals stay in their homes and get assistance from the federal or state government.

Last Session, the Legislature created a Foreclosure Mediation Program, [Exhibit D](#), page 21. Nevada has the only mandatory foreclosure mediation program in the United States. In 2010, there were approximately 80,000 notices of default, and approximately 8,000 elected to go through this program, [Exhibit D](#), page 22. Approximately 50 percent were successful mediations where individuals were able to stay in their homes. In some cases, individuals are offered cash for keys. If they leave the home in good condition, they are given money to help them move out and move on with their lives. Yesterday, the Nevada Supreme Court heard one of the first appeals regarding a notice to proceed with foreclosure.

We are tasked to do more with less. We do not have the time to deal with the volume of cases coming before us. I just returned from the Council of Chief Judges of the State Courts of Appeal where we discussed evidence-based sentencing. In the federal system when a person is sentenced, four or five hours—or perhaps a full day—are spent going through the charges, the background, and witnesses for and against the defendant. Except in celebrated cases at the district court, we take about ten minutes per person for this

process. We review the Presentence Investigation Reports and sometimes listen to witnesses, but we then have to make a call—10 minutes versus a day—for life in prison or 20 years in prison.

SENATOR MCGINNESS:

Are there still some areas of rural Nevada not covered by specialty courts?

CHIEF JUSTICE DOUGLAS:

We have drug courts in every judicial district and county of Nevada. In [Exhibit D](#), page 12 identifies where the specialty courts are located. Drug courts are funded through administrative assessments and the federal government, [Exhibit D](#), page 14. Our newest trend is where justices of the peace and municipal court judges provide programs for misdemeanor offenders. The funding from the federal government runs out in two or three years, and we need to assess how we can keep the program going.

Some individuals who need mental health assistance are transferred into both Clark and Washoe Counties' mental health programs.

Former Eighth Judicial District Judge Jack Lehman, from the drug court in Las Vegas, and Senior District Judge Peter I. Breen, former Second Judicial District Judge, from the mental health court in Washoe County, have been leaders in the nation regarding specialty courts.

SENATOR COPENING:

What would warrant an appeal to the Nevada Supreme Court from the foreclosure mediation process? Is that a right for everyone who does not agree with the mediation result?

CHIEF JUSTICE Douglas:

It is a right. Following mediation, the lender is either allowed to proceed or not to proceed based on what is determined. Either party can appeal to the district court for an impropriety in the program and come to the Supreme Court. This program was put together by the efforts of the Legislature and the Administrative Office of the Courts. They attempted to develop rules that work. We are in the process of interpreting some of those rules and definitions. The first appeal from foreclosure mediation came to the Supreme Court yesterday. This will help to create a better program as we clarify some of the discrepancies. The states of Washington and Hawaii have invited people from

our program to speak with them about what we are doing in Nevada. People from around our Country are amazed at the Legislature's foresight in establishing this program. It is mandatory, not voluntary.

LINDA J. EISSMANN (Committee Policy Analyst):

Please look at your Committee Brief ([Exhibit F](#)). The Senate Committee on Judiciary Committee Brief includes Session Deadlines on page 1. This Committee has jurisdiction over a wide range of issues, page 2. You will see the Committee Activity from the 2009 Session on page 3.

Page 3 of [Exhibit F](#) shows issues likely to come before this Committee. Relevant Research Division Publications are listed on pages 4 and 5. The fact sheets delineate each of the categories of felonies on page 5. This is useful to see which crimes are Category A felonies and so on. The Committee Brief includes the penalties for each felony category and for gross misdemeanors and misdemeanors, pages 5 and 6.

CHAIR WIENER:

I will open the hearing on Senate Bill (S.B.) 5.

SENATE BILL 5: Revises provisions governing the selection and summoning of grand jurors in certain counties. (BDR 1-319)

BEN GRAHAM (Administrative Office of the Courts):

I am here to discuss matters relating to grand juries. Historically, Washoe County and Clark County convene grand juries on a regular basis. They usually hear felony matters in secret. They must decide whether to indict or not indict. Part of the process in convening a grand jury is to gather enough people to sit on a grand jury. The NRS requires a certain number of people to be summoned and potentially be on a grand jury.

A problem has arisen because the statutory scheme does not provide flexibility, and sometimes you do not get enough people for a grand jury. When that happens, those who came are sent home and the process starts over. Sometimes, this process is repeated two or three times before enough people show up to serve on a grand jury. We are asking the Legislature to expand the statute, which would save money because our citizens would make fewer trips to the courthouse and there would be fewer mailings by court administration.

LINDA MARIE BELL (District Judge, Department 7, Eighth Judicial District):

I am the person responsible for selecting and dealing with issues that arise with our grand jury. Two grand juries are running at any time in Clark County because of the population and the number of criminal cases. We select a grand jury every six months. This lengthy process takes several months. Once we pick a grand jury, we start the process over to pick the next grand jury.

We must have 100 qualified people volunteer for a grand jury. We randomly select people from lists. We send 6,000 letters and forms to get approximately 110 to 120 responses. We check to ensure these people are qualified, are citizens, do not have felony convictions and are over 18 years of age. We are lucky to get 100 people. The judges select 50 of those 100 people. That number is statutory. We summon those 50 people, and they come in. We must have 43 people.

I have presided over the selection of a grand jury five times, and we have had 43 people four of those five times. The last time we had 36 people. We went through the process three times to pick a grand jury. The hardworking citizens willing to take on this responsibility came back three times so we could get enough people to comply with the statute and pick the grand jury.

Once we get the people there, we randomly draw 17 to serve as grand jurors and 12 to serve as alternates. We are asking to eliminate the quorum requirement. If enough people show up to pick the grand jury, we would be able to go forward with the selection.

I have also run out of alternate grand jurors. A grand juror may get a new job and leave grand jury service. An alternate replaces that person. By the time six months have passed, people may no longer live in town, and we cannot find them.

This bill will increase the number of alternates from 12 to 14. It will not cost money and should make the process run more smoothly.

CHAIR WIENER:

I do not see the 43 in the statutory language. Thank you for the supplemental information ([Exhibit G](#)).

JUDGE BELL:

On page 2, line 26 of S.B. 5 says, "If for any reason eight or more ... proposed grand jurors fail to appear" Of the 50 selected, we must have 43 show up. If 8 of the 50 fail to appear, we cannot go forward with a grand jury selection.

CHAIR WIENER:

Your proposed language on page 2, line 14 of the bill says, "... from the list until at least 50 persons have been selected."

JUDGE BELL:

That is a little bit different. Line 14 of page 2 allows the judges to select more than 50 people to give us a little more cushion. The language on line 26 eliminates the quorum requirement. If we have enough people so we can draw out 17 grand jurors and the alternates, we can proceed with the selection. We are expanding the flexibility in the numbers in two different ways.

CHAIR WIENER:

Please explain the deletion of lines 2 and 3 on page 3 of the bill.

JUDGE BELL:

That is to reflect the practice of the court. It would be cumbersome to send everything to the sheriff because we do things on tight deadlines. It is my understanding that Washoe County does not send things out through the sheriff. The court actually sends out the summons.

CHAIR WIENER:

Though it has been statutory, the practice has been different?

JUDGE BELL:

That is correct.

SENATOR COPENING:

The fiscal note shows that this bill would save money. The fiscal note is for the summons. Is that for mailing? Is that already in the budget?

JUDGE BELL:

We already do that. There should not be any fiscal impact. This would save us money because we would not have to resummon people. It is not a huge expense. We are mailing to 50 people, but it is a big expense of time.

Senate Committee on Judiciary
February 8, 2011
Page 9

CHAIR WIENER:

We do have fiscal notes. The one provided by the Administrative Office of the Courts ([Exhibit H](#)) is zero. The Eighth Judicial District Court, Clark County, shows zero, page 2. The Second Judicial District Court, Washoe County, shows 2010 through 2011 at \$200 and 2012 through 2013 at \$200, page 3.

SENATOR COPENING:

Does that accomplish the same thing?

JUDGE BELL:

This gives Washoe County the flexibility to keep their process the same. They can still pick 50 people but do not have to pick more than 50. They would avoid the problem of having insufficient people to pick a grand jury. Washoe County does not have a problem with the language in the bill.

MR. GRAHAM:

In preparing to submit this bill draft, I discussed the grand jury process with the Washoe County District Attorney's Office. They did not have a problem with this.

SENATOR COPENING MOVED TO DO PASS S.B. 5 AS DRAFTED.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

I will open the hearing on S.B. 6.

SENATE BILL 6: Authorizes the electronic reproduction of the seal of a court.
(BDR 1-324)

MELISSA A. SARAGOSA (Las Vegas Township Justice Court, Department 4, Clark County):

Senate Bill 6 would move our courts into the twenty-first century using available technology to streamline our processes. The bill enables us to use an electronic seal on documents generated by the court within specific guidelines set by the

Nevada Supreme Court. Local rules of practice would protect the integrity of that seal and the integrity of that process. We want courts with different case management systems to use their own local rules to implement how they would use an electronic seal if they choose to do so. It is not a mandatory requirement. The impressed seal would still be an appropriate method of putting the court seal on documents.

For example, the Las Vegas Justice Court had approximately 65,000 civil complaints filed last fiscal year. The plaintiff must submit a summons with each complaint filed. The summons is reviewed by our clerk's staff to ensure it has the proper caption and case number matching the complaint. The clerk of the court then issues the summons. We hope the summons can be issued with an electronic seal of the court. Sixty-five thousand documents would not have to be printed and signed by the clerk with an impressed seal upon them.

JUDGE BELL:

With the advent of electronic filing, we are streamlining our court. We are going paperless, which saves a tremendous amount of time and money. This would enable us to further those goals.

CHAIR WIENER:

What is the disadvantage of this proposal?

JUDGE SARAGOSA:

When an electronic seal is placed on a document, specific measures must be in place to protect that integrity. We would need specific guidelines so the electronic seal could not easily be reproduced or photocopied on any document to make it appear as if it was a seal of the court. The raised seal impressed on documents has that safeguard because you can feel it on the piece of paper. In a paperless world, you cannot feel that raised seal.

CHAIR WIENER:

How many jurisdictions or other states are doing this now?

JUDGE SARAGOSA:

I do not know the answer to that question. I can research that if you wish.

CHAIR WIENER:

We can learn from what has been proven to succeed. Please provide that information to Ms. Eissmann. We want to make sure everything is properly protected. I will close the hearing on S.B. 6 and open the hearing on S.B. 24.

SENATE BILL 24: Revises provisions concerning writs of execution in justice courts. (BDR 6-321)

MR. GRAHAM:

Senate Bill 24 would permit the court to issue various documents electronically. Some concerns were expressed. Judge Saragosa spoke with those concerned. After the testimony, there will be further discussion. This bill does not mandate anything for any courts not using this process. It is not changing the overview or the view of documents.

CHAIR WIENER:

You said it is permissive, but I am looking for clarification. On page 1, lines 3 and 4 of the bill say, "... may be issued by the clerk of the court" You are striking "... justice who entered the judgment, or any successor in office." I see that as a change of responsibility, not an additional option. Please help me understand that.

JUDGE SARAGOSA:

I agree with you. It changes the language of this particular statute. We anticipate changing the language because this is viewed by the court as an administrative function. Chapter 70 of NRS outlines the procedure for issuing a writ of execution in justice court. Those same procedures for district court are outlined in chapter 21 of NRS. This statute aligns our requirements in issuing writs of execution with those in district court. The form for the writ of execution used in district court is in NRS 21.025. There is no requirement for it to be subscribed by a justice of the peace.

Before a judgment can be issued in justice court or any court, it must be reviewed by a judge. It could be a default judgment, summary judgment or judgment by a bench or jury trial. A judgment has that level of substantive legal review before it is ever issued. Once a plaintiff has obtained a judgment, his collection efforts begin. The writ of execution is the beginning of that process. It is a document submitted to the court, and it is an accounting. It outlines the principal amount due on the judgment, the attorney's fees due and the costs of

the court due. Many of those items come directly from the judgment itself. It also includes interest, which is an ever-changing number. It is accrued on a daily basis and at different percentages depending upon the statute. If it is a contractual case, the interest might accrue based upon the percentage in a contract. If it is another case where interest is not contractual, interest might accrue at a statutory rate. The statutory rate changes. It is based upon the prime rate, and it changes every six months if prime changes. Those calculations are made by the plaintiff in every case. Once they have collected a certain amount, they recalculate the interest based upon the principal amount due at that point. They then resubmit a writ of execution to the court.

Those amounts are never something the court can look at and recalculate. The amount collected on a judgment is information not within the court's knowledge. That information comes from a plaintiff or a plaintiff's attorney when they submit the writ to the court. The court relies upon the plaintiffs' attorneys and plaintiffs to provide accurate information to the court. Plaintiffs' attorneys are held to sanctions under Justice Court Rule of Civil Procedure 11 if they submit a document with false information.

There is also a method of redress for defendants to come back before the court on a motion if they feel the numbers were written in error, were inflated or they feel they have been garnished too much. The court will resolve these disputes.

The Las Vegas Justice Court processes approximately 3,000 writs of execution per month. The clerks do the administrative review of those documents. Under the statute, they do not—and are not required to—do a recalculation. The statute then calls for that justice to sign that document instead of allowing the clerk to sign off on it. The clerks check to ensure there is no bankruptcy on file with justice court. A writ of execution cannot be issued if the court is aware of a bankruptcy. It is an administrative action. We ask the statute be changed to allow the clerk to sign in lieu of having a justice of the peace sign each one.

CHAIR WIENER:

By striking the language, because you are saying "may" and "clerk of the court," you are prohibiting the justice or successor from doing that. It would be the determination of that particular court how to handle it.

JUDGE SARAGOSA:

I would not be opposed to amended language that would read, "the justice or the clerk" if some jurisdictions chose to have the justice do that. That would be perfectly appropriate and would accomplish our goals. We are working to alleviate concerns.

JON SASSER (Statewide Advocacy Coordinator, Washoe Legal Services; Washoe County Senior Law Project; Legal Aid Center of Southern Nevada):

We had a number of people express some concerns about this change from a judicial function to a clerical or administrative function. There were concerns about a lack of potential judicial oversight. Judges in the past have caught errors in the process. There were also some concerns regarding different practices around the State.

The Las Vegas Justice Court handles 3,000 of these cases per month, and maybe that drives the need for this. Others in more rural areas or smaller courts in Clark County may give more individual attention. Hopefully, we can walk through some of these concerns and see what assurances there may be of proper judicial oversight of the clerk's office.

SENATOR GUSTAVSON:

I did not realize that the district court already allows this. The administrative staff does most of this work, but I would like to see that judicial oversight in both the district and justice courts.

SENATOR ROBERSON:

Why is there disparate treatment historically between the district court and the justice court as to this issue?

MR. GRAHAM:

It just did not get submitted and updated when the district court process was updated. I would like to get a review on how it is done in district court so the Committee is comfortable that there is no abuse to the constituency.

CHAIR WIENER:

To address the concerns of Senator Roberson and others, Mr. Wilkinson and Ms. Eissmann, please provide us with background on the distinctive differences between how the courts do it so we can process the policy appropriately.

Senate Committee on Judiciary
February 8, 2011
Page 14

There being nothing further to come before the Committee, we are adjourned at 9:30 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 8, 2011

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Senator Wiener	Senate Committee on Judiciary Rules for the 2011 Session
	D	The Honorable Michael L. Douglas	Judicial Branch Overview
	E	The Honorable Michael L. Douglas	The Annual Report of the Nevada Judiciary
	F	Linda Eissmann	The Senate Committee on Judiciary Committee Brief
S.B. 5	G	Linda Marie Bell	Grand Jury Empanelment
S.B. 5	H	Linda Marie Bell	Fiscal Note