

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

**Seventy-Seventh Session
March 29, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:46 a.m. on Friday, March 29, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Harvey J. Munford, Clark County Assembly District No. 6



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Dianne Harvey, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Frank Slaughter, Private Citizen, Las Vegas, Nevada
Sandra Pomrenze, Judge, Eighth Judicial District Court
Keith Lyons, representing the Nevada Justice Association
Kimberly Surratt, representing the Nevada Justice Association
Gabrielle Jones, Attorney, Legal Aid Center of Southern Nevada
Louise Bush, Chief, Child Support Enforcement, Division of Welfare and
Supportive Services, Department of Health and Human Services
T. Arthur Ritchie, Jr., Judge, Eighth Judicial District Court

Chairman Frierson:

[Roll was taken. Committee protocol was reviewed.] Welcome everyone. I want to apologize for the late start, however, this morning's breakfast was sponsored by Women in Government, and I wanted to accommodate members of the Committee that wanted to participate in that function.

We have three measures on the agenda today. We are going to go out of order, and Mr. Munford will introduce the first bill. I will open the hearing on Assembly Bill 399.

**Assembly Bill 399: Revises various provisions relating to unarmed combat.
(BDR 41-142)**

Assemblyman Harvey J. Munford, Clark County District No. 6:

Thank you, Mr. Chairman. It is a pleasure to be here this morning. As many of you know, Nevada has long been associated with the sport of boxing. The state has hosted some of the most famous bouts of all time. Boxing has been good to Nevada, and in turn, Nevada must be an attentive steward of the sport. This bill will address two important issues to boxing's future: the integrity of the judging process, and the post-career health of boxers and other unarmed combat contestants.

You may recall the controversial Manny Pacquiao fight and the loss to Timothy Bradley at the MGM Grand Hotel in Las Vegas last June. That decision led to accusations of fraud and calls for a government investigation. The uproar

over that particular decision may grow less intense as time passes on, however, the integrity of the sport remains at risk, and I feel the need to address that.

Section 1 of the bill establishes an advisory board for fair and accurate judging in boxing. The members of the advisory board will include current or former professional boxers, judges, and promoters, plus a representative of the public. The advisory board will serve as an expert resource to the Nevada Athletic Commission. Its duties would include studying how judging is done and how it could be improved, making annual recommendations to the commission about how to promote fair and accurate judging, and submitting its recommendations in a report to the Governor and the Legislature.

My second goal in introducing Assembly Bill 399 is to establish a fund to help down-and-out boxers and mixed martial arts fighters pay medical expenses for their career-related injuries. Currently, *Nevada Revised Statutes* (NRS) 467.108 imposes fees on each ticket sold for live professional contests of unarmed combat held in this state. The Nevada Athletic Commission uses the revenues from these fees to award grants to organizations that promote amateur contests or exhibitions of unarmed combat, or to perform random blood or drug testing. I agree that these are valid uses of the revenues from the fees; however, I believe fans and promoters should be willing to keep the sport healthy by making sure that retired contestants can obtain medical care for injuries sustained during their careers.

Section 3 of this bill raises the fees on tickets from \$1 to \$2 for larger contests and \$0.50 to \$1 for smaller contests. The bill earmarks the extra revenue for the benefit of retired boxers and other unarmed combatants who are injured during their careers and need help in obtaining medical care.

I want to mention what motivated me to present this bill. I received a phone call about three years ago from one of the heavyweight champions of the world back in the eighties. His name is Michael Dokes. Maybe some of you have heard of him. Ironically, Michael Dokes and I are from the same hometown of Akron, Ohio. When he was being treated at University Medical Center (UMC), one of the medical facilities in southern Nevada, he was informed they could no longer treat his medical problem because he had no financial means to pay the necessary charges. Here he was, a former boxing champion who fought many times in Las Vegas in some of the top-level fights that brought in a large amount of revenue. If you were around in the eighties, for many years Las Vegas was the mecca for boxing matches. A nurse told him to call me because he was from my hometown. I had never met Michael Dokes, but I saw him fight and followed his career because he was a hometown associate.

Michael Dokes never did get the proper treatment. Last summer when I was back in Akron, Ohio, at a family reunion, he was in a hospice and I went to visit him. He requested that I come because someone who was visiting him told him that I was in town. I went to see him in his last days. It was a humbling and emotional experience. He knew that I was one of the few that reached out to him. He has since passed away. As I said, this was the inspiration behind this bill.

I have been in Las Vegas a long time, and some of the greatest prizefighters in the history of the sport have fought in this state. Without question, the ones that stand out are Muhammad Ali, Sonny Liston, Tommy "Hitman" Hearns, Marvin Hagler, Larry Holmes, Sugar Ray Leonard, and the list goes on.

Chairman Frierson:

Mr. Munford, a couple of people have some questions. Do you prefer to finish before we ask questions?

Assemblyman Munford:

I am sure some of their questions might relate to me mentioning that.

Assemblyman Ohrenschall:

Thank you for presenting this bill. I remember following it when you brought similar legislation in the past and listening to you being interviewed on KNPR on this issue. I tried to do some research on how many boxers had been severely injured and I have not been able to find an exact number. I read the story in 2010 of Z "The Dream" Gorres who ended up owing \$450,000 to UMC, and the taxpayers paid most of the bill. In your experience and research, do many injured boxers, either injured at the time or having lingering brain injuries, end up at state-run facilities because of their lack of medical coverage and resources?

Assemblyman Munford:

I have not been able to gather much information. I know it is out there and it is very important. There have been many media articles and comments made on television about many of those cases. It seems that the effects of boxing on the participant have been quiet to some extent. The one that has received the most recognition is Muhammad Ali who is now suffering from Parkinson's disease. There is no direct evidence that boxing is connected to it, but we are all suspicious about that.

I look at other sports like football, basketball, baseball, and all of them have some type of insurance program for retired participants who played their particular sport. They have different types of competitive events where the funds that are raised go into an insurance program. Boxing is the only one that

does not have one. Of all the sports I mentioned, if you want to encourage your child to participate in a sport, boxing would be the least desirable. There is no question about it. You have all witnessed the constant pounding and battering around the head that takes place in boxing. In studies that have been released for the other sports like football, the slightest hit on the head could result in future damage.

I go back a few years in boxing and I can remember Sugar Ray Robinson who hit someone back in the fifties, and they died as the result. Benny "Kid" Paret died after being pummeled in the ring by Emile Griffith. There have been many deaths as the result of boxing and so you know the seriousness of the sport. There is nothing out there to protect the boxer.

Chairman Frierson:

I am sorry to interrupt, but Mrs. Spiegel has a question.

Assemblywoman Spiegel:

I do have a question on section 2, subsection 4 which reads, "The Executive Director of the Commission is entitled to receive a salary in an amount that is equal to the salary of the Nevada Attorney for Injured Workers." Why do you reference that one position? What is the salary of the executive directors of other commissions? What is the background in determining those decisions?

Assemblyman Munford:

I do not have the knowledge on that. I could get that information to you.

Assemblywoman Spiegel:

Thank you. Are boxers currently covered by workers' compensation? If not, have you explored whether it would make sense to have them covered by this?

Assemblyman Munford:

Here is what they have. Every time a boxing match takes place, no matter the weight class or anything, \$50,000 is set aside to cover any immediate injuries from that particular match. If the boxer is killed in the ring, the family is compensated. I am not sure if there are deductions when they are paid for participating.

Assemblyman Hansen:

I am a big boxing fan. All four of my boys have boxed. You have not talked much about the purpose of the advisory board. If you go back in the history of fighting, you have Gene Tunney and the Manassa Mauler, Jack Dempsey. Through the years, there have been some very controversial decisions in boxing.

Are you actually trying to set up a governing board so if there is an unfair decision in a fight, an appeal can be made to a governing board for a decision?

Assemblyman Munford:

Yes, I would like to see that. Going back in the days of the Sugar Rays or Gene Tunney, Max Baer, Joe Louis, Rocky Marciano, and Jersey Joe Walcott, there were rumors about whether boxing was rigged. For a long time many of these boxers left the game broke; they did not have a dime. My purpose of this bill is so the boxers can get medical coverage and advice so that people do not take advantage of them. Many times the participants in boxing were uneducated and they usually came from minorities, just as they do today. How many white boxers do you see? They are usually Hispanic or black. In the days we were talking about, they were usually Italian or black because that was a way to climb their socioeconomic ladder. I do believe a board is necessary because there have been many controversial decisions.

Assemblyman Wheeler:

How is the position of executive director of the Commission appointed? I see where they vote for a chair and a vice chair, but I see nothing about the executive director. Do you know the salary of the Nevada Attorney for Injured Workers?

[Vice Chairman Ohrenschall assumed the Chair.]

Assemblyman Munford:

I do not know that, but it is accessible and should be public record. Most of the commissioners who are on the Nevada State Boxing Commission are appointed. I believe they are appointed by the Governor, and the body itself will choose a chairman.

Assemblyman Wheeler:

This says that the board chooses the chair and the vice chair. Then on the next page, you have the executive director. Is that a different position, or is that the chairman?

Assemblyman Munford:

That is the chairman.

Vice Chairman Ohrenschall:

I am looking online and see that in 2010 the Athletic Commission conducted a study to try to create a fund for catastrophic injuries for boxers. I am looking on their website and I do not see any evidence they have created such a fund,

or the results of the study. I am glad that you are bringing up this piece of legislation, as this is an issue that needs to be addressed.

Assemblyman Munford:

I did sit on that committee. Our entire purpose and reason for existence was to try to eliminate or find the cause of so many deaths in the ring. Prior to the formation of that committee, there were quite a few incidents. I know there was a death several months before that. I cannot name the boxer, and there might have been another one before that. We wanted to see what happened and what contributed to those deaths. We had doctors and experienced trainers on the committee.

Many people do not know the steps in the process a boxer goes through when he prepares for a fight. He has to make a certain weight class, and because of this, when they go into the ring they are weaker, or dehydrated, and that might contribute toward their death. Another factor might be the size of the gloves or the length of the fight. Not all championship fights go to 15 rounds anymore; their duration is 12 rounds. Another worry was the constant pounding a boxer received. All of these concerns were discussed when I was a member of the Advisory Committee on Boxer Health and Safety.

Vice Chairman Ohrenschall:

Thank you for presenting this bill. These matches obviously bring millions of dollars to the state and to our General Fund. I do think it is important Nevada look out for the people in the ring.

Assemblyman Duncan:

Does this apply to all the boxers that have fought, or do you have to have a prizefight in Nevada?

[Chairman Frierson reassumed the Chair.]

Is the executive director the authority to make the determination of whether you qualify for the fund based on injuries that were sustained over your career?

Assemblyman Munford:

When I presented this bill last session, we did discuss how much we would expand; should it be only fights that occur in the state of Nevada, should it be nationally, or internationally? I did not continue to study all the aspects of it and try to consolidate things into one package after the bill did not pass last session. With the Dokes experience, I needed to present this again. I know I did not do as much homework as I should have done on this. It is still a very inspirational and emotional thing. I do not know if many people understand

what a down-and-out boxer goes through because they have not been around many of them.

Someone mentioned that this state has made tons of money. I used to deal cards part-time and one of the casino managers told me that if we could continue to get the top-level fights that bring in the people and the players, we would have no financial concerns; we would be able to meet our financial obligations. As I said earlier, many of you sitting on this Committee cannot remember when we were the mecca of boxing. Every month it seemed like there was a major fight coming into the state. I presented a resolution the other day about Jack Johnson and the history related to his situation. He fought in Reno back in 1910. We have established ourselves as a place where boxing was going to be strongly and deeply embraced. We have continued to gain a great deal of revenue from it. In a way, I think Nevada owes boxing something. I think many people would agree with that. It has been around a long time. I think we should expand it.

What was your other question?

Assemblyman Duncan:

Is it the sole discretion of the director to determine eligibility if a boxer applies for this fund? Does he determine if the injury or illness was sustained because of a boxing match, or does it just apply to anyone who is sick?

Assemblyman Munford:

I think we could establish something from legislation that responsibility would rest entirely on the Nevada Athletic Commission.

Assemblyman Wheeler:

I see your intent in this bill, but I see many technical loopholes in it. Although I do not know much about boxing, I am good at filling in technical holes and would like to get together with you. Maybe we could put something together that would work.

Assemblyman Munford:

Without question, I would enjoy that. I also want to add that I do have some people in southern Nevada. They do have more background with the technical aspect that Assemblyman Wheeler mentioned. I will admit I am more of a fan and have sentimental involvement, but they have information and knowledge.

Chairman Frierson:

Mr. Martin and Mrs. Diaz have questions. Would you prefer we go to Las Vegas first?

Assemblyman Munford:

Let us go down to Las Vegas first and then we can come back. Are you okay with that?

Chairman Frierson:

We are going to Las Vegas. Please introduce yourself and present any comments you have on the bill.

Frank Slaughter, Private Citizen, Las Vegas, Nevada:

I was with Mr. Munford the last time he introduced this bill. I am in support of this bill as it relates to unarmed combat in our state. I hope when we talk about unarmed combat we are not just talking about boxing, we are also talking about mixed martial arts (MMA), and maybe high school wrestling as it pertains to any injuries that occur during a match or in sparring. I coached boxing at the University of Nevada, Las Vegas (UNLV) for 14 years as an assistant coach. I had amateur experience when I was in the military and I am very passionate about bringing safety issues to our state. I have talked with Dr. Cynthia Bir, Ph.D., of Wayne State University who is a biomedical engineer. I introduced her to Dr. Charles Bernick at the Lou Ruvo Center for Brain Health and she wants to do some research here to study the effects of concussions.

I also was involved in helping two former pro boxers, one who was Z Gorres in 2010. I heard about his problem at UMC where I formerly worked. We got enough money to bring his wife to the United States to attend to him while he was in UMC. I also was involved with another boxer from Uganda, Joseph Kiwanuka. Blind in both eyes from cataracts and a detached retina, he was left on the streets. Within three or four months, I helped him get surgery, called the Ugandan Embassy and had them come get Joseph, who was stuck in the states and on the streets for five years. I just received an email from Joseph. People in Uganda say that he is fine now. I actually went to the Philippines to see how Z Gorres was doing after his treatment at UMC. The neurologist there did a great job with him although he does walk with a limp and his speech is labored. These two boxers were from different countries. If they had been residents of Las Vegas, they would be eligible for assistance right now. Z Gorres will probably never work again and Joseph Kiwanuka will never be able to function normally again in society given the neurological damage he sustained. In these two cases, no taxpayer money was used for long-term care. In the short term, our taxpayers cared for both of these men.

Assemblyman Martin:

Assemblyman Munford, thank you for bringing this forward. A couple of years ago I had a conversation with Charles "Doc" Broadus who trained

George Foreman since he was a teenager. He emphasized that oversight was a good thing. Could you please clarify the relationship of the advisory board, Ultimate Fight Championship, and the Athletic Commission?

In section 1, subsection 6, paragraph (a) it says that the advisory board will only meet as needed. I would encourage you to try coming up with a set number of times per year, such as twice a year or four times a year.

Assemblyman Munford:

I will refer that question to Mr. Slaughter.

Frank Slaughter:

I did not delve into the advisory board. Our Nevada Athletic Commission is probably the finest commission in the world. We do make mistakes. I think that the Timothy Bradley/Manny Pacquiao fight was one of the most controversial decisions to date given the magnitude and high profile of the fight. It brought a lot of negative attention to us. Beyond that, anytime we can go back and look at a fight, and mainly look at the judges at a fight and provide some sort of training session, or a debriefing to point out what was missed, we are talking about improving the integrity of the sport. We are talking about the integrity of all pugilistic sports in Nevada—MMA and boxing—because it is so important to our economy. We want to get it right. We have the best commission in the world, we want to have the best decisions in the world, and we want to keep the fights here. I think fighters would want to come here, knowing that they are going to get a fair decision.

Beyond that, my main concern is the safety of the sport. That is why I brought Dr. Bir from Wayne State here to see if she can do some research with Dr. Charles Bernick from the Lou Ruvo Center, Cleveland Clinic. I want to make sure that these fighters are cared for when they are injured. I hope I answered your question.

Assemblywoman Diaz:

I do see the value of having an advisory board, especially for fair and accurate judging. It is important that Nevada continue to be a leader, and the boxing capital of the world. Did you look at any other states that are competing against Nevada for many of these fights such as New York, New Jersey, and Texas? Do they have this type of structure established in their state as well?

Assemblyman Munford:

We have not reached out on a national basis. I know there are other top-level fights taking place in other states. I think if we would be the state to take the first step to develop integrity and perform some studies in terms of the safety

and the health-related incidents to the sport, we could form some kind of national board or work together in some capacity. Without question, that should be encouraged in the future. Other states probably do not hold as many fights as we do on a regular basis. That is probably why they have not looked into it in some degree or in greater depth. There are top-level fights in Las Vegas almost on a weekly basis. Most of the top-ranked fighters reside in Las Vegas.

Chairman Frierson:

Does the Committee have any other questions? I see none. Anyone else either here or in Las Vegas wishing to provide testimony in support of the measure, please come forward and provide that testimony at this time. [There was no one.] Anyone in Carson City who wishes to offer testimony in opposition please come forward. I see no one. Is there anyone in Las Vegas wishing to offer opposition to the bill? I see no one. If there is anyone in a neutral position, please come forward either here in Carson City or in Las Vegas. I see no one.

Mr. Munford, please offer any closing remarks before we close the hearing on the measure.

Assemblyman Munford:

Thank you, Chairman Frierson. I am concerned because I think there are feelings among certain groups that do not see the value of wanting something like this to exist. It is disturbing that there are people who want to turn their back or ignore the real depth of the legislation I am presenting. Nevada, and particularly Las Vegas, has greatly benefited, especially monetarily, from boxing. More people should want to come forward and give it more support and assistance. So many boxers are languishing and suffering. The money behind boxing is a different kind of money than that behind the other sports. There is no collective bargaining with boxing; football, baseball, and basketball have it. No one is there to speak and look out for the welfare of these boxers. There is no other sport where a participant takes as much pounding around the head as in boxing. It is obvious; you do not have to be a doctor to realize that. You can just look at it and see. Even when they train before the match, they wear the head guard, but they do not wear the head guard during the actual match. I hope you are able to understand what I am trying to say and the point I am trying to make. What I saw and experienced with Michael Dokes has been very emotional to me. His family calls to see how I am doing. That is all I have to say, Mr. Chairman. Thank you.

Chairman Frierson:

Thank you, Mr. Munford. I watched this bill last session and I share your disappointment that others who were here last time are not here to testify today to provide some insight. I think the Committee would have loved to have heard from the Athletic Commission or some of the people who testified last session. This is an important issue and hopefully, you will continue to explore it. Obviously, time is of the essence, and if there is something that can incorporate some of the people that have traditionally been involved, I think the Committee would be willing to entertain that. We share your frustration, and it makes it difficult for us to fully vet issues if we do not have that. I appreciate your bringing the bill forward. We will now close the hearing on Assembly Bill 399.

We will now move on to the next two family-related bills that we have. We will go in order for the remainder of the agenda and open the hearing on Assembly Bill 262. I invite Ms. Cohen to present her bill.

**Assembly Bill 262: Revises provisions governing child custody and visitation.
(BDR 11-951)**

Assemblywoman Lesley E. Cohen, Clark County Assembly District No. 29:

Now we go from the sport of fighting in the boxing ring to the sport of fighting in family court.

Before starting with the bill, I would like to review some legal terms that sometimes are mixed together but have different meanings relevant to this bill. A divorce is a divorce. If years later you come back to court after a divorce and you have custody issues, visitation issues, or child support issues, it is still a divorce case. It is sometimes referred to as a post-divorce action, but it is still a divorce case. A paternity case is when the parentage of the father has to be established. After paternity is established, the court can make custody and visitation decisions, but the case remains a paternity case. Also in paternity, even if the parents are sure the dad is the dad, you still officially need to have dad made the dad. Those are unmarried parents. Paternity is dealt with in *Nevada Revised Statutes* (NRS) Chapter 126. Assembly Bill 262 has to do with the custody case which is in *Nevada Revised Statutes* (NRS) Chapter 125C. These are custody and visitation determinations and other determinations made between unmarried parents when paternity is not at issue. In other words, dad is legally and officially the dad, either of the parents file the proper acknowledgement of paternity, or the court has already said dad is the dad. To add more confusion, NRS Chapter 125C includes other statutes that address other issues such as we have already heard this session—grandparents' rights, custody and visitation of children with parents in the military, and moving a child out of state. To make things more confusing, you can refer to custody

issues, meaning the parents' time share with the child. In a divorce or paternity case, divorce is still a divorce case, but you can have custody issues, but then you can also have separate custody cases.

In the case of *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005) the Nevada Supreme Court ruled that attorney's fees are not recoverable unless allowed by express or implied agreement—so that is a contract—or authorized by statute or rule. You have to be the prevailing party in those matters. Assembly Bill 262 makes it clear that in NRS Chapter 126 the court has the authority to grant attorney's fees. Doing so would bring NRS Chapter 126 in line with the rest of the statutes that I was just discussing. In a divorce case, the court can always award attorney's fees, even if the case becomes a post-divorce case. That is in statute. In a paternity case it is the same thing, the court can award attorney's fees. In a custody case, however, except for a limited exception that I will address shortly, the court cannot award attorney's fees. This means that you can have two similarly situated families with unmarried parents. The first family never established paternity so if the parents separate and they need to go to court to get some orders regarding custody, et cetera, or a visitation schedule, there could be an award of the attorney's fees. The court has that authority. In the second family, the parents are unmarried, they separate, and then want to go to court to deal with custody issues. They filed some paperwork years earlier maybe establishing paternity, and now they need the court's assistance to set up their schedule. Because they filed that affidavit for paternity years ago, the judge cannot award attorney's fees. There is no logical reason why these two similarly situated families should be treated differently by the court. Now you get to the limited exception because even though it is in the chapter it is not relevant. It is found in NRS 125C.180 which is part of the section in Chapter 125C having to do with children in military families. It specifically states it is dealing with cases in military families.

What is happening between the divorce, paternity, and custody sections of the *Nevada Revised Statutes* is that practitioners end up picking and choosing from the different sections when they are presenting a case. For instance, you could have people file a case that could technically be a custody case because paternity has already been established, but they file it as a paternity case so they can be awarded attorney's fees. Different judges are handling this differently. Some are saying, "No, this is not a paternity case, you have established paternity." Some are saying, "Okay, let us move forward."

It is also causing appeals. I understand there is a family court judge who did award attorney's fees in a custody case utilizing the statute we just talked about. It was not a military family so the appellant is saying you cannot award

attorney's fees; we are not a military family. That is now on appeal at the Nevada Supreme Court.

This is something that is confusing and needs to be clarified. It is just simple fairness in an issue of access to judgment. It is better for families as a whole. We have a judge in Clark County who is going to be testifying on this matter. I am sure she is going to tell you when one party has an attorney and one party does not, it just bogs down the case and causes the court to bog down. It takes longer for everyone's case to get through the system and be resolved.

I hope this bill will help keep overly litigious people from dragging their cases out. For instance, if you know that your ex does not have money to fight in court, you might think you can wear them out and keep going until they cannot afford to go any more. I have seen this lots of times. Now if you know the other parent might be awarded attorney's fees, you may be more likely to move your case forward. You may be more likely to settle, or be more reasonable to keep yourself out of court, or to keep yourself in court for a shorter amount of time. I can take questions now, or we can go to Judge Pomrenze in Las Vegas.

Chairman Frierson:

You mentioned a case. Can you give us the citation?

Assemblywoman Cohen:

It is *Miller vs. Wilfong*, 121 Nev. 619, 119 P. 3d 727. I have a copy of it if you would like to see it so you do not have to go look for it.

Chairman Frierson:

I want to be sure that we have it for the record. What year is that case?

Assemblywoman Cohen:

It is 2005.

Chairman Frierson:

Does the Committee have any questions?

Assemblywoman Spiegel:

Can you confirm that this is only covering the prevailing party?

Assemblywoman Cohen:

No, it is not. That is what makes this an access to justice issue. It is not about winning, losing, or a contract like an auto accident when you can say that this person is at fault. It is about making sure that both parties are able to have representation in court to help them.

Assemblywoman Spiegel:

The person who is filing the complaint could be responsible for paying both sides' legal fees. Is that right?

Assemblywoman Cohen:

That is right, or a portion of the fees. In Nevada, you might have one party that has not worked because even though the parties were not married, they have been living as a family for years off of one income. All of a sudden they separate. Now you have one party who has not had an income for years and does not have savings, and the other party still has an income. You have inequality. As I mentioned in the paternity case, when you have to establish dad is dad, we can take care of that. The judges can take care of that, say this is a case that is fair, and we need to have both parties have attorneys in this matter. In the custody case, just because they filed an affidavit of paternity, there cannot be an award of attorney's fees.

Chairman Frierson:

Are there any other questions? We invite those that support this bill to please come forward now.

Sandra Pomrenze, Judge, Eighth Judicial District Court:

I have been on the bench for about eight and a half years. It has been an issue for me and I know for many of my colleagues who follow the statute and try to abide by it. We oftentimes find ourselves unable to award fees when parties bring what we call generic custody cases. It is a problem because our goal is to address the best interest of children and that often gets lost in the shuffle when it comes to parents litigating over their time with the children, who pays child support, et cetera. There is an uneven playing field when one party can show up with an attorney because they have the resources and the other party cannot.

There is oftentimes a denial of access to justice because proceedings in family court are very complicated. It is complicated for lawyers at times, and I can tell you there are very few pro se litigants that really understand the process. It can bog down the system and interfere in the abilities of the parties to reach a settlement in the best interest of children. As a practical matter, when there is that kind of disparity of income, it leaves the parties in that unequal position.

We have a number of people in our community who do not qualify for legal aid; they are oftentimes the working poor or the unemployed. Legal aid has limited resources to assist these people and the court cannot act as an advocate for either party, so it creates tension in the justice system. I hope this bill will allow the parties, in a much more rational fashion, to resolve their interests in truly the

best interests of the children. If anyone has any questions regarding the purpose of the bill, as Assemblywoman Cohen correctly pointed out, this is a doughnut hole families fall into because there is not a dispute over paternity. They have never been married. As we all know, the reality of our society is that many people have children but do not get married and then they find themselves at loggerheads on how to resolve the issues pertaining to their children. This is intended to help those litigants get through the process and help their children.

Assemblyman Hansen:

How is this handled in other states? Is this modeled after legislation in other states? Not being a lawyer, it seems unusual to me for the winner to pay for the loser's legal fees.

Judge Pomrenze:

This is not designed for a winner or a loser. This is broader than that because oftentimes you may start a case where there is such a disparity of income between the two parties that even moving the case forward becomes problematic. We have so many requirements that we have put on litigants as it is. For them to figure out how to get through the process and how to properly provide the court with their financial information is simply daunting.

As far as other states, our statutory schemes on divorce, custody, and paternity are unique to Nevada. To try to compare us to other states is difficult. Our statutory schemes in these areas have evolved over time within this state. There are some states where attorney's fees are clearly available by statute; there are some where they are not. I am concerned about the citizens and especially the children in the state of Nevada.

Assemblywoman Cohen:

It is not about winner or loser, or the court saying, "You are good so you get attorney's fees, and you are bad, you have to pay it." It is about the court saying, "We need an equal playing field, and we need to make sure that both parents have access to help while they are in court."

Chairman Frierson:

Ms. Cohen, correct me if I am wrong. Sometimes it is not clearly who won; each side gets some relief.

Assemblywoman Cohen:

In family court, not everyone is happy because no one is winning everything. There are many issues. It is not a car accident where a person is at fault. It is how do we look out for the best interests of the children and get all of these

related issues resolved for the children. I guess I would say the winner would be the children.

Chairman Frierson:

I see no other questions. I do see someone in Las Vegas to provide support for the bill.

Keith Lyons, representing the Nevada Justice Association:

We support this bill. To amplify what the previous two speakers have said, in *Miller v. Wilfong*, the Nevada Supreme Court set out a scheme for the courts to award attorney's fees in certain factors and attorneys have to provide information to the court for them to award attorney's fees in a family court case. The Nevada Supreme Court said it applied to all family court cases. The problem is the first factor in the statute, where in the analysis, whether there is statute or rule that allows for the imposition of attorney's fees. One of the issues raised by a judge in one of my cases in Las Vegas within the last year was this very issue. Typically as an attorney, when I am brought in on day one on a case, even on a civil custody case, even if paternity has been established through an affidavit of paternity, I will file the case as a paternity case in part because parents can actually come back under a case called *Love v. Love*, 114 Nev. 572, 959 P. 2d 523 (1998) and say there was fraud when they signed the affidavit of paternity, and they are really not the father. I want to clarify that in all of my cases where the parties were not married, and I actually do it in some of the cases where they were married. The issue is in cases that I file that way; I can get attorney's fees brought as a paternity case under NRS Chapter 126.

It is not a win or lose situation. I totally agree with the other speakers. It is an issue of fundamental fairness. When you have someone who, for example, is making \$9 an hour, working 30 hours a week, and the father of her child is making \$17 to \$21 an hour and working 40-plus hours a week, there is a tremendous difference in income and a tremendous difference in the ability of what one person can do to litigate their case. In my case, the judge ruled because there is no statute when it is purely a custody case, my client, if they had been married, would have been entitled to attorney's fees. If I had initially filed it for my client, and this case had been filed as a paternity case five years before I got involved in the case, my client would have been entitled to attorney's fees, but was not. Now you have a woman who ended up having shared custody, but because of the wage disparity, has very limited ability to take care of her children and little ability to afford an attorney. In that particular case the attorney's fees were over \$7,000. If I had to depend on her wages to pay it, I would not be paid. On \$9 an hour, she could never pay a \$7,000 attorney fee bill.

[Vice Chairman Ohrenschall assumed the Chair.]

The issue is not that I would expect the court to award me \$7,000 in attorney's fees. Obviously that would be my hope that they would as counsel in that case, but the court would look at all the factors and balance the attorney's fees. They may have given my client \$3,500 or \$4,000 or \$5,000; some number that they believe in equity is fair, based on the case that goes in front of them. They have judicial discretion to do that. Under the current scheme, they cannot award attorney's fees.

Speaking on behalf of Nevada Justice Association, this bill promotes fundamental fairness to unmarried litigants who are simply fighting a custody battle. We ask that you pass it.

Vice Chairman Ohrenschall:

Thank you very much. Are there any questions for Mr. Lyons? I do not see any questions. Is there anyone else in Las Vegas in favor of Assembly Bill 262 who wishes to be heard? [There was no one.] Is there anyone else in Carson City that would like to speak in favor of the bill? [There was no one.] Is there anyone in Carson City or in Las Vegas opposed to Assembly Bill 262? [There was no one.] Is there anyone neutral on the bill? [There was no one.]

Assemblywoman Cohen, are there any closing remarks you would like to make?

Assemblywoman Cohen:

I think Judge Pomrenze said it best. We are filling the doughnut hole. We have attorney's fees in divorce cases, in paternity cases, and the only difference between the paternity case and the custody case is we are dealing with whether paternity was already established. It is just a question of fairness and making the statutes line up on this issue.

Vice Chairman Ohrenschall:

Thank you again for bringing this bill. I heard about the need for this prior to this session, and I am glad that you have your finger on the pulse of such an important need.

[Chairman Frierson reassumed the Chair.]

Chairman Frierson:

I will now close the hearing on Assembly Bill 262 and open the hearing on Assembly Bill 389.

Assembly Bill 389: Revises provisions governing parentage. (BDR 11-922)

Assemblywoman Lesley E. Cohen, Clark County Assembly District No. 29:

Assembly Bill 389 addresses issues with *Nevada Revised Statutes* (NRS) 126.101. *Nevada Revised Statutes* Chapter 126 is the paternity chapter. Paternity cases arise when the paternity of the child needs to be confirmed by the court. Even if there is no question and the parents know, you still have to officially confirm paternity. You can have custody issues in a paternity case, but it is not necessarily a custody case. Mr. Chairman, I ask for some leeway in not going through the bill at this point; I will go through it shortly. As it stands, NRS 126.101 requires in a paternity case a general guardian or a guardian ad litem be appointed to represent the child's interest and that the child be named as a party to his or her parents' paternity case. What A.B. 389 does is change the judge "must appoint" language to "may appoint". A judge may appoint a guardian if the judge believes it is necessary. It also removes the requirement that a child be named as a litigant in his parents' paternity case.

The reason I am bringing A.B. 389 to change these requirements from the "must" to the "may" is because I believe it is an archaic requirement from a time when there were fewer children born out of wedlock. Those children and their parents were treated differently by society and by our courts. We no longer do that. In fact, NRS 126.031, subsection 1 states, "The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parent." The guardian requirement is saying to the parents in paternity cases that they cannot look out for their child's best interest. Not only is a judge possibly telling them what to do, but also a third party representing the child is going to be suggesting to the judge what that third party thinks is in the child's best interest.

The vast majority of cases in Nevada are cases dealing with visitation, custody, and paternity issues. The visitation and custody issues get resolved on their own, or at least a large chunk of them do. For instance, oftentimes parents cannot make a decision about ultimately where the child is going to live week to week. They get the holiday visitation taken care of themselves and the vacation time, often with the help of mediation, which is required in Washoe and Clark Counties. The judge does not have to make that decision. What we are doing with the guardian requirement is insisting that the guardian participate in the mediation. In the past, there were mechanisms for the state to collect child support and welfare reimbursement from a parent that was not properly supporting the child; those mechanisms for the state and for the county are different. Years ago the statutes helped agencies, but child support and welfare do not need the statute any more. We will go into that a little later.

Practitioners or judges have not followed these requirements for the last 20 years or so. People bring paternity cases without guardians and without

naming the children all of the time. Not just people pro per, but also attorneys are not doing it. The judges are not necessarily forcing them to. It was a statute that no one considered until recently when the Nevada Supreme Court remanded a couple of cases saying that the statute was not followed, that you need a guardian ad litem, and you need to name the child. However, the Nevada Supreme Court did not report those opinions and that leads me to believe that the Supreme Court was not that concerned with it either. These cases were remanded for a technical issue.

Another problem is if you are going to start to enforce the requirement about a guardian ad litem or a guardian in general as well, without getting into money issues, who is paying? The statute does not say if the parents are paying, or the state is paying. Where are we going to get all of these guardians? Remember, we now have a lot more of these paternity cases than we did in the past. We are going to hear testimony shortly by Gabrielle Jones of the Legal Aid Center in Southern Nevada. She will address that issue about having enough guardians.

Let us now go through the bill. Subsection 1 for me is where the action is. That is where the "must" is changed to a "may." If a judge believes that a guardian needs to be appointed, the judge still has that authority. That is all we are doing, getting rid of the requirement that a guardian has to be appointed and getting rid of the requirement that a child be named as a party in the suit. When I say "named", when you see the parent's court case, it is going to be the name of the parents and the child on that document from the court. I would like to see that removed.

Subsection 2 is somewhat up in the air. Throughout the process of putting the bill together, I was very concerned and did not want anything in the statute or change anything in the statute that would make it harder for county child support enforcement agencies to do their job. Frankly, I was not in contact with the Division of Welfare and Supportive Services (DWSS) and the Attorney General's Office that represents them. I was in contact with the Washoe and Clark County District Attorney's Offices who do child support enforcement, but as I said, not the Nevada Division of Welfare and Supportive Services and the Attorney General's Office. Yesterday I heard from Louise Bush of the Division of Welfare and Support Services (DWSS) and they proposed an amendment that is on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit C](#)) to just delete on page 2, line 2, of the bill beginning at the "if" through line 11. Ms. Bush from DWSS and other people from her office are here to explain that when they testify. I do not have a problem with that; I just want to give the remainder of the stakeholders a chance to respond to that. Her amendment will be in opposition. I have heard

from the Family Support Division of the Office of the District Attorney in Clark County. They do not have a problem with it, and I am almost positive that I am going to hear from the other stakeholders that they do not have a problem with it either. I am sure that we will be able to work that out and clarify the statute for practitioners, judges, and litigants. I can take any questions.

Chairman Frierson:

Do I have any questions of the Committee at this time? I see none.

Kimberly Surratt, representing the Nevada Justice Association:

I am an unpaid lobbyist with the Nevada Justice Association and a full-time practicing family law attorney from Reno, Nevada. I am here to state that the Nevada Justice Association domestic committee, which is made up of lawyers from both northern and southern Nevada, is in support of this amendment. It probably sounds ridiculous to you that we literally ignore the "must" in this statute, but we do. Hundreds and hundreds of cases go before the court where we do not appoint a guardian ad litem because it is an unfunded mandate in the statute. There is no source inside the court to go to and say, "I will pick that guardian ad litem and attach it to this case." We do not have them available to us, we do not have the money available to us, and our clients do not have the money to add a third attorney into the pool. It is bad enough to have two. If you add a third attorney you add more legal fees, more costs, more complications, and it literally has been ignored for years. Occasionally it pops its ugly head up and we decide we actually need one. There are cases that are nasty and complicated enough that the child needs his own independent representation and his own separate voice in the process. The courts need to appoint a guardian ad litem in that circumstance, but the court needs the discretion when that is necessary. Many times a paternity case is as simple as a quick DNA test to determine paternity. They could move on to some complicated custody and visitation issues, but not always. Sometimes it is just a straightforward paternity case. Sometimes they stipulate and agree, but according to the statute, you need to pay another lawyer in order to accomplish all of that and add the child into the pleading as a party to the action.

We also agree with the request by DWSS for amendments. There is a lot of language in here about the district attorney's office and how DWSS participates in the appointment of the guardian ad litem. All of this comes down to unfunded mandates, policies, and procedures that do not take place any more. It is simply not current. The Nevada Justice Association would also agree to all of the amendments that they propose to this bill.

Assemblywoman Cohen:

Piggybacking on what Ms. Surratt said, it is not just about an unfunded mandate, it is about the fact that anyone thinks anymore that just because you were not married, you need someone besides a judge also saying what is best for your child.

Chairman Frierson:

Thank you. Are there any questions of either Ms. Cohen or Ms. Surratt? I see none.

I will invite people that are here to testify in support of Assembly Bill 389 to come forward both here and in Las Vegas.

Gabrielle Jones, Attorney, Legal Aid Center of Southern Nevada:

I am a staff attorney with the Legal Aid Center of Southern Nevada in the domestic violence unit. I routinely represent clients in paternity cases.

I am here today to support this bill for a couple of reasons ([Exhibit D](#)). First, I have been a practicing family law attorney for four years and I have never named a child in a case or asked for a guardian ad litem to be appointed. It was not until December that I had an issue with this. In my particular case, Mom was a victim of human trafficking. She had a nine-year-old son and she wanted to get a formal custody order. The child was a product of a sexual assault. Dad had been deported to Mexico before the child was even born, so paternity had not been established. In this case, I was told I had to name the child in the caption and have the guardian ad litem appointed for the child's interest. It is my opinion in this sort of case that it was not necessary. There was no relationship between the father and the child and there was nothing to be protected. I felt that down the line if the judge noticed something where that interest needed to be protected, then the judge could appoint a guardian ad litem. I think requiring that from the outset was not fair to the client.

I also have some concerns, being an attorney at Legal Aid, about the impact on resources. Each week we receive applications from numerous individuals from the community seeking our services. A large number of people need help with paternity cases. Four staff attorneys are not able to meet that high demand. We have to depend on our pro bono directory of the attorneys in our community who take these cases all in pro bono. It has been proposed to us that perhaps Legal Aid could come up with a pool of attorneys that could serve as guardians ad litem in these paternity cases. My concern with that is we only have a small pool of attorneys now that we can go to for assistance with custody and divorce cases. If we ask those same attorneys to act as guardians ad litem, we

are going to lose the impact we have of helping as many people in the community. That would be unfortunate. Thank you.

Chairman Frierson:

Thank you, Ms. Jones. Do I have any questions of Ms. Jones? I see none.

Is there anyone else either in Carson City or in Las Vegas wishing to offer testimony in support? I see no one. I now invite those in Carson City and Las Vegas to offer testimony in opposition to come forward if there are any.

Louise Bush, Chief, Child Support Enforcement, Division of Welfare and Supportive Services, Department of Health and Human Services:

This bill retains the requirement for Division of Welfare and Supportive Services to be appointed the child's guardian ad litem in paternity actions initiated by the district attorney if the district attorney does not adequately represent a child's interests. The Division of Welfare and Supportive Services is not opposing the bill, we are just seeking clarification of the statute. Therefore, we have offered a proposal to the amendment to delete subsections 1(a) and (b) from NRS 126.101 regarding the requirement that DWSS must be appointed as guardian ad litem in a paternity action initiated by a district attorney if the child's interest is not adequately represented by the district attorney. [Ms. Bush continued to read from prepared testimony ([Exhibit E](#)).

Chairman Frierson:

Are there any questions of the Committee? I see none. Thank you for your prospective.

Is there anyone else wishing to testify in opposition? We will now go to neutral and I invite those here in Carson City and in Las Vegas to offer any testimony in a neutral position.

T. Arthur Ritchie, Jr., Judge, Eighth Judicial District Court:

The court is taking a neutral position on Assembly Bill 389, but I am privileged to offer some testimony concerning the context of this, and I have talked to Assemblywoman Cohen. Many people in our community have one or more children together but are not married. Paternity is not an issue because when their children are born parents acknowledge parentage when they sign themselves on the birth certificates. When they separate, in order to establish rights and responsibilities or a parenting plan, they file actions. Almost all of the cases in which parentage is not an issue are brought Mom v. Dad, Dad v. Mom. They are not brought pursuant to NRS 126.101. For years, the parentage cases where parentage is not an issue would be brought and handled this way. The children were generally not sued; guardians ad litem were not appointed.

This matter came on the radar of the court at the end of last year and the beginning of this year.

Actually, the Eighth Judicial District Court Family Division met on this in February to talk about two unpublished orders from the Nevada Supreme Court on decisions for cases where parentage was an issue. In these orders, they described the procedure in NRS 126.101, which raised the question that the judges had to discuss as to whether this was going to be required; a jurisdictional requirement to name children. Obviously, we do not want judges to apply a standard differently. I do not think it will be a particular issue except that the Bench-Bar Committee, which is a committee of lawyers and judges who meet, have discussed this matter. This bill would make it discretionary as to whether or not to name the child and might adequately address, as a matter of policy, whether this requirement is necessary. We do not want a situation where a lawyer is worried that one judge is going to apply a different analysis to the same case.

While the court is neutral on this bill, I want to be able to answer any questions about the context. Certainly, there are conflicting provisions in NRS Chapter 126 which cause some issues of analysis. For instance, in NRS 126.053, when parents acknowledge parentage and those acknowledgements of paternity go to the State Board of Health, it is as if it is a judgment. In fact, the statute says they are not required to be ratified by the court of the state before the declaration is deemed to have the same effect as a judgment, or order of the court, to determine the existence of a relationship between parent and child. Many of these people bring their cases and cite this provision saying, "We have already determined parentage. We have a judgment related to parentage." I will note that the civil resource forms are provided online in Washoe County, from the self-help center in Clark County, and from a link on the Nevada Supreme Court website to the Clark County self-help forms, and used for cases for unmarried folks, when parentage is not at issue. I suppose a couple of cases have raised this issue. I personally think this bill might address some of the concerns about how courts might approach the fact that the NRS Chapter 126 provision that requires the child to be named be clarified and have that made discretionary. Thank you.

Chairman Frierson:

Thank you, Judge Ritchie. Do I have any questions from the Committee for Judge Ritchie? [There were none.]

I will invite Ms. Cohen back up for any closing remarks that she may have.

Assemblywoman Cohen:

As you have seen, this is clarifying and eliminating some archaic language. I think that Ms. Jones made a good point. She has been doing this exclusively for the four years of her career and has not had to do these paternity cases naming the child and getting the guardian ad litem. For me, it is almost 15 years of practice and it is something that never came into my radar until the Supreme Court started to say, "Oh wait. Do we have this rule?" It still gives the court the opportunity to order a guardian ad litem if the judge feels it necessary, but in the vast majority of these cases, I do not think it is going to be necessary. I appreciate your attention.

Chairman Frierson:

Thank you very much. I will close the hearing on Assembly Bill 389. Having no business from prior hearings, I will open it for public comment, both here and in Las Vegas. Seeing no one who wishes to make public comment, I will adjourn today's meeting of the Assembly Judiciary Committee [at 10:26 a.m.].

RESPECTFULLY SUBMITTED:

Dianne Harvey
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 29, 2013

Time of Meeting: 8:46 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 389	C	Assemblywoman Cohen	Proposed Amendment
A.B. 389	D	Gabrielle Jones	Testimony
A.B. 389	E	Louise Bush	Testimony