

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

**Seventy-Seventh Session
April 22, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:04 a.m. on Monday, April 22, 2013, 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 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:

Senator James A. Settelmeyer, Senatorial District No. 17
Senator Tick Segerblom, Clark County Senatorial District No. 3



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Lora Myles, representing the Carson and Rural Elder Law Program
Patrick Sanderson, representing the Nevada Alliance for Retired
Americans
Diana Alba, County Clerk, Clark County
Allen Lichtenstein, representing the American Civil Liberties Union of
Nevada
Nancy Parent, Chief Deputy Clerk, Washoe County
Margaret Flint, representing Arch of Reno Chapel; Chapel of the Bells,
Reno; and Silver Bells Wedding Chapel, Reno

Chairman Frierson:

[Roll was called. Protocol was explained.] We have two items on the agenda today; we will go in order. I will open the hearing on Senate Bill 78 (1st Reprint) and invite Senator Settlemeyer up to introduce the bill.

Senate Bill 78 (1st Reprint): Makes various changes concerning guardianships and powers of attorney. (BDR 13-465)

Senator James A. Settlemeyer, Senatorial District No. 17:

Thank you for hearing Senate Bill 78 (1st Reprint) today. In past sessions, I worked with Senator Bernice Mathews on guardianship matters to help bring forward a universal guardianship bill. There are some issues that still need to be addressed when dealing with guardianships. To me, it is always important and one of our primary duties that we take care of the very young and the very old who do not have other individuals out there to take care of them, and that is where this matter comes from today.

I have Lora Myles at the table with me. She puts in about 60 to 70 hours a week on guardianship matters, so she has a very interesting perspective in that regard. We have worked with various parties, including the guardianship bar in the state, to bring forth these issues and try to correct some of the problems that we have seen. I will defer to all of her expertise, because with over 4,000 hours a year versus some of the people who only deal with

this matter occasionally, I feel she is definitely the best qualified to address these issues.

Lora Myles, representing the Carson and Rural Elder Law Program:

I am the attorney for the Carson and Rural Elder Law Program in the rural counties. I am also the attorney for the public guardian in Storey County and Carson City, and I work with the public guardians in other rural counties. This bill comes from the State Bar of Nevada committee. We got several members together who deal in guardianships, and there were some issues that had come up from prior legislation. There were a couple of conflicts and some other things that needed to be corrected, so most of the bill is actually a cleanup bill.

[Vice Chairman Ohrenschall assumed the Chair.]

Section 2 applies primarily to Washoe and Clark Counties, as the rural counties do not have a guardianship training process in place; however, with the passage of this measure we are hoping that the rural counties will develop guardianship training programs. Guardianship training programs are especially beneficial to family members or pro per guardianships where they literally have no guidance on how to be a guardian and oftentimes wind up in trouble.

Section 3 addresses issues that several guardians have had with banks requesting confidential medical information and other documentation to prove the ward is incompetent. The letters of guardianship and the order from the court should be sufficient, and the banks should not have access to the confidential medical information.

In 2011, *Nevada Revised Statutes* (NRS) 159.0595 was amended requiring private guardians undergo full background checks. Discussion in the Legislature and discussion with the courts indicated that having all guardians undergo background checks, especially family members, would be cost prohibitive. Section 4 is the compromise on this issue requiring certain information be given to the courts.

Sections 5, 6, 8, 9, and 19 clarify and streamline the noticing measures or provisions within the statutes. We are just trying to combine everything under one provision and clarify who has to get notice and when the notice has to be provided.

Section 7 streamlines language concerning documentation of the need for a guardian of an adult and adds language concerning proposed guardians' backgrounds. In particular, we are asking that the guardian provide information

to the court about whether they have ever filed for bankruptcy. Bankruptcies are a direct concern to the courts because the guardian is responsible for all of the finances of the ward. There have been a couple of headline cases recently where a professional guardian wound up absconding with a great deal of money and, if she had been required to provide bankruptcy information to the court, that would have changed the ability of the court to determine whether she should have been a guardian or not. Reporting information such as a bankruptcy to the court does not prohibit someone from being a guardian, but it does put the court on notice that maybe this person needs to be looked at.

To give you a recent example, we had a case where a judge looked through the papers filed by a family member to be the guardian and realized the family member had not only filed bankruptcy, but had also served felony time for writing bad checks, and the court determined that that family member should not be guardian.

Section 11 clarifies differences in guardianships of minors and adults. We realized, after we passed the change in the temporary guardianship statute, that a minor is, by rights, an individual who is not capable of handling his own affairs and to require a psychological or clinical evaluation to prove that he is a minor is rather ridiculous. Several of the judges in Clark County and Washoe County said, "Can we not just ask for a birth certificate?" That is what that change is.

Section 15 creates a duty to notify the court of the ward's death. We have several cases which have gone on for years where the court has not known that the ward has died, and the guardian is no longer able to be located, so the guardianships technically cannot be closed.

Sections 16 and 18 correct an error that occurred during the 2009 legislation. The provisions regarding placement are the duties of the guardian of the person, but this was codified under guardian of the estate and we are just changing that.

Section 17 allows a guardian to represent a ward in a lawsuit unless the court determines a conflict of interest, particularly in cases where a minor child is under the guardianship of her parents and the parents are suing a third party. The parents may have a conflict of interest in the lawsuit against the third party, and it may be advisable to have a guardian ad litem appointed to represent the child.

Section 20 establishes bidding requirements in a court sale of real property after the first bid. Sections 21 and 22 set limitations on the guardian's actions

following the death of the ward and prior to the termination of the guardianship. Sections 23 through 28 amend various provisions of NRS Chapter 162A, which are the powers of attorney. One of the biggest changes in those provisions is the requirement that if a ward, a potential ward, or an individual senior who is executing the power of attorney of health care is in a care facility of any sort, there has to be a doctor's certification that that person is competent to execute that power of attorney. This is in line with the 2012 case, *DeBoer v. Sr. Bridges of Sparks Fam. Hosp.*, [128 Nev. Adv. Op. 38, 282 P.3d 727 (2012)] where the court found the hospital liable for allowing an individual who was in the hospital to determine whether she was competent; there was a finding that she was incompetent to execute a power of attorney, and the person who had the power of attorney completely swindled that senior. I would be happy to entertain any questions.

Vice Chairman Ohrenschall:

On section 3 of the bill, the new section in NRS Chapter 159 about guardians and the procedure they go through in terms of going to financial institutions and having access to bank accounts, that is not the current procedure? Would you explain how this would be different from what happens now?

Lora Myles:

It is the current procedure; however, there is nothing in the statute that prohibits the banks from requesting medical information and other information pertaining to the guardianship. We have some banks that are requesting that information, some banks that are not, and we just want it clear that the banks cannot request it at all. We even have one bank here locally where one teller will say, "Well, I want to see the doctor's reports" and another teller will never ask for that. We are trying to get it clear that the banks do not have the right to the medical information of the ward.

Vice Chairman Ohrenschall:

So banks were asking for this, even though the guardianship had been established?

Lora Myles:

Even though the guardianship had been established, yes.

Vice Chairman Ohrenschall:

My next question has to do with section 4, informing the judge of a felony or gross misdemeanor convictions. Obviously, if it is a financial crime, I can understand it, but we just passed a bill in the Assembly making feeding a wild horse or burro a gross misdemeanor. Would that affect someone's ability to be a guardian or would the judge have to weigh that?

Lora Myles:

It would be up to the judge if the misdemeanor was sufficient to prohibit that person from being a guardian or not. We had one case involving a public guardian where the individual who was trying to contest the guardianship was guilty of horse theft and the judge said, "Maybe they can be the guardian," but then it was discovered that the horses they stole were the ward's horses. The judge said, "No." It is up to the judge. The idea is that the people who are applying for guardianship have to present that information to the court, so the court is aware there may be a problem down the road.

Vice Chairman Ohrenschall:

Another question I have has to do with section 5, page 6, lines 4 through 7, where it discusses the search for relatives after the appointment of the guardian. What does that search involve and in what kinds of cases would publication be waived and when would it not be waived?

Lora Myles:

In all guardianships we have to look for relatives. That is what we have to do. We have to file notice with the nearest relatives—children, grandchildren, siblings, and spouses. Most of the public guardians and most of the professional guardians either have access to online search engines which will let them search for someone, such as <www.ancestry.com>. In some cases, they hire a private investigator or an heir finder. We generally know where one relative is. A lot of times we call them and try to find other relatives through that one known relative. In cases where publication is required, for instance in public guardian cases where you know there is absolutely no one around, you publish notice. In many of those cases, it is an expense that the public guardian's office cannot afford or the ward cannot afford, and to have to do that for every single petition in the court is cost prohibitive. When you first start the guardianship, you publish to try and locate relatives if you have not located them by another means. After that point, if no relative has come forth, then you do not have to publish thereafter except for publication on confirmation of sale of real property.

Vice Chairman Ohrenschall:

Would that publication be in a legal journal or a general newspaper?

Lora Myles:

It is usually in a general newspaper. It can be any newspaper where the relative was last known or it can be just the general newspaper where the ward currently resides.

Assemblywoman Dondero Loop:

You mentioned that sometimes no one is around. Is there no one around that can take on this responsibility, or is there no one around?

Lora Myles:

In some cases, it is just that there is no one around. We had four new cases for the public guardian here in Carson City within the last month where there were no known living relatives. In two of the cases, the individuals were essentially homeless, and in another case, the individual was a recluse living in a very undesirable environment and she wound up having a neighbor finding her outside on the ground. There is just no one around; there are no relatives.

Assemblywoman Dondero Loop:

Just to clarify, am I correct in that you go to five degrees of consanguinity?

Lora Myles:

Under the guardianship statutes, we are required to look for children, grandchildren, siblings, nieces, and nephews. We are not required under NRS Chapter 159 to look beyond that point, but a lot of times we will. It is a little different than looking under a probate. With probate, you do have to look through some degrees of consanguinity, but under guardianship, no.

Assemblywoman Cohen:

In section 12 and a few other sections, there is reference to using a police report as evidence to the court of some issues with the proposed guardian. Does the information in the police report have to be a first-person account by the officer of what the officer actually saw? I know that sometimes with police reports it is just the police officer reporting what someone told him.

Lora Myles:

Generally, it is the first-hand account from the sheriff's office or the police department. They have actually gone out to investigate a situation with the ward. In a recent case, the ward was found down in her yard. The neighbor called the sheriff, so it was the sheriff's report stating what the neighbor said. The person who became the ward was very confused, did not know where she was, and needed to have an emergency guardianship to obtain medical care. It was a first-hand account from the sheriff. If it is a report taken by the sheriff from a third party and the sheriff has not witnessed the incident, then that report is usually transferred to elder protective services and elder protective services will do an investigation.

Vice Chairman Ohrenschall:

Are there any other questions for Ms. Myles? I have a few more. On the bottom of page 7, lines 40 through 45, it talks about an adult ward. The current statute says that you need "a certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, . . ." and now it looks like we are expanding it to "a letter signed by any governmental agency in this State which conducts investigations or a certificate signed by any other person whom the court finds qualified to execute a certificate" I wonder, if it is just a letter, are there enough procedural safeguards there? Let us say the investigation has not worked its way through and the person does not feel that they need a guardian. I guess I am a little worried by this expansion if it is just a letter.

Lora Myles:

Generally, the courts will not accept a simple letter. They want to have a letter from someplace like child protective services or elder protective services. It is up to the judge whether the letter submitted is sufficient to order a guardianship or not. In most of those cases, the reason for the letter is because the individual—usually a senior—is refusing to obtain medical attention or has not obtained medical attention in 15 or 20 years. It is up to the judge what they will accept or will not accept. Just a simple letter from a family member saying, "Mom is crazy," I guarantee the judge is not going to accept that.

Vice Chairman Ohrenschall:

Page 8, lines 31 through 34, says "If the proposed ward is determined to have limited capacity to consent to the appointment" Is that something that happens quite often? Someone is found to need a guardian, but they have the capacity to consent to have a guardian appointed?

Lora Myles:

Yes, it does happen quite frequently. We have a current case here in Carson City where the individual realizes he can no longer handle his finances. He is of limited capacity according to the psychiatrist, and rather than choose a friend or a family member who he does not trust, he has chosen the public guardian to be his guardian, so he has signed a consent to the guardianship.

Vice Chairman Ohrenschall:

Page 9, lines 21 through 23, is the bankruptcy issue. Right now, if someone is seeking to become a guardian and they have had a business or a personal bankruptcy, does the court know about that? Does it come up at all?

Lora Myles:

No, that is not raised. This is why we are requesting that it be raised, because the guardian is financially responsible for the assets of the ward.

Vice Chairman Ohrenschall:

I guess I personally have mixed feelings about that. It might raise a red flag, but with the downturn of the economy over the last few years, I imagine there are a lot of people who have filed personal and business bankruptcies that you never would have expected, but it does not necessarily mean that they would mismanage someone's funds. It is just that they were victims of the great recession.

Lora Myles:

They need to inform the court of the bankruptcy. It does not prohibit them from being named guardian if the judge finds that they are capable of being guardian despite having filed bankruptcy, but they do have to inform the court.

Vice Chairman Ohrenschall:

On page 11, lines 39 through 45 talk about cost shifting. Would you walk the Committee through that?

Lora Myles:

This is what actually happens in most cases and now we are trying to clarify it and basically put what is general practice into the statute.

Vice Chairman Ohrenschall:

I am looking at section 14, page 18, lines 12 through 18. It looks like we are expanding who can sign the certificate from a licensed Nevada physician or psychiatrist to someone who is employed by the U.S. Department of Veterans Affairs (VA) but is not necessarily licensed in the state. That caused me a little concern because I am worried that a certificate might be signed by someone who is not licensed to practice in Nevada.

Lora Myles:

Most physicians practicing with the Department of Veterans Affairs are licensed in Nevada, but because the VA is a federal entity, it does not require that physicians who practice within the VA be licensed in any state. There are physicians within the VA who are not licensed in Nevada. They may be licensed elsewhere, but because the VA is a federal entity, it has its own rules and regulations on how it licenses those people who practice within the VA.

Vice Chairman Ohrenschall:

So then the psychiatrist or the physician who is working for the VA, but not necessarily licensed in Nevada, would presumably have a license in good standing in some state?

Lora Myles:

It is presumed they would have a license in good standing in some state. Either way, the VA has to vet them before they can practice within the VA, so there is some degree of oversight through the VA as to what their ability to practice is.

Vice Chairman Ohrenschall:

Right now, those physicians or psychiatrists who are working for the VA who are not licensed in Nevada cannot sign the certificate recommending the ward?

Lora Myles:

There are questions whether they could, so again, we are just trying to clarify this to get it into the statutes so they feel more comfortable with signing the certificates.

Vice Chairman Ohrenschall:

Other states allow those nonlicensed physicians who are working for the federal VA to do this?

Lora Myles:

Yes.

Vice Chairman Ohrenschall:

Regarding page 20, lines 1 through 4, you mentioned that there have been some examples of where there had been an issue about notification of the death of a ward. Would you give us an example or tell us what has been happening or what the problem is that we are trying to fix?

Lora Myles:

Most of these situations involve family guardians, and they do not fully understand that they need to notify the court of the death of the ward. The ward may pass away, they finish paying all the ward's bills, and then they go on with their lives, not thinking about what reporting they need to do with the court. In Clark County, of course, we have the Guardianship Commissioner who tries to keep on top of those things, but in the other counties we do not. In some cases, even the attorney handling the situation may not hear from the guardian and know that the ward is deceased. I know that in my own practice, I annually go to the Vital Statistics Office and request death certificates on all those people I have not heard from for a while, even if I have mailed letters to

see if those wards are still living or not. This is very common with family members who are guardians. They just are not aware of the need to report to the court. In 2011, we changed the statute which required the family members to sign an acknowledgement of the guardianship duties with each court, and this would allow us to put that in there. They have to notify the court of the ward's death. It is mandatory. It is not just something that they say, "Oh, I forgot to do that."

Vice Chairman Ohrenschall:

There is no penalty?

Lora Myles:

No, there is no penalty.

Vice Chairman Ohrenschall:

Would you walk us through why we are adding the new language in section 20, subsection 7?

Lora Myles:

In sales of real property, you have to publish notice of the sale, and individuals can come in and overbid for the property. You may have an offer for \$100,000, but someone else comes into court and says, "No, I am going to bid \$105,000."

Vice Chairman Ohrenschall:

This would be a sale that the guardian has decided is needed for expenses for the ward?

Lora Myles:

Yes. This would be a sale of the property of the ward as required under the statutes to provide for the care of the ward. In some cases, with the economic downturn, some properties might become very interesting due to the lower market. We have had cases where people have come in and tried to bid 25 cents higher than the offer. This basically sets a limit saying, "No, you cannot bid 25 cents." If the judge wants to accept the 25-cent bid he can, but we are trying to limit the number of people who come in and the bidding wars that may go on for an hour or longer in court where each person bids 25 cents higher than the other person.

Vice Chairman Ohrenschall:

In the procedure of the death of the ward and the relations between the guardian and the executor outlined at the bottom of page 26, how does that change? What would happen now when the ward dies? Has there been an

issue regarding this to try to keep the guardian from meddling with things or administering things when now it is the executor's role?

Lora Myles:

Yes, there has been, especially in family cases where you may have one family member who is the guardian and another family member who is the executor and there is constant fighting over what happens with the money that is left. We are trying to set some limits as to how long the guardian can retain those assets. Right now, the guardian has 180 days to retain the assets, but we are trying to clarify that, if there is an executor appointed, it shortens the time that the guardian may retain the assets. If there is a trust, it shortens the time the guardian may retain the assets. Of course, if the guardian has final bills that need to be paid, the court can allow the guardian to retain sufficient assets to pay those final bills. It just moves things along instead of prolonging how long things are fought over between guardians and executors.

Vice Chairman Ohrenschall:

That is an area that you were talking about. For example, the executor is a cousin and the guardian is a nephew, and the nephew is going to contest the will, then will the guardian not be able to pay for final medical expenses because everything is frozen? What would happen in that situation?

Lora Myles:

The guardian would still have control of the assets, so the guardian could pay the final medical expenses and pay the final bills. As long as the assets are under the control of the guardianship court, they are under control of the guardian. It is to try and reduce the friction that may occur because the guardian and the executor do not see eye to eye.

Assemblywoman Cohen:

Going back to section 2 with the training, would you give some more information about what training is available and what the court generally deems is appropriate in what situations?

Lora Myles:

Clark County has a training program for its pro per for family guardians, and it is at least one day's worth of training toward basically what the law is, what your duties are, and what responsibilities you have. They hand out copies of statute, copies of forms, and other information to the guardian to try and explain what their duties and responsibilities are. Washoe County has a training program through their public guardian's office, and the court does try to get most of the pro per individuals into that training program.

Assemblywoman Spiegel:

Currently, can people from the rurals attend training classes in either Clark County or Washoe County?

Lora Myles:

Yes, they can.

Vice Chairman Ohrenschall:

Another question I have deals with section 28 and the certificate of competency. Would you walk us through it?

Lora Myles:

In prior legislation, we required information in a certificate of competency to be given to the judge. Clark County adopted a form detailing information the judge wants to see, such as what daily activities the ward can perform, what medications the ward is on, what the primary diagnosis is, what the limitations are as far as the ability to communicate, whether they can vote, and whether they can drive. The First Judicial District Court has a similar form, and Washoe County also has a similar form. Most of the rural counties utilize the First Judicial form. It is to provide the judge with the information as to exactly what the limitations of the ward are. In particular, one of the provisions is whether the ward can own a firearm or not, which is required under other provisions in the NRS concerning the ability to own a firearm, as well as the ability to vote, drive, execute legal documents, attend a court hearing, and that sort of information.

Vice Chairman Ohrenschall:

Could that be done by the ward with the guardian's consent or without? I want to make sure I am understanding it. Is this after the guardian has been appointed?

Lora Myles:

The certificate of competency is requested by the court to determine whether the ward needs a guardian.

Vice Chairman Ohrenschall:

So this would be prior to the appointment of the guardian?

Lora Myles:

Yes, it is generally filed with the petition for a guardian.

Vice Chairman Ohrenschall:

Are there any other questions for Ms. Myles or Senator Settlemeyer? [There were none.]

Senator Settlemeyer, is there anyone else you would like us to call?

Senator Settlemeyer:

Thank you. There are no more prepared testimonies, so it is at your discretion.

Vice Chairman Ohrenschall:

Is there anyone else in support of S.B. 78 (R1) in Carson City? [There was no one.] Is there anyone in support of S.B. 78 (R1) in Las Vegas? [There was no one.] Is there anyone opposed to S.B. 78 (R1)?

Patrick Sanderson, representing the Nevada Alliance for Retired Americans:

I am not really opposed to it, but the way our rules go this year, I think this is where I had to come in and talk. As of this moment, I have a nephew who is an electrician and he gathers cattle. He was bucked off, either kicked in the head or his head was caved in on a rock. He has been in intensive care in the hospital since April 10, 2013. He has not come out of his coma yet, and his father is trying to get information in order to pay for his house, his truck, his everything. When you go to the bank, they do not give you anything. He has put in for guardianship, but that takes 30 days down the road. You have to have a court date and you have to go before a judge.

I am just hoping that you take a look at this bill and do not make it any harder to carry out just the functions to protect this young man in case he makes it through, which we hope he does. He is young, in his 30s, strong, and he has a chance to protect his money. When you go in and you do not pay your bills, house payments, or your truck payment, then it goes on your record as bad credit. I just want to make sure that this bill has in it that, if a person is in a medically induced coma, he does not have any late fees or he is not charged and nothing goes against his credit. I want you to take a look at this bill. You read through it and you think it is common sense, but I would appreciate if you would leave the commonsense issues with the judge to where he can make a ruling as fast as possible and not go through a bunch of hoops in order to get this young man's life and affairs in line.

Read through this bill, study it, and I would like to see something in here that says, "No late fees or charges shall be put against the person's bills," because they were not allowed to even find out about the bills. Thankfully, the father went and got ahold of the gal who sold him the property. She wound up being able to find out what loan it was and the dad went in and paid a house payment

before it was overdue. But as far as his truck and his other affairs, you do not know for sure what is owed out there, and the banks will not tell you anything.

Please, just use your infinite wisdom to move this forward in a common sense way, and get rid of the late fees for someone who is in a medically induced state to where they cannot take care of themselves. He is not awake and we do not know when he is going to be awake, but he should not be charged for something that he cannot control. Make it to where the guardian can move forward on this. I just ask you to use common sense and remember there are real life cases out here where people are injured, cannot take care of themselves, and their father or their guardian should be able to handle this with a little bit of grace, common sense, and protect a young man or an old person who is going through this. I appreciate it, and I know that you will do your best to think about this bill and try to pass it in the best way possible. Thank you very much.

[Chairman Frierson reassumed the Chair.]

Chairman Frierson:

With respect to anything that is not actually in the bill, I would encourage you to get with the bill's sponsor about it, but I appreciate your support of the bill. Are there any questions from the Committee? [There were none.] Is there anyone else in Carson City or Las Vegas who is in support of S.B. 78 (R1)? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 78 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in a neutral position regarding S.B. 78 (R1) either here or in Las Vegas? [There was no one.] I would like to invite Senator Settlemeyer up for any closing remarks.

Senator Settlemeyer:

I appreciate it. I was just in touch with Ms. Myles. There are actually 24-hour emergency procedures that are in place to allow people to step in in those types of situations to help out. They are going to exchange cards, and we are going to try to get his loved ones some help for this particular situation.

I would like to thank the Committee for its very thorough analysis of the bill. I would like to leave with another aspect that did not come out in testimony about guardians. I have a very, very close friend, to say the least, and she was the guardian of her mom. That strains a relationship in a very, very problematic way, when all of a sudden you try to step in and be the parent and you are the child. It created strained relations to the point that they no longer were able to be mother and daughter. These guardians have the ability to step in after a request, which is what happened. In this situation—it was my mother-in-law

and my wife—but the guardian was able to step in and take over, and help reestablish that relationship for my mother-in-law and my wife. She was allowed once again to be the daughter to her mom and be there and hold vigil over her in the final weeks. That is why I come with the guardianship bill. It is so important that these people are out there to help and they have come to us seeking our help. It is the judges who are the ones who are seeking this information. It is not a situation where it is used to bar people. It is just to give the judge every bit of information possible to make the best decision.

Chairman Frierson:

Thank you. I will close the hearing on S.B. 78 (R1) and open the hearing on Senate Bill 419. Senator Segerblom, will you come up to introduce the bill?

Senate Bill 419: Revises provisions relating to marriage. (BDR 11-1107)

Senator Tick Segerblom, Clark County Senatorial District No. 3:

Those of you who were here two years ago may recall this bill because it was in front of this Committee and it met an untimely death at that point. We are back again. I think we have a much improved version which, hopefully, you will agree with.

The bill deals with an issue which we have in Nevada where currently the only people who can perform marriages outside of judges are clergy, and that turns out to be problematic because it is probably unconstitutional to limit the ability to marry people to those who have religious beliefs as opposed to people who are not religious. There is a lawsuit [*Raul Martinez, et al v. Clark County, et al*, No. 2:11-CV-00457-PMP-VCF (Jan. 18, 2012)] saying that the current procedure is unconstitutional. We believe this bill will resolve that lawsuit and also allow notaries public, under certain conditions, to be authorized to marry people. The conditions are that they go through a course that the county clerks will provide. Unlike previous years, we have a buy-in by the county clerks, we have a buy-in by the American Civil Liberties Union, and so we think we have a pretty good solution. I will be happy to answer questions.

Assemblywoman Spiegel:

You were talking about how there are issues because someone needs to be a clergy person or a judge to be an officiant at a wedding. Judges do not have to be a member of any particular religion or may have no religion, so I am wondering why there is an issue related to religion if judges are amongst the people who can officiate.

Senator Segerblom:

Right now, for example, if I want to get married at a wedding chapel, the wedding chapel cannot hire the justice of the peace to come in and perform the wedding. So they hire a minister to come in, but there is no mechanism for the wedding chapel to hire someone who is nonreligious. The procedure to qualify to marry someone through the county clerk requires that you claim that you are ordained by some type of religion, even though that can be done on the Internet by filling out a couple of forms. There is no other alternative mechanism. That is the issue here.

Assemblywoman Spiegel:

Based on your understanding, a wedding chapel could not hire either a justice of the peace or someone who is a judge in any capacity? I know that there are substitute judges. Are they not available or able to be hired?

Senator Segerblom:

I do not think that the judges are allowed to accept money on the side, but I could be wrong on that. I know that right now there is a procedure for ministers to be approved by the county clerks, but there is no process for someone who is not with a religion to have that same authority. We looked at various places to find people who are nonreligious. Florida allows notaries. As you probably know, in the old days, to become a notary you simply filled out a form, sent it to the county clerk, and you became a notary public. Now it is a much more detailed and complicated process. You have to go through a day's training, you have to pay a fee, you have to register, and you have to get a bond. It is a very difficult process.

Chairman Frierson:

Are there any questions of Senator Segerblom? [There were none.]

Diana Alba, County Clerk, Clark County:

Regarding Assemblywoman Spiegel's question, I think it is important to note that, on justices of the peace, commissioner townships are limited by law to perform 20 weddings a year, so most justices of the peace limit the performance of marriages to family and friends, their staff members, and their staff's family and friends. It is no longer a situation where someone can just come to the courthouse, call the justice of the peace's office, and an administrative assistant will set up an appointment to have them perform a marriage, because they are limited to 20.

I want to add a clarification on who is able to perform a marriage. It is judges, clergy, and county clerks. So the county clerk, as commissioner of civil marriages, can also perform marriage ceremonies.

I want to mention that we have been working on this for almost the last two years. It is not just Mr. Allen Lichtenstein [representing the American Civil Liberties Union of Nevada] and I trying to find a legislative solution, but we have consulted with people in the wedding industry, and have considered a number of solutions before we settled on the notary public suggestion that was Mr. Lichtenstein's from the beginning. We did consider officers in philosophical organizations, nonprofit organizations, and community organizations. We even looked at providing the ability for members of the state Legislature. So we have really looked at a lot of different options. We feel like this is the best route to go. There are nearly 100 wedding chapels in Clark County, and most of them hire different ministers to perform their marriages. This bill is not for them as much as it is for individuals who choose to have a nonreligious ceremony. They often want to have someone who is a friend of theirs and without a religious affiliation. It opens the door for that to take place.

I also want to mention that, as part of the application process, the notary will go through the same application process that a minister does, which includes a criminal background check, as Senator Segerblom said. A person needs to go through quite a bit to become a notary these days, and then, on top of that, they need to apply through the office of the county clerk to obtain a certificate of authority, and that includes a background check.

There are some fees in this bill. Heretofore, there has never been any kind of a fee to obtain a certificate of authority to perform marriages. We have included a small fee of \$25. The reason we have put that in there is because we feel this is a serious responsibility. This is something that should not be taken casually, and that someone needs to want to do this. I think that a small fee gives some assurance of that. We do process a large number of certificates of authority in Clark County. Approximately 50 percent are from individuals who are doing it through churches online. Many of them have congregations and they serve the community, but it is clear from just looking at the paperwork that many do not. We received an application just a few months ago from two 18-year-old men who submitted them at the same time. The impression was that this was something that was not being taken seriously. Even in the statute, in the performance of a marriage, we use the term "solemnize," because it is a solemn occasion. It is a serious occasion. This is a responsibility that someone needs to think carefully about before they take it upon themselves. After the ceremony, important paperwork needs to be completed and submitted to the recorder, because there are serious implications for legalizing a marriage. We feel that the fee is appropriate, especially considering the fact that most people who perform marriages get compensated for doing it and that it is appropriate.

The other fee is regarding the fee for a civil marriage ceremony. The fee for a justice of the peace to perform a marriage or a deputy clerk to perform a marriage has been \$50 for as many years as I can remember. I spoke with Margaret Flint [representing various Reno wedding chapels] about this and neither one of us could remember when this fee was imposed. It probably has been more than ten years. I have had a number of wedding chapels come to me and say that because the Clark County Clerk's Office of Civil Marriages offers a \$50 wedding ceremony, that these wedding chapels are almost forced to offer a \$50 ceremony as well in order to compete, and that they simply cannot make a profit on a \$50 ceremony. They have asked if we would consider increasing that fee.

I want to make it clear that this is not an attempt to grab more money for the county. The amount of revenue that it would generate is really rather small, but it was done at the request of the wedding chapels in Clark County. Several of them have come to me, and most of these wedding chapels are small, family-owned businesses and certainly the county clerk's role is not to compete with them. Our role is to offer a simple civil ceremony for those who want that. They can come to my office and obtain it. I do not think \$75 is too great a fee to charge, and I do not think we should be in the business of unfairly competing with those wedding chapels. I wanted to make that clear, in case anyone had any concerns about those fees. If there are any questions, I would be happy to answer them. I know Mr. Lichtenstein has a few things to add regarding the lawsuit and its resolution.

[Ms. Alba also submitted written testimony ([Exhibit C](#)).]

Chairman Frierson:

Are there any questions for Ms. Alba? [There were none.]

Allen Lichtenstein, representing the American Civil Liberties Union of Nevada:

Our organization actually brought the lawsuit. It came to us with a complaint by several people from the Humanist Society, who, under the current law, when they applied for the certificate of authority to perform marriages because they were not from a religious organization under the statute, could not do so, and that seemed a clear violation of both the religious test portion of the *Constitution* as well as the establishment clause of the First Amendment.

We have worked very closely, and I have to give great credit to Ms. Alba because she worked really well with us, along with the other clerks. As Senator Segerblom has mentioned, the case is on hold now, and a legislative solution is far better than any kind of court. The federal court can only strike out unconstitutional language. It cannot put in language that would fix the

problem. It is not our intention, and has never been our intention or desire, to prevent ministers or other clergy from performing marriages, which is a fairly time-honored tradition. The problem was that it was only ministers, in a practical sense, other than the justices of the peace or the marriage commissioners who could do so. So people such as the clients who came to us were sort of frozen out. This seems to solve several problems. One is the obvious constitutional issue, but it also provides the kind of assurance that the clerks need to ensure that not just anyone can just walk in and become someone who performs marriages.

As has already been stated, notaries are already vetted. They have already been given the responsibility of performing certain important acts. It is a bit ironic that in the last session, when a domestic partnership bill came up and was passed, the people who have to sign off on domestic partnerships are, in effect, notaries. So having notaries who are already vetted go through a second process, which is the normal process for anyone who applies to a county clerk to have authority to solemnize marriages, I think provides that particular assurance that the people who will be doing so are responsible and will fulfill their responsibilities. This seems to be the most workable solution. With the efforts of Ms. Alba working through all of the different possibilities and iterations of this, this seems to be the best solution that we can come up with.

Assemblyman Ohrenschall:

Do you know if other states are allowing either this or something similar to this in terms of the solemnization of the wedding?

Allen Lichtenstein:

Yes. I know the state of Florida has something similar to this. There are other states that have different permutations of this sort of thing. It is not unprecedented.

Assemblyman Ohrenschall:

Have Florida and the other states you mentioned had any problems with allowing these officials to perform the ceremony?

Allen Lichtenstein:

Not that we have come across. I do not know if Ms. Alba has seen anything, but we are not aware of any.

Assemblywoman Dondero Loop:

I do not have an inherent problem with someone who is not part of a religion performing a wedding for someone who may not be religious, but I have a little bit of angst over the notary piece. Becoming a notary is not extremely difficult,

nor is it extremely costly. I struggle with that. How are we going to keep that in line? How are we going to control it? Give me some specifics.

Diana Alba:

I understand your concerns. When we first began talking about this, even some people in the Office of the Secretary of State had some concerns, because there are a large number of notaries in the state of Nevada. We are not throwing the door open where, just because you are a notary, you can perform a marriage. These people do need to go through a separate application process and they do need to have a criminal background check.

The situation we have now with only ministers performing marriages has all the same problems. It is very easy to become a minister. About half of the ministers that we deal with are ordained online. It is very easy to go online and be ordained. A local church, a local minister—if a minister does not record a marriage certificate or do something in compliance with the law, we can usually work through the church to contact that person. I actually have the authority to revoke someone's certificate of authority if they are not complying with the law. I do that if I have a couple that comes in and complains that their certificate was not recorded. We would just have to manage these notaries the same way we manage the ministers, and I think the issues are actually going to be very similar.

Allen Lichtenstein:

At the moment, it is not necessary to be an ordained minister in order to apply and become authorized. It is just someone who is designated by a religious organization. That was a change that I believe was made in 2011. The question really is not that someone has gone through all this training and background check before they come to county clerk's office. It is simply someone from a religious organization where that organization says, "You are designated." Nothing more than that.

Assemblywoman Dondero Loop:

Would you clarify who presently does weddings at the county, when you do not want a religious ceremony?

Diana Alba:

If someone wants a simple civil ceremony, they can come to my office. The Office of Civil Marriages is open seven days a week by appointment. We have longer hours on the weekends than we do during the week. So a couple can come down to the office and have a simple civil ceremony. Currently the fee is \$50. It is in a small office, and exactly what you would expect. However, my staff does not go on location to perform marriages.

If someone wants to be married in a park or at Red Rock, or even at their home, they need to arrange for someone else to do it. A lot of the justices of the peace do perform marriages. District court judges can perform marriages, but the justices of the peace are limited to 20 a year, so they usually self-impose that they only perform ceremonies for people in their family or close friends. Other than that, a couple would need to go to a wedding chapel or arrange through a local church parish. Most wedding chapels offer a civil ceremony and they clearly advertise that they offer it; however, those civil ceremonies, even though there is no mention of religion, they are actually performed by an officiant who has a religious connection, because that is the only avenue through which that person could get a certificate of authority. So some couples do not even want that. Even though the ceremony is civil in nature, the document is signed by a pastor or reverend.

Assemblywoman Dondero Loop:

I was asked to attend a wedding one time, and it was not very long ago, and I know I was downtown. There was a little office that we went into, they had an archway, and it was not a wedding chapel.

Diana Alba:

That sounds like the Office of Civil Marriages. It was in the building at 309 South Third Street building. It was a small office. We do have a little wicker arch. We have moved across the street into a building on the corner of Lewis and Third Street, on the sixth floor.

Assemblywoman Dondero Loop:

Who does those marriages? It was not you; I know that for sure.

Diana Alba:

It was one of my employees. Those marriages are performed by deputy county clerks. Those are my staff who perform those ceremonies.

Assemblywoman Dondero Loop:

How many of those do you have?

Diana Alba:

I believe we did maybe just a little under 4,000 civil marriages last year.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.]

Senator Segerblom:

To Assemblywoman Dondero Loop's point about notaries, I do not know how familiar she is with the current process, but it is not the old days where you just filled out a form and sent it in. Now you have to spend a day of training, you have to get a bond, and it is actually a very sophisticated process. I am sure most notaries have much more thorough background checks than would a minister or a designee of a religion.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.] I will now invite folks wishing to offer testimony in support to come forward.

Nancy Parent, Chief Deputy Clerk, Washoe County:

We are here in support of S.B. 419. To address the legal challenges in Clark County and to recognize that if we authorize notaries to perform marriages, we will actually have a better handle on who they are and what they are doing than we do right now with the ministers that are authorized by an online church. About 50 percent of our ministers have their ordination certificates issued online, and they do not have congregations. This way, if you have a notary, they are a more stable member of your community after the process they have gone through with the Secretary of State.

We also support the fees for authorizing folks to do a marriage ceremony. Currently we do all that work, and have for as long as I can recall, with no fee. So that fee would help the county recoup the labor-intensive work involved. The fee for the marriage commissioner—I know that our local chapels would really appreciate it being increased by \$25. The \$50 is really reasonable, and very inexpensive. No one has ever complained about it. I do not think they would complain if it went up \$25.

Last but not least, this bill contains a provision in section 4, subsection 4, to correct something that I think we did by mistake in the 2011 Legislative Session. You have to be authorized by the county clerk to perform a marriage ceremony, whether you are religious or not. There is a situation where you can authorize a person to perform just a specific marriage ceremony and they do not have to obtain permanent authorization. In 2011, when we made a change to the statute, we removed the ability for a local resident to be able to do that, and now we currently only allow out-of-state people who are ministers, whether they are online-ordained or an actual minister—they have to reside out of state—to perform a marriage ceremony. You do have people in the state that live here that may have the religious background, and they do not want a permanent authorization, they do not want to make that a part of their everyday

duties, they just want to do it for a niece, nephew, or friend. If we accept the provisions of section 4, subsection 4, we will put it back the way it was.

[Ms. Parent submitted a letter ([Exhibit D](#)) from Amy Harvey, Washoe County Clerk, which was not discussed.]

Chairman Frierson:

Are there any questions from the Committee? [There were none.]

Margaret Flint, representing Arch of Reno Chapel; Chapel of the Bells, Reno; and Silver Bells Wedding Chapel, Reno:

I represent various Reno wedding chapels. I would like to thank Ms. Alba. She has worked very tenaciously with us and brought us all together during the interim on something that we believe we can agree with. We believe the idea of the notary is a much, much better alternative than what we were looking at, due to the fact that anyone can go online to, for example, the Universal Life Church website and for about \$10—you might even be able to get one for free—you can print out an ordination certificate. Due to some federal regulations, basically the clerks cannot deny a certificate of permission to perform marriages with that certificate. It will not be an automatic entitlement for the notary. The notary still has to apply, just as any ordained minister would have to apply, and go through all the background checks, a clearance, and be in good standing with the Secretary of State's Office. So this is a much better standard to follow if we are going to make this type of a maneuver rather than just anyone who can randomly go online. There is another one, [<www.roseministries.com>](http://www.roseministries.com), that is based in Nevada. You can get those certificates—they are a dime a dozen. This is a much better alternative and a better set of standards.

We are also absolutely in support of the fee increase for the commissioner of civil marriages; that fee has not been increased in we do not know how long. Basically, yes, it does undercut private businesses that are still trying to survive in this tough economy. The majority of the people who are going to be affected by that fee increase are tourists; they are not local people. I am not sure how many in Clark County, but we can still confirm that about 65 percent of our Washoe County base is tourist, so this is not something that is going to have a big effect on our local base. We are absolutely in support of S.B. 419 at this point.

Assemblyman Duncan:

For the religious test for the *Constitution*, I do not see where it is requiring a belief for something. You do not have to attest to a belief in God by being ordained. It seems more to me that it is basically that you have to be affiliated

with a certain denomination or universal church or whatever. I am trying to flesh out the constitutional argument and why the Legislature needs to step in.

Senator Segerblom:

Let me give you an example. When I was in college in the 1960s, you had to believe in God to become a conscientious objector, and the Supreme Court threw it out and said, "No, if you have a strong moral belief, that is equivalent to having a belief in God." So it was really what you believe as opposed to the religious basis for your belief. I think the same thing applies here. You cannot just say that somehow God is tied to something that the government gives you.

Allen Lichtenstein:

The basis of the constitutional argument is really quite simple. Under the current law, if you are affiliated with a religious organization, you are eligible to apply—it does not mean that you will get it, but you are eligible to apply—to be authorized to solemnize marriages, just as if you are not, as some of the people who came to us are not. They are atheist and self-proclaimed humanists. They were rejected. They were rejected because the law does not allow people who do not have a religious affiliation to have that opportunity. That is disparate treatment. Right now the court case is on hold, but the rulings that have come out of the court so far give a pretty strong indication that the federal court sees that constitutional problem, both in terms of the establishment clause, as well as the nonreligious test clause within the body of the *Constitution* itself. So what we are trying to do here is avoid a situation where the court will find the religious test unconstitutional but cannot replace it with anything, and then we are left with a mess for the next Legislature to clean up. By doing this, we preclude that particular kind of problem.

Assemblyman Hansen:

I have been doing some homework on this exact issue in relation to hate crimes, because when it has come up, if, for example, someone attacks me because I am a Mormon, it falls under the religious clause of hate crime legislation, and if someone attacks me because I am an atheist, the question was, is that considered a religion? In other words, is there a special protection for me because I am specifically religious? My understanding is, under law, atheism is defined as a religion in that type of an example. Is that your understanding also?

Allen Lichtenstein:

Not quite. In talking about hate crimes—and let us understand that a hate crime is not a separate crime—it is an enhancement for some other kind of crime, at least in the state of Nevada. If you are attacked because of your religious belief, be it pro, con, Mormon, Catholic, atheist, whatever, because of the

nature of your religious or nonreligious belief, that could be subject to that hate crime enhancement. It is not only for a religious person or for an atheist—and atheism is not considered a religion, but it is considered having a particular belief—that if it is prompting the attack, it would fall under that. So it is a particular belief that you have, religious or nonreligious, that would indicate it. But it does not call atheism a religion. It does not even talk about a religion. It talks about the motivation. I hope that answers your question.

Assemblyman Hansen:

Well, kind of, because really the specifics of the law said "religion."

Chairman Frierson:

That is not the bill that is before us today. I do not want to get too far off the bill.

Assemblyman Hansen:

The point I am getting at, and my understanding is, is that atheism is considered protected under the religious clause in a hate crime situation. So I am just wondering if the same thing would apply in this specific instance, and we are kind of splitting hairs to something that is already covered under law.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.]

Diana Alba:

If I may add a bit of clarification on the religious note. The statute does say that in order to obtain the certificate of authority to perform marriages, the individual needs to serve a church or religious organization. My legal counsel is the Civil Division of the Office of the District Attorney of Clark County. When we received one of the applications—I believe from one of the plaintiffs in the lawsuit—which indicated that that person was an atheist, my legal counsel's advice to me was that "religious organization" has a definition, a legal definition, that religion is a belief in a higher power, and is a belief in God so to speak. If someone is a nonbeliever, by definition, they are excluded from that group. That was the basis upon which we denied that application. I am not an attorney, but I am telling you what my attorney's advice was to me in that particular situation. A religious organization has a legal definition, and if you are an atheist, you are, by definition, not part of a religious organization.

I also wanted to mention that the lawsuit definitely has been an impetus in finding a solution for this problem. This issue has been discussed for a number of years, back to 2007 when we were making some adjustments to this very statute. Senator Warren Hardy was working with us; he was a very

conservative state senator. Even at that time I was in Carson City, and he pulled me into the back hall and said, "Is there not some way we can come up with a provision for a nonreligious person to perform a marriage ceremony?" The bill was already in motion and time was very short. We just could not come up with a solution at that time. Even back then, different individuals had recognized that this was a gap in the law and we were trying to find a solution. That is just my recollection.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in support of S.B. 419? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 419 either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in the neutral position? [There was no one.] Seeing none, I will invite Senator Segerblom to add his remarks in closing.

Senator Segerblom:

This is not a perfect solution, but you cannot let the perfect get in the way of the good. We have been around and around and this seems to be the best we can come up with. We have both parties who have agreed that if this bill passes, the lawsuit will be dismissed. I think it is worthy of your consideration.

Chairman Frierson:

Thank you, Senator Segerblom. With that, we will close the hearing on S.B. 419 and briefly open it up for any public comment. Seeing none, today's Assembly Committee on Judiciary is now adjourned [at 10:24 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 22, 2013

Time of Meeting: 9:04 a.m.

| Bill | Exhibit | Witness / Agency | Description |
|-------------|----------------|---|---|
| | A | | Agenda |
| | B | | Attendance Roster |
| S.B. 419 | C | Diana Alba, County Clerk, Clark County | Testimony |
| S.B. 419 | D | Nancy Parent, Chief Deputy Clerk, Washoe County | Letter from Amy Harvey, Washoe County Clerk |