

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
February 14, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:04 a.m. on Thursday, February 14, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

John McCormick, Rural Courts Coordinator, Nevada Supreme Court
C. Joseph Guild III, Nevada Court Reporters Association
Lori Judd, Nevada Court Reporters Association

Chair Segerblom:

I will open the hearing on Senate Bill (S.B.) 64.

SENATE BILL 64: Revises various provisions relating to court reporters. (BDR 1-386)

John McCormick (Rural Courts Coordinator, Nevada Supreme Court):

Senate Bill 64 had its genesis as the companion piece to a court rule that is being developed by the Nevada Supreme Court regarding court recorders. However, that rule has not yet been approved, which makes the original language in S.B. 64 premature. Asking for a statutory change before the proper regulatory structure is in place is putting the cart before the horse.

For this reason, we are now proposing an amendment ([Exhibit C](#)) that deletes most of the bill and leaves just two provisions. Section 2, subsections 1 and 7 of S.B. 64 prevent a court employee from being paid twice for the same job. The statute is unclear, in that it seems to allow court reporters who create transcripts as part of their jobs to also receive the statutory reimbursement. Section 6 adds the procedure to be followed when the recording of a hearing at the municipal court level on appeal is defective. It mirrors the language in chapter 4 of *Nevada Revised Statutes* (NRS) for justice court and brings those chapters into congruence.

The original intention of the bill was to add court recorders to the portion of the NRS covering court reporters. We are close to a resolution of the issues raised by the Nevada Court Reporters Association, but I ask the Committee's leave to continue working on it to iron out the problems.

Chair Segerblom:

What is the purpose of the court rules you describe?

Mr. McCormick:

The court rules are an outgrowth of the Commission on Preservation, Access, and Sealing of Court Records that was formed in 2009 with Nevada Supreme Court Chief Justice James W. Hardesty as the chair. The rules were the work of a subcommittee of that body headed by a judge and a court reporter. Those rules were to constitute a manual of best practices for making the court record, which would lay out the standards for court recorders. If we added court recorders to the statute before we have the rules that regulate what they do, how they do it and what their qualifications must be, we would have an unregulated group of people authorized to make the court record. The point of the court rule is to set out the acknowledged best practices for making, keeping and transcribing the court record.

Senator Hammond:

Would the provision that stops reporters and recorders from being paid twice for the same job mean that the person who records a hearing cannot later transcribe it?

Mr. McCormick:

No. There was some ambiguity in statute that could potentially allow a person who is an employee of the court to collect the statutory reimbursement for creating the transcript, even though that is his or her job. This provision says if you are an employee of the court hired to record and transcribe hearings, you cannot also collect the statutory compensation for the work. Since this is your job, you may not collect the fee a contracted court reporter would get for making the transcript.

Senator Hammond:

Are they able to do that now?

Mr. McCormick:

It is not being done, to the best of my knowledge, but there was some concern that it might be due to the ambiguous language of the statute. We are trying to clear that up and make sure everybody is on the same page.

Senator Hutchison:

In the Eighth Judicial District Court, we make both an audio and a video recording of court proceedings. If we need a transcript, we call the court and the recording is transcribed. Is this a different process than is currently in place?

Mr. McCormick:

No, it is not different. This bill tries to accommodate the practice in the Eighth Judicial District Court, which is authorized in NRS 3.380. Senate Bill 64 clarifies that those who work for the court to transcribe hearings cannot also collect the additional statutory compensation for transcription of hearings.

Senator Hutchison:

The reference to "court recorder" throughout the bill seems to create a different class of transcriber. This is already happening down in the Eighth Judicial District Court. Are we codifying the practice so it can happen statewide?

Mr. McCormick:

That was the idea of the original bill, yes. It was to work in conjunction with the Nevada Supreme Court rule that was being contemplated to regulate the practice of court recording. We do not yet have that court rule, so we are asking not to add the court recorder language into statute yet. We are committed to working with the Nevada Court Reporters Association to get section 6 and some of the other provisions ironed out.

Senator Hutchison:

Are you going to come back at some point and want to add the court recorder language back into the bill?

Mr. McCormick:

Our current intention is to make the changes noted in [Exhibit C](#) and continue to work with the Nevada Court Reporters Association toward getting a mutually agreeable bill in 2015.

C. Joseph Guild III (Nevada Court Reporters Association):

Section 2 of [Exhibit C](#) refers to " ... the official reporter or reporter pro tempore appointed by the court pursuant to NRS 3.380" That is the statutory section Mr. McCormick was talking about. If you look at both sections of the statute, NRS 3.370 deals with court reporters and compensation. That was the section of statute that was attempted to be changed with the amendments in [S.B. 64](#). It may be that what Mr. McCormick is attempting to do would be better inserted into NRS 3.380 as amendatory language than into NRS 3.370.

Senator Ford:

Is it fair to say that the Nevada Court Reporters Association has no issue with the current iteration of the bill, as represented in [Exhibit C](#)?

Mr. Guild:

That is not quite accurate. We still have some problems with section 7 of [Exhibit C](#). There are a few court reporters in the rural counties who include, as a part of their contract compensation, independent contractor duty as transcribers, as opposed to county contractual employment as reporters. We want to make sure they are not left out in the cold.

Senator Ford:

How many of those do we have?

Mr. Guild:

I think it is fewer than 10.

Lori Judd (Nevada Court Reporters Association):

We were opposed to S.B. 64 as originally written. We have had a good dialogue with Mr. McCormick and would like to continue working on the bill with him.

With regard to Exhibit C, most of the court reporters in Nevada operate as independent contractors. Their rate of pay is included in NRS 3.370. From that pay, they supply the necessary equipment and supplies to produce transcripts, including steno machines, computers, software, printers, paper and so on. Recording machine operators work as employees of the courts, and their equipment and supplies are provided by the courts.

In order to work as a court reporter in Nevada, you must pass the certification exam. That ensures a minimum level of competence, and the public is assured that they will get a quality product because a certified person is producing it. Court recorders—those operating the recording machines and those doing the transcripts from those recordings—have no certification requirements. As court reporters, we would like to see them come up to our standards. We would like everyone who is involved in making court records in Nevada have some level of certification.

We would also like the proposed amendments regarding recording machine operators to go into a different section of the statute rather than trying to amend NRS 3.370 to be an umbrella to cover everybody who makes a record. The rural counties have created a hybrid of employees and independent contractors, and they have worked that out with their own county commissions as to what works in their area. There is not one size that fits all for Nevada.

Chair Segerblom:

Are there any Nevada laws or regulations concerning certification for court recorders?

Ms. Judd:

No.

Chair Segerblom:

Are there any federal laws regarding court recorders?

Ms. Judd:

I do not know. I am not aware of any standards regarding recording machine operators. We would like to mandate that anyone who is involved in making the court record, whether it is running a recording machine, working a steno machine or providing transcripts, must have some level of certification.

Chair Segerblom:

Do any others states require that level of certification? That was not part of this bill to start with.

Ms. Judd:

Yes, other states do this. I do not have the information at hand, but I will get it to you.

Chair Segerblom:

That should probably be a separate bill. I do not know if we will be able to tackle it this Session.

Mr. McCormick:

The manual we were expecting to get from the courts would have included standards for people making recordings and transcribing from them. We are hoping to put those standards into court rule.

Chair Segerblom:

Is the Nevada Court Reporters Association involved in the process of creating that manual?

Mr. McCormick:

Yes. The cochair of the Commission on Preservation, Access, and Sealing of Court Records is a court reporter, and the Nevada Court Reporters Association has been involved in the subcommittee working on the manual.

Senator Brower:

It seems that I have spent half my life with court reporters. I appreciate what they do. It requires a degree of skill and professionalism that is obtained only through a lot of training, practice and expertise. It looks like the court recorder job is simply a matter of pressing a button and making sure the system is recording, then making a transcription. All of that seems fairly ministerial in nature. Can you clarify?

Ms. Judd:

There is more involved when you are the recording monitor. The minimal level of proficiency should be that the recording is constantly being monitored. If the recording picks up the sound of a police siren going past the building, or if one of the parties accidentally turns off the microphone, there should be someone in the room whose job it is to listen to everything and make sure it is all being captured. That is one of the things we assume would be included in the certification exam. Recorders also need to keep a log as to what time on the recording each witness starts and stops testifying so a transcription can be completed if requested. There is more to being a recording monitor than just turning a switch on and off. It comes back to our position that they need to be certified so there is not only just a minimum level of competence but uniform practices statewide.

Senator Brower:

I do not think I have ever been in a court proceeding where there was not a court reporter. I have never relied on a recording. I have always seen the court reporter and subsequently asked the court reporter for a transcript.

Ms. Judd:

Our position is that the court reporter is simultaneously making the transcript. The live reporter in the courtroom knows when something was missed. With a recording, you do not know what is there until someone listens to it, and that may be hours, days, years or even decades later. Sometimes there is nothing there, and there is no avenue at that time to go and fix what is missing on the audio recording. With a live court reporter, we know at the time when there is a problem, and we can fix the proceedings right then.

Senator Hutchison:

Lawyers do not always request a transcript for a hearing because of the cost. My understanding was if the lawyer asks for a transcript, the court reporter goes back to the recording and transcribes that. You seem to be saying that the transcription could be done by anyone. It may look like a transcript that a court reporter has prepared, but in fact a court reporter was not involved. Is that right?

Ms. Judd:

That is correct. Transcripts from the audio recordings made in the Eighth Judicial District Court are almost never done by a court reporter, unless

an attorney has obtained a copy of the recording and asked the court reporter he or she has been working with. But by and large, court reporters do not like to transcribe from audio recordings. They are difficult to hear, and there are none of the opportunities we would have if we had been there live to take control of proceedings to make sure we really get a good transcript. That is why even a court reporter's transcript, when we are transcribing from a recording rather than a live meeting, is full of "inaudible" and "unintelligible" notes. We do not have the ability to fix the situation so we can make an accurate verbatim record, as we would have done if we had been there at the time.

Senator Hutchison:

How do you reconcile the cost savings of making only a recording? There is a significant cost savings when you make a recording but not a transcription. Your proposal seems to be that we pay someone to monitor the recording system during court proceedings like a court reporter. That would create a significant cost issue.

Ms. Judd:

There is really no change in cost. It is my understanding that courts with recording systems are already paying a full-time person. It is much more expensive to have a recording system than to hire a court reporter because of the cost of installing, repairing, replacing and monitoring the system. All of those costs are incurred before you have generated a single transcript. Also, since the monitor will be spending the entire day listening to court proceedings, you will have to employ other people to transcribe the recordings. You will also have to pay for printers, computers, software, paper and toner. All that is calculated into the cost of getting a transcript from a courtroom that uses an audio recording system. If you hire certified court reporters, they work as independent contractors. They only get paid when court is in session, they purchase all of their own equipment and they pay for any repairs that are needed. It is actually far less expensive to hire a live court reporter than to use a recording system.

The courts started using recordings rather than court reporters because court reporters are rare. It takes time and ability to become a court reporter, and though many start the training, few finish and become good court reporters who can provide a readable, instantaneous transcription of court proceedings.

Senator Hutchison:

Perhaps I misunderstood your prior testimony. I thought you said the problem is that recording systems are not being monitored, so there is no one there to stop the proceedings if the sound is not being recorded. If you do not have someone monitoring the recording, that would be a cost-saving measure. But you now seem to be saying that there is someone there listening to the recording all day. I cannot reconcile those two statements.

Ms. Judd:

It is my understanding that some recording machines are monitored and some are not. I cannot say whether all courtrooms have a full-time monitor. Our position is that anyone who is involved in that process needs to be certified, and all recording machines should be monitored. We should know at the time if someone's microphone is off or if the recording is not capturing the spoken word. We should not find out when someone tries to get a transcript that the sound quality was inadequate. If the machines are not monitored, they should be, and the monitors should be certified.

Senator Brower:

Does the law allow for a court recorder in lieu of a court reporter? Are there some courts in Nevada where the recording is the only record of the proceeding?

Ms. Judd:

Yes, that is my understanding.

Mr. Guild:

Yes, the law does allow that. In the Eighth Judicial District Court, approximately 80 percent of the proceedings are recorded and then transcribed by either a transcribing pool or a court reporter. The pay for the 48 recorders in Clark County ranges from \$30,000 a year to \$90,000 a year. Using a recording system is not necessarily a cost saving to the taxpayer. The transcripts created by recorders or a transcribing pool are not certified, and a court reporter's transcript is certified. That is part of the statute. Finally, court reporters are required to keep certain records for up to 8 years, and there is no such requirement for a recorder.

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Those are bigger issues than those covered by S.B. 64, but they do show the need to act on Ms. Judd's suggestions. For the health, welfare, benefit and safety of the citizens of Nevada, court recorders should be certified.

Chair Segerblom:

The federal magistrates all use court recorders rather than court reporters. I agree, it is helpful to have someone who is awake and listening as opposed to hitting a switch and taking a nap.

I will close the hearing on S.B. 64. Is there any public comment? Hearing none, I will adjourn the meeting at 9:41 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 64	C	4	John McCormick	Supreme Court Amendment to SB 64