

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

**Seventy-Eighth Session
February 12, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, February 12, 2015, 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 www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureaus Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

James W. Hardesty, Chief Justice, Nevada Supreme Court
Paul C. Deyhle, General Counsel and Executive Director,
Commission on Judicial Discipline
Andres Moses, Staff Attorney, Eighth Judicial District Court

Chairman Hansen:

[Roll was taken.] We have two bills on the agenda today. We also have the great privilege of having the Chief Justice of the Nevada Supreme Court here to present those bills.

Assembly Bill 68: Revises provisions relating to the Commission on Judicial Discipline. (BDR 1-494)

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

Good morning. It is an honor to be in front of the Judiciary Committee for the Nevada Assembly. I appreciate the opportunity to present a couple of the bills that have been generated by the judicial system.

As most of you already know, we have allocated ten bills for all matters that might affect the judicial system. The process began well into early last year. We tried to identify areas where we might submit bill draft requests from judges throughout the state on issues the judiciary staff feels is important for consideration by the Legislature. The two bills before you this morning are two of the ten bills that the judiciary and the Judicial Council of Nevada considers to be important matters for the Legislature to address. The other eight bills, some of which have been heard in other committees, will be coming forward to you.

The first bill is Assembly Bill 68. This bill amends some of the statutes that deal with the Commission on Judicial Discipline. For the benefit of the new committee members, our *Nevada Constitution* provides for a judicial discipline commission. The Commission's jurisdiction is to review charges or allegations of misconduct committed by judges at all levels. The Constitution also empowers the Legislature to establish procedures by which the Commission operates. These statutory changes tendered to you in A.B. 68 deal with some

statutory amendments that were precipitated by a couple of recent judicial misconduct cases which has created time, expense, and cost to the Commission. It also seeks to clarify a couple of areas which we will go over, in detail, in a few minutes. For example, is a judge who retires or resigns still subject to the jurisdiction of the Commission for allegations of misconduct that occurs before the resignation? This bill would clarify that he or she would be.

This bill, as initially submitted, was reviewed by the Judicial Council. After discussions with representatives of the Commission on Judicial Discipline, I come to you with the approval of the Judicial Council of Nevada and the Commission on Judicial Discipline. The language contained in the bill is agreed upon by both groups.

With me today is the recently appointed Executive Director of the Commission on Judicial Discipline, Paul Deyhle. He is a talented lawyer and a very bright young man. I think he will bring new energy, enthusiasm, and innovation to the Commission. Several of the provisions included in this bill are the result of his work with his new commission.

I know that it is not in the purview of this particular committee, but I do want to underscore for you a concern of the Supreme Court, and we will underscore that concern when we get to the money committees reviewing the Commission on Judicial Discipline's budget. One of the big problems that the Supreme Court believes exists is the constant, and repetitive, underfunding of the Commission to conduct timely investigations and act on issues of alleged misconduct in a timely manner. The budget has frequently been consumed with lengthy and expensive investigative costs requiring the Commission to come back to the Interim Finance Committee (IFC). It has also been impacted by attorney's fees incurred when hiring personnel to pursue investigations of judges who are alleged to have committed misconduct. Paul and his commission have made significant changes to their budget, and I am hoping the Legislature will receive his budget favorably. The increases he has requested are an effort to produce a more timely and efficient result in these cases of misconduct.

Some of you may be familiar with a recent case involving Family Court Judge Steven Jones. It went on for a lengthy period of time with allegations going back six or seven years. This is just not acceptable to the integrity that we expect from the judiciary in this state. It requires efficient statutes and an ample budget to be able to address cases of that magnitude so they can be dealt with quickly, promptly, and appropriately, affording the due process necessary to accomplish those objectives. The amendments to this bill are some that flow from that case. They will also clarify some other issues and the

language that is presented. With that, I will ask Mr. Deyhle to provide some specifics behind each of the different sections in the bill. Afterward, both of us will be available to respond to questions.

Paul C. Deyhle, General Counsel and Executive Director, Commission on Judicial Discipline:

As Chief Justice Hardesty explained, these changes were made to the *Nevada Revised Statutes* (NRS) Chapter 1, which governs the Commission. The change to section 1 ([Exhibit C](#)) clarifies that the determination of suspension or the filing of a formal statement of charges recorded in the Commission's minutes need not be in writing.

The change to section 3 clarifies that the Commission's jurisdiction also extends to all former judges for past misconduct occurring while serving as a sitting judge. This would close a loophole and allow an argument that the Commission does not have jurisdiction over conduct over a judge while he or she sat as a judge. The change to section 3, subsection 2, relates to the filing of a complaint or action in a court other than the Supreme Court. This addresses the Judge Robert C. Jones situation, where the Commission had to expend a significant amount of money hiring private attorneys to appear before the Eighth Judicial District Court.

Chairman Hansen:

I am sorry, let me interrupt. For those of you who want to follow along, the amendments ([Exhibit C](#)) are on the Nevada Electronic Legislative Information System (NELIS). Please proceed.

Paul C. Deyhle:

This change would apply if a complaint is filed other than in the Supreme Court. The complaint would be presumed to be frivolous and intended solely for the purposes of delay, which would allow the Commission to request reimbursement of attorney's fees in those instances. Of course, they would not be returned to the Commission, but to the state treasury.

The change to section 4 simply provides more clarification to the statute. It is a housekeeping change which makes the statute more clear. The change to section 5 clarifies that the existence of a proceeding is confidential, and not just the proceeding itself. This protects the confidentiality of the Commission's proceedings filed against judges. The statute already states that the Commission's deliberative sessions must remain private. The change to section 6, subsection 3, clarifies that any minutes from those sessions must remain confidential. Lastly, there is section 8. *Nevada Revised Statutes* 1.445 allows the appointing authority, which in this case is the Supreme Court, the

Governor's Office, or the State Bar of Nevada Board of Governors, to appoint for each position for which the authority makes the appointment, one or more alternate members. Right now, the appointing authorities can only appoint one alternate member for every regular member. This would provide needed flexibility in the event of unavailability, sickness, or the many instances of recusal that Commission members are subjected to. I will be happy to answer any questions.

Assemblywoman Fiore:

Thank you for being here. I have a two-part question. Why should all the findings and determinations not be in writing? What is the rationale for allowing staff to make the determinations and findings? I thought that is the idea of the Commission.

Paul C. Deyhle:

The staff language was stricken and is not part of this amendment. Currently, the statute does not require all of the determinations be in writing. It only requires the terms of the suspensions, or when it becomes public. What happens is the Commission will meet and review anywhere between 70 to 80 cases each meeting. The Commission is briefed, they will discuss the case, vote on the record, and it will be logged in the minutes. We do not have a written determination in every single case that leads through the process. The Commission will receive a complaint, they will determine whether there is sufficient evidence to proceed, and they will authorize an investigation. After the investigation is completed, the Commission gets together again and decides whether there is reasonable probability that misconduct has occurred. Afterward, it goes to the next stage, which is requiring the judge to answer. It goes on until the determination that it is going to become public, and we are going to file a formal statement of charges. There are many stages along the way whereas the Commission will simply vote on the record, and we will log it in.

Chief Justice Hardesty:

If I may augment that answer, currently a judge will only face charges if there is a determination made by the Commission that there is cause to do so. The vast majority of the allegations are dismissed by the Commission as not having merit. This provision makes clear that documenting interim decisions by the Commission during the course of the proceeding, through its minutes, is adequate documentation for what transpires. The judge needs to know written findings when the proceeding moves to a formal complaint. Those are documented in written findings.

Assemblyman Jones:

It was mentioned that if a case is filed in District Court, and it should be in the Justice Court because it is presumed out of jurisdiction, you can get a recovery of attorney's fees. If the Commission spends those fees and does not have enough money, why does that money go back to the General Fund instead of back to the Commission?

Paul C. Deyhle:

I would think there would be a conflict if we are asking for attorney's fees to be given back to us as opposed to back to the State Treasurer. I do not have much more of an answer other than to say it would be a perceived conflict asking for money from the District Court to come back to us for actions we had to take in connection to a case. Does that adequately answer your question?

Assemblyman Jones:

You would be better able to see if there is a conflict; but you are expending those funds, and you have limited funds. When attorneys get attorney's fees and provisions in a contract, they get the money back for what they spent. However, if it is a conflict, it is a conflict.

Paul C. Deyhle:

It is a perceived conflict. I do not know if it actually would be a conflict. If the Legislature decides that the money would be better returned to the Commission, then so be it. I do not know how that would be perceived in terms of any particular case.

Assemblyman Nelson:

Getting back to Assemblywoman Fiore's question, it looks like the original version in section 1 stated that the findings are not required to be in writing. In the amendment, that was taken out, correct? Now it just reads that formal statement of charges shall be recorded in the Commission's minutes, but the language saying it is not required to be in writing has been deleted. Is that correct?

Paul C. Deyhle:

Yes, that is correct.

Assemblyman Nelson:

Therefore, it is going to be in writing. I assume the minutes are in writing or electronically preserved.

Paul C. Deyhle:

Yes, our minutes are in writing and are preserved electronically.

Assemblyman Nelson:

As Chief Justice Hardesty has said, they are not made public unless there is a later determination. Is that correct?

Paul C. Deyhle:

The Commission's minutes and the deliberative sessions are never made public even in a public proceeding. The written determination and findings of fact are made public.

Assemblywoman Seaman:

My question was asked and answered. Thank you.

Assemblyman Gardner:

I am looking for clarification on the amendment in section 3, subsection 2. In the amendment, it looks like the right to get attorney's fees reimbursed was deleted. Is that correct, or are you going to be adding that back in?

Paul C. Deyhle:

You are correct. That language was stricken. As the amendment reads, it would be a presumption that if any filings would be frivolous and for the purposes of delay, we would request attorney's fees from the District Court or the appellate process with the Supreme Court. Where that money goes, whether it be to the State Treasurer or the Commission, is unknown at this point. You are correct that the attorney's fee provision has been removed.

Chief Justice Hardesty:

I can expand on that, Assemblyman Gardner. The determination of attorney's fees would be made by the court where the case is filed. Several actions were filed in the Eighth Judicial District Court for the Jones case, challenging the Commission's hearings and proceedings against him. Under the *Nevada Constitution*, only the Supreme Court has jurisdiction to consider appeals or actions taken by the Commission. This accomplishes two objectives. There may be interlocutory orders made by the Commission; the Commission may say, given the nature of what has been charged here, this judge should be both suspended and suspended without pay. That is an example of an interlocutory order that should be reviewed by the Supreme Court. What actually occurred was there were several District Court filings that resulted in over \$90,000 in attorney's fees that the Commission has to incur from its budget. In this instance, once there is a presumption of frivolity, the frivolous nature of the case would be a basis on which the District Court would award attorney's fees under NRS Chapter 18. Those fees would be awarded to the Commission for deposit to the State General Fund.

Assemblyman Gardner:

Thank you for that follow-up. That makes a lot more sense to me. If we are going to say it is a presumption of frivolity, do you think we should add a statement to the judges saying that should there be a presumption it should be dismissed or remanded to the Supreme Court? This would get it out so that there are not a lot of attorney's fees spent.

Chief Justice Hardesty:

That is the effect of the presumption of frivolity. I do not think it would be appropriate to abandon all due process. Suppose a judge attacks some provision of the *Nevada Constitution* surrounding the Commission. That has not happened before, but we see new cases all of the time. Declaring it to be absolute or declaring that it should be dismissed would foreclose the opportunity for someone to bring a case in controversy that might have some merit. We think the judges should evaluate that. Certainly given the changes we have made, most cases involving an allegation of misconduct will be dismissed early on in the process.

Chairman Hansen:

I have a question along those lines. It refers to the sentence in section 3, subsection 2 which reads, "Any such complaint or action filed in a court other than the Supreme Court shall be presumed to be frivolous and intended solely for the purpose of delay." Let us say I file an action in a justice court that should be filed in a district court and they do not tell me it is frivolous. They tell me it is not allowed. Apparently, your last answer indicates that there are times that you may need to file in a court to challenge the Supreme Court's decision. I am confused as to why we do not say that it has to be filed exclusively with the Supreme Court. Can you elaborate on that?

Chief Justice Hardesty:

From my perspective, I am always cautious in saying that all cases are the same; not all cases are the same. I think you are better off giving the discretion to the District Court to determine, based on this standard, whether or not the case is presumptively frivolous. At the moment, it is hard for me to consider a factual scenario where a case would not be viewed as frivolous. I do not think we should foreclose someone's right to articulate that to a judge if, in fact, there is a factual, and more importantly, legal basis for doing so.

Assemblyman Nelson:

I am curious if the judge in question were a member of the Supreme Court, are there provisions in the law to handle that?

Chief Justice Hardesty:

Hypothetically, there are provisions dealing with Supreme Court justices. The Supreme Court has jurisdiction to address appeals involving one of its colleagues. Obviously, the challenged justice is disqualified, and the Constitution provides for amendments to replace the disqualified justice in such an appeal.

Chairman Hansen:

Are there any further questions? Seeing none, thank you, Your Honor, and Mr. Deyhle. Is there anybody else here who plans to testify in favor of A.B. 68? [There was no one.] Is there anybody here to testify against A.B. 68? [There was no one.] Is there anybody down in Clark County wishing to testify? [There was no one.] I will close the hearing on Assembly Bill 68. Let us move on to Assembly Bill 69.

Assembly Bill 69: Revises various provisions relating to the Judicial Branch of State Government. (BDR 1-497)

Chief Justice Hardesty:

I am here to address the Committee on Assembly Bill 69. All of us are interested in efficient government, and not government asked to do things that are no longer necessary because of changes in technology or otherwise. What A.B. 69 does is examine 39 statutes for amendment. We have added four more since the original bill was tendered ([Exhibit D](#)). We amend one definition, and we suggest repealing 12 statutes ([Exhibit E](#)). The background for this measure dates back to 2013. Chief Justice Pickering commissioned a committee of the Judicial Council of Nevada to review all of the statutes requiring the various courts to report on all manner of things and to determine if the courts were in compliance. Let me begin by pointing out that since the 1800s, the Legislature adopted statutes requiring the courts to report, maintain records, or do certain actions oftentimes without any funding for those actions. Most of the statutes that we are dealing with here are unfunded mandates to the court system. We are not addressing any of the statutes from a fiscal standpoint. We are simply dealing with the fact that many of the statutes on the books today ask the courts to do things that are no longer technologically appropriate or necessary and cost money.

The Committee met several times in 2014 under Chief Justice Gibbons. A plan was developed to finalize the list of all requirements where the courts have an obligation to provide information or money. As a result, we identified almost 200 statutes that require judges or court staff to provide reports, information, or money to a sundry of folks, and many such reports include the Legislature. Examples of statutes not being considered for change involve clerks giving

receipts for payment, clerks submitting money to the State Treasurer, court administrators determining the presumptive amount of child support annually, and clerks submitting divorce information to the state registrar. In April 2014, two reporting requirements were submitted to the Director of the Legislative Counsel Bureau for possible inclusion in his bill of reports to sunset. They were medical malpractice reporting and alternative dispute resolution reporting. Assembly Bill 69 captures what the Judicial Council and its committee believe are 39 statutes that should be amended. They make changes to improve the efficiency of the courts and recognize that these statutes are handled more financially efficient consistent with new technology. One amends *Nevada Revised Statutes* (NRS) Chapter 19. We are recommending 12 statutes be repealed altogether because technology or other issues make them unnecessary. We asked for the list of statutes to be reviewed by all the district courts, justice courts, and municipal courts in the state. Twelve of the seventeen district courts responded. Thirty-nine of the forty-two justice courts responded. Fifteen of the seventeen municipal courts responded. As a result, we identified four additional amendments to submit ([Exhibit D](#)).

Robin Sweet, Director of the Administrative Office of the Supreme Court, is with me today. She has been working with the Committee and the Judicial Council. She is prepared to review all of the sections.

I want to give you some examples of the statutes listed at the end of the bill for repeal ([Exhibit E](#)). One of the bills to be repealed is NRS 2.260. This statute requires on the fifth day of each calendar month, the Clerk of the Supreme Court is to publish a list of all cases submitted to the Supreme Court which remain undecided for a period of more than 90 days, together with the date of original submission. The publication is to be made in a newspaper that publishes and advertises for the state. It is not necessary for us to provide the full title, but we should provide a sufficient title and number. In doing so, we would be spending \$200,000 a year to list all of the cases pending in the Supreme Court. We think that is inefficient and a waste of the state's money because they are listed on our website daily. This is just one of several examples. The particular statute that I am referring to was enacted in 1913. Other statutes that we are suggesting be repealed date back to 1895 or 1937. To provide you with another example, *Nevada Revised Statutes* 6.050 deals with the original process by which jurors would be identified for selection. The lawyers on this panel know that NRS 6.050, NRS 6.060, NRS 6.070, and NRS 6.080 do not conform in any respect with how we currently select juries in this state. In the rural counties where there is no jury commissioner, they would have to submit through their district court the names of all persons that may one day be called as a juror. Of course, we have no idea if there are even

going to be trials, or how many trials there would be, but we are supposed to list all of the people who might be jurors. Once done, the county commission and the board has to record this in their minutes and keep a record of it. From there we are supposed to place the names on slips of paper in a jury box. That becomes the basis for how we pick jurors in rural counties. It may have worked really well in 1885, the year in which the statute was enacted. Right now, all of this is in our case management systems. Jurors are selected through notices of the number of jurors needed in the venire and depending upon the nature of the case. What we are asking the Legislature to do is to follow the lead taken by the Judicial Council, creating some efficiencies in our statutes. We hope you are not expecting the judiciary to report on matters or pursue procedures that are not only a waste of money but a waste of time.

I regard this bill as a significant effort and contribution by the judicial system to make the judiciary more responsive and more efficient, taking into account our current technology, systems, capabilities, and avoiding unnecessary costs. We have 39 bills involving amendments. Robin Sweet is prepared to address and comment on every single one of those bills, and we are happy to do that. Perhaps, if the Committee has had time to look at some of these, you would rather ask questions about specific ones. We can simply give the same explanation for many of them. This is being amended because the process has been superseded by technology, or because this process is no longer necessary. However you would like to proceed is the most efficient way to proceed.

Chairman Hansen:

Are there any questions from the Committee? I am surprised the Nevada Press Association is not here today to defend that \$200,000 expenditure. As you know, the legal notice situation is actually pretty significant. Right now, we still require legal notices to be placed in newspapers. For the smaller newspapers, that is a substantial income for them. The only item that I have a question on is the last one, which I believe has to do with the appeals court ([Exhibit E](#)). *Nevada Revised Statutes* 177.267 is a fairly recent statute. Most that you mentioned were from the 19th century, but this one is more recent. What is the reason for the change in this one? I presume the removal is because of the new appeals court, but I am not sure.

Chief Justice Hardesty:

That is partially correct. It has to do with an appeal to the Appellate Court. We are trying to incorporate the provision to deal with that issue.

Chairman Hansen:

Is there anyone else with any questions? I see none. We love it when we see people removing laws from obsolete statutes or regulations. There is a great deal of frustration when the general public wants a constant expansion of the *Nevada Revised Statutes* and the *Nevada Administrative Code*. Anytime you want something to be removed, you will get a real strong pat on the back.

Chief Justice Hardesty:

We are not shrinking it by a lot, but we are shrinking it by some. Believe me, when we took this survey, many of the court administrators and judges looked at these and stated how they superseded that process a long time ago. This will make us compliant. There are still come courts who are not compliant. The Administrative Office of the Courts is developing a training procedure to make them compliant. The Supreme Court's objective here is to make sure that all courts are fully compliant. Some of this requires training, and some requires technology improvements. We are in the process of doing just that.

Chairman Hansen:

Thank you, Your Honor. Between now and the time we have a work session, if you find others that are obsolete that you would like to add, we would welcome any additional removal of obsolete statutes or ways to save money.

Chief Justice Hardesty:

If any of the Committee has a question after looking at these, I invite you to call Ms. Sweet directly. We will be happy to answer any questions. You have been given a lot of material and may not have had the time to digest it. Between now and your work session, if a member of the Committee has a question about a specific bill, repeal, or amendment, we are available to answer your questions directly.

Chairman Hansen:

Are there any questions? [There were none.] Is there anyone else that intends to testify in favor of A. B. 69?

Andres Moses, Staff Attorney, Eighth Judicial District Court:

The Eighth Judicial District Court is Nevada's largest general jurisdiction trial court in Nevada. We have 52 judges consisting of 32 civil criminal judges and 20 in family court. We have nearly 600 employees. I am here to record our support for A.B. 69. We participated in the process to identify many of the statutes that require amendment. We are in full support.

Chairman Hansen:

Thank you, Mr. Moses. Are there any questions? [There were none.] Is there anybody else to testify in favor here or in Clark County? [There was no one.] Is there anyone in opposition, or in the neutral position? [There was no one.] Is there anyone who has any public comment? [There was no one.] We will close the hearing on A.B. 69. With no further testimony, the meeting is adjourned [at 8:42 a.m.].

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 12, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A. B. 68	C	Ben Graham, Nevada Supreme Court	Amendment to A.B. 68
A. B. 69	D	Ben Graham, Nevada Supreme Court	Amendment to A.B. 69
A. B. 69	E	Chief Justice Hardesty, Nevada Supreme Court	Language in Statutes Proposed to be Repealed in A.B. 69