

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 30, 2015**

The subcommittee of the Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:07 p.m. on Thursday, April 30, 2015, in Room 2134 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.

SUBCOMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

SUBCOMMITTEE MEMBERS ABSENT:

Senator Michael Roberson (Excused)
Senator Tick Segerblom (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Lynette Jones, Committee Secretary

OTHERS PRESENT:

The Honorable James Hardesty, Chief Justice, Nevada Supreme Court
Michael Montero, District Judge, Department 2, Sixth Judicial District
Kevin Higgins, Sparks Township Justice Court, Department 2, Washoe County
Chris Wilson, Sparks Township Justice Court, Department 1, Washoe County
John Tatro, Justice and Municipal Court, Justice Court II, Carson City
Sean B. Sullivan, Public Defender's Office, Washoe County
Kristin Erickson, Nevada District Attorneys Association

Chair Brower:

I will open the subcommittee meeting with Assembly Bill (A.B.) 435.

ASSEMBLY BILL 435 (1st Reprint): Provides for the realignment of certain judicial districts. (BDR 1-302)

The Honorable James Hardesty (Chief Justice, Nevada Supreme Court):

I will present A.B. 435. This bill is the product of an idea that began in March at the 2015 Family Law Conference in Ely. As Chief Justice, I am responsible for monitoring caseloads of the various judicial districts. This includes reviewing delays that occur in the dockets of districts caused by caseload size or travel judges must undertake.

The Fifth Judicial District Court consists of Nye, Esmeralda and Mineral Counties. For a number of years, we have discussed moving Mineral County to another district to make judicial services closer to judges in Churchill or Lyon Counties. I made a recommendation to the Ely judges that a new Eleventh Judicial District Court be created, consisting of Pershing, Lander and Mineral Counties.

This bill is best described by the map provided to the Committee ([Exhibit C](#)). The map shows the configuration of the 10 judicial districts in Nevada. The Fifth Judicial District Court consists of Nye, Esmeralda and Mineral Counties. The Sixth Judicial District Court consists of Humboldt, Pershing and Lander Counties. A point on the map connects Mineral and Lander Counties.

Page 2 of [Exhibit C](#) the handout provides a breakdown of caseloads for each of the judicial districts. The Fifth Judicial District Court has two judges and is the fourth highest in the State in terms of caseload per judge. This is due to increased growth in Pahrump. Clark County has a caseload of 1,846 cases per judge, Washoe County has 1,370 cases per judge, Elko County has 1,309 cases per judge and Nye County has 1,268 cases per judge.

Redistributing Mineral County to Lyon County is a problem for a variety of reasons and attaching it to Churchill County would not solve the caseload issues. We investigated the possibility of creating a new district; page 3 of [Exhibit C](#) provides a caseload breakdown if a new district is formed. The result is the caseload in the Fifth Judicial District Court is reduced by approximately 70 cases per judge in Nye and Esmeralda Counties. Mineral, Lander and

Pershing Counties will have one judge with 784 cases, which is still higher than Douglas and Lyon Counties but much more manageable due to a reduction in travel. Humboldt County becomes a single-judge district with 1,067 cases. The central part of the State will have more symmetry in caseloads distributed to the district court judges. This change will delay or avoid the need to add district court judges to those districts any time soon.

When formulating this idea, I spoke with the county commissioners in Pershing, Humboldt and Mineral Counties during a public session. Lander County also held a public hearing on these issues. Assembly Bill 435 comes to you with the unanimous support of every county commissioner in Mineral, Lander, Pershing and Humboldt Counties. They support the bill because it increases judicial services and makes travel time shorter.

For example, Michael Montero, District Judge, Department 2, Sixth Judicial District, can stay at home and handle the entire docket of Humboldt County instead of traveling to Battle Mountain and Lovelock to help Jim Shirley, District Judge, Department 1, Sixth Judicial District, cover his docket. The travel time from Pahrump to Hawthorne at over 550 miles is the longest travel route for judges in the State. The travel time from Lovelock to Hawthorne and Battle Mountain is considerably shorter, allows for increased judicial presence in Mineral County and shortens the time in which cases are decided. Divorce and criminal cases in smaller counties are set out sometimes as far as a year because of limited judicial services available in those districts. This matter was studied by county managers and judges to determine if the new district would have a fiscal impact. There is no adverse fiscal impact to any of the counties involved for the next few years.

County Commissioners in Humboldt and Pershing Counties conditioned their approval on a provision we inserted into the bill before the Assembly Committee on Judiciary hearing. The change confirmed that Pershing and Humboldt Counties would have concurrent jurisdiction over disputes concerning the Humboldt River Decree, which affects both counties. The bill confirms the venue for any case or proceeding related to the Humboldt River Decree must be determined on an alternating basis between the Sixth and Eleventh Judicial District Courts.

Assembly Bill 435 comes to the Committee with the unanimous recommendation of all parties involved, the people served by this change, the county commissioners and each of the affected district court judges.

Chair Brower:

We have previously discussed this issue, and the bill makes sense. You referred to caseloads assigned to judges in the districts on page 2 of [Exhibit C](#).

Chief Justice Hardesty:

Yes.

Chair Brower:

Does the map show a caseload of 351 for the Seventh Judicial District Court?

Chief Justice Hardesty:

Yes. The Ely State Prison is located in that district, and the two judges located in that area deal with challenging writ of habeas corpus cases. The caseload appears to be understated, but it is not due to the complexity of the cases.

Chair Brower:

Clark County is in the high range of assigned caseloads with 1,800 cases per judge.

Chief Justice Hardesty:

Yes. That number was about 2,400 cases when I presented the proposal to increase judges in Clark County in 2009.

Chair Brower:

Have the caseloads been reduced because of the additional judges or a decrease in the number of filings?

Chief Justice Hardesty:

Both.

Michael Montero (District Judge, Department 2, Sixth Judicial District):

I am one of two judges in the Sixth Judicial District Court. Chief Justice Hardesty met with the county commissioners in the respective counties, but he did not speak at the Lander County Commissioners meeting when they unanimously voted to support this measure. The Lander County

Commissioners were present at a tricounty meeting in Humboldt County when Chief Justice Hardesty spoke about the issues, and the Humboldt County Commissioners voted to support this measure.

This change will give me the opportunity to spend more time in Humboldt County. My caseload will increase but not having to travel will be significant. Everyone will benefit in this situation. We have spent considerable time in Humboldt, Pershing and Lander Counties talking about the dollars associated with the change, and we see no negative fiscal impact. It gives us the opportunity to do some different things fiscally within the districts, based on disparities between the counties and their relative wealth.

Chair Brower:

Assembly Bill 435 comes to us with the unanimous support of all parties involved. This includes the support of local elected officials, which indicates the bill makes sense.

Chief Justice Hardesty:

District Judge Jim Shirley, who resides in Lovelock, is attending The National Judicial College and could not be here today. District Judge Shirley wants the Committee to know that he supports the bill.

Chair Brower:

I will close the hearing on A.B. 435 and open the hearing on A.B. 66.

ASSEMBLY BILL 66 (1st Reprint): Revises provisions relating to justice courts.
(BDR 1-492)

Kevin Higgins (Sparks Township Justice Court, Department 2, Washoe County):

I will present A.B. 66, which is sponsored by the Nevada Supreme Court on behalf of the Sparks Justice Court. The bill revises provisions that require a justice of the peace be a licensed attorney based on the population of the township. This will put the Sparks Justice Court in the same category as Reno, Las Vegas, North Las Vegas and Henderson.

Assembly Bill 66 changes the population threshold to include Sparks. The population in our township has been over 100,000 since 2012, and we now have 140,000 people in the township. Statewide, 39 of the 67 justices of the peace are attorneys who represent 50 percent of the courts, including the

smaller courts. This bill has been endorsed by Christopher Hicks, Washoe County District Attorney, Jeremy Bosler, Washoe County Public Defender, and Jennifer Lunt, Washoe County Alternate Public Defender. Section 1 of the bill is unanimously endorsed by all judges in the association, which is unusual. We do have those who disagree with another section of the bill. We submitted documents to the Committee ([Exhibit D](#)) that give an idea of the numbers I will discuss.

Attachment 1 of [Exhibit D](#) shows the population estimates for townships in Nevada, including Sparks Justice Court. Attachment 2 shows the judicial townships by population, which lists the Sparks Justice Court as the fifth largest at 140,000 behind North Las Vegas and Reno. The Carson City township is at 53,000. There is a significant gap between the five-largest justice courts and the others. Attachment 3 is a justice court summary from the Nevada Judiciary Annual Report. The report shows the two judges in Sparks have the second-highest caseload in the State with 3,500 cases each. Las Vegas has the highest caseload with over 8,000 cases per judge. These statistics show that Sparks Justice Court is approaching that large urban threshold which makes it important we have judicial attorneys.

Attachment 4 of [Exhibit D](#) is an endorsement from Susan Deriso, Senior Justice of the Peace, Sparks Justice Court, who is not an attorney. Judge Deriso believes the increasing caseload and complexity of cases make it difficult for a nonlaw-trained judge to take the bench. Attachment 5 provides statistics regarding the types of cases processed in Sparks Justice Court. It was noted that the City of Sparks has changed over the years. The population no longer consists of 25,000 people. Last year, we had three murders, multiple sexual assaults and other complex cases that come with a big city.

We anticipate the Sparks Township will continue to grow because of economic development. We meet the qualifications for a third judge under statute, and we are close to qualifying for a fourth judge. We delayed adding judges to save money for the County, but it has been decided that we will put that third judge position on the ballot next Session. Chris Wilson, Sparks Township Justice Court, Department 1, Washoe County, and I are very busy. We believe it is fair to the citizens of Sparks to have an attorney judge. A nonattorney judge would have a difficult time in the position. This is the original part of [A.B. 66](#).

The second part of the bill was amended by the Assembly Committee on Judiciary to increase the civil jurisdiction limits in civil court. We were approached by members of both Houses of the Legislature about increasing the limit. The limit for small claims is \$7,500 and \$10,000 for civil actions within justice courts. The bill was amended to increase these limits.

Chair Brower:

Can you tell the Committee what the jurisdictional limits mean? What is the practical effect?

Judge Higgins:

In small claims court, cases are generally lay people with car repair disputes, ex-spouses refusing to pay their share of the medical bills and other collection matters.

Chair Brower:

Justices of the peace preside over small claims court. It is a different division of your court.

Judge Higgins:

Yes. You can file in small claims court without an attorney, the formal rules of evidence are not applied, and people come and present their cases. The judge makes a decision from the bench. Civil court is the general jurisdiction justice court that requires attorneys to know the rules of evidence and motions. Small claims court has a limit of \$7,500, and civil actions have a limit of \$10,000. We have been told there is an interest in increasing the limit of general civil actions anywhere from \$25,000 to \$50,000. We met with Assemblyman Ira Hansen, Chair of the Assembly Committee on Judiciary, to discuss if the time was right to increase the limits. We agreed to a compromise. The compromise in the bill increases the small claims court maximum jurisdiction from \$7,500 to \$10,000 effective October 1. Effective January 1, 2017, justice court general civil jurisdictions will increase from \$10,000 to \$15,000.

The small claims court jurisdiction was increased in 2011, and we did not see an increase in caseloads; in fact, caseloads went down. There are decisions people must make when they bring a lawsuit. If you had a car accident and you have \$12,000 in damages, you can bring the case to justice court, but you must reduce your claim to \$10,000. You need to be aware that your claim

cannot exceed this limit or you must have a discussion with an attorney who will advise you that a \$12,000 claim must be filed with district court. I would anticipate an attorney would say "that is what your attorney's fees will be." The decision must be made on smaller cases to file a smaller claim or not file because the claimant feels it is not worth the investment. This is an access to justice issue and increasing the limits will provide people better access to the court system. Cases in justice court are processed quickly. Judge Wilson pointed out he had a large civil trial this week, filed in February, and the trial was yesterday. Cases are processed quickly and are easily accessible.

We are also set up for jury trials; however, it does not happen often. I had a jury assembled and ready to go, but the plaintiff did not show up. That was going to be the first jury trial held in Sparks Justice Court in a long time. We are set up for jury trials, and some judges have a concern that increasing the limits will increase the number of jury trials.

Attachment 9 of [Exhibit D](#) shows the history of jurisdictional increases for general civil cases and small claims cases in Nevada. In 1864, the maximum jurisdiction for general civil cases was set at \$300, and this amount did not increase until 1979. For 125 years, you could bring a \$300 general civil case. Small claims were not introduced until 1923. The attachment shows that the maximum amount has slowly progressed upward over the years. In some years, there were periods when jurisdictions were the same for both courts. In other years, there were periods when general jurisdiction court was twice as much as small claims court. The anticipated increase proposed in [A.B. 66](#) is not out of line based on historical increases.

Judge Wilson noted that in 1864, \$300 was close to a year's wages for a working person. A person earned \$1 per day to work in a mine or on the railroad. This was considered a good wage. Today, \$10,000 would not be considered a year's wages. I estimate the average yearly earnings today to be in the \$30,000 or \$40,000 range. I am not asking for a higher limit, but there are judges who want the limit increased to that level. In all fairness, some judges in our association are opposed to any increase.

We did a review of Nevada caseloads, and the civil caseload filings in justice court have slowly decreased over the years. After the 2011 small claims increase, the caseload continued to go down. I do not think we will have an issue in which the courts will be overwhelmed with new cases. I do not

anticipate much increase in the small claims jurisdiction. The people who ask for \$7,500 when they have a \$12,000 claim will now have the ability to ask for \$10,000 instead. We will see some cases filed in justice court that are now being filed in district court. It was not our idea to increase the civil jurisdiction, but now is the time to do it. I want to disclose to the Committee that not all judges are in agreement with the change.

Chair Brower:

We have a letter from the judges in the Henderson Township Justice Court who oppose the jurisdictional increases ([Exhibit E](#)). Does the two-thirds majority vote requirement stem from the increased filing fees in sections 1.3 and 1.7?

Judge Higgins:

Yes. We added an extra category from \$10,000 to \$15,000 and increased the filing fee by \$75, which is the same bracket for the lower bracket. The same applies to small claims court with a new bracket added between \$7,500 and \$10,000 and a slightly higher filing fee.

Chair Brower:

I referred earlier to the importance of the justice courts. Judge Wilson, I know you came from the Washoe County District Attorney's Office and have extensive experience with criminal cases. Can you give the Committee a summary of the types of criminal matters a justice of the peace handles?

Chris Wilson (Sparks Township Justice Court, Department 1, Washoe County):

I spent 16 years in the Washoe County District Attorney's Office and handled a wide variety of crimes. I was appointed to the bench a little over a year ago. After the appointment, I ran for election in November 2014. When first appointed, I handled parts of every felony and gross misdemeanor that exist. When a person is arrested, you start with a 48-hour review of the proper cause sheets. We do that review immediately. The issuance of search warrants and seize orders go through the justice of the peace. Our cases include everything on up to murder cases, and there is no room for errors in this process.

For every type of crime including murder, we handle bail hearings, initial arraignments and preliminary hearings to determine if there is enough evidence to send the case to district court. We also handle traffic cases that occur in the township. That is the process for gross misdemeanors and felonies. For misdemeanors, we handle the entire case from the point of arraignment to

sentencing. A vast amount of our trial time relates to misdemeanors. When you review my caseload, you see I spend approximately 60 percent of my time handling the criminal caseload and 40 percent handling civil cases.

Chair Brower:

There is a misconception that justice courts only handle criminal misdemeanor cases. Justices of the peace have a significant role to play in felony cases, whether it is determining if someone stays in custody pending trial, issuing search warrants or conducting preliminary hearings and other important functions. Having legal training is helpful but not necessary. We can use Judge John Tatro as an example.

John Tatro (Justice and Municipal Court, Justice Court II, Carson City):

I am a municipal court judge and a justice of the peace in Carson City.

Chair Brower:

Your position is unique to Carson City, given the nature of the City's governmental structure.

Judge Tatro:

It is a consolidated municipality. I have been a judge for 20 years. I was appointed in 1995 and elected four times in four different elections. When I started the job in 1995, my work history included working at the State Gaming Control Board for 13 years as an agent, working as a peace officer and then as a hearing officer at the Gaming Control Board for 8 years. I also attended the Judicial College and conducted evidentiary hearings. When I completed my application for justice of the peace, I had done over 2,000 hearings, which gave me an understanding of conducting hearings and the criminal process.

When I started, the caseload was one-half the caseload I have now, and the complexity of the cases was minor compared to what it is today. Now we see motions to suppress. In the past, I would see a motion to suppress once a month or once every 3 months. Now we handle one motion a week. In 1995 when I was a new judge, I had time to train on the job. I could call other judges for guidance and perform research regarding procedures. Now I would not have that luxury. If I started my job today as a nonattorney judge in Carson City, I do not think I would be at the level necessary for the people in the court, defendants and litigants in cases. It would not be fair to them. I cannot see

nonattorney judges in a town like Sparks where the caseload is larger and things are happening more quickly.

Some people in Carson City say they do not want an attorney judge. When I am in the public or at a conference, citizens of Carson City ask me where I went to law school. When I tell them I did not go to law school, they wonder how I could become a judge. I am fully qualified for my job now and litigants get a fair hearing, but if this were 1995 with today's caseload, they would not.

Chair Brower:

It is increasingly difficult to serve as a judge without a legal background.

Sean B. Sullivan (Public Defender's Office, Washoe County):

We support A.B. 66 as presented. I agree with comments made by today's testifiers. I practiced before Judge Higgins and Judge Wilson in Sparks Justice Court when I was a Deputy District Attorney in the early 2000s. I switched sides to become Deputy Public Defender, and I still practice before Sparks Justice Court. I can testify that Sparks is not the same town it was before; caseloads and workloads are increasing. A lot of heavy lifting is done in justice court.

Senator Hammond:

Do you support the bill as amended by the Assembly Judiciary Committee?

Mr. Sullivan:

It is difficult for me as a criminal practitioner to address the amendment as it deals with civil matters. I can speak based on my dealings with family members or friends who seek my advice as the family lawyer. They come to me when they have a small claim matter or a civil action they wish to pursue. I agree with the sentiments of the judges who have testified today. This is about having access to justice, and people must make hard decisions about having their cases maneuvered into district court or addressing it at the justice court level. When you consider the time and attorney fees, justice court is often the way to go.

Senator Hammond:

The more I understand how all the parties feel about the bill, the better I will be when making a determination.

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Kristin Erickson (Nevada District Attorneys Association):
We support A.B. 66.

Chair Brower:

I will close the subcommittee hearing on A.B. 66 and adjourn the meeting at 1:43 p.m.

RESPECTFULLY SUBMITTED:

Lynette Jones,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 435	C	3	James Hardesty/Nevada Supreme Court	Maps of Nevada's Judicial Districts
A.B. 66	D	15	Kevin Higgins/Sparks Township Justice Court	Letter of Support/Justice Court Statistics
A.B. 66	E	2	Henderson Township Justice Court	Letter of Opposition