MINUTES OF THE JOINT MEETING
OF THE
ASSEMBLY COMMITTEE ON CORRECTIONS, PAROLE, AND PROBATION
AND THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
February 16, 2017

The joint meeting of the Assembly Committee on Corrections, Parole, and Probation and the Assembly Committee on Judiciary was called to order by Chairman James Ohrenschall at 8:08 a.m. on Thursday, February 16, 2017, 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 www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Steve Yeager, Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Devon Isbell, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts
Paul C. Deyhle, Esq., General Counsel and Executive Director, Commission on Judicial Discipline
Tonja Brown, Private Citizen, Carson City, Nevada
Keith L. Lee, representing Nevada Judges of Limited Jurisdiction
Robin L. Sweet, Director and State Court Administrator, Administrative Office of the Courts

Chairman Ohrenschall:
[Roll was called and protocol was explained.] I want to open our meeting with a hearing on Assembly Bill 28, which revises provisions relating to the Commission on Judicial Discipline.

Assembly Bill 28: Revises provisions relating to the Commission on Judicial Discipline. (BDR 1-395)

John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts:
I am the assistant court administrator at the Supreme Court, and I have an easy job this morning. I am here to introduce Paul C. Deyhle, who is the executive director and general counsel for the Commission on Judicial Discipline, who will talk a little bit about Assembly Bill 28.

Chairman Ohrenschall:
Thank you very much, Mr. McCormick. We know that most of the year you have a very difficult job, so I am glad you have an easier one today. We appreciate all of your hard work.

Paul C. Deyhle, Esq., General Counsel and Executive Director, Commission on Judicial Discipline:
I am here today to discuss A.B. 28. This bill provides due process under Chapters 4 and 5 of the *Nevada Revised Statutes* (NRS) concerning limited jurisdiction judges, namely justices of the peace and municipal court judges, when they fail to attend mandatory instruction. The intent of this bill is not to monitor a judge's compliance with

their educational requirements—that is the purview of the Administrative Office of the Courts (AOC)—but rather to order the forfeiture when notified of a judge's failure to attend that instruction. If you have any specific questions, I will be happy to answer them.

Chairman Ohrenschall:
What if there were a bona fide reason such as personal illness, family illness, or an emergency, and the judge was not able to attend the instruction? Would the language we are considering here allow for consideration of that type of situation?

Paul Deyhle:
Under the statute, if they have an excuse, they need to get a letter of excuse from a district judge in their county. As long as they have that letter and it is filed with the Office of the Court Administrator, then that would provide the necessary excuse for not attending.

Chairman Ohrenschall:
What would happen in a rural district where there are not multiple judges? What if the district judge became ill or passed away and was therefore not able to issue the letter? Would there be some sort of backup plan so the lower-court judge would not have to forfeit their office?

John McCormick:
We have a set of judicial education policies and procedures that allow for communication with the court administrator and the chief justice in those cases where illness, injury, or another situation prevents someone from attending. If there was a good-faith effort made—if they were going to go to the class but they broke their leg—and the district judge was not available, those allowances are made. As Mr. Deyhle said, the intent of A. B. 28 is not for the AOC to go out and actively police judges, but to investigate when a referral is made to the Commission on Judicial Discipline because someone has not complied. My understanding of the bill's intent is that we are not going to actively go and try to find people, but when people unreasonably do not attend, this bill would come into play.

Chairman Ohrenschall:
Thank you very much for explaining that. Is it correct to say that the bill is really meant more for an individual's refusal to attend, versus some kind of family emergency or an unexpected situation that prevented the judge from attending?

Paul Deyhle:
Yes, that is correct. The statutes do not provide for due process in this situation. Currently, the statute simply says that if you fail to attend the instruction and get a letter of excuse, there is an automatic forfeiture of your position. The intent of this bill is to provide due process for those judges, to provide notice and an opportunity to respond in a hearing, before an order of forfeiture is issued.

Chairman Ohrenschall:
Thank you very much.

Assemblyman Fumo:
If I understand correctly, you said you would give the offending judge notice, and they would have the opportunity to respond. If they said they had a broken leg, who decides if that is an adequate excuse or not? Would it be the Commission, or are you just going to accept it at face value and give them a certain amount of time to proceed?

Paul Deyhle:
If there was a reason such as a broken leg or a sickness, then a district judge would have a letter excusing them and that would be fine. We would not even be involved if that was the case. It is only in situations where a district court judge does not provide that letter of excuse.

Assemblyman Fumo:
I am going to confuse the Judicial Branch with the Executive Branch for a moment, but right now, we have an attorney general chief of staff who has been given an opportunity, for two years, to take the Nevada bar exam and he has refused or failed to do so. Do we have anything in the Executive Branch where we could order his removal? Is there a procedure set up for someone who fails to follow procedures?

Paul Deyhle:
Are you referring to a judge or within the Executive Branch? I am not aware if there are any procedures in the Executive Branch to remove someone in that situation.

Chairman Ohrenschall:
Assemblyman Fumo, I appreciate the question, but please limit discussion to the current bill.

Assemblyman Fumo:
I was just wondering if two years would be an acceptable excuse for a judge to not follow the requirements?

Paul Deyhle:
For example, if the judge had not taken the class for two years?

Assemblyman Fumo:
Right.

Paul Deyhle:
I do not know if that would be the case, because right now the statute says it is for newly-elected or appointed judges. They have to take mandatory instruction at the beginning of their term, so I think two years would be a little too long. I am just speaking on my own behalf, however.

Assemblyman Fumo:
Would you say this is a little excessive?

Paul Deyhle:
Yes, but that is not my decision to make.

Assemblyman Fumo:
Thank you.

Assemblyman Thompson:
Usually when we bring forth a bill, it is because something is trending or there is a problem going on. Is this bill the result of an isolated incident that occurred where perhaps we may have just talked to the judge, or do you have a sense there is a trend of judges not complying?

Paul Deyhle:
Assembly Bill 28 came about over the last couple of years. This situation does not occur often. We decided to put forth this bill because judges and other litigants were notifying us that their colleagues were not attending these classes. The statute says that you have to forfeit your office, so a lot of these litigants or judges—or complainants, if you will—expected the Commission to simply remove these judges because the statute says you forfeit your office if you do not attend and do not get a letter of excuse. The Commission was uncomfortable with that because there was no due process. We had some commissioners who felt that the statute says what it says so we should just issue an order to forfeit. Other commissioners viewed that as premature and wanted to give the judge due process. Our statute, right now, is written in such a way that the only way we could do that is to file a formal statement of charges and have a trial. That is why the need arose for this bill.

Assemblyman Pickard:
I do not practice in justice court so this issue is not really on my radar screen. When I first read this bill and saw that it was an addition of due process protection, I thought it was great. Is there an intermediate step that might be appropriate as we go through this process? I say this because automatic forfeiture of an elected official, in my view, is a big step. Is there any consideration for withholding a judge's income and not allowing them to sit until they complete their education? Might there be an appropriate intermediate step before we ask for forfeiture? Was that considered?

Paul Deyhle:
No, that was not considered. We are working within the confines of NRS Chapters 4 and 5. The Commission looks to those chapters and reads those provisions, and those chapters give the Commission the authority to work within those parameters alone. The statute just says to forfeit. Unless NRS Chapters 4 and 5 were amended, we would have our hands tied at that point.

John McCormick:
At the AOC, we do a lot of work with judges when they first take the bench. We inform them multiple times of the education that they are required to take. If we work closely with the National Judicial College (NJC), if we notice that judges have not signed up, our judicial education department contacts the judges directly and works with them. A number of steps are taken prior to the judges even taking the bench to make sure they know they have to take mandatory education. The AOC actually pays for the course and the NJC reimburses the judge for their expenses. There is a whole process to inform the judge or the judge-elect of the requirement and to ensure that they go to class before we would even get to this point. There is a lot of work done on the front end.

Assemblyman Pickard:
Since we are making a change for the better, I think it would be appropriate to also give judges an intermediate step with a shortened time line. I am familiar with what a judge has to go through in terms of training. What if there was an intermediate, short-term step saying that a judge cannot take a case or get paid until he or she takes this class? We could maybe give them 30 days and then move to a forfeiture. To me, it just seems like a gradual step is a more appropriate way to accomplish this. I am not a court administrator, however, so I do not know.

Paul Deyhle:
I believe NRS Chapters 4 and 5 would have to be amended in order for the Commission to consider that avenue. Right now, it says if you do not do this, you forfeit your office.

Chairman Ohrenschall:
Thank you very much.

Assemblyman Wheeler:
I come from a small community where oftentimes justices of the peace are elected without being barred. There is no requirement for it, much like the Attorney General's staff. There is no requirement for justices of the peace to be barred. I understand why they need this training, do not get me wrong, but these are elected officials just like everyone sitting up here. I think that allowing a commission to remove judges should be a very high bar. On its face, I am not thrilled with this bill. I think Mr. Pickard came up with a good intermediate fix. I would feel better if we had a step that allowed us to say, "Okay, you messed up, but we know that your people want you in office."

Many times, in these small communities, people vote for certain candidates because they are not attorneys, because they are local members of the community. I agree with Mr. Pickard. I think there should be an intermediate step in there, and I would be able to support this bill if there was one.

Chairman Ohrenschall:
If I may clarify: currently, the Commission can remove a judge?

Paul Deyhle:
Yes, and we have exclusive jurisdiction to remove judges.

Chairman Ohrenschall:
Therefore, this legislation would actually provide more due process for that judge that might miss the course.

Paul Deyhle:
Yes, that is correct. As it is right now, there is no due process.

Chairman Ohrenschall:
Thank you.

Assemblyman Elliot T. Anderson:
I understand that forfeiture is an important option in some cases, but as far as missing training, this seems to be a huge thing to do for something that seems pretty basic to me if you have a scheduling issue or something. I understand that your office is not likely to exercise that discretion for a legitimate excuse. My only power—and this Committee's only power—is to write what the law is. I do not see anything that restricts your discretion in this bill. All the law says is that you have to reasonably believe that a judge did not show up. I would like some more language in A.B. 28 to tighten it up. To be clear, you were saying that you have the power, right now, to cause someone to forfeit their office if they miss a training?

Paul Deyhle:
The Commission generally has exclusive jurisdiction to remove a judge. *Nevada Revised Statutes* (NRS) Chapters 4 and 5 speak to that directly. The Commission is not advocating to remove a judge simply because they did not take a class. That is the existing law, at the moment, under Chapters 4 and 5. The Commission got into this issue because cases were being referred to the Commission and we were receiving complaints that judges were not attending these classes. The Commission therefore looked to the statutes, and the statutes say that if you do not attend, and you do not get a letter of excuse, then you forfeit. While the Commission has the authority to remove a judge, there is no due process. Right now, the law calls for forfeiture; it does not call for intermediate steps. The Commission cannot consider anything else unless those statutes are amended. If the Legislature wishes there to be intermediate steps, we would certainly follow those procedures.

Assembly Bill 28 calls for notice and an opportunity to respond in a hearing. Any decision of the Commission can be appealed through the Nevada Supreme Court, which would have the final say. The way the statutes are written, I am not sure about an intermediate step,

and the statutes in Chapters 4 and 5 are not part of NRS Chapter 1. As of now, we just have to interpret the statutes as written.

Assemblyman Elliot T. Anderson:
I understand that this is the existing law and I appreciate that you are trying to provide due process with this bill, but what is there for the Supreme Court to review? There is nothing that restricts your discretion. It looks to me that this law already gives you full discretion to make your decision.

The Supreme Court's standard is abuse of discretion. That is a pretty generous standard because there is nothing in the law that ties down your discretion. It just says you must have a reason to believe that someone did not attend. What if language about reasonable belief without a substantial, or sufficient, or significant, or reasonable excuse were added to tie the Commission's discretion down? That is a generous standard. You have unfettered discretion. I would prefer adding language that says you have to make findings as to whether a judge has a reasonable excuse, and I do not see anything written in there. I think that would be necessary to tie down the Commission's discretion.

Paul Deyhle:
If it is the desire of the Committee that an amendment be filed along those lines, then we will certainly consider it.

Chairman Ohrenschall:
The proposed language of the bill, in section 1, says that with any move to forfeit a judge's office by the Commission, the judge would be entitled to a full hearing. Is that correct? Would the judge be able to put up a defense? If the judge had a reasonable excuse such as a child's illness on the East Coast, which required the judge to travel, could that be presented at the hearing mentioned on page 2, lines 11 through 15?

Paul Deyhle:
That is correct.

Assemblyman Elliot T. Anderson:
I understand that judges would have an opportunity to present a defense, but there is nothing in the law that says the Commission has to accept that defense. There is no law tying down their own discretion. The only standard I see concerning the hearing is "a reasonable belief" that they failed to attend the instruction. If it said a reasonable belief that the justice or judge failed to attend the instruction without a significant or reasonable excuse, then that would require the Commission, as I understand it, to accept that defense. It would create a law that the excuse serves as a defense. Right now, there is nothing in the law that says the Commission has to accept that defense, should it be presented. I am asking for something that ties down the Commission's discretion and requires them to consider those excuses. Under the law that is being proposed, there is no requirement to review excuses and make findings as to the excuses.

Chairman Ohrenschall:
I appreciate your comments. You made several good points and I am sure the Committee will consider them.

Assemblywoman Jauregui:
In section 4, subsection 1 of A.B. 28 it says, "The Commission may remove a judge, publicly censure a judge or impose other forms of discipline. . . ." What is the purpose of censuring the judge if you are already removing him or asking him to forfeit his seat?

Paul Deyhle:
That is the statute as it is currently written. This would not apply to this situation with the mandatory instruction.

Assemblywoman Tolles:
In the interest of full disclosure, I want to let you know that I am on the faculty at the National Judicial College (NJC). My question is similar to many of the other questions so I will try not to belabor the point. In section 1, subsection 1, paragraph (a), where did we come up with the "Seven days' notice of its intention. . ."?

Paul Deyhle:
I believe this mirrors the statutory language in NRS Chapter 1 regarding suspensions. As it is right now, if the Commission wants to suspend a judge pending a formal statement of charges, we also provide seven days' notice so there is an opportunity to respond and have a hearing. In the case of causing the forfeiture of a judicial office, I believe we would use the same language.

Assemblywoman Tolles:
Sections 4 and 5 are two areas we can look at for options to amend this bill. Would it also be possible to look at a longer notification process? Could we also address some of Assemblyman Elliot T. Anderson's suggestions about additional language that would actually bring true decision-making to the Commission's process so they could actually hear a defense and delay forfeiture? If a judge had a reasonable excuse for not attending instruction, could they make it up in the next round of course offerings within a reasonable period of time?

Paul Deyhle:
Yes, if the Committee wishes to extend that period, I do not think that would be a problem. I want to point out that the Commission will only be in this situation if the judge does not receive a letter of excuse. If the judge approaches a district court judge and says they need a letter of excuse because someone died, they were sick, or they had a broken leg, the judge would have to deny that request before it would even get to us.

Assemblywoman Cohen:
I would like some information about what is required of our district court judges, our appellate court judges, and our Supreme Court judges, as far as education. I do not need specifics, but I would like to know if they are required to take educational courses, and how this compares to the standards for lower court judges.

John McCormick:
District court judges have mandatory education requirements set forth in NRS Chapter 3. Off the top of my head, I cannot necessarily recall the specifics. They have to take a similar course at the NJC for the general jurisdiction level, as opposed to the limited jurisdiction level. Judges who have family jurisdiction—such as family judges—in counties with a population over 100,000, or the sitting district judge in a county under 100,000, have to take a family-law-specific course within a specified period of time. Without having NRS Chapter 3 in front of me, I do not recall what that time period is. I do not know that there are specific education requirements for the appellate level in statute.

Assemblywoman Cohen:
Does this mirror what is in the statute for district court judges, as far as not completing the coursework?

John McCormick:
As I recall, there is no specific forfeiture provision in NRS Chapter 3 concerning district court compliance; it is more open-ended.

Assemblywoman Cohen:
Why does the bill not cover all of our judges? Am I missing something? Why is there a difference?

John McCormick:
As Mr. Deyhle said, the intent of A.B. 28 was very limited, meant to address a situation that occurred, and to provide due process in the context of NRS Chapters 4 and 5. There has not been a discussion around amending district court statutes as created by the Legislature. That was not included in this conversation.

Chairman Ohrenschall:
Thank you very much.

Chairman Yeager:
This bill talks about municipal court judges and justice court judges. If I am not mistaken, I think the requirement to run for those offices is being licensed for five years as an attorney. Correct me if I am wrong, but I believe that the intent of the already existing statute in NRS Chapters 4 and 5 is to make sure that individuals who do run for office and win have adequate training to be able to do the job as justices of the peace or municipal court judges. Is that correct?

John McCormick:
That is my understanding. As a point of clarification, the specific classes that are referenced here usually only take place once per year. If they miss that one class, it is a big deal and I think that is why the required excuse is included in the law.

Chairman Yeager:
I realize that I misspoke; in some parts of the state, you do not have to be barred to run for justice of the peace. Nevertheless, I think we would like our justices of the peace to be trained to do the job.

Is there any time, in recent memory, when the Commission has exercised forfeiture of a justice of the peace or municipal court judge for failure to take these courses?

Paul Deyhle:
No.

Assemblyman Thompson:
I have a question about section 1, subsection 1, paragraphs (a) and (b). It seems like there should be an extra step there where it says that the judge has an opportunity to respond. This goes back to what Assemblyman Elliot T. Anderson and Assemblywoman Tolles were talking about. We need to be very clear about what way the Commission will respond. Do they need to issue a corrective action or something similar? If they do, everything should be done at that point.

Also, in subsection 2, once the judge responds, do they automatically go before a public hearing just to state their cause?

Paul Deyhle:
Yes. As I said, the language mirrors the statutes surrounding when you are going to suspend a judge. The statute requires the hearing to be public, and since we are going to forfeit their office, that would be public as well.

I would like to answer your question regarding the form that the opportunity to respond takes. When the Commission sends out a letter to suspend a judge, that letter has to be made public. The judge in that case can respond and can respond with a letter. There is nothing under the statute that specifies what form it has to take. We are not answering interrogatories at that point; when the judge receives the notice, they have an opportunity to respond. They can submit a brief, a letter from an attorney or themselves, and then that is all taken into consideration. They can make whatever defenses they want at that point and then it is further discussed at the hearing.

Assemblyman Thompson:
It just seems like it is too soon to be forfeiting that judge's office right there. There should be a step in the middle. Let me give a scenario. Say that you live in a

homeowners' association and you have weeds in your yard. They send you a notice and tell you that you have x amount of days to comply, or send a corrective action, before they go to the next step and do something more intrusive. I feel like there needs to be a similar step before the hearing and forfeiture. I hope there is an opportunity to talk about some type of amendment, because I think there should be a step before a judge is automatically removed from office.

Paul Deyhle:
Unfortunately, NRS Chapters 4 and 5 are restrictive because of the language of forfeiture. If you do not take the class and you do not get a letter of excuse, you are forfeited. The Commission is in a difficult situation in that regard because some of them read the statutes literally and issue the order. Others would say that it is too soon, which was your concern. As it is right now, there is no procedure at all, and maybe this is the beginning of that conversation. If the Legislature wishes to extend that period and provide intermediate steps, so be it. The way NRS Chapters 4 and 5 are written at the moment, however, does not give us many options.

Chairman Ohrenschall:
You stated before that a judge who missed an educational session can let the Commission know of the family emergency, medical emergency, or whatever happened, before it ever gets to a hearing. Is that correct? If that happens, and the Commission accepts the excuse, the Commission would not necessarily proceed into any kind of hearing to seek forfeiture.

Paul Deyhle:
That is correct. I cannot think of a situation where a judge would have a legitimate excuse for not attending and the district judge would not give that letter of excuse, unless the judges did not get along—that is possible. Another possibility could be that the district judge had information that the judge in question was lying or something of that nature. It will not get to the Commission unless the district judge has not given that letter. For example, if the district judge refuses to give that letter, for whatever reason, those circumstances would be discussed and addressed at the hearing. If the judge gives the letter, we do not get involved. The Commission only gets involved if the judge cannot obtain a letter of excuse.

Assemblyman Elliot T. Anderson:
I do not want my point to get lost. Is there anything in the bill that forces you to accept that excuse?

Paul Deyhle:
No.

Chairman Ohrenschall:
I do not see any other questions from members. Is there anyone else here who would like to speak in favor of A. B. 28? [There was no one.] Is there anyone in Carson City

or Las Vegas who is opposed? [There was no one.] Is there anyone who is neutral on A.B. 28?

Tonja Brown, Private Citizen, Carson City, Nevada:
I am Tonja Brown, and I am an advocate for the innocent. There seems to be a grey area in dealing with the Commission on Judicial Discipline. For example, someone was running for Reno municipal judge last year. I knew information about this individual and it is actually detailed in my book. She never denied that she committed perjury in Mr. Nolan Klein's case.

Chairman Ohrenschall:
Ms. Brown.

Tonja Brown:
I am getting to my point. To bring out the truth about what this person had done in this particular case, I protested out in front of her office.

Chairman Ohrenschall:
Ms. Brown, I would appreciate it if you would refrain from naming names. If you are able to speak to A. B. 28, that is fine. Otherwise we have public comment at the end of the hearing.

Tonja Brown:
I will be leaving after this. This person was running for Reno municipal judge. I was protesting out in front of her office with a sign detailing what she had done, about this perjury. She became so angry that she took my sign and threw it out into the public street, into oncoming traffic. She jeopardized the safety and well-being of the drivers and the person who had to go out and retrieve it. I wound up filing a police report, and just prior to the election, it was turned over. The detective said that what she did was wrong. It was turned over to the city attorney's office prior to the election. This person was elected to be Reno municipal judge and to this day, I have not heard the outcome from the city attorney's office. There seems to be a conflict of interest.

Chairman Ohrenschall:
Ms. Brown, I appreciate your dedication and activism, but I think this might be more appropriate in public comment, unless you have something to say specific to A. B. 28.

Tonja Brown:
There is nothing anywhere dealing with the Commission on Judicial Discipline, when you are dealing with someone who is running for office, and something happens during that time, and then they become a sitting judge.

Chairman Ohrenschall:
Ms. Brown, I appreciate your concern, but this is appropriate for public comment.

Tonja Brown:
My comment also applies to the next bill. I think this is an area that should be looked into, because the Secretary of State also cannot do anything because it does not fall under the regulations of judicial discipline.

Chairman Ohrenschall:
Thank you. Are there any closing comments? [There were none.] We will now close the hearing on A.B. 28 and we will open the hearing on Assembly Bill 37, which revises provisions relating to justice courts and municipal courts.

Assembly Bill 37: Revises provisions relating to justice courts and municipal courts. (BDR 1-397)

John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts:
Assembly Bill 37 is a bill that pertains to urban jurisdictions for justice court and municipal court. Currently, when a request to disqualify or a motion to disqualify a judge is filed against the justice of the peace, the statute requires that a district judge consider it. This works in rural Nevada; however, in urban jurisdictions such as Las Vegas Justice Court, it is a very inefficient process. If someone files a motion to disqualify a judge in Las Vegas Justice Court, that motion has to be considered by Chief Judge Gonzalez at the Eighth Judicial District Court. This bill is designed to require urban municipal justice courts to have a chief judge, and for that chief judge to be the one who handles the motion to disqualify, just like at urban district courts. It is a measure that deals with judicial efficiency and allows those motions to be handled at the justice court or municipal court level, rather than going up, taking up the district court's time, and then coming back down.

Chairman Ohrenschall:
I appreciate your comments. Could you go over this bill, section by section?

John McCormick:
Section 1 makes conforming changes so a justice of the peace or municipal judge in an urban jurisdiction with a chief judge can respond to a motion to disqualify. This bill mirrors existing provisions, and section 1 clarifies the language to allow the urban justice courts to set up that procedure. Section 2 and section 3 require those urban limited-jurisdiction courts to have a chief judge to handle the motion to disqualify procedure provided for in section 1.

Chairman Ohrenschall:
I appreciate that clarification. Thank you very much.

Assemblyman Hansen:
I am curious about how the process in section 2 works now. Sparks, Nevada, just added a third judge so they would now fall under the urban jurisdiction. Is this a mandatory

requirement, and why do they need to do this? Do judges just work it out on their own right now? Is there a problem we are trying to solve with this bill?

John McCormick:
Currently, these motions go up to the district court for consideration. Since Sparks is now included, the judges would have to pick a chief judge among the three of them. It would actually increase the efficiency and ability of the court to respond to those motions. The motions would stay with them; they would not have to send the motions to district court.

That is the problem we are trying to solve in the urban jurisdictions. I believe there are 14 judges at the Las Vegas Justice Court, so there are just more motions to disqualify. These motions take up more district court time at that level. This bill would bring those motions back down to the justice court level and allow the justice court to manage its own house.

Assemblyman Hansen:
Does the bill do more than just what is mentioned in section 1?

John McCormick:
Yes.

Assemblyman Hansen:
This bill allows justices of the peace and municipal court judges to assign cases, hours, and things like that. This new chief justice basically runs the court. Currently, do you have to go to district court to get approval to do those sorts of things?

John McCormick:
I misunderstood your question. Let me try to use Sparks as an example.

Assemblyman Hansen:
That is the jurisdiction I am interested in because it is new to this situation.

John McCormick:
Justices Kevin Higgins, Chris Wilson, and Jessica Longley would work together to figure it out. This bill just formalizes the position of the chief judge. Generally, chief judges get input from all their colleagues before making any decisions. The language in section 2 actually copies the language for the presiding district court judge in NRS Chapter 3.

Assemblyman Hansen:
So they would be following the same procedures, but moving it down to the justice of the peace level?

John McCormick:
Correct.

Assemblyman Hansen:
Is there any opposition from anybody that you know of? If I called the Sparks judges and asked if they were okay with this bill, would they be okay with it?

John McCormick:
To the best of my knowledge, yes. I have talked with Judge Higgins. When we discussed this bill within the confines of the judicial council, there were no concerns brought up in that context. It was really a matter of improving our efficiency in dealing with these matters.

Chairman Ohrenschall:
You mentioned efficiency. How much time do you think would be saved by not having to go to the district court judges if this bill passes?

John McCormick:
I do not know that I can say, specifically. Since motions will not have to be transferred up, they will not take up the district courts' time, and the motions will stay at the limited-jurisdiction level. I can talk to the Las Vegas Justice Court and get an estimate from them on how much time, effort, and resources they think it will save.

Chairman Ohrenschall:
I know there is an organization of the judges of limited jurisdiction. Do you know if they support this bill?

Keith L. Lee, representing Nevada Judges of Limited Jurisdiction:
I represent the Nevada Judges of Limited Jurisdiction. We have been involved in these conversations. As Mr. McCormick indicated, this bill really only applies to the courts in Washoe and Clark Counties, as well as Carson City. All the members think this bill is a good idea. Assembly Bill 37 is really about efficiency. Right now, having to send motions up to district court delays getting decisions made. Should this bill pass, jurisdictions that have two or more judges can designate one judge as a chief judge and handle that matter as well as other administration matters. It makes more sense from an efficiency standpoint to keep things at a level where the judges can deal with them virtually on a daily basis.

Assemblyman Pickard:
Earlier we raised the issue about the difference in experience level between justices of the peace and district court judges. In my mind, it gives me a sense of comfort that a person who perhaps has a little more experience is actually resolving the issue, since district court is the appellate level for any justice of the peace actions. Did your conversations with the Nevada Judges of Limited Jurisdiction include this component?

John McCormick:
Lay judges can only be on the bench in a few justice courts where this bill would apply. These courts are in Pahrump, Elko, Carson City, and—I am not completely sure if Sparks' population has crossed the threshold to require attorney judges there—

the Sparks Municipal Court. Those are the only courts that have multiple judges, where there could be a lay judge, where this would apply. In Elko County, for instance, there is one lay judge and one attorney judge. Those two judges together would decide who was going to be the chief and how they were going to proceed. In the few cases where there is one lay judge and one attorney judge, I think the experience exists at those courts to handle this appropriately.

Assemblyman Pickard:
What happens when we end up with a court with two judges, and the chief judge is the one who is being requested to be disqualified? What happens then?

John McCormick:
It is my understanding that this situation would have to go to district court.

Chairman Ohrenschall:
There would still be an avenue to district court if there was a situation where the chief was being biased.

Assemblywoman Cohen:
We are talking about litigants alleging bias and prejudice. Sometimes these are very heated issues that are coming up, not just administrative issues. My concern is that, especially in smaller areas that are still considered urban but have smaller courts—and not to impugn any municipal judge's or justice of the peace's ethics or integrity—we are talking about smaller offices where we have just a few judges or justices working together. They are being asked to make determinations about whether or not someone they work with very closely is biased. That raises some concerns for me. Even in the larger jurisdictions, this raises concerns for me. In the smaller jurisdictions, though, you can have an office with two or three justices of the peace. They are clearly working very closely together. Was any consideration given to that?

John McCormick:
For lack of a better term, that is a sticky situation and one that is difficult to handle as-is. In district court jurisdictions that have two judges, such as Lyon County, there is an avenue to have the Supreme Court look into it. If the situation became so onerous or contentious at the justice court or municipal court level, they could ask the district court to go ahead and take care of the issue.

Assemblywoman Cohen:
Part of the concern I would have with that is that litigants take civil cases to municipal courts because they deal with small amounts of money. These are not the types of cases where litigants have the money to keep proceeding up the chain because it is very expensive to have your attorney file these motions. It becomes more expensive to appeal the motion to district court if there is an issue. It costs money to litigate a case. We specifically have justice court for these lower-cost cases so that we can attempt to save money for litigants.

John McCormick:
Currently, as practiced, situations such as the one you mentioned have to go to the district court and would need to be appealed to the Supreme Court. In a scenario where a litigant did not agree with the district court judge concerning a disqualifying motion, this bill brings that decision down one level, to hopefully get a quicker decision made. The same problem either currently exists or is inherent in the appeals courts.

Assemblywoman Cohen:
I appreciate that and I understand what you are saying. I think any time we add an extra level or layer that litigants have to go through on lower-cost cases, we end up increasing the cost immensely. We will be keeping some litigants out of the court, and that concerns me.

Chairman Ohrenschall:
Thank you, Assemblywoman Cohen. I appreciate that you are trying to balance efficiency and cost with trying to get these issues decided instead of having to wait for them to go to district court.

Assemblywoman Krasner:
Building upon what Assemblywoman Cohen just said, is the current procedure that a higher court reviews any complaints of bias involving a lower court judge?

John McCormick:
District court is a higher level, and currently considers situations where litigants are moving to disqualify a judge based on an accusation of bias. An appeal from justice or municipal court would go to district court, and then to the Supreme Court for either the court of appeals or the Supreme Court itself to hear.

Assemblywoman Krasner:
This current proposal would then allow a justice who works side-by-side in the same court to determine whether their coworker is biased?

John McCormick:
Yes. This is no different from what currently exists at the district court level. This bill applies the district court procedure to the larger justice courts. If someone filed a motion alleging bias in district court right now, it would be considered by the presiding district court judge, just as under this proposal it would be considered by the presiding justice or municipal court judge. For the district court level, there currently is no higher level of court making these decisions. It is only at the justice court level. Quite honestly, these motions do not occur all that often in the smaller justice courts. It is more of an issue in the urban justice courts.

Assemblywoman Krasner:
The public may view this situation as if one coworker is judging another, and coworkers usually get along. It might seem, to the public, like there was no neutral, higher-court judge making a decision on whether there was bias, or whatever the complaint may be.

Chairman Ohrenschall:
Are there any other questions from the Committee? [There were none.] Is there anyone else who wishes to speak in favor of A.B. 37? [There was no one.] Is there anyone who would like to testify in Carson City or in Las Vegas? [There was no one.] Is there anyone who is opposed? [There was no one.] Is there anyone who is neutral? [There was no one.] I will close the hearing on A.B. 37, and we will open the hearing on Assembly Bill 63, which revises provisions relating to court interpreters.

Assembly Bill 63: Revises provisions relating to court interpreters. (BDR 1-393)

Robin L. Sweet, Director and State Court Administrator, Administrative Office of the Courts:
I am a state court administrator and the director of the Administrative Office of the Courts. Today we bring forward language in Assembly Bill 63 largely to put into statute what we have done for 15 years. Since the inception of the certified court interpreters program, we have done background checks through the Department of Public Safety as part of the process of certification. What happened is that there was an audit, and we found that we did not have the statutory authority to be doing those checks. This bill mirrors the statute language from *Nevada Revised Statutes* (NRS) 391.033 and will give us the authority we need with the Department of Public Safety (DPS) to continue doing background checks.

We currently have 107 certified interpreters. They have to renew their certifications every three years, and they have to have their background checks redone for that renewal. We have two or three new interpreters who qualify through the process every year, and they need the background checks. It is not a large volume, but it is an important element of the certification process. The issue is that we have had interpreter applications where we found gross misdemeanors or felonies in other states. We are currently doing background checks through a private company under state contract, but they do not do interstate checks. They only check in Nevada.

If this bill does not pass, we will have to continue to run in-state background checks only. We will not find out if somebody has a problem in another state. Because the numbers are so small, we have been able to absorb these costs into our budget, but we will have to pass that cost on to the interpreters if we have to continue with the private firm.

Chairman Ohrenschall:
Will any conviction disqualify an interpreter, or are there only certain convictions that will? Does the age of the conviction or the circumstances of the crime affect whether you might still allow someone to work as a certified interpreter?

Robin Sweet:
Crimes of moral turpitude are basically the ones that would disqualify an applicant. Anything else, such as driving under the influence (DUI) from 20 years ago, a speeding ticket, things like that, are not included. We realize that everybody may do those things. If there is something that is borderline, we will bring it to our executive committee, to meet and discuss the merits of the case. Sometimes these applicants are allowed in and sometimes they are not, but it is not common.

Assemblywoman Jauregui:
You said you have 175 interpreters?

Robin Sweet:
No. We have 107.

Assemblywoman Jauregui:
How many of those are Hispanic? What is the language used most frequently?

Robin Sweet:
We have 82 Spanish interpreters that are certified. Ten are at the master level, which is a higher level of certification. We have one each in Vietnamese, Portuguese, and Mandarin. We have one at the master level in Vietnamese, and we have 10 who speak languages such as Hindi, German, and Japanese.

Assemblywoman Jauregui:
What is the purpose of doing the fingerprints, if they have not been done before?

Robin Sweet:
They have been done. We have been doing fingerprinting for 15 years, since the program's inception. We did not have the statutory authority, and it was bad when the Department of Public Safety (DPS) had their audit. We were doing fingerprinting under the auspices of our interpreters as Supreme Court employees, without thinking about the fact that they are technically not Supreme Court employees. When DPS did the audit they found that this statutory authority did not exist, and instructed us that we need to add it.

Assemblywoman Cohen:
I believe there is a lot of crossover in most jurisdictions, with federal interpreters interpreting in the state courts. Is that correct?

Robin Sweet:
I know of a few, but I cannot say it is common. If an interpreter has a federal certification, there is an obvious allowance for them to be in our state courts.

Assemblywoman Cohen:
Is there a way for federal interpreters to waive in and not have to get the fingerprinting done? I would like to save people time by not having to do the same thing twice, once for the federal government and again for us.

John McCormick:
I believe it is a mirror process for interpreters who are federally certified. If they wanted actual reciprocity, such as to get federally and state-certified, they could go ahead and ask for that. There is discretion with the Court Administrator in that process. Obviously, if they are federal interpreters, they can prove that they are certified. Federal is a pretty serious level of certification.

Assemblywoman Cohen:
Would you be averse to adding something about allowing that reciprocity?

Robin Sweet:
No, I would not be opposed to that. We already have a set of guidelines that discuss federal interpreters. I know of interpreters who are federally certified; they do not ask for Nevada certification. Once you have the federal certification, you have done far more than state certification. Therefore, most of them do not want to also have the Nevada certification.

Assemblyman Thompson:
What are the non-qualifiers for people who want to be an interpreter? There is a movement in the United States called "Ban the Box," that requires that people do not have to initially disclose whether they are a person with a criminal record. Can you share with us some of the things that would disqualify a candidate?

Robin Sweet:
Some of the crimes might be a crime against a child, elder abuse, and other crimes against a person—serious ones. Again, DUI crimes committed when a candidate was a child or a teenager: these are examples of what would not be included.

Assemblyman Thompson:
Would it be problematic for the person to go through the interview process and then submit their fingerprints if offered the job? Is there a firm reason why the fingerprinting has to be done on the front end? Would that not automatically disqualify people if they have some of the offenses that you just mentioned?

Robin Sweet:
Our certification program is one where the person is interested in applying. They want the job. They want the certification because they want to work in the courts or other areas. They want to be able to say that they meet the minimum qualifications for the certification or for the master levels. Fingerprinting is a part of the process and they recognize that. We do not ask for fingerprints until the very end. By the time they are doing the final request

for certification they have taken a two-day seminar on interpreting that includes ethics. They have taken and passed a written exam at 80 percent or better. They have taken an oral exam, which has three pieces: a simultaneous, a consecutive, and another component which I cannot recall. They have passed that exam with a score of at least 80 percent. They have committed to this process and they want that certification. At that point, the fingerprints are just a part of the routine.

Assemblyman Thompson:
How can a person who may have a criminal record be given a fair chance? If they give you their fingerprints, and they know there are some things that are somewhat questionable on their fingerprints, will the applicant automatically be excused? I know you will have to give a subjective answer, as it is probably case-by-case.

Robin Sweet:
No, they will not be automatically excused just because they have something in their background check. If they have something that is not in the obvious child-abuse kind of category and needs a decision, we go to the executive committee to help. The committee also has interpreters on it and they can help make decisions, whatever the issue is. Whatever is in their background, our committee can decide whether it is something that does not matter or does not apply, or if it is something that we really need to take into consideration.

Assemblyman Pickard:
I want to commend the courts for the interpreters that you have. My clients have used them. I am constantly amazed at how they can hear in one ear and talk at the same time; I find that phenomenal.

I notice that the bill says there is a fiscal impact, but none of the notes suggest there is. If we are shifting from a local-only contract basis to an interstate arrangement, are there costs associated with this that we need to be aware of?

Robin Sweet:
We have already been doing full background checks. It becomes a burden if we do not pass the bill, as we will have to continue using in-state contracts only. We have a lesser product in the background check because it is in-state only. In addition, we will have to pay a private company and will have to pass that cost on.

Assemblyman Pickard:
I want to make sure I understand. Are you already doing interstate background checks, just through a different path, or are you restricted to in-state-only background checks? If you are restricted only to the in-state, is there a cost to shift to an interstate review?

Robin Sweet:
We were doing interstate background checks until the audit. When the audit found that we did not have the statutory authority, we had to switch to in-state only.

John McCormick:
I want to provide a little clarity with the issue of the audit. The Department of Public Safety did an internal audit to make sure they were in compliance with the Federal Bureau of Investigation's (FBI) rules for background checks. They found that we did not have the specific statutory authority because we have more of a professional licensing relationship with our interpreters than a direct employee relationship. I worked with the Department of Public Safety to create this bill. The language has already passed by the FBI; the specific language satisfies their requirements so we can resume doing the background checks in that manner when we pass the bill.

Assemblyman Pickard:
Thank you. Your explanation clears up a lot for me.

Chairman Ohrenschall:
Are there any other questions from the members? [There were none.] Is there anyone else here in Carson City who wishes to speak in favor of A.B. 63? [There was no one.] Is there anyone in Las Vegas who wishes to speak in favor of A. B. 63? [There was no one.] Is there anyone opposed to A. B. 63? [There was no one.] Is there anyone who is neutral? [There was no one.]

I will close the hearing on A. B. 63, and I will open the meeting for public comment.

Tonja Brown, Private Citizen, Carson City, Nevada:
I spoke earlier on Assembly Bill 28 and I would like to apply that to A. B. 37. I just now sent the Committee some information about what I said, regarding the Judicial Discipline Committee. There are also a lot of great points in our book, *To Prove His Innocence*, which has just been released. I took a couple of pictures from the book and I also sent you a picture of the sign of which I spoke. I will not name the person, but I sent the Committee the sign which said that she committed perjury to protect her career at the expense of an innocent man. That is the sign that she took and threw out into the street. There is also some other information about where it took place which you should know, which is also in the book.

The Reno city police detective said that what she did was definitely wrong. My case went over to the city attorney's office, which is a conflict of interest. This city attorney happened to have been the attorney who, in 1992, sat on my perjury complaint against the attorney until the statute of limitations ran out.

This is how the system works. You do not get a court to address any of this. When you do get a court to address something such as, for example, ineffective assistance of counsel, the public defender or the attorney will commit perjury. Unless they have been charged or convicted, nothing happens. I will tell you that in the 1990s, that particular judge had received a copy of the perjury complaint. It was grounded in a writ of habeas corpus that Mr. Klein had filed. That was in his order.

It was not as if we did not try. The Washoe County District Attorney's Office would not bring charges against this attorney for the perjury she committed during a post-conviction hearing. We had done everything possible. We went through the state bar and the Commission on Judicial Discipline. We went through every avenue that we could, only to be told, "No."

This is what happens. This is why we have innocent people in prison and why courts do not address all the issues that were brought up earlier, in other meetings, about ineffective assistance of counsel.

This book gets into everything, actually. You can compare it to "Making a Murderer." You will see the evidence that was withheld; you will see that attorney's perjury. You will see the complaints, even going to the Attorney General's Office who said, "Sorry. The statute of limitations has run out."

When I brought this forward during a protest when she was running for Reno municipal judge, this is what happened. There is no area in the law that covers things like this, whether it is the Commission on Judicial Discipline, the state bar, the state courts, or the police department. Everybody is passing the buck on to some other agency, and nothing ever gets done. If you really want to know how the system works, how our parole board works, and the injustices that are done in cases in Nevada and throughout the country, read *To Prove His Innocence*. Thank you.

Chairman Ohrenschall:
Thank you for your patience and your public comment.

Is there any other public comment here in Carson City or in Las Vegas? [There was none.] This meeting is adjourned [at 9:26 a.m.].

RESPECTFULLY SUBMITTED:

_____
Devon Isbell
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chairman

DATE: _____

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.