

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
February 19, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:03 a.m. on Tuesday, February 19, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Committee Counsel
Jenny Harbor, Committee Secretary

OTHERS PRESENT:

Ben Graham, Administrative Office of the Courts, Nevada Supreme Court
John McCormick, Assistant Courts Coordinator, Administrative Office of the
Courts, Nevada Supreme Court

CHAIR CANNIZZARO:

I will open the meeting with a presentation by Ben Graham and John McCormick.

BEN GRAHAM (Administrative Office of the Courts, Nevada Supreme Court):
I am here on behalf of the Administrative Office of the Courts (AOC) to present an overview of Nevada's Judiciary ([Exhibit C](#)).

I was with the District Attorney's Office for approximately 30 years before joining the AOC. I taught at the University of Nevada, Las Vegas, the community college in Las Vegas for 29 years, and have been at every regular and special session since 1991.

Different types of courts take cases depending on where the crime happened and what penalty authority the court has. Slide 2 shows a map of the 11 judicial districts in the State. The Eleventh Judicial District Court combined Mineral, Pershing and Lander Counties last Session due to distance issues.

Judicial districts deal with courts of record and are primarily staffed with district court judges, who hear mainly felony cases and significant civil actions.

Slide 3 outlines Nevada's court model and structure. Below district courts are justice and municipal courts.

There are 40 justice courts throughout the State. Traditionally, justice courts are located outside city limits—that is where misdemeanor cases go to trial for disposition. As an example, traffic citations are handled in justice courts. If a person receives a citation outside the geographical boundaries of Las Vegas in Clark County, the case may still end up in a justice court in Las Vegas.

JOHN MCCORMICK (Assistant Courts Coordinator, Administrative Office of the Courts, Nevada Supreme Court):

Some counties have consolidated justice courts into different townships. Most recently, the Elko County Commission consolidated the Jackpot Township into Elko Township proper. When I started at the AOC, there were three Townships in Humboldt County: McDermitt, Paradise Valley and Union. Paradise Valley and McDermitt consolidated into Union Township, which is the township for Winnemucca. Consolidations are usually based on decreases in population, increases in technology and the ability to provide access to justice.

MR. GRAHAM:

Population, territorial issues and necessity are taken into consideration when determining if law-trained judges are required in justice and municipal courts.

Major felonies can start out in justice court, but if the State puts forth enough evidence to establish probable cause, they are sent to district court for trial. This could also happen with gross misdemeanor cases.

A significant amount of time and energy is devoted to traffic violations in justice and municipal courts. Legislation is being proposed this Session to adjust whether traffic citations are criminal. Municipal and justice courts will be active in these discussions.

There is no primary hearing function in municipal court.

If someone is charged with a crime, it is advisable to keep the case in justice court because he or she can only be sentenced to a maximum six months in jail. When talking about prison, we are talking about a felony in most cases.

If a defendant is found guilty of a crime and sentenced to prison, a review of his or her case by a higher court can be requested. The Court of Appeals was passed by a majority vote of the electorate. It reviews appeals from district court that were previously seen by the Supreme Court. The Supreme Court assigns cases of lesser precedential value to the Court of Appeals; occasionally the Supreme Court will examine decisions of the appellate court. No evidence or testimony is presented before the Supreme Court or the Court of Appeals; only records and transcripts are reviewed.

SENATOR OHRENSCHALL:

I need to disclose that I have known Mr. Graham since I was a child.

MR. GRAHAM:

Slide 4 of [Exhibit C](#) describes the third branch of government. We must remember that we are three equal branches of government—the Executive Branch, the Legislative Branch and the Judicial Branch—and respect and treat each other with deference. "I will see you in court" may be a promise or a threat because the Judicial Branch is meant to sort things out in a fair and civilized manner if you and I cannot.

In regard to small claims in justice court, monetary limits have increased over the years. I frequently advise people to have cases heard in small claims court when possible, as a person may be able to proceed on his or her own without spending a lot of money.

As Slide 4 indicates, the Nevada Judiciary consists of the Supreme Court, Court of Appeals, State district courts, county justice courts and city municipal courts. Years ago, the decision was made that the Las Vegas Township consists of the City of Las Vegas as well as a large surrounding area. The Judiciary now consists of approximately 15 judges in Las Vegas Township: 3 in Henderson, 2 or 3 in North Las Vegas.

MR. MCCORMICK:

There is one judge in Laughlin, one in Searchlight, one in Bunkerville, one in Good Springs, one in Overton and one in Moapa. That covers the outlying justice courts.

MR. GRAHAM:

Battle Mountain and other towns along Interstate 80 in that region deal with a large number of traffic offenses.

MR. MCCORMICK:

There are 40 justice courts in the State, with 9 of those justices of the peace also serving as municipal court judges. We will discuss this later in the presentation.

MR. GRAHAM:

Slide 5 covers the authority of the Nevada Supreme Court, also known as the "court of last resort." With potentially the highest caseload of any court in the Nation, cases are heard on a daily basis and are rarely appealed from the Supreme Court to the federal level. There were originally three justices elected to the Supreme Court, the number increased to five and now there are seven.

There are 3 justices on the Court of Appeals, and Slide 6 provides an overview. After being rejected four times before obtaining voter approval, the Legislature voted unanimously to approve the creation of this court. Whether someone is involved in a civil or criminal matter, a defendant or a plaintiff, he or she wants swift results—the Court of Appeals helps speed up the process of conclusion.

MR. MCCORMICK:

While it is granted infrequently, litigants have the right to petition the Supreme Court to rehear a decision made by the Court of Appeals.

MR. GRAHAM:

Slide 7 of [Exhibit C](#) describes Nevada district courts, which are courts of "general jurisdiction," meaning they can only generally proceed over matters and cases authorized by the Legislature. There may be a need for additional judges to keep up with caseloads and resolve issues in a timely manner.

Slide 8 covers Nevada justice courts. The most common cases—traffic citations—are criminal cases. Jaywalking citations are also considered criminal.

MR. MCCORMICK:

Approximately 80 percent of the misdemeanor cases in Nevada are traffic cases.

MR. GRAHAM:

State highways run through cities in Washoe and Clark Counties. Due to concurrent jurisdiction, traffic citations may be heard in either municipal or justice courts.

As mentioned earlier, not all justice courts require a law-trained judge.

MR. MCCORMICK:

Requirements are based on the population of the township and the size of the county. For example, all justices of the peace in Reno and Las Vegas must be attorneys. However, the justice of the peace in Battle Mountain is not required to be an attorney. It is difficult in some of the small, rural communities that may have only one or two attorneys living in them to require an "attorney judge" as the position would never be filled. We have rural, "nonattorney" judges from a variety of backgrounds—court clerks and retired law enforcement are two of the most common.

MR. GRAHAM:

Part of the benefit of living in our State is the tradition of cooperation among the Executive and Judicial Branches. For example, if a major felony case exhausts the resources of a smaller township, Clark, Washoe and other District Attorneys' Offices send assistance at the cost of expenses only. In similar fashion, municipal judges and justices of the peace will sit in other townships if there is a heavy caseload.

MR. MCCORMICK:

Looking at another important aspect of caseloads, justice courts—with the exception of Washoe and Clark Counties—hear applications for protection orders which include domestic violence, stalking and harassment, harassment in the workplace, sexual assault, and harm to minors. In Washoe and Clark Counties, family courts hear applications for domestic violence orders as part of the district courts.

MR. GRAHAM:

Slide 9 of [Exhibit C](#) deals with municipal courts.

MR. MCCORMICK:

Regarding municipal court civil caseloads, the court's civil jurisdiction is limited. For example, in Reno, municipal courts are the appellate authority over administrative decisions of the City; barking dog civil cases or utility collections cases—if it is a municipal utility—are heard in other jurisdictions. The largest increase in municipal court caseloads over the last few years has most likely been from petitions to seal records due to recent changes in statute.

SENATOR OHRENSCHALL:

Has the institution of the appellate court helped reduce the caseload and the backlog of getting cases heard in the Supreme Court?

MR. MCCORMICK:

That data is available in our annual report, and I can provide you with hard copies. The appellate court decides in approximately 1,000 cases annually, which allows the Supreme Court to produce more written opinions. At the same time, there have been an increase in filings.

CHAIR CANNIZZARO:

I will open the hearing on Senate Bill (S.B.) 6.

SENATE BILL 6: Makes various changes relating to courts. (BDR 1-497)

MR. MCCORMICK:

Chief Justice Mark Gibbons and Justice Kristina Pickering of the Nevada Supreme Court convened a committee to make changes to the *Nevada Rules of Civil Procedure*. Senate Bill 6 identifies the areas they determined statutory change was necessary. The proposed amendment ([Exhibit D](#)) clarifies the

provisions around the appointment of masters in district court in section 1. Section 1 codifies the ability of the Supreme Court to adopt rules regarding the appointment, powers, functions and duties of commissioners, masters, and referees in district court. Since the authority to appoint masters in other areas was codified in statute, it is appropriate here.

The requirements for a commissioner, master or referee pursuant to section 1, subsection 2, paragraph (a) indicate he or she must possess qualifications that are equal to those of a district court judge to ensure qualified people are performing these functions and are being supervised by a district court judge. Also, section 1, subsection 2, paragraph (b) indicates the powers masters, commissioners and referees can exercise. After a discussion with the Chief Judge of the Eighth Judicial District Court, we thought it appropriate to present an amendment clarifying that, while the Supreme Court sets broad rules for masters, commissioners and referees, specific duties in each district court would be governed by local rule to accommodate for variance in local practice and the functions of the positions therein.

Section 2 of S.B. 6 deals with the jurisdiction of justice courts. Limited jurisdiction courts mean they exercise the jurisdiction afforded them by statute. Section 2 amends justice courts' jurisdiction as set by *Nevada Revised Statutes* (NRS) 4.370 to exclude class actions from justice court civil jurisdiction. There is concern that people are trying to file a class action with a value under \$15,000 in justice courts and that justice courts are not equipped to handle class action lawsuits. Class action lawsuits are best heard by the general jurisdiction, and district courts possess the necessary expertise and infrastructure to handle those types of cases. Also, it may run contrary to the intent of this body to have class actions heard in limited jurisdiction courts.

Section 3 amends NRS 17 to allow the Supreme Court to adopt rules governing offers of judgment and the award of costs, attorney's fees and interest in those offers of judgment in a civil action. It is our understanding the Supreme Court would look at the *Federal Rules of Civil Procedure* when dealing with an offer of judgment, which is made to resolve a civil case before it goes to trial. This would allow the Supreme Court to set up rules around how those offers of judgment work in the State just as they do in the *Federal Rules of Civil Procedure*. Statutory language in this regard was removed by amendment in 2017 due, among other things, to the confusion of governance. Section 3

codifies the ability of the Supreme Court to make those rules and improve civil case processing.

CHAIR CANNIZZARO:

What is the reason for the change from the rules adopted by the Supreme Court to local rules from district courts in section 1?

MR. McCORMICK:

While the Supreme Court sets the overall rules pursuant to section 1, subsection 1, they may not work with the rules of local practice at the district court level. This would allow the district courts to govern how masters function at the local level. The language "may exercise powers and perform functions" in paragraph (b) may need to be revised.

CHAIR CANNIZZARO:

That is my concern.

Do you know how many commissioners, masters and referees there are in district courts?

MR. McCORMICK:

I do not know, but I will forward that information to Committee staff.

SENATOR SCHEIBLE:

How is the amendment in section 3 different from the original bill?

MR. McCORMICK:

The amendment in section 3 contains identical language from the bill. The only changes in our proposed amendment are indicated by purple double strikethroughs and green bold underlines.

SENATOR SCHEIBLE:

Regarding the language in section 3, would there be a conflict between the rules set by the Supreme Court and the needs and procedures for offers of judgment of district courts?

MR. McCORMICK:

This is a nuanced argument. We propose the Supreme Court sets broad rules through the *Nevada Rules of Civil Procedure*—including offers of judgment—to

provide uniformity and a framework for every district court while allowing district courts, through local rule, governance over masters, commissioners and referees within that district.

SENATOR PICKARD:

Are you asking for a codification of power that the courts already exercise? Offers of judgment are outlined in *Nevada Rules of Civil Procedure* Rule 68; there has been debate as to whether they should exist.

There has been codification of appointment and administration of masters, generally, for many years. Is this just codification to clarify the court has authority to do what they have been doing all along?

MR. MCCORMICK:

Yes.

SENATOR PICKARD:

There have been efforts to do away with offers of judgment or even with hearing masters except for procedural issues. Is this bill intended to secure those positions within the courts, or is this going to make it easier for nonlegislative bodies to make inroads into changing how we do business?

MR. MCCORMICK:

From my conversations with the justice chairing the Nevada Rules of Civil Procedure Commission, it is my understanding that this bill is intended to codify the court's authority to govern those positions. I do not believe there is any intent to allow "end runs or sideways runs" at changing some of these things.

SENATOR HARRIS:

My question centers on the authority to set rules on performing the functions and duties of commissioners, masters and referees. Do district courts have rules set? Will local rules need to be changed in order to implement these guidelines?

MR. MCCORMICK:

The Second Judicial District Court and the Eighth Judicial District Court primarily use commissioners, masters and referees, and they have established rules of local practice that govern all aspects of judicial administration and how the courts function. There are some rural district courts that have juvenile

masters—the most common use of a master—who are already governed under local rules.

SENATOR OHRENSCHALL:

Last Session in the Assembly Judiciary Committee, there was debate on a bill that came out of the Senate Judiciary Committee having to do with termination of parental rights, often referred to as the civil death penalty. One concern was over whether masters—who are well-qualified judicial officers—would be able to preside over termination of parental rights trials. From what I have read in NRS, the Legislature has given the authority to masters both in NRS 3 and NRS 125 to hear paternity cases and divorce cases. There is no statute that allows a master to hear a termination of parental rights trial; it still has to go to an elected district court judge. Does this bill delegate authority to the courts to authorize a master to hear cases beyond what is provided for in statute?

MR. MCCORMICK:

I can only speak to conversations I have had with various district court and chief judges in urban districts, and the vast majority realize the severity and the seriousness of termination of parental rights proceedings. It is a civil death penalty; no local court would want to delegate that authority to masters. It would be contrary to best practices the Administrative Office of the Courts espouse through our Court Improvement Program to improve dependency proceedings. I am open to discussions offline to ensure that is not delegated down.

SENATOR OHRENSCHALL:

There needs to be language to show that section 1 does not delegate authority beyond what is provided for in statute.

SENATOR HANSEN:

What are the job responsibilities of commissioners, masters and referees?

MR. MCCORMICK:

Masters, generally, perform routine or perfunctory duties such as hear inconsequential hearings, evidentiary hearings, etc., before trial. They perform some of the functions of district court judges under the supervision of those judges. Many times, courts use them to delegate to an expert. For example, there are two population centers in Nye County: Tonopah and Pahrump. District judges in Pahrump made the justice of the peace in Tonopah a juvenile court

master to provide kids in Tonopah better access, quicker resolutions and a justice of the peace who is an expert in judicial matters. Masters are used to improve access to justice, improve judicial efficiency and quickly process routine matters through the system.

SENATOR HANSEN:

They are essentially staff who handle more routine jobs for judges. Do masters or referees make final determinations in cases?

MR. MCCORMICK:

A master or referee can make a decision; however, that decision has to go to the district judge for review and sign-off. Staff is an appropriate term; they help district judges, but district judges ultimately retain the responsibility to ensure everything was done properly.

SENATOR HANSEN:

Judges are elected. Will the act of appointing masters bypass one of the checks and balances that has been put forth in Nevada law?

MR. MCCORMICK:

That is a concern and a balancing act courts must face when using masters to improve efficiency, speed up the process, handle tasks and mitigate the need for more judges while making sure the elected district judge retains responsibility. The fact that masters' decisions ultimately need to be signed off by district judges is a check and balance.

SENATOR PICKARD:

I do believe masters hear termination of parental rights cases, and with every case heard, they do go to the district court for sign-off—although I think that is perfunctory. District court only hears the case if the defense counsel takes it up on appeal. Will termination of a parental rights case not be heard by masters, or will it follow the same process where masters may make the initial determination because they have been handling that dependency case for a period of time and the district court may not be aware of all the facts? Would it then follow the normal procedure of the decision being sent to the district court, or would the case—as soon as it moves to a termination of parental rights—escalate to district court?

MR. MCCORMICK:

Are you talking about the Eighth Judicial District Court?

SENATOR PICKARD:

That is where I have my experience, but I suspect Washoe County operates in a similar fashion as it has dedicated juvenile services under the family courts.

MR. MCCORMICK:

I am unable to speak on behalf of the Eighth Judicial District Court; we would need to include Chief Judge Linda Marie Bell in that discussion. In general, judges want to move away from having masters handle more serious cases, but it is a matter of judicial efficiency and available resources. The Committee will most likely hear a bill later this Session regarding the number of district judges in the Eighth Judicial District Court. One of the impetuses behind that bill is to require judges to hear civil death penalty cases, as Senator Ohrenschall said, rather than masters.

CHAIR CANNIZZARO:

There are some amendments we can work on together in this regard.

MR. MCCORMICK:

I will reach out to Senators Ohrenschall and Pickard to work on amendments as well as have discussions with members of the district courts to verify we are in agreement.

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Judiciary
February 19, 2019
Page 13

CHAIR CANNIZZARO:

I will close the hearing on S.B. 6. This meeting is adjourned at 8:55 a.m.

RESPECTFULLY SUBMITTED:

Jenny Harbor,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	2		Attendance Roster
	C	9	Ben Graham / Administrative Office of the Courts	Overview of Nevada's Judiciary
S.B. 6	D	2	Administrative Office of the Courts	Proposed Amendment