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SENATE BILL NO. 27—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

**SUMMARY**—Clarifies the authority of the Attorney General to appear in civil actions to defend state judicial officers who are sued for certain acts or omissions related to their public duties or employment. (BDR 3-219)

**FISCAL NOTE:** Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to legal representation; clarifying the authority of the Attorney General to provide for the legal defense of state judicial officers in civil actions relating to their public duties or employment; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, the Attorney General provides legal counsel to any present  
2 or former officer or employee of the State, any immune contractor or any State  
3 Legislator in a civil action brought against that person based on any alleged act or  
4 omission relating to the person’s public duty or employment if: (1) the person  
5 submits a written request for such legal counsel; and (2) the Attorney General  
6 determines that it appears that the person was acting within the course and scope of  
7 his or her public duty or employment and in good faith. (NRS 41.0339) This bill  
8 clarifies existing law by specifically requiring the Attorney General to provide legal  
9 counsel under these circumstances to any present or former justice of the Supreme  
10 Court, senior justice, judge of a district court or senior judge.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1       **Section 1.** Chapter 41 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 and 3 of this act.

3       **Sec. 2.** *As used in NRS 41.0338 to 41.0347, inclusive, and*  
4 *sections 2 and 3 of this act, unless the context otherwise requires,*  
5 *the words and terms defined in NRS 41.0338 and section 3 of this*  
6 *act have the meanings ascribed to them in those sections.*

7       **Sec. 3.** *“State judicial officer” means a justice of the*  
8 *Supreme Court, senior justice, judge of a district court or senior*  
9 *judge.*

10       **Sec. 4.** NRS 41.0338 is hereby amended to read as follows:

11       41.0338 ~~[As used in NRS 41.0338 to 41.0347, inclusive, unless~~  
12 ~~the context otherwise requires, “official]~~ **“Official** attorney” means:

13       1. The Attorney General, in an action which involves a present  
14 or former *state judicial officer*, State Legislator, officer or employee  
15 of this State, immune contractor or member of a state board or  
16 commission.

17       2. The chief legal officer or other authorized legal  
18 representative of a political subdivision, in an action which involves  
19 a present or former officer or employee of that political subdivision  
20 or a present or former member of a local board or commission.

21       **Sec. 5.** NRS 41.0339 is hereby amended to read as follows:

22       41.0339 The official attorney shall provide for the defense,  
23 including the defense of cross-claims and counterclaims, of any  
24 present or former *state judicial officer*, officer or employee of the  
25 State or a political subdivision, immune contractor or State  
26 Legislator in any civil action brought against that person based on  
27 any alleged act or omission relating to the person’s public duties or  
28 employment if:

29       1. Within 15 days after service of a copy of the summons and  
30 complaint or other legal document commencing the action, the  
31 person submits a written request for defense:

32       (a) To the official attorney; or

33       (b) If the officer, employee or immune contractor has an  
34 administrative superior, to the administrator of the person’s agency  
35 and the official attorney; and

36       2. The official attorney has determined that the act or omission  
37 on which the action is based appears to be within the course and  
38 scope of public duty or employment and appears to have been  
39 performed or omitted in good faith.

40       **Sec. 6.** NRS 41.0341 is hereby amended to read as follows:

41       41.0341 If the complaint is filed in a court of this state:



1 1. The *state judicial officer*, officer, employee, board or  
2 commission member or State Legislator; and

3 2. The state or any political subdivision named as a party  
4 defendant,

5 ↪ each has 45 days after their respective dates of service to file an  
6 answer or other responsive pleading.

7 **Sec. 7.** NRS 41.0346 is hereby amended to read as follows:

8 41.0346 1. At any time after the official attorney has  
9 appeared in any civil action and commenced to defend any person  
10 sued as a *state judicial officer*, public officer, employee, immune  
11 contractor, member of a board or commission, or State Legislator,  
12 the official attorney may apply to any court to withdraw as the  
13 attorney of record for that person based upon:

14 (a) Discovery of any new material fact which was not known at  
15 the time the defense was tendered and which would have altered the  
16 decision to tender the defense;

17 (b) Misrepresentation of any material fact by the person  
18 requesting the defense, if that fact would have altered the decision to  
19 tender the defense if the misrepresentation had not occurred;

20 (c) Discovery of any mistake of fact which was material to the  
21 decision to tender the defense and which would have altered the  
22 decision but for the mistake;

23 (d) Discovery of any fact which indicates that the act or  
24 omission on which the civil action is based was not within the  
25 course and scope of public duty or employment or was wanton or  
26 malicious;

27 (e) Failure of the defendant to cooperate in good faith with the  
28 defense of the case; or

29 (f) If the action has been brought in a court of competent  
30 jurisdiction of this state, failure to name the State or political  
31 subdivision as a party defendant, if there is sufficient evidence to  
32 establish that the civil action is clearly not based on any act or  
33 omission relating to the defendant's public duty or employment.

34 2. If any court grants a motion to withdraw on any of the  
35 grounds set forth in subsection 1 brought by the official attorney, the  
36 State or political subdivision has no duty to continue to defend any  
37 person who is the subject of the motion to withdraw.

38 **Sec. 8.** NRS 41.0347 is hereby amended to read as follows:

39 41.0347 If the official attorney does not provide for the defense  
40 of a present or former *state judicial officer*, officer, employee,  
41 immune contractor, member of a board or commission of the State  
42 or any political subdivision or ~~of a~~ State Legislator in any civil  
43 action in which the State or political subdivision is also a named  
44 defendant, or which was brought in a court other than a court of  
45 competent jurisdiction of this state, and if it is judicially determined



1 that the injuries arose out of an act or omission of that person during  
2 the performance of any duty within the course and scope of the  
3 person's public duty or employment and that the person's act or  
4 omission was not wanton or malicious:

5 1. If the Attorney General was responsible for providing the  
6 defense, the State is liable to that person for reasonable expenses in  
7 prosecuting the person's own defense, including court costs and  
8 attorney's fees. These expenses must be paid, upon approval by the  
9 State Board of Examiners, from the Reserve for Statutory  
10 Contingency Account.

11 2. If the chief legal officer or attorney of a political subdivision  
12 was responsible for providing the defense, the political subdivision  
13 is liable to that person for reasonable expenses in carrying on the  
14 person's own defense, including court costs and attorney's fees.

15 **Sec. 9.** This act becomes effective on July 1, 2013.

