MINUTES

JUDICIARY COMMITTEE
February 17, 1977
9:15 a.m.

Members Present: Chairman Barengo
Vice Chairman Hayes
Mr. Price
Mrs. Wagner
Mr. Sena
Mr. Ross
Mr. Polish
Mr. Banner
Mr. Coulter

This meeting was brought to order by Chairman Barengo at 9:15 a.m.

Assembly Bill 25:

Mr. Frank Daykin was here to advise the committee the reasoning as to why the committee could not get an amendment to refer to a section on the attorneys fees and how to go about doing this. Mr. Frank Daykin advised the committee that the mechanics of the notice are specified in NRS 160.060 the section in which they proposed an internal reference. He explained that the only reason for not inserting an internal reference at this point is simply that it is not necessary; that the attorney should know where to look in NRS for the section that provides for giving notices. In order to keep the statutes within a manageable compass, they refer to what is required and, of course, the organization and indexing of the statutes then permits finding the statute which it particularly bears on.

Assembly Joint Resolution 1:

Chairman Barengo made some preliminary remarks to the effect that this bill was a result of the interim study committee wherein they had some testimony and the committee felt that this should be heard by the majority of the Judiciary Committee and this way they could hear both sides.

Judge Howard Babcock, Chief Judge of the Eighth Judicial District Court, Clark County, then testified on this bill and on behalf of the District Court judges of Clark County, unanimously urged for the adoption of AJR 1. This was demonstrated in a letter dated February 15, 1977 addressed to the Senate and Assembly Judiciary Committees from these judges, which is attached hereto and marked Exhibit "A". Judge Babcock then read the last paragraph of said letter which he felt summarized their position.

Mr. Wayne L. Blacklock, District Court Administrator, Eighth Judicial District Court then testified on this bill and recommended the division of the court clerk's function from the county clerk's function. A copy of his entire testimony is attached hereto and marked as Exhibit "B". There followed some discussion as to the impact on employees and as to the impact, if any, on less populous areas of the state.

Judge James Guinan , District Judge and Chairman of the Legislative Committee of the District Judges Association, then testified on this bill stating that the way this is drafted, it would not permit the joining of two offices in the smaller counties because of Article 3. He also

stated that even though these two offices, county clerk and court clerk, have been treated for many purposes as one office, they are not, it is one person holding two offices. He explained that in the function of Court Clerk, he or she is subject to the direction of the Court. The Court should not be concerned in any way with what the County Clerk does as County Clerk. He explained the court personnel and county clerk personnel system in Washoe County to the committee. Judge Guinan stated that they have some legislation coming out from the bill drafter's office which he hopes will be considered which will take care of some of the confusion between which officer is supposed to handle which position. They also have an alternative resolution being drafted which will allow the legislature to combine these offices in counties where that was thought to be desirable. He feels, though, that theoretically, this would be unsound in any county. The Association of District Judges is 100% in favor of this resolution. He stated that he has had considerable experience with splitting the above two offices and it can be done effectively.

Mrs. Loretta Bowman, Clark County Clerk, then testified in general opposition to A.J.R. 1 and her comments made therein are attached hereto and marked as Exhibit "C". Thereafter there was considerable discussion, in general, trying to distinguish between the two offices, including personnel systems.

Mr. Tom Moore then testified on behalf of the County of Clark and also the Association of County Commissioners, in opposition to this joint resolution, for policy reasons. He elaborated by stating that they feel that the position should remain an elected office and be responsive to the people. Judge Babcock then responded by stating that the judges in Clark County are elected officials and it would be the policy that the judges who have the power and control of records only administer through an appointed official, like a court administrator. But, he stated the judges would be as responsive to the public as would Mrs. Bowman. Mr. Moore further stated that the position that he was to testify to was in support of that of Mrs. Bowman. Mr. Moore was asked to submit to the committee an outline regarding the County Commissioners opposition to this joint resolution.

Alex Coon, Clerk of the Court for Washoe County, then testified in regard to this bill making reference to Ordinance No. 230 in Washoe County. This ordinance, he stated, is predicated on the belief that the separation of powers in the constitution implies that there should not be any such thing as a ministerial officer and he disagrees with that and feels that we should not have separation of powers as the main thrust here in the interest of serving justice any more than we should emphasize the balance of powers and the distribution of powers. He stated that the ordinance that caused the separation of the clerk's office in Washoe County is a recognition that section 32 of Article IV of the Nevada Constitution (NRS 3.250 and 246.060) provide that the County Clerk is ex officio Clerk of the District Court. He stated that section 1 of Article III of the Nevada Constitution provides for a separation of governmental powers prohibiting the exercise of powers properly belonging to the judicial department by any other governmental department. Mr. Coon said that the purpose of this ordinance is to recognize that employess in the office of the Clerk of the District Court are under complete jurisdiction and control of the District judges and are exempt employees, pursuant to subparagraph 1 of paragraph D of subsection 2 of section 20, Washoe County Ordinance No. 213, the personnel ordinance. He further elaborated on this particular ordinance for the committee. He summarized his comments by stating that as County Clerk of Washoe County he is responsible for every act

of any one of his deputies whether they are serving the Court or otherwise, and according to these statutes mentioned here, he stated that he can demand bond of every deputy to be responsible to him. Mr. Coon stated that if the responsibility were to be split and split many ways, he does not think the people are going to be served. Thereafter there were considerable questions and discussion amongst the committee and guests.

Mr. Don Gladstone, Court Administrator for Second Judicial District Court, testified on this bill stating that he did not believe Mr. Coon was quite accurate as he views the problems as an appointed official for the District judges and he serves as an unclassified employee with them. He then explained the personnel system and classification plan and the problem when one individual is wearing two hats in regard to this particular system. He stated that he feels that the position of Clerk of the Court is a full time position in the larger counties. Mr. Gladstone said that he has seen many occasions where their judges have had to direct, by Order, the Clerk of the Court in that capacity to do something. It is a real problem and not merely a philosophical question involving people who wish to know who they really work for and where the responsibility really lies. He stated that there is a basic difference between the jobs, the functions and the kinds of skills that an individual should have to be a clerk in a judicial arena and to be a clerk in any other arena. He elaborated upon request of Mrs. Wagner on his comment that directives have not been followed by the district judges. He cited a personnel problem, a record keeping problem and he mentioned that there are others of budgetary concern and operational concern. There followed considerable discussion in this regard.

Chairman Barengo stated, at this point, that he felt it would be beneficial to the members of the committee if they could get a synopsis of what the Clerk of the Court does and what the County Clerk does and what they would be doing if they didn't have the opposite function. Judge Guinan offered that perhaps it would not take very long to state it. He said that the County Clerk, in addition to the Court Clerk function, has the Marriage Bureau, the recording of fictitious names for business, act as Clerk for the Board of County Commissioners. Mr. Coon said they also had the Commissioner of Civil Marriages, plus the microfilming department. Mrs. Bowman then advised the committee of her functions if her office was no longer that of Clerk of the Court and only County Clerk. She stated that she would be responsible for the Marriage License Department as commissioner and issuer of licenses, Clerk of the Board of County Commissioners and they would file Articles of Incorporation and Certificate of Fictitious Names. As Clerk to Board of County Commissioners, she stated that they have two regular meetings per month with additional special meetings. She said that the Marriage Bureau is 24-hour operation, 7 days per week and is staffed by seven people.

The deputy clerk for Storey County offered that, of course, they don't have the problems that Washoe and Clark have. They have three people in the clerk's office and they don't have any problems with regard to this.

Mr. Vaughn Smith, Clerk of the First Judicial District Court, Carson City,plus Treasurer, plus Registrar of Voters then testified on this bill. He stated that they have all the same duties that Clark and Washoe do, as stated above and further detailed these duties to the committee. He feels that they work very close with Judge Gregory in Carson City and that they don't have any real great problem. He stated he is opposed to the bill. Mr. Barengo questioned Mr. Smith asking if he was not, in fact, in favor of the bill when appearing

before the interim study committee. Mr. Smith stated that he knew the judge was in favor of it, but, he said that there must have been a misunderstanding because he is not in favor of it. He stated that this is much more important to the smaller counties than the larger ones. He said that he has received communication from Humboldt County in opposition to this bill.

Mr. William Slocum of Douglas County stated that they are in opposition to this bill because they feel that as of the present time, they are adequately functioning in both departments. They are small and any division of authority would cause them additional expense in and above their budget.

Judge Guinan spoke again in an attempt to clarify a few questions that came up in discussion . He mentioned that historically, there is nothing in the Constitution as to why those two offices were joined. Washoe County has separated the two offices and they have not hired any additional personnel as a result. As to where the ultimate authority lies between the judges and the clerk, the ultimate sanction is that the judges do not have the right to fire the Clerk of the Court for insubordination, the ultimate sanction would be to hold him in contempt of court and punish him. In response to another question, Judge Guinan stated that they do not have a blank check for money, and the Courts are only entitled to what is reasonably necessary for the efficient administration of justice. There is a limit of reasonability. The Supreme Court in each state is the ultimate authority on what is reasonable.

Chairman Barengo stated that Mr. Sena has requested that he would like to hear from the County Commissioners from at least Clark and Washoe County.

Judge Babcock stated that, as he understands the thrust from the two larger counties (Clark and Washoe), they are seeming to suggest that they have this great responsibility of record keeping and they are responsible for the integrity of those records. He said he is satisfied that there is no way that the integrity of record keeping could be destroyed by anyone.

Chairman Barengo ended this part of the meeting at 11:15 a.m. stating that they would await the further information requested and it would be reviewed upon receipt.

Assembly Bill 78:

Assemblyman Weise, District No. 23, testified on this bill as introducer of it, stating that it was drawn up upon request from constituents of his district who had variations of concerns. One of these concerns was that there are members of the legal profession who are practicing law and working for the State of Nevada and who are not members of the state Bar. They feel if the state is paying with state funds, they should at least be able to meet the requirements of all other attorneys in the state. Mr. Weise made reference to Paragraph 1 of Section 1 which basically addresses itself to that one question, as does the second paragraph. The third category addresses itself to people who are state attorneys, using state time, secretarial assistance, etc. to aid their private law practice and who excuse themselves during working hours to make court appearances for their private practice. He said that they did not address themselves to the attorneys who are hired by various agencies within the state.

He also mentioned that their is some concern that the law is structured to address itself purely to the employees of the administrative branch of government. He stated that in talking with Mr. Dayken, he wondered if this is somewhat of a gray area and, perhaps, this should be expanded to include all three branches. Considerable questions and discussion followed.

John Flangas, Esq. then testified on A.B. 78, particularly citing paragraph 2. He said that a question came up which he has subsequently discussed with Mr. Weise regarding the referees that the employment security department has, for example. These people are not of a legal background at the specific request of the federal government. The federal government does not like the idea of having lawyers sit on administrative hearings. He would like to have provided within this bill some means of retaining the present system of our appointed referees who are classified personnel. Chairman Barengo asked if Mr. Flangas would come up with some language for the committee, perhaps just the definition where they talk about "services of a legal nature" would be sufficient. Discussion followed. Mr. Flangas then entered an exhibit into the record, that of a presentation of Stanley Miller, Chief Appeals Referee, Employment Security Department, which is attached hereto and marked as Exhibit "D".

Pat Fagan, Esq., then testified on the bill stating that he is an attorney and also employed with the Public Service Commission as their administrative assistant and also a member of the state Bar. He stated that during negotiations to obtain his employment, he was promised that as a part of the employment agreement, he would be allowed to practice his private practice of law. He stated that during his practice he does not use their stationery, equipment or secretarial services, although, he did state that he could see where it might be abused by some. Mr. Fagan stated that he talked with the Commission about this and they are in agreement with him that his private practice does not interfere in any way with his job with the Public Service Commission. If a person were to abuse this, he would certainly be dispensable. He stated that he did speak with Assemblyman Weise and he told him that it was not his intent to eliminate the private practice of law from a person situated as he is. There were some questions following Mr. Fagan's testimony, one of which was Mr. Polish asked him what classifications are the attorneys in the various departments in and what their salaries are at this time. Mr. Fagan answered that he didn't feel he could answer that, that he was not sure what the salaries are . He further stated that if the intent here was to do away with all private practice of law , they are going to have to consider the increase in salary.

COMMITTEE ACTION:

Assembly Bill 25, Mr. Ross moved to rescind the committee's previous action and moved for a DO PASS , Mr. Sena seconded the motion and it passed unanimously.

There being no further business to discuss, Chairman Barengo adjourned the meeting at 11:45 a.m.

Respectfully submitted,

Anne M. Peirce

Anne M. Peirce, Secretary

2/17/77

GUEST LIST

NAME (Please print)	REPRESENTING	WISH TO SPEAK Yes	No
VAUGHN SMITH	CARSON CITY	✓	
Alex Coon (ALEX COON)	Washoe County Clerk		
Loretta Bowman	Clark County	✓	
Tom Moore	Clark County		
STANLEY MILLER	EMPLOYMENT Security	✓	
John A. Flangas	Employment Security	✓	

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY
LAS VEGAS, NEVADA 89101
(702) 386-4011

February 15, 1977

Mel Close, Chairman
Senate Judiciary Committee
Nevada Legislature
Carson City, Nevada 89710

Robert Barengo, Chairman
Assembly Judiciary Committee
Nevada Legislature
Carson City, Nevada 89710

Gentlemen:

On January 17, 1977, Assembly Joint Resolution No. 1 was referred to the Committee on Judiciary. The summary of this resolution proposes to remove the requirement that the county clerk be the ex-officio clerk of the court.

It has therefore been resolved by the Assembly and Senate of the State of Nevada, jointly, that Section 32 of Article 4 of the Constitution of the State of Nevada be amended to read as follows:

> Sec. 32. The Legislature shall have power to increase, diminish, consolidate or abolish the following county officer: County Clerks, County Recorders, Auditors, Sheriffs, District Attorneys and Public Administrators. The Legislature shall provide for their election by the people, and fix by law their duties and compensation. County Clerks shall be ex-officio Clerks [of the Courts of Record and] of the Boards of County Commissioners in and for their respective counties. (The explanation of the Resolution requires that the section to be omitted is the passage enclosed in brackets.)

The District Judges of the Eighth Judicial District, encompassing Clark County, Nevada, affirmatively and unanimously support this change to Article 4 of the Constitution.

It has been apparent for many years that the courts

EXHIBIT 3147

would benefit by having the clerk of the court under their jurisdiction and separate from the County Clerk's responsibilities. With the increasing workload being handled by the courts every available means to improve the processing of records and the gathering of information and data must be implemented.

It is also evident that the demands made on the County Clerk's office in larger metropolitan areas do not allow them adequate time to answer all the needs of the courts.

We recommend for your consideration that those ministerial functions performed by the county clerk which are inherent and incidental to the powers of the judicial department of government be administered under the direction of the court. Those duties which are ministerial in nature and essential to the judicial function include but are not limited to calendaring, case file control, personnel assignment, maintenance of court records, etc. and are the administrative responsibility of the court if the administration of justice is to be expedited.

Respectfully,

Judge J. Charles Thompson

Judge James Brennan

Judge Joseph Pavlikowski

Judge Thomas O'Donnell

Judge John Mendoza

Chief Judge Howard Babcock

Judge Carl J. Christensen

Judge Michael Wendell

Judge Keith C. Hayes

Judge Paul S. Goldman

Judge Addeliar Guy

1/17/77
Wayne A Blackhurst
District Court Administrator
8th Judicial District Court

ASSEMBLY JUDICIARY COMMITTEE
Court Appointment of District Court Clerk
AJR 1

The call for judicial reform was sounded most clearly by Roscoe Pound back in 1906 in his speech "The Causes of Popular Dissatisfaction with the Administration of Justice." In that historic speech he emphasized the responsibility of courts in maintaining the highest scientific standard in the administration of justice. Later in the same speech he noted that the records are the records of the court.

In 1971 Ernest Friesen in his book, MANAGING THE COURTS, p. 103, stated that current staffing methods are wasteful and expensive, not in the best interest of the county, and not providing service to the courts. There is a loss in the independent administrative posture to which the judiciary is constitutionally entitled. (p. 17)

The American Bar Association's "Standards Relating to Court Organization," 1974, §1.41 (b) (11), are explicit in stating administrative responsibilities. "Under the authority of the judges of the court and the supervision of the presiding judge, the administrative office of each court unit should be responsible for: (1) Management of the court's calendar. (2) Administration of all its staff services, including the functions traditionally performed by the clerk of the court, (and) courtroom clerks ...."

Standard §1.42 states, "The non-judicial personnel of a court system should be selected by the court system itself.... There should be complete abolition of the practice whereby court auxiliary staff, such as the clerk of court, are elected or appointed from outside the court system.

In his book THE COURTS, FULCRUM OF THE JUSTICE SYSTEM published in 1976, Ted Rubin emphasizes, "A court must gain control of all the records its different divisions maintain, and centralize responsibility ... for the design and

EXHIBIT B

implementation of a good records system."

Many individuals and organizations have studied court organization and have emphasized the need for court responsibility for and operation of the clerical functions of the judiciary. I have heard of no official study group which advocates the separation of the clerks office from the courts as now exists in Nevada.

Nationally, several states have faced the question of the role of the clerk in the judicial department. Alabama recently received national acclaim for a complete court reform package. As part of the change, the clerk's office was brought into the state court system. The Clerk's Association of the State of Maine voted unanimously to join the judicial department and be appointed by the court. Legislation to that effect was passed, signed into law and is now effectively operating. Several years ago a complete restructuring of the Colorado Judicial System joined the clerk's office and the courts. Alaska and Hawaii both have unified court systems which include the clerk's office. Across the country advocates of efficient court operation recognize the need for the courts management of its own recordkeeping functions.

The recent revision of the Nevada Constitution which provided that the Chief Justice is the administrative head of the court system connotes that there is a system. It is difficult to operate a system when the record keeper is "ex officio", in place of a clerk of the court.

Separation of the clerk of courts' responsibility from the county clerk was recommended by the Legislative Commission in its Bulletin No. 77-3. This Commission recognized the need to provide the opportunity for efficient court management.

There is now considerable interest state-wide in the improvement of the administration of justice. Staffing is being provided for a state court

administrator's office which will require information on the operation of the courts. A close working relationship between the local courts and the Supreme Court cannot be achieved when all the records of the court are outside immediate access and control by the local judges. The district court judges of both the 2nd and 8th judicial districts have taken steps to improve the administration of justice by recently hiring court administrators.

The 8th judicial district court has just implemented a new civil calendar system in an effort to effect the expeditious flow of cases through the courts. A new criminal calendar system will soon be implemented which will assign case processing responsibility to the courts, coordinate all court personnel, and insure accountability for the speedy, efficient and just disposition of criminal cases. The courts are now taking responsibility for the fair and speedy disposition of all litigation brought before them. They bear the responsibility for the court records and yet have no responsibility for the personnel keeping them.

Article III, Section one of the Nevada Constitution divides the powers of government into three separate departments. It also provides that no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as directed or permitted by the constitution.

Court appointment of the clerk is not without precedent in Nevada. Several years ago the legislature provided for the appointment by the Supreme Court of the then elected clerk of the Supreme Court.

The legislature has realized the need for appointing its own staff and has done so through the creation of the Legislative Counsel Bureau and a staff of auditors.

The traditional argument in favor of an elected court clerk is to provide a check and balance of the judiciary. The check and balance concept is to be applied between the three branches, not within one branch. Certainly the executive and legislative branches do not allow this kind of outside involvement. The Nevada Supreme Court has exercised careful and fair judgments in matters concerning the operation of the courts and is expected to continue to do so under the direction of new legislation. The judicial department will effectively administer itself.

What organization in the business community would allow a structure like this to exist? The personnel which keep its records, process its papers, and sets its work schedule are hired by someone else. The work procedures and systems which determine its efficiency are determined by someone else. The data which indicates its work product is kept by someone else. I submit it would not happen.

There are many models of court systems across the country which have solved this problem with little interruption in the operation of the courts and the proper duties of the county clerk. With proper division of personnel there should be an insignificant fiscal impact.

I recommend the division of the court clerk's function from the county clerk's function.

LORETTA DOWMAN

In my view, the A.J.R.1, presents several problems of a very serious nature with regard to the protection of the citizens' rights before the courts.

The first question one might ask regarding the subject matter of this bill is why the offices were made elective in the first place. I find there was, in fact, good reason why states in the United States included in their constitutions a provision that these ministerial officers be elected; this reason being to make the office holder responsible to the people instead of allowing them to hold first allegiance to an appointin authority. This wisdom has not lost its validity in the case of the Clerks of the Courts.

Foremost, in consideration of this matter, is the protection of the peoples' record as it was created by the activity of the parties to the actions. The proposed legislation allows for destruction of this vital balance of powers. The only factor preventing the directed or ordered change, deletion or destruction of the public court record, after the proposed change, would be the honesty or attitude of the various judges or administrators.

Equally important to the populace and of vital importance to those in the legal profession, is the right of accessibility to the open record. History is not without examples, many recent in origin, where elimination of separation of the Judicial and record keeping function prevented access to the record by all but the "chosen few". In this situation, the sword cuts both ways in limiting activity and could, selectively, deny the access of attorneys for the state and/or the public.

EXHIBIT C

Destruction of the separation of powers principal then, endangers the validity of a record upon which the entire system of justice resides presently and for all time.

I fail to find any valid or compulsive reasons for seeking this change. If it is thought this will bring efficiencies, they surely are no greater than that which can be brought by proper administration and upgrading of the activities under the present structure.

If the purpose be that of creating, through appointment, a professional administrative position, the same may be accomplished by a law to specify experience and/or educational requirements for candidates, while still affording protection to the public records.

If the purpose be change, for change sake, or for expansion of a given sphere of influence by any group, then the bill does a serious disservice to the people of Nevada and its courts, lawyers and judges.

We may be creating a condition where the fox is left guarding the chicken house.

I respectfully suggest that this and all changes currently being considered in the legislature regarding the courts of Nevada be most cautiously reviewed as a total.

I address your attention and the attention of other interested parties to the publication "American Local Government" by George S. Blair (1964 - Harper & Row) as one of several well prepared writings further defining my position.

COMMITTEE ON JUDICIARY
AB 78, 9 a.m., 2/17/77, Room 240

Presentation of Stanley Miller, Chief Appeals Referee, Employment Security Department

My qualification to speak is that I have held the position of Chief Appeals Referee for approximately 14 years and was a referee for several years before that.

My concern is that AB 78 is so general that it could be interpreted as applying to my staff of six hearing officers, a staff that will soon increase in size. The staff handles hundreds of appeal cases each month, involving disputes among claimants for benefits, employers, and the department itself.

The existing requirement, which has served well, is that one hold a university degree and have two years of experience in adjudicating issues through application of rules, regulations, and law, or in the conduct of formal fact-finding hearings, or an equivalent combination of these requirements.

My agency is a federal fund agency, and when it was erroneously understood by the federal agency that Nevada had a law degree requirement for its hearing officers, the recommendation was that the requirement be modified. The federal view, after surveys in all the states, was that the advantages of eliminating the degree requirement included:

a. Increasing flexibility in recruiting.
b. Permitting greater emphasis on the role of fact-finding rather than judging.
c. Minimizing legalistic approaches for unsophisticated parties.
d. Eliminating costly attorney salaries.

On the matter of flexibility and cost, I note that California is one of the few states with a law degree requirement (with a grandfather clause for those already in service). California's pay range is from $28,452 to start, to $34,404, after four steps, as compared with the $12,915 or thereabout to $16,291 range in Nevada.

To my knowledge, in the history of the program, only one attorney, who got his degree years ago and was not a member of the bar, ever applied for the Nevada positions, despite the customary publicity. I believe that it would be impossible to fill the positions with attornies who would stay long enough to master the complex program on the pay that it would be feasible to offer.

I point out that when appeals leave the administrative stage and move on to court, the department attorney, a member of the bar, represents the department. To my knowledge there has been no suggestion from the courts or from practitioners before the hearing officers that there is any need to change the requirements.

I have occasion to hear hundreds of recordings of hearings held in other states. The approach and quality of the majority of states without the law degree are substantially the same as from those few states with the requirement.

The lack of a degree in law does not denote ignorance of the necessary fair hearing requirements. Hearing officers attend administrative law sessions and seminars at the National College of the State Judiciary, at Temple University, and elsewhere.

Finally, I would like to state that in my opinion, if the provisions of this bill are intended to apply to Employment Security hearing officers, there should be a specific grandfather provision to cover incumbents. Otherwise, I very much fear that there will be chaos in the program, at a time when there is a court mandate to adjudicate cases expeditiously and promptly.

I wish to thank you for the opportunity to appear before you.

EXHIBIT D