

**MEMBERS PRESENT:** Chairman Stewart  
Vice Chairman Sader  
Mr. Thompson  
Ms. Foley  
Mr. Beyer  
Mr. Price  
Mr. Chaney  
Mr. Malone  
Mrs. Cafferata  
Ms. Ham  
Mr. Banner

**MEMBERS ABSENT:** None

**GUESTS PRESENT:** Steven Elliott, City of Sparks  
Bill Bunker, Federated Firefighters  
Will Deiss, Vice President - International  
Police Union  
Grace J. Fleming, Washoe County  
Judge John G. Morrison, City of Sparks  
John J. Hart, Reno Constable

Russell McClem, Incline Village Constable  
Larry Irvine, LV Police Protective Assn.  
Andy Simpson, Sparks Deputy Constable  
R. G. Phair, Sparks Deputy Constable  
George Pawning, Verdi Constable  
P.C. Powell, Chief Deputy Constable - North LV  
Don Sullivan, Reno Constable Office  
Dan Emmet, Reno Constable Office  
O.C. Lee, NV Council of Police and Sheriffs  
Patrick Pine, Clark County  
Bryce Wilson, NV Association of Counties  
Colleen Dolan, UNR Intern (Stewart)  
Bob Evans, UNR Intern (Rusk)  
Jim Joyce, NV Judges Association  
Cal Dunlap, Washoe County District Attorney

Chairman Stewart called the meeting to order at 8:15 a.m. and noted that AB 303 would be called first at the request of several witnesses.

AB 303: Increases compensation of witnesses at hearings.

First to testify was Mr. Will Deiss, Vice President of the International Police Union and of the NV Constables. He noted that this bill is an attempt to increase the current allowances of \$15 per day and 15¢ per mile one way paid to witnesses. Mr. Deiss pointed out that State government officials currently receive 19¢ per mile for use of their own vehicle, while witnesses

are asked to accept only 7½¢ (15¢ one way) per mile. The inequity is obvious.

Mr. Deiss stressed this is not a police or public safety bill, it is a witness fee bill and will involve far more witnesses and victims of crimes than it will police officers.

Mr. Deiss pointed out that a police officer is compelled to testify, however a private citizen is not unless subpoenaed. He further noted that at \$15 per day, a court appearance can actually result in financial hardship for a witness, and this can result in a complete breakdown and a reluctance of people to testify. He also noted that when the current cost of gas is computed, at 15¢ per mile one way, many individuals would be forced to pay out of pocket for gas, not even computing the wear and tear aspect.

Regarding cost, Mr. Deiss noted that in civil cases there is no cost to the government; the witness and mileage fees are paid by the moving party, who can, in turn, collect this by having it added into the judgment award.

Regarding Ms. Ham's question as to the fiscal impact of this bill, Mr. Deiss replied that at present there is no fiscal note tied to the bill because it would be almost impossible to project what it will cost. He reiterated that there would be no cost on the civil side of this bill, and he further stated that an increase of \$5-10 would probably not be of great impact.

In reply to Mr. Stewart it was explained that when a police officer is on duty he is not paid a witness fee because he is on a salary; he is paid a witness fee when he testifies on his day off or when he is on vacation. Mr. Deiss added that many times a police officer's private plans are ruined because he must appear in court, and \$15 per day is little compensation when you have had to cancel your vacation plans or haven't had a day off in weeks because of court appearances.

Mr. Bill Bunker, representing Federated Firefighters of Nevada, testified next. He stated that with the advent of paramedics and of arson divisions, firefighters are finding themselves in court more and more. He noted that his group wished to go on record as supporting AB 303.

Mr. Paul C. Powell, Chief Deputy Constable for North Las Vegas, testified next. He said he wished to stress the financial hardship which a court appearance can cause an individual, once the loss of salary, child care, travel, etc. are added in. He felt this was a major factor in the "I don't want to get involved" syndrome. He added that, frankly, many people cannot afford to be a witness, and this is eroding what the courts are attempting to do.

Mr. Larry Irvine, President of the LV Police Protective Association, testified next in favor of AB 303. Mr. Irvine agreed this is not just a police bill, however police officers will be greatly affected by it. Several points were raised by this witness:

- a) Graveyard shift police officers must often appear in court during their off-duty time;
- b) Police officers who have their days off in the middle of the week rather than on weekends often lose this time because of court appearances;
- c) There are many instances where an officer spends his entire day in the courthouse waiting for his turn to testify--\$15 per day does not even meet the minimum wage requirement;
- d) In effect, this bill puts a price tag on justice, and just how much is justice worth.

In reply to Mr. Malone, it was noted that the NV Highway Patrol officers get paid at the rate of time and a half of their normal salary for every hour spent in court. Additionally, many cases have been dismissed because witnesses have failed to appear.

Mr. Beyer asked about the history of paying witnesses. Mr. Irvine explained that witnesses began being paid in order to give these individuals some type of compensation for the time spent away from their jobs, and to lessen the burden of having to appear. He thought that in 1977 the fee was raised from \$10 to \$15, and that it had been \$10 since it was begun circa 1967. Although it was of general consensus that people should be willing to testify because it is their duty to serve justice and their country by doing so, it was also agreed that this is becoming less and less the attitude of the general public.

Mr. O.C. Lee, President of the NV Conference of Police and Sheriffs Council, International Union of Police Associations, AFLCIO, testified next in favor of AB 303. He pointed out that in some of the more rural counties the expense of travel is quite high and is creating a serious problem in terms of getting witnesses to appear in court. He stated his group wished to go on record as being in support of and as urging the Committee to support AB 303.

Mr. Cal Dunlap, Washoe County District Attorney was next to testify in favor of the bill. He said that one of the greatest problems his office encountered in contacting witnesses was trying to explain how these individuals could afford to appear in court. He pointed out that victims are victimized further by having to appear in court at what is often a financial loss to themselves in order to see justice gets done. He cited examples of hardships encountered by witnesses.

Mr. Dunlap went on to explain that court proceedings can involve a single witness being physically present for several days. This occurs because of a number of reasons:

- a) The witness may have to appear more than once in the prosecution of a given major case;

- b) There is a continuance of the hearing for whatever reason;
- c) They must appear before the Grand Jury and then again for the preliminary hearing and then for the trial;
- d) The testimony of a prior witness takes longer than expected and, because the courts cannot afford to wait for witnesses to be summoned, the individual is required to be in the building early and then wait around until his turn comes.

Mr. Dunlap summarized by stating this bill would help ease the burden of the witnesses and would thus further the cause of justice.

Mr. Bryce Wilson testified next as a representative of the Nevada Association of Counties. He said the counties feel in general that this bill will add to their costs, but they still strongly support its passage.

Mr. Patrick Pine, representing Clark County, testified next. He passed out a statement of the fiscal impact of this bill upon Clark County (EXHIBIT A). He proceeded to review the figures listed in the exhibit, and noted he would also be providing copies of the exhibit to the Taxation Committee.

As there was no further testimony on this bill, the Chairman declared the public hearing on AB 303 closed.

Following a short recess testimony on AB 265 was heard.

AB 265: Increases certain fees for services of constables.

Mr. John J. Hart, Constable of Reno Township, was first to testify on this bill. He explained he was only one of several constables present who had requested this bill. He went on to note the changes which would occur should this bill be passed, and gave the background for these requested changes.

Mr. Hart said that the constable's office collects the required fee at the time the papers are given to his office; at that time the constables determine the mileage involved based on a mileage graph, and charge 50¢ per mile, one way. He went on to note that often this is not sufficient, because seldom are the papers served on the first trip, and it can often require three or four return trips before their duty can be fulfilled. He said they are not always able to collect for this extra mileage, and since the constables are on little or no salary (they are paid out of the fees received), and since they must use their personally owned vehicles (pov), their expenses use up most of this money. He added that most agencies receive cost of living increases, and this is how he views the requested fee increases.

In reply to Mr. Sader, it was explained that the users pay the constables' fees, and that these are private attorneys. He noted

that his office does not supply services to government agencies, and that the requested increases would not affect the tax structure. He said his salary was \$6,000 per year, plus fees and mileage. He added that he has 2 deputies and 2 clerks in his office, and that while the clerks are paid by the county, the deputies are paid strictly on fees and mileage alone.

Mr. Sader also pointed out that private servers charge \$15-20 for serving these papers, and that the mileage fee has not been changed for many years. Additionally, Mr. Hart told Mr. Sader that the Reno constable's office serves approximately 4,000 processes a year, and that this office does almost all the evictions in Reno Township.

Mr. Hart told Mr. Malone that it was possible to take several processes to be served in the same area, and charge 50¢ per mile (one way) for each one. He said this doesn't usually result in a profit, however, since it so often occurs that return trips are necessary for more than one of these papers.

Mr. Price said that, in defense of the implication concerning taking more than one process to an area and charging mileage for each one, in the business world (moving companies, etc.) this is a normal practice.

Mr. Hart explained to Mr. Beyer that his office does keep running accounts with certain regular customers (landlords, etc.) and that it is possible to collect for return trip mileage in many instances, but not always, since many customers also come in and pay "up front". It is in the latter cases that collecting for the extra mileage becomes quite difficult. He said this problem occurs mainly with summonses, show cause orders, small claims, complaints, etc.

Regarding unsuccessful efforts, it was clarified for the Committee that each process is an effort, not each trip. This is based upon tradition and the original intent of the law: no matter how many trips are made, the total sum charged cannot exceed \$10 if the final result is failure to serve the papers. Mr. Hart said he had not asked that this amount be increased because he did not want to appear to be requesting too much.

Mr. Pine, at this point, clarified that if the constable charged more than \$10 for unsuccessful attempts, this would create an audit problem because of a need for logs, and verification of the number of trips, the dates of the attempts, etc.

In reply to Mr. Stewart, Mr. Hart explained that the sheriff charges the same fee for serving summonses, but charges \$5 for subpoenas while the constable only gets \$2 for subpoenas.

Mr. Will Deiss, past constable for Las Vegas Township, testified next on AB 265. He described some of the difficulties encountered in serving processes, and demonstrated why the current expenses are not covered by the fees and mileage collected. He especially attacked the limitation to a \$10 charge for unsuccessful attempts. He stated it was his belief these requested increases should be granted, and that perhaps additional ones should be considered by the Committee. He strongly favored raising the charge for unsuccessful attempts.

Next Mr. Deiss outlined some of the differences in how each individual county handles the serving of processes: some of the constables are strictly on salary, others are on partial salary and partially on fees collected; some keep all the mileage, others only keep half this money; etc. He suggested the Committee might want to consider instigating a universal method for handling the serving of processes.

Next to testify was Mr. Russel P. McClem, Constable of Incline Village. He said he was present to support AB 265 and to confirm Mr. Hart's testimony. He pointed out that while the sheriff receives the same fee as the constable for serving summonses, the sheriff is salaried and uses a state vehicle. He reiterate his support of AB 265.

Mr. Paul C. Powell, Chief Deputy Constable for North Las Vegas, testified next. He said that while he agrees with Mr. Hart's testimony, it is his opinion that Mr. Hart has not taken the matter far enough. He pointed out that in North LV there is a large transient population, and that since many of the processes are on these people, it often occurs that the constable cannot serve the papers because these people have "flown the coup". He said that while the fee for unsuccessful attempts is listed as up to \$10, it is very difficult to collect this fee. This is because the people paid the lower fee for serving the papers "up front", thus they are unwilling to pay any additional monies at a later date.

Mr. Powell also pointed out that the current law doesn't indicate the many expenses other than mileage which must be paid for and which the constable absorbs: the constable's time, automobile upkeep, automobile and liability insurance, procurement of an automobile in the first place, etc.

Mr. Powell then cited examples of the expense involved in unsuccessful attempts to serve processes. He recommended the mileage fee be raised to a maximum of \$16. He added that while this would not completely offset these expenses, it would lessen their impact on the constables.

Finally, Mr. Powell raised the issue of serving bench warrants issued by the Justice Court. He noted that this always involves an arrest, and that because a constable's car is not equipped in any way for the transportation of prisoners, the constable

will almost always have a back-up man either with him or on call. Because two men are involved, Mr. Powell recommended amending AB 265 to specify a \$25 fee for the execution of bench warrants (page 1, lines 18-19).

Mr. Patrick Pine of Clark County testified next. He explained the Enterprise Fund of Las Vegas and noted that AB 265 would benefit this fund. He suggested some additional amendments:

a) Add another fee category "for serving an eviction upon a tenant after legal notice has been given" and charging a fee of \$25. He noted that this is not clearly stated in the statute, and felt it should be.

b) Reconcile this law with the fee structure for sheriffs. Sheriffs currently receive, for taking a bond... (page 1, line 7), \$3; for serving an attachment... (page 1, line 9), \$5. The fees should be the same for identical services.

c) Fleet vehicle operating costs are currently estimated at 40¢ per mile; this does not include things like time of the individual, etc. Thus 50¢ per mile one way is ridiculous.

Mr. Pine recommended the Enterprise Fund concept for other counties. He then went on to explain that under the concept of this fund, the county had negotiated a salary (circa \$26,000 per year) with the constable. In return, it was agreed that because of the Enterprise Fund and the higher salary, the constable would take a lower proportion of the fees, and the fees would go to offset his operational costs within the Enterprise Fund concept. Mr. Pine said that, with the exception of a dispute with the deputies as to what they receive on the mileage portion of the fees, it has generally been agreed between the constables, deputies and the county that that concept has worked reasonable well.

Mr. Pine suggested the unsuccessful attempt fee be raised to as much as \$20 to help defer costs.

In an ensuing discussion regarding the fee currently charged by the various constables for serving eviction notices, it was noted that this service is not clearly mentioned in the current statute, and that the constables have, in general, been charging \$5 per man (sometimes two are required) for this service. It is not certain the rendering of this service and the fee charged is legal, however. Thus the request for clarification. A suggested fee for this duty, as cited earlier, was \$25. It was also noted that evictions often require more than one trip on the part of the constable; because of the physical and financial hardships often involved, the constables will try to help the persons being evicted through reference to social service offices, etc. and also will advise the landlords that it is easier to give the tenant a few days to vacate rather than to have to inventory and store the effects of the tenant, etc. Thus, second trips are more the rule than the exception.



Next, Mr. Dick Phair, Deputy Constable for Sparks, testified as to his expenses and fees collected since October of last year. He said he cleared an average of less than \$400 per month. He therefore supported AB 265.

Mr. Andy Simpson, Deputy Constable for Sparks, also testified as to his expenses last year and said he strongly supported this bill.

As there was no further testimony on this bill, Chairman Stewart declared the public hearing on AB 265 closed. He then appointed a subcommittee consisting of Mr. Price, chairman; Mr. Sader and Mr. Malone.

AB 270: Broadens eligible substitutes for police judges.

Mr. Bob Sader, Assembly District 32, the prime sponsor of this bill testified first, along with Judge Morrison, the police judge for the City of Sparks. Mr. Sader explained that this bill, basically, changes the qualifications for being a Police Judge in order to eliminate problems which have arisen with the existing statute. It has been introduced at the request of the City of Sparks.

It was noted that this bill increases the type of people who can serve as a temporary Police Judge; i.e., any person who is a member in good standing of the Bar Association, a Justice of the Peace, or a citizen of the community. This bill does not require that a Police Judge be a lawyer; in fact, it opens it up to non-lawyers.

Judge Morrison explained that in the past, a Justice of the Peace was to be used in the absence of a Municipal Court. Over the years, however, Justice Court workloads have increased to where they are now on a fulltime basis, as are Municipal Courts. Thus it is impossible for a Justice of the Peace to handle the additional workload which now exists.

Judge Morrison then cited a case which was thrown out of court because a lawyer, rather than a Justice of the Peace, was acting as pro-tem judge. He also noted that being a one court system in Sparks, there are instances when he has to disqualify himself from hearing certain cases and he has great difficulty in finding a pro-tem judge to sit in on these cases. AB 270 will help simplify this process. There are also instances when Judge Morrison must be absent from his duties, and again it is difficult to find a temporary replacement.

Judge Morrison explained that he himself has had to seek additional training in order to carry out his duties, so it would not be overly expensive to give this training to pro-tem judges as well. He noted that there are many qualified individuals in the community who would make excellent pro-tem judges, and he requested AB 270 be passed to enable him to appoint these people. 780



In reply to Mr. Stewart, Judge Morrison explained that a Justice of the Peace has not been called over from another district for years because of their own heavy schedules; however normally, in the past, if the Judge had to be absent for training, etc. he would notify the City Council that he had requested another Judge come over and sit for that period.

Mr. Sader noted that the existing statute, which AB 270 would repeal, requires that the Mayor make a written request if the Police Judge can't serve that a Justice of the Peace serve instead. A different procedure has been followed for some time, however, as this one is unworkable. Thus, they have had lawyers sitting as temporary judges. This has recently been successfully challenged in court.

In reply to Mrs. Cafferata, Judge Morrison explained that the kinds of cases involved consist of misdemeanor criminals and violation of city ordinances; i.e., a Muni Judge.

Mr. Stewart noted that the Las Vegas charter allows the appointment of alternate Municipal Judges. Judge Morrison said the Sparks charter does not address this point at all; it simply states that if the Municipal Judge is not able to serve, a Justice of the Peace will substitute for him. He then read from Section 1, subsection 3 (page 1, lines 15-17) of the bill.

Mr. Steve Elliott, Sparks City Attorney, testified that the main problem is the reference to NRS 266 in the Sparks and Reno city charters for the controlling language on their Municipal Courts. He explained the existing statute, and reiterated the problems it has caused.

Ms. Ham pointed out that the bill does not state that the adult resident who is appointed temporary judge must be qualified; she suggested this be added to the bill.

The next bill heard was AB 280.

AB 280: Eliminates population requirement for hiring clerks for constables.

Mr. John Hart, Reno Constable, explained the problems which have arisen from this requirement and noted he favored this bill.

Ms. Grace Fleming next testified that the Washoe County Commissioners favor this bill and wish to go on record as such.

Patrick Pine of Clark County next testified on this bill. He said he had two problems with this bill:

- a) He would like to see the term "reasonable" number of clerks clarified, as well as who determines what is reasonable.
- b) Since there are instances where Justice Court employees are providing clerical help to the Constables, this bill could raise problems in whether these people would still be under the

Justice Court chain of command or whether they would be employees of the Constable. This should be checked into.

Mr. Beyer suggested that in line 4, after "township", remove the words "a reasonable number of" and add "a clerk or clerks" as the work...

It was also suggested that the question of reasonableness could be answered by the notation "as determined by the Board of County Commissioners".

As there was no further business, Chairman Stewart adjourned the meeting at 10:55 a.m.

Respectfully submitted,

*Pamela B. Sleeper*

Pamela B. Sleeper  
Assembly Attache

CLARK COUNTY  
COMMENTS ON AB 303

This bill increases the current witness fee from \$15 to \$25 and the mileage rate from 15¢ per mile one way to 19¢ per mile round trip.

For fiscal year 1980-81, \$432,500 has been budgeted for witness fees in Clark County. Of this amount, approximately \$230,714 will be spent on witness fees with approximately 15,381 subpoenas served and \$249,941 will be spent on mileage, plane fares, bus fares, etc. If this bill went into effect this year, it would mean that an additional \$153,811 would have to be budgeted for witness fees alone. The impact would be as follows:

Original estimated witness fees	\$230,714	
Additional funds required	153,811	
Estimated witness fee per diem, mileage and other charges		\$384,525
Total estimated expense		634,466
Original budget		(432,500)
Overbudget Expense		<u>\$201,966</u>

For 1981-82, we would estimate under the new fee structure our cost would be \$775,000. Presently, we have budgeted \$568,900 for witness fees in 1981-82.