MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
March 23, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Wednesday, March 23, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Ron Titus, Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator, Nevada Supreme Court
Michael Ware, Assistant Court Administrator, Eighth Judicial District
Chris A. Beecroft, Jr., Alternative Dispute Resolution Commissioner, Eighth Judicial District
Dean A. Hardy, President, Board of Directors, Clark County Legal Services
Wayne M. Pressel, Executive Director, Nevada Legal Services
Andrew List, Nevada Association of Counties
Scott Smith

CHAIR AMODEI:
The hearing is open on Senate Bill (S.B.) 177.

SENATE BILL 177: Makes various changes concerning fees charged in civil actions. (BDR 2-522)

RON TITUS (Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator, Nevada Supreme Court):
Senate Bill 177, a Nevada Supreme Court bill, is supported by the Nevada Supreme Court, the Judicial Council of the State of Nevada and the Judicial Branch.

MICHAEL WARE (Assistant Court Administrator, Eighth Judicial District):
Several experts are present to assist me: Dean Hardy, Board President, Clark County Legal Services; Val Cooney, Project Counsel, Volunteer Attorneys for Rural Nevadans; Paul Elcano, Executive Director, Washoe Legal Services; Wayne Pressel, Executive Director, Nevada Legal Services; and Chris Beecroft, Alternative Dispute Resolution (ADR) Commissioner, Eighth Judicial District.

I will address section 1 of S.B. 177, and Commissioner Beecroft will discuss section 3, concerning ADR programs and funding. Mr. Hardy, Mr. Elcano and Ms. Cooney will elaborate on sections 2 and 4 of S.B. 177, which prescribe enabling language for counties with regard to legal defense. Mr. Pressel will briefly discuss an additional amendment to S.B. 177, regarding automatic fee waivers for indigent litigants.

Also present are Chief Judge Kathy A. Hardcastle and Legislative Committee Chair, Judge Nancy M. Saitta, both of the Eighth Judicial District.

The Eighth Judicial District is faced with an inability to meet its fundamental goal and mission of providing timely access to justice. Las Vegas television station KVBC, Channel 3, recently reported the fatal shooting of a young mother at a Green Valley elementary school, and the alleged perpetrator will not face a criminal trial sooner than February 2006.

Nevada district court judges have the dubious distinction of handling larger caseloads per judge, if not the largest, among jurists in the western United States, at 2,633 filings per judge and only 1.9 judges per 100,000 population. It is difficult, if not impossible, to process cases and

proceed to trial on dangerous criminals in a timely fashion. The problem is clear. An underfunded judiciary erodes public trust and safety, and creates an untenable delay in our justice system. That is the reason we are here today.

Senate Bill 177 represents one part of a comprehensive strategy to accelerate the time to disposition and improve public safety in Clark County. The plan, which includes a request for seven new judges, two arraignment masters and additional judge resources, would utilize the increase in revenues from S.B. 177 to help offset the cost of these much needed judicial positions.

Section 1, line 11, page 2 of S.B. 177 shows a proposed $9 increase in filing fees for any civil action, proceeding or transfer; and line 36 shows a $6 increase in filing fees for an answer or the appearance of a defendant. These fee increases represent approximately 5 percent. It is important to note that, in the comparison, the district courts' total civil case filings between the years 2000 and 2004 increased 26.4 percent, whereas the U.S. Department of Labor's Consumer Price Index (CPI) from 1997 to 2005 increased 19.9 percent.

The Committee was provided a handout entitled "General Jurisdiction Courts Civil Filing Fee Comparison" (Exhibit C) on which you will note Clark County district court's civil filing fees are currently $133, and $86 for an answer, which are well within the range of comparable jurisdictions. With the proposed increase, the total fee for civil filings and answers will increase to $142 and $92, respectively. Again, they are well within acceptable ranges.

This request is fair, reasonable and prudent. The fee increases in section 1 of this proposed legislation would generate approximately $1.2 million over the next 3 years. It would help offset the cost of growth related to additional support staff, the expansion of our specialty, problem-solving courts and other personnel to support new judicial officers.

CHRIS A. BEECROFT, JR. (Alternative Dispute Resolution Commissioner, Eighth Judicial District):

In 1991, the Legislature passed S.B. No. 366 of the 66th Session, which adopted the Court Annexed Arbitration Program for cases in which the value was $25,000 or less per plaintiff. At the same time, it increased the filing fee for the commencement answering, or otherwise response, to a case filed in civil cases. This $5 fee was restricted to fund the arbitration program. The intent behind the $5 fee was to make the arbitration program self-funding. At that

particular time, the arbitration office had three personnel and a part-time commissioner, who also fulfilled the duties of discovery commissioner. The arbitration office opened about 2,500 cases per year and assigned those cases into arbitration. The $5 fee was sufficient to keep the arbitration program self-funding.

In 1995, the Legislature passed a bill, effective January 1, 1996, which increased the threshold level for cases entering mandatory arbitration, from $25,000 to $40,000 per plaintiff. It immediately added approximately 1,500 cases to the amount administered and appointed into the arbitration program. At that time, the Eighth Judicial District also added two additional personnel to accommodate the increase in the number of cases, but there was no increase in the filing fee. From that point forward, the arbitration program in the Eighth Judicial District was no longer self-funding, which defeated the initial purpose of making the arbitration program self-sufficient.

In 2001, the Nevada Supreme Court adopted a new program of ADR, the Short Trial Program. The Eighth Judicial District implemented the rules in 2002, and the program was voluntary. Since that time, over 250 cases have been stipulated in the program; it enjoys a 60-percent rate of settlement, and 101 cases have been tried.

In December 2004, the Nevada Supreme Court adopted sweeping changes to the forms of ADR. A voluntary form of mediation, as an alternative to the mandatory arbitration program, was adopted. The rules were changed to provide all cases not resolved in mediation or arbitration would automatically and mandatorily go into the Short Trial Program. In my estimation, it will add an additional 1,000 cases to those currently administered in the arbitration office.

It is difficult, at this point, to predict the number of mediation cases that will come into the Program because the law does not apply to any case until it is filed on or after March 1 of a particular year. Again, no additional fees have been approved for the ADR forms within the State of Nevada.

The Committee was provided a “Factsheet” (Exhibit D), which presents some salient points to support S.B. 177. Bill Draft Request (BDR) 2-523, which will become a bill and pass, will further increase the threshold of cases entering the ADR programs from $40,000 to $50,000 per plaintiff and add an additional 1,000 cases to the ADR program.

BILL DRAFT REQUEST 2-523: Makes various changes to provisions regarding arbitration and other alternative methods of resolving disputes in certain civil actions. (Later introduced as Assembly Bill 468.)

The arbitration program resolves 78 percent of cases within 12 months of the date they are assigned to the program. An integral part of the court's mission is to have cases resolved within 24 months, as suggested by the American Bar Association.

Charts 1 and 2 on page 1 of Exhibit D show several important points. Since legislation increased the initial threshold, no new personnel have been added. Due to the adoption of the new Short Trial and mediation programs, the intent is to add one person to administer the Short Trial Program and one to administer the mediation program. There have been no new funding or fee increases. Two significant forms of new ADR were added to the repertoire provided litigants by the ADR office. It is contemplated the pressure will increase again, thereby, further increasing the number of cases without any fee increase.

Exhibit D shows ADR expenses have far exceeded revenues since 1996. It is no longer self-funding, which defeats the purpose of the fee and the initial policy that ADR programs be self-funded. Without your approval of the fee increase, over the next 4 years Clark County will absorb $1.8 million. A fee increase is sought to return to the original policy of having self-sustaining ADR programs, programs paid for by the litigants who use them.

My counterpart, Wesley Ayres, who administers ADR programs in Washoe County, is not in attendance; however, I understand from him that the records reflect the Second Judicial District in Washoe County also supports S.B. 177.

DEAN A. HARDY (President, Board of Directors, Clark County Legal Services):
I support S.B. 177 and will present my written testimony regarding section 2 of S.B. 177 (Exhibit E).

WAYNE M. PRESSEL (Executive Director, Nevada Legal Services):
The Committee was provided an amendment to S.B. 177 (Exhibit F), which is supported by the sponsor of the bill and all parties thereto. The amendment deals with the other side of filing fees. In the court process, indigent litigants always had the ability to approach the court and receive a waiver of filing fees

and costs, which provides them the same access to the court system as those who can pay. The amendment will simplify the court process for indigent litigants.

The amendment provides a litigant represented by an authorized legal services program, as described and defined in the *Nevada Revised Statute* (NRS) 19.031, an automatic waiver of fees and costs. The firms involved are Nevada Legal Services, Clark County Legal Services, Washoe Legal Services and pro bono projects that are also the subject of S.B. 177.

I would like to point out two things. One, this would obviate the need for the present paper process done by the litigant to supply affidavits, petitions and orders from the court to proceed with the case. This often happens in emergency situations. Two, the litigant represented by legal services will be screened for income, assets and citizenship, which are need-based services provided by Nevada Legal Services. Nevada Legal Services is obligated to serve only individuals who have proven and established legal indigency. If at some point during litigation the judge determines an individual is able to pay the filing fee and costs, the judge is free to impose part, or all, of the fees.

The Committee was provided a document entitled "Poverty in Nevada" (Exhibit G), as well as a United Way brochure entitled "The Truth About Poverty in Nevada" (Exhibit H). Exhibit G was put together by my firm and provides conceptual background and analysis of poverty. The 1990 and 2000 census show indisputable evidence that access to justice in Nevada is a vital and crucial issue; it is not a sideline show. Nevada has the fastest-growing poverty population in the United States, which has affected both urban and rural areas in the north and south.

CHAIR AMODEI:
Would S.B. 177 apply to Volunteer Attorneys for Rural Nevadans (VARN) programs in rural areas?

MR. PRESSEL:
Yes, it would apply to VARN.

ANDREW LIST (Nevada Association of Counties):
The Board of Directors of the Nevada Association of Counties (NACO), in an attempt to offset rising court costs paid by the counties, requested

BDR 2-587 for this Legislative Session. It came to our attention that S.B. 177 was coming before this Committee. The court system and NACO decided to combine BDRs where they overlapped on arbitration costs and some filing fees in district courts, and also bring part of the NACO bill into S.B. 177. The portion brought into S.B. 177 addresses fees charged by the justice of the peace. All fees requested, as consolidated into S.B. 177, are at or below CPI and were last increased in 1993. The fees are reasonable and will help counties offset the rising cost of court.

If the proposed NACO amendment to S.B. 177 (Exhibit I) is successful, NACO agreed to drop its BDR request. There is an error in the amendment: Assembly Bill (A.B.) 177 should be changed to S.B. 177.

MR. WARE:
We agree with the amendments delineated by Mr. List and feel they are fair and reasonable. Thank you for the opportunity to integrate the two bills. It is never easy to request more fees to support programs already in place; however, district court judges have worked to provide and maintain a level of reasonable access and service to the public in Clark County with available resources. Considering the booming growth in Clark County, current levels must be maintained. Innovative and creative programs have allowed us to progress with available resources. The Short Trial Program, presented by Mr. Beecroft, is one of the programs put in place. It is a one-day trial, with no cost to taxpayers, and has avoided civil litigation that would have ended up in district courts. We eliminated overflow criminal calendars, created a complex-litigation center, used specialization of cases, as well as senior judge resources, and utilized all available resources.

CHAIR AMODEI:
What is the pleasure of the Committee on S.B. 177?

SENATOR WIENER MOVED TO AMEND AND DO PASS S.B. 177.

SENATOR WASHINGTON SECONDED THE MOTION.

MR. PRESSEL:
I assume the amendment for the automatic fee waiver is included.

CHAIR AMODEI:
The maker of the motion includes the amendment for the automatic fee waiver and the second concurs.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR AMODEI:
The hearing is opened on S.B. 190.

SENATE BILL 190: Revises provisions governing actions for forcible entry or forcible or unlawful detainer. (BDR 3-629)

SCOTT SMITH:
I am an attorney with the Law Offices of Cullimore and Smith in Las Vegas, as well as Director of the Southern Nevada Multi-Housing Association in the Las Vegas, Clark County, area. I am one of the creators of S.B. 190.

Senate Bill 190 was brought forth due to a concern regarding affordable housing, which has become a problem in the Las Vegas area and the State of Nevada. Those involved in the property tax debate are aware of the problem. Senate Bill 190 would amend a law that has been on the books for almost 100 years and streamlines the formal, civil eviction process as codified in NRS 40.

The Southern Nevada Multi-Housing Association is of the opinion the current eviction process, called summary eviction under NRS 40.253 and 40.254, is unconstitutional, and the procedural due process required would not pass constitutional muster if brought before federal court. We foresee a time when the summary eviction process will no longer be available to landlords and tenants in Nevada.

In addition, the summary eviction process places a burden on paying tenants for whom my clients provide affordable housing. In the summary eviction process, a notice is placed on the tenant's door when rent is not paid or the lease is violated. There are generally five days to respond. If tenants do not respond within the time limit, they are evicted. If tenants respond, a hearing is held before a judge who determines whether or not the rent has been paid, and if

not, they are evicted. Awarding any monetary amount is prohibited; consequently, landlords do not receive rent.

Nevada's economy has been struggling with a lack of tourism since September 11, 2001, but is recovering. Rents in Las Vegas have remained flat. In January 2004, 86 percent of all apartment communities in the Las Vegas area were offering rent concessions to entice people to move into their complexes; the concession involved giving one, two and/or three months free rent. By December 2004, 50 percent of apartment complexes in the Las Vegas area provided concessions; therefore, the situation was improving.

In essence, rents remained flat while costs went up and mortgages still had to be paid. In summary eviction, the renter is evicted, but the landlord does not receive the rent due even though mortgages, payrolls, taxes and expenses must be paid. Due to a decrease in revenue because of evictions, costs must be shared among the existing source of revenue—the paying tenants. Those who pay rent on time must pay for those who do not.

I will give you an example. When a 200-unit apartment complex charging $500 a month experiences five evictions a month, the landlord loses $500-a-unit rent for that month. By the time eviction takes place and the property is repossessed, another month has passed. The property must be prepared for the next tenant and a second month of rent is lost, which is $1,000. The landlord must pay a filing fee, which has increased to $41; the constable's fee, which is statutorily set at approximately $80 to $88; serving notice on the tenant, which is $50; and paperwork for summary eviction, which is approximately $300. Consequently, each eviction costs the landlord a total of $1,479; therefore, five evictions will cost the landlord a total of $7,395.

On average, one of five evictions will file an answer with the court, which requires a hearing costing the landlord another $400. Added up for one month, the landlord has $7,795 in expenses because of the evictions. Allocated across the board, approximately $40 must be charged to each tenant of the 195 units who paid rent toward the five who did not. Over the course of one year, the cost will be $479.69 per tenant because five tenants did not pay their rent. The paying tenants will pay approximately one extra rent payment every month due to the manner in which costs are allocated.

MR. SMITH:
Currently, under NRS 40, a civil eviction can be filed. The court can shorten the time it must be answered, at which time it can go to a hearing to determine whether or not an eviction is appropriate, and then eviction is ordered. There is an attempt to make the civil eviction process fast enough to afford tenants their rights, but landlords may allocate costs to those causing evictions rather than the paying tenants.

Senate Bill 190 will not make eviction faster than summary eviction. Summary eviction allows the plaintiff to post notice on the door of the apartment, it is not required to be handed to the tenant. If the tenant does not respond to the posting, the landlord can go to court and have the tenant evicted. To stop eviction, allow tenants their day in court and constitutional due process, they must go to court and file an answer before a lawsuit is filed. This violates tenants' due process rights. Tenants must submit to the jurisdiction of the court and agree the court has the right to make a decision before the plaintiff makes an allegation. Tenants are made aware of the allegation after the answer is filed. Then a lawsuit is filed, which is an affidavit of complaint for summary eviction, and never served on the tenant. Tenants never see it unless they go to court and obtain it. This process is unfair to tenants and will be overturned in the future.

We propose using another process which allows tenants the right of due process. Section 1, subsection 2, paragraph (a) of S.B. 190, shortens the time the defendant is required to appear and defend the action. At present, there is no specific time, other than to say if the summons is published, it must be done in seven days. We want to mirror other states, such as Utah, and make it a three-day period. Currently, justice courts in Las Vegas Township will shorten the time limit to seven days, and justice courts in North Las Vegas and Henderson Townships will shorten it to ten days.

We propose a three-day period once a lawsuit is served. A five-day notice will be posted, or whatever type notice is prescribed by NRS 40. The tenant will have eight days from the five-day notice, excepting weekends and the day served, to pay the rent. If tenants do not pay within eight days, under summary eviction, they are locked out of the apartment by the constable within three days. We propose that after eight days, a regular civil lawsuit is filed and filing fees paid. A process server will find and serve the tenant; therefore, the tenant will be provided actual notice. The tenant would have three days to answer. If

the tenant answers, the court can proceed and set a hearing, as in any other circumstance. If the tenant does not answer, it will go through the normal judicial process. This process provides tenants more time and guarantees their constitutional rights better than under the current summary eviction process.

Section 2, subsection 2 of S.B. 190, would provide damages for individuals forced to go to trial if it, consequently, turns out they were wrong and, indeed, violated the lease. Ambiguity regarding damages should be clarified. When tenants force landlords to trial and are proven wrong, they must pay three times the amount of rent, plus any other damages. This is a hammer to encourage tenants to settle cases, pay the rent and allow landlords to pay the mortgage.

Landlords must pay their mortgages regardless of the problems experienced by tenants. Banks do not care whether tenants have been in the hospital or lost their jobs; consequently, landlords are foreclosed upon. Senate Bill 190 will encourage tenants to make rent a priority to continue their stable living environment, and landlords can provide a stable environment for tenants who pay rent. It will also keep landlords from raising rents because costs will not be allocated to paying tenants.

SENATOR CARE:
You mentioned ambiguity in regard to damages being three times the amount of rent. There was a 1916 Nevada Supreme Court case that said rents are not to be included among treble damages. I have not read the case; however, rent is a matter of contract. I regard three times the rent as punitive damages and breach of contract. In a contract, oral, written or implied, damages will be rent and whatever else the statute might contemplate. You may disagree.

In addition, a lease can have a provision that in the event of litigation, attorney fees would go to the prevailing party. There can be a contractual provision allowing one to capture attorney fees. I realize many tenants may not have money for attorney fees, but it is not accurate to say one could not get attorney fees if there was a contractual provision for it.

The notion of three times the rent flies in the face of time-honored tradition that contract damages are simply contract damages. This strikes me as a punitive measure.

MR. SMITH:
The case to which you are referring is *Regan* v. *King*, 39 Nev. 216 (1916). The Nevada Supreme Court ruled the justice court's action proper and noted NRS 40 addressed any damages from unlawful detainer. One version of unlawful detainer defined in NRS 40 is nonpayment of rent after notice. Due to the fact the statute said damages, the Nevada Supreme Court ruled damages should be rent, and justice court should not award rent. However, the Nevada Supreme Court did not order the justice court to award rent because that issue was not before them and would have gone beyond its jurisdiction.

That case enters an ambiguity, but it was strictly for accounting purposes on the part of the court at the time and it never ruled anything stronger. Regarding the issue of whether or not it is punitive, treble damages are similar to what happens in punitive damages. Punitive damages can be set by statute, and it is up to the Committee to determine whether or not it is appropriate. It would only be awarded if there was a trial, and only apply to people who pushed it to trial, were proven wrong and did not pay the rent. It is an inducement for people to settle and pay the rent. Rent could not be forced from them, as proposed or currently drafted.

SENATOR CARE:
Regarding the three-day notice, the tenant receives the three- or five-day notice, depending upon the circumstances. The tenant filing an affidavit in opposition of the notice leads to the landlord filing a complaint for unlawful detainer. The present mechanism allows the tenant to see the notice, respond in ignorance, but claim there was a reason rent was not paid. Perhaps, the landlord was unaware the rent was paid. The tenant would want to get before a judge before the landlord went any further. It works somewhat backwards, but nonetheless, it allows the tenant the option of putting the matter in front of the court before anything else takes place.

MR. SMITH:
The summary eviction process comes from NRS 40.253 and NRS 40.254, whereas the proposed process is different in that the tenant is given notice, but the landlord cannot do anything until a lawsuit is served and the tenant given due process rights. Summary eviction is a legal process and, under both the State and federal constitutions, tenants are entitled to be served and then file an answer. The summary eviction process allows the landlord to post and mail the notice by certificate of mailing. Should tenants not receive the notice, they can

be evicted. Tenants who file answers are submitted to the jurisdiction of the court. Hypothetically, should the landlord go to a wrong justice court or a justice court on the other side of town knowing the tenant would be unable to get there, the tenant would not have a chance to dispute the case until after eviction. The process first requires the landlord to go to court and then serve the legal proceeding on the tenant.

Your interpretation is backwards and fatally flawed from a constitutional perspective. This eviction process would not pass a federal challenge. We are seeking a way to make the process equitable.

CHAIR AMODEI:
Is there more testimony in favor of S.B. 190? Seeing none, what is the pleasure of the Committee?

SENATOR CARE MOVED TO INDEFINITELY POSTPONE S.B. 190.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS McGINNESS AND NOLAN WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:
Based on the Committee's action, the testimony of those against S.B. 190 is unnecessary at this time; however, it means no disrespect to anyone who came to testify on the bill. Therefore, the hearing is closed on S.B. 190.

There being no further business to come before the Senate Committee on Judiciary, the meeting is adjourned at 10 a.m.

RESPECTFULLY SUBMITTED:

_____
Barbara Moss,
Committee Secretary

APPROVED BY:

_____
Senator Mark E. Amodei, Chair

DATE: _____