

# SJR 9 - 2007

**Introduced on:** Mar 26, 2007

**By** Judiciary

*Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)*

## Fiscal Notes

Effect on Local Government: *No.*

Effect on State: *No.*

**Most Recent History Action:**  
**(See full list below)**

File No. 69. **(Return to 2009 Session)**

## Past Hearings

Senate Judiciary	Apr-05-2007	No Action
Senate Judiciary	Apr-10-2007	Do pass
Assembly Judiciary	Apr-30-2007	Do pass

## Votes

<a href="#">Senate Final Passage</a>	Apr-13	Yea 21,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0
<a href="#">Assembly Final Passage</a>	May-07	Yea 42,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0

## Bill Text (PDF)

[As Introduced](#)

[As Enrolled](#)

**Statutes of Nevada, 2007**

[File No. 69](#)

---

## Bill History

Mar 26, 2007	Read first time. Referred to Committee on Judiciary. To printer.
Mar 27, 2007	From printer. To committee.
Apr 11, 2007	From committee: Do pass.
Apr 12, 2007	Read second time.
Apr 13, 2007	Read third time. Passed. Title approved. (Yeas: 21, Nays: None.) To Assembly.
Apr 16, 2007	In Assembly. Read first time. Referred to Committee on Judiciary. To committee.
Apr 30, 2007	From committee: Do pass.
May 01, 2007	Read second time.
May 03, 2007	Taken from General File. Placed on General File for next legislative day.
May 07, 2007	Read third time. Passed. Title approved. (Yeas: 42, Nays: None.) To Senate.
May 08, 2007	In Senate. To enrollment.
May 11, 2007	Enrolled and delivered to Secretary of State. File No. 69. <b>(Return to 2009 Session)</b>



PREPARED BY  
RESEARCH DIVISION  
LEGISLATIVE COUNSEL BUREAU  
Nonpartisan Staff of the Nevada State Legislature

**BILL SUMMARY**  
74<sup>th</sup> REGULAR SESSION  
OF THE NEVADA STATE LEGISLATURE

---

---

**SENATE JOINT RESOLUTION NO. 9**

**Topic**

Senate Joint Resolution No. 9 pertains to a Court of Appeals.

**Summary**

Senate Joint Resolution No. 9 proposes an amendment to the *Nevada Constitution* to allow for an intermediate appellate court, known as the Court of Appeals, with jurisdiction in civil cases arising in district court and in criminal cases within the original jurisdiction of the district courts.

**Effective Date**

If approved in identical form during the 2009 Session of the Legislature, the proposal will be submitted to the voters for final approval or disapproval at the 2010 General Election.

# LEGISLATIVE HEARINGS

## MINUTES AND EXHIBITS

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
April 5, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:11 a.m. on Thursday, April 5, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

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

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Brad Wilkinson, Chief Deputy Legislative Counsel  
Gale Maynard, Committee Secretary

**OTHERS PRESENT:**

The Honorable A. William Maupin, Chief Justice, Nevada Supreme Court  
Juli Star-Alexander, Redress, Incorporated  
James Richardson, Ph.D., Nevada Faculty Alliance  
Alecia D. Biddison, The Busick Group  
Rew R. Goodenow, State Bar of Nevada  
John K. O'Connor  
Robert C. Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada  
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State

Senate Committee on Judiciary  
April 5, 2007  
Page 2

Rocky Finseth, Nevada Land Title Association  
Shari O'Donnell, Vice President, Signature Homes

CHAIR AMODEI:

We call this meeting of the Senate Committee on Judiciary to order and start with Senate Joint Resolution (S.J.R.) 9.

**SENATE JOINT RESOLUTION 9:** Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)

THE HONORABLE A. WILLIAM MAUPIN (Chief Justice, Nevada Supreme Court):

I support S.J.R. 9 which starts the process of passing the resolution in two consecutive Legislative Sessions to amend the *Constitution of the State of Nevada*. The resolution will then be on the ballot for the voters in 2010 to provide a separate intermediate court of appeals as part of the court system.

This resolution has been on the voting ballot before but was not well promoted. Amending the *Constitution of the State of Nevada* is a long process. Legislators will create the intermediate appeals court during the Legislative Session of 2011, the judges to sit on this court will be elected in 2012 and assume their offices in 2013.

Nevada Supreme Court cases increased from 1,616 in 1995 to 2,157 in 1996; in 1997, it increased again to 2,521. There has been a five-judge Supreme Court since the middle of the 1960s. This has been a huge undertaking by the judges to deal with caseloads. The Nevada State Legislature aided with important relief in the form of two additional Supreme Court justices and allowed us to create a panel system. With the addition of these judges, our caseload has been reduced; at the end of 2006, it stood at 1,377.

The increase of judges demonstrates we can get caseloads down to a manageable number. Using organized programs creates better time management. Despite these improvements, it still takes time from briefings to resolve substantial pieces of litigation before the court.

Between 1997 to present, in cooperation with the Eighth Judicial District, we created the chief judge system and incorporated this strategy in the Second Judicial District. We enacted a short trial system and used the arbitration system. With these methods in place, the filings leveled.

In the past two years, case filings have increased to over 2,000 cases per year. Even with these improvements in our court system, these increases are jeopardizing our functionality. We need to take the future of our court system to another level. Expansion of the Nevada Supreme Court has worked in the past, but with population pressures, we need to look at expanding again.

It is time to start the process of increasing our judges in the intermediate appeals court. A comprehensive report was commissioned by S.B. No. 234 of the 73rd Session of the Legislature (Exhibit C, original is on file in the Research Library) and presented on March 8.

SENATOR WIENER:

This was initiated a few sessions ago, and then you pulled back on the process because the timing was not right. Did you make a decision to initiate these other intermediate procedures during this interim? In testimony, you say other routes to justice were maxed out, is that why you are bringing this forward?

CHIEF JUSTICE MAUPIN:

Essentially, you are correct. Arbitration went into effect in 1992, but the full impact was not felt until three to four years later. In 1996, there was an examination in the Eighth Judicial District Court between myself and my colleagues whether we should stop hearing criminal and civil cases in three-week cycles. We determined to enact a specialization program based on district court caseloads. We have benefited from these decisions.

Creating the family court improved the performance of the general district court. Once elected to the Nevada Supreme Court, I voted for the measure to approve the specialization which reduced court filings. Our criminal appeals in Clark County were less than in 1996. Management decisions were done to improve the court's performance, and it had a net effect of reducing the number of filings.

This resolution was initiated twice before. We did not know how successful the court expansion program would become. It would have been hard to make the case to the public at that time, but now we are ready.

SENATOR CARE:

I see the need, but how are you going to make the case to the public? How are you going to promote the idea?

CHIEF JUSTICE MAUPIN:

We will not have competition on an attempt to get a bond measure passed to build a 17-story courthouse in Clark County along with a renovated jail. The efforts of The Honorable James W. Hardesty and The Honorable Michael L. Douglas created a Bench-Bar Committee which started a regular interaction with members of the State Bar of Nevada to keep them abreast of the progress the Nevada Supreme Court makes with its dockets and our needs.

The Nevada Supreme Court cannot solicit or raise funds. The legal profession as an institution will have to step forward to raise funds. A political committee will have to be formed in order to promote this and be professional as well as accountable with spending. We have to make our case to the people and have a business plan. We are in the process of doing this. Justice Hardesty said he was in favor of an intermediate appeals court only if justification could be based on court caseloads, management needs and the development of an efficient court.

It was agreed to lease space in the Regional Justice Center for office and courtroom space pending the approval of an intermediate appeals court.

In intervening years, court expansion seemed to be working. Our infrastructure issues are to add new offices. The three chambers available now are suitable for an intermediate appeals judge, law clerk and judicial assistant.

CHAIR AMODEI:

Is there anyone else to speak on S.J.R. 9? We will close the hearing on S.J.R. 9 and reopen the hearing on S.J.R. 2.

**SENATE JOINT RESOLUTION 2:** Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

## DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

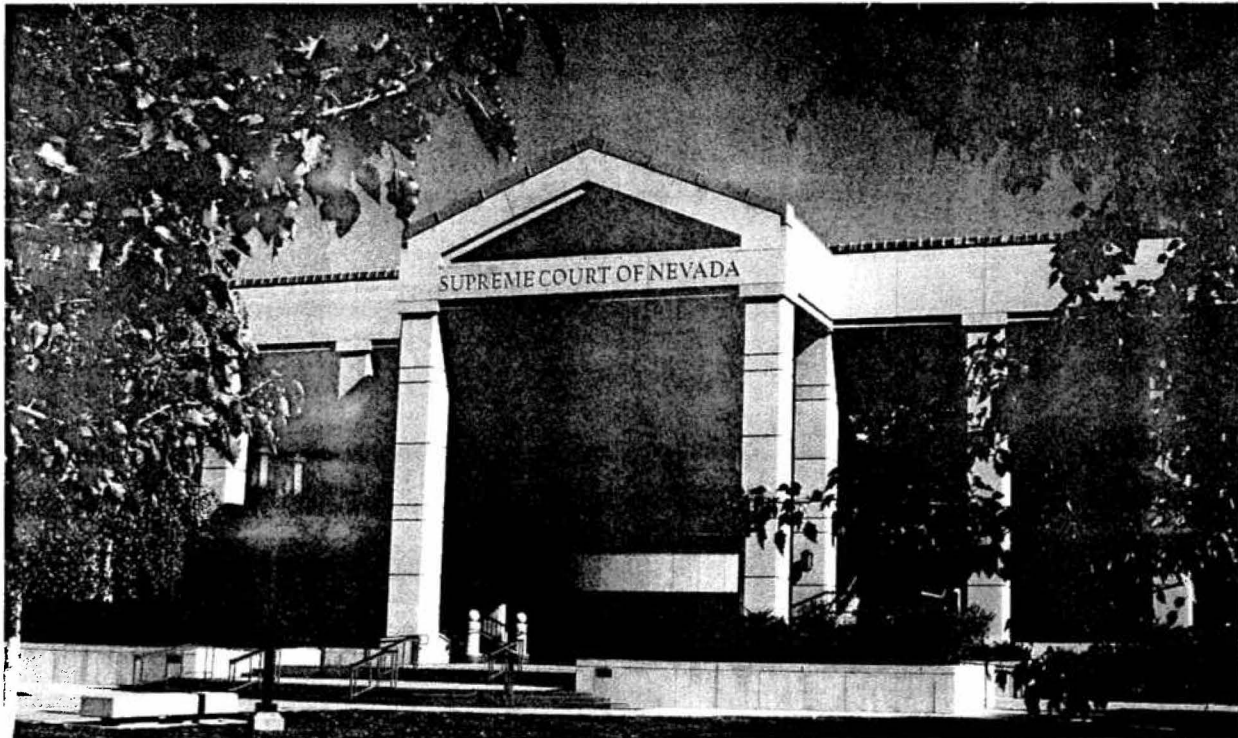
Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).



**REPORT TO THE 74th REGULAR SESSION OF  
THE NEVADA STATE LEGISLATURE, 2007,  
REGARDING THE CREATION OF  
THE NEVADA COURT OF APPEALS**

Pursuant to Senate Bill 234, 73rd Legislative Session, 2005



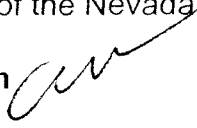
THIS EXHIBIT IS 56 PAGES LONG.  
CONTACT THE RESEARCH LIBRARY FOR  
A COPY OF THE COMPLETE EXHIBIT

SUPREME COURT OF NEVADA  
A. WILLIAM MAUPIN, CHIEF JUSTICE  
201 SOUTH CARSON STREET  
CARSON CITY, NEVADA 89701-4702



**Date:** March 8, 2007

**To:** Members of the 74th Session of the Nevada Legislature

**From:** **Chief Justice William Maupin**   
Justice Mark Gibbons  
Justice James Hardesty  
Justice Ron Parraguirre  
Justice Michael Douglas  
Justice Michael Cherry  
Justice Nancy Saitta

**Re:** **Report to the 74th Regular Session of  
The Nevada State Legislature, 2007,  
Regarding the Creation of an  
Intermediate Appellate Court**

---

Greetings:

Enclosed herewith is the report requested in Senate Bill 234 passed during the 73rd Legislative Session in 2005. This report contains an analysis of whether the State of Nevada would benefit from the establishment of an intermediate appellate court.

This report references Bill Draft Request C-661, which proposes legislation necessary for the creation of an intermediate appellate court. BDR C-661, as a joint resolution, represents the first step toward the goal of creating the Nevada Court of Appeals.

The Court also acknowledges that a joint resolution must be approved during two consecutive legislative sessions; in 2007 and subsequently in 2009. We are confident that members of the Legislature will continue to support our efforts in this regard.

The measure becomes final upon approval by the voters in 2010. The Nevada Supreme Court, along with other members of the judiciary, the State Bar of Nevada and members of the public, are committed to taking whatever action is necessary to ensure that the citizens of Nevada have sufficient information to make their choice in 2010.

Thank you for your continued support.

**REPORT TO THE 74TH REGULAR SESSION OF  
THE NEVADA STATE LEGISLATURE, 2007,  
REGARDING THE CREATION OF  
THE NEVADA COURT OF APPEALS**

Pursuant to Senate Bill 234, 73rd Legislative Session, 2005

Submitted by Supreme Court of Nevada  
201 South Carson Street  
Carson City, Nevada 89701



March 2007

**Supreme Court of Nevada**  
Chief Justice A. William Maupin  
Justice Mark Gibbons  
Justice James W. Hardesty  
Justice Ron Parraguirre  
Justice Michael Douglas  
Justice Michael Cherry  
Justice Nancy Saitta

Prepared by  
**Joan E. Neuffer**  
Staff Counsel  
Administrative Office of the Courts

**AB 234 Study Committee**  
**All Justices**  
Janette Bloom, Clerk of the Court  
Ron Titus, Director & State Court Administrator  
Robin Sweet, Deputy Director

[www.nvsupremecourt.us](http://www.nvsupremecourt.us)

**REPORT TO THE 74TH REGULAR SESSION OF  
THE NEVADA STATE LEGISLATURE, 2007  
SENATE BILL 234**

<b>TABLE OF CONTENTS</b>
--------------------------

SECTION	PAGE
<b>A. Introduction</b>	
1. Executive Summary	1
2. Conclusions	2
<b>B. The Nevada Court of Appeals - A Historical Perspective</b>	
1. Legislative History	3
a. Years 1977 to 1980	3
b. Years 1989 to 1992	4
c. Years 1993 to 2001	5
d. Years 2003 to the present	6
<b>C. Intermediate Appellate Courts in Other Jurisdictions; A Comparison</b>	
1. Nevada's Court System	7
a. <b>Figure 1.</b>	7
2. Intermediate Appellate Courts in the United States	8
a. <b>Table 1.</b>	10
3. Nevada Supreme Court Caseload	11
a. Population Growth	11
1. <b>Figure 2.</b>	11
b. Caseload Growth	12
1. <b>Figure 3.</b>	12
2. <b>Table 2.</b>	13
4. Optimum Relative Workload	14
5. States Without an Intermediate Appellate Court; Comparison	15
a. <b>Table 3.</b>	16

6.	Selected States with an Intermediate Appellate Court; Comparison	16
a.	<b>Table 4.</b>	17
<b>D. The Nevada Court of Appeals: A Reality</b>		
1.	Access to Justice	17
2.	Appropriate Standards for Nevada's Intermediate Appellate Courts	18
a.	Quality of Services	18
b.	Reduction of Delay	19
c.	Timeliness	20
1.	<b>Table 5.</b>	22
2.	<b>Table 6.</b>	22
3.	<b>Table 7.</b>	23
4.	<b>Table 8.</b>	24
d.	Error Correction Function	25
e.	Number of Authored (Published) Opinions	26
3.	Nevada's Growing Population and Effect on the Courts	28
a.	Nevada's Population	28
1.	<b>Table 10.</b>	29
b.	Clark County/Eighth Judicial District	30
1.	<b>Table 11.</b>	30
c.	Washoe County/Second Judicial District	31
1.	<b>Table 12.</b>	31
<b>E. Creation of the Nevada Court of Appeals</b>		
1.	Proposed Legislation	32
2.	Name of the New Court	33
3.	Jurisdictional Authority; Considerations	33
a.	Bill Draft Request C-661	33
b.	New Mexico model	33
c.	Jurisdiction of the Nevada Supreme Court	34
1.	Direct Appeals and Via Writ	34
2.	Discretionary Review	35
3.	Subject Matter Jurisdiction	35
4.	Transfers Between Courts	35

d.	Jurisdiction of the Nevada Court of Appeals	36
1.	Dispute Deciding Function	36
2.	Court Rule	36
4.	Caseload Management for Both Courts	36
5.	Setting Up the Nevada Court of Appeals	37
a.	New Judges	37
1.	Terms	37
2.	Qualifications	38
3.	Salaries	39
b.	Additional Legal and Support Staff	39
1.	Law Clerks	39
2.	Judicial Executive Assistants	40
3.	Deputy Clerks	40
4.	Security Personnel	40
c.	Facilities	40
d.	Sharing Resources	41
1.	Clerk's Office	41
2.	Central Legal Staff	41
e.	Costs	41
1.	<b>Table 13.</b>	42
f.	Timing	42
6.	Potential Impact on Nevada's Court System	42
a.	State Court System	43
b.	Judicial Process	43

## **F. Conclusions**

1.	Summary Recommendations	44
----	-------------------------	----

## **APPENDIX**

1.	Senate Bill 234	
----	-----------------	--

# REPORT TO THE 74TH REGULAR SESSION OF THE NEVADA STATE LEGISLATURE, 2007, REGARDING THE CREATION OF THE NEVADA COURT OF APPEALS

## A. Introduction

### 1. Executive Summary

Over the past 30 years, members of the Judicial Branch have proposed legislation required for the creation of an intermediate appellate court in Nevada. In acknowledging the efforts of the Judicial Branch, the Nevada State Legislature has approved and passed seven joint resolutions toward the goal of establishing the new court.

After successful passage of AJR 2 in 1977 and 1979, *Question Seven* was placed on the ballot in 1980. *Question Seven* was subsequently rejected by nearly 53 percent of the voters. Following defeat of *Question Seven*, members of the Judicial Branch and the Nevada State Legislature worked together to pass SJR 12 in 1989, and again in 1991, sending the measure to the voters for a second time in 1992. Unfortunately, *Question Six* was also defeated with 54 percent of the votes against.

During the 73rd Legislative Session in 2005, Assembly Bill 234 was passed to evaluate the need for the new court. The language in AB 234 acknowledges Nevada's rapid population growth, the increase in the number of cases filed statewide, and the extraordinary workload before the Supreme Court. Recent statistics underscore this concern. During the 2006 fiscal year alone, 2,086 appeals were filed in the Supreme Court, representing a 3 percent increase from the previous year.

In response to passage of AB 234, a study committee was formed by the Justices of the Nevada Supreme Court, joined by the Clerk of the Court, the Director, Deputy Director and Staff Counsel from the Administrative Office of the Courts (AB 234 Study Committee). Committee members examined the legislative history, reviewed statistics compiled by the U.S. Census Bureau and the National Center for State Courts (NCSC), discussed appellate standards proposed by the American Bar Association and the NCSC, and compared documentation and statistics gathered by AOC and the Clerk's Office for the Annual Report of the Nevada Judiciary for fiscal year 2006. The Committee agreed that discussion of proposed standards for appellate courts was appropriate in assessing our state's current structure, and to determine what improvements are necessary to accomplish the work of the Court.

Results of the AB 234 Study reveal that our state court system would clearly benefit from the addition of an intermediate appellate court. An intermediate appellate court will ensure that the citizens of Nevada continue to have access to justice at all levels.



Committee members believe the new court will provide critical support services, and will join with the Nevada Supreme Court in seeking to:

- Maintain high quality in the judicial process
- Efficiently manage all appeals
- Minimize delay in processing appeals
- Ensure appellate decisions are rendered in a timely manner
- Establish a traditional error correction court
- Increase the number of authored opinions for those cases that establish our state's common law

Review of the legislative history reveals some opposition for the concept of the new court by lawmakers and their constituents. Opponents have pointed to the high cost and expense, and expressed fear that a new court would create "another step to the process of litigation." Cost is a primary concern and must be considered. However, with the completion of the Regional Justice Center in 2005, some critical resources can be shared, thereby reducing overall expense.

The Nevada Court of Appeals will provide a much needed alternative for those seeking review of trial court decisions, and will provide a more efficient appellate process for all litigants. With careful planning and wise use of resources, the Nevada Court of Appeals will soon become an essential and integral part of our state court system.

Those who have been working toward the goal of establishing a new court will undoubtedly agree that the biggest hurdle in the process is obtaining the support of the voters. Long term support for the new court can only be obtained by providing accurate, relevant information to the voting public in a timely manner.

## **2. Conclusions**

The Committee is optimistic that the Legislature will continue to be a supportive partner during the next two legislative sessions. The Committee believes that the voting public must be provided with information necessary to make an informed decision in 2010. To that end, the Committee provides this data, costs analysis, and plan for a court of appeals that will ultimately improve the efficiency of the entire judicial system of our state.

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
April 10, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:29 a.m. on Tuesday, April 10, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

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

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Brad Wilkinson, Chief Deputy Legislative Counsel  
Barbara Moss, Committee Secretary

**OTHERS PRESENT:**

Mark Woods, Major, Division of Parole and Probation, Department of Public Safety  
John Gonska, Chief, Division of Parole and Probation, Department of Public Safety

CHAIR AMODEI:

The hearing is opened on Senate Bill (S.B.) 292.

**SENATE BILL 292:** Enacts the Uniform Mediation Act. (BDR 3-1114)

Senate Committee on Judiciary  
April 10, 2007  
Page 23

**SENATE BILL 519**: Makes various changes relating to abandoned property.  
(BDR 10-496)

CHAIR AMODEI:

An amendment has been suggested by the opponent relating to the Millennium Scholarship. What is the pleasure of the Committee on S.B. 519?

SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 519.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR AMODEI:

Senate Bill 553, with a significant amendment, will be heard tomorrow, April 11; S.J.R. 2 has also been moved to tomorrow.

The hearing is opened on S.J.R. 9.

**SENATE JOINT RESOLUTION 9**: Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)

SENATOR CARE MOVED TO DO PASS S.J.R. 9.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

MR. WILKINSON:

I would like to clarify that the amendment to S.B. 132 which added cross-country skiing, snowshoeing and road or mountain bike riding was in the bill as it initially existed. Therefore, if the desire was to pass the bill as it existed, the motion would have been a do pass rather than amend and do pass.

## DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).



PREPARED BY  
**RESEARCH DIVISION**  
LEGISLATIVE COUNSEL BUREAU  
Nonpartisan Staff of the Nevada State Legislature

# WORK SESSION

## Senate Judiciary

**April 10, 2007**

### Bills Under Consideration

<input type="checkbox"/>	Senate Bill 45	pp. 2-3
<input type="checkbox"/>	Senate Bill 85	pp. 4-15
<input type="checkbox"/>	Senate Bill 132	pp. 16-18
<input type="checkbox"/>	Senate Bill 204	pp. 19-25
<input type="checkbox"/>	Senate Bill 212	pp. 26-28
<input type="checkbox"/>	Senate Bill 216	pp. 29-37
<input type="checkbox"/>	Senate Bill 232	pp. 38-47
<input type="checkbox"/>	Senate Bill 277	pp. 48-49
<input type="checkbox"/>	Senate Bill 291	pp. 50-59
<input type="checkbox"/>	Senate Bill 292	pp. 60-61
<input type="checkbox"/>	Senate Bill 298	pp. 62-66
<input type="checkbox"/>	Senate Bill 299	pp. 67-71
<input type="checkbox"/>	Senate Bill 302	pp. 72-73
<input type="checkbox"/>	Senate Bill 317	pp. 74-91
<input type="checkbox"/>	Senate Bill 354	pp. 92-95
<input type="checkbox"/>	Senate Bill 378	p. 96
<input type="checkbox"/>	Senate Bill 380	pp. 97-113
<input type="checkbox"/>	Senate Bill 381	pp. 114-122
<input type="checkbox"/>	Senate Bill 420	p. 123
<input type="checkbox"/>	Senate Bill 471	pp. 124-125
<input type="checkbox"/>	Senate Bill 483	pp. 126-136
<input type="checkbox"/>	Senate Bill 519	pp. 137-139
<input type="checkbox"/>	Senate Bill 542	pp. 140-141
<input type="checkbox"/>	Senate Bill 553	pp. 142-148
<input type="checkbox"/>	Senate Joint Resolution 2	p. 149
<input type="checkbox"/>	Senate Joint Resolution 9	p. 150

**Committee Action:**

Do Pass \_\_\_\_\_  
Amend & Do Pass \_\_\_\_\_  
Other \_\_\_\_\_

This measure may be considered for action during today's work session.  
(April 10, 2007)

**SENATE JOINT RESOLUTION 9 — *Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)***

**Sponsored by:** Senate Committee on Judiciary on behalf of the Nevada Supreme Court  
**Date Heard:** April 5, 2007, Senate Judiciary – no action  
**Fiscal Impact:** **Effect on Local Government:** No  
**Effect on the State:** No  
**Exempt:** No

Senate Joint Resolution 9 proposes an amendment to the *Nevada Constitution* to allow for an intermediate appellate court with jurisdiction in civil cases arising in district court and in criminal cases within the original jurisdiction of the district courts.

**Testimony:** Proponents explained that the expansion of the Supreme Court in recent years and revised management of the district courts has worked to address increased caseload; however, Nevada's rapid population growth means the courts are about to incur significant increases in the courts workload. Testimony also indicated that a 2005 report to the Legislature concerning a court of appeals recommended creation of the intermediate appellate court.

There was no opposition to the measure.

**Amendments:** No amendments were offered.

**Options:**

1. Do Pass
2. No Action
3. Indefinitely Postpone
4. Other Action

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session  
April 30, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:10 a.m., on Monday, April 30, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegura  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Danielle Mayabb, Committee Secretary  
Matt Mowbray, Committee Assistant



**OTHERS PRESENT:**

The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court  
The Honorable Kathy A. Hardcastle, Chief Judge, Eighth Judicial District, Clark County  
George A. Ross, representing the Las Vegas Chamber of Commerce  
Bob Jensen, President, Nevada Trial Lawyers Association, Reno  
Fernando Serrano, Administrator, Department of Health and Human Services, Division of Child and Family Services  
Mike Pomi, President, Nevada Association of Juvenile Justice Administrators, Director, Washoe County Juvenile Services  
Scott Shick, Chief Juvenile Probation Officer, Douglas County  
Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department

**Chairman Anderson:**

[Meeting called to order. Roll called.] We will open the hearing on Senate Joint Resolution 9.

**Senate Joint Resolution 9: Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)**

**The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court:**

You have before you consideration of S.J.R. 9, which would create an intermediate appellate court in the State of Nevada. For some period of time, there has been an effort made to pursue an intermediate appellate court in our State. It has had substantial support historically from the Legislature. It has not always had support from the voters. Indeed, it did not have my support three years ago. I felt that we needed a plan that would address and answer some case management issues, specifically delineate the responsibilities of an intermediate appellate court, and was economical. There had always been a concern on my part that there were varying estimates of the costs necessary to effectuate an intermediate appellate court. When I ran for the Supreme Court, there were suggestions that it would cost \$8–\$9 million. When I asked for the explanation for those costs and how they were arrived at, there was no articulation of that. I appreciated the insight and the intuition of the Legislature in 2005 to request the Supreme Court to develop a case management evaluation and study of the intermediate appellate court. As a consequence of your efforts, the Supreme Court, acting as a whole, developed a commission to study an intermediate appellate court and formulate a business plan. Ms. Neuffer from the Administrative Office of the Courts (AOC) did a



tremendous job assisting the court in the formulation of the report to this Legislature in response to Senate Bill No. 234 of the 73rd Session. It is dated March 8, and was delivered to you the next day. As you can see from the report, we have formulated a very clear, definable business plan for the adoption of an intermediate appellate court—one that I believe we can explain to the public and the press. We will show a definitive improvement in the manner in which we process appellate cases in the State of Nevada. Additionally, we wanted to define cost. As this report shows, for the first time we have specified precisely what such a court would cost. We have the facilities available in the Regional Justice Center (RJC). We are looking at approximately \$1.1 million to effectuate an intermediate appellate court. The court would primarily hear appeals that are well-deserving and need to be heard in cases of post-conviction relief, petitions for judicial review, and those types of matters, but cases that do not generate issues of first impression and require the kind of deliberation and opinion writing expected from the highest court of the State.

**Chairman Anderson:**

Two of us up here have been long time waiting for another crack at this, and we hope it moves forward in a realistic fashion. Two seated justices of the Supreme Court would then become members of this newly created Appeals Court in 2010.

**James W. Hardesty:**

No, sir. We are recommending that the sunset provisions on those two seats be terminated and that those seats remain on the Supreme Court, and that an intermediate appellate court of three judges be empanelled.

**Chairman Anderson:**

Is that in this particular piece of legislation?

**James W. Hardesty:**

No, sir. The legislation is drafted broad enough to allow the Legislature to create an intermediate appellate court should this constitutional amendment be approved by the people. You would be in a position to do that, but our recommendation is that you retain a Supreme Court of seven justices, which is consistent with most Supreme Courts around the country, considering our population growth.

**Chairman Anderson:**

I was under the impression that existing law removes two of the seats if an appellate court is to go into effect. Is there a provision in this bill that would

remove that provision from the process, or is that to follow in a subsequent piece?

**James W. Hardesty:**

My understanding of the current draft is that it is not in there; it would be subject to future review by the Legislature. The Legislature would have some flexibility in reviewing that question. It is our recommendation that you retain the Supreme Court at seven justices if this should pass. That is how the business plan was formulated.

**Assemblyman Mortenson:**

I am a little confused because you said it would be \$1.1 million and the fiscal note on here says no government fiscal impact and no state fiscal impact. I guess that is because this does not describe the fact that you want three additional judges. That need not be in the *Nevada Constitution*. Is that the way things work?

**James W. Hardesty:**

That is correct. On page 42 of the report that was provided to you in March, you will see a summary in which the total annual estimated cost is \$1.197 million. The bill before you is an amendment to the *Nevada Constitution* which would not create a fiscal note until the Legislature decided to actually empanel and form the intermediate appellate court by statute.

**Assemblyman Mabey:**

If this and Senate Joint Resolution 2 both go on the ballot and pass, will S.J.R. 9 be in conflict with that measure?

**James W. Hardesty:**

No, sir. We have structured the language so that it would accommodate S.J.R. 2 if it were to also pass.

**Assemblyman Horne:**

Is it the Supreme Court's belief that we already have the infrastructure for an intermediate appellate court in place? We are not going to be building an additional intermediate appellate court building or additional courtrooms, et cetera. This is basically an addition of staff, am I correct?

**James W. Hardesty:**

Yes. As a matter of fact, it is our specific plan to place the intermediate appellate court on the 17th floor of the RJC. It was designed with this in mind. With the exception of one additional chambers that would need to be

constructed—and it is in a position to have that occur—that is an ideal location for the intermediate appellate court. However, we make clear in this business plan that we do not want multiple clerk offices. We want all filings to be presented to the clerk and we have developed a case management proposal that would allow for certain specified cases to be directly assigned to the intermediate appellate court upon filing. Then we would use what we call a "push down" approach in which the case assignment panel—a new creation of the Supreme Court—would evaluate each case. Depending upon the nature of the appeal, it would be pushed down to the intermediate appellate court for disposition. In terms of the facility issues, there are virtually none.

**Assemblyman Horne:**

You mentioned in your opening statement how initially you were opposed to the creation of an intermediate appellate court, particularly because there was not a plan in place. I assume that you are in favor of an intermediate appellate court in operation now, if we adopt this plan. If that assumption is correct, can you briefly tell us why Nevada now has the need for an intermediate appellate court?

**James W. Hardesty:**

My reservation before was primarily the absence of a business plan and an explanation of what it would cost. There had been studies in the past, but there was not really a definitive plan that might help guide the Legislature on how to define the intermediate appellate court and what exactly it would do. More importantly, in my view, there was not a plan internally in the Nevada Supreme Court for how we would specifically assign cases and how that would improve our operation. Currently, the Nevada Supreme Court is the busiest state Supreme Court in the United States. In the last two years, we have had filings that have exceeded 2,000 cases per year. Last year we had filings of 2,171 cases. That is over 310 cases per appellate judge per year. If you collapse the entire system in California, they are at about 167 cases per judge per year. If you collapse the system in Arizona, they are at about 175. You can see that our appellate level is egregious. The fact of the matter is that it affects time to disposition. Currently in Nevada you run the risk of having your appeal take three years for disposition. It is not because the justices are not working hard or the court staff is not working hard, but because of the fact that you have too many cases. Yet, we are a victim of our own success. Last year, with the changes we made internally in the management of the court, we produced 2,387 dispositions. That is more dispositions than any appellate court in the country, save the possible limited exception of the Ninth Circuit. They are able to accomplish a number of their dispositions because they dismiss cases that get abandoned. I submit to you that the Court is operating as efficiently as it can. We now have a plan. We now know what kinds of cases

we can divert to an intermediate appellate court with an appropriate amount of staff, and we can develop the processing of those cases and segregate out cases that require review of issues of first impression. The thing that concerns me as a Supreme Court justice is this: if this were to be adopted by the voters, the first time you would have an intermediate appellate court would be January 2013. As a sitting member of the court, it is frightening the amount of workload we are facing over the course of the next five to six years. What is particularly distressful, though, is the fact that we have a number of issues of first impression. We have one of the most important securities cases in the country right now—a case that the Securities and Exchange Commission (SEC) sought amicus participation in and orally argued because of the consequences this will have throughout the country. We are the first appellate court in the country to hear this issue. There are many other issues like that coming to this Supreme Court. Why? We are the only appellate court in the State. There is a fast track, I assure you, from what is occurring in the district courts to what is being appealed in front of us. You need time to think, to read, and to write in order to address those issues. My wife will tell you that I read until 11, 12, or 1 o'clock in the morning every night because of the amount of work we have in this court. So, yes, there is a need.

**Chairman Anderson:**

So, this passes the 2007 Legislature, the 2009 Legislature, goes to the electorate in 2010, comes back to the Legislature in 2011, and the positions are elected in 2012 to take office in 2013. Then we have three judges screening for seven justices. I am trying to envision the mechanics of this.

**James W. Hardesty:**

That is not how we propose it would work.

**Chairman Anderson:**

So, it is not going to follow the traditional model of appeal into the Supreme Court, but rather the Supreme Court is going to screen what goes to the intermediate court?

**James W. Hardesty:**

Let me give you an example of how we propose this would work. I will put it on the civil side for petitions for judicial review and on the criminal side for post-conviction writs of relief. On petitions for judicial review, as you know, that is essentially a review on the record by an appellate court of what the district court has reviewed on the record of what an administrative agency did. In many cases, these administrative reviews have already had two previous reviews. The test, for the most part, is whether there is substantial evidence to support the determination of the administrative body. What we are proposing is

that the vast majority of those cases be heard by the intermediate appellate court. That would be an automatic assignment. On some occasions, petitions for judicial review will raise an issue of first impression. Those issues and those cases would remain in the Supreme Court. We are able to identify those issues right away. The same is true with respect to post-conviction relief cases. Post-conviction relief is filed by a defendant where most of the claims are charging ineffective assistance of counsel. In those cases, they do not raise issues of first impression; it is simply an evaluation on the part of the district court judge, and later on the part of the intermediate appellate court as to whether there was or was not satisfaction of the two-pronged test under *Strickland v. Washington* [466 U.S. 668 (1984)], i.e., if there was ineffective assistance of counsel. Those cases can be handled by a three-member appellate court. For the most part, civil cases that raise issues of first impression would remain with the Supreme Court. Those that do not would be pushed down to the intermediate appellate court. The three intermediate appellate court judges are not screening for the Supreme Court. To the extent that anyone seeks further review of an action by the intermediate appellate court, it would occur through a petition for certiorari. As you may be familiar, that is how the United States Supreme Court hears its cases—through cert petitions, filed in front of them. I would not mind that operation. They had about 7,000–8,000 petitions for cert in the last couple of years, and they heard about 69 cases. They issued 69 opinions. Our court is a bit different in the way we approach things. We would propose that anyone who seeks review from the intermediate appellate court would have to petition for cert to the Supreme Court and articulate what the legal issue of first impression is or the public policy that requires review. The Supreme Court could grant or deny cert, just as the U.S. Supreme Court does now. By maintaining a single clerk's office, we avoid duplication of effort in that regard. By maintaining a case review or a case assignment panel at the Supreme Court level, we are in a position to review those issues up front, rather than later. Hopefully, that will save the parties time.

**Assemblyman Carpenter:**

On page 2, I think I understand (b) where it provides that the judges be elected by the people, but in what situation is (c) supposed to apply?

**James W. Hardesty:**

That provision addresses the circumstance in which either a judge dies or retires. It is bringing into conformance the appointment process that we currently use through the Judicial Selection Commission.

**Assemblyman Carpenter:**

The first time they would have to be elected by the people unless the other procedure is also approved by the voters, is that right?

**James W. Hardesty:**

Yes. For clarification, these are two separate issues. You clearly could approve the intermediate appellate court. You might not approve merit selection for judges, in which case, the intermediate appellate court judges would be selected just as we do currently. This is how this has been structured.

**Assemblyman Segerblom:**

Currently, are there any limits on how many Supreme Court justices we can have? In this bill, would there be any limit on how many appeals court judges we could have?

**James W. Hardesty:**

The answer to both questions is no. However, I would state that, in the report, the current justices sitting caution against expanding the court beyond seven. The panel system has worked fairly effectively, but it is really a complicated system. There are times when we are tracking five separate dockets and that is not the most efficient way to do business. If you expand the court to nine justices, for instance—the preferable thing would be to operate with an odd number—a nine member en banc court with three panels is just going to add even more confusion in tracking cases. I do not think that promotes efficiency, but will actually defeat it. Certainly, the Legislature is in a position to expand both courts if you and the courts thought that was appropriate, and you would be in a position to expand the intermediate appellate court if their caseload justified it.

**Assemblyman Segerblom:**

I was just thinking that if things got out of hand before this was able to be enacted, we could add a couple of justices in the Supreme Court to carry over until the intermediate appeals court was in place.

**James W. Hardesty:**

I think all of the justices currently would prefer to continue to slog it out rather than deal with the inefficiencies that would be created by added justices. We will report back to you in 2009 if it gets worse.

**Chairman Anderson:**

What happens in the event that both measures were to pass?

**James W. Hardesty:**

The Legislative Counsel Bureau (LCB) anticipated this issue. Language has been incorporated in S.J.R. 9 to accommodate the possibility that merit selection also passed. Therefore, if that were to occur, these new judges would be selected through merit selection.

**Chairman Anderson:**

Is there anyone else wishing to speak on S.J.R. 9? [There was no one.] Is there anyone in opposition? [There was no one.] We will close the hearing on S.J.R. 9. Let us open the hearing on Senate Bill 208.

**Senate Bill 208: Makes various changes to provisions governing employees who are summoned to appear for jury duty. (BDR 1-660)**

**The Honorable Kathy A. Hardcastle, Chief Judge, Eighth Judicial District, Clark County:**

This bill addresses an issue that we have been experiencing in Clark County and I would expect that it has probably been experienced on occasion in other parts of the State. What this bill does is clarifies the right of individuals to serve on a jury without being required to work either a swing shift or a graveyard shift then have to come back to the courthouse the next day and sit through a jury trial. Most of our employers in this State are good at recognizing the rights of individuals to serve on juries and are very accommodating to their employees. Occasionally, especially in the past few years, we have experienced some supervisors who are not really aware of the rigors of serving on a jury and are more concerned with making sure their workforce is there. In ten years, I have experienced this on a very rare occasion, and it was usually taken care of with a phone call. I called employers and explained what happens with service on a jury and they then accommodated. A juror comes in after working a graveyard shift, trying to stay awake through a jury trial, and it is very tough on them. This would give them the right not to have to work while they are sitting on a jury.

**Chairman Anderson:**

I worked a graveyard shift and then went to college in the day time, so I know it is very easy to fall asleep after a graveyard shift, whether it is in a court or in a classroom. How is the three-day notification going to work?

**Kathy A. Hardcastle:**

When someone receives the summons, they call in and get a date they are supposed to report for jury service. That is usually at least a couple weeks away. In Clark County, they can check in online as well as by telephone, and they can defer service until a time that is more convenient for them and their

there are so many 24-hour-a-day jobs. A large percentage of our population work in the casinos and as a result, this might give them a little bit of an opportunity to serve on jury duty without worrying about giving up their free time, vacation time, and sick leave in order to do that without losing pay.

**Assemblyman Horne:**

I believe that is only dealing with the summons. The summons is different than when you have actually been seated.

**Risa Lang, Committee Counsel:**

It does appear that the three-day requirement is for the notice about the summons. The person would be required to give notice to the employer.

THE MOTION PASSED. (ASSEMBLYMEN ALLEN, CARPENTER, AND  
OCEGUERA VOTED NO.)

**Chairman Anderson:**

Assemblyman Manendo will take this on the Floor. Let us take a look at S.J.R. 9. The fact that we are going to have to wait until 2013 for an appellate court is stressful. Hopefully, by that time we will recognize the need here in the State. It seems to me that we need to move this on its way since it has to pass two sessions in the Legislature.

**Assemblyman Mortenson:**

I do not really understand some things here. On page 2, around lines 12–14, it reads, "[t]he initial judges of the court of appeals shall be elected by the qualified electors of the State at the first general election." That implies to me that the subsequent judges will not be elected by the people because, as we get down to subsection (c) right below, it says "each judge of the court of appeals must be appointed by the Governor in the manner for the term provided in Section 20," but Section 20 is really talking about replacing judges who die or something like that. So, I am not sure what happens after the initial election. Are they appointed or what?

**Risa Lang:**

The following judges would also be elected unless the procedure changes. I think this is the language Justice Hardesty was referring to if the other process comes into play.

**Assemblyman Mortenson:**

Then you think they will be elected continually?



**Risa Lang:**

I believe so, unless the provisions change under paragraph (c).

**Chairman Anderson:**

I think it is to guarantee the fact that we are not going to start off with appointed judges.

ASSEMBLYMAN MORTENSON MOVED TO DO PASS SENATE JOINT  
RESOLUTION 9.

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will take this on the Floor. Are there any other issues to come before the Committee? [There were none.] We are adjourned [at 9:32 a.m.].

RESPECTFULLY SUBMITTED:

---

Danielle Mayabb  
Committee Secretary

APPROVED BY:

---

Assemblyman Bernie Anderson, Chairman

DATE: \_\_\_\_\_

# FLOOR ACTIONS

## AMENDMENTS ON SECOND READING FLOOR VOTES AND STATEMENTS OTHER ACTIONS

**NOTE:** THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS*  
([HTTP://WWW.LEG.STATE.NV.US/SESSION/74TH2007/JOURNAL/](http://www.leg.state.nv.us/session/74th2007/journal/)), WHICH ARE NOT THE OFFICIAL  
FINALIZED VERSIONS OF THE *JOURNALS*. CONSULT THE PRINT VERSION FOR THE OFFICIAL  
RECORD.

**THE SIXTY-EIGHTH DAY**

---

CARSON CITY (Friday), April 13, 2007

Senate called to order at 10:56 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Peggy Locke.

O Most High, You are able to make all grace abound to us so that in all things, at all times, having all we need, we will be fruitful in every good work and in everything we put our hand to. We ask for Your grace today that You will encourage and strengthen our hearts.

We pray for our families, for our troops in harms way that You would be with them, protect them, keep them safe. We also pray for those in authority over us and for the people we serve in this great State of Nevada.

Now, may the Lord bless you and keep you,

The Lord make his face shine upon you and be gracious to you,

The Lord turn his face towards you and give you peace.

And to God, we give You thanks and praise Your glorious Name

AMEN.

Pledge of Allegiance to the Flag.

Senator Raggio moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

**REPORTS OF COMMITTEES**

*Mr. President:*

Your Committee on Government Affairs, to which was referred Senate Bill No. 117, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

WARREN B. HARDY II, *Chair*

*Mr. President:*

Your Committee on Judiciary, to which were referred Senate Bills Nos. 7, 67, 71, 202, 294, 519, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARK E. AMODEI, *Chair*

*Mr. President:*

Your Committee on Legislative Operations and Elections, to which was referred Senate Joint Resolution No. 4, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

BARBARA K. CEGAVSKE, *Chair*

*Mr. President:*

Your Committee on Transportation and Homeland Security, to which was referred Senate Bill No. 241, has had the same under consideration, and begs leave to report the same back with the recommendation: Without recommendation and rerefer to the Committee on Finance.

DENNIS NOLAN, *Chair*

Senate Bill No. 542 having received a constitutional majority,  
Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Joint Resolution No. 9.

Resolution read third time.

Roll call on Senate Joint Resolution No. 9:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 9 having received a constitutional majority,  
Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

Assembly Bill No. 9.

Bill read third time.

Roll call on Assembly Bill No. 9:

YEAS—21.

NAYS—None.

Assembly Bill No. 9 having received a constitutional majority,  
Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 555.

Bill read third time.

Roll call on Assembly Bill No. 555:

YEAS—21.

NAYS—None.

Assembly Bill No. 555 having received a constitutional majority,  
Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 396.

Bill read third time.

Remarks by Senator Care.

Roll call on Senate Bill No. 396:

YEAS—19.

NAYS—Care, Titus—2.

Senate Bill No. 396 having received a constitutional majority,  
Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Amodei gave notice that on the next legislative day he would move to reconsider the vote whereby Senate Bill No. 409 was this day passed.

# NEVADA LEGISLATURE

Seventy-Fourth Session, 2007

---

## ASSEMBLY DAILY JOURNAL

---

### THE NINETY-SECOND DAY

CARSON CITY (Monday), May 7, 2007

Assembly called to order at 11:03 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Al Tilstra.

Today, grant to the members and officers of this body a sacred moment of quiet as they continue the duties of the day. Turn their thoughts to You and open their hearts to Your Spirit that they may have wisdom in their decisions, understanding in their thinking, love in their attitudes, and mercy in their judgments.

Let them not think when this prayer is said that their dependence upon You is over and forget Your counsels for the rest of the day. Rather, from these moments of heart-searching may there come such a sweetness of disposition that all know that You are in this place. From this holy interlude may there flow light and joy and power that will remain with them until night shall bring Your whispered benediction, "Well done, good and faithful servant." We ask these things in humbleness of heart.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Ocegüera moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 56, 81, 196, 269, 367, 369, 511, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MARILYN K. KIRKPATRICK, *Chair*

Roll call on Senate Bill No. 220:

YEAS—42.

NAYS—None.

Senate Bill No. 220 having received a constitutional majority,  
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 294.

Bill read third time.

Remarks by Assemblymen Allen and Carpenter.

Roll call on Senate Bill No. 294:

YEAS—41.

NAYS—McClain.

Senate Bill No. 294 having received a constitutional majority,  
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 473.

Bill read third time.

Remarks by Assemblyman Manendo.

Roll call on Senate Bill No. 473:

YEAS—42.

NAYS—None.

Senate Bill No. 473 having received a constitutional majority,  
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Joint Resolution No. 9.

Resolution read third time.

Remarks by Assemblyman Anderson.

Roll call on Senate Joint Resolution No. 9:

YEAS—42.

NAYS—None.

Senate Joint Resolution No. 9 having received a constitutional majority,  
Madam Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Madam Speaker announced if there were no objections, the Assembly  
would recess subject to the call of the Chair.

Assembly in recess at 12:25 p.m.

#### ASSEMBLY IN SESSION

At 12:26 p.m.

Mr. Speaker Pro Tempore presiding.

Quorum present.

# BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE  
FOR COMPLETE TEXT

# SUPPLEMENTAL MATERIALS

SENATE JOINT RESOLUTION 9 (2007)  
TO BE RETURNED TO THE 2009 SESSION.



# SJR 9\* of the 74th Session - 2009

Introduced in the Senate on Feb 02, 2009.

By: Judiciary

*Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court.  
(BDR C-661)*

## Fiscal Notes

Effect on Local Government: No.  
Effect on State: No.

**Most Recent History Action:** File No. 57.  
(See full list below)

## Past Hearings

Senate Judiciary	Feb. 04, 2009	08:30 AM	<b>Minutes</b>	Mentioned Not Agendized.
Senate Judiciary	Feb. 19, 2009	08:30 AM	<b>Minutes</b>	Do pass.
Assembly Elections, Procedures, Ethics, and Constitutional Amendments	Mar. 26, 2009	03:45 PM	<b>Minutes</b>	Do pass.

## Votes

<a href="#">Senate Final Passage</a>	Feb. 24	Yea 21,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0
<a href="#">Assembly Final Passage</a>	Apr. 27	Yea 42,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0

<b>Bill Text</b>	<a href="#">As Introduced</a>	<a href="#">As Enrolled</a>
<b>Statutes of Nevada 2009</b>	<a href="#">File No. 57</a>	

---

## Bill History

### Feb 02, 2009

- Returned from Secretary of State.
- Read first time. Referred to Committee on Judiciary. To printer.
- From printer. To committee.

### Feb 19, 2009

- From committee: Do pass.

### Feb 20, 2009

- Read second time.

### Feb 23, 2009

- Taken from General File. Placed on General File for next legislative day.

### Feb 24, 2009

- Read third time. Passed. Title approved. (Yeas: 21, Nays: None.) To Assembly.

**Feb 25, 2009**

- In Assembly.
- Read first time. Referred to Committee on Elections, Procedures, Ethics, and Constitutional Amendments. To committee.

**Mar 27, 2009**

- From committee: Do pass.

**Mar 30, 2009**

- Read second time.

**Mar 31, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 01, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 02, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 06, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 09, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 10, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 13, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 14, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 15, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 16, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 17, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 20, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 21, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 22, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 23, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 24, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Apr 27, 2009**

- Read third time. Passed. Title approved. (Yeas: 42, Nays: None.) To Senate.

**Apr 28, 2009**

- In Senate. To enrollment.

**Apr 29, 2009**

- Enrolled and delivered to Secretary of State.
- File No. 57.

- **(On 2010 Ballot)**



PREPARED BY  
RESEARCH DIVISION  
LEGISLATIVE COUNSEL BUREAU  
Nonpartisan Staff of the Nevada State Legislature

**BILL SUMMARY**  
75<sup>th</sup> REGULAR SESSION  
OF THE NEVADA STATE LEGISLATURE

---

---

**SENATE JOINT RESOLUTION NO. 9**  
**OF THE 74TH SESSION (Enrolled)**  
Pertains to a Court of Appeals

**Summary**

Senate Joint Resolution No. 9 of the 74th Session of the Nevada Legislature proposes an amendment to the *Nevada Constitution* to allow for an intermediate appellate court, known as the Court of Appeals, with jurisdiction in civil cases arising in district court and in criminal cases within the original jurisdiction of the district courts.

**Effective Date**

This measure was approved in identical form during the 2007 and 2009 Sessions of the Legislature. The proposal will be submitted to the voters for final approval or disapproval at the 2010 General Election.

# LEGISLATIVE HEARINGS

## MINUTES AND EXHIBITS

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
February 4, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:34 a.m. on Wednesday, February 4, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court

**CHAIR CARE:**

We are privileged today to have the Chief Justice of the Nevada Supreme Court present for an informational hearing on matters relating to the Judicial Branch.

**THE HONORABLE JAMES W. HARDESTY (Chief Justice, Nevada Supreme Court):**

It is a privilege to act as a spokesperson for the Judicial Branch of government for the State of Nevada. I have a PowerPoint presentation outlining various bills the Judicial Council of the State of Nevada and the Nevada Supreme Court are presenting to the Legislature (Exhibit C).

I have chaired the Advisory Commission on the Administration of Justice (the Commission) that was created and revitalized by A.B. No. 508 of the 74th Session. I suggest you consider a joint meeting with the Assembly Committee on Corrections, Parole, and Probation. They have asked me to provide a presentation on the outcome of the Commission's work and its recommendations. A number of recommendations are being proposed to the Legislature.

Our first proposal is to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. We hope this Legislature passes the second leg of Senate Joint Resolution (S.J.R.) 9 of the 74th Session and presents it to the people in 2010 for a vote, Exhibit C, page 1, slide 2.

**SENATE JOINT RESOLUTION 9 OF THE 74TH SESSION:** Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)

For clarification, S.J.R. 9 of the 74th Session amends the Constitution empowering this Legislature to structure the intermediate appellate court. The Supreme Court continues to have cases filed in record numbers. The disposition rate is significant in Exhibit C, page 2, slide 3. The number of cases filed set a record in Nevada for the number of cases per appellate judge per year.

In January 2005 when Justice Ron Parraguirre and I took office, the inventory of the Supreme Court was 1,515 cases. Today, it is over 1,750. This is a concern to the Court, the Legislature and the people because it means a longer time for disposition of appeals. In the last four years, the Court has adopted a fast track for child custody appeals, streamlined our caseload and changed our docket management to improve efficiency.

Utah has three-member panels, an Intermediate Appellate Court and a Supreme Court of five. Look at the number of cases filed each year and the number of cases per appellate judge per year in Exhibit C, page 2, slide 4.

The Intermediate Appellate Court Business Plan uses a unique system called a push-down court, Exhibit C, page 3, slide 5. Under this system, we would take advantage of the existing administrative structure. A push-down court means cases would continue to be filed with the Nevada Supreme Court, and through our screening process, we would determine which cases should be heard by an

intermediate appellate court rather than the Supreme Court. These cases deserve an appeal, but they do not result in issues of first impression requiring the Supreme Court to address them. In our report, we identified approximately 900 of the 2,200 cases that could be heard by an intermediate appellate court.

We propose a three-judge intermediate appellate court to be located on the seventeenth floor of the Regional Justice Center in Las Vegas, which results in no facility cost. It would cost about \$1.6 million for personnel, Exhibit C, page 3, slide 5. In this biennium, our Court will have reverted over \$3 million back to the State of Nevada. If the intermediate appellate court had been in place, we could have paid for it with our budget and the money we have reverted. This is almost a revenue-neutral issue. We hope this Legislature will allow funds generated from the judicial system to stay in the judicial system.

CHAIR CARE:

There was no resistance to S.J.R. 9 of the 74th Session. This Committee intends to get this out as quickly as possible. Language in S.J.R. 9 of the 74th Session empowers the Legislature to create an appellate court of at least three judges.

CHIEF JUSTICE HARDESTY:

Our report suggests a three-judge intermediate appellate court, but the Legislature could increase that number upon a showing of need by the court system.

We have had many meetings with county administrations to present a jointly agreed-upon judicial business plan, which would address the issue of how to pay for new judges. It also provides a needed resource for rural counties to deal with a number of judicial needs. We are asking the Legislature to revisit civil filing fees—not raised since 1993—for cases such as construction defects, class actions and Business Courts. We suggest the revenue from increased filing fees focus on needed judicial resources and new judges that would result in a shorter time to disposition.

Assembly Bill (A.B.) 64 will add one general jurisdiction judge to the Second Judicial District. It proposes seven new general jurisdiction judges and two family judges in Clark County, Exhibit C, page 3, slide 6. That mix could change based on caseload and case configuration. Nevada is experiencing a downturn in criminal case filings for felonies and gross misdemeanors, which



## DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).

# Nevada Judicial Branch Bills 2009 – An Overview

James W. Hardesty, Chief Justice  
Ron Titus, State Court Administrator

Senate Judiciary Committee

Wednesday, February 4, 2009

8:30 a.m.

1

SJR9 74<sup>th</sup>– Proposes to amend the Nevada  
Constitution to allow the Legislature to  
establish an intermediate appellate court

- SJR9 was passed during the 74<sup>th</sup> Session and would allow the Legislature to create an intermediate appellate court to help reduce the Supreme Court's time to disposition of appeals.

2

## Supreme Court

Article 6, Sec. 1, 2, 3, 4, & 19; NRS Chapter 2

Fiscal Year	Cases Filed	Cases Disposed	Published Opinions
2006	2,171	2,387	121
2007	2,124	1,976	51
2008	2,212	2,058	100

3

## Nevada Supreme Court Caseload Compared with Selected Other States

Table 4. Characteristics of Nevada and Other Selected Appellate Courts with and without Intermediate Appellate Courts. All data from respective states' most recent annual report or web page (2006 or 2007).

	Nevada	Montana <sup>a</sup>	Maine <sup>a</sup>	Arizona <sup>a</sup>	Arkansas <sup>a</sup>	Alaska <sup>a,b</sup>	Utah <sup>a</sup>
Population (2000)	2,050,000	344,000	1,300,000	5,130,000	2,915,000	626,000	2,340,000
	Intermediate Appellate Court						
Justices				20	12	6	7
En banc panels				Panel of 5	Both	Panel of 3	Panel of 3
Cases filed & granted				3,180 <sup>c</sup>	1,035 <sup>c</sup>	270	922 <sup>c</sup>
Cases per justice				172	111 <sup>c</sup>	90	132
	Supreme Court						
Justices				5	5	5	5
En banc panels				Panel of 3	Panel of 3	Panel of 3	Panel of 3
Cases filed & granted				1,035 <sup>c</sup>	1,035 <sup>c</sup>	1,035 <sup>c</sup>	1,035 <sup>c</sup>
Cases per justice				207	207	207	207

<sup>a</sup> Source: U.S. Census Bureau, 2000 Census.

<sup>b</sup> Source: U.S. Census Bureau, 2000 Census.

<sup>c</sup> Source: U.S. Census Bureau, Population Estimates Program, October 2006 release (<http://factfinder.census.gov>).

<sup>d</sup> Includes emergency cases and discretionary decisions filed and heard, unless otherwise noted.

<sup>e</sup> Includes emergency cases and discretionary decisions filed. Number of cases granted for review not available.

4

## Intermediate Appellate Court Business Plan

- Use the model of Supreme Court 'push down' or deflecting authority
- 3 new judges and staff
- Use existing space at the Regional Justice Center in Las Vegas
- Current costs for implementation \$1.6 million (personnel)

5

### **AB64** – Increases number of judges in the 2<sup>nd</sup> and 8<sup>th</sup> Judicial Districts

- This bill adds 1 general jurisdiction judge to the 2<sup>nd</sup> Judicial District Court (Washoe Co.), and adds 7 general jurisdiction and 2 family judges to the 8<sup>th</sup> Judicial District Court (Clark County).
- An appropriation is made for the new judges' salaries.
- New judges are requested to keep up with increasing caseloads

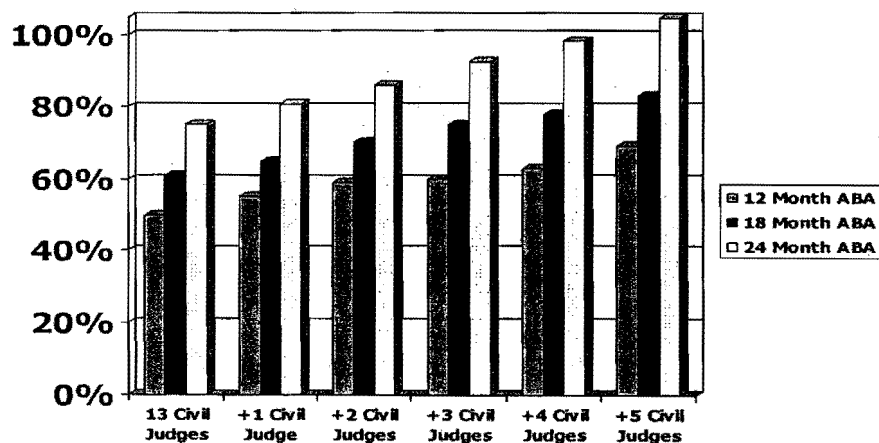
6

## The Legislative Commission's Subcommittee to Study Chancery Courts Recommendations

- Encourage the Supreme Court to adopt rules requiring business courts to issue written opinions, and set rules on the citation and precedential value of the opinions.
- Request that the Governor include money for the publication of business court opinions in his budget.
- Offer legislation requiring the publication of business court opinions (SB5).
- Support the creation of an intermediate appellate court in Nevada (SJR9, 74<sup>th</sup>).

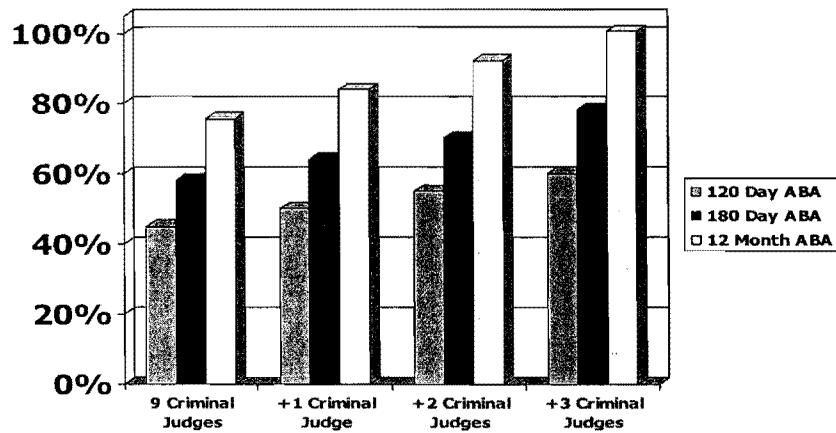
7

### 8<sup>th</sup> Judicial District Civil Case Time to Disposition



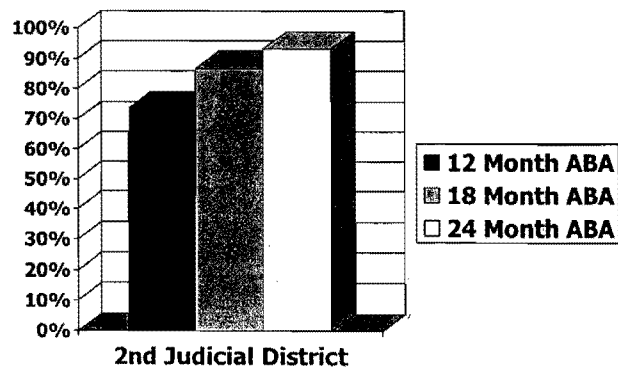
8

### 8<sup>th</sup> Judicial District Criminal Case Time to Disposition



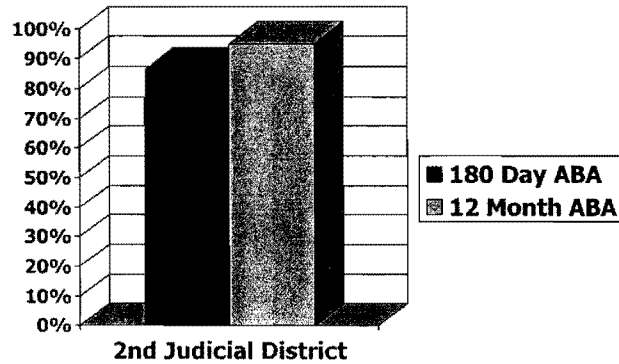
9

### 2<sup>nd</sup> Judicial District Court Civil Case Time to Disposition



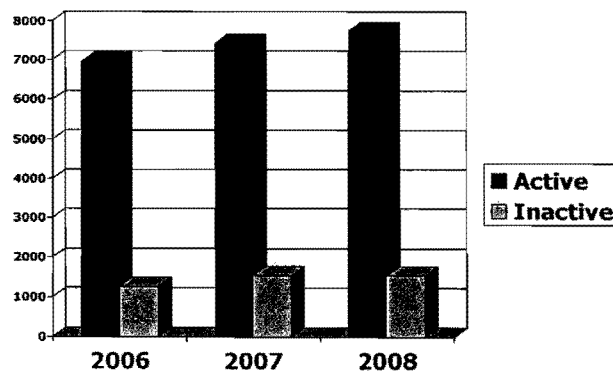
10

## 2<sup>nd</sup> Judicial District Court Criminal Case Time to Disposition



11

## Number of Nevada Lawyers



According to the Nevada State Bar, the number of active lawyers in Nevada increased 6% from 2006 to 2007, and another 6% from 2007 to 2008.

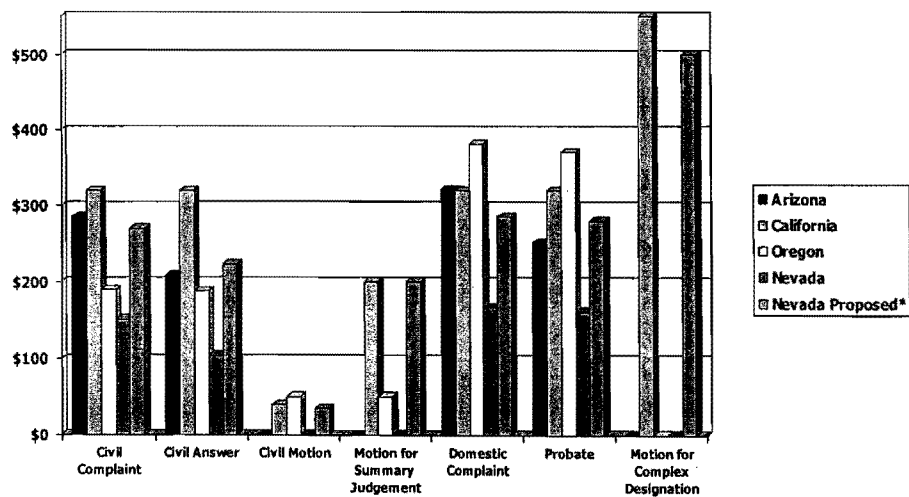
12

**AB65** – Provides for the collection and disposition of additional court fees

- This legislation would provide for increased civil filing fees in district court, the proceeds from which would be deposited in a special account with county for use to benefit the court. The fees could be used to offset the cost of bringing in new judges.
- This bill creates an optional, for each county, \$20 civil fee on district court filings to be used for court security purposes.

13

Western States Civil Filing Fee Comparison



\* Increase proposed in AB65

14



### Estimated Increased Civil Filing Fee Revenue by District

District	Civil Fee \$99	Court Security Fee \$20
1 <sup>st</sup> (Carson City, Storey)	\$382,853	\$102,080
2 <sup>nd</sup> (Washoe)	\$1,769,706	\$166,080
3 <sup>rd</sup> (Churchill, Lyon)	\$485,953	\$95,260
4 <sup>th</sup> (Elko)	\$341,517	\$81,860
5 <sup>th</sup> (Esmeralda, Mineral, Nye)	\$534,883	\$139,100
6 <sup>th</sup> (Humboldt, Lander, Pershing)	\$190,877	\$45,960
7 <sup>th</sup> (Eureka, Lincoln, White Pine)	\$100,450	\$24,780
8 <sup>th</sup> (Clark)	\$8,370,249	\$1,182,727
9 <sup>th</sup> (Douglas)	\$350,419	\$89,560

15

### **AB92** – Revises provisions governing the benefits of a senior justice or judge

- This measure would allow senior justices and judges, who do not have the maximum credit with either judicial retirement of PERS, to re-enroll in the same plan upon being named a senior justice or judge.
- The legislation also provides that senior justices and judges may receive retirement in addition to compensation for sitting on cases, allows additional retirement credit to be earned, and provides that judicial retirees get the same increases as those in PERS.

16

## Senior Judge Contributions to the Judiciary

- Senior district judges and justices took 406 assignments in 2008, and worked a total of 12,387 hours. Senior judges take assignments when an active judge has a conflict, is challenged, or is sick, among other reasons.
- Senior judges oversaw the rural drug and mental health (specialty) courts and the specialty courts in Washoe County. Until recently, senior judges sat on the Clark County Specialty Courts; freeing up active judges to handle other cases.
- Senior judges sit on the Clark County Family short trial/settlement program and an average of 81.5% of cases settled in the program, thus keeping 286 cases off the 8<sup>th</sup> District's civil caseload between Oct. '06 and Feb. '08.

17

**SB33** – Revises provisions governing administration of programs for treatment of alcoholism or drug abuse for certain offenders with third offenses of DUI

- This legislation would require that the Division of Parole and Probation, at the discretion of the District Court, supervise offenders assigned to a program of treatment for a 3<sup>rd</sup> offense DUI pursuant to NRS 484.37941.
- This topic is addressed in the Court's recent opinions of *Savage vs. 3<sup>rd</sup> Judicial District Court* (125 Nev. Adv. Op. No. 2) and *Stromberg vs. 2<sup>nd</sup> Judicial District Court* (125 Nev. Adv. Op. No. 1).

18

**AB47** – Revises provisions relating to specialty courts

- This bill removes the provision that requires the district attorney stipulate that a defendant can be placed in a specialty court program if the offense included the threat of force or violence.
- This bill allows the sealing of a defendant's record after successful completion of a specialty court program.
- This bill also reduces the number of prohibitive offenses related to participation in specialty courts.

19

**AB63** – Makes various changes to provisions regarding justice courts

- This bill allows the appointment of masters by justice courts to hear certain cases pursuant to the rules of the Supreme Court.
- This bill would statutorily prohibit masters from hearing domestic violence cases and requests for protection orders, as well as DUI cases.
- The legislation also prohibits traffic referees from hearing testimony regarding vehicular manslaughter.

20

**SB34** – Makes certain changes concerning the use of court reporters in certain court proceedings

- This bill allows justice courts to use sound recording equipment, rather than a court reporter, to record preliminary hearings, aside from those for capital offenses.
- This measure makes use of the recording equipment or a court reporter subject to the discretion of the court.

21

**SB85** – Revises provisions relating to the financial support of regional facilities for the detention of children

- This bill requires that the Governor include in his budget, funds to support regional facilities for the detention of children maintained by certain counties.

22

**AB99** – Makes various changes relating to the security and safety of participants in the legal process

- This measure enhances penalties for offenses against participants in the legal process, prohibits the filing of false liens against participants in the legal process, prohibits threatening participants in the legal process, makes murdering a participant in the legal process a capital enhancement, and allows participants in the legal process to use a fictitious address through the Secretary of State's Office.

23

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
February 19, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:39 a.m. on Thursday, February 19, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Janet Sherwood, Committee Secretary

**OTHERS PRESENT:**

The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court  
David Smith, Executive Secretary, State Board of Pardons Commissioners  
Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada  
Diane R. Crow, State Public Defender

**CHAIR CARE:**

We have two Senate Joint Resolutions on the agenda today. We will take them in numerical order. Senate Joint Resolution (S.J.R.) 1 is sponsored by Senator Parks.

CHAIR CARE:

We will close the hearing on S.J.R. 1 and open up the hearing on S.J.R. 9 of the 74th Session.

**SENATE JOINT RESOLUTION 9 OF THE 74TH SESSION**: Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)

CHIEF JUSTICE HARDESTY:

I offer three points concerning S.J.R. 9 of the 74th Session. First, this is an enabling piece of legislation. If the court system can demonstrate a demand for it and the Legislature is satisfied it improves the efficiency and processing of cases on the appellate level, S.J.R. 9 of the 74th Session enables the Legislature, if passed by the voters, to create a court of appeals.

Secondly, I did not favor an intermediate appellate court until there was a plan. The Legislature never had a plan until now. In March 2007, the court provided to you a detailed plan as to exactly what cases would be heard by the intermediate appellate court, how it would be funded and what it would cost. We demonstrated one of the most significant, valid concerns about an appellate court: that it not create another bureaucracy in the judicial system. For cases heard by the intermediate appellate court, that ends the appellate process except in circumstances where a petition for a writ of certiorari—much the same procedure as used in front of the United States Supreme Court—would be presented to the Nevada Supreme Court. That is less than 1 percent of the cases heard by the intermediate appellate court so the intermediate bureaucracy argument under this plan does not exist.

Finally, under this plan, we propose to use the same clerks' office and the same central staff personnel. There will be no facility cost because we will locate the court in the seventeenth floor of the Regional Justice Center where chambers already exist and the courtroom has already been built. The Supreme Court would exercise dual usage with the intermediate appellate court. For all of those reasons, I would hope this Legislature would endorse S.J.R. 9 of the 74th Session and send this measure to the people of the State of Nevada in 2010 for their consideration.

MS. GASCA:

I am here to express support for S.J.R. 9 of the 74th Session. We receive many complaints about the process of individuals as they go through the judicial system. Many of them express frustration, and often their cases are shoehorned through the system. They feel they have not been given a fair trial with adequate time or preparation. We feel the appellate court will create a system in which targeted attention can be given to those cases in a more effective manner.

CHAIR CARE:

Since there is no opposition to S.J.R. 9 of the 74th Session, we will close the hearing. Five of us heard the testimony last Session. It is possible that S.J.R. 9 of the 74th Session may have passed out of the Senate unanimously last Session. Having said that, the Chair will entertain a motion.

SENATOR AMODEI MOVED TO DO PASS S.J.R. 9 OF THE 74TH SESSION.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR CARE:

Senate Bill 51 was assigned originally to the Committee on Energy, Transportation and Infrastructure.

**SENATE BILL 51**: Revises provisions governing the subpoenaing of public utility records by a law enforcement agency. (BDR 58-337)

The Department of Public Safety requested the bill. While utilities can already be subpoenaed for records relating to the name and address of a person in the utility records, S.B. 51 would allow law enforcement to subpoena more information. Some Constitutional Fourth Amendment issues arose in the hearing. On that basis, Senator Michael A. Schneider wants the bill to come to Judiciary.



**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND  
CONSTITUTIONAL AMENDMENTS**

**Seventy-Fifth Session  
March 26, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 3:51 p.m. on Thursday, March 26, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/75th2009/committees/](http://www.leg.state.nv.us/75th2009/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Harry Mortenson, Chair  
Assemblywoman Ellen Koivisto, Vice Chair  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Heidi S. Gansert  
Assemblyman John Hambrick  
Assemblyman William C. Horne  
Assemblyman Ruben J. Kihuen  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom  
Assemblyman James A. Settelmeyer  
Assemblywoman Debbie Smith

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Harvey J. Munford (excused)



**GUEST LEGISLATORS PRESENT:**

Assemblyman Paul Aizley, Clark County Assembly District No. 41

**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Committee Counsel  
Patrick Guinan, Committee Policy Analyst  
Judie Fisher, Committee Manager  
Terry Horgan, Committee Secretary  
Cheryl McClellan, Committee Assistant

**OTHERS PRESENT:**

James Hardesty, Chief Justice, Supreme Court, State of Nevada  
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada  
Cam Ferenbach, Vice President, State Bar of Nevada, Las Vegas, Nevada  
Vicenta Montoya, Chair, Si Se Puede Latino Democratic Caucus, Las Vegas, Nevada  
David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada  
Matt Griffin, Deputy for Elections, Office of the Secretary of State  
Alan Glover, Clerk/Recorder, Carson City, Nevada  
Larry Lomax, Registrar of Voters, Clark County, Nevada  
Juanita Clark, Member, Charleston Neighborhood Preservation, Las Vegas, Nevada  
Michael Alonso, Reno, Nevada, representing Terrible Herbst, Inc., South Las Vegas, Nevada  
Lesley Pittman, Reno, Nevada, representing Station Casinos, Inc., Las Vegas, Nevada  
Lynn Chapman, Vice President, Nevada Families, Sparks, Nevada  
Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada  
Pilar Weiss, Las Vegas, Nevada, representing the Culinary Workers Union Local 226, Las Vegas, Nevada  
John Wagner, State Vice Chairman, Independent American Party of Nevada, Carson City, Nevada  
Russell Rowe, Las Vegas, Nevada, representing Boyd Gaming Corporation, Las Vegas, Nevada  
Tom Clark, Carson City, Nevada, representing the Nevada Tavern Owners Association, Las Vegas, Nevada

P. Casey Sullivan, President, Independent Gaming Operators, Reno, Nevada

Jeffery Siri, President and Chief Executive Officer, Club Cal Neva Hotel and Casino, Reno, Nevada; Member, Independent Gaming Operators, Reno, Nevada

**Chairman Mortenson:**

[Roll was taken. Committee rules and protocol were explained.] As there are so many people here this afternoon, the room next door is available for overflow. You may go into that room, listen to everything that is being said, and see what is happening on the television monitors. I will call the names of people who have signed up to testify or be heard, and you can walk back into this room, sit at the witness table, and testify.

I will open the hearing on Senate Joint Resolution 9 of the 74th Session.

**Senate Joint Resolution 9 of the 74th Session: Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)**

**James Hardesty, Chief Justice, Supreme Court, State of Nevada:**

You have before you S.J.R. No. 9, which comes before the Legislature for a second time, and proposes to amend the *Nevada Constitution* to allow the Legislature to establish a court of appeals, sometimes referred to as an intermediate appellate court. [A PowerPoint slide show was shown as Justice Hardesty made his presentation to the Committee (Exhibit C).] I do not want to consume a lot of your time, because I know many of you are quite familiar with the subject. In March 2007, the Supreme Court provided a report to the Legislature that identified how the Supreme Court would propose to implement a court of appeals, should the people of the state permit it through constitutional amendment, and the Legislature create it in 2011.

I want to emphasize three features about the court of appeals that was proposed in that report. First, it does not create a separate level of bureaucracy in appellate adjudication. The Court has identified some 900 cases that would be placed before the court of appeals, that would be decided by that court, and that would end the appellate process. It does not make the appellate process longer, it actually shortens it.

Second, it would permit your Supreme Court to work on cases dealing with matters of significance. Currently, as you know, the Supreme Court handles appellate matters on all subjects from death penalty issues to petitions for

judicial review of drivers' license revocations. We believe that the Supreme Court's effort and time would be better spent working on the former rather than the latter.

The final point is a cost analysis presented in our PowerPoint, which illustrates that, for \$1.6 million we could implement a court of appeals in this state. As some of you may recall from my State of the Judiciary Address, we reverted more than that amount in our budget this past year. We believe that it is cost-effective and would provide a significant level of efficiency. It does not create a second level of bureaucracy. It does not add more staff. We propose using the same clerk's office as the Supreme Court, the existing central legal staff, and the existing Supreme Court personnel to support the work of the court of appeals.

One slide compares a few other states. As you can see, we selected Nevada, Montana, Maine, Arizona, Arkansas, Alaska, and Utah as states to use for comparing the number of cases filed per appellate judge per year. As you can see, Utah, which is close in population rank to us, is about 245 cases per appellate judge per year if you combine their intermediate appellate court with their supreme court. Interestingly, Arizona is 252 for their supreme court. Nevada is at 320—one of the largest caseloads of any state supreme court in the United States. The direct impact to our citizens is the delay in the time to disposition to resolve those appeals. We urge the Committee's consideration of this bill, and I would be happy to answer any questions.

**Assemblyman Segerblom:**

Where would the court be located?

**Justice Hardesty:**

It would be located on the 17th floor of the Regional Justice Center (RJC) in Las Vegas, and would not incur additional cost. I would put a little footnote on that, however. Our preference would be to get out of the RJC, but it would not change where we would locate the court of appeals. The court of appeals would always be located in Clark County, because that is where the highest number of the cases that would be assigned to that court come from.

**Chairman Mortenson:**

Are there any further questions? I see none. This is a constitutional amendment coming back for the second time. There is no way to amend it and still have it meet the time frame and go through this House one more time so it can go to a vote of the people.

We will have testimony from the public now.

**Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:**

I am an attorney with the American Civil Liberties Union of Nevada (ACLU). We are a civil rights organization, and we frequently litigate in front of all levels of the court system in the state and federal systems.

The reason we fully support this bill is largely because we believe in the right of access to justice for every individual. That is not only the right to a speedy trial, as the Sixth Amendment requires, but also an ability to get the highest court to decide critical cases that affect the citizens as early as possible. I think Justice Hardesty has eloquently explained why caseloads have reached levels that are starting to burden access to justice. We fully support the bill and thank the Chief Justice for presenting it.

**Chairman Mortenson:**

Are there any questions for Ms. Rowland? [There was no response.] We will have testimony from Las Vegas. Welcome.

**Cam Ferenbach, Vice President, State Bar of Nevada, Las Vegas, Nevada:**

I would like to report that the Board of Governors of the State Bar unanimously supports the passage of S.J.R. No. 9. In my experience on the Board of Governors, I can say it is rare that there is unanimous agreement among our body on everything.

I have practiced law in business litigation in Nevada for 29 years and, in my personal opinion, an appellate court is badly needed for the proper operation of our judicial system. Despite the hard work of our Justices on the Supreme Court, there are increasing delays and uncertainty in the resolution of business disputes. The consequences of that include harm to Nevada businesses, which in turn hurts our economy. If this trend continues and these delays become endemic, it will actually, in my opinion, deter the location of businesses to Nevada and may even encourage their departure. In a more abstract sense, I support my colleague from the ACLU. Over time, I think the absence of an intermediate appellate court will significantly lower the quality of justice rendered by our courts.

**Chairman Mortenson:**

Are there any questions for the gentleman from Las Vegas? I see none.

**Vincenta Montoya, Chair, Si Se Puede Latino Democratic Caucus, Las Vegas, Nevada:**

I am speaking in favor of S.J.R. No. 9. As an organization, we recognize that an intermediate appellate court is necessary, and Nevada has reached the level of maturity to have such an appellate court. I am an immigration attorney, but not practicing in Nevada, and I recognize the importance of being able to have an appellate court. It will relieve the Supreme Court of a lot of pressures and I believe this will lead to more expeditious judicial consideration. That is the position of our organization, and we support the passage of this bill.

**Chairman Mortenson:**

Are there any questions? I see none, so I will close the hearing on the bill and take a vote immediately.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS  
SENATE JOINT RESOLUTION 9 OF THE 74TH SESSION.

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION CARRIED. (ASSEMBLYMEN CONKLIN, MUNFORD, AND SMITH WERE ABSENT FOR THE VOTE.)

We will open the hearing on Assembly Joint Resolution 16. I also want to mention that we will hear the bills today in the order that they are listed on the agenda. We will hear A.J.R. 16, then A.J.R. 7, and then A.J.R. 3. At that time, I will turn my gavel over to Mrs. Koivisto because that bill is an Elections, Procedures, and Ethics bill and is not a state constitutional amendment.

**Assembly Joint Resolution 16: Proposes to amend the Nevada Constitution to revise the provisions governing a petition for a state initiative or referendum. (BDR C-1240)**

**Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:**

The American Civil Liberties Union of Nevada (ACLU) requested this bill and greatly appreciates the Committee's and Chairman Mortenson's indulgence in putting this bill forward. I do have a version of my written remarks that should be included in your folders (Exhibit D).

As you all know, we have an initiative process here in the State of Nevada that is extraordinarily robust. It permits the citizens to sign an initiative petition to get something on the local or statewide ballot. The *Constitution* currently



# SJR9, 74th

---

James W. Hardesty, Chief Justice  
Nevada Supreme Court

## SJR9, 74<sup>th</sup>

---

- SJR9 74<sup>th</sup>— Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court
- SJR9 was passed during the 74<sup>th</sup> Session and would allow the Legislature to create an intermediate appellate court to help reduce the Supreme Court's time to disposition of appeals.

C-2



# Supreme Court

Article 6, Sec. 1, 2, 3, 4, & 19; NRS Chapter 2

---

Fiscal Year	Cases Filed	Cases Disposed	Published Opinions
2006	2,171	2,387	121
2007	2,124	1,976	51
2008	2,212	2,058	100

U-3

# Nevada Supreme Court Caseload Compared with Selected Other States

**Table 4. Characteristics of Nevada and Other Selected Appellate Courts with and without Intermediate Appellate Courts.** All data from respective states' most recent annual report or web page (2006 or 2007).

	Nevada	Montana <sup>a</sup>	Maine <sup>a</sup>	Arizona <sup>a,b</sup>	Arkansas <sup>a</sup>	Alaska <sup>a,b</sup>	Utah <sup>a,b</sup>
Population rank <sup>c</sup>	35	44	40	16	32	47	34
<b>Intermediate Appellate Court</b>							
Justices				22	12	3	7
En banc or panels				Panels	Both	Panels of 3	Panels of 3
Cases filed & granted <sup>d</sup>				3,780 <sup>f</sup>	1,335 <sup>f</sup>	270	922 <sup>f</sup>
Cases per justice				172	111	90	132
<b>Supreme Court</b>							
Justices	7	7	7	5	7	5	5
En banc or panels	Both	Both	En Banc	Both	En Banc	En Banc	En Banc
Cases filed & granted <sup>d</sup>	2,238	774	774 <sup>f</sup>	1,262 <sup>f</sup>	843 <sup>f</sup>	431	564 <sup>f</sup>
Cases per justice	320	111	111	252	120	86	113

<sup>a</sup>Supreme Court has discretion in case review.

<sup>b</sup>Intermediate Appellate Court has discretion in case review.

<sup>c</sup>Source: U.S. Census Bureau, Population Estimates Program: October 2008 website <http://factfinder.census.gov>

<sup>d</sup>Includes mandatory cases and discretionary petitions filed *and* granted, unless otherwise noted.

<sup>f</sup>Includes mandatory cases and total discretionary petitions filed. Number of filings granted for review not available.

## Nevada Supreme Court's Intermediate Appellate Court Business Plan from the 2007 Report to the Legislature (SB234, 2005)

---

- Use the model of Supreme Court 'push down'  
or deflecting authority
- 3 new judges and staff
- Use existing space at the Regional Justice  
Center in Las Vegas
- Current costs for implementation \$1.6 million  
(personnel)
- 2007 Report available at:  
[http://www.nvsupremecourt.us/documents/reports/rpt\\_IAC\\_2007.pdf](http://www.nvsupremecourt.us/documents/reports/rpt_IAC_2007.pdf)

9-5

# FLOOR ACTIONS

## AMENDMENTS ON SECOND READING FLOOR VOTES AND STATEMENTS OTHER ACTIONS

**NOTE:** THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS*  
([HTTP://WWW.LEG.STATE.NV.US/SESSION/75TH2009/JOURNAL/](http://www.leg.state.nv.us/Session/75th2009/JOURNAL/)),  
WHICH ARE NOT THE OFFICIAL FINALIZED VERSIONS OF THE *JOURNALS*.  
CONSULT THE PRINT VERSION FOR THE OFFICIAL RECORD.

# Journal

## OF THE

# SENATE OF THE STATE

# OF NEVADA

---

SEVENTY-FIFTH SESSION

---

THE FIRST DAY

---

CARSON CITY (Monday), February 2, 2009

Senate called to order at 12:22 p.m.

President Krolicki presiding.

Prayer by the Chaplain, Dr. Robert Fowler.

Eternal God and Heavenly Father, we are grateful to You for this day You have given us to live, and we thank You for the life that You allow each and every one of us to possess on this day.

Thank You for giving us not only the strength to live this life but the ability to enjoy the life You have given us as well. We appreciate it, and we thank You.

Eternal God, we beseech You, today, on behalf of the public servants who have gathered in this marvelous hall among this august assembly. Thank You for them and for their desire to serve the citizens of the State of Nevada. We pray their hearts' desire is to see the people of this State prosper and live in peace.

Furthermore, we thank You for their families that provide support to them, the husbands, wives and children, who spend countless hours and days without the opportunity to see their loved ones as they serve our State. Yet, they understand how great the need is within our State. So, we thank You for them.

Our State needs Your help. Our State needs Your guidance. The Bible says unless the Lord builds the house, the laborers labor in vain. Our State needs Your direction. We are a blessed State. We are a world-renowned State. We are a powerful State. Our State has national and international impact and influence; and for that impact and for that influence, we express our appreciation to You. But, we need You to use it in a proper and upright fashion.

This Legislature must make decisions about life, about direction. There are decisions to make about our economy and about the infrastructure of our State. There are decisions to make about the educational system within our State. There are decisions to make about our families and our children and their health care and emotional conditions. There are decisions to make about the reduction of crime and the elevation of peace. Therefore, we beseech Your help today.

We thank You, God, for the collective wisdom in this hall today. We pray that wisdom rain down in a spirit of cooperation and collaboration to bring forth the solutions to cause our State to be both productive and peaceful.

I ask these things in the name of the One who gave me life and gave His life for me. The Bible calls him the Rose of Sharon, Lily of the Valley, the Bright Morning Star. My grandmother called Him a doctor in a sick room and a lawyer in a courtroom. I call Him my rock in a weary land, My Saviour, my Christ.

AMEN.

FEBRUARY 2, 2009— DAY 1

21

MESSAGES FROM THE GOVERNOR  
STATE OF NEVADA  
EXECUTIVE CHAMBER  
CARSON CITY, NEVADA 89701

January 30, 2009

THE HONORABLE STEVEN HORSFORD  
THE HONORABLE BARBARA BUCKLEY  
Nevada Legislature  
401 South Carson Street  
Carson City, Nevada 89701

DEAR MAJORITY LEADER HORSFORD AND SPEAKER BUCKLEY:

Enclosed please find my message to the 75th Session of the Nevada Legislature. As you know, I delivered the message, as required by Article 5, Section 10, of the *Nevada Constitution*, on Thursday, January 15, 2009, to a gathering of your colleagues and other guests in the Assembly Chambers in Carson City.

My staff and I look forward to working with all of you during the 75th Legislative Session.

Sincerely,  
JIM GIBBONS  
*Governor of Nevada*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 2, 2009

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day adopted Assembly Concurrent Resolution No. 1.

DIANE M. KEETCH  
*Assistant Chief Clerk of the Assembly*

COMMUNICATIONS  
MESSAGES FROM THE SECRETARY OF STATE  
STATE OF NEVADA  
DEPARTMENT OF STATE

January 9, 2009

CLAIRE JESSE CLIFT, *Secretary of the Senate*, 401S. Carson S. Carson Street, Carson City, Nevada 89701-4747

DEAR MRS. CLIFT:

This letter is in acknowledgement of the transfer of Senate Joint Resolutions Nos. 1, 2, 3, 4 and 9 of the 74th Legislative Session pursuant to NRS 218.390(2)

In addition, this is also a transmittal letter for Senate Bill No. 146 of the 74th Session which was vetoed by the Governor in the 74th Legislative Session. The enclosed, engrossed and enrolled copy of Senate Bill No. 146 of the 74th Session is being transferred to the 75th Legislative Session pursuant to NRS 218.430(2).

If you have any questions in this regard, please do not hesitate to contact the Elections Division at (775) 684-5705.

Respectfully,  
ROSS MILLER  
*Secretary of State*

FEBRUARY 24, 2009 — DAY 23

**THE TWENTY-THIRD DAY**

---

CARSON CITY (Tuesday), February 24, 2009

Senate called to order at 11:08 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Dr. Marvin Dennis.

Thank You for another day to live and enjoy Your blessings provided for us in this great State. Help, I pray, these Senators who serve this great State to recognize each others' abilities and encourage them to understand each others shortcomings and make allowances for them, to work patiently as they debate the issues of our State.

I pray that You will help each Senator reach their full potential both professionally and privately.

In the Name of my Lord, I pray.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 23, 2009

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 78.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolution No. 10.

DIANE M. KEETCH

*Assistant Chief Clerk of the Assembly*

INTRODUCTION, FIRST READING AND REFERENCE

By Senator McGinness:

Senate Bill No. 155—AN ACT relating to economic development; authorizing the Commission on Economic Development to apply for and accept gifts, grants, donations and contributions into a fund for providing grants for advocacy relating to preserving military installations; and providing other matters properly relating thereto.

Senator McGinness moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

By Senator Care:

Senate Bill No. 156—AN ACT relating to elections; clarifying that any registered voter of the State or appropriate political subdivision may sign a petition to demand the recall of a public officer, regardless of whether the

Senate Bill No. 116.

Bill read third time.

Roll call on Senate Bill No. 116:

YEAS—12.

NAYS—Amodei, Care, Carlton, Cegavske, Horsford, Mathews, McGinness, Raggio, Washington—9.

Senate Bill No. 116 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Joint Resolution No. 9 of the 74th Session.

Resolution read third time.

Roll call on Senate Joint Resolution No. 9 of the 74th Session:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 9 of the 74th Session having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Lee, the privilege of the floor of the Senate Chamber for this day was extended to former Assemblyman Tom Collins.

On request of Senator Mathews, the privilege of the floor of the Senate Chamber for this day was extended to Chris Figueroa and the following members of the Nevada Nurses Association: Pam Johnson, Betty Razor, Doreen Begley, Nancy Brewster-Meredith, Eliza Fountain, Ann Rombardo, Leanna Keith, Cathy Dinauer, Leighanne Shirey, Laura Nevin, Jamie Sue Coleman, Debra Scott, Tracy Singh, Margaret Curley, Rebecca Cailor, Janice Muhammed, Laurie Potter, Janet Bryant, John Buehler-Garcia, Amy Ragnone, Kathleen Murphy Jones, Pat van Betten, Carla Brutico, Denise Engel, Michelle Thomas, Laura Nevin, Tami Gailey, Bobbi Shanks, Amber Donnelly, Deborah Klipp, Mary Ann Lambert, Janet O'Grady, Catherine Smith, Wilma Calhoun, Constance Conradt, Wendie Rains, Pamela Graham, Gloria Castillo, Marena Works, Edda Gibson, Krystle Egbuna, Rowena Enriquez, AN Bui, Angela Bermudez, Marya Coleman, Ashley Olpin, Cami Smith, Denita Munster, Kira Sampson, Shawn Petersen, Talia Phelps, Megan Gates, Lindsey Croft, Julia Glanzman, Lauren Myers, Lisa Ruggiero, Aaren Porteur, Jenna Robison, Kathleen Galicia, Sara Parsons, Becky Tercero, Jessica Holland, Ronna Alcartado, Penny Cassell, Stephanie Thiel, Davia Eakins, Freddie Joy Nael, Rachel Nordyke, Brian Zeme, Patric Dunn, Sarah Gilbert, Tammy Dunn, Michelle Owens, Michael Odneal, Patrick Culbert, Carrie Wright, Vali Dees, Kyle Wagner, Kristy Mathies, Ciera Staggs, Deborah Hite, Jessica Bigelow, Eva Wangumo, Deb Jones, Katie Hackler, Traci Kuckenmeister, Lena Neisingh, Chuck Layosa, Brittany Perkins,



**THE EIGHTY-FIFTH DAY**

---

CARSON CITY (Monday), April 27, 2009

Assembly called to order at 11:44 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Father Chuck Durante.

We stand before You, Holy Spirit, conscious of our weaknesses, but aware that we are gathered before You. Come to us, remain with us, and enlighten our hearts. Give to this Assembly light and strength to know Your will, to make it their own and to live it in their lives. Guide them by your wisdom, support them by Your power, for You are the source of all that is good. You desire justice for all. Enable this Legislature always to uphold the rights of others. Do not allow them to be misled by ignorance or corrupted by fear or favor. Unite all of us to Yourself in the bond of love and keep us faithful to all that is true. As this Assembly begins another week, may they temper justice with love, so that all their decisions may be pleasing to You, that they may know all that is promised to good and faithful servants. We make this prayer as Your holy and humble people.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

**REPORTS OF COMMITTEES**

*Madam Speaker:*

Your Committee on Elections, Procedures, Ethics, and Constitutional Amendments, to which was referred Assembly Concurrent Resolution No. 19, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

ELLEN M. KOIVISTO, *Chair*

*Madam Speaker:*

Your Committee on Ways and Means, to which was referred Assembly Bill No. 542, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MORSE ARBERRY JR., *Chair*

**INTRODUCTION, FIRST READING AND REFERENCE**

By the Committee on Ways and Means:

Assembly Bill No. 543—AN ACT relating to taxation; temporarily redirecting a portion of the taxes ad valorem levied in Clark and Washoe Counties to the State General Fund; and providing other matters properly relating thereto.

Assemblyman Ocegüera moved that all rules be suspended, reading so far had considered second reading, rules further suspended, Assembly Bill No. 542 considered engrossed, declared an emergency measure under the *Constitution*, and placed on third reading and final passage.

Motion carried.

#### GENERAL FILE AND THIRD READING

Assembly Bill No. 542.

Bill read third time.

Remarks by Assemblywoman Smith.

Conflict of interest declared by Assemblyman Grady.

Roll call on Assembly Bill No. 542:

YEAS—41.

NAYS—None.

NOT VOTING—Grady.

Assembly Bill No. 542 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 392.

Bill read third time.

Remarks by Assemblywoman Kirkpatrick.

Roll call on Senate Bill No. 392:

YEAS—42.

NAYS—None.

Senate Bill No. 392 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Joint Resolution No. 9 of the 74th Session.

Resolution read third time.

Remarks by Assemblyman Ohrenschall.

Roll call on Senate Joint Resolution No. 9 of the 74th Session:

YEAS—42.

NAYS—None.

Senate Joint Resolution No. 9 of the 74th Session having received a constitutional majority, Madam Speaker declared it passed.

Resolution ordered transmitted to the Senate.

#### UNFINISHED BUSINESS

#### SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Resolution No. 9.

#### GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblyman Horne, the privilege of the floor of the Assembly Chamber for this day was extended to the following parents and

# BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE  
FOR COMPLETE TEXT

# SUPPLEMENTAL MATERIALS

BALLOT QUESTION TEXT AND VOTES FROM THE  
2010 GENERAL ELECTION

State of Nevada

Statewide

**Ballot Questions**

**2010**

To Appear on the November 2, 2010  
General Election Ballot

## QUESTION NO. 2

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 9 of the 74th Session

### CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to allow for the establishment of an intermediate appellate court, that would have jurisdiction over appeals of certain civil and criminal cases arising from the district courts?

313,769 Votes (46.82%) Yes ☐ No ☒ 356,357 Votes (53.18%)

### EXPLANATION

The proposed amendment to the *Nevada Constitution* would authorize the Legislature to establish an intermediate appellate court, known as the Nevada Court of Appeals, that would have jurisdiction to hear certain appeals arising from civil and criminal cases from the district courts. If the Legislature establishes the intermediate appellate court, the Nevada Supreme Court would be responsible for establishing the specific jurisdiction of the Court of Appeals and for providing review of its decisions.

Currently, language in Article 6 of the *Nevada Constitution* provides for the court system in Nevada, comprised of a Supreme Court, district courts, justices of the peace, and municipal courts. The Supreme Court is the only court in Nevada with jurisdiction to hear cases that are appealed from decisions rendered by the district courts. In addition, the Supreme Court has original jurisdiction over certain types of cases and administers the functions of the State Bar of Nevada and the judiciary.

The proposed amendment does not create the Court of Appeals, but rather authorizes the Legislature to establish the Court.

**A “Yes” vote would authorize the Legislature to establish an intermediate appellate court.**

**A “No” vote would retain the existing court system.**

### ARGUMENTS FOR PASSAGE

Increasing population and caseloads throughout Nevada’s court system support the establishment of an intermediate Court of Appeals. For several decades, Nevada was the fastest growing state in the nation and the number of cases in the court system increased at a similar rate. Although the pace of Nevada’s population growth has slowed, the State is still growing and the workload

of its court system continues to grow. The number of judges in the district courts has increased in recent years in an effort to maintain the public's timely access to justice.

Nevada's Supreme Court is the highest court in the State. It is one of the busiest courts in the nation and has already implemented technological and procedural improvements to accommodate caseload growth. It hears all appeals of civil and criminal cases originating in the district courts. However, the American Bar Association recommends that when the volume of appeals becomes so great that the Supreme Court cannot decide these cases at a desirable pace, an intermediate appellate court should be created. Nevada has reached that point.

The new Court of Appeals will improve efficiency, minimize delay, maintain quality in the judicial process, ensure timeliness of decisions, provide the Supreme Court with the ability to focus on precedent-setting cases, and increase the number of written opinions that establish the State's common law. Currently, Nevada is one of only 11 states and the District of Columbia that do not have an intermediate appellate court.

Completion of the Regional Justice Center in Las Vegas would allow the Court of Appeals to share facilities and other existing resources with the Supreme Court. Therefore, the costs associated with establishing the Court of Appeals may be reduced since no new facilities may be necessary.

## **ARGUMENTS AGAINST PASSAGE**

Establishment of the new Nevada Court of Appeals would simply shift the increasing caseload from the Supreme Court to the Court of Appeals and would add another step to the process of litigation. Another level in the judicial system is not desirable, as it would potentially increase costs for litigants and add time to an already lengthy legal process.

Establishment of the intermediate appellate court would require the State to allocate funds and resources to the court system that might otherwise be used for more essential purposes.

## **FISCAL NOTE**

### **Financial Impact – Cannot Be Determined**

If this proposal to amend the *Nevada Constitution* is approved by voters, the Nevada Legislature would be authorized to establish an intermediate appellate court within this State. Approval of this proposal by the voters would have no direct or immediate financial impact upon the State and local governments or individual taxpayers, as the proposal authorizes, but does not require, the Legislature to establish an intermediate appellate court.

If this proposal is approved by the voters and the Legislature chooses to establish an intermediate appellate court, there would be a financial impact upon the State and local governments. The provisions of the constitutional amendment specify the minimum number of judges that must

make up the appellate court, but allows the Legislature to add additional appellate judges to the proposed court. The creation of an appellate court would require professional and administrative staff, in addition to other one-time and ongoing costs related to the operation of the appellate court. The Legislature would be responsible for setting the salaries of the judges and professional and administrative staff, as well as establishing the one-time and ongoing costs related to the operation of the court. Because it is not possible to determine the decisions the Legislature may make with respect to the establishment and operation of an intermediate appellate court, if the Legislature chooses to establish one, the specific financial impact upon the State and local government or individual taxpayers cannot be determined at this time.

If this question is approved by voters and the Legislature considers legislation that would establish an intermediate appellate court, a fiscal note would be prepared based on the proposed legislation and made available at that time for consideration by the Legislature.