

**MINUTES OF THE MEETING
OF THE
LEGISLATIVE COMMISSION=S SUBCOMMITTEE
TO ENCOURAGE CORPORATIONS AND OTHER BUSINESS ENTITIES
TO ORGANIZE AND CONDUCT BUSINESS IN THIS STATE: SUB-SUBCOMMITTEE
FOR THE EXAMINATION OF THE
BUSINESS COURT AND BUSINESS LAWS
(Senate Concurrent Resolution No. 19, File No. 144, *Statutes of Nevada 1999*)
May 30, 2000
Las Vegas, Nevada**

The second meeting of the Legislative Commission=s Subcommittee to Encourage Corporations and Other Business Entities to Organize and Conduct Business in this State (S.C.R. 19): Sub-Subcommittee for the Examination of the Business Court and Business Laws was held on Tuesday, May 30, 2000, at 10 a.m., at the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4401, Las Vegas, Nevada. The meeting was videoconferenced to the Legislative Building, 401 South Carson Street, Room 3138, Carson City, Nevada. Pages 2 and 3 contain the AMeeting Notice and Agenda.@

SUB-SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Mark A. James, Chairman
Senator Michael A. Schneider
Senator Dina Titus
John Fowler, Chairman of the Executive Committee, State Bar of Nevada

SUB-SUBCOMMITTEE MEMBERS PRESENT IN CARSON CITY:

Assemblyman Greg Brower
Scott Anderson, Deputy Secretary of State Commercial Recordings, Office of the Secretary of State
Bob Shriver, Executive Director, Nevada=s Commission on Economic Development

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Allison Combs, Principal Research Analyst
Bradley A. Wilkinson, Principal Deputy Legislative Counsel
Roxanne Duer, Senior Research Secretary

MEETING NOTICE AND AGENDA

Name of Organization: Legislative Commission=s Subcommittee to Study Methods to Encourage Corporations and Other Business Entities to Organize and Conduct Business in this State (S.C.R. 19):
Sub-Subcommittee for the Examination of the Business Court and Business Laws

Date and Time of Meeting: Tuesday, May 30, 2000
10 a.m.

Place of Meeting: Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the Sub-Subcommittee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Legislative Building
Room 3138
401 South Carson Street
Carson City, Nevada

*If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative web site is <http://www.leg.state.nv.us>. For audio broadcasts, click on the link *AListen to Meetings Live on the Internet.*@*

AGENDA

- I. Opening Remarks and Introductions
Senator Mark A. James, Chairman
- II. Presentation Regarding the Supreme Court=s Task Force Examining the Business Court
Robert E. Rose, Chief Justice, Nevada Supreme Court
- III. Presentation Regarding Proposed Changes to Nevada=s Business Laws
John Fowler, Advisory Member of S.C.R. 19 Subcommittee and Chairman of the Executive Committee, Business Law Section, State Bar of Nevada
- IV. Presentation Regarding Proposed Changes in Nevada=s Intellectual Property Laws
Mark Tratos, Nevada Attorney
- V. Public Testimony
- *VI. Discussion of Recommendations
- VII. Adjournment

*Denotes item on which the Sub-Subcommittee may take action.

Note: We are ~~pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Roxanne Duer, at 775/684-6825, as soon as possible.~~

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Grant Sawyer State Office Building, 555 East Washington Avenue; and Clark County Office, 500 South Grand Central Parkway.

OPENING REMARKS AND INTRODUCTIONS

Senator Mark A. James, Chairman, called the meeting to order. Chairman James introduced the members of the S.C.R. 19 Sub-Subcommittee as well as the staff of the Legislative Counsel Bureau. He explained that what makes Delaware attractive to businesses seeking to incorporate is its Court of Chancery and the sophisticated and liberal incorporation laws it has developed. The Sub-Subcommittee has examined this idea and discussed various methods to create a similar court in Nevada. At the Sub-Subcommittee=s meeting of January 7, 2000, in Las Vegas, Nevada, Chief Justice Robert E. Rose, Nevada Supreme Court, testified and suggested that the Supreme Court analyze this issue by looking to the judges and attorneys of the judicial system to determine if the judicial branch could adopt or establish a business court without changing the structure of the courts. Chairman James asked Chief Justice Rose to report on the status of the task force.

**PRESENTATION REGARDING THE SUPREME COURT=S
TASK FORCE EXAMINING THE BUSINESS COURT**

Robert E. Rose

Robert E. Rose, Chief Justice, Nevada Supreme Court, stated the business court proposal was recently introduced to the Judicial Leadership Conference on May 10, 2000, and provided the Sub-Subcommittee with the handouts presented at the conference which include: (1) an outline of the business court jurisdiction; and (2) an outline of the presentation by the business court task force (please refer to Exhibit A). Focusing his comments on the court=s jurisdiction, he explained that the court shall have authority to hear and decide cases regardless of the type of relief sought, by bench or jury trial, that involve as the primary dispute:

- \$ Disputes concerning the validity, control, operation, or governance of entities created under *Nevada Revised Statutes* (NRS) 78-88, including shareholder derivative suits;
- \$ Disputes concerning trademarks asserted under Nevada law; causes of action asserted pursuant to the Nevada Trade Secrets Act and the Nevada Securities Act involving Investment Securities as described in Article 8 of the *Nevada Uniform Commercial Code*; or Commodities described in NRS Chapter 90; or
- \$ Disputes between two business entities where the business court determines that the case would benefit from enhanced case management.

Further, the business court shall not hear cases where the primary claim is an action:

- \$ For personal injury;
- \$ Based on product liability;
- \$ Brought by a consumer against a business;
- \$ For wrongful termination of employment; or
- \$ Landlord-tenant disputes.

Initially, it is anticipated that the business court may not have a full calendar; therefore, judges should not be precluded from hearing non-business cases if time is available to dedicate to other cases. It is recommended that:

- \$ The district judge serving in the business court may hear and decide all other non-business cases assigned to that judge. The position of district judge shall rotate periodically as provided in the district court rules of the Second and Eighth Judicial District Court Rules. Rotation of judges would meet the constitutional issue of a full-time judge assigned to one specific type of case.
- \$ The business court shall decide whether or not a case should be accepted for treatment by the business court. The court=s decision shall not be appealable nor reviewable upon any writ, including the Nevada Supreme Court.

Additional recommendations include:

- \$ Business court judges shall be selected by the chief judge of the judicial district.
- \$ Two full-time district court judges in the Eighth Judicial District Court (Clark County) and one-full time or two part-time district court judges in the Second Judicial District Court (Washoe County) shall comprise the business court.

- \$ A case filed in a judicial district other than the Second and Eighth Judicial Districts may be transferred to a business court if both parties and the district judge assigned to the case consent. However, the business court reserves the right to decline to accept any case advocated as a business court case.
- \$ A case in which either party filed in the Second or the Eighth Judicial District may request in the pleadings that a case be transferred to a business court. Upon filing of the pleadings, the case shall be transferred to the business court and determination of jurisdiction will be made by a business court judge.

Chief Justice Rose noted some concerns relative to the establishment of a business court:

- \$ Estimating the number of cases in the Second and Eighth Judicial District Courts. A general estimate in Clark County would be 1,000 to 2,000 business court cases, and 500 to 750 cases in Washoe County.
- \$ Seventy-five percent of Nevada's judges attended the Judicial Leadership Conference. Of that percentage, 60 percent were in favor of the proposed concept; 20 percent were negative, and 20 percent were undecided for lack of sufficient information.
- \$ The Supreme Court favors the concept in a close vote, and a slim majority would favor the creation of a business court in the Second and the Eighth Judicial Districts.
- \$ The lack of courtrooms for additional judges. Due to budget constraints, one floor has been eliminated from the proposed Regional Justice Center which is scheduled for completion in two years. There will be no room for expansion at the time of occupancy.

Additionally, Chief Justice Rose indicated that the Eighth Judicial District in Las Vegas is drafting a rule change proposal, whereby 14 judges will return to a system in which both civil and criminal cases will be heard; presently they specialize only in civil or criminal suits. Four of the judges would deal with only civil suits designated to business court/complex litigation. The only foreseen problem is that complex litigation includes tort cases, construction defect cases, products liability cases, and professional negligence cases, and there may be some attorneys who may be concerned about lumping@ those cases in such a business court format.

Chairman James asked Chief Justice Rose about the concept of a rule change that would have an assignment to complex civil and business cases. Such a concept would increase the jurisdiction of the court beyond business entity types of disputes and expand the discretionary jurisdiction of the court into any civil cases that were complex and may have nothing to do with business cases. In his opinion, Chief Justice Rose stated that although a majority of the business court will consist of complex business litigation, by expanding the court to cover all complex cases, i.e., professional negligence, construction defects, and products liability, the possibility of greater opposition to the original proposal is created. Such a concept may make the proposal more complex and implementation may be more difficult.

Continuing, Chief Justice Rose opined that if the revisions to the court rules of the Second and Eighth District Courts were submitted by the July 5, 2000, meeting of the Nevada Supreme Court and then approved by the Supreme Court, it is conceivable the business court/complex litigation process could take effect on January 1, 2001, in Clark and Washoe Counties.

Chairman James commented that if the Supreme Court and the Second and the Eighth Judicial District judges were to come forward with a consensus proposal, he was of the opinion that the Legislators could support that recommendation through a resolution. The resolution could articulate that this would be accomplished through court rule. If necessary, there could be a separate request for an appropriations bill. Chairman James noted that the July 5, 2000, meeting at which the proposed changes to the court rules would be voted on, would be a week after the S.C.R. 19 Subcommittee's final work session meeting which is scheduled for June 30, 2000. At that time, the S.C.R. 19 Subcommittee will take action on recommendations for bill draft requests, resolutions, and appropriations. Chief Justice Rose speculated that if the proposals were received in the next week or two, a special meeting could be scheduled for the latter part of June to determine the vote of the Nevada Supreme Court and transmit that information

to Chairman James. Another proposal would be to meet with Chairman James and members of the S.C.R. 19 Subcommittee, Chief Justice Rose, Associate Justice A. William Maupin, and the Chiefs of the Second and Eighth Judicial Districts in mid-June for a work session to discuss the issues at hand.

Chairman James indicated that would be a possibility at which time some specific resolutions and requests could be defined that could be presented to the full Subcommittee even if the judiciary had not formally voted on the proposals. He noted that even if the court rules were not amended, a resolution can always be amended at a later date, which would be accomplished during the 2001 Legislative Session.

Assemblyman Brower stated his concern that broadening the jurisdiction of the business court should be taken very seriously. Creating a business court should be litigant-driven as opposed to issue-driven. He noted the S.C.R. 19 Subcommittee is tasked with studying methods to encourage corporations and other business entities to organize and conduct business in this state. If the Subcommittee is to accomplish the goal of enhancing the business climate in Nevada, the jurisdiction of the business court should be limited and aimed at achieving that goal. If there is a need to increase the number of departments in northern and southern Nevada to accommodate complex cases that are not necessarily business cases, it may be beyond the scope of the Subcommittee's assignment. Assemblyman Brower asked Chief Justice Rose to share the concerns of his colleagues relative to complex business litigation.

Chief Justice Rose indicated there were two specific areas of concern: (1) a business court is not needed; and (2) the elitist argument, that it is a court for the wealthy who will receive special treatment. In addressing these issues he was of the opinion that:

§ If a business court operates effectively and is not under the jurisdiction on the civil side, cases will be processed more efficiently; and

§ By restricting the focus of the court, the argument that it caters to the wealthy is alleviated; therefore, trial lawyers, unions, and consumer groups would oppose it only if they came under the jurisdiction of the business court.

A. William Maupin

A. William Maupin, Associate Justice, Nevada Supreme Court, addressed the proposal as it relates to Clark County and explained that the Eighth Judicial District in Clark County provides the Nevada Supreme Court with approximately 65 percent of appeals that go through the state appellate process. Because Nevada does not have an intermediate appellate court, every final judgement over which the Supreme Court has jurisdiction is heard by the Court.

Continuing, Justice Maupin indicated the Eighth Judicial District Court judges are in the process of drafting a set of docket control rules for submittal to the Supreme Court for approval to return to a Modified specialization program. Essentially, of the 19 district court judges, four will specialize in civil cases and the remainder will have split calendars for five weeks handling civil cases and then alternating five weeks dealing with criminal cases. Justice Maupin explained the Modified specialization program will enable the Eighth Judicial District to maintain its high level of productivity processing civil and criminal cases. He indicated he welcomes the concept of the business court as another docket control measure, particularly in the two urban districts, and committed to assist the Subcommittee in identifying any problem areas associated with establishing a business court in the Second and Eighth Judicial Districts.

In response to questions from Senator Titus, Justice Maupin explained:

§ The creation of a family court required a constitutional amendment because district court judges were dedicated solely for the purpose of practicing family law. Although the business court will be a specialized court, under Nevada's Constitution judges can rotate in and out of general jurisdiction court. Criminal judges can serve for six months or a year and then rotate as civil judges in the complex business format.

Pat Cashill

Pat Cashill, Nevada Trial Lawyers Association (NTLA), commented the NTLA has not taken an official position on the business court until a final proposal is submitted; however, it will support a narrow jurisdiction base for a business court. If there were a perception the business court was a court for the wealthy, that would do the system of justice a serious disservice. The NTLA does, however, pledge its support and manpower to achieve a reasonable solution to a problem that can be resolved.

John H.O. La Gatta

John La Gatta, a private citizen, responded to Senator Titus' previous question and stated he recalled his testimony in which he asked if there was a procedure by which judges could be dedicated to the business court rather than seeking an amendment to *Nevada's Constitution*. In his opinion, the S.C.R. 19 Subcommittee expanded to explore additional avenues other than the Court of Chancery as first proposed. Mr. La Gatta indicated that a number of states have taken various approaches which all seem to be working:

- \$ Delaware has a court of equity;
- \$ New Jersey has a tracking system;
- \$ The State of New York designates judges; and
- \$ North Carolina has one judge with a threshold in money.

Chairman James remarked that if the business court could better administer justice on the civil side by adopting such a proposal as well as encourage businesses to locate in Nevada, all would be benefitted. He suggested members of the Sub-Subcommittee meet with Chief Justice Rose; Associate Justice Maupin; Judge James W. Hardesty, Second Judicial District; Judge Gene T. Porter, Eighth Judicial District; Judge Mark W. Gibbons, Eighth Judicial District, and interested parties to reach proposal consensus prior to the S.C.R. 19 Subcommittee meeting of June 30, 2000,

Jim Pitochelli

Jim Pitochelli, President, Professional Corporate Advisors, explained the company is an advisory firm that deals with incorporations and corporate advisory services for startup companies and businesses seeking financing. In his opinion, Mr. Pitochelli indicated the creation of a business court would definitely fill a void in the area of incorporation, but strongly urged that the jurisdiction of the business court be specifically tailored and not confused with complex litigation involving other judicial areas.

**PRESENTATION REGARDING PROPOSED CHANGES
TO NEVADA'S BUSINESS LAWS**

John P. Fowler

John P. Fowler, Chairman of the Executive Committee, Business Law Section, State Bar of Nevada, presented an overview on the status of statutory amendments. He provided the members with a copy of a letter to Chairman James with suggested changes to business laws and a working list of proposed changes to *Nevada Revised Statutes* and Title 7 (please refer to Exhibit B). He explained various law firms assisted in the process in which reports were provided after certain portions of Title 7 were compared with correlative portions of the Delaware Code. From these reports, each law firm provided draft language specific to Nevada's statutes. The final draft is not yet available, but completion is anticipated prior to the June 30, 2000, meeting.

Mr. Fowler referred to the following suggested changes (Exhibit B):

- \$ A global change that would be applicable to all statutes and would allow filed documents to be signed by any officer of a corporation, not specifically the president or vice-president and secretary or assistant secretary of a

corporation.

\$ The conversion of one entity into another. Conversion allows one entity to convert itself without having to create and merge with another entity. This procedure has been adopted in the states of California and Delaware.

\$ A procedure favored by Canadian corporations is domestication. It would allow any corporation outside the United States to domesticate into a Nevada incorporation. This particular procedure works well with Canadian statutes. Delaware employed it several years ago and it has been successful. Being able to domesticate into Nevada in a simple procedure and very attractive to corporations.

Scott Anderson

Scott Anderson, Deputy Secretary of State for the Commercial Recordings Division, Secretary of State's Office, referred to two issues recently discussed at a conference of the International Association of Corporate Administrators, which makes up the majority of the Secretary of States Offices and corporation divisions within the United States and throughout the world:

- 1 The conversion of an entity from one type of entity such as a limited liability partnership or a limited liability corporation (LLC), into another type of entity.
- 2 The Secretary of State's Office has been expanding due to the addition of LLCs and business trusts; however, there is a movement underway to limit the types of entities that are considered legal entities.

**PRESENTATION REGARDING PROPOSED CHANGES IN
NEVADA'S INTELLECTUAL PROPERTY LAWS**

Mark G. Tratos, Esq.

Mark Tratos, Attorney, Quirk & Tratos, outlined seven specific areas of legislative enactments to be considered in the 2001 Legislative Session (please refer to Exhibit C). Focusing on trade secrets and trademarks in a business court format, he summarized the following proposals:

- 1 Nevada's Trademark Act does not presently contain an anti-dilution provision. Such a provision would make it illegal to use a famous trademark on unrelated goods or services, thereby weakening or deleting the mark's value.
- 2 Nevada's trade secret act should be amended to specifically address dissemination of trade secrets via the Internet.
- 3 At the present time, Nevada does not have an electronic signatures act that would establish the means by which courts could recognize commercial transactions and contracts that occur only electronically.
- 4 Nevada has no laws preventing individuals from electronically jamming a web site through the use of unsolicited electronic mails or similar correspondence. An anti-spamming statute would make it illegal for entities or individuals to use the Internet as an offensive tool to disrupt business operations through sending unsolicited communications.
- 5 An electronic privacy act would require Nevada-based Internet businesses, or businesses that use Internet service providers located in Nevada that collect personal information about Internet users, to prominently post a statement as to their privacy practices on their web site.
- 6 Nevada has no basis for allowing minors who perform in various entertainment venues throughout the state, or in the recording, film, or television industry, to have their contracts reviewed and judicially approved.

- 7 Adopt a specific sales tax abatement provision that allows film and television companies who purchase goods in the state of Nevada for use in Nevada, to avoid paying sales tax, provided the goods or items remain in the state for a specific period of time (five years or more) and are used for future film or television projects, or are donated to specific institutions (such as the University of Nevada, Las Vegas, or Nevada=s community college system) that assist in the development of the film and television industries infrastructure in the State of Nevada.

Mr. Tratos indicated that Nevada currently has an exemption under its sales tax for ticket sales that occur in any venue or arena larger than 2,700 seats.

Responding to questions from Chairman James, Mr. Tratos explained that:

\$ When the sales tax statute was passed, the Convention Center Arena was the only large venue in Las Vegas. Currently, there are numerous facilities with a seating capacity which exceeds 2,700 seats that are not taxed which result in a significant loss to Nevada=s tax base.

\$ A few states have anti-dilution provisions. It is a growing trend in states to adopt such language and is important in states with major corporations that have large advertising budgets that have made marks famous. Nevada is a unique state with a small population but with businesses who spend millions of dollars annually promoting their business enterprises.

Mr. Anderson, identified previously, remarked that electronic signatures legislation was passed in the 1999 Legislative Session and digital signature regulations were adopted recently through the Secretary of State=s Office. He asked if Mr. Tratos had reviewed the legislation.

Mr. Tratos replied in the affirmative but indicated his comments were directed at judicial enforcement, providing courts with a clear understanding as to how they can use the regulations in place of the typical rules in place for statute of frauds. It is not clear in the legislation and amending the language would provide courts with better direction.

Bob Shriver

Bob Shriver, Executive Director, Nevada=s Commission on Economic Development, was of the opinion that the majority of production companies lease equipment rather than purchase it. Mr. Tratos replied in the affirmation that many film companies utilize a lease arrangement. The most current statistics suggest approximately 63 percent of the film companies use a lease formula because it is a complete tax write off. It depends on the company=s particular budget and whether or not they can use the equipment again in a short period of time. There are suggestions amongst the trades that a repetitive use suggests that a purchase is a better buy than a lease arrangement.

PUBLIC TESTIMONY

Chairman James opened the meeting for public testimony. There was no public testimony provided from the Carson City or Las Vegas locations. Chairman James closed the public testimony portion of the hearing.

DISCUSSION OF RECOMMENDATIONS

Chairman James indicated that specific recommendations would not be discussed during today=s hearing. He will talk with some of the judges to see whether there is a consensus among the judiciary and how to implement the business court. The next meeting is June 30, 2000, at which the full S.C.R. 19 Subcommittee will have a work session to vote on recommendations for all the issues considered by the three Sub-Subcommittees.

ADJOURNMENT

There being no further business, Chairman James adjourned the meeting at 12:00 p.m.

Exhibit D is the Attendance Record@ for this meeting.

Respectfully submitted,

Roxanne Duer
Senior Research Secretary

Allison Combs
Principal Research Analyst

Approved By:

Senator Mark A. James, Chairman

Date

LIST OF EXHIBITS

Exhibit A was submitted by Robert E. Rose, Chief Justice, Nevada Supreme Court, and consists of the following documents:

- 1 The testimony of Chief Justice Rose titled ABusiness Court Jurisdiction,@ dated May 30, 2000.
- 2 An outline of the business court presented at the Judicial Leadership Conference titled AOutline of Business Court Task Force Presentation, Judicial Leadership Conference B May 10, 2000,@ dated May 30, 2000.
- 3 An article from the *Legal Opinion Letter* titled ABusiness Courts Can Improve State Judicial and Legal Systems,@ dated January 9, 1998.

Exhibit B submitted by John P. Fowler, Chairman of the Executive Committee, State Bar of Nevada, consists of the following documents:

- 1 Correspondence to Senator Mark James, Chairman, from John P. Fowler, Chairman, Executive Committee, State Bar of Nevada, titled ASuggestions for Change to Business Laws (Title 7),@ dated May 26, 2000.
- 2 A working list of suggested changes titled AWorking List of Suggested Changes to Statutes and Title 7, *Nevada Revised Statutes*.@
- 3 Correspondence to John P. Fowler, Esq., Marshall Hill Cassas & deLipkau, from Richard Bennett, Hale Lane Peek Dennison Howard and Anderson, titled AProposed Revisions to Statutes,@ and dated May 15, 2000.
- 4 An electronic mail from Rob Kim, Kummer Kaempfer Bonner & Renshaw, Attorneys at Law, to the State Bar of Nevada B Business Law Section B Executive Committee, titled Nevada and Delaware Limited Liability

Company Comparison,@ dated May 5, 2000.

Exhibit C is a memorandum to Senator Mark James from Mark G. Tratos, Esq., Quirk & Tratos, titled AProposed Changes in the DataBIntellectual Property, Entertainment & Internet Statutes,@ dated May 26, 2000.

Exhibit D is the AAttendance Record@ for this meeting.

Copies of the materials distributed during the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at (775) 684-6827.