MINUTES OF THE MEETING OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE ON FAMILY COURTS

(Assembly Concurrent Resolution No. 32)

Grant Sawyer State Office Building

Las Vegas, Nevada

June 3, 1998

The fifth meeting of the Legislative Commission's Subcommittee on Family Courts (A.C.R. 32) was held on Wednesday, June 3, 1998, in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was simultaneously videoconferenced to the Legislative Building, 401 South Carson Street, Carson City, Nevada.

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblyman Barbara Buckley, Chairman

Senator Jon C. Porter

Senator Maurice Washington

Assemblywoman Ellen M. Koivisto

Assemblywoman Genie Ohrenschall

Assemblywoman Sandra Tiffany

SUBCOMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Ernest E. Adler

Excused:

Senator Dina Titus

ADVISORY COMMITTEE MEMBERS PRESENT:

Dr. Philip Bushard, Director, Family Mediation Program, Second Judicial District Court

Robert P. Dickerson, Family Law Section, State Bar of Nevada

Elena Hatch, Chief Deputy District Attorney, Office of the Clark County District Attorney

Anna Peterson, Former Court Administrator, Eighth Judicial District Court

Madelyn Shipman, Assistant District Attorney, Office of the Washoe County District Attorney

LEGISLATIVE COUNSEL BUREAU (LCB) STAFF PRESENT:

Bradley A. Wilkinson, Principal Deputy Legislative Counsel

Kevin C. Powers, Deputy Legislative Counsel

Allison Combs, Principal Research Analyst

Patti Adams, Secretary

Nancy McPherson, Secretary

OPENING REMARKS AND INTRODUCTIONS

Chairman Buckley called the meeting to order at 10:35 a.m. and began by welcoming everyone to the work session meeting of the Legislative Commission's Subcommittee on Family Courts . She thanked the members of the Subcommittee, the Advisory Committee and the staff of the Subcommittee. She also thanked individuals from the judiciary and the general public who had provided valuable testimony and offered assistance throughout the study. She expressed her hope that the testimony from the public and various experts knowledgeable in the family court process would result in recommendations from the Subcommittee that will help the family court become more effective and efficient. She stated that the Subcommittee is deeply committed to doing all it can to ensure that cases that come before the family courts are processed as efficiently, professionally and compassionately as possible and that the families involved in those cases feel that they were treated justly and fairly. She reminded everyone that once the Subcommittee makes its recommendations, the results will be published in a report from which proposed legislation will be drafted. Any legislation will then be subject to additional hearings during the next legislative session at which time everyone is again invited to present testimony.

Chairman Buckley noted the numerous hours of testimony that had been received by the Subcommittee and explained that, although public comments would be heard at the end of the work session, this meeting was the time for the Subcommittee members to express their thoughts and ideas and make recommendations. Further testimony would not be taken at this meeting although individuals may be called upon to clarify previous testimony. She noted that possible recommendations and draft legislation could be found in the blue work session booklet provided by the Subcommittee staff and would be the basis for much of the discussion during the meeting.

RECOMMENDATIONS

A. Abolishment of Family Court

Bradley A. Wilkinson, Principal Deputy Legislative Counsel, introduced the first item for consideration, abolishment of the family court. He explained that this would involve amending NRS and the Statutes of Nevada to abolish the family court as a division of the district court and provide that cases which are currently within the jurisdiction of the family court would become subject to the general jurisdiction of the district court. He noted that the creation of the family court is provided for in the Constitution, so consequently, as it was created, it could also be abolished.

Assemblywoman Tiffany urged that the Subcommittee not recommend the abolishment of the family court. She stated that the direction of the Subcommittee was to reform the family court and help it reform itself.

Senator Washington questioned whether there was a population level that a county needed to reach before it could establish a family court. Mr. Powers answered that the Nevada Constitution does not contain any population requirement, but Nevada Revised Statutes currently provide for a population of 100,000 or more to establish a family court. Senator Washington continued by recommending permissive language that would allow counties to have the option to establish a family court without a certain population level. Mr. Powers commented that the power to create family courts lies with the Legislature and that permissive language would, in effect, delegate this responsibility to the counties. Chairman Buckley offered that if other counties wanted a family court, they could come before the Legislature and make that request.

Chairman Buckley noted that the recommendation to abolish the family court would ignore the reason it was created in the first place and, seeing no objection to Assemblywoman Tiffany's suggestion to move past this recommendation,

suggested that the Subcommittee move on to the second recommendation.

B. Assignment and Rotation of Family Court Judges

Mr. Wilkinson introduced the topic of assignment and rotation of family court judges by noting that the proposal was two-fold. The first part would amend NRS to allow the Chief Judge of the Eighth Judicial District Court to rotate judges to and from the family court by assigning and reassigning a certain number of district judges to be dedicated judges of the family court and to assign and reassign, as needed, district judges who are not assigned to be dedicated judges of the family court to be temporary judges of the family court. The second part of the proposal would amend NRS to allow the Chief Judge of the Second Judicial District Court to assign and reassign, as needed, district judges who have not been elected or appointed to a department of the family court to be temporary judges of the family court, but would not permit rotation of the district judges who have been elected or appointed to a department of the family court.

Mr. Powers continued by introducing the proposed bill draft presented in Exhibit B, pages 2 through 9, inclusive. The bill would create rotation in the Eighth Judicial District but not change the status quo in the Second Judicial District Court. There could, however, be some expansion at the discretion of the Chief Judge of the Second Judicial District to assign temporary judges of the family court above and beyond those judges who are already elected or appointed to family court positions. The bill would also maintain the status quo with regard to the courses of instruction that judges are required to take. He explained that, in the Eighth Judicial District, there would be two types of family court judges. The first type would be a dedicated family court judge and the Chief Judge of the Judicial District in Clark County would assign 8 judges to be the dedicated family court judges and those judges would only exercise the jurisdiction of the family court. One provision in the proposed bill draft, he noted, provides that any judge who is elected or appointed to the family court in Clark County before the effective date of the bill would have the option to remain a dedicated judge of the family courts. That judge could not be reassigned by the Chief Judge unless the judge consented to the reassignment. He continued by explaining that, other than the 8 dedicated judges in the family court, there would be opportunity for the Chief Judge to assign temporary judges of the family court. Those temporary judges, based on need, would exercise jurisdiction of the family courts over cases and also exercise jurisdiction within the general jurisdiction of the district courts. Mr. Powers noted that the bill as proposed would not permit rotation of those judges who are elected or appointed to the family court division in the Second Judicial District. The Chief Judge in the Second Judicial District would also have the ability to assign judges to be temporary judges of the family court above those who are elected or appointed.

Chairman Buckley opened the discussion by suggesting that the Subcommittee could adopt Judge Leavitt's recommendation to start the rotation experiment with voluntary rotation in the Eighth Judicial District. Her understanding of the judge's suggestion would allow the Chief Judge and the court with its rule-making authority to set up a system whereby caseloads could be exchanged voluntarily between a family court judge and a general jurisdiction judge. Judge Leavitt's proposal, she recalled, would also allow the Chief Judge to assign temporary judges to help relieve any backlog of cases. Chairman Buckley felt that the proposed bill draft as outlined in the work session document would be more of a mandatory rotation. She also expressed her feeling that the language in this legislation would eliminate persons from running for election as a dedicated family court judge. Her recommendation to the Subcommittee was to request voluntary rotation and temporary assignment of family court judges to start the experiment. This approach, coupled with other reforms considered, could be evaluated for its effectiveness at a future date and more radical changes could be made at that time if necessary.

In response to a question from Senator Washington regarding the length of the voluntary rotation experiment, Chairman Buckley stated that she felt the legislative session of 2001 would be the earliest that a fair evaluation could be made.

Senator Adler commented that he agreed that legislation on the rotation idea should proceed slowly.

The advantage he saw in the proposed bill draft was allowing the Chief Judge to assign regular district court judges to the family court to even out some of the caseload and to help out and that this assignment should not be voluntary. His recommendation was to accept that portion of the proposed legislation. He added that the other parts of this bill draft might not be necessary because the current system in Washoe County is working well

Anna Peterson agreed with the rotation trial suggested by Chairman Buckley but added that language should be added

to assure that the need for judges in the family court be protected first. She also offered that the phrasing "dedicated judges" could be changed to "dedicated court" as she felt that all judges were dedicated and the current wording could be offensive.

Assemblywoman Tiffany added her support to the suggestion of adopting voluntary rotation but urged that, if this was to be done by court rule rather than legislation, there should be a time certain for a report back from the courts. She also requested mandating a three-year rotation rather than leaving the time up to the courts.

Madelyn Shipman stated that she felt that the aspect of temporary assignment was very important so that the Chief Judge can provide assistance to the family court with any backlog or to fill a temporary vacancy. She mentioned that her concern about rotation was that the electorate thought of different criteria for a family court position as opposed to a general jurisdiction position and that a person would run for family court judge with the idea he would later be able to move into a general jurisdiction position. She also asked for clarification on a point in the proposed bill draft stating that the Chief Judge could not assign himself as a family court judge. She wondered if this meant that a family court judge could not be the Chief Judge.

Mr. Powers responded that under the structure set up for Clark County in the proposed draft, the Chief Judge could not act as a dedicated judge of family court while he's serving as Chief Judge, but he could act as a temporary judge of the family court, thereby exercising family court jurisdiction and general jurisdiction. In response to Chairman Buckley's concern about whether a judge assigned to the family division was precluded from being the Chief Judge, Mr. Powers assured her that, by statute, there is no limitation in that regard. He added that the proposed legislation would not preclude the Chief Judge in Clark County from being a family court judge. The Chief Judge could hear family court cases because he could assign himself as a temporary judge of the family court. Ms. Shipman added that a family court judge is currently the Chief Judge of the Second Judicial District.

Elena Hatch urged the Subcommittee to be very careful in reference to the duration of rotation because the importance of family court that this Subcommittee was trying to underscore would be defeated in there was no continuity in the handling of cases.

To clarify the ensuing discussion, Chairman Buckley offered that the language of the proposed legislation be such that it assured that a dedicated family court judge would not be precluded from becoming Chief Judge.

Assemblywoman Tiffany expressed her concern that the Chief Judge should be the judge with the most training and experience in all areas of the court system which includes civil, criminal and family. She felt that because family court judges now are being trained only in family court, they would not have the broad experience needed for the position of Chief Judge.

Mr. Dickerson countered that that rationale suggested that family court judges are inferior judges. He noted that a judge is a judge and to suggest that one has expertise in only one area is incorrect. He continued by stating that what was needed in a judge is a person with intellect, a person with good judgment, a person who has the judicial temperament to make rulings in a judicial fashion and is able to explain the decision so that people can understand. He suggested that this could best be obtained by a using a merit selection basis rather than election to choose judges.

Chairman Buckley noted that the debate of election of judges versus merit selection was a dialogue that occurred every legislative session but deferred the discussion until after closure could be reached on the recommendation of rotation which was under consideration at this point in the meeting.

Discussion continued concerning how assigning and reassigning judges would affect the continuity of case handling. Chairman Buckley offered that court rule would be expected to ensure continuity and that could be evaluated from the report by the courts to the 2001 Legislature.

Ms. Peterson questioned and was assured that training for the judges who are rotated was included in the proposed legislation. She also expressed her dislike for the numbering system used for the family courts. The designation of a, b, c, instead of 1, 2, 3, implied to her that the family courts were inferior. Mr. Powers replied that the provision for lettering of the family court departments as "a, b, c" and numbering of the general jurisdiction departments as "1, 2, 3" is statutory and can be changed.

Senator Porter referred to the discussion about a time certain and requested that a plan and implementation report be received by the Judiciary Committees of both houses by February 1, 1999. Chairman Buckley reiterated that the Subcommittee wanted to have accountability built into the proposal and wanted a report in order to evaluate the experiment to see if it was working or needed to be expanded or changed. She deferred the timeline issue to Mr. Wilkinson who stated that the problem with a report by February of 1999 was that the actual rotation could not be implemented until the proposed bill is passed by the Legislature. He added that if a sunset provision allowed rotation until 2001, the Legislature in 2001 could look at whether it wanted to keep the rotation based on the report.

A discussion ensued regarding whether the legislation should be the same for Clark County and Washoe County. Assemblywoman Tiffany argued that it should be consistent but Senator Washington disagreed because the Washoe County system was presently working and should not be changed. Chairman Buckley added that the courts should have the flexibility to make their own court rules which could result in experimentation that worked and could be emulated by other courts. She felt it did not have to be uniform statewide in all cases.

Chairman Buckley questioned why, if Washoe County was already rotating judges to serve in the family division based on desire and ability, Clark County could not do the same. Mr. Wilkinson replied that Clark County could currently assign general jurisdiction judges to be temporary judges of the family court. The proposed bill draft, he explained, would make that a little bit broader by including reasons other than "caseload" for assigning temporary judges. He stated that the law currently does not allow judges to rotate out of family court; that needs to be changed through legislation. Mr. Powers added that the statute now does permit judges to act as temporary judges of the family court and still exercise other general jurisdiction but currently that is not voluntary. Ms. Shipman offered that currently the law does allow for temporary assignment but the word "rotation" connotes more that a temporary assignment; it would be moving someone from what is designated as a family court into a general jurisdiction court and that currently does not exist in statute.

Regarding a concern that the Subcommittee wished to make temporary assignment of judges voluntary, which could result in no temporary judges to aid in caseload, Mr. Powers was assured that this was not the intent of the Subcommittee. He reiterated that the temporary assignment of a judge to the family court is currently being done by the Chief Judge and is not done on a voluntary basis. The only proposed change concerning that issue would be to make the language a little broader. He added that the focus of the Subcommittee throughout the study seems to have been concerned with what opportunity has been provided for the judicial districts to permit judges elected to the family court to move into the general jurisdiction quarter. Ms. Shipman concurred that the issue is whether a judge who is elected to the family court could be allowed to switch places for a period of time with a general jurisdiction judge who is willing to do so.

Chairman Buckley noted that, since the recommendation being considered by the Subcommittee would not be mandating something different for Washoe County and Clark County but rather giving those courts additional voluntary authority, that there really is no debate over setting different standards for the two Judicial Districts. Senator Washington concurred that a voluntary change would be acceptable.

Chairman Buckley clarified the recommendation under consideration by stating that it would involve an expansion of the ability of the Chief Judge concerning reasons for temporary assignment to be more encompassing to give relief to the family court as needed. A second and separate part, she added, would be to adopt statutory changes permitting a voluntary rotation system with the inclusion of language in the report or the actual bill draft of the Subcommittee's intent that divisions dedicated to family court not be lessened and further, that there be assurances of continuity of the cases to be regulated by court rule. Senator Porter added the request that the statement encourage a report back from the courts by February 1, 1999

Responding to a concern expressed by Assemblywoman Ohrenschall regarding differences in Clark County family courts and Washoe County family courts causing a possible inequity of justice based upon finances, Chairman Buckley answered that the Subcommittee is attempting in all of its deliberations to assure that no impediments are put before anyone based on ability to pay.

Further discussion of the motion brought forth the desire of the Subcommittee to include a sunset provision in the legislation regarding the statutory change permitting voluntary rotation in order to assess how the experiment is working. It was agreed that the earliest that a report could get back to the Legislature would be for the 2001 legislative session. The maker and the seconder of the motion agreed to this addition.

THE MOTION MADE BY ASSEMBLYWOMAN OHRENSCHALL AND SECONDED BY ASSEMBLYWOMAN TIFFANY REGARDING TEMPORARY ASSIGNMENT AND ROTATION OF FAMILY COURT JUDGES AS CLARIFIED BY CHAIRMAN BUCKLEY WAS PLACED FOR A VOTE AND PASSED UNANIMOUSLY.

C. Role of the Chief Judge in Expediting the Processing of Cases and addressing Grievances from Litigants in the Family Court

Mr. Wilkinson introduced the next item from the work session document (Exhibit B at page 9) by explaining that the proposal would amend NRS to allow the following duties for the Chief Judge of the Second Judicial District Court and the Chief Judge of the Eighth Judicial District Court: ensure that procedures in the family court are applied as uniformly as practicable; ensure that cases and other proceedings in the family court are considered and decided in a timely manner; and establish procedures for addressing grievances which are submitted to the Chief Judge by a party in a case or other proceeding in the family court and which concern the administration of the case or other proceeding.

Chairman Buckley mentioned a point that had been brought to her attention questioning why certain recommendations of the Subcommittee were being limited to family court instead of being extended to all divisions of the court. She explained that this Subcommittee was formed to study the family courts and its primary focus is to make reforms in the areas that affect family court. Assemblywoman Tiffany agreed that testimony heard by the Subcommittee was directly related to family court and if expansion of the recommendations to other divisions was important it could be addressed in the Legislature with more public hearing and more input. Senator Washington disagreed and argued that litigants in civil cases also want to have speedy hearings and decisions and suggested that the recommendation on the role of the Chief Judge be expanded to include civil cases.

Ms. Shipman suggested that, rather than including this recommendation in the proposed legislation, it could be set forth in the report that the Subcommittee recognizes that this could be potentially appropriate for all departments. Ms. Shipman continued by requesting that language be added to clarify for the layman that the grievance procedure applies only to the administration of the case and not appeals regarding the decision of the court. Chairman Buckley agreed that this could be added to the motion.

ASSEMBLYWOMAN TIFFANY THEN MADE A MOTION TO ACCEPT THIS RECOMMENDATION LIMITING IT TO FAMILY COURT AS STATED AND INCLUDE A RECOMMENDATION IN THE REPORT OF THE SUBCOMMITTEE THAT THE LEGISLATURE CONSIDER EXPANSION TO OTHER DIVISIONS OF THE COURT. SENATOR WASHINGTON SECONDED THE MOTION. THE QUESTION WAS PLACED AND THE MOTION PASSED UNANIMOUSLY.

D. Assessment

Mr. Wilkinson introduced the next recommendation, which was to include a statement in the Subcommittee's report urging the Eighth Judicial District Court to create a mechanism whereby the Family Mediation Center may perform assessments for litigants and their families who are indigent or otherwise financially unable to pay for an outsourced, private assessment. He stated that this recommendation resulted from the decision of the Family Mediation Center, formerly the Family Mediation and Assessment Center, to outsource assessments, resulting in costs to litigants for assessments.

Assemblywoman Tiffany questioned whether "to create a mechanism" implied a financial structure and expressed her opinion that this should not belong to the court system to decide but rather should be done from the county commission. She added that since there had not been much discussion of this and because the Subcommittee had even questioned the value and consistency of assessments, the Subcommittee should not take this action at this time. Senator Porter stated that he felt the Subcommittee could request that the courts give input on this item in their report, but not actually put anything in place at this time. Dr. Bushard suggested that this item be included with the next item for consideration concerning guardians ad litem and Court-Appointed Special Advocates (CASA) and that the Subcommittee make a strong statement to support those services and encourage adequate funding for all those services. Ms. Peterson added her opinion that mediation is more important and was concerned that this recommendation would tie up the Family Mediation Center with a lot of paperwork.

Chairman Buckley summarized both sides of the issue and agreed with Senator Porter that the Subcommittee just require a report back to ensure that no harm is being done because of inability to pay for assessments and to further consider this recommendation in conjunction with the CASA and the guardian ad litem program. Senator Adler agreed that many assessments are unnecessary and tend to prolong a case whereas mediation is what moves cases along. He added that in some cases assessments are used instead of the sound judgment of the judge and expressed his opinion that the judge should make the decisions and not rely on someone who is writing an assessment.

Chairman Buckley suggested that the Subcommittee could consider putting a statement in the report on its study affirming its belief that assessments have been excessively relied on and supporting the court's decision not to do assessments and to instead request the courts to encourage the use of mediation for early resolution.

Chairman Buckley continued by expressing her concern that, in some cases, mandatory mediation was being ignored and wondered whether this was deliberate or whether it was because this mandate was fairly recent. Mr. Dickerson stated that he felt that this was probably occurring because it is difficult to change a system and that the attorneys and the court itself just need time to discover how to best implement the new mandate for mediation.

Noting a consensus of the Subcommittee members, Chairman Buckley reiterated that they not proceed with an actual recommendation regarding the creation of a mechanism, but rather put a statement in their report asking for input from the courts assessing whether the status quo is harming anyone and whether assessments are, in fact, still being utilized.

E. Coordination of Cases

Mr. Wilkinson introduced the next item for consideration as found in Exhibit B at page 11. This recommendation is to adopt a resolution urging the Eighth Judicial District Court to coordinate and integrate fully all case files in the family court which pertain to the same parties or children but which are reviewed by multiple persons or agencies because they involve multiple issues, such as domestic violence, child support, and abused or neglected children, and to ensure that the parties or children in such cases are directed to the appropriate agencies and services in a timely manner. The second part of the resolution would be to require the Chief Judge of the Eighth Judicial District to submit a report to the next session of the Legislature listing the actions that happen or will be taken by the court and include any suggestions for legislation that might assist in accomplishing that goal.

Chairman Buckley opened the discussion by noting that this recommendation was the result of the testimony of Tom Leeds and the discussion of numerous files relating to one family. The general concession of most testimony was to coordinate files so that one judge would hear all aspects of one family's pending cases. This centralization would eliminate the need to deal with a multitude of departments and help eliminate any one aspect from slipping through the cracks. Assemblywoman Tiffany agreed and added that this could be tied to the next item for consideration regarding case management and tracking. She stated that this coordination could be accomplished with the integrated computer software mentioned in recommendation F (Exhibit B at page 11) by adding language to include coordination of case files. Chairman Buckley asked that the two items be kept separate at this time for purposes of moving on item E and look to adding language to item F when it is under consideration. Senator Adler added that it was the clear legislative intent when passing the original family court bill that all files regarding one family be taken as a whole. With the note that this was the original intent, he gave his support to this proposed resolution.

Ms. Shipman suggested that the language "all case files" be changed to "as fully as possible all case files as there could be some cases where total integration would not be possible. She also questioned whether the language "and to ensure that the parties or children in such cases are directed to the appropriate agencies and services" meant that the court would be assuming some role of directing people to agencies that are not department related. Chairman Buckley stated that her impression was that this was limited to court agencies as opposed to social services. She agreed that should be clarified to preclude a social service role for a judge and just make sure that all departments and divisions of the court are made easier for a person to navigate. Senator Washington added that he felt this language was added to make sure that juvenile court was included in the coordination efforts.

Responding to Assemblywoman Tiffany's question regarding the omission of Washoe County from this recommendation, Ms. Shipman stated that the Second Judicial District Court is already attempting to coordinate cases and saw no problem with urging both Judicial Districts to coordinate using the language "as fully as possible all case files." Chairman Buckley noted that perfection is hard to achieve but that the goal would be "all case files" and

suggested keeping the original language. The will of the Subcommittee was to include the language "as fully as possible."

A MOTION WAS MADE BY SENATOR PORTER AND SECONDED BY ASSEMBLYWOMAN TIFFANY TO ADOPT THE RESOLUTION WITH THE ADDITION OF THE LEGISLATIVE HISTORY AND INTENT AS MENTIONED BY SENATOR ADLER. THE MOTION PASSED UNANIMOUSLY.

F: Case Management

Mr. Wilkinson introduced the next item for consideration, which included adopting a resolution or including a statement in the Subcommittee's report urging the Eighth Judicial District Court to establish for judges of the family court a bench book of standardized court procedures. Further actions were to include a statement in the Subcommittee's report urging the Board of County Commissioners of Clark County and the Board of County Commissioners of Washoe County to provide further funding to their respective District Courts to acquire integrated computer software to be used for case management and tracking (Exhibit B at page 11).

Assemblywoman Tiffany noted that since the Second Judicial District Court already has the software needed, the wording in the third action should be changed from "acquire" to something that would indicate continued support for the process already begun. She also reiterated her request to add "coordination of cases" in this item along with case management and tracking. She added that she agreed that a strong statement should be sent to Clark County to urge the Commissioners to provide the funds to acquire the needed software. Chairman Buckley expressed her strong support of this recommendation so that the courts could avoid "lost" and delayed cases. She agreed with Assemblywoman Tiffany regarding changing the word "acquire" and adding language concerning the coordination of cases. Dr. Bushard suggested that the record may want to reflect that the Board of Commissioners of Washoe County should be complimented for having taken this action as the integrated software programs have indeed been purchased and are being installed now and training conducted to go on-line the first of the year with the new integrated software system. Ms. Hatch added that the intent that there be trained personnel be included in the wording in order to assure efficiency. She also requested that aging of cases be added to this item.

Assemblywoman Tiffany made a motion to accept the recommendations under item F with a change in the word "acquire" in part 3, the words "and training" added to "computer software," and including coordination of cases and tracking of timeliness of cases. The motion would include a statement commending Washoe County and a statement requesting standardized procedures. Ms. Peterson offered that since the judge is not really responsible for the case until after the answer if filed, the aging should begin then. Chairman Buckley asked that that be noted in the report.

THE MOTION AS MADE BY ASSEMBLYWOMAN TIFFANY WAS SECONDED BY ASSEMBLYWOMAN OHRENSCHALL AND PASSED UNANIMOUSLY.

G. Family Court Procedures

Chairman Buckley suggested that the majority of recommendations listed in this item (Exhibit B, pages 11 through 14, inclusive) be left to court rule with more time for input and study and that the Subcommittee's recommendation be simply that the courts follow the rules that are already in place regarding these issues. She did request, however, that the Subcommittee look more closely at the third item (Exhibit B at page 13) regarding setting a date for trial in Clark County which seemed to be a more urgent issue as heard in previous testimony.

Senator Adler commented that, in the rural counties, the process that seems to accelerate settlement of cases is getting the mediation done up front, and if mediation does not work, then a date for trial is set. Mr. Dickerson agreed with the importance of setting the trial date early to get cases moving. He expressed his opinion that at least 90 percent of the cases could be closed in a 6-month period with the exceptions being the very complicated cases. Senator Adler added that a deadline needed to be set for mediation. He suggested that a mediator should be selected and the first mediation meeting should occur within 30 days.

Responding to a question from Chairman Buckley regarding a deadline for mandatory mediation, Mr. Wilkinson stated that the mediation program that was just established for Clark County is done by statute in NRS 3.500 and does not set any deadline. Mr. Bushard commented that it might be impossible to see the parties within a 30-day time frame to conduct the initial mediation but added that the rules could clearly direct that the court give the impetus and the referral to the parties to go to mediation very early in the process. Chairman Buckley agreed that a deadline that cannot be met should not be imposed but suggested that the will of the Subcommittee regarding encouragement that mediation take place as early as practicable and without undue delay be included in the language.

Responding to a question from Senator Porter concerning which of the listed recommendations were not in the existing rules, Mr. Wilkinson explained that none of them currently exists as stated which is why the recommendation would urge the Supreme Court to review and consider adopting them. Chairman Buckley added clarification that what many of the items would do is simply shorten a time period for a certain action. Her earlier suggestion, she explained, was rather than being concerned with the details of these recommendations, the Subcommittee should simply encourage that the current deadlines be met.

Responding to a question from Senator Washington on item number 4 regarding discovery, Mr. Wilkinson stated that this recommendation would urge the Supreme Court to review and consider amending the Nevada Rules of Civil Procedure to require parties to meet with the discovery commissioner and at this meeting set a time period for discovery instead of leaving it open-ended. This would reduce the period in which discovery is permitted to be conducted but does not set out that period. That would be left to the court.

Chairman Buckley suggested that the items listed under the topic of Family Court Procedures, with the exception of setting a date for trial, be given to the Nevada Supreme Court with a note that the Subcommittee was not commenting on their merits one way or the other but asking that the Supreme Court consider them and look at the enforcement of the rules that already exist. The topics of setting a date for trial and mediation would be considered separately.

Assemblywoman Tiffany agreed with Chairman Buckley's suggestion and continued with a question for Mr. Dickerson. She wondered why the initial divorce papers, which include a check-off item regarding a conference settlement did not also include a check-off item regarding mediation. Mr. Dickerson replied that the mediation rules apply to child custody issues only and proceeded to explain the process from filing through resolution of a case. He added a side note regarding oral arguments that if oral arguments are excluded, the client whose attorney writes better has an unfair advantage in the settlement of a case.

Assemblywoman Tiffany persisted with her question regarding a check-off item for mediation in a case like her divorce where only financial issues were involved. Mr. Dickerson repeated that there is no mandatory mediation for cases regarding only financial issues but that the parties could elect to use a private mediator if they so desired. Chairman Buckley added that there seemed to be no reason why the Subcommittee could not encourage the court to alert people to the availability of mediation for cases involving only financial disputes.

SENATOR ADLER MADE A MOTION THAT THE SUBCOMMITTEE ACCEPT THE RECOMMENDATION TO INCLUDE A STATEMENT IN THE SUBCOMMITTEE'S REPORT CONCERNING THE DATE OF TRIAL SETTING, MAKE A RECOMMENDATION THAT A MEDIATOR BE APPOINTED WITHIN 30 DAYS AND FORWARD THE REMAINDER OF THE RECOMMENDATIONS ON TO THE RESPECTIVE COURTS FOR THEIR EXAMINATION. THE MOTION WAS SECONDED BY ASSEMBLYWOMAN TIFFANY AND PASSED UNANIMOUSLY.

H. Settlement Conferences

Mr. Wilkinson introduced the next item under consideration, which was to include a statement in the Subcommittee's report urging the Eighth Judicial District Court to review and consider adopting changes to the Eighth Judicial District Court Rules. Those changes would require that a judge of the family court, in every case, set a date for a mandatory settlement conference when the parties appear in court to set a date for trial. And the second part of the recommendation would be to amend the Rules to require that the mandatory settlement conference be presided over by the judge of the family court who is assigned to the case or by a settlement judge.

A motion was made by Senator Adler and seconded by Senator Washington to adopt the recommendation.

After discussion between Mr. Dickerson and Assemblywoman Tiffany regarding the previous issue of mediation for cases with financial concerns only, a suggestion was made by Chairman Buckley that the Subcommittee could recommend that the court provide some notice to the parties involved that mediation could be used as an inexpensive alternative to litigating in the court system. An amendment to the original motion to include this companion recommendation was made by Senator Washington and found to be agreeable with Senator Adler.

Senator Porter questioned the wording of the second part of the recommendation which provides that the mandatory settlement conference "be presided over by the judge of the family court who is assigned to the case." He wondered if this wording could cause a case to linger for months if that particular judge could not follow through on that requirement and the other judges were too busy to do the settlement portion. Ms. Shipman noted that this could be dealt with through the responsibility given to the Chief Judge to assure continuity. Chairman Buckley suggested that wording be included in the recommendation to assure that the settlement conference occurs in a timely manner. This was agreed to by the maker and seconder of the motion.

THE MOTION AS MADE BY SENATOR ADLER AND SECONDED BY SENATOR WASHINGTON WITH THE AMENDMENT CONCERNING MEDIATION NOTICE AND THE WORDING SUGGESTED BY CHAIRMAN BUCKLEY PASSED UNANIMOUSLY.

I. Guardians Ad Litem and Court-Appointed Special Advocates (CASA)

Mr. Wilkinson introduced the next item, which would include a statement in the Subcommittee's report urging increased funding for the use of guardians ad litem and court-appointed special advocates in cases filed in family court to ensure that the voices of children are heard.

Chairman Buckley began discussion by underlining the importance of this item and noting that testimony indicated that this was not being used in all child custody cases because of lack of funding. She expressed her frustration that all the Subcommittee could do would be to encourage increased funding and underscore its importance.

Senator Washington questioned whether there was an age appropriateness before a child could testify to which Chairman Buckley replied that this varied from judge to judge depending on their philosophy about what a child testifying would do to the parent-child relationship. She added that the purpose of the guardian ad litem and CASA programs is to be the voice of the children regardless of age and remove any burden from the children of feeling that they had to choose between their parents.

Senator Washington made the motion to approve this recommendation concerning guardians ad litem and court-appointed special advocates. The motion was seconded by Assemblywoman Ohrenschall.

Senator Porter also expressed frustration that the Subcommittee's recommendation in this area might fall on deaf ears and there seemed to be nothing more that they could do to support this vital function. Chairman Buckley offered that a second possibility would be to recommend to the Assembly Ways and Means Committee and the Senate Finance Committee, or even the Governor, that they find money in the budget to allocate to these programs. She added that this might violate separateness as this has always been a responsibility of the counties. Ms. Shipman put forth a third option of creating a dedicated funding source by adding a small amount to something such as the filing fee. She cautioned that it be made clear to the counties that these funds would be over and above what the counties already are allocating.

Chairman Buckley suggested that the Subcommittee stay with the recommendation as written in the work session document and any further action could be taken up at the legislative session, either individually or collectively.

Senator Porter stated his opinion that there is a lack of coordination between all the child advocacy programs and mentioned that he would be addressing this bigger problem by introducing legislation in the next legislative session. He felt this would be a more appropriate place to be even stronger and look for alternatives to fund these programs. Chairman Buckley stated her approval of this approach.

THE MOTION TO APPROVE THE RECOMMENDATION AS MADE BY SENATOR WASHINGTON AND SECONDED BY ASSEMBLYWOMAN OHRENSCHALL WAS PLACED FOR A VOTE AND PASSED UNANIMOUSLY.

J. Access to Family Courts by Litigants Not Represented by an Attorney

Mr. Wilkinson introduced the next recommendation from the work session document which would adopt a resolution or include a statement in the Subcommittee's report urging the Board of County Commissioners of Clark County to provide funding for a pro per self-help clinic for family court litigants or a separate pro per office staffed with individuals who are trained to assist pro per litigants in family law matters.

Chairman Buckley noted that the efforts on setting up a pro per clinic have already begun with presentations to the county commissioners who seemed to be very supportive. She felt this item would be going forward and would be a great help to many people who cannot afford an attorney.

Assemblywoman Tiffany questioned whether the new law school would help in staffing a pro se clinic. Chairman Buckley, who is also director of Clark County Legal Services, stated that discussions have been held with the dean of the law school regarding his community service mandate for the students and that the self-help clinic would be a place where these students could be placed. She added that this would be an opportunity for them to learn that many people cannot afford lawyers and help them see the great need there is in the community.

Assemblywoman Tiffany made the motion to include a statement in the Subcommittee's report regarding the pro per self-help clinic as stated in the work session document (Exhibit B at page 15). The motion was seconded by Assemblywoman Koivisto.

Senator Washington asked that the recommendation be changed to include the Second Judicial District Court. Dr. Bushard informed the Subcommittee that Washoe County has approved a position for the family court that he called a family law facilitator who would be an attorney who would set up some type of program along these lines. Chairman Buckley suggested that a statement be added to the recommendation supporting Washoe County in its efforts with this facilitator and encouraging Washoe County and Clark County to work together in coordinating their efforts to ensure more access to justice by people who cannot afford an attorney. This was approved by the maker and seconder of the motion.

THE MOTION MADE BY ASSEMBLYWOMAN TIFFANY AND SECONDED BY ASSEMBLYWOMAN KOIVISTO WITH THE ADDITION SUGGESTED BY CHAIRMAN BUCKLEY WAS PLACED FOR A VOTE AND PASSED UNANIMOUSLY.

K. Legislative Monitoring of Family Court Caseload

Mr. Wilkinson introduced the next item for discussion which was a proposed bill draft amending NRS 3.025 to require the Chief Judge of the Second Judicial District Court and the Chief Judge of the Eighth Judicial District Court to submit to the Director of the Legislative Counsel Bureau the written report that each Chief Judge must currently submit to the Clerk of the Supreme Court each month which sets forth the number and type of cases assigned to, considered, submitted and decided by each district judge in the preceding month and the number of full judicial days in the preceding month each district judge appeared in court or in chambers to perform his judicial duties. Responding to a comment by Chairman Buckley, Mr. Wilkinson noted that this recommendation concerns the entire court, not just the family court.

Ms. Peterson offered that this was a difficult, time-consuming job that was like taking attendance on judges. After submitting this report to the Clerk of the Supreme Court for many years, she was instructed by a judge to find out what happened to the reports that were submitted. Ms. Shipman was told that they are kept for a year and then shredded. She suggested that the details required in the report went way beyond the need and suggested that a report contain only general information regarding cases, filings and dispositions rather than information on every judge, every department, every case, every assignment and reassignment for every day.

Chairman Buckley remarked that, since it was existing law that this report be sent to the Supreme Court, it would only entail sending a copy of that same report to the Legislature for review. Mr. Dickerson requested an opinion of

counsel regarding a possible constitutional problem of separation of powers with requiring the judicial branch of the government to be reporting this type of information to the legislative branch. Mr. Powers gave his opinion that since this is a ministerial task and is not directing the judicial department to do anything that does not derive from their basic judicial power, it would not constitute a problem with separation of powers. He noted that this would be just submitting to the Legislature the report that is already required by the Supreme Court so it would not be adding any court responsibilities that were not judicial in character.

The motion was made by Assemblywoman Ohrenschall and seconded by Assemblywoman Tiffany to accept the recommendation to amend NRS to provide for legislative monitoring of the family court caseload.

Senator Washington suggested that Ms. Shipman's comments be taken into consideration and that the report be simplified or changed in some way to reflect that. Assemblywoman Tiffany countered by noting that what was attempting to be achieved was accountability and that all this information needed to be available to anyone who wanted it. The perception of some people who have made complaints is that some judges are not working enough hours. She suggested that if the courts want the reporting process changed they could present their concerns to the full Legislature with recommendations for changing the process.

Senator Washington stated that he would be satisfied with leaving it to the court clerks to come to the Legislature with suggestions to make this process more efficient. He suggested that the Subcommittee draft a resolution urging them to do that. Chairman Buckley proposed that the Subcommittee leave the recommended draft as is and recognize that the court may be coming with a possible amendment when the bill is considered by the entire Legislature.

THE MOTION BY ASSEMBLYWOMAN OHRENSCHALL AND SECONDED BY ASSEMBLYWOMAN TIFFANY TO ACCEPT THE RECOMMENDATION AS WRITTEN IN THE WORK SESSION DOCUMENT WAS PUT TO A VOTE AND PASSED UNANIMOUSLY.

L. Additional Family Court Judges and Staff

Mr. Wilkinson introduced the next recommendation, which contained two parts. It would amend NRS to increase the number of judges for the family court division of the Eighth Judicial District Court. Mr. Wilkinson noted that the Subcommittee would have to designate how many additional judges would be recommended. The second part of the recommendation would be to include a statement in the Subcommittee's report urging the Board of County Commissioners of Clark County to provide funding for additional staff for the family court division of the Eighth Judicial District Court. Mr. Wilkinson noted that the salary of District Court judges is paid by the state, but the staff and physical facilities for judges are paid by the county, and based upon previous testimony, would cost approximately $500,000 to $600,000 for each additional judge.

Chairman Buckley provided some background to this recommendation by stating that a bill to add additional judges to serve in the family court was defeated in the last legislative session because of concerns about lack of accountability, the length of time for the processing of cases and other perceived problems with the way the family court was working. She added that the reforms recommended by the Subcommittee should help lessen those concerns, but that a reduction in caseload for the judges of the Eighth Judicial District Court needed to be addressed. She cited figures that the caseload in the Second Judicial District Court is 2,000 cases per judge, while in the Eighth Judicial District Court, there are 4,274 cases per judge. She questioned whether a judge handling 4,000 cases could be expected to dispense good justice and be timely. She expressed her opinion that five additional judges may be too much to ask for and suggested the Subcommittee recommend three additional judges. Mr. Dickerson and Ms. Hatch both expressed their view that the Subcommittee should stay with the recommendation for five additional judges because of the large caseload and the growth experienced by Clark County.

Ms. Shipman noted that the second part of the recommendation urging the Board of County Commissioners to provide funding for additional judges suggests that the county is not required to fund the additional judges, when, in reality, if the judges are approved by the Legislature, funding by the county for staff is not an option. Chairman Buckley agreed that, if the Subcommittee proceeds with this recommendation, the second part could be deleted.

Senator Washington stated that he understood the urgency for five additional judges, but noted that realistically the finance committees might only be able to approve funding for three. To this, Assemblywoman Koivisto commented

that they may need to ask for five positions in order to get three.

Assemblywoman Tiffany offered her opinion that it should be the District Court or the Supreme Court who proposes this bill draft rather than the Subcommittee. In her opinion, the courts would have the necessary information to know if they needed additional judges and how many were needed. Chairman Buckley countered by saying that because the Subcommittee has heard the testimony and seen the numbers that it was important that its voice be heard in the legislative session. She agreed that the judges should also propose a bill draft because they would be the ones who would need to justify the expense and answer questions about the additional judges. Chairman Buckley suggested that, rather than proposing a bill draft, the recommendation of the Subcommittee could be in the form of a resolution or a statement supporting the need for these additional judges based on the need that was heard throughout the study.

Mr. Dickerson noted that the comments heard by the Subcommittee during the testimony mainly concerned the length of time it was taking for cases to get through the system. He felt that reducing caseload was one of the most important measures that needed to be addressed because the Legislature will be looking to the recommendations of the Subcommittee that had studied the issues. Using Ms. Hatch's figures that, even with an additional five judges, there would still be 2,630 cases per judge based on the present caseload with no consideration given to the growth of Clark County, Mr. Dickerson respectfully requested that the Subcommittee consider five additional judges.

Assemblywoman Tiffany made the motion to adopt a resolution recommending the addition of five family court judges to the Eighth Judicial District Court, to include the second part urging the Board of County Commissioners for the needed funding, and to encourage the District Court or the Supreme Court to propose a bill draft for the amendment. She also offered to be involved in helping to get any proposed bill passed during the legislative session. The motion was seconded by Senator Porter. Responding to Senator Porter's question concerning the funding of judges by the state, Mr. Powers answered that he believed that district judges are provided for in the Constitution and as constitutional officers they are entitled to salaries paid by the state. He later verified that the Nevada Constitution provides for payment of judges' salaries by the state.

THE MOTION BY ASSEMBLYWOMAN TIFFANY AND SECONDED BY SENATOR PORTER REGARDING ADDITIONAL COURT JUDGES WAS PLACED FOR A VOTE AND PASSED UNANIMOUSLY.

The motion was later amended to include a statement in the Subcommittee's report recommending the addition of five family court judges rather than drafting a resolution for that purpose.

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ADDITIONAL RECOMMENDATIONS FROM THE SUBCOMMITTEE

Child Support Payments

Commenting on the recommendation presented to the Subcommittee by Senator Washington regarding child support payments (Exhibit C), Chairman Buckley expressed that changing the formula for child support payments was not part of the charge given to the Subcommittee by ACR32. She expressed her desire to see something of this nature come forward in the Legislature but noted that the Subcommittee was not the body to initiate those ideas.

Temporary Protective Orders

Mr. Wilkinson introduced Senator Washington's next recommendation regarding temporary protective orders from

Exhibit C. This recommendation would address the abuse of temporary protective orders by requiring that after a temporary protective order (TPO) is issued, law enforcement or the district attorney's office must investigate the allegations used to substantiate the request for the TPO. If the allegations cannot be substantiated, provide that the TPO cannot be used as "leverage" against a party to the divorce or child custody case to force the party to agree to custody arrangements, visitation rights, child support payments or conditions of the divorce. Mr. Wilkinson commented that there would need to be some details worked out to enact this concept in statutory form.

Chairman Buckley agreed with Senator Washington that something needs to be done to control unsubstantiated allegations that result in a TPO which in turn affect the outcome of a case, but expressed concern about how this would be investigated. She stated that the district attorney's office and the police are already overwhelmed and would not have the resources to investigate every TPO for validity. She requested counsel from Mr. Wilkinson regarding what might be done or is being done in other jurisdictions to discourage people from falsifying information to get a TPO or getting undue leverage from an unwarranted TPO. Mr. Wilkinson stated that there was probably not much that could be done legislatively and that the burden to ensure that the TPO was proper would lie with the judge or commissioner who reviews the issue of whether the TPO is issued. He added that there is currently opportunity to challenge a TPO and get a hearing.

Assemblywoman Ohrenschall suggested that sanctions could be mandated if the allegations brought forth to obtain a TPO were discovered to be totally unsubstantiated. Senator Adler agreed that it would help solve the problem if the judges enforced sanctions where background information turns out to be totally false and a false affidavit has been offered. Mr. Dickerson added his agreement that judges should be empowered to impose sanctions in these cases. He added his concern that the TPO commissioner is the one who will hear the initial hearing and determine whether or not the TPO is going to be extended. At least 7 days and maybe as long as 30 days could pass by the time the initial hearing comes before the TPO officer and then getting before the district court judge could be another 30 days. The parent against whom the allegations have been made has been prevented from being at the home or seeing the children for up to 2 months by that time. He suggested that jail time would be an appropriate punishment for someone who swore to a false affidavit resulting in a TPO.

Responding to a question from Senator Washington regarding the authority of the TPO commissioner, Mr. Dickerson replied that the initial hearing is before the TPO commissioner who then makes a recommendation that will go to the judge to be signed. If a party disagrees with the conclusions of the commissioner, an objection can be filed with the district court judge. Concerning the part of the recommendation dealing with investigation of the TPO, Mr. Dickerson commented that since the district attorney's office would be prosecuting the case, it would not be appropriate for them to be the investigating body. He added that if police officers are given this charge, they often have to make decisions strictly from a "he said, she said" situation. It is left to the judge in the adversarial process to make a determination concerning which party is credible.

Senator Adler suggested sanctions such as awarding costs and attorney's fees to a party who needed to retain an attorney to get a false TPO reversed and make-up visitation for the person who has been excluded from visitation because of a false affidavit.

Senator Washington returned to the problem of using the TPO as "leverage" in a case and requested that counsel address possible ways of preventing this. Mr. Wilkinson admitted that this is a difficult problem and stated that, although it might unfortunately take awhile, the means of resolving the issue is by challenging the issuance of the TPO. He agreed that one approach to the problem could be to amend the law to provide sanctions for a party who pursues a TPO using false allegations.

Mr. Dickerson offered that part of the problem of leverage occurred when legislation was passed that provided that a parent who was shown by clear and convincing evidence to have committed domestic battery was precluded from being sole or even joint custodian of a child. He suggested that this was not in the best interest of the child because someone who batters a spouse may not necessarily be a bad parent. He agreed that Senator Adler's suggested sanctions were excellent but that what would really stop someone from making false allegations would be the possibility of spending time in jail. He added that making false allegations should be considered when awarding custody.

Commenting on Mr. Dickerson's last statement, Chairman Buckley noted that some people may make an allegation which they sincerely believe is true which, in reality, is not based on fact. So to penalize someone by possibly taking

away their children for their belief in something that is not in fact true does not seem to be a fair solution. She agreed, however, that there need to be some sanctions for making false allegations.

Ms. Shipman commented that the court already has the authority to impose sanctions for false allegations, but that sanctions such as those suggested by Senator Adler which relate specifically to temporary protective orders could be presented for legislation.

Senator Adler clarified his motion that in any case where the judge decides by clear and convincing evidence that someone has sworn out a false affidavit in support of a TPO that the judge shall award attorney's fees and costs to the other party, that there must be make-up visitation if visitation was missed and that the filing of a false affidavit must be considered as a factor in determining child custody in the future. Senator Adler's motion was seconded by Assemblywoman Ohrenschall.

Chairman Buckley commented that it was a good motion that could be explored further in the next session. Senator Washington added that the motion was probably a step in the right direction and would bring the issue forward which might result in more ideas during discussion by the full Legislature.

THE MOTION REGARDING SANCTION FOR FALSE ALLEGATIONS RESULTING IN A TEMPORARY PROTECTIVE ORDER AS STATED BY SENATOR ADLER AND SECONDED BY ASSEMBLYWOMAN OHRENSCHALL WAS PUT TO A VOTE AND PASSED UNANIMOUSLY.

Ex Parte Communications

Mr. Wilkinson introduced this proposal from Senator Washington's handout that would provide that, unless specifically authorized by statute, if both parties are residents of Nevada, ex-parte communication would be prohibited during child custody and divorce proceedings except when the other party has been given notice and the opportunity to participate.

Chairman Buckley opened the comments by noting that ex parte communication is already prohibited but expressed her concern that testimony heard by the Subcommittee seemed to indicate that it was happening. She asked for suggestions to help prevent ex parte communication from happening.

Mr. Dickerson offered his opinion that this problem is not as prevalent as the Subcommittee has been led to believe and that the issue was what was seen as ex parte communication. What some people would characterize as ex parte communication, he continued, cannot and should not be prevented. He agreed with Chairman Buckley that ex parte communication which attempts to sway a judge's opinion is already prohibited under the judicial code of ethics and that judges who participate in this unlawful communication are investigated by the Commission on Judicial Discipline and are subject to discipline.

Senator Adler expressed his concern that there was a problem because some attorneys go to a judge with an ex parte motion when the other counsel is available and that it is preferable that they meet with the judge jointly. Chairman Buckley agreed that ex parte communication is happening and it is a legitimate concern, but repeating that it is already illegal, she questioned what could be done to assure that the rule is followed. Ms. Shipman added that she, too, felt that this is a large problem and suggested that the Subcommittee could urge the judges to be more aware of ex parte communication because they are the ones who have the power to make sure that it does not occur.

Chairman Buckley commented that there is a connection between campaign contributions and the public's perception about our system of judicial governance. There is a perception that people who give money to judges' campaigns get better access and results. A possible solution to this, she offered, could lie in Mr. Dickerson's point about the need to use some sort of selection process for judges, but the Legislature has rejected anything other than election because of the concern that it would take away choice from the people.

Senator Washington suggested that maybe the Subcommittee could make a strong recommendation to the judges to strictly enforce the rule as it now stands. Chairman Buckley agreed that it could be included in the Subcommittee's report that ex parte communication is a problem that has come to the Subcommittee's attention during the study. She added that perhaps the grievance system recommended by the Subcommittee , if it becomes law, could be utilized to

receive complaints regarding ex parte communication if the Commission on Judicial Discipline does not take action. Senator Washington made a motion to that effect which was seconded by Senator Porter.

Mr. Dickerson repeated that he did not feel that this was a significant problem and that, in his 22 years of practicing law, he has not yet encountered a situation which involved ex parte communication. He continued by asserting that accusing a judge of having ex parte communication because he goes to lunch with an attorney friend is an unfair assessment. He added that the testimony heard by the Subcommittee has contained no information backed by fact and that parties who feel there is a problem already have recourse through the state bar with respect to the attorney and through the Commission on Judicial Discipline with respect to the judge.

THE MOTION MADE BY SENATOR WASHINGTON AND SECONDED BY SENATOR PORTER CONCERNING EX PARTE COMMUNICATION WAS PLACED FOR A VOTE AND PASSED UNANIMOUSLY.

FINAL COMMENTS FROM THE SUBCOMMITTEE

Chairman Buckley asked Mr. Wilkinson if he felt that the Subcommittee had sufficiently addressed the issue of a standard for timelines on processing cases. Mr. Wilkinson stated his belief that the Subcommittee had adequately covered this issue and that the approach taken is an effective way of trying to speed the process along without encroaching on the judiciary's power. He added that the legislative branch has to be very careful in making any sort of rules regarding timeliness of decisions because most statutes of that nature have been found to be unconstitutional.

Ms Shipman stated her hope that the Subcommittee could address a hardship felt by the Eighth Judicial District Court regarding control of their records. She expressed her frustration that, at this time, the court does not have control of the data that makes up the reports that are forwarded to the Supreme Court. Chairman Buckley questioned whether she was referring to the issue of the functions of the county clerk regarding the processing and managing of cases and asked Ms. Peterson if she had any specific ideas in terms of legislation for the Subcommittee to consider. Ms. Shipman offered that a position of clerk of the court be created that could take over managing the records from the county clerk or just allowing the court to have undisturbed access to the records would be very helpful.

In answer to Chairman Buckley's question regarding the jurisdiction over these duties, Ms. Shipman stated that the Nevada Constitution sets forth the county clerk as ex officio clerk of the district court and that this ex officio status could not be taken away without a constitutional amendment. She said that Washoe County addressed the separation of power issue in this regard in the late 1970s by making the clerks that served the courts in their records function as "court employees" but they were still viewed as "county employees" for purposes of oversight and supervision by the county clerk. Chairman Buckley then asked why, if this was handled this way in Washoe County, it could not also be done in Clark County. Ms. Shipman answered that there needed to be persuasive arguments to have a change in the system that would remove these clerks as county employees.

Responding to a question from Assemblywoman Tiffany regarding the court's control of its records, Ms. Shipman explained that the court has access to retrieve information, but it does not have control over all the data that goes into the system because the data is filed at the county clerk's office and is maintained by the county clerk. Ms. Shipman clarified that those functions have been separated in Washoe County so that total control over court records remains with the courts, but that is not the way it is currently set up in Clark County. Chairman Buckley offered to include a statement in the Subcommittee report of its concern that, without access to the records and the data, the Eighth Judicial District Court is unable to respond effectively to requests for information; more control of court records by the court would result in better accountability to the public. Ms. Peterson agreed that this support from the Subcommittee would be helpful. There was a consensus among the Subcommittee members to do this.

Senator Porter commented that currently there is only one judge in the juvenile division of the Clark County court and questioned whether any of the additional judges would be placed in the juvenile court. Chairman Buckley suggested including a statement in the report asking the court to supply information regarding caseload and whether there needs to be increased designation in that area. Mr. Dickerson stated that the juvenile court judge is assisted by three or four hearing masters who aid in gathering facts and handling of juvenile matters. Senator Porter then asked if hearing masters could be used in the rest of the family court instead of adding more judges. To that inquiry, Mr. Dickerson

replied that the function of the hearing master is usually a fact-finding process and that juvenile issues are usually more conducive to having a hearing master involved. In other cases, he felt, it would be more important to have a judge involved in the process and making the decision. Senator Porter suggested that some of Mr. Dickerson's comments could be used to make a recommendation and Chairman Buckley stated that those thoughts would be included in the section on additional judges.

Before opening the meeting to public comment, Chairman Buckley thanked the Subcommittee again for their work in dealing with the wide variety of topics presented throughout the study. She expressed her belief that steps had been taken by the Subcommittee to improve the family court system. She concluded by saying that the Subcommittee was sending the message that the public wanted accountability and this message would continue to be sent during the legislative session next year in Carson City.

PUBLIC COMMENT

Thomas Gaule expressed his opinion that the Subcommittee had no concern for the public and that the only solution was the first recommendation which was to abolish the family court and that was skipped over and only placed in the work session document to placate the public. His opinion was that an appeal to the Supreme Court which is backlogged three years in not an answer, and it is no wonder that people feel hopeless. He felt that the Subcommittee only made the situation worse by recommending more judges to a corrupt system.

Frances Dee Bray presented her case to the Subcommittee involving custody of her son, Joshua. She stated that, because her ex-husband has worked within the Clark County court system for 25 to 30 years, she requested a change of venue but that request was denied. This, she felt, was clearly unfair. She also noted that certain records have been deleted from her file, including a lie detector test she took at the Henderson police department. She added that issues brought up earlier during this work session such as a temporary protective order and ex parte communication had been used against her and emphasized the fact that these things do occur. She stated that she had not seen her son since December 7, and hoped the Subcommittee could do something to protect him and other people like her and her son who are being hurt by what she feels is a corrupt family court system.

Dennis Hetherington expressed his belief that since this study began, he has seen a dedication and commitment on the part of the staff of the courts and the judges to improve the system to make it work better and as efficiently and humanely as possible. He also felt that the Las Vegas Sun should be commended for the attention it has drawn to the problems of the court. As Executive Director of the Clark County Pro Bono Project, he stated that the Pro Bono Project stands ready as the only provider of free legal services in the family court and would continue not only with the services that have been provided in the past but with new services that are being developed, particularly for victims of domestic violence. Referring to the Subcommittee's discussion of an integrated case management system for the courts, he stated that he felt this was an important tool coupled with people who are trained and dedicated. He added that he sees the clerk's office as being a service agency to the courts, to the attorneys and, by extension, to the litigants.

Kim Blandino spoke regarding his case. He had just finished a six-year prison sentence for violation of custody rights. He took his children out of what he felt to be a neglectful and abusive situation and kept them illegally for 7 or 8 months. For this act, he was punished with a six-year prison term during which time he had limited contact with his children. He had seen them only once in the past 4 years. According to Mr. Blandino, he was denied visitation because he could not afford to pay a therapist to supervise the visits. When he asked the judge in his case "Are you telling me I cannot see my children because I'm poor?", she replied "Yes." He strongly expressed his opinion that a parent should not be denied visitation because of financial issues. He added that he believed that the training for judges is inadequate and needs to be expanded and that there are some judges who do not know nor care to learn the law. His opinion was that unless the court system is perceived to be just and fair, it will only encourage other parents to resort to "self-help." He concluded by saying that because of the punishment he received which resulted in such limited contact with his children, the job ahead of him to regain a relationship with them is overwhelming.

Mary Branham opened her remarks by saying that during the meetings for family court reform, testimony from court members and judges indicates that everything is okay. Her contention was that the victims of the family court judges, those who are hurt by the system, see things more clearly. She feels that children are being torn from a loving parent and given to a non-caring parent because of money or position. She questioned whether money and position make a person more truthful or more worthy of respect. She suggested that a committee be formed to go back into cases

where there has been proof of abuse and make these situations right. Regarding guardians ad litem and court-appointed special advocates, she felt that the court tended to put words into the children's mouths and that children, at any age, should be able to talk for themselves. She offered that the caseload could be cut if the courts looked more closely at both sides the first time the case came up and that fair decisions would keep the case from reappearing time and time again.

Steven Dempsey testified that the Subcommittee's recommendations to have more judges and give them more power was a step in the wrong direction. He felt that independent agencies or organizations should be doing investigations, including investigations on the judges themselves. He added that there should be drug testing of judges. Concerning the suggestion during Subcommittee discussion regarding filing a complaint against an attorney with the State Bar, Mr. Dempsey expressed that no action would ever be taken because an "unsophisticated individual" could never prove beyond a reasonable doubt that the attorney was guilty of anything. As to the election of judges, Mr. Dempsey stated his belief that electronic vote machines were subject to fraud and judges who were declared winners were not necessarily the ones the public had voted for, but this would probably never be proved. Many people, he stated, feel that there is corruption and deception in the system and, although the Subcommittee has taken some steps in the right direction, much more needs to be done to convince them otherwise. One potential solution he offered was to empower the Ethics Commission by increasing their jurisdiction and authorizing them to investigate improper claims.

Aurora Buxton spoke of her case regarding her daughter whom she has not seen for almost 2 years. According to Ms. Buxton's testimony, she has not been allowed to see her daughter because she was accused of alienating the child from her father by taking her to the Sunrise Children's Hospital when the girl returned from her father's house complaining about being molested. The hospital did find a discharge as well as irritation and inflammation in the girl's vagina, Ms. Buxton continued. She added that during the proceedings, her daughter had been appointed a guardian ad litem who, Ms. Buxton stated, had lied to the court. She felt that some of the problems in child custody cases could be resolved by listening to the children and allowing them to speak.

Bob Lueck suggested that setting up an arbitration program in the family court system for cases involving property and debts only would help facilitate the movement of divorce cases through the court. This program, he continued, could be mandatory for couples without children and voluntary for couples with children who wanted to have the property aspects of their divorce settled by arbitration. This process, he believed, would free up judges to hear the more complex cases involving custody disputes or abuse and these then would also move through the system more quickly.

Robert Metz opened his comments by stating that he belonged to an organization in Nevada called Parents for Equal Justice whose goal is to eliminate corruption in the family court. He asserted that the only feasible recommendation in the work session document was to abolish the family court. He continued by making allegations against Judge Jordan who was the presiding judge in the custody case involving his 29-month-old son. He mentioned that his organization already has a recall petition with 4,000 names in the event that Judge Jordan is reelected. Mr. Metz claimed that other judges are also guilty of misconduct and that the Commission on Judicial Discipline has been no help. He urged the Subcommittee to propose legislation that would make judges accountable for their gross violations and allow people to take civil action against them. He also claimed that the temporary protective order office is run by the Committee to Aid Abused Women and is biased toward women. He urged that the Legislature enforce the laws of the state and vowed that his organization would remove every corrupt judge and politician that refuses to protect children.

Al DiCicco agreed with the allegations of corruption in the family court system and stated that his sympathy lies with those who have been harmed by this system. His opinion was that one of the most important issues is restitution for these people. He questioned why only attorneys could run for the position of judge and asserted that, without that impediment, he would have run against Judge Jones and won because of all the people who are disillusioned with the type of justice dispensed by Judge Jones. He urged accountability and prosecution of those in the family court system who have committed crimes. He vowed that people would continue to fight for the rights of their children which he felt have not been protected. He concluded by commending the Subcommittee members who have sincere intents and urged the others to do some soul searching.

Steven Siano expressed his opinion that there is a need to empower parents on behalf of the children. He argued that the "child health, education, welfare industry" was exploiting children for profit and did not act on the best interests of the children. He argued that natural law dictates that parents, not the state, have the duty and right to protect their children.

Maggie Kaye spoke regarding her divorce case, which had been proceeding for 3 1/2 years. She alleged that the judge in her case, after hearing testimony from only one side, became the arbitrator for the case and then proceeded to rule as judge. She questioned the legality of having arbitration after the trial was started and stated that she felt that the proposed change to the Eighth District Court Rules to require that a judge, in every case, set a date for mandatory settlement conference when the parties appear in court to set a date for trial was a step in the right direction. She continued by describing procedures in her case that were prolonging it and agreed with Assemblywoman Tiffany's remarks that mediation should be held at the opening of the case.

Shirley LaSpina gave testimony regarding her case, which she said resulted in the loss of all her assets, her business being ruined and bankruptcy being forced on her. She recognized the Subcommittee for its efforts in some areas but said that it did not address the issue of restitution for people like herself who have been ruined by the system. She felt that her case, which did not involve children, should not be taking as long as it has, and she expressed her sympathy for people with children who would not have the resources she has had to attempt to fight the system. She urged that something be done to help people with legitimate complaints against the system.

Chairman Buckley thanked Ms. LaSpina for the work she has done for other people and for her presentation to the Subcommittee. She added that the Subcommittee did not discuss the issue of compensation because it has no authority as a legislative body in this area. The Subcommittee can recommend laws but enforcement is not part of its jurisdiction.

Chairman Buckley concluded the meeting by again thanking the members of the Subcommittee for taking on the difficult, time-consuming task that was required and who volunteered because they care about families. She thanked the staff for its work in fielding calls and suggesting reforms to help prevent situations as the ones heard in testimony. She thanked the advisory committee for their time and opinions which at times resulted only in their being berated. She thanked the members of the public who took time to share their views that helped shape the considerations of the Subcommittee. And she thanked Judge Steel for being present at all the hearings and for expressing her willingness from the court to work with the Subcommittee.

The meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Nancy M. McPherson

Subcommittee Secretary

Approved:

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Assemblyman Barbara E. Buckley

Chairman

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Date

LIST OF EXHIBITS

Exhibit A is a copy of the meeting notice and agenda.

Exhibit B is the work session document prepared by the Subcommittee staff for the Legislative Commission's Subcommittee on Family Courts (Assembly Concurrent Resolution Number 32)

Exhibit C is the paper entitled "Recommendations for the Consideration of the Legislative Commission's Subcommittee on Family Courts" submitted by Senator Maurice Washington.

Exhibit D is the "Sign-In Sheet."