

**MINUTES OF THE MEETING OF THE
LEGISLATIVE COMMISSION'S
SUBCOMMITTEE ON FAMILY COURTS
(Assembly Concurrent Resolution No. 32)**

April 16, 1998

Las Vegas, Nevada

The fourth meeting of the Legislative Commission's Subcommittee on Family Courts (A.C.R. 32) was held on Thursday, April 16, 1998, at 9:15 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was simultaneously videoconferenced to Room 1214 of the Legislative Building, 401 South Carson Street, Carson City, Nevada.

SUBCOMMITTEE MEMBERS PRESENT:

Assemblywoman Barbara E. Buckley, Chairman

Senator Jon C. Porter

Senator Maurice Washington

Assemblywoman Ellen M. Koivisto

Assemblywoman Genie Ohrenschall

Assemblywoman Sandra Tiffany

SUBCOMMITTEE MEMBERS EXCUSED:

Senator Ernest E. Adler

Senator Dina Titus

ADVISORY COMMITTEE MEMBERS PRESENT:

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

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 STAFF PRESENT:

Bradley A. Wilkinson, Principal Deputy Legislative Counsel

Kevin C. Powers, Deputy Legislative Counsel

Allison Combs, Principal Research Analyst

Patti Adams, Secretary

Emiko Mitchell, Secretary

OPENING REMARKS

Chairman Buckley called the fourth meeting of the Subcommittee to order at 9:15 a.m. The topics discussed in the first three meetings included the processing of cases in Family Court, timeliness of decisions, recordkeeping and case management in Family Court, standardization of court procedures among different departments, case loads in the Family Courts, coordination between those areas of case loads, the jurisdiction of the court, the ability of judges to rotate into the Family Court and the need for additional judges in the Family Court.

UPDATE AND PRESENTATION CONCERNING

ASSESSMENT AND MEDIATION

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

Dr. Philip Bushard, Director, Family Mediation Program, Second Judicial District Court, provided the Subcommittee with testimony on the settlement component of the Family Court system. While acknowledging the responsibility of the Legislature to simultaneously represent a multitude of perspectives, Dr. Bushard expressed his concern that the Subcommittee may be considering solutions which will reinforce the adversarial nature of the Family Court system.

Dr. Bushard provided the Subcommittee with a brief history of the family mediation program. In 1991, the Legislature passed Senate Bill No. 367, which directed the Second Judicial District Court to establish a program of mandatory mediation in cases that involve child custody or visitation. Prior to the passage of Senate Bill No. 367 in 1991, Washoe County did not have an annexed court program, while Clark County provided services for families through their Child Custody Division in the District Courts. The family mediation program was envisioned to be a vital dispute resolution component of the Family Court system. Implementation of any social program involves developing policies and procedures, developing appointment processes, organizing recordkeeping and monitoring case tracking to ensure that the implemented program will be able to efficiently process cases. He stated that establishment of effective and efficient operations is dependent upon coordination between the judiciary and the service providers. Dr. Bushard testified that it is his opinion that providing litigation options to the public is the primary benefit of alternative dispute resolution methods, such as mediation and evaluation.

Dr. Bushard indicated that the two-year reports submitted by the Family Mediation Program to the Legislative Counsel Bureau in 1993, 1995 and 1997, are statistical records which provide summarization of the Family Mediation Program services and outcomes. People interested in obtaining these reports may contact the Legislative Counsel Bureau. In the 1993 report, the start-up issues of the mediation program were highlighted. The 1995 report identified issues of qualifications, training and certification of the family mediators. Dr. Bushard informed the Subcommittee that these family mediator issues may need further consideration as mediation is becoming institutionalized in the Clark County District Court. Regarding the 1997 report, Dr. Bushard indicated that the focus was on the requirements of the initiating statute and how the Family Mediation Program attempted to implement the directives of the Nevada Legislature.

Dr. Bushard continued with a discussion of the role of mediation in the Family Court system. He stated that to understand why the Family Court system is different from other systems, it is important to acknowledge the problems faced by the Family Court. Because Family Court cases center on such emotionally traumatic familial problems, it has been his experience as a clinician and as a mediator that the driving issue in these cases is often psychological or emotional, not necessarily legal. In his opinion, the litigants often approach the courts seeking punishment and retribution and their problems are 90% emotional and 10% legal. He further emphasized the importance of providing court-based mediation and private mediation services to address the problems at the level where they exist.

Additionally, another factor that differentiates the Family Court from other jurisdictions is the high rate of cases

which return to the Family Court after a decision has been made in the original legal event. The rate at which cases are returned to Family Court highlights the problem that many litigants do not feel their issues were resolved in the original legal proceeding. Dr. Bushard noted that judicial determination is only a component of resolution and it is important to provide attention and services to the litigant's issues prior to the start of the legal procedure.

In many Family Court cases, Dr. Bushard informed the Subcommittee, the Court must intervene where parties are situationally immobilized and are in need of support to reach resolution in a crisis. In his opinion, there are a substantial number of cases in which parties are incapacitated in their decision-making. As a result, these chronic cases become very costly for the Family Court system, the litigants and the children of the litigants.

Dr. Bushard stated that in an adversarial system, individual interests typically are represented and advanced by attorneys. Proponents of mediation recognize flaws in an adversarial system, particularly the lack of representation of children's interests. Family Court litigation focuses on the past and on the weaknesses of the parties' parental capabilities. As a result of focusing on these issues, the decision-making process does not concentrate on giving consideration to the families' current resources, future needs and the future ability of the families to meet those needs.

Although noting that the majority of cases in District Court are settled by counsel, Dr. Bushard emphasized that there is also a need for dispute resolution mechanisms, although proponents of mediation also recognize that self-determined dispute resolution is not a complete solution. There must be a systematic link between direct court services and support court services, such as mediation, evaluation and representation by court-appointed special advocates, which will allow all the components to work conjointly in supporting the families in resolving disputes and the Family Court in resolving cases.

Dr. Bushard testified that one critical element of a mediation program is that it is a confidential process which allows parties to discuss and attempt to resolve issues before entering into the adversarial process. Giving the litigants the authority and the responsibility to make decisions is also a critical element of mediation programs because it allows the litigants to control both the process and the outcome. In providing mediation services, the Family Court seeks to gain the parties' commitment to follow through with court decisions to minimize post-divorce problems and maintain post-divorce agreements. The primary service of the Family Mediation Program is to provide litigants with alternatives to litigation, not to resolve all familial issues. The alternative dispute resolution process must allow the parties to clear their family issues in a non-adversarial environment.

Chairman Buckley requested Dr. Bushard's comments on the effectiveness of mediation in cases where parties are not willing to recognize the benefits of early mediation. Dr. Bushard responded that the mediation process allows litigants to address some of the emotional issues, receive referrals to needed therapies and create a plan for their case resolution. However, the Family Court must provide a range of dispute resolution options, one of which is mediation. In response to the chairman's request, Dr. Bushard estimated that 70% of the parties were reluctant to attempt mediation, possibly because of the litigants' confusion over counsel's advice not to confer with the opposing party. Dr. Bushard commented on previous testimony concerning the efficiency of case resolution and noted that expediting the legal process is not always in the best interests of litigants because additional time may be required to allow the litigants to resolve their issues or to be referred to needed therapy. Mediation is equally important at the outset of the action and at the outset of the trial period to provide litigants with the option of attempting case resolution on their own terms.

In response to Assemblywoman Ohrenschall, Dr. Bushard informed the Subcommittee that, under local court rule in Washoe County, all cases identified as having a child custody or child visitation disputes are automatically referred to the Family Mediation Program by the court staff and attorneys. The court staff and attorneys may also stipulate to mediation in cases where there are difficult unresolved issues. Additionally, in approximately 10% of cases, the litigants have contacted the program requesting mediation assistance. Because mediation is a confidential process, the program is not allowed to make recommendations or provide reports to the court. However, the primary responsibility of the program is to assist parties, in divorce or post-divorce cases, in the creation of a parenting plan. The parenting plan, drafted and reviewed by attorneys, is submitted to the courts for approval and adoption in the divorce action and becomes binding at that point.

Dr. Bushard indicated that the program is funded by a \$5 fee from Justice Court and District Court civil cases, which generates approximately 60% of the operating budget. Additionally, the program also receives another 20% of its operating budget from fees charged to clients. The balance is supplied from the Washoe County General Fund.

Dr. Bushard said he was unable to comment on the services provided by the Clark County Family Mediation Center, but noted that Washoe County only addresses mediation services because of limited monetary and staff resources. With staff assistance from interns from the University of Nevada-Reno, the program closed 265 cases last year.

LaDeana Gamble, Family Mediation Manager, Eighth Judicial District Court

LaDeana Gamble, Family Mediation Manager, Eighth Judicial District Court, gave the Subcommittee an overhead presentation on the historical and statistical information on the Family Mediation Program. Following the meeting, she also submitted an informational booklet on the Family Mediation Program, Exhibit B. The Family Mediation Program began in 1968 in the Child Protective Services Division of the Department of Family and Youth Services. In 1975, the Family Mediation Program was transferred to the District Court.

Ms. Gamble stated that in its original form, the Child Custody Division, now known as the Family Mediation Center, had an investigative component staffed by investigators with peace-officer powers. By having peace-officer powers, the staff investigators were able to obtain law enforcement records and, when necessary, place children in protective custody. In 1985, the Child Custody Division began offering mediation services.

In 1992, Ms. Gamble began her tenure as the manager of the Family Mediation Center. Her chief goals at that time were to reorganize the structure of the Center and to move it from the investigative model to a child-focused model. Ms. Gamble explained that the structural change was becoming necessary because families were becoming more diversified. Additionally, with the implementation of the Domestic Violence Program in 1993, there was an increasing number of cases coming before the court with issues of domestic violence.

Ms. Gamble noted that the diversity of families coming into Clark County as the population boomed also brought challenges to the court related to job opportunities, gambling and the families' general expectations. Additionally, there was an increasing number of emergency referrals dealing with, for example, drugs or the death of a parent. During this population growth, the Center was also receiving a growing number of referrals of families seeking family mediation services, with a 100% growth in referrals from 1987 to the present. The statistics held significance because, before 1992, families unsuccessful in resolving disputes in mediation were reassigned to another family specialist for evaluation services and the court closed the cases. Ms. Gamble estimated that one-third of the families may have been counted twice within the data in the 1987 to 1997 statistical information presented to the Subcommittee in the informational booklet, Exhibit B.

Citing historical statistics from 1993 to 1997, Ms. Gamble indicated that the Center received a significant increase in referrals from the newly implemented Family Court. The Center, with its limited resources, was not able to keep up with the demands of the courts. Referring to the graph "Comparison of Staffing Increases," Ms. Gamble explained that the red line in the graph is representative of the Family Court's staff growth in 1993, with the addition of 6 Family Court judges. The blue line in the graph is representative of the Center's staff growth.

In 1997, the Center contacted 35 court jurisdictions to conduct a survey of court-connected service programs, the results of which are found in the informational booklet, Exhibit B. Many of the court-service programs have limited their scope to services relating to mediations and evaluations. Furthermore, many jurisdictions are outsourcing their evaluation services while maintaining court-connected mediation services.

The Clark County mandatory mediation program was implemented to assist parents in building co-parental relationships and to focus on future child custody matters. The Center currently staffs 9 full-time family specialists and one part-time family specialist to conduct mediation services. From October 1, 1997, to the present, the Center has received 329 referrals for mediation services. Of the 329 cases, 90 may have been settled by the litigants before coming to the Center or may have been closed because of lack of litigant participation, while 47 cases reached an impasse. The Center's mediation rate is currently 80%.

Ms. Gamble discussed the various community outreach efforts made by the Center. Among those efforts are educating the State Bar, the bench and the community on the mediation services available. Additionally, the Center has collaborated with the Clark County Law Library to develop a manual titled "Mandatory Mediation Manual for Proper Persons." Information on how parties can comply with mandatory mediation laws is also available in a brochure distributed at various locations throughout the court building.

Although the Center has outsourced its evaluation services to the private sector, the Center is conducting the training for the private evaluators. Thirty-five licensed marriage and family therapists and license clinical social workers are included in the Center's private evaluator provider list supplied to the courts. Most evaluators in the private sector charge between \$80 to \$120 an hour for their services, but the 35 evaluators on the provider list have agreed to provide their services for a fee of \$45.

Ms. Gamble stated that the decision to outsource the evaluation services was made because the Center did not have sufficient resources to adequately provide the services. The average evaluation requires approximately 20 staff hours, while the average mediation requires 9 staff hours. Outsourcing the evaluation services has allowed the staff to serve twice as many clients in the mediation program. In addition, the private evaluators have agreed to conduct home visits at the families' residence, which the Center's evaluators were not able to do because of lack of staff.

Ms. Gamble testified that the Center has been unsuccessful in addressing the issue of litigants' inability to pay the \$45 evaluation fee, but some private evaluators have provided their services at no charge. She expressed her hope that the Clark County Center will be able to incorporate a case-rotation model, similar to one used in Contra Costa County, California, in which private evaluators provide pro bono evaluation services on a rotating basis.

Since the restructuring on October 1, 1997, the Center is primarily providing mediation services and coordinating the outsourced evaluation services. Upon the submission of an information sheet by the family, the staff runs the court minutes and forwards the information to the private evaluator. Dan Wiley, a private consultant working with the Eighth Judicial District Court, informed the Center that coordination of outsourced services is vital in ensuring information is returned to the court in a timely manner. In addition to coordinating the evaluation services, the Center will be evaluating the program in six months.

Ms. Gamble testified that the negative media reports have focused on the Center's attempt to provide services to the court with limited staff. She expressed her hope that restructuring efforts will show both the Legislature and the community that the Center will be able to better provide quality mediation services.

In addition to developing the "Mandatory Mediation Manual for Proper Persons," the Center has been active in providing other services to the community. The Center provides program coordination services for COPE, the mandatory divorce education class, which has educated 15,000 families in the community. The Center has also formed a partnership with the Clark County Law Library to supply them with the mediation manual, mediation information, and community resource directories.

In response to Assemblywoman Tiffany's question, Ms. Gamble said that judges' referrals to the Center are done on a case-by-case basis, except that cases involving a contested child custody matter are automatically referred to the Center. Dr. Bushard commented that mandatory mediation in Clark County will institutionalize mediation and create the expectation that it will be the court's first level of response for parties entering the Family Court system.

Ms. Gamble indicated that the Center's staff are county employees. The Center, in addition to its full-time staff, also has one part-time employee and one graduate intern from the University of Nevada, Las Vegas. In response to Assemblywoman Tiffany, Ms. Gamble stated that the Center does not have any volunteer staff. She informed the assemblywoman that, in addition to licensed clinical social workers and licensed marriage and family therapists, the Center also has intern positions for graduates who are required to complete 3,000 post-graduate hours to complete their licensing requirements.

Responding to Assemblywoman Tiffany, Ms. Gamble indicated that the private evaluators are not currently being evaluated by the Center, but effective May 4, 1998, the Center will begin utilizing satisfaction surveys for clients who use the court-connected services. She further stated that it is the intent of the Center to provide client referrals to the evaluation services, not to oversee the private evaluators. Because the private evaluators are licensed professionals, clients concerned with the conduct of the evaluators would be referred to the respective state licensing board.

Assemblywoman Tiffany noted that the majority of the constituent complaints she has received regarding the Family Court system has been focused on the elongated and ineffective procedures of the Family Mediation Center. It has been her experience that families seeking relief from the Family Court often do not understand why judges refer them to the Center for 90-day assessments. Ms. Gamble responded that the referral system may be improved by adopting a model similar to the one used in Albuquerque, New Mexico. In this model, the families must meet specific criteria

before the judge will refer the family to the evaluation services. Dr. Bushard added that clients must also be educated on the processes of the court system and on the available alternatives to litigation, such as mediation. Additionally, he emphasized the importance of the Family Court having the authority to reinforce a policy that encourages litigants to attempt dispute resolution in mediation before proceeding to the litigation process. In many cases, Ms. Gamble indicated, there is a legitimate need for evaluations to be conducted to provide the court with the information it needs to make a decision. In cases where the issues are more emotional than legal, parents should be supported and encouraged to resolve their issues in mediation, she said.

In response to Assemblywoman Ohrenschall, Ms. Gamble stated that the Eighth Judicial District Court has adopted local Court Rule No. 5.70, which mandates mediation upon the filing of an answer in a contested child custody matter. The adopted court rule has been forwarded to the Supreme Court for its approval. Assessments are ordered by the judges on a case-by-case basis and are not mandatory. In Ms. Gamble's experience, some judges, depending on their respective department, request submission of recommendations along with the assessment reports, while others do not. Responding to Assemblywoman Ohrenschall, Ms. Gamble indicated that the Center, by local court rule, does not involve children in the mediation process. However, children over the age of 4 are interviewed during the evaluation process.

Ms. Gamble said that the Center is funded by the Clark County General Fund. Assemblywoman Ohrenschall mentioned the national organization, "MAXIMUS," which advises state and local entities on how to maximize their intake of federal money. She asked Ms. Gamble if the Clark County Center participated in the studies commissioned by "MAXIMUS," the Division of Child and Family Services and Clark County Child Protective Services. Ms. Gamble said that the Center did not participate in the studies, but recently received a grant from the Nevada Department of Health and Human Resources to provide mediation in paternity matters involving child visitation and access. The Clark County District Attorney's Office will assist the Center in providing mediation services. Ms. Gamble noted that improving parents' access to their children will provide more incentive for the parents to pay child support.

Ms. Gamble explained that emergency referrals to mediation are also determined by judges on a case-by-case basis. Domestic violence, unexpected parental incarceration, parental medical disability and parental child abduction are examples of situations that may necessitate an emergency referral. Responding to Assemblywoman Ohrenschall's question, Ms. Gamble testified that the judge would determine if an emergency referral is necessary in a situation involving a runaway child in a divorce case.

Ms. Gamble further explained that the parties' attorneys are given a copy of the evaluation report prepared by the private evaluators, but the report is not released to the individual parties. Litigants appearing in proper person are entitled to read the evaluation report, but must do so in the presence of the judges, the bailiff or other support staff. The report is then returned to the respective judicial department.

Responding to Assemblywoman Koivisto, Ms. Gamble indicated that the Center has a total of 10 staff members, 9 of whom have graduate degrees in either psychology, social work or behavioral sciences. Two staff members have undergraduate degrees. All staff members have a minimum of five years experience working with families, in a court setting or in a child protective services setting.

Before October 1, 1997, evaluations conducted by the Center were completed in 90 days. With the evaluation services outsourced to the private sector, those evaluations are now being returned in 60 days. When a judge orders an evaluation, the Center's involvement in the process is restricted to forwarding an information sheet and the court minutes to the private evaluators.

Chairman Buckley noted that in the past legislative session, the Legislature received numerous complaints centering on the inaccurate assessments conducted by the Center. She requested Ms. Gamble's comments on why the assessments were not stopped in a timely manner, either by the courts or by the Center, when the quality of the assessment reports began to suffer because of lack of staffing. Ms. Gamble stated that she assumes responsibility for the inadequate assessment reports produced by the Center. She said that when Clark County did not prioritize funding for additional staff, she attempted to streamline the process internally to enable the Center to continue providing the assessment services. However, streamlining the process compromised quality for quantity. In her opinion, the evaluators are not responsible for determining the truth in Family Court Cases; that responsibility belongs to attorneys and the bench. She further stated that the responsibility of the Center is to focus on the social and psychological

aspects of the family units and to determine the impact of the relationship on the family unit.

Assemblywoman Ohrenschall raised the issue of whether mediation is mandatory in cases where issues of child custody, child visitation and child support have previously been agreed upon by the parties in a pre-nuptial or post-nuptial agreement. In response to the assemblywoman, Ms. Gamble indicated it would be a judicial determination as to whether parties in agreement on these issues would be referred to the mediation services of the Center.

Responding to Mr. Dickerson, Ms. Gamble stated, in her conservative estimation, approximately 40% to 50% of assessments have involved false allegations by one or both parents. She concurred with Mr. Dickerson's statement that the increases in assessments involving false accusations took staff time away from completing other assessments with legitimate issues. Ms. Gamble said that this problem may be alleviated if referrals to assessments were not made until substantial information on the allegation is presented to the court, which is a procedure used by the courts in Albuquerque, New Mexico.

Ms. Gamble estimated that 75% to 80% of the Center cases involve parents attempting to tie issues regarding custody with financial issues. Dr. Bushard stated he believes that this occurs in 100% of cases because of the obvious link between custody and financial issues. Dr. Bushard said that the unreasonableness displayed by some litigants is a problem in the mediation process. He suggested that the Subcommittee give consideration to a mediation model which would allow and encourage parties to discuss monetary issues and include monetary factors in the settlement process, rather than keeping the monetary issues distinct from other issues.

Ms. Gamble testified that in the Center's survey of other court jurisdictions and court-connected programs, evaluation and mediation functions were typically operated by two separate units. Before the structural change in October 1997, the Center combined these services and, in her opinion, the process became more complex. Additionally, because there was an awareness that individuals choosing not to participate in mediation would be automatically referred to the assessment services, the litigants had no vested interest in the process of mediation.

Senator Washington noted that Ms. Gamble's historical statistics in the Center's informational booklet indicated that the average case load per specialist decreased by 500 cases in 1997. Responding, Ms. Gamble stated that it was her opinion that the decrease in the average case load was a direct result of the negative media coverage of the Center. During this time, the Center received fewer referrals from the court. Senator Washington asked for Ms. Gamble's comments on the responsibility of the Center to determine what is in the best interests of the children when there is parental feuding over child visitation issues and financial issues. Ms. Gamble explained that as a provider of mediation services, it is the role of the Center to provide educational information to the parents as it relates to their redefined relationship and address issues as it relates to the children. Mediation also provides a forum for the parties to address unresolved issues related to the relationship and to focus on developing an ongoing co-parental plan for their children.

Senator Washington inquired about the continuance or reversal of temporary protective orders after a family has addressed issues relating to the order. Ms. Gamble indicated that the mediators do not make recommendations to the court on such matters. If the issues relating to the order have been addressed and resolved, the parties may return to the court to modify the order accordingly. Ms. Gamble concurred that temporary protective orders may be strategically used as leverage in the Family Court system, but stated that is the primary responsibility of the Center to assure the safety and security of the families. In addition, the mediator has the responsibility to provide valid opportunities for a self-determined solution and to prevent abuse of the system. Clarifying her earlier comments, Ms. Gamble informed Senator Washington that another contribution to the decrease in the average case load per specialist may have been attributable to the moratorium on new referrals to the Center at that time, to allow the mediators to process the cases already at the Center.

Charlotte Kiffer, Private Evaluator

Charlotte Kiffer, Private Mediator, provided the Subcommittee with testimony on the role of the private evaluator in the Family Court System. Ms. Kiffer indicated that she is a licensed clinical social worker and has provided private

child custody evaluations since the evaluation services were outsourced from the Center in October 1997.

Ms. Kiffer highlighted two specific areas of concern from her perspective as private evaluator. The first issue raised by Ms. Kiffer related to the parenting deficiencies that one parent alleges against another. It has been her experience that the parenting deficiencies are very specific emotional traumas inflicted on the parties as they proceed through their divorce actions. For example, deficiencies may be attributable to a mental health problem that would require a diagnosis, or to a lack of parental role models. In Ms. Kiffer's opinion, these deficiencies, given time, can be treated and resolved, allowing the courts to proceed to more pertinent legal issues.

Private evaluators also lack the authority to obtain information, such as police records, child abuse and neglect reports, discharge summaries and psychological evaluations, which may be vital in conducting a complete and accurate assessment. Private evaluators are often denied this information despite obtaining a signed release from their clients for such records.

Kitty Hardy, Private Mediator

Kitty Hardy, Private Mediator, provided the Subcommittee with testimony on the mediation services outsourced to the private sector. She testified that many parental allegations in child custody cases are made because the litigants are experiencing specific emotional traumas. In Ms. Hardy's experience, many of the allegations can be resolved if the families are given sufficient time to work with the professional clinicians. Ms. Hardy concurred with Ms. Kiffer's comments on the limitation of the private clinician's authority to gain pertinent information in cases.

Ms. Hardy highlighted several advantages in using private practitioners in conducting court services. She indicated that the first advantage is that private practitioners are able to conduct interviews in the clients' homes rather than in the court office. Ms. Hardy noted that such interviews allow the practitioner to observe the families in their home environments. Additionally, it allows the practitioner to observe the interactions and associations of the children with other family members without directly involving them in the interview process. She stated that private practitioners also have the advantage of meeting with clients in off-hours, including evening and weekends, to accommodate the clients' work schedules. Ms. Hardy informed the Subcommittee that the complexity of most cases will require more than the 20 hours per evaluation estimated by the Center to provide a quality report with accurate information.

Responding to Senator Washington, Ms. Hardy reiterated that the private mediators and evaluators do not have access to information which may be crucial in completing child custody evaluations. She stated that if the court feels further information is needed for mediation purposes, the private mediators and evaluators will receive releases for such information. However, there are several jurisdictions, such as the Child Protective Services, which will not release information to the private practitioners without court authorization. The information is necessary to determine if the parties and their children are receiving counseling and to determine the needs of the children. In addition, the information also will allow the private practitioners to determine if the parties are capable of mediating.

In response to Senator Washington, Ms. Hardy indicated that, typically, attorneys will provide the practitioners with information necessary to complete their evaluations. However, Child Protective Services will only provide, upon release by the litigants or their attorneys, a form letter indicating the disposition of allegations made in cases. The CPS staff will not discuss case issues with or release records to private evaluators because the evaluators are not court officers.

Charlotte Kiffer, Private Evaluator

Ms. Kiffer continued with testimony on the services provided by private evaluators. Additionally, she submitted her testimony in writing, attached as Exhibit C. Ms. Kiffer worked in the Child Custody Division of the Eighth Judicial District Court from 1985 to 1991. Since 1991, she has been in private practice conducting mediations and, occasionally, child custody evaluations.

Ms. Kiffer extended her appreciation to the Subcommittee for the passage of Senate Bill No. 419, which mandated parents to attempt mediation before proceeding to the court procedure. In Ms. Kiffer's experience, once parents begin litigation, they become very positioned and are often unwilling to work together for the benefit of their children. Because mediation is a structured, problem-solving process managed by neutral, trained third parties, it provides a confidential setting for parents to discuss and decide a co-parenting plan for their children. Since the passage of

Senate Bill No. 419, more requests for private mediation have been made by litigants and their attorneys than by judges. When attorneys are involved in referring parties to mediation, the referrals occur quickly. This quick response is critical when the court return date is 30 days or less. In cases where litigants appear in proper person, the process to request private mediation is more time consuming.

Ms. Kiffer offered several suggestions on improving the mediation and evaluation services provided to Family Court litigants. Communication between the Family Court and the private practitioners must be improved. Additionally, the private mediators and evaluators should be involved in the efforts to educate the community on the services they provide. Ms. Kiffer informed the Subcommittee that 90% of the advertising and forms developed for court services are specific to the Family Mediation Center although litigants are statutorily given the choice to mediate privately or through court-connected programs. To emphasize the choices available, Ms. Kiffer suggested that the Court Clerk's office post step-by-step procedures on how litigants or their attorneys can be referred to private mediation if that is their option. To expedite referrals to mediation, Ms. Kiffer suggested that the Family Court implement the use of a form, completed by the judge, which provides the private mediators with the necessary information to complete mediations or evaluations.

Ms. Kiffer explained to the Subcommittee that because licensing or certification is not required, she recommended adoption of proposed standards for mediators, as listed in her written testimony, Exhibit C. The Center has created a list of private mediators meeting these standards, but Ms. Kiffer expressed her concern that the staff is not verifying the credentials of the mediators. In her opinion, the Family Court must be committed to verifying the qualifications of mediators and to referring families to qualified mediators. Additionally, Ms. Kiffer suggested that the continuing education requirements of the mediators should be documented annually by the Center.

Currently, the fees paid by litigants referred to the Center are based on a sliding scale and are paid into the Clark County General Fund. Ms. Kiffer suggested that these fee payments and other funds generated through filing fees be placed in a fund which is used to pay for the services of the private mediator or evaluator, with the Center collecting the reimbursement for those services directly from the parties. She also suggested that the Family Court hire a professional mediator, from outside the Clark County and Nevada jurisdictions, to assist the court in establishing goals common to the court and private mediators and to assist in improving communications between the court and the private sector service providers.

In Ms. Kiffer's opinion, the Family Court must reevaluate the outsourcing of child custody evaluations because the referrals to the evaluations appear to be an internal court decision rather than a component of law. She further remarked that litigants are not well served when non-court connected programs, unable to access vital information for a report, are conducting child custody evaluations.

The Honorable Michael A. Towne, Superior Court of the State of Hawaii

To accommodate Judge Towne's judicial calendar, Chairman Buckley explained that the judge will provide the Subcommittee with testimony via telephone, covering two topics on the agenda, "The Child's Voice," and "Judicial Grievances." In addition to providing testimony via telephone, Judge Towne also submitted an excerpt from the "Hawaii Code of Judicial Conduct," attached Exhibit D.

Judge Towne stated that by statute, the Superior Court of Hawaii is given the opportunity to hear the wishes of the children. The weight placed on the input is decided by the presiding judge in the case, with consideration given to factors such as the maturity of the child. In his opinion, individual states must make the determination on whether to include the children's input in Family Court cases.

In response to Mr. Dickerson, Judge Towne stated that he does not typically invite the children to speak on their own behalf unless the child's guardian ad-litem or CASA representative indicates the child has a strong desire to speak in court. The best interests of the child are determined by a CASA representative or guardian ad-litem conducting a thorough interview with the child in a clinical setting. Judge Towne informed Mr. Dickerson that children are not brought into the court except in rare situations in Hawaii.

Judge Towne explained that the judges in Hawaii are appointed through a merit selection similar to the "Missouri

Plan." A nine-member judicial selection commission develops a list of six judicial candidates to give to the Governor and the selections are confirmed by the Senate.

Responding to Chairman Buckley, Judge Towne indicated that the CASA representatives provide services primarily in abuse and neglect cases, although they may be specially requested to represent a child in a custody case. Responding to Assemblywoman Ohrenschall, Judge Towne said that children should be appointed representation at the onset of the litigation.

Chairman Buckley informed Judge Towne that among the Subcommittee's concerns is the procedural irregularities and the lack of a formal grievance system by which litigants may make formal complaints. Judge Towne cited two sections of the Code of Judicial Conduct that require judges to process cases in a timely and efficient manner. The first section cited by the judge, Canon 3(B)(8), states: "[A] judge shall dispose of all judicial matters promptly, efficiently and fairly." In addition to Canon 3(B)(8), Judge Towne also cited Canon 3(C)(3), which states: "[A] judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure prompt disposition of matters before them and the proper performance of their other judicial responsibilities."

Judge Towne explained that the great majority of complaints received in his court involve the merits of a judicial decision. Litigants raising complaints on the merits of decisions are referred either to the appeal process or to the Judicial Conduct Commission. With complaints of untimeliness, judicial attitude, perceived bias, or some other similar complaint, Judge Towne indicated that the Chief Judge and the court staff reviews the courtroom's video tape and the Chief Judge discusses the allegations with the presiding judge of the case. Reviewing the tape and talking to the judge often clarifies the points of complaint, particularly in cases where the complaint is filed by a pro se litigant. Judge Towne cited the Code of Judicial Conduct mandating proper performance of judges, Canon 3(B)(4), which states "[A] judge shall be patient, dignified and courteous to the litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control."

Judge Towne indicated that in Hawaiian courts, ex-parte conduct is not allowed except in very specific circumstances. The Hawaii Family Court receives approximately six to ten judicial complaints per year. In his opinion, the low number of complaints filed against Family Court judges in Hawaii may be attributable to the court's quick response to litigant complaints before the complaints become a matter for referral to the Commission on Judicial Conduct.

Responding to Chairman Buckley, Judge Towne stated that a chief judge with supervisory authority has the duty and the responsibility to ensure that judges perform properly and dispose of their cases promptly. The judge also informed the Subcommittee that pro tem judges, presiding over other areas of law, are used in the absence of sitting Family Court judges to assist in maintaining the case load. He remarked that he believes Nevada does not allow the use of pro tem judges unless a judge is seriously ill, which he found startling. Because Hawaii has a unified court system, the judges rotate within the Family Court, for example, from divorce to juvenile delinquency. The Hawaii Family Court currently has nine full-time judges. The court does not choose pro tem judges who preside over family law issues to avoid any possible appearance of a conflict of interest.

As Chief Judge, Judge Towne carried a one-half to three-quarter calendar and was available to assist other judges in maintaining their case loads. Additionally, in high-profile or complex cases requiring weeks of judicial time, Judge Towne took that assignment, with concurrence from the presiding judge, to allow the judge to maintain his current case load. As Chief Judge, he also acted as the court liaison for both the media and the Hawaii Legislature.

Responding to Mr. Dickerson, Judge Towne described the merit selection system used in Hawaii. The Judicial Selection Commission advertises a vacancy and invites applications. The applications are thoroughly screened, from which a final list of six is forwarded to the appointing authority. The list for Circuit Judges is referred to the Governor, while the list for District Judges is referred to the Chief Judge. In Judge Towne's experience, the retention process is an important key in ensuring the judges are providing fair and decisive judgments.

The judicial evaluation process uses established criteria, defined by statute as developed by the Judicial Selection Commission, covering characteristics such as decisiveness, fairness, temperament and patience. The judges must express their wish to be retained to the Commission six months before the expiration of their term. The Commission invites public feedback on the judge through newspaper advertisements. Additionally, the Commission also receives input on the judge from the court staff, attorneys and other judges. Recently, the Hawaii courts also began utilizing an

on-going evaluation program as well as the court-observer program to provide judicial evaluations.

Responding to Assemblywoman Tiffany, Judge Towne indicated that a CASA representative is appointed in all abuse and neglect cases. In divorce cases or complex cases involving children, the Court appoints a custody commissioner or a special guardian ad-litem to the children. CASA representatives are not used in divorce cases except upon special request because of the limited resources of the court.

Judge Towne noted that Hawaii Family Court has also outsourced its evaluations. Family Court judges will refer cases to evaluation if the case meets the criteria established by the court's bench book. Typically, cases referred to evaluation will have issues of child sexual abuse, mental illness or domestic violence. Litigants unable to afford the evaluation services may be referred to pro bono evaluators. The Hawaii Family Court maintains a good working relationship with the family law section attorneys, meets with the divorce bar on a monthly basis and invites the attorneys' input on Family Court matters.

Ruth Pearson Urban, Manager, Clark County Neighborhood Justice Center

Ruth Pearson Urban, Manager, Clark County Neighborhood Justice Center, presented the Subcommittee with testimony on the court-connected social services programs and submitted written testimony titled, "Testimony of Ruth Pearson Urban," Exhibit E. The Clark County Social Services has made several requests to appear on the agenda of the monthly judicial meetings to discuss programs, such as the Clark County Neighborhood Justice Center. Ms. Urban informed the Subcommittee that, to date, the requests have gone unanswered.

Ms. Urban expressed her concern over Clark County Social Services' omission from the monthly judicial meeting agendas because the Neighborhood Justice Center is partially financed from Family Court filing fees. Additionally, the Neighborhood Justice Center has offered to assist the Family Court in providing mediation in adult guardianship cases, as well as child custody and visitation cases, particularly for parents who are not in the Family Court system and cannot afford private mediation fees.

Because the Family Mediation Center does not provide services to parties who do not have a matter filed before the court, Ms. Urban explained that families seeking resolution of custodial and visitation issues through mediation are forced either to enter the court system or hire a private mediator. Therefore, she recommended that the Subcommittee require the Family Mediation Center to provide services to parties who are not in the court system. Additionally, Ms. Urban also recommended that the Family Mediation Center apply the same fee schedule to all clients and, in cases where families are unable to pay, the fees should be waived or reduced.

Currently, the parental education program helping children to cope with divorce is court-mandated and only available to litigants of the Family Court system. Prior to its termination in 1992, "The Divorce Experience," provided information to individuals contemplating divorce, in the process of divorce or to individuals having post-divorce problems. Ms. Urban expressed her concern that the Clark County Family Court has been very limited in providing public education and prevention programs since the termination of "The Divorce Experience" program in 1992. In Ms. Urban's opinion, the Family Court judges are promoting dependency on the bench and are not encouraging settlements and supporting family self-determination. In closing, Ms. Urban informed the Subcommittee that mediation, as mandated by the Legislature, must be extended to those who are not in the court process.

Ms. Urban stated that offering early intervention services, such as mediation, may deter families from seeking resolution through the court process. Ms. Urban informed Assemblywoman Ohrenschall that mediation, regardless of which agency conducted the mediation, only becomes binding if it is entered as a judgment by the court. However, mandating binding mediation agreements in a voluntary process may dissuade parties from seeking mediation services.

In answering Assemblywoman Tiffany, Ms. Urban indicated counseling usually consists of therapeutic services provided to one party, while mediation attempts dispute resolution by involving both parties. She further indicated that public mediation has received some criticism from private mediators, as documented in the correspondence submitted to members of Mediators of Southern Nevada, Exhibit F. Ms. Urban reiterated her suggestion that mediation services must be expanded to parties outside the court process.

Dr. Bushard requested that Ms. Urban discuss some of the issues which she felt were important enough to have been

included on the monthly judicial agenda. Ms. Urban indicated that the intention of Clark County Social Services was to inform the Family Court about several programs under development which may mutually benefit clients for both agencies. As an example, Ms. Urban noted that the Neighborhood Justice Center has been interested in providing mediation services in contested adult guardianship cases. Currently, these parties are restricted to entering a contested hearing or contacting the private sector for mediation services.

Chairman Buckley commented that parties seeking mediation may be better served if referred to the appropriate agency, depending on the parties' ability to pay and whether the parties opt to enter the court process. She said that perhaps the Neighborhood Justice Center may serve parties who do not wish to enter the court process but want to attempt mediation as a method of resolution, the court-connected programs may serve lower-income litigants not able to afford to pay for services and the private mediation providers may serve those who are able to pay for such services. In response to the chairman, Ms. Urban concurred with her comments and stated that she is not advocating the elimination of any agency which provides mediation.

Senator Washington commented on the Louisiana state law mandating couples attend pre-marital counseling sessions before receiving a marriage license and asked Ms. Urban to comment on instituting similar counseling by the Neighborhood Justice Center to couples contemplating divorce. Ms. Urban stated that the schools currently teach "Family Life" classes which informs teens on the responsibilities of marriage, raising children and other similar issues. Responding to Senator Washington, Ms. Urban indicated that pre-marital counseling is not within the venue of the Neighborhood Justice Center and suggested other organizations or agencies, such as the School District or the Parent-Teachers' Association, may more appropriately provide these services.

Ms. Urban informed the Subcommittee that the Neighborhood Justice Center mediators are volunteers who have received more than 40 hours of training from the Center. Responding to Ms. Hatch, Ms. Urban indicated that the case resolution rate for the Neighborhood Justice Center is approximately 70% to 80%. The majority of the staff time is devoted to providing information, giving referrals and determining the appropriateness of mediation in cases. Of the approximately 3,500 cases received by the Neighborhood Justice Center yearly, Ms. Urban stated that roughly 10% of those cases are determined by the staff to be appropriate for mediation, with both parties agreeable to mediation. With the increased funding that became available for the Center on October 1, 1997, the Center has been able to hire additional staff and begin a marketing campaign advertising its services.

THE CHILD'S VOICE: PRESENTATION ON C.A.S.A. SERVICES

AND LISTENING TO CHILDREN

Linda Ley, Manager, C.A.S.A. Services, Eighth Judicial District Court

Linda Ley, Manager, C.A.S.A. Services, Eighth Judicial District Court, provided an overview of the background and history of the CASA (court-appointed special advocate) program and also submitted an informational booklet, attached Exhibit G. In addition to her testimony, Ms. Ley provided a video presentation on the history of the CASA program, produced by the National CASA Association. The first CASA program was developed in 1977 by Judge David Soukup, Superior Court Judge, King County, Seattle, Washington, to provide volunteers to assist judges in gathering information necessary to make informed decisions about abused and neglected children. Since its inception, CASA has expanded to 710 local programs with 44,000 volunteers across the country. In 1997, CASA provided services to 156,000 children.

The mission of the National CASA program is to speak for the best interests of abused and neglected children, to promote and support quality volunteer representation and to provide a child with a safe, permanent, nurturing home. In 1977, as the CASA program was in its developmental stages, the Children and Placement Committee of the National Council of Juvenile and Family Court Judges incorporated the CASA model into their guidelines, focusing on providing children with safe and permanent homes. In its study evaluating volunteer advocacy programs, the Office of Juvenile Justice and Delinquency Prevention rated the CASA program as one of the most successful and innovative programs. The Clark County program became the first CASA program in Nevada in 1980, originally

under the direction of Judge John Mendoza.

Ms. Ley explained that the CASA program is included in the language of four federal laws, including the recently reaffirmed legislation entitled, "Child Abuse Prevention and Treatment Act of 1974," or CAPTA. The Nevada CASA program exists by Nevada Revised Statute 432B.500 and the Clark County CASA program is mandated by the Eighth Judicial District Court Rule Number 5.41.

Ms. Ley continued with a discussion of the qualifications and training of the CASA volunteers. The volunteer must be 21 years old, possess a driver's license and proof of insurance. Additionally, the volunteer must complete an application packet, submit to a background check and be fingerprinted and checked against the NCIC child abuse registry. Once the application is submitted and the background of the volunteer is checked, the volunteer is screened by an interview panel. In addition to the mandatory 40-hour training curriculum, adopted and localized for the local CASA program, a volunteer must also participate in ongoing in-service training and receive annual evaluations.

One major key to the success of the CASA program is requiring the volunteers to make a two-year commitment to the program. In cases that may take years to resolve, the CASA provides a level of consistency in the life of the children. Although there are no specific experience or educational requirements, the CASA program does look for people with an understanding of child development, family dynamics and issues of confidentiality. Ms. Ley indicated that the CASA volunteers must also be creative problem solvers, tenacious, able to identify the differences between successes and failures and able to communicate, organize and establish positive working relationships. In addition to training and commitment, volunteer supervision is another key element in the success of the CASA program.

The primary responsibility of a CASA is to provide advocacy to abused and neglected juveniles for whom permanency has not yet been established. Ms. Ley stated that the federal regulations mandate that children should not remain in foster care for more than 15 months. However, the average stay for children in foster care in Nevada is approximately 3 years. She further stated that the responsibilities of the CASA in juvenile cases include conducting independent evaluations, advocating for the children's needs, monitoring compliance with court orders and facilitating sibling contact. In Ms. Ley's opinion, facilitating and maintaining sibling contact is one of the most important elements in assisting children involved in the court process.

In 1987, the Clark County CASA program added a domestic relations component. While the National CASA does not endorse domestic relations components in their local programs, it has provided education and direction to the Clark County CASA program in domestic relation issues. The CASA program provides domestic relations services in three specific areas. The CASA volunteers conduct interviews with children, typically school-aged, in cases where the child's concerns may be significant in a case resolution. The CASA volunteers also conduct parent-child observations, observing the father-child and the mother-child relationships separately. Additionally, CASA volunteers conduct several interviews with the children over an extended period of time. In domestic relation cases, the CASA volunteers' responsibilities include conducting private interviews with the children in a neutral setting with minimal parental contact, advocating the best interests of the children and submitting a report to the court. In clarifying the statistics found in the CASA informational booklet, Ms. Ley explained that because the divorce filings are listed under a specific "D" court case number, the figures represent cases, not children, in which a CASA was appointed. In juvenile cases, the figures are representative of individual children because each child receives a separate "J" court case number upon filing.

Ms. Ley discussed two projects which CASA has been active in developing in the Southern Nevada community. The first program, the Foster Care Review Board, is a panel that includes a judge, a CASA representative, a Child and Family Services representative, a Child Protective Services representative, a mental health representative and a member of the community expressing interest in children's issues. The panel will review cases and deal with issues of permanency in cases where children have been in foster care for 12 months or longer, accepting input from the child's therapists, case workers, teachers and relatives. CASA, working conjointly with the Clark County Family Court and the Administrative Offices of the Court, is developing the Health and Education Manuscript Project, with funding from the State Court Improvement Fund. The Project will be a statewide health and education tracking system for children who are in foster care. The goal of the tracking system will be to comply with the federal mandates requiring a consolidated document of the children's health and education records. The prototype is expected to be operational by August 1, 1998.

Ms. Ley summarized the services provided to the Clark County community by the CASA volunteers and staff.

Currently, the CASA has approximately 185 volunteers. In juvenile court cases, Ms. Ley indicated that the volunteers average approximately 120 hours of volunteer work per year on their cases. In domestic cases, volunteers average approximately 10 hours of volunteer work per year. In 1997, the Clark County CASA volunteers provided approximately 62,315 hours of volunteer work in the community.

Ms. Ley continued with a discussion of the four basic areas which CASA volunteers contribute to the child welfare system. She stated that the volunteers are able to contribute more time to the children than the social workers working in the child welfare system. In Ms. Ley's opinion, the volunteers are able to spend quality time with the children, which gives the CASA workers an insight into the child's wishes, hopes and dreams. The CASA volunteers are also able to provide the Family Court with a comprehensive picture of the child's overall needs. The CASA volunteers provide a safety net for the children to ensure their cases do not languish in the Family Court system. Lastly, the CASA volunteers maintain a single-minded focus on the importance of establishing permanency in the children's lives.

Mary Herzik, Executive Director, C.A.S.A. Services, Second Judicial District Court

Mary Herzik, Executive Director, C.A.S.A. Services, Second Judicial District Court, provided the Subcommittee with testimony on the CASA services provided in Northern Nevada. In addition to her testimony, Ms. Herzik also submitted a document with statistical information on the Second Judicial District CASA program, attached as Exhibit H. Ms. Herzik informed the Subcommittee that Nevada currently has four CASA programs, Clark County, Washoe County, Douglas County and Carson City. The Washoe County CASA program has been existence since 1982, under the direction of Judge McGee. In 1997, the Washoe County CASA program served over 500 children. The program receives an average of 200 new case referrals each year.

Ms. Herzik explained that the two distinctive elements found in the Washoe County CASA program are representation by a CASA-attorney team and strong support of the program from the Family Court judges and masters. With support from the Nevada Law Foundation, the Washoe County CASA program is able to pair an attorney with the CASA volunteer, to provide team representation. Ms. Herzik indicated the CASA-attorney team representation is a very effective way of ensuring the child's social and legal interests are met. The second element, strong support from the Family Court judges and masters, is also a critical factor in the success of the CASA program. The Washoe County Family Court judges actively participate in the CASA program, including attending the introductory sessions for new volunteers, attending the volunteer swearing-in ceremony and providing training to the new volunteers. In Ms. Herzik's opinion, participation by the Family Court judges has been an important key in motivating the CASA volunteers.

Ms. Herzik discussed two community programs initiated by the Washoe County CASA program. The first program, "Family's Visiting Project," is a pilot program designed to provide structured visitation for families where children have been removed because of abuse or neglect and placed in foster care. Funding for this project was provided by the Court Improvement Project of the Administrative Office of the Supreme Court. The CASA program's research has shown that successful reunification of a child with his or her family requires early and frequent visitation. Working conjointly with the YWCA, the Washoe County CASA program is providing families with a place to visit together and spend family time. The CASA program has contracted with the YWCA to provide these families with swimming and other recreational services. Additionally, two on-site therapeutic supervisors provide guidance to the families during their visits. Currently, the "Family's Visiting Project" is providing services to 10 families, but the Washoe County CASA program is expecting to provide services in the future to an estimated 20 families on any given weekend. In addition to providing services outside the customary work week, the CASA program also provides transportation for parents and siblings to facilitate visitation.

The second project initiated by the Washoe County CASA, again working conjointly with the YWCA, is the "Peace Center," a project that provides parents with a safe, non-threatening environment in which to exchange custody of their children for court-ordered weekend visitations. For high-conflict families, alternative exchange sites are provided, such as at a police substation or at a McDonald's restaurant. In the project's first 18 months, there has not been an incident of violence during a custody exchange.

Bonnie Mann, Chairwoman, C.A.S.A. Foundation

Bonnie Mann, Chairwoman, C.A.S.A. Foundation, provided the Subcommittee with testimony on the importance of

the one-to-one contact CASA volunteers have with children. Ms. Mann stated that a well-managed CASA program with strong supervisory support is important in preparing volunteers to be front-line advocates for children in the court process. Because they are able to develop a sense of trust with the children and discuss the children's needs in private moments, the CASA volunteers are very beneficial in providing both the child welfare system and the Family Court with information on the needs of the children. In closing, Ms. Mann stated that the CASA program can be instrumental in augmenting the overburdened and understaffed child welfare system.

Responding to Assemblywoman Ohrenschall, Ms. Ley indicated that CASA representatives are not appointed in juvenile delinquency cases. However, CASA volunteers may be involved in such cases if they originally represented the children in a child abuse or neglect case. Clarifying the distinction between CASA representatives and guardians ad-litem, Ms. Herzik indicated that a CASA is volunteering his services. Ms. Ley indicated that the Clark County CASA program operates similarly to the Washoe County program, with the exception that attorneys are usually only appointed in cases where the court is concerned about legal issues surrounding the child.

Responding to Senator Porter, Ms. Ley indicated that the CASA program is reliant upon the child welfare system in assisting permanency in children's lives. In Ms. Ley's opinion, the understaffed child welfare system has caused case workers to become monitors rather than facilitators in placing children in permanent homes. Additionally, she stated that the Clark County CASA program is only able to serve half the population it is mandated to serve because of insufficiencies in its professional staff. Ms. Ley explained that the National CASA Association recommends the ratio of one supervisory, professional staff person to every 35 volunteers. Currently, the Clark County CASA program is working at a ratio of one professional staff person to every 60 to 65 volunteers. Ms. Ley explained that the Clark County CASA program is operable with this ratio, but the higher ratio may result in the staff performing crisis intervention rather than volunteer supervision. Responding to Senator Porter's concerns, Ms. Ley concurred that because of insufficient supervisory staff, the Clark County CASA program is only able to retain approximately 200 volunteers.

Responding to Assemblywoman Ohrenschall, Ms. Mann gave the Subcommittee a brief history and overview of the CASA Foundation. The CASA Foundation began approximately 14 years ago as a support foundation for the growing number of CASA programs being initiated in local communities. The mission of the CASA Foundation is to support the efforts of the CASA programs for abused and neglected children and children in foster care. Additionally, the CASA Foundation also supports the efforts of the local CASA programs to encourage additional funding to add more supervisory staff and volunteers necessary to meet the mandated services. The CASA Foundation has made contributions to meet the special needs of children and has provided scholarships to children exiting the foster care system. The Foundation has also assisted children 15 or older or children entering independent living with some of their transitional needs, such as providing transportation or getting them into an apartment. The Foundation has provided airfare for siblings to meet their other siblings who may have been adopted or are receiving out-of-state mental or health care. Airfare has also been provided to fly children to potential adoptive parents who are located outside Nevada.

Ms. Ley provided the Subcommittee with additional information on independent living, as requested by Assemblywoman Ohrenschall. Children in foster care are eligible for independent living training when they are 15 ½ years old, although, typically, children do not enter independent living until they are 18 years old. Clark County has several independent living placements, but the placements are more similar to adolescent group homes with supervised living. The training provides the children with knowledge on how to cook, clean, control finances and perform other tasks necessary for successful independent living. The CASA Foundation has been actively developing manuals and informational booklets for children entering independent living.

JUDICIAL GRIEVANCES

Leonard I. Gang, General Counsel and Executive Director, Commission on Judicial Discipline

Leonard I. Gang, General Counsel and Executive Director, Commission on Judicial Discipline, provided the Subcommittee with testimony on the judicial discipline process in Nevada. Mr. Gang also submitted the informational booklet, "Nevada Commission on Judicial Discipline," Exhibit I. The booklet contains portions of the Nevada Constitution dealing with judicial discipline, the Nevada Code of Judicial Conduct, rules applicable to the

Commission, and the process, procedures and statistics of the Commission.

Referring to a flow chart on page 45 of the "Nevada Commission on Judicial Discipline" booklet, attached as Exhibit I, Mr. Gang indicated that the jurisdiction of the Judicial Discipline Commission is invoked by the filing of a complaint. Complaints may be filed by a member of the public, an attorney or another judge, and must be filed under oath. Since September 1997, the Executive Director of the Judicial Discipline Commission may also file complaints, although there is no requirement for the Director to file the complaint under oath. Mr. Gang emphasized that the procedure is identical for all filings.

Upon receipt of a complaint, Mr. Gang reviews the complaint to ensure that the matter is under the jurisdictional duties of the Commission. Complaints filed by the public must be sworn to under oath, must be made against a judge and must raise some issue of judicial misconduct. If the complaint meets all the criteria, the complaint is presented to the Commission. If the complaint does not meet the criteria, the complaint is dismissed.

Once the Commission has determined that the matter is under its jurisdiction, Mr. Gang receives authorization to conduct an investigation. A private investigator is utilized to investigate, conduct interviews and gather any documents that may be needed by the Commission for its review. The Commission will review the investigation to determine whether the charges have merit. If the charges are determined to have merit, the complaint is served upon the judge, who is required to respond to the charges.

Mr. Gang stated that a judge may submit affidavits, witness statements and any other documents that may better enable the Commission to review the complaint. If the Commission finds probable cause to proceed from their review of the investigatory file, Mr. Gang receives authorization to hire an attorney, who will prepare a formal statement of charges.

Mr. Gang emphasized that the complaint filing and the investigation are confidential processes not for public review. However, once a formal complaint is filed, the complaint and all subsequent documents that may be filed are open to public review. After the judge has answered the complaint, the Commission will determine if clear and convincing evidence has been presented. If there has been no such presentation, the complaint is dismissed. If it is determined that there is clear and convincing evidence of judicial misconduct, the Commission prepares its findings of fact and conclusions of law and files a certified copy of its decision with the Nevada Supreme Court.

Mr. Gang indicated that the judge has 15 days in which to appeal the decision made by the Commission to the Supreme Court. The Supreme Court will conduct a limited review, similar to an appellate review of a District Court's decision. Unlike most state judicial discipline authorities, the Commission may impose a final and binding decision for the discipline of judges. However, the Supreme Court maintains the authority to override the discipline imposed on a judge by the Commission. In most states, the state judicial disciplinary authority recommends judicial discipline, but it is the state's Supreme Court that imposes the discipline upon the judge.

Mr. Gang referred the Subcommittee to the chart located in his informational booklet indicating the number of complaints received against Family Court judges in relationship to complaints received from all District Court judges. Complaints filed on matters emanating from the Family Court represented approximately 54% of the total complaints filed in 1996 and 59% of the total filed in 1997. Mr. Gang stated that it is common throughout most court jurisdictions for the number of complaints filed in Family Court matters to be significantly higher than complaints filed in other court matters.

Responding to Mr. Dickerson, Mr. Gang indicated that the majority of complaints received by the Commission are filed because of a litigant's dissatisfaction with the outcome of his case, not from genuine issues of judicial misconduct. Of the complaints filed against Family Court judges, 90% of those complaints are filed in Clark County. Nationally, approximately 85% to 87% of the complaints filed are dismissed on initial review because there is no issue of ethical misconduct. The dismissal rate of complaints filed in Nevada is similar to the national statistics. In his three-year tenure as the Executive Director of the Commission, the Commission has disciplined two judges from Clark County for matters involving untimely decision-making and ex-parte contacts.

Concurring with Chairman Buckley, Mr. Gang noted that the complaints received by the Commission predominantly involve timeliness, perceived judicial bias or ex-parte contact. Mr. Gang remarked that any method by which litigant complaints can be resolved satisfactorily and in a timely manner would be beneficial to the court process. Responding

to Senator Washington's concerns, Mr. Gang indicated that because jurisdiction is established by the Nevada Constitution, the Commission would retain authority over judicial misconduct complaints in a strong chief judge system.

Mr. Gang noted that the mentoring of new judges entering the Washoe County Family Court may be one factor which contributed to the Family Court in Northern Nevada being more successful than the Clark County Family Court. Mr. Gang noted that Judge Jordan served as a master and worked under Judge McGee before becoming a Family Court judge and Judge Schumacher served as a master for Judges Jordan and McGee. With mentoring, the new judges learn the process and learn how to work together. In Mr. Gang's opinion, the dissension between the judges in the Clark County Family Court has not allowed them to have the same working relationship as the judges in Washoe County.

Mr. Gang also discussed the importance of continuing education for Family Court judges. From a list of courses offered by the National Judicial College, Mr. Gang highlighted courses that may be beneficial to judges presiding over family law matters, such as decision making, dispute resolution skills, essential judicial skills, judicial ethics and family mediation.

Mr. Gang suggested that the Subcommittee further research the Clark County case resolution rate, presented in an earlier meeting of the Subcommittee as 90% resolution within a one-year period. In his opinion, removing the uncontested divorce cases from the statistical data may create a more accurate representation of the Clark County Family Court case resolution rate. Concurring with earlier testimony, Mr. Gang agreed that utilizing an outside mediator to mediate between the Family Court judges on an ongoing basis would be very beneficial to the court.

Mr. Gang remarked that in his experience with family law, both as a private practitioner and as a Clark County District Court judge, a full calendar of family law cases was unnecessary to develop expertise in the field of law. Rotation may be a useful method to relieve judicial burn-out. Senator Washington emphasized that consistency in the Washoe County Family Court system has been beneficial in providing stability to the court and ensuring decisions are made in a timely manner.

Senator Washington requested and received the permission of the Chair to deviate from the agenda and place his constituent, Anita Wray, on the panel to provide public comment. Ms. Wray's comments are included in the Public Comment section of the Meeting Minutes.

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LEGAL HELP FOR USERS OF THE FAMILY COURT:

PROPOSED PRO SE CLINIC

The Honorable Myron E. Leavitt, Chief Judge, Eighth Judicial District Court

The Honorable Myron E. Leavitt, Chief Judge, Eighth Judicial District Court, provided the Subcommittee with testimony on the efforts of the Court to implement a center for self-represented litigants. Before beginning testimony on the center, Judge Leavitt reiterated his support of a judicial rotation system and stated that a chief judge can be beneficial in settling disputes from litigants and disputes among judges.

Judge Leavitt noted that the United States Constitution allows parties to access the courts and to represent themselves. However, attorneys and self-represented litigants must abide by all the rules of the court. To provide guidance and advice to litigants representing themselves, the Clark County Family Court is implementing a pro se resource center. The new law school will be assisting the Family Court in staffing the center. The center will be located in close proximity to the Clerk of the Court and will be modeled after the Center in Maricopa County, Arizona.

Christina M. Chandler, Assistant Court Administrator, Eighth Judicial District Court

Christina M. Chandler, Assistant Court Administrator, Eighth Judicial District Court, presented the Subcommittee

with statistical information on the proposed pro se resource center. In addition to her testimony, Ms. Chandler also submitted a report entitled, "Footprints for a Family Division Resource Center to Assist Self-Represented (Pro Se) Litigants," attached as Exhibit J. Ms. Chandler indicated that approximately 44% of the Family Court litigants are self-represented. As a comparison with other states, pro se litigants represent approximately 80% of the Arizona litigants and 66% of the California litigants. Pro se litigants are typically from low to moderate-income families. Sixty-two percent of the Clark County Family Court litigants have a family income of less than \$45,000 per year.

Ms. Chandler indicated that Clark County has several resources for indigent litigants to receive legal assistance, such as the Clark County Pro Bono Project and Nevada Legal Services. However, the low to moderate-income level families are restricted from accessing these services because of their income level. Ms. Chandler commented that with the standard cost for legal assistance averaging between \$100 to \$300 per hour, it is important to provide services to the moderate-income families unable to afford such fees.

Ms. Chandler indicated that many judges are of the opinion that pro se centers have been proven to be an effective management tool because they have characteristics which effect both the efficiency of their cases and the appropriation of court resources. In the Eighth Judicial District Court, Ms. Chandler estimated that approximately 66% of court staff time is devoted to self-represented litigants. The court staff spends approximately 20 to 30 minutes per personal contact with self-represented litigants, while telephone contact typically requires 10 to 12 minutes. Ms. Chandler calculated that approximately 30,000 court hours, or the equivalent of the work provided by 10 full-time staff members, are dedicated to this population.

Ms. Chandler explained that self-represented litigants can also be the cause of protracted court cases because they are not adequately prepared for court or are not in compliance with statutory or court rules. She expressed her concern that judges, trained to be mutual and objective parties, are providing extra services to these litigants to ensure progress of their cases. Unlicensed legal services providing litigants with inaccurate or inappropriate documents for submission to the court have also frequently been the cause of delays in court proceedings.

In preparing budgetary figures, the Eighth Judicial District Court's research into other pro se resource centers has determined that adequate staffing is absolutely vital to the success of a center. To assist with the implementation of the center, the Eighth Judicial District Court is partnering with several community programs, such as the Eighth Judicial District Court Pro Bono Committee, Nevada Legal Services, the Clark County Pro Bono Project and Clark County Legal Services. Funding for a remodel in the existing building has been secured, and the center will be located on the first floor, adjacent to the Clerk's office. In closing, Ms. Chandler said that the Court strongly supports this program and believes it will serve the families of Clark County and assist the Court in better managing its cases.

Chairman Buckley explained that she is the Executive Director of Clark County Legal Services, a non-profit law firm providing legal representation to low-income litigants. The chair discussed the firm's proposed community programs to provide legal services. The dean of the new law school has expressed a desire to require first-year law students to perform 60 hours of community service. In conjunction with the new law school, Clark County Legal Services will provide one full-time attorney to oversee and work with the law students providing community service. One suggested project is to hold divorce clinics, staffed by law students under the supervision of a Clark County Legal Services attorney. In addition to utilizing law students to provide legal services, Clark County Legal Services is developing an Internet site, with features such as downloadable legal forms, legal information and links to the Family Court's site. Chairman Buckley emphasized that legal needs are expansive, requiring everything from forms or simple questions to be answered to full representation. In Chairman Buckley's opinion, the litigants will be better served and will have less frustration with the court system if the court can fill the majority of their needs.

Judge Leavitt concurred with Mr. Gang's emphasis on the importance of educating Family Court judges in the area of family law. However, in his opinion, the training should not be a condition of a judge becoming a candidate for the Family Court.

Mr. Dickerson commented that in addition to the Clark County Pro Bono Project, the State Bar's Moderate Means Panel also provides attorney representation at a reduced fee. Services are provided at a reduced cost, approximately \$50 to \$75 an hour, to litigants of moderate means who do not meet the income-level qualifications to receive services from the Clark County Pro Bono Project.

The Honorable Barry C. Schneider, Domestic Relations Department Presiding Judge, Superior Court of Arizona, Maricopa County

The Honorable Barry C. Schneider, Domestic Relations Department Presiding Judge, Superior Court of Arizona, Maricopa County, provided the Subcommittee with information on Maricopa County, Arizona, Domestic Relations Court. Judge Schneider informed the Subcommittee that he has served on the bench for 12 years, beginning with an appointment to the Civil Department bench, serving as the presiding judge after two years. He has been on the Domestic Relations bench since 1994 and, in a month, will be rotated into another assignment.

The Superior Court for Maricopa County is situated in Phoenix, the county seat. Currently, Phoenix is the sixth largest city and Maricopa County Superior Court is the sixth largest urban court in the country. There are 72 judges and 33 commissioners, similar to magistrates, serving in the Superior Court. In Judge Schneider's opinion, the selection of judges based on merit, as in Maricopa County, is advantageous because it allows the court to be innovative. The Superior Court is departmentalized and judges rotate from department to department, every two to three years.

Judge Schneider said that he is currently co-chairing a statewide Supreme Court committee researching the feasibility of implementing a unified Family Court system in Arizona. The committee has met for approximately one year and will not recommend moving to a unified Family Court system. In Judge Schneider's opinion, rotation is very healthy both for the court institution and the litigants.

The Domestic Relations Department of the Superior Court has approximately 30,000 new case filings per year, with approximately the same number of post-decree filings for modification or enforcement of decrees per year. Currently, 14 judges and eight commissioners are assigned to the Domestic Relations Department. However, the number of judges assigned will be reduced to 12 and the number of commissioners will be reduced to seven because the case load does not necessitate the current staffing situation.

Judge Schneider, as presiding judge of Maricopa County, has been participating in two standing legislative committees. He indicated that the committees have been very effective in educating the Arizona Legislature, the community, the judges and others on the problems facing the Domestic Relations court. The committees work through a process that allows for the full sharing and understanding of family law related issues and their work leads to many proposals for legislation presented to the Arizona Legislature.

Maricopa County Superior Court has received national recognition and accolades for its effectiveness, for its adoption of the "Fast Track" program and for its reforms regarding discovery and juries. Judge Schneider emphasized that the Superior Court has accomplished these reforms without legislative assistance. When he received the Domestic Relations assignment in 1994, there was no case management in his inherited calendar. Trials were set approximately seven to eight months out, and there was no judicial involvement between the motion to set the trial and the trial date.

Judge Schneider provided pro se litigant statistics specific to the Maricopa County Court. He noted that 90% of the cases in Domestic Relations involve pro se litigants. Cases in which one party has attorney representation comprise approximately 50% of the total Domestic Relations case load, while cases in which both parties have attorneys represent approximately 9% of the case load.

Judge Schneider defined two types of case management, "fast track" and "differentiated case management." Fast Track, adopted in Maricopa County Superior Court in 1970's, is a case management system in which cases were often dismissed if legal action was not taken in a given time frame. Judge Schneider defined differentiated case management as a system whereby judges interact with the litigants to manage their cases to ensure forward progress. The judge indicated that the primary difference between the systems is that the complexity of the case determines the time requirements in differentiated case management. Judge Schneider stated that the Superior Court of Maricopa County was the beneficiary of two grants, a State Justice Institute grant to implement a self-service center and a grant to implement a system of differentiated case management. After several unsuccessful attempts to identify and profile complex cases, the focus on differentiating the cases shifted to the early and continuous involvement of the judiciary in the processing of cases. In Judge Schneider's court, instead of setting trials six to seven months in the future, he invites the litigants and their attorneys into a mutual arena to discuss the issues in dispute. By having an authoritative figure presiding over the discussions, the issues can be identified, streamlined and, often, resolved. Identifying the issues allows him to give the litigants specific referrals to service providers, such as real estate appraisers or custody

evaluators.

Judge Schneider informed the Subcommittee that many self-represented litigants lack the basic knowledge on the legal process to keep their cases moving forward. Recognizing this problem, in 1995, the Superior Court of Maricopa County established a self-service center to provide litigants with basic information on the litigation process. Once access to the court is provided, differentiated case management is the element that pushes the parties through the legal system. Utilizing case managers earning approximately \$30,000 per year saved court resources and freed judicial time that could then be devoted to more complex cases. Differentiated case management has been practiced in the Superior Court since May 1997. Attorneys initially resisted the case management plan because of the time restrictions placed on legal actions, but the court now relaxes the time restrictions if the parties or their attorneys have demonstrated to the court that they have engaged in a process of effective communication.

Judge Schneider cautioned the Subcommittee on providing case-specific legal advice to pro se litigants. In Arizona, the litigants are only provided with direction, not advice. Because the court is a neutral government entity, it cannot provide information to one litigant without providing the same to the opposing litigant.

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Bob James, Self-Service Center Administrator, Superior Court of Arizona in Maricopa County

Bob James, Self-Service Center Administrator, Superior Court of Arizona in Maricopa County, provided the Subcommittee with testimony on the background and an overview of the Self-Service Center's operations. In addition to his testimony, Mr. James submitted two documents to the Subcommittee. The first document, "Streamlining the Litigation Process: Differentiated Case Management," is attached as Exhibit K. The second document, "Superior Court of Arizona, Maricopa County, Self-Service Center Presentation to the Nevada Legislative Commission Subcommittee on Family Courts," is attached as Exhibit L.

Mr. James explained that the Center originated because the court was increasingly being challenged by litigants entering the system who were unfamiliar with the legal process. The court, the Maricopa County Bar, the Arizona State Bar and local service providers worked together for a year to design and develop a system to assist pro se litigants. Mr. James stated that with effective communication from the court and access to and knowledge of available litigation tools, litigants can adequately represent themselves.

Mr. James indicated that there are three fundamental tools which must be provided to pro se litigants. The first tool is knowledge of the fundamental elements of the court process. For example, litigants may need to be provided with basic knowledge such as the difference between divorce, annulment or legal separation. The second fundamental tool is effective and efficient communication between the litigants and the court. The litigant must present his or her information to the court in such a manner that the court can easily understand the submitted information. Judges are often faced with the reading numerous pages of litigants' narrative prose to obtain the information needed to make case decisions. The third fundamental tool is advice and counsel. Mr. James explained that although providing advice is crucial, it is the mission of the Center to provide justice, not advice.

The Center provides more than 420 court forms to assist effective and efficient communication between the litigants and the court. The forms, specifically prepared for self-represented litigants, often list the available options as check-boxes or fill-in blanks. A properly completed form allows the court to receive the information it needs in the appropriate form and gives the litigants the opportunity to voice their needs. In addition to supplying a range of court forms, the Center also provides detailed instructions on completing the forms. The forms are available in series of informational packets with step-by-step instructions on completing a given court procedure. For example, divorce documents and instructions are available in a series of four informational packets. Mr. James said that if litigants are willing to read thoroughly the instructions included with the informational packets, litigants will have the knowledge necessary to guide themselves through their court process.

The Center does not directly advise or counsel litigants but does strongly recommend such services for self-represented litigants. To encourage litigants to seek advice and counsel, the Center has adopted the concept of "unbundled legal services," originating from an American Bar Association standing committee, wherein the attorney-client relationship is limited to the attorney providing specific, limited services. The Center aggressively markets this concept to empower litigants to resolve their case. The concept of unbundled legal services has been endorsed by the

American Bar Association and the state and county bar associations.

Mr. James discussed the "Family Lawyer Assistance Project," a joint effort between the Maricopa County Bar Association and a local legal aid organization to provide pro bono legal services. The attorneys work half-days and schedule half-hour appointments for parties seeking legal advice. A \$25 service fee is charged unless the service fee is waived because the litigant meets federal poverty guidelines. The legal services are provided on-site at the Center, and, because many Arizona communities are still very rural, the Center also provides a roster of attorneys who have indicated their willingness to provide unbundled legal services outside the downtown Phoenix area. The Center's attorney roster provides information on attorneys' locations, hours, languages spoken, fee costs, length of experience and law school attendance. However, the roster is provided only as a resource and the Center does not endorse or refer litigants to attorneys on the roster.

The Center provides services in two physical locations, Phoenix and Mesa. Both facilities staff a total of five full-time customer service advisors and serve more than 400 people daily. He further indicated that the Center provides the tools necessary to empower the litigants to represent themselves through the court process and does not encourage them to become reliant on the government for assistance.

Mr. James presented budgetary statistics found in the document, "Superior Court of Arizona, Maricopa County, Self-Service Center Presentation to the Nevada Legislative Commission Sub-Committee on Family Courts," attached as Exhibit L. He informed the Subcommittee that paper has been the costliest expense of the program. Mr. James estimated that the Center distributes in excess of 400,000 pieces of paper and incurs an estimated monthly paper expense of \$13,000. Because of this expense, the Center has received permission from the County Board of Supervisors to institute a fee system on the informational packets.

The Center launched its Internet website in September 1995 to provide 24-hour access to general information on the Center, downloadable court forms at no cost and access to the roster of lawyers providing unbundled legal services. Sample pages from the Center's website can be found in the Subcommittee informational booklet under Tab IV, attached as Exhibit A. In addition to the new website, the Center has also instituted a menu-driven telephone system to provide general information, also accessible 24-hours per day. The website serves approximately 120 users daily, and the telephone system serves between 3,000 to 4,000 users weekly.

In studies conducted before and after the implementation of the Center, the Domestic Relations Department of the Superior Court of Maricopa County saw an approximate 50% reduction in the number of inquiries from self-represented litigants and a 30% reduction across the court in general. The reduction in time devoted to these litigants gave the judges and their staff more time to devote to processing their case loads. Because litigants are more prepared and better informed, court delays and postponements occur with much less frequency.

Although the Center has not done an exhaustive study on its effect on the total number of filings, the court has not seen an increase in the percentage of self-represented litigants. In Mr. James' opinion, the greater impact from the Center's existence has been an increased perception that attorneys are an important source for pro se litigants.

Responding to Ms. Shipman, Mr. James indicated that the series informational packets includes information, instructions and court documents for parties on both sides of the dispute. Typically, the first packet is for the initial pleading, the second packet provides information on the choices of legal services available and the third packet is the response packet. He further noted that defendants are benefited by this organization of packets because they are able to see how the response fits into the overall court procedure.

Mr. James informed Ms. Shipman that the Superior Court received grants totaling approximately \$135,000 for funding both the Center and the differentiated case management project. The majority of the grant was utilized to fund the initial staffing of both projects and the on-going funding has been absorbed within the court operations budget, funded by Maricopa County. In addition to receiving funding through the reallocation of current positions, the Center also received a grant from the Arizona Supreme Court to implement the menu-driven telephone system and to provide funding for the Center's Internet server.

In response to Assemblywoman Tiffany, Judge Schneider indicated that complaints regarding the court are directed to the Judicial Conduct Commission, an agency separate from the judiciary; however, judicial discipline is imposed by the Supreme Court of Arizona. Judge Schneider also noted that the presiding judge of a department handles

complaints informally, also, as there is no other formal procedure in place.

Judge Schneider informed Assemblywoman Tiffany that judges are rotated in the departmentalized courts in urban counties, such as Maricopa and Pima Counties. The judges in rural counties are general jurisdictional judges hearing all calendars and do not rotate. Maricopa County judges have a presumptive two-year term assignment with one-half of the total judges rotating once a year. Judge Schneider stated that judicial preferences and expertise are considered when determining rotation assignments.

The case management system used in Maricopa County provides case prompts and automatically generates notices, and the court is becoming more reliant on the computer to maintain statistical information. Responding to Assemblywoman Tiffany, Judge Schneider indicated that his salary is funded by both the state and Maricopa County, while all other court expenses are fully funded by the county.

In Judge Schneider's opinion, the selection of judges by election compromises the integrity of judges and provides a disservice to the system of democracy because the judiciary cannot act independently when representing constituents.

The judge informed Assemblywoman Tiffany that mediation is mandatory in Maricopa County in any case with child custody issues. It is the responsibility of the differentiated case managers to identify the need for mediation in a case and to accelerate the parties into mediation. Maricopa County is moving towards adoption of the Family Court concept of therapeutic jurisprudence, which is defined as therapeutically intervening with litigants so that they are less likely to remain in dispute. He indicated that therapeutic jurisprudence is particularly important in domestic relations cases because the issues center as much on the future of the family as they do on the past, unlike contract cases or personal injury cases, which center on historical disputes. Judge Schneider also informed Assemblywoman Tiffany that Maricopa County does provide access to mediation for parties not in the court system and differentiates between mediation for divorce and abuse cases.

VOICE OF THE LITIGANTS: CITIZEN RECOMMENDATIONS FOR FAMILY COURT REFORM

Al DiCicco, Director, Coalition for Family Court Reform

Al DiCicco, Director, Coalition for Family Court Reform, provided the Subcommittee with his recommendations for Family Court reform. In addition to providing testimony, Mr. DiCicco also submitted, "Preliminary Reform Plan for Family Court," attached as Exhibit M. Mr. DiCicco listed suggestions to the Subcommittee on reforming the Family Court:

1. Create a citizens' review board for complaints concerning judges and attorneys. Judges and attorneys must be held accountable for their actions. Additionally, strict sanctions should be placed on the complainants to discourage further occurrences.
2. Adopt and follow basic guidelines to increase consistency in judicial decision-making and in the general procedures of the court. In cases that require special attention and alternative measures, the Family Court should carefully evaluate all the facts and needs of family prior to granting requests.
3. Require all court staff, attorneys and court service providers to focus on swift case resolution to reduce the financial and emotional distress on the families.
4. Permit litigants to give testimony prior to rulings.
5. Permit the children to voice their wants and needs in all cases and give their testimony consideration when deciding cases.
6. Appoint a child advocate in every case involving a child. The advocate may be an attorney, a guardian ad litem, a CASA representative or a similar individual who will represent the child's right to have frequent and continuing involvement with both parents.

7. Consider all evidence and all relationships that a child may have when determining what is in the best interests of the child. The majority of cases do not give any consideration to what is in the best interest of the children.
8. Focus on improving parental skills rather than terminating parental rights. The Family Court must always encourage custody with both genetic parents, unless a parent willingly and permanently surrenders all parental rights or is criminally proven to be dangerous to the child.
9. Modify the term "visitation" to "parenting time." The term "visitation" provokes the perception of one who is unimportant or has little or no influence on the development of their child. Such changes are currently being made to the court orders in Illinois.
10. Give both parents liberal parenting time with their child, adopt a standardized parental guideline agreed upon by both parents and enforce adherence to that parental guideline.
11. Respect the rights of the child's grandparents to visit their grandchildren. Additionally, the child's relationships with other relatives such as cousins, aunts and uncles must also be respected.
12. Investigate and determine which parent is more likely to encourage relationships with relatives, such as grandparents, aunts and uncles. Such encouragement should be included as a factor for the judge to consider when determining custody of the child.
13. Investigate cases that appear to be continuing for unreasonable lengths of time. The individuals causing unreasonable delay should be reprimanded.
14. Dismiss allegations made without supporting evidence and sanction attorneys pursuing legal action on such allegations.
15. Discontinue calculating child custody on a percentage basis.
16. Grant garnishment of wages only in circumstances where a parent is delinquent on child support payments. Workers have been terminated when employers refused to garnish wages.
17. Investigate non-compliance with court orders rather than imprisoning the parents. Some judges have acted too quickly to imprison parents in cases of a non-criminal nature.
18. Implement a chief judge system. The chief judge must be accessible to the litigants and must have the authority to review and modify orders in circumstances where laws were violated or disregarded, to reprimand judges and to sit on the proposed citizens' review board.
19. Analyze the statistics comparing case load to actual time worked before adding more judges to the Family Court.
20. Research court jurisdictions in other states to determine the best procedure to use in the Family Court. Mr. DiCicco acknowledged the efforts of the Subcommittee in researching other jurisdictional procedures.
21. Mandate a family law course for all judges as a condition to implement judicial rotation and require a yearly refresher course.
22. Remove the \$200 substitution of judge court fee, limit the number of substitutions a litigant may receive and require litigants to show just cause for the substitution.
23. Hold individuals accountable for damages when violations of law have occurred and award restitution to families damaged by such violations
24. Issue a bilingual foreign judgment when localizing a case. A Nevada order should be mandatory and swift so as to give the parties an order that will be upheld by the police and the court.

25. Accept participation and input from both parents or step-parents when counseling children.
26. Offer first right of refusal to the parent before any day care is provided for the child.
27. Offer incentives to parents who wish to care for their own children rather than place them in day care. Nevada should lobby for such incentives on a federal level.
28. Combine judicial and attorney discipline authorities into one and open an office in Clark County that may be accessed by citizens in Southern Nevada.
29. Adhere to and enforce filing deadlines in Family Court. There should be no tolerance for attorneys violating procedures and deadlines.
30. Enforce restrictions on improper conduct in the court room.
31. Perform psychological evaluations either on all or none of the parties. Therapists should be required to sign an oath stating their willingness to perform in a way that will promote frequent and continuing relationship with both parents.
32. Mandate case follow-up.
33. Use mediation to make changes to existing parenting plans.
34. Utilize judicial performance evaluations and accept input from Family Court litigants.
35. Research the necessity and effectiveness of using hearing masters.

Shirley LaSpina, Founder, P.O.W.E.R. Justice I.N.C.

Shirley LaSpina, Founder, P.O.W.E.R. Justice I.N.C., provided the Subcommittee with her recommendations for Family Court reforms. In addition to her testimony, Ms. LaSpina also submitted several documents to the Subcommittee, attached as Exhibit N. Ms. LaSpina indicated that her experience in the legal process led to her identification of several problem areas of the Family Court. In Ms. LaSpina's opinion, mediation is an important start for parties seeking a divorce, but if it is ineffective, the judge must take a legal stance and issue a decision that will lessen the losses of the compliant spouse. She suggested enforcement of the agreements made during mediation will emphasize that compliance with all laws, rules and procedures will be mandatory. Ms. LaSpina indicated that another problem area for Family Court is the no-fault divorce because it permits marital misuse of funds prior to the start of the legal process.

Ms. LaSpina informed the Subcommittee that her experience has shown that many divorce lawyers have been allowed to manipulate the legal system within the Family Court. Ms. LaSpina further noted that ex parte contact between attorneys and judges has also created a negative impact on the court. She suggested that the Subcommittee challenge the Nevada State Bar for not holding attorneys accountable for damages to clients and the other parties because of unethical practices.

Ms. LaSpina also recommended parties not in compliance with court orders, rules or procedures should not have the authority to seal court records. Sealing court records should only be done at the request of the party in compliance with the court orders or to protect the interests of the children involved. In Ms. LaSpina's opinion, the court clerk's opinion of the judges may negatively impact their handling of the case records, by tampering or manipulating court case files. She recommended that all court orders be examined for accuracy and signed by both attorneys and their clients before the documents are forwarded for the judge's signature.

In Ms. LaSpina's opinion, many Family Court litigants receive unjust treatment from judges who do not abide by court rules and procedures and who do not adhere to the facts and evidence of a case. She suggested mandating sanctions for attorneys who enter allegations and charges without producing supportive evidence. Additionally, judges should not be given absolute authority to incarcerate Family Court litigants, except in circumstances serious in nature. She further suggested that the chief judge should examine all the evidence for merit in each claim of judicial misconduct. The chief judge must also strongly and actively pursue complaints of judicial or litigant unfairness.

Ms. LaSpina also informed the Subcommittee that the litigants must be given an opportunity to face and respond to their accusers in court and must be given avenues for restitution outside the Family Court system. She acknowledged the efforts of the Clark County Family Court to implement a pro se clinic; however, Ms. LaSpina disagreed with previous testimony given on the pro se litigant's inefficiencies and lack of knowledge. In her experience in the Family Court, Ms. LaSpina noted that most pro se litigants adhere to the court rules and procedure and are adequately prepared. Additionally, increased participation from pro se litigants would limit ex parte contact. Ms. LaSpina also informed the Subcommittee that pro se litigants are held to a higher legal standard than the attorneys. As an example, she stated that motions filed late by a pro se litigant will typically be denied, although a motion filed by an attorney is normally granted. In addition to the unequal standards applied to pro se litigants, Ms. LaSpina indicated that the Supreme Court does not give priority to cases brought to the Court on appeal. She urged the Subcommittee to encourage the Supreme Court to recognize that appeals from Family Court are of equal importance to cases involving businesses.

PUBLIC COMMENT

The following individuals provided public testimony during the fourth meeting of the Subcommittee on Family Courts. Submissions to the Subcommittee are indicated by an exhibit designation.

Anita Wray read a correspondence from her son, John Septien, regarding the temporary protective order filed against him by his ex-wife. By mutual agreement, Mr. Septien and his wife filed for a divorce on February 3, 1996. On February 6, his wife sought and received a temporary protective order from the court master in Washoe County. Mr. Septien's correspondence indicated that the temporary protective order was issued to him as he was teaching his Truckee Meadows Community College class. He noted that the first court master granted his wife's requests for monetary support, full custody of their son and his eviction from their house. Mr. Septien's correspondence informed the Subcommittee that the Family Court master does not investigate circumstances upon the request of a temporary protective order and does not allow the accused a hearing date. He further indicated that the order issued was a 30-day temporary protective order; however, his wife sought and received an extension of the order at the close of the 30-day time frame.

Shortly after his wife refused to participate in mandatory mediation, she contacted Mr. Septien for a reconciliation and requested she be added to his medical insurance plan. His correspondence indicated that after she had recovered from several surgeries, Mr. Septien was issued another temporary protective order, again, in front of his class, which is still in effect.

Mr. Septien's correspondence stated that he has supplied Senator Washington with a videotape of the court proceeding where his wife received the first temporary protective order. He informed the Subcommittee that the videotape demonstrates how easily a woman can receive a temporary protective order without supplying any evidence of the allegations. Additionally, Mr. Septien indicated that the tape also shows the inconsistencies between court masters. Mr. Septien understands the value of using the temporary protective order as a tool in the prevention of domestic violence; however, the temporary protective order should not be allowed to be used as leverage in divorce or custody matters. In his correspondence, Mr. Septien recommended that investigations into allegations should be conducted prior to the issuance of a temporary protective order. He also recommended that the individuals making the allegations must be made aware of the consequences of falsifying information when requesting a temporary protective order and the court must be held liable in circumstances where a temporary protective order is granted based upon false information. Ms. Wray voiced her concern that once falsely accused, individuals will be stereotyped as abusers. Senator Washington confirmed possession of Mr. Septien's videotape and indicated that the tape would be submitted to the Subcommittee for its review.

Tod Brenbarger provided the Subcommittee with his recommendations for Family Court reform. In addition to his testimony, Mr. Brenbarger also submitted a report entitled, "What is Really Wrong With Family Court: A paper on the constitutional abuses of Family Court prepared for the Nevada Legislature," attached as Exhibit O. Mr. Brenbarger indicated that the real problem of the Family Court is that it operates entirely outside the bounds of what a court is constitutionally permitted to do. In Mr. Brenbarger's opinion, the Nevada Legislature has instituted several unconstitutional laws.

Mr. Brenbarger expressed his concern that the traditional hearing process has been bypassed by statutes and court rules to allow masters, referees and special social workers to hear cases and prepare reports and that the involvement of the judge is limited to attaching his recommendation to the prepared report. Mr. Brenbarger informed the Subcommittee that both the Nevada and United States Supreme Courts have determined that hearings conducted by an individual other than a judge is unconstitutional in several cases, listed in his report attached as Exhibit O.

Mr. Brenbarger indicated that the current Family Court practice of using masters to perform judicial duties and denying litigants the right to an evidentiary hearing must be abolished. In his opinion, the master's report is hearsay and cannot replace the hearing process. He also suggested that the litigants must be able to hear evidence and cross-examine witnesses. Mr. Brenbarger expressed his view that it is unconstitutional that statements of children are only accessible upon a court order. In circumstances where a litigant is representing himself, he indicated that the litigant cannot access the document. In his experience, the Family Mediation and Assessment Center denies litigants' access to evidence and testimony collected, the opportunity to respond to allegations and the right to confront their accusers. He further noted that his case has been in the Family Court system for 28 months.

Mr. Brenbarger informed the Subcommittee that subsection 2 of NRS 126.031 states that an unmarried mother has more rights for custody of the children than an unmarried father. Mr. Brenbarger stated that subsection 2 of NRS 126.031 contradicts subsection 1 of the same statute, which states that the parent-child relationship extends equally to every child and to every parent, regardless of marital status. In addition to contradicting itself, Mr. Brenbarger explained that NRS 126.031 also contradicts NRS 125.480, which states that preference must not be given to either parent for the sole reason that the parent is the mother or father of the child.

Mr. Brenbarger expressed his concern that separating the Family Court from the District Court will result in the development of a new form of family law. He stated that the Family Court must abide by the same rules of civil procedure as other District Courts. Mr. Brenbarger outlined several suggested reforms for the Family Court:

1. Reinstate due process.
1. Repeal unconstitutional laws or court rules.
1. Guarantee the right to a hearing in a custody case.
1. Set a standard of joint physical and joint legal custody of children. NRS 125.490 should be amended to set a standard of joint physical and legal custody rather than joint custody by parental agreement, as the statute currently reads. Joint legal and physical custody should be waived in circumstances where a parent does not wish joint custody or is incapable of taking custody of the children.
1. Use investigations in conjunction with the court hearing, not as a substitute for the court hearing. The current policy of the Family Mediation and Assessment Center is to use an investigation in place of a court hearing.
1. Abolish the Family Court.
1. Keep statistics such as, case resolution time, recommendations for custody to father versus custody to mother, attorneys' wins and losses, and child support granted to father versus mother.
1. Dissolve or reduce sovereign immunity for judges. Currently, judges on the bench cannot be sued criminally nor can they be held liable for damages. A board of constitutional scholars should be created to provide limited immunity to judges.
1. Hire more District Court judges.

Robert B. Metz provided the Subcommittee with testimony on his case in the Washoe County Family Court. Mr. Metz indicated that in addition to providing testimony, he is also acting as a representative of a newly formed organization called, "Parents For Equal Justice," a watch-dog agency established to ensure that the laws passed by the Nevada Legislature are upheld in the Family Court. Mr. Metz expressed his concern that his ex-wife has been negligent in providing adequate medical care to their son and has endangered his vision. He further indicated that he has filed a complaint against a Second Judicial District Court bailiff and Family Court Judge Scott Jordan. In Mr.

Metz's opinion, the standards by which the Washoe County Family Court issues temporary protective orders are biased against men. He further noted that a hearing is mandated within ten days of the filing of a restraining or temporary protective order. In his case, the order was issued but no meeting was held.

Peggy Drake provided the Subcommittee with testimony on her experiences with the Washoe County Family Court. Ms. Drake informed Chairman Buckley that until the editorial entitled, "Family Court Concept Worth Preserving," was published in the Reno Gazette-Journal on April 13, 1998, the newspapers in Northern Nevada have been negligent in notifying the public of the impending Subcommittee hearings. During the course of the divorce and child support proceedings, Ms. Drake indicated that she and her son were financially manipulated by her ex-husband and his attorneys. Chairman Buckley interrupted Ms. Drake's testimony and suggested that she submit her written testimony to the Subcommittee for its review. The chair also indicated that the Subcommittee members, staff and Chairman Buckley would be willing to arrange a personal telephone call with Ms. Drake to further discuss the matters of her case. Chairman Buckley reminded the members of the public that although the Subcommittee is willing to listen to individual's stories, the primary task of the legislative hearing process is to look at the overall system to recommend reforms. Responding to Ms. Drake's concerns, the chair explained that all written testimony submitted to the Subcommittee will be made part of the formal, written record of the Nevada Legislature.

Joseph Giampapa provided the Subcommittee with testimony on the temporary protective order issued against him by the Washoe County Family Court. In addition to testifying, Mr. Giampapa also submitted written testimony to the Subcommittee, attached as Exhibit P. He concurred with Ms. Drake on the lack of public notification in Northern Nevada for the Subcommittee hearings. Mr. Giampapa stated that he was served a temporary protective order by a woman he had been dating until the relationship ended in October. He expressed his view that the temporary protective order was based on a series of fabrications against him. For the court date, Mr. Giampapa enlisted 15 character witnesses and brought several notarized letters attesting to his character. Mr. Giampapa explained that the court master, Ms. Van Meter, was upset with him for bringing his character witnesses into the court and told him that the notarized letters were inadmissible. His ex-wife, unable to attend because of illness, also wrote a letter explaining that Mr. Giampapa had never been violent or threatened violence during their 29-year marriage, but the letter was also judged inadmissible by the court master. Mr. Giampapa indicated that when he was not able to disprove the accusations, the court master granted the ex-girlfriend's request to extend the temporary protective order for one year. In his opinion, Mr. Giampapa stated that the court master was biased against men.

Mr. Giampapa expressed his concern over the impact of a temporary protective order on his career as a lecturer and a therapist. He informed the Subcommittee that the Native American Council has approached him in reference to working with children through their organization. However, because the temporary protective order will be found during the mandatory investigation into Mr. Giampapa's background, he will be unable to work with the Council.

Dr. J.K. Wheeler provided the Subcommittee with testimony on the problems and discrepancies experienced during his son's Washoe County Family Court case. Dr. Wheeler also indicated that the public in Northern Nevada did not receive advanced notice about the Family Court Subcommittee hearings and suggested that the Subcommittee consider adding a hearing date to accommodate additional public comments. He disagreed with the Family Court editorial published in the Reno Gazette-Journal and expressed his view that both the Washoe and the Clark County Family Court systems share the same level of problems in proportion to the population of the county.

Dr. Wheeler explained that one problem in the Washoe County Family Court is the two operating systems running simultaneously, the divorce system and the master court's system. He stated that the master's court system is operated almost exclusively and autonomously by masters and their rulings are typically rubber-stamped by Family Court judges. Dr. Wheeler also noted the problem of delay in the Washoe County Family Court. He indicated that it took two years for his son to receive a hearing for modification of a decree for lowering child support on the basis of injury and illness. While waiting for the hearing, Dr. Wheeler informed the Subcommittee that the master's court and the District Attorney proceeded to prosecute his son for accumulating arrearages. He further indicated that the accounting system used by the District Attorney's Support Division is flawed. The Support Division receives support payments, but does not post the payment promptly, then prosecutes individuals on the basis of alleged delays. Additionally, Dr. Wheeler noted that orders from the court allowing credit for distribution of debts or for attorney's fees are not properly credited and wages are garnished in excess.

Dr. Wheeler suggested that the Subcommittee institute a statutory system of restitution for families damaged by the Family Court. He also expressed his opinion that the master court is an abusive system which does not fall under the

jurisdictional authority of the Commission on Judicial Discipline. Chairman Buckley indicated that the Judicial Discipline Commission's lack of jurisdiction over the masters will be a topic which will be discussed in detail by the Subcommittee. The chairman also clarified that the Subcommittee is a statewide legislative committee which will suggest reforms for all family courts in Nevada.

Douglas I. Carley provided the Subcommittee with testimony on his pending case. Mr. Carley recommended that all currently confidential Family Mediation and Assessment Center files be open and accessible to litigants. He also concurred with Mr. Metz's testimony on the existence of gender bias by Family Court judges.

Carlene Burke provided the Subcommittee with testimony on the custody case of her grandson. Because of abandonment and neglect by the child's mother, Ms. Burke has had custody of her grandson for five years. She recently sought to terminate the parental rights of the mother and indicated that she had met the criteria set by Nevada Revised Statutes. In Ms. Burke's opinion, the private therapist misrepresented facts and recommended unsupervised visitation with the mother.

Talia Zeer provided the Subcommittee with information on her child custody case involving her adopted nine-year old daughter and her daughter's biological, Iraqi parents who have stated they misunderstood the adoption consent because it was written in English. Since she spoke to the Subcommittee at the last hearing, Ms. Zeer indicated that her daughter's case has been removed from Judge Diane Steel's calendar and will be heard by another judge. She further indicated that her daughter remains in danger of being sent back to her biological parents in Iraq. Ms. Zeer recommended that litigants should be able to prosecute judges in circumstances where cases were mishandled.

Mary Branham provided the Subcommittee with suggestions for Family Court reform. Ms. Branham indicated that the Family Court needs judges who are compassionate and possess the knowledge on needs of children. Additionally, she recommended that the Family Court must give the children an opportunity to voice their wants and needs and give weight to what the children express in court.

Winifred Keaulani provided the Subcommittee with testimony on the custody case of her grandchildren. Ms. Keaulani indicated that her grandchildren were removed from her and her husband's home by the Child Protective Services. She further indicated that they were not given an opportunity to refute the allegations of being unfit to care for their grandchildren. Ms. Keaulani informed the Subcommittee that her grandchildren are currently in foster care, but she is still fighting for visitation rights.

LeAnn Luttrell provided the Subcommittee with testimony on the problems she has encountered in obtaining a QDRO from her divorce settlement, awarded June 21, 1996. At that time, Ms. Luttrell indicated that Mr. Dickerson advised her to contact Rob Bare at the Nevada State Bar. An attorney assisted her in preparing the QDROs and was informed that it contained numerous errors and omissions. Additionally, the attorney sent correspondence to Ms. Luttrell noting her responsibility to pay for half of the attorney's fees before he will prepare the QDRO. She indicated that, in court, the attorney had quoted his fees to be from \$200 to \$300, but the correspondence indicated his fee was \$700. Ms. Luttrell further explained that the State Bar dismissed her complaint against the attorney because the attorney had indicated his willingness to prepare the QDRO. Ms. Luttrell has submitted documentation to the State Bar showing that the attorney has avoided preparing the QDRO for a period of two years. She informed the Subcommittee that her experience shows that self-represented litigants in the Family Court can be financially damaged during the court process. Ms. Luttrell also expressed her view that the Supreme Court also shows a lack of concern for issues concerning families and their property.

Mr. Dickerson suggested that Ms. Luttrell contact an individual who may be able to assist her in obtaining the QDRO. In respect to her share of the pension, Mr. Dickerson also informed her that if the pension plan has been appreciating in value, she is entitled to half of the appreciation that has accumulated in the two years since the divorce settlement was awarded. Ms. Luttrell expressed her appreciation for Mr. Dickerson's assistance, but indicated that she felt that the State Bar did not hold the attorney accountable for his actions and the attorney should have corrected the errors so that the QDRO could have been processed more timely.

Tim Varela provided the Subcommittee with testimony on evaluations performed by the Family Mediation and Assessment Center and his child custody case in the Family Court. Mr. Varela explained that his wife left him and his children for a time frame of approximately six months. He and his wife agreed to, signed and notarized a parenting plan that gave him primary custody of the children. After an absence of six months, his wife abducted the children

and took them to Kansas.

Mr. Varela explained that it took approximately two weeks for pleadings to be filed and one month before he had a hearing with Judge Sanchez. He referenced NRS 200.359, which states that a parent cannot abduct a child from the other parent's custody. However, Judge Sanchez ruled that NRS 200.359 was not violated because a judgment did not exist before the abduction. Mr. Varela recommended that the Subcommittee amend NRS 200.359 to prohibit abduction of a child from the custody of another parent to another state. In Mr. Varela's opinion, if it is clear that the children were abducted in violation of Nevada's statutes, the judges should return the children to the parent with original custody.

Upon the children's return to Nevada and after numerous delays, Judge Sanchez ordered that the matter be heard by specialists from the Family Mediation and Assessment Center. He believes that the specialist was incompetent and biased and expressed his view that the Family Mediation and Assessment Center should be eliminated. Chairman Buckley noted that Mr. Varela's testimony echoed the testimony of many other litigants on problems such as lack of timeliness in decision making and referrals to the Center which resulted in ineffective assessments.

Ms. Evette Tippet testified that she and her children have been in the Child Family Services system for 4 years. She requested information on what action she may take to resolve her situation. Chairman Buckley explained that the lack of a contact person to resolve issues of procedural irregularities is one of the issues that the Subcommittee will take under consideration. The chairman offered to refer Ms. Tippet to either the Judicial Discipline System, the State Bar or the Chief Judge. After noting that Ms. Tippet resides in Washington, D.C., Chairman Buckley requested that Ms. Tippet step outside the meeting room to speak to the Subcommittee Counsel, Brad Wilkinson. Ms. Tippet requested that Haddie Mae Burnett provide the Subcommittee with testimony on the custody case of Ms. Tippet's children.

Haddie Mae Burnett informed the Subcommittee that Ms. Tippet resided with her before her move to Washington, D.C. She indicated that Ms. Tippet's children would speak of the abuse they received while in the care of their aunt, Ms. Tippet's sister. Chairman Buckley expressed her concern that the situation was abusive and requested Christine Chandler to join Mr. Wilkinson in speaking to Ms. Tippet. During a visit around the Christmas holiday, Ms. Tippet's son showed her a mark on his forearm and explained that his aunt had hit him with an extension cord. After three and one-half years, Child and Family Services removed her children from her sister's house. However, instead of returning the children to Ms. Tippet's custody, the Child Family Services representative put the children in the custody of her other sister. Ms. Tippet informed the Subcommittee that individuals need to be held accountable for their actions because it is the children who suffer the most. In her opinion, many of the actions taken by Child and Family Services were based on hearsay information and she suggested that the Subcommittee mandate thorough investigations into allegations brought against parents. Chairman Buckley reiterated her concern about the abuse allegations and requested Ms. Tippet speak to both Mr. Wilkinson and Ms. Chandler. Additionally, the chairman suggested a contact person who may be of assistance to Ms. Tippet in establishing a plan for reunification with her children.

Angie Root, Judicial Executive Assistant for Eighth Judicial District Court Judge Diane Steel, provided the Subcommittee with written testimony, attached as Exhibit R. The written testimony is a typical example of the dialogue between Ms. Root and the pro se litigants calling to request information. Ms. Root explained to the Subcommittee that it is very difficult to speak to pro se litigants on a daily basis without being able to offer referrals or assistance.

Dennis Hetherington, Executive Director of the Clark County Pro Bono Project, read into the record a resolution passed by the Board of Directors on March 17, 1998: "Be it resolved that access to justice has been and will always be the cornerstone of the Clark County Pro Bono Project; that the Board of Directors of the Clark County Pro Bono Project wholeheartedly endorses the plans of the Eighth Judicial District Court to establish a court access center in the Family Court to render assistance to proper person litigants; that the Pro Bono Project, which for thirteen years, has been the sole provider of free legal services in family law, is interested in participating in the establishment and operation of the court access center; that the Pro Bono Project stands ready to assist the Court to the best of its abilities and resources."

Andrew Glomb provided the Subcommittee with several recommendations for reform, based on his experience with Department C of the Family Court in the Eighth Judicial District Court. Mr. Glomb recommended that the Nevada Legislature enact a law similar to one in California which holds an individual making false allegations responsible for

legal expenses if the allegations cannot be substantiated. He further suggested that pro se litigants must be able to access, sign and change orders. In his experience as a pro se litigant, the process to change an order is excessively complicated. Mr. Glomb also suggested that the Family Mediation and Assessment Center's files should be accessible by pro se litigants. In his case, four investigations were done in two years, but he was not able access the investigative files in preparation for his court appearance. He concurred with earlier testimony suggesting separation of the evaluation and mediation services. In his opinion, individuals directed into mediation by a judge do not have an incentive to mediate. He also stated that only one court should have jurisdiction over the same action. In addition to appearing in Department C of the Eighth Judicial District Court, Mr. Glomb was also required to pay court fees for URESA court procedures. Additionally, Mr. Glomb indicated that judges must give priority to making decisions and issuing orders quickly in emergency situations. He indicated that when his ex-wife took his children to Washington, it took approximately one month for him to contact the Washington Attorney General's Office and for the Washington judge to order his ex-wife to bring the children back to Nevada. Although she suffered no repercussions, Mr. Glomb indicated that he had lost one month of visitation with his children.

Thomas Gaule provided the Subcommittee with testimony on his experiences with several judges in the Family Court system and informed the Subcommittee that he is opposed to the system currently in place and believes that the Family Court has no jurisdiction over the family.

Aurora Maskall, Law Clerk for Judge Diane Steel, provided the Subcommittee with testimony on the advantages of implementing a court access center. Ms. Maskall also submitted written testimony to the Subcommittee, attached as Exhibit S. She explained that in her position as law clerk, a significant portion of her time at work is spent speaking to self-represented litigants who are trying to perform the tasks of an attorney without legal education. Ms. Maskall commented that the court access center will alleviate some of the fears and anxieties of the litigants by giving them guidance through court procedures. In closing, Ms. Maskall informed the Subcommittee that it is important to demystify the court rules and procedures to give the pro se litigants an equal footing in court.

Steve Siano provided the Subcommittee with comments on the Family Court system. Mr. Siano expressed his view that the Family Court does not have jurisdiction over families. He stated that children are the most precious natural resources and need to be protected.

Victoria Cloutier provided the Subcommittee with testimony on the experiences she has had with the Family and the URESA Courts. Ms. Cloutier concurred with Mr. Glomb's testimony on the ineffectiveness of the URESA Court. In Ms. Cloutier's opinion, the URESA Court judges show bias against women. As an example, she indicated that the Court typically grants longer continuances to men. Ms. Cloutier also expressed her view that the URESA Court does not adequately maintain its records and does not verify the information submitted on financial affidavits. She informed the Subcommittee that the District Attorney's office does not adequately represent the child or the parents paying child support and does not have a formal complaint system in place for litigants to voice their concerns about the inadequacies. In closing, Ms. Cloutier expressed her view that the judges in the Juvenile Court are irresponsible and urged the Subcommittee to do further research into that court.

Dana Lynn provided the Subcommittee with comments on the Family Court system. Ms. Lynn expressed her disappointment with the Subcommittee for placing "Public Comments" last on the agenda. Ms. Lynn recommended changes to the discovery laws and informed the Subcommittee that the Family Court needs to improve accuracy and accountability.

Chairman Buckley noted that in excess of 10 hours of legislative time has been devoted to hearing public testimony and indicated that that exceeds the time allotted to any other presenter on the Subcommittee's agendas. To the chairman's knowledge, the Subcommittee on Family Courts is the only legislative committee that has placed members of the public, Al DiCicco and Shirley LaSpina, on a meeting agenda to provide input from the Family Court user's perspective.

There being no further business, the meeting was adjourned at 6:25 p.m.

Respectfully Submitted,

Emiko Mitchell

Committee Secretary

Approved:

Assemblywoman Barbara E. Buckley

Chairman

Date

LIST OF EXHIBITS

Exhibit A is the Legislative Commission's Subcommittee on Family Courts (Assembly Concurrent Resolution Number 32) booklet prepared by the Subcommittee staff. The material used by the Subcommittee and the presenters is divided into thirteen sections:

- Section I: Agenda for March 11, 1998
- Section II: Legislative Commission's Subcommittee on Family courts and Advisory Committee
- Section III: Assembly Concurrent Resolution Number 32 (1997)
- Section IV: Sample Web Pages from the Self-Service Center of the Superior Court of Arizona in Maricopa County
- Section V: Las Vegas Sun Newspaper Article—March 12, 1998
- Section VI: Las Vegas Sun Newspaper Article—March 12, 1998
- Section VII: Las Vegas Review Journal Newspaper Article—March 12, 1998
- Section VIII: Las Vegas Sun Newspaper Article—March 17, 1998
- Section IX: Las Vegas Sun Newspaper Article—March 22, 1998
- Section X: Las Vegas Review Journal Newspaper Article—April 2, 1998

- Section XI: Las Vegas Sun Newspaper Article—April 3, 1998
- Section XII: Las Vegas Sun Newspaper Article—April 6, 1998
- Section XIII: Personal Letter to the Committee from Margaret Zeleski

Exhibit B is the informational booklet on the Clark County Family Mediation Program, submitted by LaDeana Gamble, Family Mediation Manager, Eighth Judicial District Court.

Exhibit C is the written testimony provided by Charlotte Kiffer, Private Evaluator, during her presentation on the mediation and evaluation services outsourced to the private sector by the Clark County Family Court.

Exhibit D is the "Code of Judicial Conduct, Canon 3," pages 195-198, used during the presentation by the Honorable Michael A. Towne, Superior Court of Hawaii, on the issue of "Judicial Grievances."

Exhibit E is the written testimony Ruth Pearson Urban, Manager, Clark County Neighborhood Justice Center, on the Family Mediation and Assessment Center and other mediation and evaluation services.

Exhibit F is the correspondence sent to members of the Mediators of Southern Nevada, submitted by Ms. Ruth Pearson Urban, Manager, Clark County Neighborhood Justice Center.

Exhibit G is a booklet containing the overview and statistical information on the Clark County CASA program, presented to the Subcommittee by Linda Ley, Manager, CASA Services, Eighth Judicial District Court.

Exhibit H is a document containing an overview and statistical data on the Washoe county CASA program, presented to the Subcommittee by Mary Herzik, Executive Director, C.A.S.A. Services, Second Judicial District Court.

Exhibit I is the report submitted by Leonard I. Gang, General Counsel and Executive Director of the Nevada Commission on Judicial Discipline, containing information on the Commission rules, procedures and statistical information.

Exhibit J is the report, "Footprints for a Family Division Resource Center to Assist Self-Represented (Pro Se) Litigants, presented to the Subcommittee by the Honorable Judge Myron E. Leavitt, Chief Judge, and Christina Chandler, Assistant Court Administrator, Eighth Judicial District Court. The report contains statistical information on a Pro Se center and offers an overview of the efforts of the Eighth Judicial District Court to implement a center in its jurisdiction.

Exhibit K is the report, "Streamlining the Litigation Process: Differentiated Case Management in Domestic Relations Cases," used in the presentation by the Honorable Barry C. Schneider, Domestic Relations Department Presiding Judge, and Bob James, Self-Service Center Administrator, Superior Court of Arizona, Maricopa County.

Exhibit L is the report, "Superior Court of Arizona, Maricopa County, Self-Service Center Presentation to the Nevada Legislative Commission Subcommittee on Family Courts," used in the presentation by the Honorable Barry C. Schneider, Domestic Relations Department Presiding Judge, and Bob James, Self-Service Center Administrator, Superior Court of Arizona, Maricopa County. The report contains an overview of and statistical information on the Self-Service Center in Maricopa County, Arizona.

Exhibit M is the written testimony of Al DiCicco, Director, Coalition for Family Court Reform, for his presentation on litigant recommendations for Family Court reforms.

Exhibit N is the written testimony and photocopies of court documents of Shirley LaSpina, Founder, P.O.W.E.R. Justice I.N.C., for her presentation on litigant recommendations for Family Court reforms.

Exhibit O is the report, "What is Really Wrong With Family Court: A Paper on the Constitutional Abuses of Family Court Prepared for the Nevada Legislature," submitted by Tod Brenbarger and used in his presentation on litigation recommendations for Family Court reforms.

Exhibit P is the written testimony of Joseph Giampapa on his case heard by a court master. In his testimony, Mr.

Giampapa outlined several circumstances which led him to believe that the court master was biased against men and ruled decisions accordingly.

Exhibit Q is the written testimony of Angela Root, Judicial Executive Assistant for the Honorable Diane Steel, Eighth Judicial District Court Family Judge. Ms. Root's testimony provides a typical dialogue of the numerous calls she receives from pro se litigants.

Exhibit R is the written testimony of Aurora Maskall, Law Clerk for the Honorable Diane Steel, Eighth Judicial District Court Family Judge. Ms. Maskall's testimony details the limitations placed on her when attempting to assist pro se litigants.

Exhibit S is the written testimony of Steven Siano. Mr. Siano's testimony explains his feelings about how our children, families and society are in danger from those who claim to protect them.

Exhibit T is the "Sign-In" sheet.