MINUTES OF THE MEETING

OF THE

LEGISLATIVE COMMISSION'S

SUBCOMMITTEE ON FAMILY COURTS

(Assembly Concurrent Resolution No. 32)

January 21, 1998

Las Vegas, Nevada

The second meeting of the Legislative Commission's Subcommittee on Family Courts (A.C.R. 32) was held on Wednesday, January 21, 1998, at 9:30 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 Ernest E. Adler

Senator Jon C. Porter

Senator Dina Titus

Senator Maurice Washington

Assemblywoman Ellen M. Koivisto

Assemblywoman Sandra Tiffany

Assemblywoman Genie Ohrenschall was excused.

ADVISORY COMMITTEE MEMBERS PRESENT:

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

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

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

Anna Peterson, Former Court Administrator, Eighth Judicial District Court

Dr. Steve Riddell, National Council of Juvenile and Family Court Judges

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 AND INTRODUCTIONS

Chairman Buckley called the meeting to order at 9:45 a.m. and began with a brief explanation of the legislative process by which the Subcommittee on Family Courts was created. She noted that most of the members of the Subcommittee have volunteered to be a part of the study because of their interest in the subject matter. Chairman Buckley further explained that the selection of the Advisory Committee members was made in accordance with Assembly Concurrent Resolution No. 32. She commented that today's meeting of the Subcommittee will focus on the processing of cases, the timeliness of decisions and the record keeping procedures of the family court. In addition, the Subcommittee will narrow its focus to the standardization of court procedures. The Subcommittee will discuss the effectiveness of the various court procedures, highlighting the most effective of those procedures currently implemented in the family courts.

In the third meeting on March 11, the focus of the Subcommittee will be on issues such as caseloads and jurisdiction of the family courts, the barriers encountered by litigants trying to enter family court, the varying types of case proceedings, the number of family court cases in existence and the rotation of the family court judges. The services needed by family court users will be on the agenda for the Subcommittee's fourth meeting on April 16. Among the services to be discussed will be mediation, assessment, alternative methods of dispute resolution, the need for judicial grievance mechanisms, pro se clinics and other services needed by family court litigants.

Before proceeding to the first panelists, Chairman Buckley noted the presence of several distinguished guests: Supreme Court Justice Miriam Shearing, Clark County Family Court Judges Robert Gaston, Frances-Anne Fine and Diane Steele, Eighth Judicial District Court Judge Myron E. Leavitt, Eighth Judicial District Court Administrators, Charles Short and Christina Chandler, and Washoe County Family Court Judge Scott Jordan.

OVERVIEW OF THE PROCESSING OF DIVORCE CASES, TIMELINESS OF DECISIONS AND RECORDKEEPING OF THE FAMILY COURT

The Honorable Robert E. Gaston and Commissioner Jennifer Henry

The Honorable Robert E. Gaston, Family Court Judge, Eighth Judicial District Court, and Commissioner Jennifer Henry, Master, Eighth Judicial District Court, provided the Subcommittee with an overview of the processing of divorce cases, timeliness of decisions and recordkeeping of the family court. In addition to the overview, Judge Gaston told the Subcommittee he would provide them with information pertaining to the court's past efficiency as well as the proposals currently under consideration to improve the efficiency of the Clark County family court. Judge Gaston and Commissioner Henry submitted a report titled "Eighth Judicial District Court Family Division Proposal For a New Logical Model to Expedite Contested Litigation," Exhibit B.

Judge Gaston provided the Subcommittee with an example of the procedures involved with a domestic violence case before the establishment of the family court system. First, in order to receive a temporary protective order, the complainant would go to the office of the court clerk and, unassisted, fill out the proper temporary protective order request form. After the form was completed, the complainant would then submit the document and pay the $35 fee to the clerk of the court. Judge Gaston explained that if the complainant could not afford the fee, the temporary protective order was not issued. The clerk of the court then transferred the document to the judge. In a procedure that took approximately one week, the judge, upon review of the document, would render a decision as to whether or not the complainant should receive protection. Once the judge reached the decision to provide protection, it generally took two to three weeks before the temporary protective order was served on the perpetrator of domestic violence. During this two to three week period, the complainant remained in jeopardy as he or she continued to live in the house with the person accused of domestic violence. As a result of the numerous hurdles and risks faced by the victims of domestic violence, there was not a large volume of temporary protective orders filed prior to the establishment of the family court.

Additionally, Judge Gaston explained that the family cases were in competition with criminal cases for trial dates on the judges' calendars. As a rule, the criminal cases received precedence, and often times, family cases were bumped to allow time for the civil and criminal cases to be heard. Judge Gaston also recalled that some judges disliked handling family cases and would opt for the civil and criminal cases instead. As a result of their concerns over the numerous barriers faced by family case litigants, the Legislature established the family court system.

Judge Gaston described the family court cases as the most stressful, contentious and emotional cases heard by the courts. As a result, more family court judges are shot by their litigants, more complaints are filed against family practitioners than practitioners of any other area of law, and, nationwide, more complaints against family court judges are heard by judicial ethics committees. In spite of this, there are many judges who dedicate their professional careers to handling family cases. The judge cited the numerous newspaper articles on the problems people have encountered in the family court. He explained that the judges are well aware of the articles, but under their code of ethics, they are forbidden to comment on any of these cases. Judge Gaston said there will be unhappy litigants simply because of the fact that some litigants will not receive the decision they wanted in their case. The judge cautioned the Subcommittee that the efficiency of the family court's performance should not be determined by those litigants who have not prevailed in court.

The judge continued with a discussion of the Clark County judicial review of family court cases. In a random sampling of two months, 96% and 91% of the cases were resolved within the first year, respectively. Referring to a chart used in his presentation, Judge Gaston cited the following case resolution statistic comparisons between Clark County and the national standards established by the American Bar Association:

Case Resolution	ABA National Standards for Case Resolution	Clark County Case Resolution Figures for Month Sampled
Within the first 90 days	90%	79%
Within the first 180 days	98%	88%
Within the first 360 days	100%	96%

Judge Gaston stated that the second month sampled received a slightly lower case resolution rate within the first 360 days, 91%. In a national comparison of family courts, Judge Gaston explained, the Clark County family court figure of 93.5% for a 360-day case resolution compared very favorably to other family court jurisdictions. The judge also indicated to the Subcommittee that while Dayton, Ohio and Atlanta, Georgia, reached a 360-day case resolution of 99% and 98%, respectively, no jurisdiction listed in his chart obtained 100% case resolution. In the family court, there will be serious, extremely complicated cases that will take more than one year to resolve. Judge Gaston indicated that although only 4% of the family court cases will not be resolved in the first year, he believes there is need for improvement because that 4% represents hundreds of cases in the current caseload. In the judge's opinion, some of the 4% is representative of litigants who will never be truly satisfied with their court cases. Judge Gaston said the family court must also accept the responsibility of cases failing to be resolved within the first year because of the court's inefficiency in moving these cases through the family court. Currently, the judges are reviewing the cases

that are represented by the 4%.

Judge Gaston said that although Clark County compares favorably with other jurisdictions in its ability to resolve cases within one year, the question has previously been raised as to whether the court has made fair decisions which are rendered justifiably. Judge Gaston noted that the appellate process is the only objective method available to determine the fairness of the decisions. At a rate of .65%, the percentage of family court cases appealed is the lowest in Southern Nevada and one of the lowest in the state. Judge Gaston continued by explaining that of the .65% of cases initially appealed, 6% of that figure are either remanded or reversed.

Judge Gaston, with Commissioner Jennifer Henry, continued with their presentation on the "Eighth Judicial District Court Family Division Proposal for a New Logical Model to Expedite Contested Litigation," Exhibit B. The first task in preparing the new logical model was to identify the major events in the life of a case. Judge Gaston asked the Subcommittee to refer to the spreadsheet included with the "Eighth Judicial District Court Family Division Proposal for a New Logical Model to Expedite Contested Litigation," and noted that this model is the most recent version. On the spreadsheet, the major events are colored in green, and consist of filing, servicing and answering the complaint. In the proposed model, the time involved in the initiation of the case is reduced from 120 days to 90 days. Continuing the time line, the judge discussed the early case conference and early case conference report. After the litigants have had this early case conference, they have a period of time in which to submit a joint case conference report, or if the parties cannot agree, an individual case conference report. The next major event in the time line is the creation of the scheduling order memorandum, indicating that the discovery time has elapsed and the case is ready for a trial setting. The trial setting can vary from judge to judge. In Judge Gaston's court room, he and the attorneys set a trial date at the calendar call. The time between the release of the scheduling order memo and the trial setting is currently set at 30 days. While the judge indicated that this time is one of the "black holes" where some cases have been lost, most cases are set very efficiently. At Judge Gaston's calendar calls, the majority of his cases are set within the first four weeks following the calendar call. If the attorneys indicate that the case will be extremely complicated, the trial can be set later. The next step is the submission of a decree. It is at this point, Judge Gaston explained, that a breakdown occasionally occurs. If a judge has rendered a decision but no order has been prepared, the judge will, in the interest of time, move on to the next case. To correct this breakdown, the proposal includes a 30-day limitation between the time the trial is completed and the time the decree is submitted to the judge for signing, the next step in the time line. In the proposal, once a decree is submitted, the judges are given 30 days to sign. The next major event is the notice of entry of order, which notifies the opposing party that a decree has been rendered and the appeal process may be started, if so desired. The appeal period is 30 days, and at 31 days, the case is automatically closed. Judge Gaston indicated that the court currently does not have the manpower to determine whether all of the cases have completed the litigation process. The proposed system, once time has expired, will automatically generate reminder letters to the attorneys, litigants and judges involved in the case.

In Judge Gaston's opinion, although the model he and Commissioner Henry presented will improve the efficiency of the family court, the Supreme Court must modify the Eighth Judicial District Court Rules and the Nevada Rules of Civil Procedure for this model to be implemented. The family court, the State Bar and the Court Clerk's office have met regularly to produce input on the proposed model. Judge Gaston stated that the proposal is within 60 days of being reviewed by the participants and implementing the proposed changes. When the reviews are completed and changes are implemented, the court will submit the changes to the Supreme Court for the required rule modifications.

Senator Porter asked Judge Gaston if he believes there is concurrence among the family court judges on the proposed changes to the family court system. The judge stated that the proposed changes were presented several times to the family court judges for their review and their suggested changes were implemented in the proposal. Judge Gaston informed the Subcommittee that the judges have agreed upon the model conceptually, which allows the model to be shown to the other participating entities for their suggestions. Once these suggestions are compiled, the model will be brought back to the family court judges for a final review. The judge agreed with Senator Porter's assessment that part of the problem of the unresolved 4% of cases can be attributed to the current logistical case management system. Judge Gaston also explained to the Subcommittee that part of the difficulties in maintaining statistics lies in identifying the closed cases. The judge provided a case scenario as an example of the difficulties in identifying a closed case: A couple goes to court for a divorce, which is granted by the judge. The case follows all the procedures outlined by Judge Gaston's time line, the decree is entered and the case is closed. Three years later, the couple returns to the court to file a motion to change the child custody arrangements. Once the motion is filed, the current case management system will reflect back to the date on the original divorce decree. Although this case was closed, on paper it appears to have languished in the court for three years. Judge Gaston said he is working with computer

systems managers to enable the system to mark such cases as closed.

Senator Porter expressed his concern over the $35 fee needed to process a temporary protective order. He requested information on the family court's intention to supply on-site legal assistance to low-income families that may not be able to pay such fees. Judge Gaston informed the senator that a litigant unable to pay the $35 may ask the court to appear in forma pauperis and request the order. Because pro per litigants have the greatest need for assistance, the judge estimated that 60% of the family court's staff time is spent on pro per cases. He further suggested the court would be able to provide greater assistance to pro per litigants and improve the overall efficiency of the family court by creating a separate pro per office, staffed with individuals trained to provide assistance. In addition to a trained staff, Judge Gaston also suggested making court forms available to the litigants through a computerized program. In response to Senator Porter's concern over the support of the legal community to provide pro bono assistance, Judge Gaston opted to defer this question to Bob Dickerson, but said that he believes there should not be a concern over competing interests. The senator disputed this statement, stating he has heard from his constituents that there are problems with attorneys providing pro bono services. The judge agreed that there may be individual attorneys who are reluctant to provide pro bono services, but, in Judge Gaston's opinion, overall there is support for providing such services because it improves the efficiency of the proceedings for both sides. The judge estimated that 30% to 35% of the litigants currently in family court are pro per, but this figure will continue to increase in the future.

Dr. Philip Bushard asked the judge to summarize the key issues in why some cases are not able to come to a resolution within a year. Judge Gaston responded by stating that many cases are so contentious that some litigants will keep returning to the court because they are unhappy with the order of the court. The judge also said that some of the responsibility for cases lost in the system must be placed on the family court itself for its inefficiency.

Referring to Judge Gaston's chart on the national case resolution percentages, Mr. Dickerson requested that the judge respond on whether or not a study has ever been done on the highly successful Dayton, Ohio system. Judge Gaston deferred the question to his colleague, Commissioner Henry. Commissioner Henry testified that there was a study done titled "Current Case Flow Management Principles and Practice, How to Succeed in Justice." She said that, after her review of the packet of information on this study, it is her understanding that Dayton, Ohio has a more hands-on approach to their case flow management system. She remarked that she is not certain if the system is staff-run or computerized, but for their proposed model they have chosen a computerized approach. Commissioner Henry suggested that the Subcommittee look at the "Current Case Flow Management Principles and Practice, How to Succeed in Justice," study because it contains information on several successful courts in the nation. She stated that the family court litigants would be better served if the court can identify the critical points in the case time line and move their cases through those points to a successful close.

Mr. Dickerson expressed his concern that the proposed model is not shortening the times as they are currently set. Commissioner Henry responded that the time on service has been shortened to a maximum of 90 days, unless the judge orders a lengthening of that time, which may occur if it is necessary to publish to find the defendant. The commissioner explained that this time is currently 120 days in the state-wide rules of procedure, and the model proposes to reduce it to 90 days. Commissioner Henry continued with a discussion of the Rule 16.1 Early Case Conference Report. Commissioner Henry remarked that, in her opinion, the early case conference report is one area in which Clark County is not operating efficiently because there is no method for the court to determine whether the litigants are complying with Rule 16.1. She said that their proposal is to require the early case conference within 30 days. If more time is needed, it can be increased to 60 days by stipulation. The time could be increased to 90 days only by court order. The 90-day maximum range is half of the maximum time currently allowed, 180 days. Once the early case conference has taken place, the litigants must report to the discovery commissioner to set the time needed for discovery. In the model, discovery in a domestic case must occur within 180 days but can be altered by a judge in more complex cases. Once the joint case or individual case conference reports are filed, the discovery commissioner has 20 days to get a scheduling order memorandum to each respective department. The discovery commissioner then generates a case summarization for the judge and sets a discovery cut-off date. Within 30 days of the issuance of the scheduling order memo, the judge will have the trial setting.

Judge Gaston indicated that under the proposed model, when the time allowed for an action elapses, a notice to the discovery commissioner will be automatically generated. This will allow the discovery commissioner to have a hands-on approach to ensuring the early case conferences are being held in a timely manner. Judge Gaston also informed the Subcommittee that the proposed changes will include stop-gap checks and balances to help ensure family court cases will not be lost in the system.

Mr. Dickerson reiterated his concern that, in the initial period, the proposed changes only reduce the time for service of the complaint. In Mr. Dickerson's opinion, most family cases do not require 180 days for discovery and further reduction of this time would create a more efficient process. In addition to the discovery time, Mr. Dickerson also expressed his concern with the time for setting a trial. In his experience, many of the courts are not able to set a trial date within six months after discovery. He also noted that, with 180 days for discovery and a date for trial in excess of six months from discovery, the typical family court case has already exceeded the one year point. Mr. Dickerson requested Judge Gaston and Commissioner Henry's input on whether there has been any consideration in having the early case conferences heard in the presence of a settlement or a sitting judge, in an effort to limit the discovery time as much as possible. In this example, a settlement process would be initiated and, if it appears to be unresolvable within a six-month period, the current litigation process would begin.

Judge Gaston stated that Mr. Dickerson's example has been considered by the courts. In the model, the computer will produce a tickler at 60 days and 90 days after the answer. At that point, some of the judges will require an automatic, mandatory settlement conference 90 days after the answer is filed. In the judge's opinion, about 75% of the family court cases could be resolved in a timely manner if the litigants got together to discuss the issues at hand. Commissioner Henry added that the flow chart, which will be available to proper persons dealing in the court, is a very user-friendly system that will be the working ground for the development of a computer model with the ability to track every family court case at any point in time. She further explained that the model contains several triggering events which will alert the parties involved to proceed to the next stage of litigation. In this way, the court is less reliant on the litigants and the attorneys to ensure the case is proceeding in an efficient and timely manner.

Mr. Dickerson inquired about the family court judges' opinions on the issue of rotating judges through the civil, criminal and family courts. In addition to the rotation issue, he also asked Judge Gaston to provide the Subcommittee with suggestions on how to lessen the stress and contention so prevalent in family court. Judge Gaston, commenting on Mr. Dickerson's last request, stated that the family court has attempted to use alternative methods for dispute resolution such as mediation in the presence of a special master and settlement conferences. In response to the issue of rotating judges, he stated that it is important for the family court to have dedicated judges. Although he does see benefits in the rotation system, he stated that involuntary movement of the judges will not work. Judge Gaston explained that if a judge is unhappy in a particular court but cannot move to another court for six years, the decisions rendered by the judge might be affected by his or her unhappiness.

Assemblywoman Tiffany requested information on the ability of the current caseload management system to produce outcome measurements. Judge Gaston explained that the system currently being used, the "Blackstone" program, is inadequate in producing outcome measurements. The new computer program will allow access to case information at any given point in the litigation process. In response to Assemblywoman Tiffany's question, Judge Gaston explained to the Subcommittee that a county computer programmer and a "Blackstone" program representative have been working to incorporate the necessary changes into the current software. Judge Gaston, after talking to Charles Short, informed the assemblywoman that a $75,000 re-programming appropriation was made in September to allow the modifications to be implemented to the current computer system. The judge also advised the Subcommittee that the model currently presented may not be the model eventually adopted by the court. Assemblywoman Tiffany stated that, as the model is being updated, the Subcommittee must consider the cost issue between re-programming the current system versus purchasing a new computer system.

Chairman Buckley discussed further reducing the time periods in the flow chart, specifically reducing the time between the answer and the 16.1 early case conference to fifteen days and reducing the time to file the joint case conference report to fifteen days. She asked the panelists if any consideration has been given to shortening the times in this manner. In addition, Chairman Buckley commented on Commissioner Bigger's practice of issuing summons and imposing fines when the joint case conference report has not been submitted in a timely fashion and asked if the same practices are being utilized in the family court. Judge Gaston responded by stating that the model attempts to reduce as many time periods as possible without risking the litigant's right to due process and right to be heard in court. The inefficiencies, in the judge's opinion, occur when a case deviates from the main litigation line, not when it proceeds through the proper steps of litigation. In the current program, it is impossible to identify these lost cases. However, in the new proposal, these cases will be identified and returned to the main litigation line. Commissioner Henry stated that she is familiar with Commissioner Bigger's practices and agrees it is an effective system; however, she is unable to follow a similar system because she does not have adequate funding or adequate staff. Currently, Commissioner Henry relies on the attorneys and litigants to alert her to scheduling problems.

The Honorable Scott Jordan and Cathy Krolak

The Honorable Scott Jordan, Family Court Judge, Second Judicial District Court, and Cathy Krolak, Court Administrator, Second Judicial District Court, provided the Subcommittee with testimony on Washoe County caseload distribution statistics. In addition to submitting condensed statistics to each Subcommittee and advisory committee member (Exhibit C), Judge Jordan and Ms. Krolak also submitted their complete caseload data report (Exhibit D). Ms. Krolak began by discussing the court caseload distribution chart showing caseload history for the past twelve years, found on the first page of their information packet. The figures shown represent new case filings only. After a 6% growth in the family court from 1996 to 1997, the Washoe County family court received a third full-time family court judge, which considerably alleviated the per-judge caseload. Ms. Krolak continued with a discussion of the statistics on the pro per cases, found on page two of Exhibit C. She concurred with Dan Wiley's analysis of the Eighth Judicial District Court Family Division, which found pro per cases to be an increasing burden on the family court system. In the Washoe County family court in 1997, 3,436 pro per cases were filed, representing 40% of the new case filings in the court. This statistic has led the Second Judicial District Court to conduct a time study on the staff time required to assist pro per litigants. The study will include the staff time necessary to answer litigant questions, offer guidance and offer assistance in filling out forms. Moving to page three of their packet, Ms. Krolak cited the 1996 pro per case percentage as 41% of their new case filings. She discussed their findings on the clearance rate, the rate in which cases were filed and closed within the same year, of divorce cases in the five-year history of the family court. In 1993, the first year of existence, the Second Judicial District family court had a 56% clearance rate for divorce cases. This percentage was improved to a clearance rate of 73% in 1997.

Ms. Krolak continued with a discussion of the time to disposition for divorce cases. In a random sampling of over a thousand divorce cases in family court, the average time to disposition was 207 days, with 71% of those cases being disposed of in less than 180 days. The random sampling included a number of cases that were of significant age, which created an elevated average disposition time. The 1996 divorce case disposition percentage showed 83-84% of the cases were disposed of in less than 180 days. Referring to the final page of the packet, Ms. Krolak discussed the final graph depicting the age of the pending divorce caseload as of December 31, 1997, a representation of the current backlog, indicating 63% of the cases are 180 days old or older.

Ms. Krolak said that the caseload data presented in the information packet took approximately 40 staff hours to compile. She noted that the computer system was able to generate a significant portion of the packet, but the current caseload management system is inadequate for their needs. Although the cost will be significant, they are in the process of selecting a vendor for a new caseload management system. In the Second Judicial District, the individual departments are responsible for their caseload management system, not the court support staff. She continued with a discussion of the Montgomery County, Ohio jurisdiction, referred to in Judge Gaston's testimony. Ms. Krolak visited this court to observe their practices and found that the Montgomery County courts have a designated staff, responsible for ensuring that the judicial department and the attorneys are aware of what critical dates are approaching in a case. While the system seems to be successful, Ms. Krolak said she believed it would not be possible to replicate because of insufficiencies in staff and funding. In response to Ms. Peterson's question, Ms. Krolak clarified that their figures only represent new case filings and the chart figures do not represent the total workload of the court.

Assemblywoman Tiffany requested that the panel discuss the workflow differences between the case management in Clark County and Washoe County. Judge Jordan stated that the significant difference is in the handling of the case after the answer is filed. After the case answer is filed in Washoe County, the filing office pulls the file immediately and sends it to the judge assigned to the case. At this point, an order, which was automatically generated, is issued to bring the parties into court to set the case within ten days. The case is set for trial prior to the 16.1 early case conference or any other discovery procedure. Judge Jordan indicated, in his opinion, the largest gap in the current system is the time from the trial date setting to the date that the trial is heard. In addition to setting trial dates as quickly as possible, the Second Judicial District family court sets a mandatory settlement conference in every case, which is set at the same time the trial is set. Judge Jordan described the two roles the court must play in assuring that the cases are proceeding in a timely and efficient manner. First, the court must provide court rooms, judges and staff to avoid delays in processing cases. Second, the court must guide the cases through the litigation process. It is the responsibility of the court to act on cases that appear to be languishing in the system. Judge Jordan stated that the court may identify the cases which are languishing in the system in two ways: by receiving litigant complaints or by proactively addressing the tickled cases before they become mired in the system. The judge informed the Subcommittee that the Second Judicial District family court has proactively addressed these cases in 1997. The oldest open cases were examined and each case was reviewed by the court. Judge Jordan said that after the reviews were

done, an order was issued to either dismiss the case or to bring the parties back into court to proceed. Citing the 1997 figures in the "Times to Disposition" chart, Judge Jordan noted that 45 of the cases were more than 720 days old, cases which were proactively identified by the court. Judge Jordan explained that the statistics for 1996 and 1997 are different because the court identified and closed these cases in 1997, but he sees the 1996 figures as more accurately depicting the average disposition times. The judge also commented on Chairman Buckley's discussion of imposing sanctions when rules are not followed. He urged the Subcommittee to take caution in imposing sanctions because of the rule of "unintended consequences," meaning actions taken might result in unanticipated consequences. Judge Jordan said that the rule of "unintended consequences" may affect the issue of pro se legal representation. Because there is diversity in the complexity of cases and diversity in the litigants' assets and income levels, there is no distinct line between which cases are substantial enough to warrant lawyers, which parties are of sufficient means to warrant lawyers and which parties will require pro se representation. In the judge's opinion, the feedback he has received from the parties concerned with the family court in Washoe County indicates that imposing sanctions might deter lawyers from taking the marginal cases involving pro se litigants. Judge Jordan noted that the "unintended consequence" of imposing sanctions may be an increase in the number of unrepresented parties in the family court.

Mr. Dickerson inquired about the Second Judicial District Court rule with respect to setting the trial date and settlement conference within ten days of filing the answer. He asked the judge to clarify on whether this is set by special rule or by family court judges' policy in Washoe County. Judge Jordan informed Mr. Dickerson that this is a policy followed by all three judges. The judge did not have a copy of the rules in front of him to cite the specific rule number, but stated that there is a rule to direct when an answer is to be filed. By the policy of all three judges, Judge Jordan added that orders of referral to mediation are issued at the same time the trial is set.

Mr. Bushard requested the judge's comments on what he considers to be the core of the problems in cases that are active yet languishing in the family court system. In Judge Jordan's experience, financially complicated divorce actions, which more closely resemble corporate dissolution or civil financial actions, are examples of the type of case which may languish in the courts. The judge indicated cases involving child custody issues generally are not as long and can be put on the calendar more quickly.

Assemblywoman Tiffany requested the panel to discuss the caseload management software and their intentions to purchase existing software versus building a new system. Ms. Krolak indicated that the Second Judicial District Court is currently inquiring into purchasing a system that would be a base-model for their trial court system. This will give the family court an opportunity to re-engineer their work flow and make the necessary modifications to the program. In response to Assemblywoman Tiffany's question, Ms. Krolak also indicated that the family court has been studying the re-engineering process for some time, but has not considered interfacing their system with the NOMAD system. Assemblywoman Tiffany asked the panel if they had enough re-engineering study data to produce a presentation for the Subcommittee. Ms. Krolak informed the assemblywoman that the study has not compiled enough data to provide a presentation.

Thomas L. Leeds

Thomas L. Leeds, Esquire, Master, Eighth Judicial District Court, provided the Subcommittee with testimony on the processing of family court cases involving children and families and submitted written testimony on the same, titled "Testimony Before Legislative Interim Committee," Exhibit E. Mr. Leeds indicated his testimony will focus on cases involving children and families, which are processed outside the model presented by Judge Gaston. Mr. Leeds commended Dan Wiley for his report on the family court, but stated that the cases involving children and families were not studied for his report. He also informed the Subcommittee that, in addition to the families in litigation, the taxpayers of Nevada are also affected by the case processing in family court. Mr. Leeds strongly recommended that the Subcommittee consider two specific areas of legislation. First, require the courts to coordinate and integrate fully the cases heard by family court judges with cases involving domestic violence, child support and abused and neglected children. Second, Mr. Leeds recommended amending the Nevada child support guidelines to include the cost of day care, the responsibility of parents to support children of other families and the relative income of parents as part of the formula calculation, instead of as a deviation factor as it presently exists in Nevada law.

Mr. Leeds explained that one family may have up to four different files, representing four different cases in four different court rooms, all within the family court system. Because of this, the county clerk, Loretta Bowman, has created a color-code for different case types in the family court system:

Color Code Type of Case

Brown Divorce

Green Child Support

Black Temporary Protective Order

Orange Child Abuse and Neglect

Lavender Children Under Guardian Care

Mr. Wiley's report and Judge Gaston's presentation focused only on the brown-striped files, the divorce cases. As a hypothetical example, one family may have a pending divorce case with its court dates, a child support case with its court dates, a child abuse or neglect case and a temporary protective order case, in instances where there is indication of violence in the home. The judges, in turn, must review all of these cases when the family comes to court. In the current family court system, the possible combination of case types is a problem in itself, because there is nothing in place to coordinate these files with each other. Mr. Leeds provided another hypothetical example: In Clark County, if an abused or neglected child is removed from a home and placed in foster care, the case receives an orange stripe. While this child is in foster care, the family court juvenile judge or a juvenile referee will usually order the parent to pay child support. This order will remain in the orange-striped file or in the child abuse and neglect case file. In the meantime, the welfare division will open a case to obtain taxpayer-funded child support assistance to the foster parents caring for the child. The district attorney's office will open a separate case, green-striped, to file and serve the child support order on the parents of the child removed from the home. It is at this point that Mr. Leeds, as the child support hearing master, will receive the case and order the parent to pay the court-ordered child support. He indicated that by the time he receives a case, the case is always over a year old.

Mr. Leeds expressed his satisfaction with the passage of Assembly Bill Number 401 during the last legislative session. In addition to requiring support orders, it will allow the child support orders from any of the cases above to be filed in a central and single state case registry beginning October 1, 1998. As a supplement to Assembly Bill Number 401, Mr. Leeds urged the Subcommittee to consider legislation to require coordination and integration of all cases into a single, unified system. He also highlighted the importance of treating the children involved equally and efficiently, regardless of what type of case file originally brought that family into court. He reiterated his recommendation to the Subcommittee to consider legislation amending the formula by which child support is calculated to create consistency from case to case.

Chairman Buckley asked Mr. Leeds if there is a proposal to manage cases involving families and children to ensure they also receive effective and efficient attention. Mr. Leeds responded by explaining that Assembly Bill Number 401 channeled most of the responsibilities of processing support obligations from the courts to the administrative agencies, which, in itself, should streamline the process. In the model he will present to the Subcommittee at the next meeting, Mr. Leeds will recommend that in each case involving a child, regardless of the type of case, the presiding decision-maker will be required to ask three questions. First, does the child have a legally recognized father? Mr. Leeds' statistics indicate that 30% of the children in family court do not have a legally recognized father. Second, does the child have a means of support? Responding to Chairman Buckley's original question on case management, Mr. Leeds stated in his model, any case without a support order would be referred to the child support agency. Additionally, any case that contains a request for a protective order not already in existence would also be referred to the child support agency. The model will allow parents to address these needs without requiring their presence in the court. Third, does this child have a recognized relationship with both parents, subject to protection against domestic violence? Mr. Leeds' model would require any case without a pre-existing custody agreement to be immediately referred to mediation. Mr. Leeds noted that after the United States Congress passed the Welfare Reform Bill, the child support community found that fathers who are able to spend time with their children are more likely to pay child support. Mr. Leeds also indicated that federal funding for mediation in these matters is available. Summarizing his proposed model, Mr. Leeds stated that the three questions must be asked and then the families must be sent to the authority that is able to answer these questions.

Mr. Dickerson asked Mr. Leeds if case coordination and integration into a single, unified system would be more appropriately accomplished through the administration of the courts. If legislation is required, Mr. Dickerson

requested Mr. Leeds to comment on his knowledge of legislation used in other states. Mr. Leeds responded that the importance lies more in addressing the issues than in the method in which those issues are addressed.

Ms. Shipman requested Mr. Leeds to clarify his use of the term "integration," in the processing of family court cases. Mr. Leeds responded that integration of the cases, according to his proposal, would require communication between the presiding authorities of all of the cases involving one family to ensure that the three questions are being answered. This could be accomplished with an adjustment in the local policies rather than by a major overhaul of the system. In Mr. Leeds' opinion, this proposal would allow the family court judges to focus on the responsibilities they were elected to handle: resolving legitimate disputes, hearing appeals and settling property issues in divorce cases.

Senator Adler expressed his concerns with issuing immediate support orders without establishing visitation until the mediation conference or trial date is held. The senator asked Mr. Leeds to comment on his suggestion of issuing a temporary, standard visitation order in conjunction with the support order. Mr. Leeds indicated he is unable to assist support-paying parents who do not have legal access to their children because they must open a second case to obtain access. Mr. Leeds said he believes that the access time could be shortened by two to three months if the parents could be referred to the specialized services and professionals most able to assist them in dealing with support and visitation issues.

Senator Adler stated that he has received numerous complaints from constituents who are paying support without access to their children, a situation which is common in Nevada. Senator Adler suggested, absent domestic violence and other considerations, a temporary, standard visitation order with unlimited telephone access should be issued in conjunction with the child support order. Providing a parent with access to their children, in the senator's opinion, should lessen the animosity between the parties as the case proceeds. Mr. Leeds said that he agrees with Senator Adler's concerns but does not have the statutory authority to issue orders in regard to child visitation.

Chairman Buckley indicated child visitation issues will be a topic on the next agenda in March. Ms. Peterson suggested Mr. Leeds' lack of authority in child visitation issues also stems from federal laws governing this issue.

Dan L. Wiley, Dan L. Wiley & Associates, Inc.

Dan L. Wiley, Dan L. Wiley & Associates provided the Subcommittee with testimony on caseload management and timely processing of cases. Excerpts of his report can be found in Section IX of Exhibit A, "Legislative Commission's Subcommittee on Family Courts (A.C.R. 32)" information booklet. Mr. Wiley indicated he was retained to assist the family court in conducting a study of the organizational and operational procedures of the court. In his report, he strongly recommended the implementation of a case management program and the adoption of specific case management practices. In addition to Section IX of Exhibit A, Mr. Wiley also has supplementary information in Section V of Exhibit A, titled "Case Flow Management Overview." The materials presented by Mr. Wiley were created by the Institute for Court Management, a nationally recognized organization specializing in caseload management education for judicial officers and judicial management personnel. Mr. Wiley indicated he would highlight the more important fundamental elements.

The first fundamental principle in case flow management is firm judicial leadership. In Mr. Wiley's opinion, firm judicial leadership, along with early judicial intervention, are at the heart and soul of case management systems. Within these principles, Mr. Wiley emphasized several responsibilities the family court must assume in processing its cases. The court must take a fundamental responsibility to manage its cases in a way that promotes fair and timely resolution of the issues. Leadership must be used, at all levels of the court, in establishing practices, defining procedures, investigating problems and setting the pace and flow of cases through the system. He stated that he also feels that the court must be responsible for moving the cases effectively through the litigation process.

The second fundamental principle in case flow management is setting goals and objectives. Mr. Wiley recommended that the Eighth Judicial District Court's Family Division adopt the American Bar Association standards for case processing as a formal guideline. In addition to providing guidance to the family court, the American Bar Association standards will also provide a system of checks and balances to ensure cases are being processed as effectively and expeditiously as possible. Mr. Wiley stated that adequate, timely and accurate information is a crucial factor in an effective caseload management system able to provide judicial personnel with case status at any given point in time. He also concurred with the previous panelists on the issue of consistency and uniformity, specifically in areas such as continuance policies, dismissals for lack of prosecution, limitations on oral motions and sanctions for attorney non-

compliance. He noted that education and training of judicial personnel will be necessary in this area. In Mr. Wiley's opinion, the ability of a court to provide services effectively and efficiently is based on its case flow management system.

Mr. Wiley continued with a discussion of the Dayton, Ohio court system, previously discussed in Judge Gaston's testimony. He stated that the Dayton report consultants found several key elements in the effectiveness in that jurisdiction: mandatory mediation, strong judicial leadership, communication and uniformity among judicial staff, establishment of rules and guidelines, and early case conferences. The early case conference in Dayton also includes an early case analysis. A conference is established to set the hearings and guidelines and to identify any special circumstances that might complicate a case. Mr. Wiley has advocated early case analysis in his report to the Eighth Judicial District Court Family Division to identify and appropriately handle these cases at an early stage. Concluding his testimony, Mr. Wiley added two more key factors in the effectiveness of the Dayton system: pro se litigant programs and judge rotation. He added that a study of the Dayton court system has found that rotation has maintained a freshness in the judiciary.

Chairman Buckley requested Mr. Wiley to comment on his recommendation to create a bench book on standardization of procedures, because she had heard this task was stalled because of disagreement between the judges. Mr. Wiley deferred this question to Charles Short, Court Administrator, Eighth Judicial District Court. Mr. Short said that a group of judicial officers, headed by Judge McGroarty, recently released a draft bench book for the Eighth Judicial District Court. Judge McGroarty indicated to Mr. Short that they are currently accepting feedback on the draft until approximately February 1, and it should be ready for publication sometime during the month of February. Mr. Short stated that once the bench book is published, he will gladly share it with the Subcommittee and any other interested parties. He also informed Chairman Buckley that a majority of the family judges voted for the adoption of the American Bar Association caseload management guidelines in May 1997. At that time, the judges requested information on how to establish these standards, resulting in the presentation given to the Subcommittee by Judge Gaston and Commissioner Henry.

Chairman Buckley inquired if the standards are in place with a majority vote or if the standards are not being followed in the departments that did not vote to adopt. Mr. Short explained to the Subcommittee that a small group of court staff has been working collectively on the process of creating a workable plan to incorporate the standards into the system. Once a successful model is created which will be acceptable to all parties involved, the standards will be incorporated. He said that the standards were not yet in place.

Chairman Buckley asked Mr. Wiley whether his study considered the issue of the need for additional court resources, specifically in regard to the ability to enforce compliance with deadlines. Mr. Wiley informed Chairman Buckley that the issue of resource levels was not specifically addressed in his report. As a judicial staff level comparison, Mr. Wiley discussed the case management staff in the Eleventh Circuit Court, Dade County, Florida. In this jurisdiction, each judicial department has approximately two staff persons, specifically responsible for ensuring deadline compliance and checking on the progress of each case through the litigation process. In Mr. Wiley's opinion, this demonstrates the need in local family courts for additional resources to assist in effective management of cases.

In response to Ms. Peterson's question, Mr. Wiley stated, in his opinion, the family court should be able to incorporate the key elements of effective caseload management into its existing framework. Mr. Wiley added that he is an advocate of a strong central judicial administration with responsible judicial leadership. He continued by stating that the lines of authority should begin at the state judicial system and continue all the way through to the local court levels, through chief judges. Ms. Peterson also requested that Mr. Wiley comment on the effectiveness of judicial leadership when judges are elected. Mr. Wiley responded that the court in Dade County has a strong, central judicial leadership with elected judges and, in his opinion, the method by which a judge reaches the bench should not be a factor in the effectiveness of judicial leadership if the persons involved are committed to the judicial position and willing to work with others as a team.

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STANDARDIZATION OF COURT PROCEDURES

Shawn B. Meador and Kathryn Stryker-Wirth

Shawn B. Meador, Esquire, Woodburn & Wedge, and Kathryn Stryker-Wirth, Esquire, Jolley, Urga, Wirth and Woodbury, provided the Subcommittee with testimony on the standardization of court procedures. Mr. Meador began by informing the Subcommittee that he has a private practice in Reno and has practiced in the family law area for approximately ten years, before and after the adoption of the family court. His areas of practice have concentrated in Reno, Washoe County, the rural areas in Northern Nevada, and very rarely, Clark County. In Mr. Meador's opinion, improvements could be made in terms of additional funds and additional judges, but overall, the family court system in Washoe County is functioning extremely well. He urged the Subcommittee to carefully consider any modifications to the system that may, unintentionally, jeopardize the court in Washoe County.

Mr. Meador stated that he strongly opposes rotating judges to ameliorate the problem of judicial burn-out. One of the primary benefits of dedicated family court judges is the development of judicial expertise concerning the complex dynamics of families. He said he believes that this expertise cannot be learned in a two-year time frame. Mr. Meador stated he sees two distinct disadvantages to rotating judges: the loss of the judicial expertise previously mentioned and the fact that judges who preside outside the family court arena are not empathetic to the area of family law. In Mr. Meador's opinion, if judges are not satisfied with presiding in a family court, their opinions may be reflected in their decisions. Mr. Meador also gave the Subcommittee a comparison between the Washoe and Clark County procedures on trial date settings. In Washoe County, the trial date is set thirty days after the answer is filed, which forces the parties to proceed and prepare for the trial. In Clark County, the trial is not set at the beginning of the litigation process, which can cause a case to languish if the parties involved are not proceeding in a timely manner.

Ms. Stryker-Wirth began with a brief overview of her experience in the area of family law. She stated that she practices mainly in the family courts in Clark County and has been practicing in the area of family law for thirteen years. Ms. Stryker-Wirth applauded the implementation of the family court system and said that the family court has been a tremendous benefit to the community and is far more effective than the domestic referees previously used in Clark County. Ms. Stryker-Wirth concurred with Mr. Meador's opposition to rotation of judges. She stated that family law is an area that is either disliked or embraced by judges and attorneys. If judges who do not embrace family law are sitting on the bench, it may be, as Mr. Meador previously commented, very problematic. Ms. Stryker-Wirth concluded by cautioning the Subcommittee against overreacting to the media reports criticizing the family court system. She noted the importance of remembering that each family court case is unique and very fact-specific, and warned the Subcommittee that implementing changes to address such specific problems may actually create more problems.

Chairman Buckley commented on the numerous complaints from individuals and attorneys on the lack of consistency between courts as it relates to trial settings and requested the panelists' suggestions to remedy this inconsistency. Ms. Stryker-Wirth agreed that uniformity between the courts is needed, particularly in setting trials. Additionally, uniformity is needed in determining if a case can be settled or if it will be necessary to go to trial. She suggested implementation of uniform procedures setting mandatory conferences with the presiding judge in a case. Ms. Stryker-Wirth also suggested that, perhaps within the thirty day time frame for the early case conference, the attorneys and parties should be brought into court before the presiding judge to determine the complexity of the case. If a case is fairly complex, it will proceed to the next appropriate step in the litigation process. If it appears to be fairly simple, the case may be routed to a settlement judge for a possible early resolution. In the current system, if an attorney allows the time in which to hold the early case conference and file the joint case conference report to lapse, it will trigger a scheduling order to keep the case moving through the litigation process. However, if the attorney is negligent in this step, there is no stop-gap measurement in place to indicate that the case has stalled.

Mr. Meador explained that because the Washoe County family court system has only three judges, it is easier to adopt fairly uniform court practices, which is beneficial to both the litigants and the attorneys. Washoe County family court also has a triggering mechanism in place where, if the trial is not set promptly, the parties will get a notice from the court to set the case or appear and show cause as to why it has not been set. In Mr. Meador's opinion, this forces the trial date and motivates the parties to be prepared for the trial. All three Washoe County family court judges set the mandatory settlement conference at the same time the trial is set. Although some people oppose it for due process reasons, the family court judges preside over the settlement conferences in the cases. For the majority of cases, in Mr. Meador's opinion, having the judge preside over the settlement has been very effective.

Senator Washington expressed his constituents' concerns about the lack of legal services available for low-income litigants. He asked the panelists for their input on legal self-help centers and requested suggestions for funding these centers. Mr. Meador concurred with the senator's concerns and stated that one of the biggest problems in the area of

court accessibility is the lack of services available to litigants with limited financial resources. Mr. Meador indicated that more services were available to impoverished litigants than to the litigants with modest incomes who are not able to afford legal representation in complex cases, and that Washoe County is currently in the process of creating a package to assist litigants in more effectively representing themselves in court. To fund this process, Mr. Meador suggested the possibility of raising the divorce fee costs, but said he was not familiar enough with governmental finances to provide additional advice.

Ms. Stryker-Wirth informed the senator that a legal self-help center study committee has been formed in Clark County to gather information and provide recommendations to the court. Ms. Stryker-Wirth has had the opportunity to observe the Maricopa County, Arizona court system, which is fully computerized and funded, she believes, through court filing fees. In response to Senator Washington's request to include a representative from the Maricopa County court system, Chairman Buckley indicated that this topic will be included for discussion at the meeting on April 16.

Senator Adler remarked that motions are generally submitted on paperwork then sent to the judge for a decision, unless there is a request for an oral argument. In Clark County, however, a majority of the motions require a hearing. The senator asked the panelists for their comments on Clark County adopting the same policy as Washoe County to reduce the number of oral arguments. Ms. Stryker-Wirth indicated that this issue has been very controversial. Some practitioners want the opportunity to argue before the court on motions, while others feel it is unnecessary and inflates the cost of litigation. Ms. Stryker-Wirth said that she supports the elimination of oral arguments because it would lessen the litigants' court expenses, force the practitioners to be more accurate and more thorough in their pleadings and require everything to be presented to the court in writing. She also stated that oral arguments allow for the discussion of extraneous matters that were not raised in the pleadings, which can be disadvantageous at times. The oral arguments can be advantageous to litigants because it includes them in the process of litigation and it allows them to be in the court to hear the reasoning behind the judges' decisions. In very emotional cases, these advantages become very important to the litigants. Ms. Stryker-Wirth concluded by stating there are numerous pros and cons but from a financial viewpoint, eliminating the oral arguments would greatly reduce the cost of litigation to the parties involved.

Senator Adler questioned the necessity of oral arguments being held in every case rather than at the request of one of the parties' attorneys. Ms. Stryker-Wirth indicated there is a rule currently in place that requires the request of an oral argument by the attorneys, but, in her experience, it has been something which is always requested. She stated that the rule has not worked as originally envisioned. Senator Adler asked whether a request for oral argument had ever been denied. Ms. Stryker-Wirth responded that she has never had a judge deny a request for an oral argument.

In response to Chairman Buckley's inquiry, Mr. Meador indicated that in Washoe County a hearing is held in a custody motion, but other than that, most motions are decided strictly on paperwork. Although the litigants can request an oral argument, it is not done as a matter of course. If an oral argument is requested, it will generally be placed on a date far enough on the calendar for the judge to be available to hear it; however, in most cases, litigants do not want to incur the delay of requesting a hearing. It is an option available to litigants, and the judges are lenient in granting oral arguments because it is not done as a matter of course. Mr. Meador said that he thinks that the current system in Washoe County is very effective. The decisions are rendered promptly and it forces the attorneys to work effectively in preparing their paperwork because they will not get another chance to appear in front of a judge. Once the paperwork is submitted, the judge and his staff can review the case when time is available.

Mr. Dickerson, in response to Senator Adler's questions, stated the Clark County attorneys may prefer to have oral arguments as a rule because they believe the case will be less likely to slip through the cracks of the system and not be ruled upon. He requested that the panel supply the Subcommittee with the Washoe County time line between the filing of the reply with the court and the judge's rule on the motion. Mr. Meador stated, in his experience, routine cases will receive a decision on motion within two to four weeks, with the time frame being longer for more complex cases. Mr. Dickerson commented that in Clark County the period between the filing of the motion and the hearing is approximately twenty-one days, with one week of that time used for judicial review of the file.

At the request of Chairman Buckley, Bradley A. Wilkinson, Principal Deputy Legislative Counsel, summarized the results of an informal statewide family court questionnaire, prepared by the Subcommittee and sent to the attorneys practicing in the area of family law, Exhibit F, "Family Court Questionnaire," and Exhibit G, "Family Court Questionnaire Responses." In response to the first question, "Do you object to the court ruling on technical motions

without oral arguments? If not, why not?", a majority of the respondents indicated they did not object to the court ruling for several reasons: it is more cost effective for both the court and the litigants, it expedites the processing of the case and it is a duplication of the work already submitted to the courts in written materials. The minority who opposed the court ruling on technical motions without oral argument felt that oral arguments were still necessary to provide a forum in which the court can hear the arguments and receive a full understanding of the issues while allowing the litigants to be a part of the litigation process.

The second question, "What aspects of the court's practice and procedure are in most need of standardization?" received a wide variety of responses. Mr. Wilkinson indicated that the areas which were mentioned most often as being in need of standardization were the issuance of orders regarding alimony and child support and the practices of issuing ex-parte orders, temporary protective orders and orders shortening time. In addition, the responses indicated a need for standardization of court forms such as forms for financial declarations, requests for hearings and requests for trial settings.

To question number three, "What can be done to expedite the actual conduct of the early case conference and filing of the early case conference report?", most respondents stated that sanctions should be used more frequently when the parties are not in compliance with the rules. Other responses suggested that the procedure may be expedited by holding early case conferences telephonically. Several Clark County respondents cited favorably the time reductions proposed in the model presented by Judge Gaston and Commissioner Henry.

Question number four, "What practices in place in some departments of family court should be followed by all departments?" also drew a wide variety of responses. The majority of the responses stated that the court should follow the current rules already in place instead of adopting new, standardized rules. Other respondents suggested that the court should decide cases on the bench rather than taking them under submission.

The responses to question number five, "What can be done to expedite cases in the family court?", included many of the same responses to the previous questions: current court rules should be followed; eliminate oral arguments on technical motions; and adopt proposed modifications such as the one presented by Judge Gaston and Commissioner Henry. Overall, the most common response to this question stated that the efficiency of the family court can be improved by the addition of more law clerks, masters and judges.

Mr. Wilkinson indicated that there was not much variance in the responses received from Clark County, Washoe County, Carson City and the rural areas of the state. In the one area of variance, standardization of court procedures, Washoe County respondents indicated that the procedures were already fairly standardized by the three family court judges.

Chairman Buckley requested the panelists' comments on the survey responses. Ms. Stryker-Wirth stated it was a positive sign the attorneys in Clark County supported the elimination of automatic oral arguments. She discussed the topic of imposing sanctions and explained to the Subcommittee that this practice varies from court to court. As an example, some judges require a pre-trial memorandum to be filed before the calendar call. If it is not, sanctions are imposed and a donation is made to the county law library. Ms. Stryker-Wirth said that sanctions can be very effective in ensuring the progress of the case.

Senator Titus asked the panelists whether the expertise of elected family court judges outweighs the problem of judge burn-out. Mr. Meador reiterated that he and Ms. Stryker-Wirth are strongly opposed to the rotation of judges. In his opinion, the court will not only lose the expertise of the judges, but will also lose the empathy of the judges.

Mr. Dickerson commented on the statistics he received from Dennis Heatherington, Executive Director, Clark County Pro Bono Project. In Clark County, there are approximately 3,000 practicing attorneys. Of this number, there is a pool of roughly 300 attorneys available to handle pro bono family cases, indicating that an estimated 10% of the total attorney population is practicing family law. Mr. Dickerson presented the argument that selecting judges well-versed in the area of family law will limit the pool of people available for the position to 10% of the attorney population in Clark County. Rotating the judges, on the other hand, will extend that pool to the full population of practicing attorneys. Once in the position, the judge can acquire the appropriate expertise needed for that court. Mr. Dickerson requested the panelists' comments on this argument. Mr. Meador agreed with Mr. Dickerson that any competent attorney can learn the laws of the court, but said he felt that the judges must also have empathy for the cases and litigants. In his opinion, a judge will not acquire empathy for his cases and litigants unless the judge has

come into family court with a desire to work with family law. It can be extremely difficult on litigants and attorneys when the presiding judge has no interest in the issues at hand, in Mr. Meador's experience.

Senator Titus continued the conversation on empathy of judges and expressed her concern that the apparent lack of empathy in the family court is one of the reasons that the Subcommittee was created. Ms. Stryker-Wirth remarked that the Subcommittee may be faced with two issues, the complaints received by the Subcommittee and the actual problems in the family court system. She said she thinks the problem lies more in judge burn-out than a lack of empathy. Ms. Stryker-Wirth concurred with Mr. Meador's suggestion of decreasing the caseloads to alleviate some of the judge burn-out problems. She also expressed her disagreement with Mr. Dickerson's argument on increasing the pool of people available to preside over family court cases. Prior to the establishment of the family court, Ms. Stryker-Wirth had cases in which the judge insisted on settlement to clear his calendar for civil and criminal trials. She concluded by asking the Subcommittee to bear in mind that family court cases are very fact-specific and for every story there is another side to the story. Although there are problems in the court, the nature of family court cases will almost guarantee the party who did not prevail in court will walk away unhappy.

Senator Porter, noting the inconsistencies in procedure from department to department, voiced his doubts that procedures are being handled properly and asked the panel to comment on the plausibility of giving one judge the authority to be in charge. Mr. Meador indicated the Washoe County procedures are handled with uniformity among the three family court judges. Ms. Stryker-Wirth agreed with Senator Porter's assessment of the inconsistencies, but noted that this question would be more appropriately answered by the judicial officers of Clark County.

Mr. Dickerson commented on Senator Porter's concerns and indicated that the testimony provided to the Subcommittee during the two hearings have highlighted the need for a strong chief judge system, which is, in his opinion, a critical element in an effective family court system. He remarked that the Washoe County family court system is successful because the three judges are working together to provide consistency from court to court. He also commended the Washoe County family court judges on their process of setting the settlement conference at the same time the trial is set because it creates a deadline toward which the attorneys and litigants can work. Mr. Dickerson suggested that the settlement conference, if presided over by a family court judge, could resolve some of the issues early in the litigation process.

Mr. Dickerson suggested that there may be a possible constitutional problem of separation of powers if the Legislature attempts to dictate judicial procedures to the courts. He further stated that if there is a constitutional concern, the Subcommittee may want to consider providing a coalition between the Subcommittee and the courts to determine if more consistent policies can be implemented. Mr. Dickerson said that, if the Washoe County procedures can be emulated, Clark County will have a more efficient resolution of its cases. Chairman Buckley addressed Mr. Dickerson's concern by stating that the constitutional issue was discussed while Assembly Concurrent Resolution Number 32 was under legislative consideration. She further stated that although the Clark County family court system had sufficient time to implement standardized court procedures, the task was not being accomplished and the Legislature saw fit to take action. Even though the Legislature does not have the authority to dictate court rules, Chairman Buckley indicated it does have the authority to fund judges and to abolish the family court. She also added that the Subcommittee and the family court system can work conjunctively to suggest and implement reforms or the Legislature can take more significant corrective actions.

Mr. Meador clarified the process by which the settlement conference is set in Washoe County. The attorneys meet with the court clerk to set this conference, not with the judge. However, in the more complex cases, the judges are available to discuss the issues to determine the most effective way to handle the case. Mr. Meador suggested that if the judges in Clark County were able to focus on the important or contested motions, it would free up judicial time to allow the judges to participate actively in the management of the more complex cases.

Senator Adler suggested that a court rule should be established to require the attorneys in a child custody case to meet in the initiation phase of the case and enter into a stipulation on temporary child support and custody. If the matter cannot be resolved at this point, the parties should be required to appear in court to provide an explanation to the judge as to why the matter cannot be resolved. He stated that this system would be preferable to the current one where multiple motions are filed on child custody, support and visitation. The senator added that, in his experience, generally, the courts are cooperative and will implement parallel court rules to reflect statutory changes made by the legislature. Senator Adler requested panelist comments on his suggested temporary child support and custody changes.

Ms. Stryker-Wirth agreed with Senator Adler's suggestion and indicated that there is a fairly new rule which requires the attorneys to make a good-faith effort to resolve an issue with opposing counsel prior to the motion being filed. In her opinion, the rule has helped eliminate motions that would otherwise be filed and has allowed the parties to resolve issues, such as temporary child support and temporary child custody, early in the litigation process. Ms. Stryker-Wirth indicated that any effort to encourage early communication between parties will be helpful in the early resolution of cases. Mr. Meador informed Senator Adler that, in his opinion, conscientious attorneys will try to resolve as many issues as they can with the opposing counsel before appearing in front of a judge. He further stated it should be rare to have a motion on child support, but because the issues of temporary alimony, preliminary awards of attorneys' fees, and how and when such fees are awarded are so vague in the statutes, it makes early case resolution extremely difficult. Mr. Meador indicated that the judges have very little guidance on the issue of temporary child support awards, and, as a result, more motions tend to be filed in this area. Senator Adler agreed with Mr. Meador that the Nevada statutes regarding alimony are vague and cases with alimony issues will more likely require a hearing.

Senator Porter requested that the Subcommittee staff research the ability of the chief justice to provide authority to the local courts, specifically to assign a chief judge, under the current statutes of Nevada. In addition to Senator Porter's research, Chairman Buckley also requested the Subcommittee staff prepare a summary of standardized court procedure reforms that have received support from the family courts. She further explained that this summary will be reviewed by the Subcommittee at the next meeting, given to the family court for their comments and available for the Subcommittee's final work session.

Chairman Buckley stated that Charles Short and Christina Chandler, Court Administrators, Eighth Judicial District Family Court, are available to respond to Subcommittee questions regarding family court standardization of procedures. Senator Porter requested Mr. Short to provide the court staff's viewpoint on the question he asked Judge Gaston earlier: Does the model, presented by Judge Gaston, have support from a consensus of family court judges?

Mr. Short responded that, although there is conceptual support at the judicial level for a model that meets American Bar Association standards, the model presented will probably not be the one adopted and implemented because it has yet to receive input and support from the Clark County Bar. He indicated that the Clark County Bar, after their initial meeting with the Eighth Judicial District family court, will be providing their input and recommendations on changes to the proposed model in approximately two weeks. Once the Clark County Bar's comments and suggestions are incorporated into the model and the support of the bar is received, the revised model will go the judges, sometime in March, for their approval. At the point of adoption, the implementation process can begin. Until it receives the support of the family law bar, it will not be a workable model. Senator Porter expressed his concerns about the changes not being implemented without the acceptance of the Clark County Bar. Mr. Short explained the relationship between the family bar and the family court is a symbiotic relationship and the two entities must work together to be successful. In Mr. Short's opinion, if changes are forced upon either side, they may react in unanticipated ways that can slow down the litigation process. He remarked that changes must create a win-win situation for all parties concerned if the changes are to be successful.

Senator Porter agreed with Mr. Short's concerns in building a consensus of support in the family court, but stated that the goal of the Subcommittee should be focused on providing relief to the families in trauma not on making the system happy. Mr. Short responded by saying that the final goal of the model is to provide expedited litigation and to reduce the amount of time for a case to be processed through the family court system. In the end, these goals will reduce the cost of litigation and allow families to receive decisions quicker so they may move on with their lives. Mr. Short stated that petty disputes between the court and bar must be set aside to achieve these goals. As he stated during his previous testimony, access to justice for unrepresented litigants is fundamental. The court has set the creation of a pro se litigant program as their second priority and all twenty-four judges have authorized the use of a pro se litigant program. The next step is to bring the program to the county commission for funding. Mr. Short further indicated a consensus must be achieved for changes to be enacted because there is no strong chief judge system in place.

The Honorable Frances-Ann Fine and The Honorable Diane Steele, Eighth Judicial District Family Court Judges

The Honorable Frances-Ann Fine and the Honorable Diane Steele, Eighth Judicial District Court Family Division, appeared before the Subcommittee to respond to questions. In response to Senator Porter's question on consensus among the judges on the model, Judge Steele said that in her short experience as a family court judge, she has seen an increased effort on the part of judges to work together to provide solutions to the family court concerns. Although the

judges are in consensus on the need for improvements to the family court system, the model presented may not be the most effective way to achieve these improvements. In the judge's opinion, the pro per litigants will probably not have the legal understanding to follow the litigation process as presented in the model. Judge Fine concurred and stated the family court judges accepted the model's concept, but must also be understandable to all the parties involved, including pro per litigants.

Judge Fine commended Judge Gaston and Commissioner Henry's presentation, but stressed the importance of the flow chart being easily understood by all of the participants in the family court system. Judge Fine indicated that the concept of Judge Gaston and Commissioner Henry's model is accepted by the family court as well as the Clark County Bar. She further explained that because it must meet approval through a democratic process, all the participants must have a chance to provide input on the model.

Senator Porter requested that the judges comment on the issue of implementing a strong chief judge system. In response to the senator, Judge Fine first commended Judge Gloria Sanchez, the current Clark County family court presiding judge, for her ability to bring the judges and staff together to work as a team. In Judge Fine's opinion, the Clark County family court has room for improvement but is working more efficiently now than it has in the past. Senator Porter expressed his appreciation to the judges for their indication the system is working better than it has in the past, but pressed for their comments on whether the system would be improved if the presiding judge would have the authority of a strong chief judge. In Judge Steele's opinion, whether or not the system would be improved by a strong chief judge would depend on the type of person put into that position. She cited several factors that may affect that person's effectiveness as chief judge: ego, level-headedness and work ethic.

Chairman Buckley added that the mandatory mediation statute was initiated by a Subcommittee member, Senator Titus. The senator thanked the chairman and expressed her appreciation in hearing that mandatory mediation has been a successful addition to the family court system. Senator Titus continued by requesting that the panelists comment on whether or not a consensus will be reached in time to provide the Subcommittee with a model acceptable to all entities. Judge Fine informed the senator that it is the goal of the court to obtain acceptance by the Clark County Bar and to send it to the Supreme Court for their input. Judge Steele remarked that the more acceptable the model is to all involved, the more successful it will be in the end.

Judge Steele asked Chairman Buckley if the pro per litigants were able to provide input in the statewide survey on the family courts. She continued by stating that unless an oral argument is heard in cases involving pro per litigants, the judges cannot ensure that both parties are on equal footing in the litigation process. The chairman indicated that unrepresented litigants' input was not included in this survey, but the topic of pro per litigants and their needs will be discussed in the April meeting.

Chairman Buckley indicated the need for improvements in the family court system has been expressed by the public for quite some time, and it is the goal of the Subcommittee to recommend necessary reforms to the family court system and ensure those reforms are implemented in a timely manner. Chairman Buckley stated that either the reforms will be implemented based on suggestions from the family court or it will be implemented based on the suggestions of the Subcommittee, regardless of consensus among family court entities. The chairman further stated that the public can no longer wait for reforms and neither can the Subcommittee.

Senator Washington responded to Judge Steele's comments on the chief judge position. He indicated that it would be up to the discretion of the family court judges to select a chief judge based on the qualifications and standards earlier cited by Judge Steele and asked the judges to comment once again on the idea. In Judge Steele's opinion, the election of a person to serve as chief judge can have disadvantages that may not come to light until the person is already sitting on the bench.

Because family court cases are unique from case to case, Judge Steele urged the Subcommittee to approach implementation of standardized court procedures very cautiously. The family court deals with the closest issues in a litigants' life: their family, their children, their money, their future. Sometimes, the judge stated, the court has three minutes per family to deal with these issues. In her opinion, it will be a disservice to families to force them into a mold set by standardized court procedures. Judge Steele said that she supports the Washoe County procedure of quickly setting a trial date after an answer is filed.

In response to Senator Washington's concerns over cases which have languished for extensive periods without a

decision being rendered, Judge Steele said that some of these parties have been in litigation longer than needed. Mr. Dickerson requested Judge Steele's comments on whether Clark County has considered implementing Washoe County procedures such as settlement conference and trial setting. Judge Steele agreed that settlement conferences are an effective tool in early resolution, but because of time constraints, she usually sets them at the request of one of the parties as opposed to mandatorily in every case. She also concurred with the statement made earlier that it is much more effective to have the case judge also be the presiding judge at the settlement conference.

Judge Fine stated it has been her goal to incorporate some of the Washoe County procedures into her court room. She explained to the Subcommittee that she spent several days in Washoe County family court, observing the procedures that were followed. Judge Fine said that she has incorporated automatic settlement conferences for cases expected to last more than three hours. To incorporate the Washoe County court procedures in Clark County, however, would require judicial consensus, recommendations from the Subcommittee and, possibly, the Washoe County family judges working conjunctively with the Clark County court administration offices. Judge Fine stated it was her understanding that all of the departments automatically generate a scheduling order to set the trial after the early conference report has been filed.

From his experience with the state bar, Mr. Dickerson disagreed with Senator Porter's comments on the family court emphasizing reforms to appease the judges and attorneys. He stated it would be false to lead one to the impression that the judges are allowing the attorneys to dictate court procedures. Judge Fine concurred with Mr. Dickerson's comments.

Senator Porter stated that Clark County has been behind other jurisdictions in providing access to its unrepresented litigants. As a comparison, he described the Maricopa County, Arizona process where a kiosk is available to litigants to provide them with proper judicial access and administrative guidance. He requested the panelists comment on if they see a restriction on court access due to family bar influence. Judge Steele disagreed with the idea that the family bar's influence has helped to restrict access for unrepresented litigants, but said that access to the courts must be improved because many unrepresented litigants do not have enough legal knowledge to process their cases. The attorneys, in Judge Steele's opinion, would welcome such assistance for unrepresented litigants because it will alleviate some of the inaccuracies in the cases and give these litigants a more equal footing in the court. The judge emphasized, however, that the staff providing assistance must also be accountable for the accuracy of the information that they provide. She said that there have been times when she has had to return documents because the typing service changed documents already notarized or paralegal services forged litigant signatures causing unnecessary delays in the case.

Senator Porter continued by discussing his concerns on the funding of a pro se clinic. He said it is his understanding that a pro se clinic has been under consideration for years, but seems to leave the budget process before it can be implemented. He further stated he has heard several sources indicate there is influence from the family bar to impede the implementation of the pro se clinics because it does compete with the legal profession. Senator Porter requested information from the family court on the history of the attempts to implement a pro se clinic in Clark County.

Chairman Buckley requested that research be compiled and provided to the Subcommittee concerning the history of the courts' involvement with regard to pro se clinics. In addition, Senator Porter requested information on whether the pro se assistance provided by on-site staff is generally administrative aid or legal counsel. Judge Steele also recommended that the Subcommittee analyze the budgetary issue of whether funding is more appropriately received from the judicial branch, the county or the state budget. She expressed her concerns that there might be a conflict of interest issue to consider when funding assistance for litigants on one side of a court case. Chairman Buckley summarized the requests from Subcommittee members and also requested that different approaches to providing services to unrepresented litigants be researched.

Judge Fine addressed Senator Porter's budgetary concern by noting that the judges are all in favor of the implementation of pro se clinics and have recommended the county include the cost of implementing the clinic in their budget. Judge Fine continued with a discussion of the Maricopa County, Arizona family court system. First, the judge informed Senator Porter that the kiosk receives little use because it does not work. The judge described the Maricopa County, Arizona family court building as being very user friendly with directional signs pointing the litigants to the proper floor and room for the services they need. Inaccuracy in the court filings by unrepresented litigants, Judge Fine indicated, is a common reason for delays in court proceedings.

Mr. Dickerson commented on Senator Porter's concerns of the lack of access to justice in the family court system. In Mr. Dickerson's opinion, one of the most effective family court systems is in Maricopa County, Arizona. Additionally, he suggested to Chairman Buckley that the Subcommittee might consider asking a Maricopa County family court representative to be in attendance at the next meeting. Mr. Dickerson noted the presence of Dennis Heatherington, Executive Director, Clark County Pro Bono Project, in the audience. He further commented that the Pro Bono Project has assisted many people who cannot afford legal services because of their low-income levels. In addition to the Clark County Pro Bono Project, the State Bar has also established the "Moderate Means Committee," a group of lawyers offering their legal services, at a reduced cost, to litigants who may not qualify for assistance from other organizations.

Senator Porter stated it is his understanding that litigants in the juvenile court have a difficult time finding pro bono representation and asked Mr. Dickerson to address this issue. Mr. Dickerson agreed with the senator's assessment. Citing Mr. Heatherington's figures of 300 out of 3,000 attorneys practicing family law in Clark county, he indicated that of the 300, the number of attorneys handling juvenile family matters would probably be very minuscule. The Bar consists of approximately 5,000 attorneys statewide, 80% of which are either sole practitioners or partners in a firm of three attorneys or less. Mr. Dickerson told Senator Porter that consideration must be given to the issue of the number of pro bono cases an attorney can take and still be able to afford to feed his family. Senator Porter stated his concern is focused more on the lack of access for the children in juvenile court than the shortage of juvenile pro bono attorneys. Chairman Buckley indicated this issue, as well as the pro se clinic, will be discussed in depth at the Subcommittee meeting in April.

Chairman Buckley indicated that, in her experience, for every pro bono case accepted, an attorney will turn away one hundred other pro bono cases. Although there is a core of attorneys who do provide these services, many attorneys do not perform any pro bono work. Some of these issues will be under consideration by the "Access to Justice Committee," established by the Supreme Court, which includes Chairman Buckley and a representative from the State Bar as sitting members. The issue of pro se assistance being provided by law students from the new law school will also be a topic of discussion. Chairman Buckley noted that the Dean of the new law school has already taken the issue of mandatory community service for all law students under consideration, and Clark County Legal Services, the chairman's office, has offered the supervisory assistance of their attorneys to law students providing legal services.

In response to Senator Porter's concerns, Judge Fine clarified that indigent juveniles receive representation from public defenders. If the parents do have limited funds, she indicated that there are services available for a lesser amount, as described by Mr. Dickerson. The judge also informed the Subcommittee that there is a substantial wait to receive a Pro Bono Project in-take appointment to determine if the litigants can qualify for services. Senator Porter stated, from his conversations with people in the legal profession, there is a problem in providing assistance to juvenile litigants. He expressed his disappointment over the information he has heard in the last two meetings and cautioned that if the problems of the children are not met today, these problems will escalate into far more serious problems in the future.

Judge Steele strongly urged the Subcommittee to research the costs of implementing a pro per center versus the cost of the adding more judges, staff and facilities to the family court, because additional judges will be necessary if a pro se clinic is not approved.

Dr. Steve Riddell responded to an earlier question regarding the number of unified court systems. He informed the Subcommittee that there are approximately ten to twelve unified family courts in the nation, with another twelve to fifteen states considering implementation. Among the states with unified court systems, the most recognized and respected systems are located in Hawaii and Rhode Island. In addition, Dr. Riddell cited New Jersey and Delaware as also having effective unified court systems. He continued by informing the Subcommittee that the National Council of Juvenile and Family Court Judges, by policy, is a strong proponent for the unified family court system.

On the issue of bench books, Dr. Riddell informed the Subcommittee that the National Council of Juvenile and Family Court Judges has a number of highly-lauded bench books currently available on issues such as dependency, abuse and neglect and improving court practices relating to issues of family violence. Additionally, with the funding assistance from national adoption foundations such as the Dave Thomas Foundation for Adoption, the National Council is currently working on a bench book on adoption. Dr. Riddell informed the Subcommittee that the National Council is going to convene a national symposium on the unified family court; unfortunately, it isn't scheduled until mid-1999.

In regard to the earlier discussion on the Maricopa County, Arizona family court system, Dr. Riddell told the Subcommittee that the presiding judge of that jurisdiction is a current member of the National Council. He further stated it he would be glad to make this judge available for the next meeting, either in person or by videoconference, at the Council's expense. Dr. Riddell mentioned that Judge McGroarty, in addition to providing assistance in the creation of the Clark County court procedure bench book, is also assisting the Council in the creation of their bench book on court procedures.

Dennis Heatherington

Dennis Heatherington, Executive Director, Clark County Pro Bono Project, provided the Subcommittee with an overview of the pro bono services in Clark County and responded to Subcommittee questions. Mr. Heatherington explained that the Clark County Pro Bono Project, currently in its thirteenth year of operation, provides free legal services to low-income litigants in civil matters. During 1997, the Pro Bono Project was contacted by 12,000 litigants seeking assistance. Of the 12,000 litigants, approximately 10,000 received some level of legal assistance, most commonly in the form of information and referral. The Pro Bono Project was able to provide legal representation to 332 litigants during 1997. Mr. Heatherington emphasized that the legal representation was provided by attorneys volunteering their services because the Project does not have any attorneys on their staff.

Mr. Heatherington stated that despite the high expectations placed on the judges, he has not met a family court judge who was not dedicated to the area of family law. He acknowledged that the family court does have problems, but remarked that it is relatively new and suffering from "growing pains." In Mr. Heatherington's opinion, another factor in the ongoing problems of the court that has been neglected is the litigants themselves. To illustrate the situation, he stated that the Pro Bono Project can only assist a small percent of the 12,000 litigants who come to them for assistance. Currently, the appointments for interviews of the litigants pre-screened by telephone are being set into March and April. Of the litigants who have an appointment to be interviewed, Mr. Heatherington said that approximately 25% will not show up for the interview nor will they contact the Project to reschedule. He remarked that a "no-show" client is unfair to his staff setting the interview appointments and unfair to the other litigants who legitimately wish to receive assistance. In addition to "no-show" clients, another problem faced by the Clark County Pro Bono Project is "failure to cooperate" clients, litigants accepted for attorney representation who do not keep their appointment with the attorneys, do not return the attorneys calls, and in the worst case, do not show up on court dates. Mr. Heatherington estimated six to ten "failure to cooperate" clients per month must be written off. He further stated that "no-show" and "failure to cooperate" clientele may deter attorneys from accepting pro bono cases.

Mr. Heatherington said that he has learned that the general public, by and large, has very little understanding of the court and legal system. He also expressed his concerns over the litigants who are seeking revenge instead of resolution in their case. Mr. Heatherington also indicated that streamlining of the system, shortening the time for some processes and uniformity and consistency are needed in the family court system. In closing, he stated his opinion that the family court is working much better than the perception one would receive from the litigants and the media reports on the system.

PUBLIC TESTIMONY

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

Al DiCicco, Director of The Coalition For Family Court Reform, submitted to the Subcommittee the February 1998 issue of his coalition newsletter, written testimony submitted in correspondence to the Legislative Counsel Bureau, and three editorials written by Mr. DiCicco for the "Las Vegas Sun" Internet web site, Exhibit H. Mr. DiCicco began by giving the Subcommittee some information on his coalition. The Coalition For Family Court Reform organization, created in 1997, is a coalition of family court litigants with complaints and suggestions on the reform of the family court system. He stated the coalition is currently working on reform proposals to submit to the Legislature. In Mr. DiCicco's opinion, the experts on the family court system are the family court litigants and they have not been given enough opportunity to speak on the issues. He further stated that accountability of the judges is also an important issue in the reform of the system. Mr. DiCicco also made remarks regarding his child custody case. Currently, all of his children are currently being diagnosed as possibly having Attention Deficit Hyperactivity Disorder. He further

informed the Subcommittee that his children are receiving medications such as Dexedrine, Zoloft, Tenex and Buspar. Mr. DiCicco's case is currently under appeal, and he stated the appeal process is extremely expensive. As an alternative to the appeal process, he suggested giving more authority to the Judicial Discipline Commission to intervene in cases. In addition to added authority, Mr. DiCicco also suggested adding a judicial discipline branch to the Clark County area. He concurred with Mr. Leeds' assessment of the need for consistent calculation in the formula for child support. Mr. DiCicco further stated the non-payment of child support and non-compliance of visitation orders should receive equal reprimand by means which don't require the filing of court orders. To benefit the children involved, Mr. DiCicco suggested giving parents and grandparents incentives to take care of their own children instead of relying on day care facilities. On the issue of judicial burn-out, Mr. DiCicco cautioned the Subcommittee not to confuse judicial burn-out with judicial incompetence. In closing, he stated the family court needs true advocates that are concerned with the well-being of the children, not in using the family court as a stepping stone to the next judicial position.

Talia Zeer submitted written testimony on her child custody case and a "Las Vegas Sun" article titled, "9-Year Old Caught in Own Iraqi Squabble," dated January 18, 1998, Exhibit I. Mrs. Zeer provided the Subcommittee with background on her child custody case involving her adopted nine-year old daughter. Although Mrs. Zeer and her husband have been the only family in her daughter's life, her daughter is in jeopardy of being forced to return to Baghdad to the biological parents she does not know. Mrs. Zeer stated she is concerned because her daughter is lagging behind the other children in school. Reading from her written testimony, Mrs. Zeer informed the Subcommittee that in spite of the fact that the adoption consent papers were witnessed as being signed and notarized, the biological parents claimed they did not realize they were signing adoption papers eight years ago. She urged the Subcommittee to review her daughter's case in her written testimony. Mrs. Zeer stated if other parents decide to claim ignorance in signing adoption papers, other children will be in jeopardy, too.

Lee Ann Luttrell, in addition to submitting written testimony, Exhibit J, provided the Subcommittee with information on her divorce case, currently before the Nevada Supreme Court. During the last legislative session, Ms. Luttrell indicated she submitted written testimony to the legislative committee studying family court problems. Since that time, however, she stated she has seen no improvements in the family court system. Ms. Luttrell outlined the difficulties she has encountered in obtaining a divorce after her twenty-seven year marriage ended. In summary, Ms. Luttrell informed the Subcommittee that appealing a case is not affordable to the average litigant in family court. In her experience with the family court system, she has received no assistance in filling out court forms. Additionally, she was not able to receive pro bono services from the Clark County Pro Bono Project because she previously had an attorney whom she believed was "misrepresenting her" in court.

Douglas I. Carley provided the Subcommittee with testimony on his divorce and child custody case and submitted an editorial he wrote for the "Las Vegas Review-Journal," titled "Fixing Family Court: Back-Room Deals, Gender Bias Are Problems," Exhibit K. Mr. Carley, in response to the previous discussions on the appeal process, concurred with the statements that the process is far too expensive for most litigants to pursue. Because of his ex-wife's history of extremely violent behavior towards both him and his children, Mr. Carley filed for a temporary protective order and after violating the order, she was arrested. He detailed an incident which occurred at the children's day care facility in which she forcefully entered the facility and assaulted several people, including himself and several children. At the time of his beating, he suffered a heart attack and had to undergo bypass surgery. After an initial Family Mediation and Assessment Center report in his favor, a second less favorable report was issued and his ex-wife received temporary custody of the children. In addition, he stated that Judge Sanchez allowed his ex-wife back into the house which led his attorney to suggest to Mr. Carley that he move out of his house for his own protection. In summarizing his testimony, Mr. Carley strongly urged the Subcommittee to implement safeguards to prevent out-of-court dealings between court staff and litigants.

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. While Mr. Gaule agreed the family court judges face numerous difficult decisions, the families involved in the cases are the ones in need of assistance. In closing, Mr. Gaule stated it has been his experience that the party with the most expensive representation will usually win the court case.

Steven Dempsey provided the Subcommittee with testimony on his experience working on family court cases. Mr. Dempsey began by voicing his disagreement over the perception of the experts of family court being the family court judges and staff. In his opinion, the experts are the families which are going through the system. Although he

graduated from Western State, San Diego, California with a law degree, Mr. Dempsey stated his growing distaste for law has deterred him from practicing his profession. He further explained that his distaste for the legal profession stemmed from his involvement in a divorce case he worked on in law school. At the time Mr. Dempsey and his law professor received this case, the wife was working with her fourth attorney and the couple was forced to file for bankruptcy. In his opinion, this illustrates the problem of lack of attorney accountability in the family court system. Mr. Dempsey also suggested drug testing for all judicial officers. In regard to Judge Fine's discussion on the inaccuracies in pro per filings, he mentioned case law which indicated the pro per litigants are not held to the same standard as other professional court personnel. In summary, Mr. Dempsey stated that the family court judges, staff and attorneys have a vested financial interest in maintaining the system as it currently stands.

Pat McMillan provided the Subcommittee with testimony on his experience as a contact investigator for the Department of Justice. Mr. McMillan suggested the Subcommittee research to see which attorneys win cases in the family court. In his opinion, he stated there is a core of attorneys winning the majority of family cases. Mr. McMillan, concurring with Mr. Dempsey, also stated the party which prevails in a case will usually have the more powerful, higher paid and better connected attorney. He also concurred with the comments on the need for accountability for family court judicial officers and staff. Mr. McMillan stated that the Judicial Discipline Commission is more focused on damage control than in helping the users of the court system. In conclusion, he also suggested drug testing the judicial officers.

Mark LePage provided the Subcommittee with testimony on his ongoing divorce and child custody cases. Mr. LePage began by stating his is one of the "lost cases," which have been languishing in the family court since August 1992. Mr. LePage has produced evidence on numerous occasions showing his ex-wife to be an alcoholic, emotionally unfit mother. However, when she appeared intoxicated and five months pregnant in front of the court, he indicated that Judge Marren refused to subject his ex-wife to a blood alcohol test because it was too invasive and cautioned her not to appear in court intoxicated again. After three years, Mr. LePage stated he received a date for an evidentiary hearing. Shortly thereafter, Judge Hardcastle replaced Judge Marren, who was transferred to juvenile court. During this three-year time period, Mr. LePage filed a motion to have his ex-wife held in contempt for noncompliance with court orders. Mr. LePage informed the Subcommittee that the judge refused to review the files and told the litigants to settle the situation among themselves. Although his daughter is emotionally and physically abused and in need of psychological help, his ex-wife refuses to give her permission to allow his daughter to seek psychological attention. Additionally, the court has offered no assistance by issuing an order to require this attention be sought. Mr. LePage also stated that Judge Hardcastle refused to acknowledge a verbal order between himself and his ex-wife and issued a contempt charge on Mr. LePage when he could not deliver the written order to the court. He indicated this is the step at which his litigation is currently: If he returns to the court, Mr. LePage will be required to serve the remainder of his contempt charge time. At this time, the only recourse he has is the appellate process, which he cannot afford to do. Mr. LePage strongly urged the Subcommittee to implement changes which will force the family court to focus on the needs of the children rather than the needs of the two litigants.

Responding to Mr. Dickerson's request to offer specific suggestions to prioritize the need of the children, Mr. LePage told the Subcommittee that the children must be represented by a person, with no affiliation to either party in the case, specifically focused on the best interests of the child. If there is a situation of contested custody which does not appear to be resolvable in a settlement conference, there must be a thorough home investigation, including investigations into the home environment, the neighborhood and the neighbors. Both parents should be subjected to a thorough psychological evaluation, either by psychiatrist or psychologist. Mr. LePage emphasized the evaluation must be conducted by one mental health expert to evaluate properly and impartially both parents. He acknowledged this system will be more costly, but, in his opinion, it would create a more effective product and may result in less contention in the family court. Mr. LePage remarked that the system in place prior to the family court was much more thorough in its investigations than the current system.

Carolyn Williams provided the Subcommittee with testimony on her divorce case, which began in April 1994 and is still in front of the courts. Ms. Williams described the increasing financial strain her divorce case has put upon her and her eighty-five year old mother since its inception in 1994. She has retained her seventh attorney, is currently accepting welfare and food stamp assistance and has lost her community property. Ms. Williams' case is being appealed in the Supreme Court.

Dana Lynn provided the Subcommittee with testimony on her experiences in the family court. She stated her family court case is in its fifth year, and she is currently representing herself. Ms. Lynn indicated her self-representation was

necessary after her first two attorneys' efforts destroyed her case. She suggested that the Subcommittee consider the issue of judge and attorney accountability when working on the reforms to family court. In Ms. Lynn's opinion, attorneys are not following through on the discovery process despite claiming to do so. She further suggested that the Supreme Court decisions on family court cases must be rendered in a more timely manner. Concurring with early discussions, Ms. Lynn also recommended regular and random drug testing of the judicial officers and the attorneys. She further informed the Subcommittee that the family court would be improved by the elimination of no-fault divorces. In closing, she expressed her strong opposition to the attorneys working in the family court who have continually worked to sabotage the rights of the individuals seeking justice.

There being no further business, the meeting was adjourned at 4:30 p.m.

Respectfully Submitted,

Emiko Mitchell

Committee Secretary

Approved:

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Assemblywoman Barbara E. Buckley

Chairman

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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 nine sections:

- Section I: List of Subcommittee Members, Staff and Advisory Committee Members
- Section II: Assembly Concurrent Resolution Number 32 (1997)
- Section III: 1998 Revision of the Rules of Practice for the Eighth Judicial District Court Related to the Family Division
- Section IV: General Information Concerning the Family Court, Clark County Bar Association's Practitioner's Handbook

- Section V: Caseflow Management Overview
- Section VI: Rules of Practice for the Second Judicial District Court of the State of Nevada
- Section VII: Article from "The Writ"
- Section VIII: Las Vegas Sun Newspaper Article—December 13, 1997
- Section IX: September 1997 Report by Dan L. Wiley & Associates: Excerpts Concerning Caseload Management and Timely Processing of Cases

Exhibit B is the informational packet provided to the Subcommittee for the presentation of the Honorable Robert E. Gaston, Family Court Judge, Eighth Judicial District Court, and Commissioner Jennifer Henry, Master, Eighth Judicial District Court, titled "Eighth Judicial District Court Family Division Proposal for a New Logical Model to Expedite Contested Litigation."

Exhibit C is the condensed statistical data report used during the presentation made by the Honorable Scott Jordan, Family Court Judge, Second Judicial District Court, and Cathy Krolak, Court Administrator, Second Judicial District Court, on Washoe County caseload distribution statistics. This report, condensed for distribution to the Subcommittee members, staff and advisory committee members, was submitted in conjunction with Exhibit D, the complete statistical findings on the Washoe County caseload distribution.

Exhibit D is the complete statistical data report prepared by the Honorable Scott Jordan, Family Court Judge, Second Judicial District Court, and Cathy Krolak, Court Administrator, Second Judicial District Court, on Washoe County caseload distribution statistics. This complete report was submitted to the Subcommittee in conjunction with Exhibit C, a condensed version which was distributed to the Subcommittee members, staff and advisory committee members.

Exhibit E is the written testimony of Thomas L. Leeds, Esquire, Master, Eighth Judicial District Court, titled "Testimony Before Legislative Interim Committee," detailing the procedure for processing of family court cases involving children and families.

Exhibit F is the survey titled "Family Court Questionnaire" prepared by the Subcommittee staff for distribution to attorneys practicing in Carson City, Clark County, Washoe County and other rural counties in Nevada. This survey was used in conjunction with Exhibit G, "Family Court Questionnaire Responses," in the presentation by Bradley A. Wilkinson, Principal Deputy Legislative Counsel concerning the survey responses.

Exhibit G is the attorney responses to the "Family Court Questionnaire," Exhibit F. The attorneys' submissions were used for survey response analysis in the presentation made by Bradley A. Wilkinson, Principal Deputy Legislative Counsel.

Exhibit H are the items submitted by Al DiCicco, Director of The Coalition For Family Court Reform, detailing events in his child custody case. Exhibit G includes:

- A letter dated January 20, 1998, to the Legislative Counsel Bureau, from Al DiCicco. This correspondence details the psychological and medicinal treatments his children have received during the course of his child custody cases in Nevada and Illinois. Attached to this correspondence are two letters from Ronald H. Rottschafer, Ph.D., Clinical Psychologist, to Thomas Kelley, Esquire, dated February 2, 1992 and October 8, 1992.
- The February 1998 edition of his "Coalition For Family Court Reform" newsletter.
- Three editorials written by Mr. DiCicco and posted on the "Las Vegas Sun" Internet web site, dated and titled as follows:
    a. July 19, 1997: "Letter: Family Court consultant didn't talk to litigants."
    b. August 23, 1997: "Letter: There are hidden reasons why parents flee with their kids."

c. December 2, 1997: "Letter: Family Court needs judges who are advocates of children."

Exhibit I is the written testimony provided by Talia Zeer, detailing the child custody case concerning her adopted daughter possibly being returned to her biological parents in Baghdad, Iraq. In addition to her written testimony on her case, Ms. Zeer submitted an article from the Internet web site for the "Las Vegas Sun," January 18, 1998, titled "9-year-old Caught in Own Iraqi Squabble."

Exhibit J is the written testimony provided by Lee Ann Luttrell, "Case Currently In the Supreme Court of the State of Nevada: Lee Ann Luttrell v. Richard D. Luttrell," detailing the difficulties she has encountered in her divorce case.

Exhibit K is an editorial written by Douglas I. Carley and published by the "Las Vegas Review-Journal", dated July 11, 1997, titled "Fixing Family Court: Back-room Deals, Gender Bias are Problems." In addition to the editorial, Mr. Carley included a second page to his editorial detailing his divorce and child custody cases, which was not published by the "Las Vegas Review-Journal."

Exhibit L is the "Sign-In Sheet."