



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO  
*Attorney General*

KEITH MUNRO  
*Assistant Attorney General*  
GREGORY M. SMITH  
*Chief of Staff*

May 1, 2013

The Honorable Jason Frierson, Chair  
Assembly Committee on Judiciary  
Nevada State Assembly, Room 3121  
401 S. Carson St.  
Carson City, NV 89701-4747

Re: SB 27

Dear Mr. Frierson:

The Office of the Attorney General requests your support for SB 27. This bill clarifies the authority of the Attorney General or the chief legal officer of a political subdivision to appear in a civil action to defend a state or local judicial officer or employee who sued for certain acts or omissions related to their public duties or employment.

The duty of the Attorney General or the chief legal officer of a political subdivision to defend certain state or local officers in civil actions originates in NRS Chapter 41. NRS 41.0339 provides, in pertinent part:

The official attorney shall provide for the defense, including the defense of cross-claims and counterclaims, of any present or former officer or employee of the State or a political subdivision, . . . in any civil action brought against that person based on any alleged act or omission relating to the person's public duties or employment [under certain conditions].

There is some ambiguity with regard to the responsibility of the Attorney General or the chief legal officer of a political subdivision to represent and defend state or local judicial officers and employees in such circumstances.

Telephone 775-684-1100 • Fax 775-684-1108 • www.ag.state.nv.us • E-mail

Assembly Committee: Judiciary  
Exhibit: E Page 1 of 3 Date: 05/03/13  
Submitted by: Catherine Cortez Masto

Exhibit V -ACAJ  
Document consists of 12 pages.  
Entire exhibit provided.  
Meeting Date: 3-23-14.

This ambiguity can be attributed in part to the fact that the judicial power of the state is vested in our court system pursuant to Nev. Const. Article 6, § 1, and the judiciary exists as a separate, co-equal branch of government pursuant to Nev. Const. Article 3, § 1. The Nevada Supreme Court, beginning with *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (1967), has in numerous cases confirmed the judiciary's inherent power to administer its function.

NRS 41.0339 imposes a duty to defend all "state officers." Supreme Court justices and district court judges are identified as state officers in NRS 281.010(1)(f) and (g). The Nevada Supreme Court has also held that district court judges are state officers. *State ex rel. Masto v. Montero*, 124 Nev. 573, 577, 188 P.3d 47, 50 (2008). Conversely, justices of the peace are categorized as county officers in NRS 281.010(n)(9), and case law establishes that municipal courts are not a part of the state judicial system, but instead a part of the municipality. *Nunez v. City of Las Vegas*, 116 Nev. 535, 538, 1 P.3d 959, 961 (2000).

The purpose of SB 27 is to remove any ambiguity as to whose duty it is to represent state and local judicial officers and employees pursuant to NRS 41.0339. The bill clarifies existing law by amending NRS Chapter 41 to specifically require 1) the Attorney General to provide representation to any present or former justice of the Supreme Court, senior justice, judge of a district court or senior judge; and 2) the chief legal officer of a political subdivision to provide representation to any present or former justice of the peace, senior justice of the peace, municipal judge, or senior municipal judge of that political subdivision.

The bill further amends NRS Chapter 41 to require the Attorney General or the chief legal officer of a political to provide representation for certain persons who are *not* employees or officers of the State or a political subdivision, but who are named as defendants in a civil action solely because of an alleged act or omission of a state or local officer or employee.

Section 5 of the bill further authorizes an official attorney to appoint a special deputy if the official attorney determines that providing representation pursuant to Section 8 will be impractical, uneconomical, or may create a conflict of interest for the official attorney. Finally, Section 8.5 of the bill requires the Department of Administration to include any costs associated with implementing this act in to the Attorney General's cost allocation plan for the 2015 Session of the Nevada Legislature.

The Honorable Jason Frierson, Chair  
May 1, 2013  
Page 3

Thank you for your consideration of this bill. If you have any questions, please do not hesitate to contact me at 688-1966 or [bkandt@ag.nv.gov](mailto:bkandt@ag.nv.gov).

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:



---

BRETT KANDT  
Special Deputy Attorney General

BK:MAS  
Encl.  
Cc: Assembly Committee on Judiciary

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY  
Seventy-Seventh Session  
May 3, 2013**

**Catherine Cortez Masto, Attorney General:**

"Let me clarify and answer your question for you. I am a little disappointed that the county is here trying to circumvent what I have put in place during the last couple of weeks. I have actually reached out to county management and District Attorney Steve Wolfson. We have a meeting next week to clarify the working relationship on this particular issue. The genesis of that meeting is to put in place, outside of legislation, moving forward, a memorandum of understanding or some sort of concrete document that specifies the working relationship when it comes to these district court employees that Clark County pays into this particular fund, which is NRS Chapter 331. From our perspective, I will be very clear. I have already let the district attorney and county management know that we will provide the defense; however, over the course of the years, we have not been actually asking them to cover our attorneys' fees and costs. We will now be asking Clark County to cover the attorneys' fees and costs for that representation. We will be working through that issue.

I do not think this requires legislation now. From my perspective, the state is stepping up to the plate doing just what Ms. Barker has talked about, and the genesis of that meeting is taking place next week and we will solidify this working arrangement through a working document, a memorandum of understanding, for the future. I do not think it is necessary at this point in time to move forward with legislation addressing this amendment. [The Attorney General also submitted a letter of support (Exhibit E).]"

**MEMORANDUM OF UNDERSTANDING**  
Between  
Clark County and  
the Nevada State Attorney General for  
Reimbursement/Payment of State Tort Defense Fund Cost and Attorneys' Fees  
Re: Defense of Eighth Judicial District Court Employees

Effective June 16, 2015

**I. PURPOSE AND SCOPE**

This Memorandum of Understanding ("MOU") memorializes a cooperating relationship between Clark County ("Clark County"), and the Office of the Nevada Attorney General ("OAG") (collectively "the Parties"), for the purpose of establishing procedures governing reimbursement/payment of litigation defense costs for persons employed in or appointed by the Eighth Judicial District Court (hereinafter "District Court Employees")<sup>1</sup>, when these persons are sued for acts or omissions alleged to have occurred within the course and scope of their public duties or employment, pursuant to NRS 41.0339, NRS 41.0349, and NRS 331.187.

This MOU acknowledges that for Fiscal Year 2016, Clark County has elected to make payment to the State Treasury Fund for Insurance Premiums ("State Fund"), pursuant to NRS 331.187(3), to cover potential liability of District Court Employees' who are named as defendants in civil litigation; that in conjunction therewith, on May 27, 2015, the OAG asked Clark County to make an election regarding coverage for the cost of defense (attorneys' fees) in tort related lawsuits covered by the State Fund; and that on June 16, 2015 the Board of Clark County Commissioners authorized Clark County to reimburse the OAG for the cost of defense, subject to an hourly rate limitation.

Accordingly, this MOU is intended to set forth a framework by which the OAG anticipates incurring defense costs, submission of that cost to the County, and payment of

---

<sup>1</sup> A District Court Employee is one who is funded by Clark County, works in the Eighth Judicial District Court, and is selected for appointment or hire, supervised, evaluated and, when necessary, subject to discipline by 1) a Judge or Judges of the Eighth Judicial District Court, or by 2) a person or persons who are selected for appointment or hire, supervised, evaluated and, when necessary, subject to discipline by a Judge or Judges of the Eighth Judicial District Court.

defense costs by Clark County consistent with the terms set forth herein. This MOU is intended solely to address payment of costs of defense.

## II. REIMBURSEMENT/PAYMENT OF DEFENSE COST

In addition to Clark County's annual liability assessment based on the Eighth Judicial District Court full-time equivalent employee count, the OAG will fund and Clark County will be billed monthly to reimburse the OAG for the actual cost of defense (attorneys' fees) incurred in tort related lawsuits against District Court Employees, for which the State Tort Fund provides coverage. The cost of defense will be billed by the OAG as follows:

1. The hourly services of a Deputy Attorney General at the current Statewide Cost Allocation rate of \$145.36/hour. The Deputy Attorneys General will track actual billed hours utilizing the Prolaw billing system or its equivalent, and this system will be utilized to bill actual attorney hours back to Clark County. Should the Statewide Cost Allocation rate be increased, the County will be notified of the rate change as part of each fiscal year's assessment notification.

### OR, IN THE ALTERNATIVE,

2. The actual cost if the retention of outside counsel (counsel other than a Deputy Attorney General), if outside counsel is required to defend the employees of the Eighth Judicial District Court. Outside counsel retention may occur in one of two ways:

- a. The OAG may, at its discretion, approve the use of an existing civil defense contract for any law firm with which Clark County has a contract for tort defense of County employees, at the County's then contracted rate (\$190.00/hour as of August 18, 2015.); or

- b. At the request of the Chief Judge of the Eighth Judicial District Court (EJDC), the OAG may consider a request for outside counsel not otherwise contracted with Clark County. The OAG will not approve retention of outside counsel at an hourly rate any greater than the hourly rate contracted by Clark County for tort defense of

MEMORANDUM OF UNDERSTANDING

Between: Clark County; and  
Office of the Attorney General  
Page 3 of 3

Re: Reimbursement for the Costs of Defense

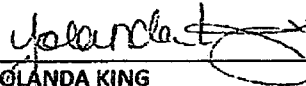
County employees at the time of the request. If the EJDC desires to retain outside counsel at a higher rate, the defense will neither be funded through the State Tort Claim Fund, nor billed to Clark County through this defense assessment.

III. TERMINATION

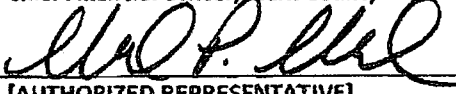
This MOU shall remain in force and effect until and unless Clark County opts out of the NRS 331.187(3) assessment by complying with either NRS 331.187(3)(a), 3(b), or 3(c). The terms of the MOU may be modified by a writing signed by all the parties, or terminated by either Party upon 60 days written notice prior to the conclusion of any fiscal year for which the NRS 331.187(3) assessment has been paid by Clark County.

The Parties hereto have executed this MOU on the dates shown below.

Date: 9/29/2015

  
YOLANDA KING  
Chief Financial Officer, Clark County

Date: 10/14/2015

  
[AUTHORIZED REPRESENTATIVE]  
[Title], Office of the Attorney General

Exec Summ June 3, 20120

EXECUTIVE SUMMARY

Prepared by Stephanie Heying and Sheila MacDonald  
Administrative Office of the Courts

COMMISSION ON PRESERVATION, ACCESS, AND SEALING OF COURT RECORDS

Thursday, June 3, 2010

9:00 a.m. to 3:00 p.m.

Carson City Las Vegas  
Nevada Supreme Court Regional Justice Center  
201 South Carson Street 200 Lewis Avenue, 17th Floor  
Supreme Court Courtroom Supreme Court Courtroom  
Carson City, Nevada Las Vegas, Nevada

MEMBERS PRESENT:

Justice James W. Hardesty, Chair, Nevada Supreme Court  
Bernie Anderson, Nevada State Assemblyman  
Connie Bloom, Court Support Operations, Eighth Judicial District  
Katie Gallagher, Records Manager, Las Vegas Justice Court  
A.D. Hopkins, Special Projects Editor, Las Vegas Review-Journal  
Ed Irvin, Attorney General's Office  
Kathy Ivey, Court Administrator, Pahrump Justice Court  
Mario Lopez, Deputy Clerk, Second Judicial District  
Teri Mark, State Records Manager, Nevada State Library and Archives  
Jillian Prieto, Esq., Staff Attorney, Eighth Judicial District  
Teresa Prince, Supervisor Evidence and Exhibits, Second Judicial District  
Ann Sly, Vault Technician, Eighth Judicial District  
Barry Smith, Nevada Press Association  
Joe Tommasino, Esq., Staff Attorney, Clark County Courts  
Hon. Valorie Vega, District Judge, Eighth Judicial District



Exec Summ June 3, 20120

Bobbie Williams, Chief Deputy District Court Clerk, Ninth Judicial District  
Cathy Woods, Reno Justice Court, on behalf of Steve Tuttle

Nathan Tod Young, Esq., Defense Bar

GUESTS:

Justice Michael Cherry, Nevada Supreme Court  
Bonnie Cooper, Reno Justice Court

MEMBERS ABSENT:

Mary Cameron, Chairperson, Nevada Court Reporters Board  
Howard Conyers, Court Administrator, Second Judicial District  
Hon. Patrick Flanagan, District Judge, Second Judicial District  
Hon. David Gamble, District Judge, Ninth Judicial District  
Hon. Kathy Hardcastle, District Judge, Eighth Judicial District  
John Jensen, Assistant Clerk of the Court, Family Court and Services Division  
Heidi Shaw, Court Administrator, Sparks Municipal Court  
Win Smith, Elko County Clerk, Fourth Judicial District  
Bill Zihlmann, Court Office Supervisor, Henderson Municipal Court

STAFF:

Stephanie Heying, Court Services Analyst, Nevada Supreme Court AOC  
Sheila MacDonald, Court Services Analyst, Nevada Supreme Court AOC

I. Call to order

A. Call of Roll and Determination of a Quorum

Exec Summ June 3, 20120

. Does Nevada Revised Statutes declare this?

. Does Court Rule declare this?

o Use and access of the Confidential Sheet by judges in the deliberative process is unknown.

. Las Vegas Justice, Reno Justice, Pahrump Justice, and the Ninth Judicial District Courts all file the sheet in the file. The judge may or may not look at the sheet.

. The Second and Eighth Judicial Districts do not keep the sheet in the file. Access by the judge is uncertain.

. Eighth Judicial District the sheet is maintained in the TPO office.

\* There was a concern an adverse party could submit information without the victim's and counsel's knowledge, but that information may be available to the judge, which could suggest ex parte communications, which raises concerns.

. Subcommittee should discuss the varying policy issues of retention and expungement of protection order files.

o Need to review the current retention period (based on the public hearing comments two years is too short, but keeping the files indefinitely may be too long).

. Internet Access/VAWA Federal Act/Funding

o Find out how the AG's Office confirms courts are in compliance with Federal Act. (Confirmed, this is not a requirement for funding at this point, so no tracking is done)

THIS DOCUMENT

HAS

ILLEGIBLE

COPIES

**THIS FILE HAS PAGES THAT ARE**

**ILLEGIBLE UPON RECEIPT OF THE**

**FILING OF THE DOCUMENT**

**PAGES ARE SCANNED/FILMED**

**AT THE BEST QUALITY ACHIEVED**

**AT THIS TIME**