



Implementation of Courts of Chancery

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LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY
THE BENEFITS, COSTS, AND FEASIBILITY OF THE IMPLEMENTATION OF
COURTS OF CHANCERY IN NEVADA

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SUMMARY OF RECOMMENDATIONS

LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE BENEFITS, COSTS, AND FEASIBILITY OF THE IMPLEMENTATION OF COURTS OF CHANCERY IN NEVADA

Assembly Concurrent Resolution No. 35
(File No. 109, *Statutes of Nevada 2007*)

On July 8, 2008, during the fifth and final meeting of the Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada (Assembly Concurrent Resolution No. 35, File No. 109, *Statutes of Nevada 2007*), the members conducted a work session and voted to forward one bill draft request (BDR) to the 2009 Legislative Session. The Subcommittee members also voted to have two letters drafted to various entities expressing their support for specific issues or encouraging certain action and one statement of support for an issue in the Subcommittee's final report. A summary of the BDR, letters, and statement of support follows.

During the drafting process, specific details of the following proposals for legislation and letters may be further clarified by staff in consultation with the Chair or others, as appropriate. If a proposal for legislation or letter includes reference to specific chapters or statutes of the *Nevada Revised Statutes* (NRS), as part of the drafting process, amendments to other related chapters or sections of the NRS may be made to fully implement the proposals.

BILL DRAFT REQUEST

1. Draft legislation requiring the district court clerks to publish the written opinions of the business courts by making the opinions publicly available on the Internet, so long as Nevada's Supreme Court adopts rules requiring the business courts to issue written opinions explaining their decisions. **(BDR 1-179)** The BDR text is located at: [SB5](http://www.leg.state.nv.us/75th2009/BDRList) or www.leg.state.nv.us/75th2009/BDRList.

LETTERS

2. Write a letter to Nevada's Supreme Court encouraging the adoption of court rules that:
(a) direct the business courts to issue written opinions explaining their decisions;
(b) provide for the publication in written, electronic, or other form, including, but not limited to, publication via the Internet of the business court opinions; (c) provide for the citation of the business court opinions in the courts of Nevada; and (d) specify the precedential value or authoritative weight that must be given to the business court opinions.

3. Write a letter to Governor Jim Gibbons and the Chairmen of the Senate Committee on Finance and the Assembly Committee on Ways and Means in support of Nevada's Supreme Court's budget request for additional funding to cover the costs of issuing and publishing business court opinions.

STATEMENT OF SUPPORT IN THE FINAL REPORT

4. Include a statement in the final report supporting the intermediate appellate court amendment to the *Nevada Constitution* set forth in Senate Joint Resolution No. 9 (File No. 69, *Statutes of Nevada 2007*), which will return to the 2009 Legislative Session.

**REPORT TO THE 75TH SESSION OF THE NEVADA LEGISLATURE BY THE
LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE BENEFITS,
COSTS, AND FEASIBILITY OF THE IMPLEMENTATION OF COURTS OF
CHANCERY IN NEVADA**

Assembly Concurrent Resolution No. 35
(File No. 109, *Statutes of Nevada 2007*)

I. INTRODUCTION

The Legislative Commission's Subcommittee to Study the Implementation of Courts of Chancery in Nevada was directed to conduct a study of the benefits, costs, and feasibility of the implementation of courts of chancery in Nevada. The Subcommittee was created in 2007 under Assembly Concurrent Resolution No. 35 (File No. 109, *Statutes of Nevada*). The Legislative Commission must submit a report of the results of the study and any recommendations for legislation to the 75th Session of the Nevada State Legislature. Please see Appendix A for a copy of A.C.R. 35.

The Subcommittee held four meetings on January 29, 2008; March 18, 2008; April 29, 2008; May 28, 2008; and the fifth meeting on July 8, 2008, consisted of a work session. All five meetings were open to the public, broadcast live on the Internet, and conducted through simultaneous videoconferences between legislative meeting rooms at the Grant Sawyer State Office Building in Las Vegas, Nevada, and the Legislative Building in Carson City, Nevada. Additionally, the January, April, and May meetings included a simultaneous videoconference to the Great Basin College in Elko, Nevada.

During its final meeting, the Subcommittee adopted four recommendations including one recommendation for a bill draft for consideration by the 2009 Session of the Nevada State Legislature. In lieu of implementing a court of chancery in Nevada, the recommendations support the enhancement of the business court dockets currently operating in the Second and Eighth Judicial District Courts of Nevada through the issuance and publication of written judicial opinions and through support for the proposed amendment to the *Nevada Constitution* to provide for an intermediate appellate court in Nevada.

Senator Bob Beers served as the Chairman. Other legislative members of the Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada during the 2007-2008 Interim included:

Senator Terry Care
Senator Barbara K. Cegavske
Assemblyman John C. Carpenter
Assemblyman William C. Horne
Assemblyman Tick Segerblom

Legislative Counsel Bureau (LCB) staff services were provided by:

Jennifer Chisel, Senior Research Analyst, Research Division

Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser, Legal Division

Lucinda Benjamin, Senior Research Secretary, Research Division

II. REVIEW OF ASSEMBLY CONCURRENT RESOLUTION NO. 35

Assembly Concurrent Resolution No. 35 of the 2007 Legislative Session requires the Legislative Commission to appoint a subcommittee to study the benefits, costs, and feasibility of the implementation of courts of chancery in Nevada.

The study of courts of chancery must include, without limitation:

1. A compilation and analysis of the economic and legal impact courts of chancery have had in states in which they have been implemented; and
2. An assessment of expected revenues, estimated costs of operation, and any ancillary economic impact to Nevada that might result from the implementation of courts of chancery.

III. BACKGROUND

The study of courts of chancery required by A.C.R. 35 was initially proposed in Senate Concurrent Resolution No. 47 of the 2007 Legislative Session; however, no action was taken on S.C.R. 47, and it failed to pass. Assembly Concurrent Resolution No. 35 includes the same requirements for the study of courts of chancery in S.C.R. 47 as well as requirements for a separate subcommittee to study issues relating to senior citizens and veterans.

During the 1999-2000 Legislative Interim, the issue of establishing a business court in Nevada was studied by the Legislative Commission's Subcommittee to Encourage Corporations and Other Business Entities to Organize and Conduct Business in Nevada (S.C.R. 19, File No. 144, *Statutes of Nevada 1999*). The S.C.R. 19 Subcommittee adopted the recommendation to draft a resolution endorsing the creation of business court procedures by court rule in the Second Judicial District Court of Nevada in Washoe County and Eighth Judicial District Court of Nevada in Clark County. The result was the promulgation of the Second Judicial District Court Rule 2.1 "Business court docket" and the Eighth Judicial District Court Rule 1.61 "Assignment of business matters" creating specific procedures for certain business disputes. For complete details about the S.C.R. 19 Subcommittee's findings and recommendations, please refer to the Subcommittee's report to the 71st Session of the Nevada Legislature located at: [Research Division Studies and Legislative Reports](http://www.leg.state.nv.us/lcb/research/2001InterimReports/Bulletin01-08.pdf) or www.leg.state.nv.us/lcb/research/2001InterimReports/Bulletin01-08.pdf.

IV. TOPICS DISCUSSED BY THE SUBCOMMITTEE

During the course of the study, testimony from the Secretary of State, Nevada's Supreme Court justices and court personnel, State judges, national business court experts, representatives from Nevada's business and legal communities, and the public was provided on the topic of the judiciary with specific emphasis on business courts and courts of chancery. Please refer to the "Summary Minutes and Action Reports" for detailed summaries of the meetings, which are available at the Subcommittee's website: [Implementation of Courts of Chancery](http://www.leg.state.nv.us/74th/Interim/Studies/Chancery/) or www.leg.state.nv.us/74th/Interim/Studies/Chancery/.

A. EXISTING BUSINESS COURTS IN NEVADA

At its meeting on January 29, 2008, the Subcommittee discussed the existing business courts operating in Nevada. The business court docket programs in the Second Judicial District Court in Washoe County and the Eighth Judicial District Court in Clark County were created by court rule in response to recommendations made by the Legislative Commission's Subcommittee to Encourage Corporations and Other Business Entities to Organize and Conduct Business in Nevada.

The Honorable Brent Adams is the business court judge in Washoe County and the Honorable Elizabeth Goff Gonzalez and the Honorable Mark Denton are the business court judges in Clark County. Currently, business court judges are selected based on their specialized experience in handling business matters.

In Nevada, the business court judges hear criminal and/or general civil cases in addition to their business caseloads. Judge Adams noted that about 30 percent of his docket consists of business cases. Judge Gonzalez stated that her business cases are 25 percent of her caseload although she spends about half of her time on the business matters. Judge Denton said he also spends half his time on business cases.

Judge Adams indicated that there are two compelling reasons to operate a business court. First, uniformity and predictability of the judicial decisions and second, it provides active early case management to end disputes so the litigation does not destroy the business. Judge Gonzalez added that written opinions would enhance the predictability of the business court; however, the business court judges lack adequate resources to produce written decisions.

B. BUSINESS COURTS OPERATING IN OTHER STATES

During the meeting on March 18, 2008, the Subcommittee learned from a panel of national business court experts about the business and complex litigation courts in other states as well as Delaware's Court of Chancery. The notion of a chancery (equity) court was somewhat discouraged by the panel, based on the current business environment. The panel indicated that Nevada's business court is fairly similar to others that have been established in other states.

One notable difference is that Nevada does not publish written opinions from the business court cases. Another related difference is that Nevada's business court judges hear general civil and criminal cases in addition to the business court docket. Most, if not all, of the other states have business court judges that exclusively hear business cases.

C. PROPOSED MODEL BUSINESS COURT IN NEVADA

In addition to creating a separate chancery court, the Subcommittee heard about the possibility of enhancing the existing business courts during the meetings on April 29 and May 28, 2008. The concept of a "model business court" was presented by the Clark County business court judges. The model business court includes:

- Reassigning all business cases to the business court;
- Producing written opinions of publication and citation quality, requiring the addition of a law clerk and permanent staff attorney;
- Enhancing the courtroom technology to provide digital audio-video court recording and documentation for court operations; and
- Obtaining professional services for website development.

Members of the business and legal communities who are familiar with the business courts operating in Nevada provided support for the elements outlined in the model business court proposal. The need for written opinions and additional resources dedicated to the business court were discussed at length.

The Subcommittee also received a presentation from Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser, Legal Division, LCB, to clarify the issue regarding judicial precedent and the publication of judicial decisions. For a more detailed discussion, please see the legal memorandum in Appendix B.

D. INTERMEDIATE APPELLATE COURT PROPOSAL

The Honorable A. William Maupin, Associate Justice, Nevada's Supreme Court, explained to the Subcommittee at the January 29, 2008, meeting that the primary appellate court in Nevada is the Supreme Court which handles all appeals in criminal and civil cases from the district court system. He stated that approximately 80 percent of the Supreme Court's cases are heard in three-judge panels. A full Supreme Court includes the judges in the two three-judge panels that sit en banc with the Chief Justice, which handles the primary cases that set precedent. Such cases include those with issues of first impression, resolve conflicting prior precedent, constitutional issues, death penalty cases, major civil cases and business cases with complex records, and ballot questions.

In 2007, the Legislature passed Senate Joint Resolution No. 9 (File No. 69, *Statutes of Nevada*), which proposed to amend the *Nevada Constitution* to add an intermediate appeals court to the judicial system. Joint resolutions that seek to amend the *Nevada Constitution* must be passed by two sessions of the Legislature and then be submitted to the people of Nevada for a vote. If approved by the 2009 Legislature and then by the voters in the 2010 General Election, the Legislature would create the appellate court in the 2011 Legislative Session and judges would be elected to take office in 2013. Details about S.J.R. 9 are available at: [SJR9](#) or www.leg.state.nv.us/74th/Reports/history.cfm?ID=1149.

At the May 28, 2008, meeting, the Honorable James W. Hardesty, Associate Justice, Nevada's Supreme Court, urged the Subcommittee to consider supporting and advancing the intermediate appellate court that was proposed to the Nevada Legislature in 2007. He stated that one of the objectives for implementing an appellate court was to increase the capability for Nevada's Supreme Court to have adequate time and resources to dedicate to the more complex cases, including business court appeals. He believes the appellate court is a key component to the judiciary's effort to work with the Legislature to advance the business court as a successful specialty court within the existing overall system.

V. FINDINGS AND RECOMMENDATIONS

During the Subcommittee's final meeting on July 8, 2008, the members conducted a work session and adopted four recommendations, including one recommendation for a bill draft for consideration by the 2009 Nevada Legislature. More information about the work session can be found on the Subcommittee's webpage at: [Implementation of Courts of Chancery](#) or www.leg.state.nv.us/74th/Interim/Studies/Chancery/.

The Subcommittee did not adopt the recommendation to create a dedicated business court in Nevada by amending the *Nevada Constitution* to authorize the Legislature to establish courts having jurisdiction over business matters. For more information regarding the Subcommittee's consideration of this matter, please see the "Summary Minutes and Action Report" of the July 8, 2008, meeting, available at: [Implementation of Courts of Chancery](#) or www.leg.state.nv.us/74th/Interim/Studies/Chancery/.

Recognizing that the model business court concept could enhance the existing business court, the Subcommittee adopted the following recommendation:

- 1. Write a letter to Nevada's Supreme Court encouraging the adoption of court rules that: (a) direct the business courts to issue written opinions explaining their decisions; (b) provide for the publication in written, electronic, or other form, including, but not limited to, publication via the Internet of the business court opinions; (c) provide for the citation of the business court opinions in the courts of Nevada; and (d) specify the precedential value or authoritative weight that must be given to the business court opinions.**

In an effort to provide the court system with the funding necessary to enhance the existing business courts, the following recommendation was adopted by the Subcommittee:

- 2. Write a letter to Governor Jim Gibbons and the Chairmen of the Senate Committee on Finance and the Assembly Committee on Ways and Means in support of Nevada's Supreme Court's budget request for additional funding to cover the costs of issuing and publishing business court opinions. Please see Appendix C.**

The Subcommittee adopted the following recommendation in connection with the first recommendation. If Nevada's Supreme Court adopts court rules that direct the business courts to issue written opinions, the Subcommittee recommends that those opinions be publicly available. The Legislature cannot enact a statute requiring the business courts to produce written opinions because that function is solely within the authority of the Judicial Branch under the *Nevada Constitution*. However, the Legislature can enact a statute requiring the district court clerks to publish the written opinions of the business courts by making the opinions publicly available on a website since this is an administrative function within the constitutional authority of the Legislative Branch.

- 3. Draft legislation requiring the district court clerks to publish the written opinions of the business courts by making the opinions publicly available on the Internet, so long as Nevada's Supreme Court adopts rules requiring the business courts to issue written opinions explaining their decisions. (BDR 1-179) Please see Appendix D.**

In response to testimony regarding the implementation of an intermediate appellate court provided to the Subcommittee, the following recommendation was adopted:

- 4. Include a statement in the final report supporting the intermediate appellate court amendment to the *Nevada Constitution* set forth in Senate Joint Resolution No. 9 (File No. 69, *Statutes of Nevada 2007*), which will return to the 2009 Legislative Session.**

VI. CONCLUSION

The Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada fulfilled the requirements of A.C.R. 35 by examining the following: (1) current status of the business court dockets operating in the Second and Eighth Judicial District Courts in Nevada; (2) fiscal impact of enhancing the existing business courts to create a "model business court" in Nevada; (3) information on the status of business and chancery courts in other jurisdictions provided by a panel of business court experts; (4) information about the implementation of a court of chancery or enhancing the existing business court system provided by representatives of the business and legal communities; (5) legal overview of judicial precedent and the publication of judicial decisions; and (6) implementation of an intermediate appellate court in Nevada.

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APPENDIX A

Assembly Concurrent Resolution No. 35 (File No. 109, *Statutes of Nevada 2007*)

**LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE
BENEFITS, COSTS, AND FEASIBILITY OF THE IMPLEMENTATION OF
COURTS OF CHANCERY IN NEVADA**

Assembly Concurrent Resolution No. 35—Committee on Elections, Procedures, Ethics,
and Constitutional Amendments

FILE NUMBER 109

ASSEMBLY CONCURRENT RESOLUTION—Directing the Legislative Commission to conduct interim studies concerning chancery courts and issues relating to senior citizens and veterans.

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the Legislative Commission is hereby directed to appoint a subcommittee to study the benefits, costs and feasibility of the implementation of courts of chancery in Nevada and a subcommittee to study issues relating to senior citizens and veterans; and be it further

RESOLVED, That each subcommittee must be composed of three members of the Assembly and three members of the Senate, one of whom must be appointed as Chairman of the subcommittee; and be it further

RESOLVED, That the study of courts of chancery must include, without limitation, a compilation and analysis of the economic and legal impact courts of chancery have had in states in which they have been implemented and an assessment of expected revenues, estimated costs of operation and any ancillary economic impact to Nevada that might result from the implementation of courts of chancery; and be it further

RESOLVED, That the interim committee studying issues relating to senior citizens and veterans shall evaluate, review and comment upon issues relating to senior citizens and veterans, including, without limitation:

1. Health and human services;
2. Elder abuse and exploitation;
3. Financial and physical wellness initiatives;
4. Housing and transportation; and
5. Public outreach and advocacy; and be it further

RESOLVED, That any recommended legislation proposed by either of the interim committees must be approved by a majority of the members of the Assembly and a majority of the members of the Senate appointed to the interim committee; and be it further

RESOLVED, That the Legislative Commission shall submit a report of the results of the studies and any recommendations for legislation to the 75th Session of the Nevada Legislature.

APPENDIX B

A Memorandum Dated April 28, 2008, to Senator Terry Care, on the
Subject of Business Courts, from Kevin C. Powers, Senate Legal Counsel and
Bill Drafting Adviser, Legal Division, Legislative Counsel Bureau

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MEMORANDUM

DATE: April 28, 2008
TO: Senator Terry Care
FROM: Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser **KP**
SUBJECT: Business Courts

You have asked this office several questions relating to the administration of the business courts in Clark County and Washoe County. Specifically, you have asked: (1) whether a statute or court rule could require the business courts to produce written opinions; (2) whether a statute or court rule could require the publication of the written opinions of the business courts by making the opinions publicly available on a website; (3) whether a statute or court rule could make the written opinions of each business court binding precedent on the other business courts. Before discussing the legal issues raised by your questions, we believe it will be helpful to provide some general background information regarding the balance of constitutional power between the legislative and judicial branches in the area of court practices and procedures.

BACKGROUND

In Nevada, "[t]he doctrine of separation of powers is fundamental to our system of government." Dunphy v. Sheehan, 92 Nev. 259, 265 (1976). The constitutional source of this doctrine is Section 1 of Article 3 of the Nevada Constitution, which establishes a tripartite system of state government and which firmly fixes the principle of separation of powers in the organic law of this state. Galloway v. Truesdell, 83 Nev. 13, 19 (1967). The separation-of-powers provision in Section 1 of Article 3 provides in relevant part:

The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.

The Nevada Supreme Court has stated that "[u]nder the separation of powers doctrine, each branch of government is considered to be co-equal, with inherent powers to administer its own affairs." Blackjack Bonding v. City of Las Vegas Mun. Ct., 116 Nev. 1213, 1218 (2000).

In addition, the court has stated that it is fundamental “that powers separately vested in the executive, legislative, and judicial departments be exercised without intrusion.” Id. at 1219. Thus, when the Legislature proposes to enact legislation that would direct the actions of the judicial branch of government, the question arises whether such legislation would be an unconstitutional encroachment on the inherent powers of the judiciary to administer its own affairs.

The Nevada Constitution expressly vests judicial power in the courts. Nev. Const. art. 6, §§ 1 & 19. The courts of this state, consequently, “possess the entire body of the intrinsic judicial power of the state.” State ex rel. Watson v. Merialdo, 70 Nev. 322, 326 (1954) (internal quotation marks omitted). The judicial power of the state includes “the right to exercise any lesser power that can be subsumed under, or is included as an integral part of, the broader heading of ‘Judicial Power’; that is, any power or authority that is inherent or incidental to a judicial function is properly within the realm of judicial power.” Galloway, 83 Nev. at 20.

The inherent power of the judicial branch includes the power to govern its own procedures by “promulgating and prescribing any and all rules necessary or desirable to handle the business of the courts or their judicial functions.” Galloway, 83 Nev. at 23; Whitlock v. Salmon, 104 Nev. 24, 26 (1988); State v. Connery, 99 Nev. 342, 345 (1983); Goldberg v. Eighth Jud. Dist. Ct., 93 Nev. 614, 617 (1977). The inherent power of the judicial branch to govern its own procedures is not subject to legislative control. Blackjack Bonding, 116 Nev. at 1218-21. Rather, such inherent judicial power “is independent of legislative power, and may not be diminished or compromised by the legislature.” Connery, 99 Nev. at 345. Thus, “[t]he Nevada Constitution grants the power to supervise and administer the court system to the judiciary.” Clark County v. State Indus. Ins. Sys., 102 Nev. 353, 354 (1986) (citing Nev. Const. art. 6, §§ 1 & 19).

Typically, when the Legislature enacts a statute relating to court practices and procedures, “the courts may acquiesce out of comity or courtesy; however, such statutes are merely legislative authorizations of independent rights already belonging to the judiciary.” Blackjack Bonding, 116 Nev. at 1220 n.4. Therefore, “[t]he legislature may, by statute, sanction the exercise of inherent powers by the courts, and the courts may acquiesce in such pronouncements by the legislature, but when a statute attempts to limit or destroy an inherent power of the courts, that statute must fail.” Lindauer v. Allen, 85 Nev. 430, 434 (1969); State v. Second Jud. Dist. Ct., 116 Nev. 953, 957-63 (2000); Blackjack Bonding, 116 Nev. at 1220 n.4.

If a statute interferes with the courts in the exercise of their judicial functions, the statute is unconstitutional under the doctrine of separation of powers. Johnson v. Goldman, 94 Nev. 6, 7-9 (1978); Goldberg, 93 Nev. at 614-18; Watson, 70 Nev. at 323-28. For example, “[a]ny legislation undertaking to require judicial action within fixed periods of time is an unconstitutional interference by the legislature with a judicial function.” Lindauer, 85 Nev. at 434; Volpert v. Papagna, 85 Nev. 437, 439 (1969); Waite v. Burgess, 69 Nev. 230, 233 (1952).

Furthermore, it is well established that “the legislature may not enact a procedural statute that conflicts with a pre-existing procedural rule, without violating the doctrine of separation of powers, and that such a statute is of no effect.” Connery, 99 Nev. at 345. Similarly, when “a rule of procedure is promulgated in conflict with a pre-existing procedural statute, the rule supersedes the statute and controls.” Id.

Finally, in certain limited circumstances, the Legislature may regulate court practices and procedures by statute when expressly authorized to do so by the Nevada Constitution. State v. Second Jud. Dist. Ct., 116 Nev. at 960-61. For example, the Legislature is constitutionally authorized to provide by law for “[t]he establishment of a family court as a division of any district court and may prescribe its jurisdiction.” Nev. Const. art. 6, § 6. The Legislature is also constitutionally authorized to provide by law for the jurisdiction of justice courts and for the establishment and jurisdiction of municipal courts. Nev. Const. art. 6, §§ 1, 8 & 9. However, even when the Legislature is constitutionally authorized to regulate court practices and procedures, the Legislature still must be careful not to regulate in a manner that interferes with the judiciary’s exercise of its inherent power to supervise and administer the court system. State v. Second Jud. Dist. Ct., 116 Nev. at 960-61.

In exercising its inherent power to supervise and administer the court system, the Nevada Supreme Court has authorized the district courts to adopt local rules of practice and procedure with the approval of the Supreme Court. See Nev. Const. art. 6, § 19; N.R.C.P. 83; Cheek v. FNF Constr., Inc., 112 Nev. 1249, 1253-54 (1996); W. Mercury, Inc. v. Rix Co., 84 Nev. 218, 222-23 (1968). Pursuant to this authority, the Eighth Judicial District Court in Clark County and the Second Judicial District Court in Washoe County have established, by court rule, business courts as a division of the district court. Specifically, in Clark County, the business courts have been established pursuant to Eighth Judicial District Court Rules 1.33, 1.61 and 1.62. In Washoe County, the business courts have been established pursuant to Second Judicial District Court Rule 2.1.

With this background in mind, we will now discuss the legal issues raised by your questions.

DISCUSSION

I. Could a statute or court rule require the business courts to produce written opinions?

Under the Nevada Rules of Civil Procedure, “dispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective.” Division of Child & Family Servs. v. Eighth Jud. Dist. Ct., 120 Nev. 445, 454 (2004); N.R.C.P. 54 & 58. As a general requirement under the rules, the dispositional orders of the district courts typically must contain written findings of fact and conclusions of law. N.R.C.P. 52; Lagrange Constr., Inc. v.

Del E. Webb Corp., 83 Nev. 524, 528-30 (1967); Robison v. Bate, 78 Nev. 501, 505-06 (1962). However, the rules contain the following exceptions to this general requirement:

It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule. But an order granting summary judgment shall set forth the undisputed material facts and legal determinations on which the court granted summary judgment.

N.R.C.P. 52; Schoepe v. Pacific Silver Corp., 109 Nev. 941, 943 (1993); Smith v. City of Las Vegas, 80 Nev. 220, 224 (1964).

The Nevada Supreme Court encourages the district courts to make their written findings of fact and conclusions of law as specific and detailed as possible. Lagrange Constr., 83 Nev. at 528-30; Heidtman v. Nevada Indus. Comm'n, 78 Nev. 25, 29 (1962); Crumley v. Fabbi, 47 Nev. 14, 18-19 (1923). However, given the heavy caseloads and limited resources of the district courts, it is well established that the district courts are not required to produce written opinions which are the equivalent of the published opinions of the appellate courts. See 21 C.J.S. Courts §§ 240-43 (2006); 20 Am. Jur. 2d Courts §§ 36 & 38 (2005). Instead, the written opinions of the district courts need only contain findings of fact and conclusions of law that are sufficient to allow for meaningful appellate review. See Hardy v. First Nat'l Bank, 86 Nev. 921, 923 (1970); Bowman v. Tisnado, 84 Nev. 420, 421-22 (1968); Hotel Last Frontier Corp. v. Frontier Prop., Inc., 79 Nev. 392, 397-98 (1963).

Because the production of written opinions is a core judicial function that is already governed by court rules, we believe a statute requiring the business courts to produce written opinions would impermissibly interfere with core judicial functions and conflict with pre-existing court rules in violation of the doctrine of separation of powers. However, we believe the judiciary could impose such a requirement on the business courts by court rule.

II. Could a statute or court rule require the publication of the written opinions of the business courts by making the opinions publicly available on a website?

Section 8 of Article 15 of the Nevada Constitution contemplates that the Legislature will provide by law for the publication of judicial decisions. That section provides:

The Legislature shall provide for the speedy publication of all statute laws of a general nature, and such decisions of the Supreme Court, as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; provided, that no judgment of the Supreme Court shall take effect and be operative until the opinion of the court in such case shall be filed with the clerk of said court.

Nev. Const. art. 15, § 8 (emphasis added). Although Section 8 of Article 15 expressly refers to the decisions of the Nevada Supreme Court, we believe the Legislature may provide by law for the publication of the decisions of each business court by making them publicly available on a website.

As a general rule, the Legislature may enact statutes requiring “nonjudicial action of a ministerial nature occurring after a judicial function has taken place.” State v. American Bankers Ins. Co., 106 Nev. 880, 883 (1990). Thus, the Legislature may require ministerial officers within the judicial branch, such as court clerks, to perform nonjudicial functions of a ministerial or administrative nature that are related to the business of the courts. See Sullivan v. Eighth Jud. Dist. Ct., 111 Nev. 1367, 1369 (1995); 21 C.J.S. Courts §§ 337-41 (2006); 15A Am. Jur. 2d Clerks of Court §§ 20-28 (2000).

The publication of judicial decisions is not a judicial function. Rather, it is a nonjudicial function of a ministerial or administrative nature typically performed by court clerks. See State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 757 (2001) (noting that the office of the district court clerk “is a ministerial office inherent to the judicial branch of government. Its sole purpose is to perform clerical and record-keeping functions necessary to the district court’s operation.”); 21 C.J.S. Courts § 341 (2006); 15A Am. Jur. 2d Clerks of Court § 27 (2000). Thus, we believe the Legislature may enact a statute requiring the district court clerks to publish the written opinions of the business courts by making the opinions publicly available on a website. We also believe the judiciary could impose the same requirement on the district court clerks by court rule.

III. Could a statute or court rule make the written opinions of each business court binding precedent on the other business courts?

It is well established that only a decision of a state’s highest court creates binding precedent that must be followed by all lower courts. See 20 Am. Jur. 2d Courts § 142 (2005) (“[U]nder the doctrine of stare decisis, a decision of the state’s highest or supreme court binds the state’s court of appeals and the trial courts.”) (footnotes omitted); McClung v. Employment Dev. Dep’t, 99 P.3d 1015, 1019-20 (Cal. 2004). Thus, the decisions of trial courts, such as the district courts, do not create binding precedents. 21 C.J.S. Courts § 212 (2006); Harrott v. County of Kings, 25 P.3d 649, 655 (Cal. 2001) (“Trial court decisions are not precedents binding on other courts under the principle of stare decisis.”).

Furthermore, under the Nevada Constitution, the district courts possess equal and coextensive jurisdiction. Nev. Const. art. 6, §§ 5 & 6; Rohlfing v. Second Jud. Dist. Ct., 106 Nev. 902, 906 (1990); State v. Sustacha, 108 Nev. 223, 225-26 (1992). It is well established that a district court is not bound to follow the decisions of another district court of equal and coextensive jurisdiction. See Starbuck v. City of San Francisco, 556 F.2d 450, 457 n.13 (9th Cir. 1977) (“The doctrine of stare decisis does not compel one district judge to follow the decision of another.”); Fox v. Acadia State Bank, 937 F.2d 1566, 1570 (11th Cir. 1991) (“A district court is not bound by another district court’s decision, or even an opinion by another judge of the same

district court.”); Threadgill v. Armstrong World Indus., Inc., 928 F.2d 1366, 1371 (3d Cir. 1991) (same); Colby v. J.C. Penney Co., 811 F.2d 1119, 1124 (7th Cir. 1987) (same).

Even though the decisions of the district courts do not create binding precedents, a district court will generally give significant persuasive weight to prior decisions of other district courts of equal and coextensive jurisdiction and will usually adhere to the legal conclusions contained in those prior decisions, unless they are clearly erroneous. See Scott v. State, 840 A.2d 715, 723-24 (Md. 2004). As explained by the Louisiana Supreme Court:

While a court is not always bound, under the principle of stare decisis, to follow the decisions of another court whose authority is coordinate, such decisions are very persuasive, and it is well established as a general rule that a court will adhere to a principle, not clearly erroneous, which is laid down by another court of coordinate jurisdiction, until the rule is settled otherwise by the decision of a higher court.

City of Shreveport v. Baylock, 107 So. 2d 419, 421 (La. 1958) (quoting 21 C.J.S. Courts § 200).

However, because the determination of how much persuasive weight should be given to a decision of another district court is a matter of judicial discretion, that determination constitutes a core judicial function. See 21 C.J.S. Courts § 212 (2006); 20 Am. Jur. 2d Courts § 141 (2005). As a result, we believe a statute making the written opinions of each business court binding precedent on the other business courts would impermissibly interfere with a core judicial function in violation of the doctrine of separation of powers. Furthermore, because the Nevada Constitution grants each district court equal and coextensive jurisdiction, we believe the judiciary would be prohibited from imposing such a requirement on the business courts as well.

If you have any further questions regarding these matters, please do not hesitate to contact this office.

cc:
Jennifer M. Chisel, Senior Research Analyst
Legislative Counsel Bureau, Research Division

APPENDIX C

Letters Drafted Upon Adoption of Recommendations by the
Legislative Commission's Subcommittee to Study the Benefits, Costs,
and Feasibility of the Implementation of Courts of Chancery in Nevada

BOB BEERS, CPA

SENATOR

Clark No. 6



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State of Nevada Senate

November 20, 2008

The Honorable Mark Gibbons, Chief Justice
Nevada Supreme Court
Supreme Court Building
201 South Carson Street, Suite 300
Carson City, Nevada 89701-4789

Dear Chief Justice Gibbons:

The Nevada Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada (Assembly Concurrent Resolution No. 35, File No. 109, *Statutes of Nevada 2007*) recently completed its work for the 2007-2008 Legislative Interim. The Subcommittee was required to assess the feasibility of implementing a chancery court in Nevada and as part of the assessment reviewed the business court docket programs currently operating in the Second and Eighth Judicial District Courts.

As you are aware, the business court docket programs in the Second and Eighth Judicial District Courts were created by court rule in 2000 in response to recommendations made by the Legislative Commission's Subcommittee to Encourage Corporations and Other Business Entities to Organize and Conduct Business in Nevada (S.C.R. 19, File No. 144, *Statutes of Nevada 1999*).

During the study, the Subcommittee learned about business and complex litigation courts established in other jurisdictions around the nation as well as information about Delaware's Court of Chancery from a panel of national business court experts. The panel of experts indicated that Nevada's business court is similar to courts that have been established in other states. One notable difference is that Nevada does not publish written opinions from the business court cases. Another related difference is that Nevada's business court judges hear general civil and criminal cases in addition to the business court docket. Most, if not all, of the other states have business court judges that exclusively hear business cases.

At the July 8, 2008, work session, the Subcommittee adopted a recommendation to formally encourage the Nevada Supreme Court to adopt court rules that: (a) direct business courts to issue written opinions explaining their decisions; (b) provide for the publication in written,

The Honorable Mark Gibbons, Chief Justice

Page 2

November 20, 2008

electronic, or other form, including, but not limited to, publication of business court opinions via the Internet; (c) provide for citation of business court opinions in courts of Nevada; and (d) specify the precedential value or authoritative weight that must be given to business court opinions.

Thank you for your consideration of this important request. As always, please do not hesitate to contact me if the Subcommittee or I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Beers", with a stylized flourish at the end.

Bob Beers, Chairman
Legislative Commission's Subcommittee to
Study the Benefits, Costs, and Feasibility of the
Implementation of Courts of Chancery
in Nevada

BB/lb: L04

BOB BEERS, CPA

SENATOR

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State of Nevada Senate

November 20, 2008

The Honorable Jim Gibbons
Office of the Governor
101 North Carson Street, Suite 1
Carson City, Nevada 89701-4786

Dear Governor Gibbons:

The Nevada Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada (Assembly Concurrent Resolution No. 35, File No. 109, *Statutes of Nevada 2007*) recently completed its work for the 2007-2008 Legislative Interim. The Subcommittee was required to assess the feasibility of implementing a chancery court in Nevada and as part of the assessment reviewed the business court docket programs currently operating in the Second and Eighth Judicial District Courts.

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The Subcommittee received information regarding the fiscal impact of creating a "model business court" to enhance the business courts currently operating in the Second and Eighth Judicial District Courts. The model business court concept includes: (1) reassigning all business cases to the business court; (2) producing written opinions of publication and citation

The Honorable Jim Gibbons

Page 2

November 20, 2008

quality, requiring the addition of a law clerk and permanent staff attorney; (3) enhancing the courtroom technology to provide digital audio-video court recording and documentation for court operations; and (4) obtaining professional services for website development.

At the July 8, 2008, work session, the Subcommittee adopted a recommendation to support Nevada's Supreme Court 2009-2011 biennium budget request for additional funding to cover the costs of issuing and publishing business court opinions.

Thank you for your consideration of this important request. As always, please do not hesitate to contact me if the Subcommittee or I may be of assistance.

Sincerely,



Bob Beers, Chairman

Legislative Commission's Subcommittee
to Study the Benefits, Costs, and Feasibility of
the Implementation of Courts of Chancery
in Nevada

BB/lb: L05

cc: Senator Bernie Mathews, Co-Chairman, Senate Committee on Finance
Senator Steven Horsford, Co-Chairman, Senate Committee on Finance
Assemblyman Morse Arberry Jr., Chairman, Assembly Committee on Ways and Means

BOB BEERS, CPA

SENATOR

Clark No. 6



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State of Nevada Senate

November 20, 2008

The Honorable Morse Arberry Jr., Chairman
Assembly Committee on Ways and Means
Nevada State Assembly
1330 Virginia City Avenue
Las Vegas, Nevada 89106-2052

Dear Assemblyman Arberry:

The Nevada Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada (Assembly Concurrent Resolution No. 35, File No. 109, *Statutes of Nevada 2007*) recently completed its work for the 2007-2008 Legislative Interim. The Subcommittee was required to assess the feasibility of implementing a chancery court in Nevada and as part of the assessment reviewed the business court docket programs currently operating in the Second and Eighth Judicial District Courts.

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The Honorable Morse Arberry Jr., Chairman

Page 2

November 20, 2008

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Thank you for your consideration of this important request. As always, please do not hesitate to contact me if the Subcommittee or I may be of assistance.

Sincerely,

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Bob Beers, Chairman

Legislative Commission's Subcommittee to
Study the Benefits, Costs, and Feasibility of the
Implementation of Courts of Chancery
in Nevada

BB/lb: L07

cc: Jim Gibbons, Governor, State of Nevada

BOB BEERS, CPA

SENATOR

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State of Nevada Senate

November 20, 2008

The Honorable Bernice Mathews, Co-Chairman
Senate Committee on Finance
Nevada State Senate
Post Office Box 7176
Reno, Nevada 89510-7176

The Honorable Steven Horsford, Co-Chairman
Senate Committee on Finance
Nevada State Senate
1306 West Craig Road, E-310
North Las Vegas, Nevada 89032-0215

Dear Senators Mathews and Horsford:

The Nevada Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada (Assembly Concurrent Resolution No. 35, File No. 109, *Statutes of Nevada 2007*) recently completed its work for the 2007-2008 Legislative Interim. The Subcommittee was required to assess the feasibility of implementing a chancery court in Nevada and as part of the assessment reviewed the business court docket programs currently operating in the Second and Eighth Judicial District Courts.

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The Honorable Bernice Mathews, Co-Chairman
The Honorable Steven Horsford, Co-Chairman
Page 2
November 20, 2008

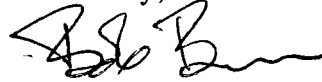
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Thank you for your consideration of this important request. As always, please do not hesitate to contact me if the Subcommittee or I may be of assistance.

Sincerely,



Bob Beers, Chairman
Legislative Commission's Subcommittee to
Study the Benefits, Costs, and Feasibility of the
Implementation of Courts of Chancery
in Nevada

BB/lb: L06

cc: Jim Gibbons, Governor, State of Nevada

Assemblyman Morse Arberry Jr., Chairman, Assembly Committee on Ways and Means

APPENDIX D

Suggested Legislation

The following Bill Draft Request will be available during the 2009 Legislative Session, or can be accessed after “Introduction” at the following website: [Nevada Legislature Bill Draft Request List of the 75th Session \(2009\)](#)

BDR 1-179 Provides for the publication of business court opinions under certain circumstances.