

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
May 31, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 9:30 a.m. on Tuesday, May 31, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Judi Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Barbara Buckley, Ex-Assemblywoman, Executive Director, Legal Aid Center of Southern Nevada
Paul D. Elcano, Jr., Executive Director, Washoe Legal Services
Cam Ferenbach, State Bar of Nevada
Rew Goodenow
Ben Graham, Administrative Office of the Courts
Chris Bayer, Director, CASA of Carson City
Dashun Jackson
Ollie Hernandez

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CHAIR WIENER:

We have been asked to concur with Assembly amendments to a number of bills. First is Senate Bill (S.B.) 101.

[SENATE BILL 101 \(2nd Reprint\)](#): Revises provisions relating to marriage.
(BDR 11-635)

LINDA J. EISSMANN (Policy Analyst):

Amendment 659 to S.B. 101 adds a new section 5 of the bill, which deletes the provision that deputy commissioners of civil marriage may not perform marriages at any time other than the hour or shift in which they are employed. It also allows the appointment of deputy commissioners who are independent contractors and not employees of the county clerk's office, if they submit to a background check and meet the requirements set forth in the amendment.

CHAIR WIENER:

I have talked with the sponsor of this bill, and he is not in favor of the Assembly's amendment.

SENATOR COPENING MOVED TO NOT CONCUR WITH
AMENDMENT 659 TO S.B. 101.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

Next is S.B. 257.

[SENATE BILL 257 \(2nd Reprint\)](#): Revises various provisions governing graffiti offenses. (BDR 15-616)

The one change made by Amendment 794 deals with civil damages, adding up to three times any loss in the value of the property in addition to up to three times the cost of restoration. I am fine with this amendment to my bill.

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SENATOR GUSTAVSON MOVED TO CONCUR WITH AMENDMENT 794
TO S.B. 257.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

CHAIR WIENER:
Next is S.B. 402.

[SENATE BILL 402 \(2nd Reprint\)](#): Revises provisions relating to real property.
(BDR 9-1090)

Ms. EISSMANN:

Amendment 740 provides that a commercial foreclosure sale must take place in a public location. It also deletes section 4.5 of the bill, which revised the definition of the term "indebtedness" as it is used in the statutes on deficiency judgments, *Nevada Revised Statutes* (NRS) 40.451 through 40.463. The rationale for the second change is that the provision is inconsistent with portions of Assembly Bill (A.B.) 273, which addresses deficiencies.

[ASSEMBLY BILL 273 \(3rd Reprint\)](#): Revises provisions relating to real property.
(BDR 3-561)

CHAIR WIENER:

As you know, there was a lot of activity on the Floor of the Senate on A.B. 273 yesterday, with one Committee amendment and one personal amendment. There is a desire in the Assembly to continue the conversation on S.B. 402 because of the work done on other measures.

SENATOR COPENING MOVED TO NOT CONCUR WITH
AMENDMENT 740 TO S.B. 402.

SENATOR GUSTAVSON SECONDED THE MOTION.

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THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:
The last bill is S.B. 403.

SENATE BILL 403 (2nd Reprint): Revises provisions relating to the information which must be provided by a unit's owner in a resale transaction. (BDR 10-1126)

Ms. EISSMANN:
Amendment 739 relates to the statement a homeowners' association (HOA) provides to a purchaser in a resale package. The amendment requires the statement to set forth the amount of any unpaid obligation rather than assessment and provides that the HOA must deliver a replacement statement only during the 15-day period the statement is effective, if the HOA becomes aware of an error before completion of the resale. The amendment also provides that if the HOA fails to furnish the resale package within the ten days provided for in existing law, the purchaser, rather than the seller, is not liable for any delinquent assessment.

CHAIR WIENER:
I have talked with our counsel about this measure, and it looks as if the changes enrich the bill and clarify some of the intentions.

SENATOR COPENING MOVED TO CONCUR WITH AMENDMENT 739 TO S.B. 403.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:
I will open the hearing on A.B. 259.

[ASSEMBLY BILL 259 \(2nd Reprint\)](#): Requires a portion of certain existing fees to be used for certain programs for legal services. (BDR 2-817)

EX-ASSEMBLYWOMAN BARBARA BUCKLEY (Executive Director, Legal Aid Center of Southern Nevada):

I have a printed presentation explaining how [A.B. 259](#) would fund court-appointed special advocate programs like the Legal Aid Center of Southern Nevada (LACSN) and describing the vital work these funds would enable ([Exhibit C](#)).

Let me take a couple moments to talk about civil legal services to the disadvantaged in Nevada. In southern Nevada, we are served by LACSN. Washoe Legal Services serves Washoe County, and Nevada Legal Services serves the rural counties, as well as having a smaller presence in Washoe County and Clark County. These three organizations are all 501(c)(3) nonprofit organizations.

Our mission is to provide help in civil cases to individuals who cannot afford an attorney. In criminal cases, if you cannot afford an attorney, one is provided for you. However, if you are about to lose your home or your children, or you have been swindled out of your life savings, the only help available is that offered by LACSN and the other organizations. Our primary funding sources are filing fees and philanthropy. We are probably able to serve one out of every ten people who come to us for help. The hardest part of our job is seeing people who are about to lose everything and not having the staff to help them.

At LACSN, we have six major projects: the Children's Attorneys Project, the Domestic Violence Project, the Consumer Rights Project, the Pro Bono Project, the Community Legal Education Project and the Civil Law Self-Help Center. The Children's Attorneys Project gives children a voice in court. We started this program 11 years ago, and we were one of the last major metropolitan communities in the nation that had no independent legal representation for children. The abuser had a lawyer and the government had a lawyer, but the child did not. When we received our first grant to change that, we hired one attorney. Now we have 10 staff attorneys and 250 pro bono lawyers, and yet we are only able to represent half of the children who need our help. [Assembly Bill 192](#) and [A.B. 259](#) will provide an attorney for every child. It will be a milestone, one that most communities reached decades ago, but one that we will finally be able to reach.

[ASSEMBLY BILL 192 \(1st Reprint\)](#): Revises various provisions relating to fees charged by county recorders. (BDR 20-901)

In our Domestic Violence Project, we represent victims in custody matters and clients who have problems with temporary protective orders. The biggest reason women with children do not leave their abusers is that they are afraid to lose the children. That is especially true when the abuser drains the bank accounts and has the resources to hire a lawyer. We level the playing field and allow people to reclaim lives free of violence.

The Consumer Rights Project helps people who have been swindled of their last penny. Many deceptive trade practices are going on in Nevada, and we help the consumer fight predatory lending and scams. The saddest ones are people who trust someone at their church and get ripped off.

The Pro Bono Project is a project where, in addition to our staff attorneys, we ask every lawyer in the community to step up and help. Last year, we had over 16,000 volunteer hours from pro bono attorneys. We have about 1,000 cases out with private lawyers at the moment.

So why are we here? Our clients are your constituents, and they are facing record unemployment. We have people who come into our office who say, "I have never been without a job for the last 36 years. I lost my job; my house is in foreclosure; my wife sued me for divorce; and now I am being sued by my credit card company." And then they break down and cry. That is what we see: people who have never asked for help before. Between these problems and declining revenue, we are in a world of crisis. This bill will help meet that unmet legal need.

[Assembly Bill 259](#), which is revenue neutral—there is no fee increase—redirects two types of fees to help fund legal aid for the disadvantaged. The first is a \$20 filing fee collected when people file court documents. This redirection was part of the Nevada Supreme Court's business plan last Session, but at the last minute the Governor requested its removal. This redirection is supported by the Supreme Court and is unopposed. The Clark County and Washoe County courts are receiving that money now. In the rural communities, the rural judges would have the discretion to give the money to legal aid for the indigent, as defined in NRS 19.031. That was at the request of the rural judges to the Nevada Supreme Court. They get less money, and they wanted to have that option so

they could fund any of a laundry list of agencies as needed, such as legal aid, a court appointed special advocate (CASA) organization or court security.

The second part of the measure redirects \$5 of the locally generated notice of default fee to individuals in need of legal assistance. At this point, this money goes to the Nevada Supreme Court to fund the Foreclosure Mediation Program, Office of the Court Administrator, and we have the Court's blessing to divert it. The Court is now giving grants to legal aid organizations to help homeowners with questions. We have added one full-time person to the new Civil Law Self-Help Center in the Regional Justice Center to answer questions from homeowners.

In summary, the bill is revenue neutral. It has no opposition and the support of the Supreme Court. We have an incredible, unmet legal need and an incredible capacity in the organizations funded under NRS 19.031.

CHAIR WIENER:

Section 2, subsection 10, paragraph (c) includes the \$5 fee to which you referred. However, paragraph (b) reduces another fee from \$50 to \$45. Could you explain that? Also, paragraph (c) states, "The county recorder may direct that 1.5 percent of the fees" Is that 1.5 percent equivalent to the \$5 to be redirected?

ASSEMBLYWOMAN BUCKLEY:

Regarding your first question, the original redirection from the notice of default fee was \$15. It was reduced to the current level of \$5 at the request of the Nevada Supreme Court because it has to keep its budget healthy and whole. We appreciate the Court's willingness to partner with us, and we are satisfied with that amount.

Regarding the 1.5 percent, that is the recorder's fee standard collection allowance. That is applicable with every filing fee account, and it was reprinted in this bill in a way that makes it look awkward, but that is the standard amount done across the board. Yes, it does reduce it further, but that is how every account is treated.

SENATOR COPENING:

How much revenue do you expect to generate from this change? How many more clients do you expect to serve? How many more attorneys do you expect to hire?

ASSEMBLYWOMAN BUCKLEY:

The \$20 will generate \$1.2 million in Clark County; \$108,000 in Washoe County; and \$178,000 in the rural counties, should they choose to implement it. The starting salary for our attorneys is \$50,000 a year, which is incredible when so many attorneys walk in owing \$150,000 in student loans. The standard rule of thumb, when you factor in benefits, continuing legal education and support, is about \$100,000 per attorney. The increased caseload is harder to figure. Concerning abused and neglected children, our attorneys represent about 110 clients at any one time. Some of those cases are very active, and some children are on the road to adoption. In domestic violence, our caseload is about 45 cases. In addition, our attorneys travel to the domestic violence shelters once a week to meet new clients coming in. The attorneys also teach classes every Saturday on divorce and custody, which is a huge commitment, and so they have duties in addition to representing individual clients.

Between A.B. 192 and A.B. 259, in Clark County we will be able to hire ten new attorneys to represent children. We will probably be able to add one attorney each to the Domestic Violence Project and the Consumer Rights Project. In terms of additional clients represented, in the Children's Attorneys Project, that would be approximately 1,000 to 1,100 children. We will continue our Pro Bono Project because the need is so overwhelming. Sometimes we get a drop in the bucket, and this would give us three drops in the bucket. This will not allow us to meet every civil unmet need in Clark County, however.

SENATOR COPENING:

How much does the \$5 contribute?

ASSEMBLYWOMAN BUCKLEY:

It will be approximately \$200,000 in Clark County; \$31,000 in Washoe County; and \$20,000 in the rural counties.

PAUL D. ELCANO, JR. (Executive Director, Washoe Legal Services):

We support this bill. I have written testimony that describes the services we provide that would be funded by A.B. 259 ([Exhibit D](#)). Washoe Legal Services

provides the same services in the north that LACSN does in the south, and we work closely together as a team.

CAM FERENBACH (State Bar of Nevada):

I support this bill. Over the years in my practice of law, I have taken a great interest in access to justice projects. In the last five to ten years, we have created an Access to Justice Commission under the Supreme Court. This bill is another important step. Ten years ago, I would not have believed we would be able to represent every child in Clark County who was in a domestic abuse situation. We are now on the cusp of having that happen. Washoe Legal Services, Nevada Legal Services and LACSN have been working together diligently, focusing their resources on getting the job done for indigent people who need legal services.

REW GOODENOW:

I am here to speak on behalf of A.B. 259. I am a lawyer in private practice in Reno, and I also donate time to the volunteer lawyer programs. I want to emphasize my support for the programs these organizations oversee. When I was the chair of the Young Lawyers Section of the State Bar of Nevada, we formed Volunteer Attorneys for Rural Nevadans. I grew up in a rural area, and it is difficult to get lawyers' services to citizens of modest means in rural areas. The needs of families and children do not stop at the borders of our cities; in fact, sometimes they are more acute in the rural areas. It has always been important to me that those services continue to be enhanced.

This bill will not affect me or my clients in any way. It is a redirection of a portion of the filing fees.

The appearance of fairness in our courts is also important to me. Our courts have to be available to people who do not have the same means my business clients do. It is important that the courts not just be fair, but that they appear fair to the voters. Common people, working people with jobs, must have the same access to the courts as the big-money clients do. It is important that we support programs like this through filing fees so the courts will be available to people of modest means.

BEN GRAHAM (Administrative Office of the Courts):

Chief Justice Douglas and Justice Hardesty asked me to offer their apologies for their inability to appear before this Committee due to prior commitments. This

does not in any way diminish the Supreme Court's support for what is being sought here this morning. The provisions in A.B. 259 were part of the Supreme Court's business plan in 2009. As indicated, there were some issues as the Session wound down, and they were deleted at the last minute. The legal term "nunc pro tunc" literally means "now for then." In a way, we are asking to do now what we would like to have done in 2009. The Supreme Court supports the \$20 filing fee redirection and the \$5 diversion.

CHAIR WIENER:

Was the \$5 diversion part of the 2009 plan?

MR. GRAHAM:

It was not at the time. As it progressed, it appeared that there was going to be more and more need of legal services for people confronted with foreclosure issues. Hopefully, this will help the legal aid agencies work with those facing foreclosure.

CHRIS BAYER (Director, CASA of Carson City):

We support this bill. I speak for CASA agencies across the State when I say that we appreciate this bill allowing judges in the rural counties to have discretion in funding. These issues of representation for children, as with appointment of guardians ad litem for children, are passionately felt and truly justified.

DASHUN JACKSON:

I support this bill. I have written testimony describing the life of a foster child and explaining the difference it can mean to a child to have the services of an attorney ([Exhibit E](#)).

OLLIE HERNANDEZ:

I support this bill. I have written testimony explaining why this bill is important and describing my experiences in foster care ([Exhibit F](#)).

CHAIR WIENER:

In your statement, you mentioned that your attorney helped you with the refusal of psychotropic drugs. Could you share your experience with us?

MS. HERNANDEZ:

In foster care, if children have outbursts or issues with the trauma that put them in foster care, they are given psychotropic drugs to control the behavior. Even though they have been through hell, it is apparently not considered normal for foster kids to feel like that. These drugs inhibit the feelings and put you in a daze. So instead of learning how to deal with the issues you have from the abuse or from being in foster care, your feelings are just blocked because fosterers do not want to deal with your problems.

CHAIR WIENER:

Did you have a conversation with your attorney that you did not want to feel that way?

MS. HERNANDEZ:

Yes. During my junior year of high school, I was put on antianxiety medication that is also used for seizures. I do not have epilepsy. I was a junior in high school, and it is normal to have anxiety about taking college entrance tests and getting ready to apply to college. I did not think I had a problem. Psychotropic drugs are abused in foster care. When I found out the side effects of the medication and decided I did not want to take it anymore, I talked to my attorney about it. When I had spoken with my legal guardian about it, she said, "Oh, whatever; talk to your social worker," even though I had already spoken to my worker. So my last option was to talk to my lawyer because she can go over my legal guardian's head to the judge, and that is what she did. When I told her I did not want to be on antianxiety medication anymore, she went to court and explained to the judge about the side effects and my feelings about taking it, and I was taken off the psychotropic drugs gradually.

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CHAIR WIENER:

I will close the hearing on A.B. 259. Is there any public comment or any further business to come before the Committee? Hearing none, this meeting is adjourned at 10:17 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 259	C	Barbara Buckley	A.B. 259 Presentation
A.B. 259	D	Paul D. Elcano, Jr.	Written testimony
A.B. 259	E	Dashun Jackson	Written testimony
A.B. 259	F	Ollie Hernandez	Written testimony