

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*)

WORK SESSION DOCUMENT

(Includes Exhibits)



July 8, 2008

Prepared by the Research Division
Legislative Counsel Bureau

EXHIBIT B - CHANCERY COURTS
Meeting Date: July 8, 2008
Document consists of 28 pages.
Entire Exhibit provided.

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Copy of 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 (LCB)..... Exhibit A

Copy of a Memorandum Dated June 5, 2008, to Members of the
Subcommittee to Study the Benefits, Costs, and Feasibility of
the Implementation of Courts of Chancery in Nevada from
Kevin C. Powers, Legal Division, LCB, which includes a Draft Joint
Resolution Amending the *Nevada Constitution* to Authorize the Legislature
to Establish Courts Having Jurisdiction Over Business Matters Exhibit B

Copy of Senate Joint Resolution No. 9 (File No. 69, *Statutes of Nevada 2007*),
which will Return to the 2009 Legislative Session Exhibit C



WORK SESSION DOCUMENT

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*)

July 8, 2008

The following "Work Session Document" has been prepared by the Chair and staff of the Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada. It is designed to assist the Subcommittee members to develop recommendations to be forwarded to the 2009 Session of the Nevada Legislature. Each item in this document may be the subject of further discussion, refinement, or action.

This document contains recommendations that were either submitted in writing or presented during the Subcommittee's hearings on January 29, 2008; March 18, 2008; April 29, 2008; and May 28, 2008. The source of each recommendation is noted in parentheses unless the proposal was raised and discussed by numerous individuals and entities during the course of the Subcommittee's meetings.

The recommendations listed in this document are in no particular order and do not necessarily have the support or opposition of the Subcommittee Chair or members. For purposes of this "Work Session Document," the recommendations have been compiled and grouped by topic so the members may review them to decide if they should be adopted, changed, rejected, or further considered. The members of the Subcommittee may vote to send as many letters as they choose; however, pursuant to *Nevada Revised Statutes* 218.2429, the Subcommittee is limited to five bill draft

requests, including requests for the drafting of legislative resolutions. Additionally, although possible actions may be identified within each recommendation, the Subcommittee may choose to recommend any of the following actions: (1) draft legislation; (2) draft a legislative resolution; (3) draft a letter; or (4) include a statement in the final report.

If action is taken to adopt a recommendation, it will become part of the Subcommittee's final report and will be presented to the 75th Session of the Nevada Legislature for consideration. Finally, please note that specific details of approved requests for legislation or statements may need to be clarified by the Subcommittee staff prior to drafting.

RECOMMENDATIONS

ENHANCE THE EXISTING BUSINESS COURTS IN NEVADA

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

(Proposed by the Honorable Elizabeth Goff Gonzalez, Department 11, Eighth Judicial District Court of Nevada, and the Honorable Mark R. Denton, Department 13, Eighth Judicial District Court of Nevada.)

3. *If Recommendation No. 1 (direct the business courts to issue and publish written opinions by court rule) is approved by the Subcommittee, 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.*

(Included for the Subcommittee's consideration by staff, based on discussion in the memorandum to Senator Terry Care from Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser, Legal Division, Legislative Counsel Bureau, dated April 28, 2008.) (See Exhibit A.)

CREATE A DEDICATED BUSINESS COURT
--

4. Draft a joint resolution amending the *Nevada Constitution* to authorize the Legislature to establish courts having jurisdiction over business matters. (See Exhibit B.)

INDIRECT ENHANCEMENT TO THE BUSINESS COURT

5. 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. Joint resolutions that seek to amend the *Nevada Constitution* must be passed by two sessions of the Legislature and then submitted to the voters for approval or disapproval at the next general election.

(Proposed by Justice James Hardesty, Associate Justice, Nevada Supreme Court.)
(See Exhibit C.)

EXHIBIT A

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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

EXHIBIT B

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MEMORANDUM

DATE: June 5, 2008

TO: 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*)

FROM: Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser *KP*

SUBJECT: Work Session Draft of a potential joint resolution amending the Nevada Constitution to authorize the Legislature to establish courts having jurisdiction over business matters.

To assist the Subcommittee during its Work Session on June 23, 2008, I have prepared the enclosed Work Session Draft of a potential joint resolution amending the Nevada Constitution to authorize the Legislature to establish courts having jurisdiction over business matters.

Please note that the enclosed Work Session Draft was prepared for the limited purpose of discussion during the Work Session. If the Subcommittee were to request the drafting of a similar joint resolution for introduction during the 2009 Legislative Session, the request would be submitted to the Legislative Counsel as a bill draft request (BDR) pursuant to chapter 218 of NRS, and the drafting of the joint resolution would be subject to further review, revision and approval by the Legislative Counsel.

Enclosure

cc:

Senator Bob Beers, Chair
Senator Terry Care
Senator Barbara K. Cegavske

Assemblyman John C. Carpenter
Assemblyman William C. Horne
Assemblyman Tick Segerblom

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

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

WORK SESSION DRAFT

June 23, 2008

Prepared by the Legal Division of the Legislative Counsel Bureau

POTENTIAL JOINT RESOLUTION amending the Nevada Constitution to authorize the
Legislature to establish courts having jurisdiction over business matters.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That Section
6 of Article 6 of the Nevada Constitution be amended to read as follows:

1. The District Courts in the several Judicial Districts of this State have original
jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts.
They also have final appellate jurisdiction in cases arising in Justices Courts and such other
inferior tribunals as may be established by law. The District Courts and the Judges thereof
have power to issue writs of Mandamus, Prohibition, Injunction, Quo-Warranto, Certiorari,
and all other writs proper and necessary to the complete exercise of their jurisdiction. The
District Courts and the Judges thereof shall also have power to issue writs of Habeas
Corpus on petition by, or on behalf of any person who is held in actual custody in their
respective districts, or who has suffered a criminal conviction in their respective districts
and has not completed the sentence imposed pursuant to the judgment of conviction.

2. The legislature may provide by law for:

(a) Referees in district courts.

(b) The establishment of a family court as a division of any district court and may
prescribe its jurisdiction.

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the Implementation of Courts of Chancery in Nevada

WORK SESSION DRAFT
June 23, 2008

Prepared by the Legal Division of the Legislative Counsel Bureau

1 ***3. The legislature may provide by law for the establishment of one or more district***
2 ***courts having jurisdiction over business matters. Such courts may be established as:***

3 ***(a) A division of any district court; or***

4 ***(b) A specialized district court. The legislature may provide by law for one or more***
5 ***judicial districts for such specialized district courts, and those judicial districts are not***
6 ***required to be coextensive with the judicial districts of the other district courts.***

7 ***4. If the legislature establishes one or more district courts having jurisdiction over***
8 ***business matters pursuant to subsection 3:***

9 ***(a) The legislature shall prescribe by law the name and jurisdiction of the district***
10 ***courts having jurisdiction over business matters.***

11 ***(b) Except as otherwise provided in this subsection, the legislature may provide by***
12 ***law for the appointment and retention by election of the judges of the district courts***
13 ***having jurisdiction over business matters and for procedures relating thereto,***
14 ***notwithstanding any other provision of this Article to the contrary, but the term of office***
15 ***of the judges of such courts must be the same as the term of office of the judges of the***
16 ***other district courts. If, at the time that the legislature establishes one or more district***
17 ***courts having jurisdiction over business matters pursuant to subsection 3, this Article***
18 ***provides for the appointment and retention by election of the judges of the other district***
19 ***courts, each judge of a district court having jurisdiction over business matters must be***

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1 *appointed and retained in the manner and for the term provided for in this Article for*
2 *the judges of the other district courts. If the legislature does not provide by law for the*
3 *appointment and retention by election of the judges of the district courts having*
4 *jurisdiction over business matters and this Article does not provide for the appointment*
5 *and retention by election of the judges of the other district courts, the judges of the*
6 *district courts having jurisdiction over business matters must be elected in the manner*
7 *and for the term provided for in this Article for the judges of the other district courts.*

8 (c) *The legislature may prescribe by law additional qualifications, including, but not*
9 *limited to, education, experience or training, that are necessary to be eligible to be a*
10 *judge of a district court having jurisdiction over business matters, but such additional*
11 *qualifications must be reasonably related to the jurisdiction and judicial functions of*
12 *such courts.*

13 (d) *The legislature may provide by law for the publication in written, electronic or*
14 *other form, including, but not limited to, publication via the Internet, of the decisions of*
15 *the district courts having jurisdiction over business matters. If the legislature provides by*
16 *law for the publication of the decisions of such courts:*

17 (1) *The Supreme Court, by rule, shall provide for the citation of such decisions in*
18 *the courts of this State and shall specify the precedential value or authoritative weight*
19 *that must be given to such decisions by the courts of this State.*

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1 ***(2) In accordance with Section 8 of Article 15 of this Constitution, all such***
2 ***judicial decisions must be free for publication by any person, and no judgment of such a***
3 ***court shall take effect and be operative until the opinion of the court in such case is filed***
4 ***with the clerk of the court.***

5 ***(e) The legislature may prescribe by law procedures to facilitate alternative dispute***
6 ***resolution, settlement and expedited disposition of cases in the district courts having***
7 ***jurisdiction over business matters.***

8 ***(f) The legislature may enact such other laws as it determines to be necessary to***
9 ***facilitate the operation of the district courts having jurisdiction over business matters.***

EXHIBIT C

FILE NUMBER.....

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court.

Legislative Counsel's Digest:

This resolution proposes an amendment to the Nevada Constitution to allow the Legislature to establish an intermediate appellate court, known as the court of appeals. If the Legislature establishes the court of appeals, the court must consist of at least three judges. The initial judges will be elected at the first general election after the creation of the court, and each judge will be elected to serve a term of 6 years.

The court will have appellate jurisdiction in civil cases arising in district court and in criminal cases within the original jurisdiction of the district courts. The Nevada Supreme Court must fix the jurisdiction of the court and provide for the review of appeals decided by the court.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 3A, be added to Article 6 of the Nevada Constitution to read as follows:

Sec. 3A. 1. The Legislature may provide by law for the creation of a court of appeals.

2. If the Legislature creates a court of appeals pursuant to subsection 1, then:

(a) The court of appeals must consist of three judges or such greater number as the Legislature may provide by law. If the number of judges is so increased, the Supreme Court may provide by rule for the assignment of any appeal to a panel of three judges for decision.

(b) Except as otherwise provided in paragraph (c) and unless the Legislature provides for a term of fewer years pursuant to paragraph (d), each judge of the court of appeals must be elected by the qualified electors of this State at the general election for a term of 6 years beginning on the first Monday of January next after the election. The initial judges of the court of appeals must be elected by the qualified electors of this State at the first general election following the creation of the court of appeals.

(c) Notwithstanding the provisions of paragraph (b), if, at the time that the Legislature establishes a court of appeals, this Article provides for the appointment of each justice of the Supreme Court and judge of the district court by the Governor, each judge of the court of appeals must be



appointed by the Governor in the manner and for the term provided in Section 20 of this Article.

(d) Except as otherwise provided in paragraph (e), if there is an increase in the number of judges of the court of appeals, each additional judge must be elected by the qualified electors of this State at the first general election following the increase for a term beginning on the first Monday of January next after the election. The Legislature shall provide for an initial term of 6 or fewer years for each additional judge so that the terms of all judges of the court of appeals expire at the same time.

(e) Notwithstanding the provisions of paragraph (d), if, at the time that there is an increase in the number of judges of the court of appeals, this Article provides for the appointment of each justice of the Supreme Court and judge of the district court by the Governor, each additional judge must be appointed by the Governor in the manner and for the term provided in Section 20 of this Article.

(f) The Supreme Court shall appoint one of the judges of the court of appeals to be chief judge. The chief judge serves a term of 4 years and may succeed himself. The chief judge may resign his position as chief judge without resigning from the court of appeals.

And be it further

RESOLVED, That Section 1 of Article 6 of the Nevada Constitution be amended to read as follows:

Section 1. The judicial power of this State ~~[shall be]~~ *is* vested in a court system, comprising a Supreme Court, *a court of appeals, if established by the Legislature*, district courts ~~[.]~~ and justices of the peace. The Legislature may also establish, as part of the system, courts for municipal purposes only in incorporated cities and towns.

And be it further

RESOLVED, That Section 4 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 4. *1.* The Supreme Court ~~[shall]~~ *and the court of appeals, if established by the Legislature*, have appellate jurisdiction in all civil cases arising in district courts, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. *If the Legislature establishes a court of appeals, the Supreme Court shall fix the jurisdiction of the court of appeals and provide for the review, where*



appropriate, of appeals decided by the court of appeals. The ~~[court shall]~~ *Supreme Court and the court of appeals* also have power to issue writs of mandamus, certiorari, prohibition, quo warranto ~~[,]~~ and habeas corpus and also all writs necessary or proper to the complete exercise of ~~[its appellate]~~ *their* jurisdiction. Each ~~[of the justices shall have power to]~~ *justice of the Supreme Court and judge of the court of appeals may* issue writs of habeas corpus to any part of the State, upon petition by, or on behalf of, any person held in actual custody ~~[,]~~ *in this State* and may make such writs returnable ~~[, before himself]~~ *before the issuing justice or judge* or the ~~[Supreme Court,]~~ *court of which the justice or judge is a member,* or before any district court in the State or ~~[before]~~ any judge of ~~[said courts.]~~ *a district court.*

2. In case of the disability or disqualification, for any cause, of ~~[the Chief Justice or one of the associate justices]~~ *a justice* of the Supreme Court, ~~[for any two of them,]~~ the Governor ~~[is authorized and empowered to designate any]~~ *may designate a judge of the court of appeals or a* district judge ~~[or judges]~~ to sit in the place ~~[for places of such]~~ *of the* disqualified or disabled justice. ~~[for justices, and said judge or judges so designated shall receive their]~~ *The judge designated by the Governor is entitled to receive his* actual expense of travel and otherwise while sitting in the Supreme Court.

3. *In case of the disability or disqualification, for any cause, of a judge of the court of appeals, the Governor may designate a district judge to sit in the place of the disabled or disqualified judge. The judge that the Governor designates is entitled to receive his actual expense of travel and otherwise while sitting in the court of appeals.*

And be it further

RESOLVED, That Section 7 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 7. The times of holding the Supreme Court , *the court of appeals, if established by the Legislature, and the* district courts ~~[shall]~~ *must* be as fixed by law. The terms of the Supreme Court ~~[shall]~~ *must* be held at the seat of government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in the State. *The terms of the court of appeals, if established by the Legislature, must be held at the place provided by law.* The terms of the district courts ~~[shall]~~ *must*



be held at the county seats of their respective counties unless the Legislature otherwise provides by law.

And be it further

RESOLVED, That Section 8 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 8. **1.** The Legislature shall determine the number of justices of the peace to be elected in each city and township of the State ~~{,}~~ and shall fix by law their qualifications, their terms of office and the limits of their civil and criminal jurisdiction, according to the amount in controversy, the nature of the case, the penalty provided ~~{,}~~ or any combination of these.

2. The provisions of this section affecting the number, qualifications, terms of office and jurisdiction of justices of the peace become effective on the first Monday of January, 1979.

3. The Legislature shall also prescribe by law the manner, and determine the cases , in which appeals may be taken from justices and other courts. The Supreme Court, *the court of appeals, if established by the Legislature*, the district courts ~~{,}~~ and such other courts ~~{,}~~ as the Legislature shall designate ~~{, shall be}~~ *are* courts of record.

And be it further

RESOLVED, That Section 11 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 11. The justices of the Supreme Court , *the judges of the court of appeals, if established by the Legislature*, and the district judges ~~{shall be}~~ *are* ineligible to any office, other than a judicial office, during the term for which they ~~{shall}~~ have been elected or appointed . ~~{, and all}~~ *All* elections or appointments of any such judges by the people, Legislature ~~{,}~~ or otherwise ~~{,}~~ during said period ~~{,}~~ to any office other than judicial ~~{, shall be}~~ *are* void.

And be it further

RESOLVED, That Section 15 of Article 6 of the Nevada Constitution be amended to read as follows:

~~{See:}~~ **Sec. 15.** The justices of the Supreme Court , *the judges of the court of appeals, if established by the Legislature*, and *the* district judges ~~{shall}~~ *are* each *entitled to* receive for their services a compensation to be fixed by law and paid in the manner provided by law, which ~~{shall}~~ *must* not be increased or diminished during the term for which they ~~{shall}~~ have been elected, unless a vacancy occurs, in which



case the successor of the former incumbent ~~[shall]~~ *is entitled to* receive only such salary as may be provided by law at the time of his election or appointment. ~~[; and provision shall]~~ *A provision must* be made by law for setting apart from each year's revenue a sufficient amount of money ~~[;]~~ to pay such compensation.

And be it further

RESOLVED, That Section 20 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 20. 1. When a vacancy occurs before the expiration of any term of office in the Supreme Court *or the court of appeals, if established by the Legislature,* or among the district judges, the Governor shall appoint a justice or judge from among three nominees selected for such individual vacancy by the Commission on Judicial Selection.

2. The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.

3. Each nomination for the Supreme Court ~~[shall]~~ *or the court of appeals, if established by the Legislature, must* be made by the permanent Commission, composed of:

(a) The Chief Justice or an associate justice designated by him;

(b) Three members of the State Bar of Nevada, a public corporation created by statute, appointed by its Board of Governors; and

(c) Three persons, not members of the legal profession, appointed by the Governor.

4. Each nomination for the district court ~~[shall]~~ *must* be made by a temporary commission composed of:

(a) The permanent Commission;

(b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the Board of Governors of the State Bar of Nevada; and

(c) A resident of such judicial district, not a member of the legal profession, appointed by the Governor.

5. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the *Supreme* Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this section to be occupied by members of the State Bar of Nevada.



6. The term of office of each appointive member of the permanent Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission ~~{shall}~~ **must** be appointed when a vacancy occurs, and their terms ~~{shall}~~ expire when the nominations for such vacancy have been transmitted to the Governor.

7. An appointing authority shall not appoint to the permanent Commission more than:

(a) One resident of any county.

(b) Two members of the same political party.

→ No member of the permanent Commission may be a member of ~~{a}~~ **the** Commission on Judicial Discipline.

8. After the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not made the appointment required by this Section, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted.

~~{→ If a commission on judicial selection is established by another section of this Constitution to nominate persons to fill vacancies on the Supreme Court, such commission shall serve as the permanent Commission established by subsection 3 of this Section.}~~

And be it further

RESOLVED, That Section 21 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 21. 1. A justice of the Supreme Court, **a judge of the court of appeals, if established by the Legislature**, a district judge, a justice of the peace or a municipal judge may, in addition to the provision of Article 7 for impeachment, be censured, retired, removed or otherwise disciplined by the Commission on Judicial Discipline. Pursuant to rules governing appeals adopted by the Supreme Court, a justice or judge may appeal from the action of the Commission to the Supreme Court, which may reverse such action or take any alternative action provided in this subsection.

2. The Commission is composed of:

(a) Two justices or judges appointed by the Supreme Court;



(b) Two members of the State Bar of Nevada, a public corporation created by statute, appointed by its Board of Governors; and

(c) Three persons, not members of the legal profession, appointed by the Governor.

↳ The Commission shall elect a Chairman from among its three lay members.

3. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the *Supreme* Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this Section to be occupied by members of the State Bar of Nevada.

4. The term of office of each appointive member of the Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. An appointing authority shall not appoint more than one resident of any county. The Governor shall not appoint more than two members of the same political party. No member may be a member of a commission on judicial selection.

5. The Legislature shall establish:

(a) In addition to censure, retirement and removal, the other forms of disciplinary action that the Commission may impose;

(b) The grounds for censure and other disciplinary action that the Commission may impose, including, but not limited to, violations of the provisions of the Code of Judicial Conduct;

(c) The standards for the investigation of matters relating to the fitness of a justice or judge; and

(d) The confidentiality or nonconfidentiality, as appropriate, of proceedings before the Commission, except that, in any event, a decision to censure, retire or remove a justice or judge must be made public.

6. The Supreme Court shall adopt a Code of Judicial Conduct.

7. The Commission shall adopt rules of procedure for the conduct of its hearings and any other procedural rules it deems necessary to carry out its duties.

8. No justice or judge may by virtue of this section be:



(a) Removed except for willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance; or

(b) Retired except for advanced age which interferes with the proper performance of his judicial duties, or for mental or physical disability which prevents the proper performance of his judicial duties and which is likely to be permanent in nature.

9. Any matter relating to the fitness of a justice or judge may be brought to the attention of the Commission by any person or on the motion of the Commission. The Commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing is ordered, a statement of the matter ~~{shall}~~ *must* be served upon the justice or judge against whom the proceeding is brought. The Commission in its discretion may suspend a justice or judge from the exercise of his office pending the determination of the proceedings before the Commission. Any justice or judge whose removal is sought is liable to indictment and punishment according to law. A justice or judge retired for disability in accordance with this Section is entitled thereafter to receive such compensation as the Legislature may provide.

10. If a proceeding is brought against a justice of the Supreme Court, no justice of the Supreme Court may sit on the Commission for that proceeding. *If a proceeding is brought against a judge of the court of appeals, no judge of the court of appeals may sit on the Commission for that proceeding.* If a proceeding is brought against a district judge, no district judge from the same judicial district may sit on the Commission for that proceeding. If a proceeding is brought against a justice of the peace, no justice of the peace from the same township may sit on the Commission for that proceeding. If a proceeding is brought against a municipal judge, no municipal judge from the same city may sit on the Commission for that proceeding. If an appeal is taken from an action of the Commission to the Supreme Court, any justice who sat on the Commission for that proceeding is disqualified from participating in the consideration or decision of the appeal. When any member of the Commission is disqualified by this subsection, the Supreme Court shall appoint a substitute from among the eligible judges.

11. The Commission may:



(a) Designate for each hearing an attorney or attorneys at law to act as counsel to conduct the proceeding;

(b) Summon witnesses to appear and testify under oath and compel the production of books, papers, documents and records;

(c) Grant immunity from prosecution or punishment when the Commission deems it necessary and proper in order to compel the giving of testimony under oath and the production of books, papers, documents and records; and

(d) Exercise such further powers as the Legislature may from time to time confer upon it.

And be it further

RESOLVED, That Section 3 of Article 7 of the Nevada Constitution be amended to read as follows:

~~{See:}~~ *Sec.* 3. For any reasonable cause to be entered on the journals of each House, which may ~~{ }~~ or may not be sufficient grounds for impeachment, the ~~{Chief Justice and associate}~~ justices of the Supreme Court, *the judges of the court of appeals, if established by the Legislature,* and the judges of the district courts ~~{shall}~~ *must* be removed from office on the vote of two thirds of the members elected to each branch of the Legislature. ~~{, and the}~~ *The* justice or judge complained of ~~{, shall}~~ *must* be served with a copy of the complaint against him ~~{, and shall}~~ *and* have an opportunity of being heard in person or by counsel in his defense. ~~{, provided, that no}~~ *No* member of either branch of the Legislature ~~{shall be}~~ *is* eligible to fill the vacancy occasioned by such removal.

And be it further

RESOLVED, That Section 8 of Article 15 of the Nevada Constitution be amended to read as follows:

~~{See:}~~ *Sec.* 8. The Legislature shall provide for the speedy publication of all statute laws of a general nature ~~{ }~~ and such decisions of the Supreme Court ~~{ }~~ *and the court of appeals, if established by the Legislature,* as it may deem expedient. ~~{, and all}~~ *All* laws and judicial decisions ~~{shall}~~ *must* be free for publication by any person. ~~{, provided, that no}~~ *No* judgment of the Supreme Court *or the court of appeals* shall take effect and be operative until the opinion of the court in such case ~~{shall be}~~ *is* filed with the clerk of said court.

