



**Nevada Supreme Court**  
**Access to Justice Commission**  
**State Bar of Nevada**  
**Quarterly meeting**  
**Friday, July 10, 2009**  
**1- 5 pm**

<p><b>Las Vegas</b>  <b>AOC Conference Room, 17<sup>th</sup> Floor</b>  <b>Regional Justice Center</b>          200 Lewis Ave., Las Vegas,          89101</p>	<p><b>Carson City</b>  <b>AOC Conference Room, 2<sup>nd</sup> Floor</b>  <b>Supreme Court Building</b>          201 S. Carson Street, Carson          City, 89701</p>	<p><b>Reno</b>  <b>AOC Conference Room, 2<sup>nd</sup> Floor, #215</b>  <b>2<sup>nd</sup> Judicial District Court</b>          75 Court Street, Reno, 89501</p>
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**MINUTES**

**Commission members in attendance:**

Chief Justice James Hardesty    Co-Chair  
 Justice Michael Douglas        Co-Chair

Cooney	Valerie
Desmond	John
Doherty	Hon. Francis
Elcano	Paul
Ferenbach	Cam
Gonzales	Hon. Elizabeth
Johnson	AnnaMarie
Nielsen	Ernest
Steinheimer	Hon. Constance
Thronson	David
Vogel	Sheri Cane
Warden	Tom

Marzec                    Kristina                                    Executive Director, Commission (Staff)

**Non-voting members in attendance:**

Candelaria            Amber                                    Director, Eighth Judicial District Family Law Self Help Center

**Members by phone:**

None

**Guests:**

Buckley	Barbara	Executive Director, Legal Aid Center of Southern Nevada
Eglet	Robert	Vice-Chair, Nevada Law Foundation
England	Kathleen	President, State Bar of Nevada
Etkins	Lynn	Legal Aid Center of Southern Nevada
Farmer	Kimberly	Executive Director, State Bar of Nevada
Ochoa	Vincent	Board of Governors, State Bar of Nevada
Phelps	Carly	

**Members unable to attend (excused absences):**

Kandt                    W. Brett

## 1. Minutes 4.28.2009

Approved.

## 2. Equal Justice Conference and ATJ in other states

Several Commissioners and staff attended this year's Equal Justice Conference. Not unexpectedly, a major focus of the conference this year was on LSC and pending legislation for increased funding as well as relaxation of the attendant restrictions.

Anna Johnson attended and relayed there were some interesting ideas on how to tie into stimulus funding. Some states have done very creative tie-ins, such as with homelessness prevention, and rapid re-housing. NLS and Washoe SLP both have programming in those areas. There are also ways that are not necessarily legal representation, such as services provided by mediators who nonetheless have to be attorneys. One emphasis of the conference was rural delivery, with many of the same problems Nevada has evidenced in other states such as Montana. A trend in the mountain west is moving away from remote services towards putting physical offices in outlying areas.

Kristina Marzec noted this year strategic planning was a major focus and sessions on that topic heavily attended. Many Commissions are embarking on plans for strategic planning both for the Commission itself and state-wide services delivery, both objectives for Nevada in 2010.

Justice Douglas asked Commissioners to take note of the materials provided at page 62 of the packet regarding ABA Resource suggestions for Best Practices in ATJ to move initiatives forward. Also in the materials are programs and ideas that could be in our future. Each state has its own cultural ideologies on ATJ. Noticeably, three years after inception is the time commissions start to sit down and talk about priorities. This should be a focus for this Commission.

## 3. Report of the Legal Service Providers

*Sugar Vogel.* She has been engaging in discussions with the mayor and city managers. Fallout from the economy expected to last 3-4 years. At present, no cuts or lay offs are planned for her program. A regional application is in for funds for the senior law project, which could fund at least one part time attorney under AB 149 and one elder abuse attorney. Encouraging news.

*Barbara Buckley.* LACSN is swamped due to the economy. In particular the consumer unit bears the brunt of the need, but child abuse is also up. LACSN has two foreclosure grants; they have two lawyers and two full-time law clerks, averaging about 200 cases. A component of the bankruptcy program was recently added to strip second mortgages and expand to Chapter 7 filings, with the first case coming up next week. The Consumer Unit has grown to 5 1/2 attorneys, 6 paralegals, and a new attorney to run the self help center, Jim Berchtold. The Childrens' Unit is swamped, along with the domestic violence unit. All indications are that the County approved going through the normal fiscal cycle with no increases, but no decreases. She is reaching out to Judge Ritchie and Judge Steele to help with wait times in family court, which affects pro bono lawyers being able to take cases.

*Anna Johnson.* NLS is more like Consumer Credit Counseling. Services involve initial counseling and review of documents trying to get modifications and re-financing. Effective July 1 a grant came through (from Western Tennessee Legal Services National Center) for funding to train judges who want to be mediators. The final visit from LSC is completed. It was officially reported last week funding approved through the rest of this year. Caution noted that LSC itself is being audited by the GAO. New pro bono coordinator Steve McDonald hired effective June 1.

Anticipated funding increase pending is about 405 million under the House Bill. The Casey Amendments are proving to be a bigger obstacle than funding, largely due to unfounded political concerns over potential use of funds on sensitive hot topic issues such as abortion.

Judge Doherty commented Anna's news is demoralizing and represents the continued politicizing of poverty law. This will reflect on what we do as a state going forward. The Commission needs to hold the banner of poverty law as a basic human need. It is chilling that our national legislature is still focusing on these red herring issues rather than advocacy of poor people trying to access basic human rights. Mission should be to insure our core mission of what poverty law is.

*Valerie Cooney.* VARN funding received under recovery act grants will enable hiring of another staff intake person, probably someone with a background in domestic violence. A new attorney was hired to run the pro bono program and hopes to broaden the scope of services, including community outreach and attorney outreach in rural areas. Funding also received to open a shared office in Fernley (with the DV office) and hope to expand that to include family-law related matters in the future. She is currently in discussions with Anna to enter an MOU to serve as an arm of NLS in the rurals whereby VARN can use its relationships and contacts at least in the broad category of family law issues. VARN has already set out to find locations in Elko, Fallon, and Yerington and will also meet with the statewide CASA director to express interest in providing training to volunteers in rurals. Recent grant from the State Bar will provide for updating VARN's website, with a view in future towards developing a virtual self-help center.

*Ernie Nielsen.* For the Washoe Senior Law Project the problem is a lack of services more than a loss of jobs. Clients are mostly in states of transition. WSLP did enter an agreement with NLS and the county for homelessness prevention. As noted before, there is still a concern about tobacco funds used to fund guardianship cases. Preparing to apply for round 3 of foreclosure prevention funding. Clinics have been in place for the past 6 months. The program is retooling to adjust for those significant numbers expected in the next few months; should be a very robust program. Right now not nearly enough funding on wards and homelessness advocacy in particular, trying to find ways to increase that programming.

*Paul Elcano.* WLS is business as usual, financials are okay, no losses, program filled its last vacancy in child advocacy with a great attorney. Grants come and go but WLS is growing and stable. Two big issues on horizon are IOLTA and the increase in filing fees (i.e. will that increase result in less cases being filed and thus a net loss). Judge Doherty noted she is also concerned about the filing fee issue which has presented some challenges in the rurals. The Court will receive a full report by the end of the year with successes and failures.

*Self-help.* Judge Gonzales reported the RJC self-help center begins construction in two weeks. They are still finalizing the contract with LACSN for the ground floor. Amber Candelaria noted the Family Law Self-Help Center is doing well and very busy. The HotDocs contract is still with the County but she is confident it will be approved.

*Executive Directors' Report.* Chair Paul Elcano gave the Executive Director Committee Report. The group met a few weeks prior and discussed four key issues. The group supports the rule change discussions with regard to SCR 217 (IOLTA benchmarks). There were continued discussions on a stipulated formula for block granting among the providers, which is proceeding well. Concessions were made for different people. A few issues need to be explored with the Nevada Law Foundation before the group can make any recommendations regarding a potential rule establishing dues add-on or dues set-off. The NLF proposal on jury fees, while certainly worth exploring, is not ripe for recommendation yet. That proposal needs to be vetted. Also discussed was statewide reporting, which is difficult given the different data systems and various requirements for grants among the providers. Justice Douglas noted if we are going to be successful in seeking funds that information is worthwhile to gather. To seek funding we all need to be telling one story. The Executive Directors agreed to report back by the next Commission meeting or sooner with uniform reporting. Their next meeting is September 15.

#### **4. Pro Bono week**

A review of pro bono week planning was provided. Events are planned Monday through Thursday, with VARN doing a legal fair the prior Saturday. Each provider is putting on at least one event, there will be a kick-off cocktail reception Monday night attended by the co-chairs at *Lionel Sawyer*, and there are a number of CLEs planned including a CLE breakfast in Reno. The State Bar's website and *Nevadalawhelp.org* will be updated as plans progress, along with articles in the various bar journals and on-line resources. Bank of Nevada has been a significant supporter both financially and by putting on an

event that week. Marketing will begin in early October.

## **5. Foreclosure Mediation Program**

Chief Justice Hardesty reported the programming is up and running. There are rules, a coordinator, a director, and as of now, 104 attorney in the first phase of mediation. The Court has received proposals for mediation training and is monitoring daily notices of default to get a feel for volume. There was an anticipated dip in filing on the 1<sup>st</sup> as people tried to avoid the consequences of AB 149. The average is about 100 per day in Clark County and 35 per day in Washoe (commercial and residential). Every single department in the Court was involved in getting this program to fruition. The Justice is confident mediation will likely proceed in the first week or two of August and then proceed daily from there. Unsuccessful mediation and claims for bad faith will have to go to district court, and there are some challenges there which are being worked through next. He is working with Judge Ritchie on rule making in that respect. There will be a rulemaking committee (which will not set parameters on sanctions). There needs to be some consistency in rulings so it will evolve up to the Supreme Court. The Court will put on two CLE training programs for judges (one with training as mediators will get, the other related to sanctions). The Justice has been talking with chief justices from New Mexico and Connecticut and likes their programs.

Justice Hardesty stated his pride in all the people involved in helping with this program. There was tremendous effort on the part of every Justice and every staffer.

## **6. Nevada Law Foundation Report**

Robert Eglet presenting. There has not been much progress on the IOLTA campaign since the last Commission meeting due to distractions the last three months. The Foundation is again requesting a rule change on increasing its board. This is required to expand boots on the ground. The NLF needs active committees for going to law firms (phone calls are good, but to get them to change, it takes face to face meetings with representatives of one of our preferred interest bank partners).

Silver Ball attendance was up this year and the program was better. The net income out of it however is nowhere near as good as possible, and the Board is looking to completely revamp the program and make it just as nice without the cost. Colleague pledges are mostly collected, some are on payment programs, and the total amount is significantly higher than past years.

IOTLA good news is that revenue for the first five months is up. This is due to a combination of things, especially IOLTA going mandatory and efforts regarding the preferred interest program. Wells Fargo and Bank of America are not giving us a break. The NLF has spoken to many banks in the last several months (both those that said yes and no) and the consensus is until someone tells banks they have to do this in order to keep trust accounts, they are not going to do it. It took a lot of effort plus conversion to mandatory to increase funding by a quarter million. It would be helpful on the road ahead if the NLF could say there is a rule change coming in the next 6-8 months.

Barbara commented it is important to have a rule supported by the State Bar. We need a campaign to win the hearts of the bar membership and should be talking about how to allay fears, which we believe unfounded, about the proposal. Everyone reacts negatively to the concept of anything mandatory in nature. We have to do a rule otherwise we are wasting precious time. There should be a long range effective date to allow for education. This rule is not about inconvenience to lawyers: it's a legal aid crisis and a way to help without breaking a sweat. Cam opined the model that comes to mind is the prejudgment interest rate set by the commissioner of banks every 6 months. Paul took a different point of view, noting renegotiation and monitoring of the rates will be very important. Caution is urged with a formulaic approach. Rate has to be good for a year.

Justice Hardesty opined the rate should be in the rule because frankly, it forces to court to look at it every year as it should be. Some of our current challenges arise from matters not being properly reviewed with the necessary attention.

There followed lengthy discussion on the merits of the rule proposal draft for Rule 217 as provided in the agenda. The rule must take into consideration the rurals, review, reporting, oversight, and should give banks the benefit of notice before the eventual effective date. The economy is so unpredictable now review in a year is definitely advantageous. The issue of pending litigation related to comparability was revisited. The Commission's research is that there is no pending litigation at this time in the country. There was some concern voiced something might be pending in Arizona. The Chief Justice will follow up on that.

### **Motions on Rule Changes**

- **Amendments to SCR 217.** Moved and approved to form working group.

Moved and approved to form a working group comprised of Chief Justice Hardesty, Justice Douglas, Cam Ferenbach, Barbara Buckley, and Paul Elcano to discuss and tweak the rule draft and get back with the full Commission with a recommendation. Kristina to provide staff support and work with Justice Hardesty to schedule the first conference call within the next few weeks.

- **Increasing the NLF Board to a total of 21:** Moved and approved, one opposed.

Justice Douglas noted the plan was to put these people in action to hit the ground running for fundraising. The other component was the State Bar asked the NLF to form a managing/operational group to run governance of the foundation as an ongoing process, which the NLF has pledged to do.

Confirmed that the Rule recommendation will come from the Commission directly to the Court under the open ADKT for Commission issues generally.

- **Change to Rule 216(1)(a). Change "major portion" to "significant majority".** No Motion.

Consensus is both terms are ambiguous. This rule needs significant discussion and vetting on a number of issues related to the IOLTA discussions generally and is not ripe for amendment at this time.

Robert noted the NLF was successful this year in fundraising to cover all overhead and estimates 1.4 million or more in IOLTA this year. The reserve is for providers only. If fundraising is successful enough the NLF can go to 100%, but 90% is a minimum. The intent was to strengthen the rule so other boards are clear on program's intention. Sugar asked if the senior programs are considered part of the core provider group of six. Robert noted as far as the NLF is concerned, yes they are. Barbara noted this came up in the Executive Director Committee discussions and a review of the language of rule 217 leaves open to interpretation whether government entities are intended. However, this discussion was not intended to cut out seniors as the group recognizes the value of the senior programs. The group would like to recommend their inclusion in a way that makes sense and there have been amicable talks to that end. Cam noted the problem for years has been the providers need to have a reliable income stream. One option would be to have the rule affirmatively recognize the six providers by name, and then go ahead and put in the 90% minimum. Justice Hardesty noted we can postpone this section but it needs to be resolved soon.

On a related point, the Executive Directors agreed to resolve the block grant formula issue by the next Commission meeting, if not sooner.

- **Jury Fees (NRS 38).** No Motion. Matter referred to Development Committee.

After extensive discussion of this proposal, it was agreed that while the idea is intriguing, it needs significantly more vetting, particularly for constitutionality. Also a concern about the impression of taxation on jury demands, and, the burden on the everyman plaintiff that might have a chilling effect. Noted the equal protection issue goes beyond initial poverty. Chief Justice Hardesty noted a question is can the Court impose a fee and then designate the recipient. There has to be a clear nexus. A better option might be forfeiture funds, however that is not a stable revenue source. Judge Gonzales offered to pull jury demand statistics from 2007 through 2009.

- **Rule 15. Commission composition.** Moved and approved with changes. Final rule to come back to Commission.

Rework to make sure it's clear the Executive Director is not a voting member. Add three at-large positions. There is an ebb and flow of at-large positions, which allow for flexibility depending on the evolving goals and priorities of the Commission over time. This will also allow for keeping on valued founding members that no longer fill a specific rule slot.

- **Rule 6.1.** Moved and approved to have Legal Services Delivery and the designated working group further review and report back to Commission.

**7. Adjourned at 5:45.**