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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 THE STATE OF NEVADA, EX REL, AMY ) Case No. 35144  
4 HARVEY, THE DULY-ELECTED COUNTY )  
5 CLERK OF WASHOE COUNTY AND EX OFFICIO )  
6 COURT CLERK OF THE SECOND JUDICIAL )  
7 DISTRICT COURT, AMY HARVEY IN HER )  
8 CAPACITY AS CLERK OF THE SECOND )  
9 JUDICIAL DISTRICT COURT, )  
10 Plaintiff/Petitioners, )

11 vs. )

12 THE SECOND JUDICIAL DISTRICT COURT )  
13 OF THE STATE OF NEVADA, IN AND FOR )  
14 THE COUNTY OF WASHOE, AND THE )  
15 HONORABLE CHARLES M. McGEE, CHIEF )  
16 JUDGE, SECOND JUDICIAL DISTRICT )  
17 COURT; THE HONORABLE BRENT T. ADAMS )  
18 DISTRICT JUDGE, SECOND JUDICIAL )  
19 DISTRICT COURT; THE HONORABLE JANET J. )  
20 BERRY, DISTRICT JUDGE, THE SECOND )  
21 JUDICIAL DISTRICT COURT; THE )  
22 HONORABLE PETER I. BREEN, DISTRICT )  
23 JUDGE, SECOND JUDICIAL DISTRICT COURT; )  
24 THE HONORABLE STEVEN P. ELLIOTT, )  
25 DISTRICT JUDGE, SECOND JUDICIAL )  
DISTRICT COURT; THE HONORABLE JAMES )  
W. HARDESTY, DISTRICT JUDGE, SECOND )  
JUDICIAL DISTRICT COURT; THE HONORABLE )  
SCOTT JORDAN, DISTRICT JUDGE, SECOND )  
JUDICIAL DISTRICT COURT; THE HONORABLE )  
STEVEN R. KOSACH, DISTRICT JUDGE, )  
SECOND JUDICIAL DISTRICT COURT; THE )  
HONORABLE JEROME M. POLAHA, DISTRICT )  
JUDGE, SECOND JUDICIAL DISTRICT COURT; )  
THE HONORABLE DEBORAH SCHUMACHER, )  
DISTRICT JUDGE SECOND JUDICIAL DISTRICT )  
COURT; AND THE HONORABLE )  
CONNIE J. STEINHEIMER, DISTRICT JUDGE, )  
SECOND JUDICIAL DISTRICT COURT, )  
Defendants/Respondent and Real Parties )  
in Interest. )

BRIEF OF AN AMICUS CURIAE  
(NEVADA ASSOCIATION OF COUNTY CLERKS  
AND COUNTY ELECTION OFFICIALS)

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1 continues to promote the effective functioning of the district court and the court clerk's offices  
2 within the limits set by the state constitution, state statutes, and the rules of court.

3  
4 **III. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

5 A. Do the provisions of the Washoe County Code creating the Court Administrator's  
6 office, as applied by the administrative actions taken by the District Court and District Judges,  
7 impermissively nullify the duties placed on the Clerk by the last sentence in Article 4, section  
8 32 of the Constitution of the State of Nevada, state statutes and Rules of Court?

9  
10 B. Are the administrative actions taken by the District Court and District Judges  
11 defining the duties of the Court Administrator's office in excess of the inherent power of the  
12 district court?

13  
14 C. What are the proper guidelines for an effective and harmonious interaction of the  
15 court clerk and district court respecting the management and operation of the district court  
16 clerk's office?

17 **IV. STATEMENT OF THE CASE**

18 This is a proceeding invoking this Courts original jurisdiction The Complaint in *quo*  
19 *warranto* and the Application for extraordinary relief, filed by the Clerk on November 17, 1999  
20 essentially requests that the Court Administrator be ousted for performing certain duties that are  
21 the legal responsibility of the Clerk in her *ex officio* capacity as court clerk for the District Court,  
22 that the District Court and District Judges be prohibited from usurping, intruding upon  
23 or holding and exercising the duties of the Court Clerk in her *ex officio* capacity as court clerk,  
24 and that this Court declare the respective rights and duties of the District Court and its judges  
25 relative to the constitutional office of the County Clerk in her *ex officio* capacity as court clerk.

1 Because this matter is of public concern and potentially impacts the efficient administration of  
2 justice, the Clerk requests this action take precedence over pending civil business, citing NRS  
3 35.250.

4 On January 27, 2000 this Court issued an Order directing the District Court and the  
5 District Judges to file an answer on the issues of arguable cause. The time to answer was  
6 enlarged by order of this Court through and including March 24, 2000. The Association files  
7 this brief conditionally with its motion for leave to file a brief of an amicus curiae, in advance  
8 of the date the answer is due Rule 29 of the Nevada Rules of Appellate Procedure (hereafter  
9 "NRAP").

#### 10 **V. STATEMENT OF FACTS**

11 Over twenty five years ago, the District Court and its judges decided to create the  
12 position of Court Administrator. The Clerk s Complaint and Application, Exhibit 1:1 and  
13 Exhibit 2:1<sup>1</sup>. Initially, the District Judges envisioned that the Court Administrator would be  
14 responsible for the administrative functions of the District Judges, as supervised and directed by  
15 the District Judges. Exhibit 1:2. The administrative functions include matters related to  
16 preparing the court's budget, handling the court's purchasing and personnel administration,  
17 managing jurors, calendaring cases, determining court space and equipment needs, compiling  
18 statistics, acting as the court's liaison with other state and county officers, preparing and  
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20 \_\_\_\_\_  
21 Hereafter, references to Exhibits are to those exhibits attached to the Clerk's Complaint and  
22 Application unless otherwise specified. NRAP 28(3). The reference is styled by exhibit  
23 number and page.  
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1 reporting on the progress of court-related legislation, serving as the court's public information  
2 officer, as well as providing the administrative supervision of the Court's Juvenile Probation  
3 Department. Exhibit 1:2.

4 The District Judges did not intend that the Court Administrator would assume any of the  
5 functions of the Court Clerk. Exhibit 1:2. Specifically, the District Judges did not intend that  
6 the Court Administrator would handle any funds which are the responsibility of the Court  
7 Clerk, would not have deputies, or be authorized to make any decisions which could result in  
8 liability on the part the Court Clerk. Exhibit 1:2. However, the District Judges purported to  
9 reserve the ability to have the Court Administrator instruct or direct the Court Clerk in the  
10 performance of the Clerk's duties as deemed necessary by the District Judges. Exhibit 1:2.  
11 Moreover, any differences between the two officials assertedly would be resolved by the  
12 District Judges. Exhibit 1:2.

13 The District Judges justified the change in its relations with the Clerk's office relying on  
14 its perceived distinction between the offices of County Clerk and Court Clerk. Exhibit 1:1.  
15 The District Judges believed the distinction was lost over the years because both offices were  
16 held by the same officer, because the personnel had been used interchangeably between both  
17 offices, funds to operate the two offices had been commingled, and the two offices had been  
18 operated as if they were one office. Exhibit 1:1. The District Judges decided to change this  
19 situation by separating all of the functions of the two offices. Exhibit 1:1-2.

20 Washoe County Ordinance number 230 (June 21, 1974) was adopted by the Board of  
21 County Commissioners. This ordinance established the position of Court Administrator,  
22 recognized that the employees m the Court Clerk's office are under the complete jurisdiction  
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1 and control of the District Judges, transferred 32 specifically named positions and employees of  
2 the Court Clerk to the direct supervision of the District Judges, and defined generally the duties  
3 of the Court Administrator. Exhibit 2:1-2 The ordinance acknowledged that the County Clerk is  
4 the ex officio court clerk pursuant to section 32 in Article 4 of the Nevada Constitution as well as  
5 sections 3.250 and 246.060 of the Nevada Revised Statutes, but justified the changes  
6 produced by the ordinance text by relying on the separation of powers provision in subsection 1  
7 of section 1 in Article 3 of the Nevada Constitution. Exhibit 2:1. This reliance, inferred that  
8 some court clerk functions properly belonged to the Judicial Department as opposed to any  
9 other governmental department. **See**, Exhibit 2:1.

10 Since the creation of the position of Court Administrator, the administrative functions  
11 envisioned have evolved in definition and scope. Court files are maintained in the filing office  
12 under the management of the District Court and the Court Administrator. Exhibit 3:1. The  
13 Clerk and her staff have no access to the case files in the filing office other than at the public  
14 viewing table with prior approval, except perhaps when the "hard copy" of the case file is  
15 scheduled for microfilming. Exhibit 3:1. Moreover, even though in 1975 the District Judges  
16 did not intent that the Court Administrator handle any funds which are the responsibility of the  
17 Court Clerk, the Clerk cannot state whether her report of court fees is accurate because she  
18 lacks access to the District Court's daily receipts. **Cf.**, Exhibit 4:1 and Exhibit 1:2. The District  
19 Court, by petition, has secured this Court's approval to repeal former Rule 2 of the Rules of  
20 Practice for the Second Judicial District Court (hereafter "WDCR") and adopt a new Rule 2.  
21 Paragraphs b, e and i of subsection 8 in WDCR 2 provide that the Court Administrator  
22 supervises the operation of the filing office, process the pleadings and papers related to district  
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1 court business, supervises the court clerks, hires, trains and supervises all necessary personnel  
2 to adequately conduct the operations of the district court and determines statistics to be  
3 gathered for the statewide uniform system of judicial records. These activities are statutory  
4 responsibilities of the County Clerk in her *ex officio* capacity as court clerk.

5 The official relationship between the District Court and the Clerk has eroded. **See**, the  
6 Clerk's Complaint and Application 12:6 - 16:2<sup>2</sup> and Exhibit 3. The pronouncement of  
7 guidelines concerning the nature, extent and scope of the District Court's administrative  
8 authority over the Clerk in her *ex officio* capacity as court clerk is needed This matter is  
9 appropriate for decision by this Court pursuant to constitutional and statutory mandate. **See**  
10 Nev. Const. Art. 6 sec. 4 and 19, and NRS 1.210(4) and 1.360(1). Moreover, this Court is  
11 empowered with general administrative authority over lower courts, commonly referred to as its  
12 power of superintendence **See, Goldman v Bryan**, 104 Nev. 644, 653-654, 764 P.2d 1296  
13 (1988).

## 14 15 **VI. LEGAL ARGUMENT**

### 16 **A. THE OFFICE OF COUNTY CLERK IS DENOMINATED** 17 **CONSTITUTIONALLY AND THE LEGISLATURE HAS** 18 **THE ABILITY TO DEFINE THE SCOPE OF THE COUNTY** 19 **CLERK'S DUTIES. BUT THE CONSTITUTION PROVIDES** 20 **THE COUNTY CLERK MUST BE THE COURT CLERK** 21 **FOR THE DISTRICT COURT.**

22 The state constitution enumerates the county clerk as one of the elected county officers,  
23 and gives the legislature the power to increase, diminish, consolidate or abolish the office of  
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References to the Complaint and Application are styled by page and line.

1 county clerk, and fix by law the county clerk's duties. Nev. Const. Art. 4 sec. 32. The same  
2 constitutional provision specifies the county clerk must be the *ex officio* court clerk for the  
3 courts record in that clerk's county. **Id.** The district court is a court of record. NRS 1.020(2).  
4 Reading the two provisions together, the Washoe County Clerk, by virtue of her office, must  
5 serve as the court clerk for the Second Judicial District Court.

6 The legislature has defined the duties of the County Clerk when acting in the *ex officio*  
7 capacity of court clerk for the district court. **See**, NRS 3.245 **et seq.** and NRS 246.010 **et seq.**  
8 There are many statutory duties placed on the court clerk. Since the exhibits attached to the  
9 Washoe County Clerk's Complaint and Application focus largely on responsibility for keeping  
10 court records and administering the receipt of money payable to the district court, the  
11 Association will focus this brief on a discussion of those responsibilities.

12 The legislature reiterates that the county clerk is "the clerk of the district court of his  
13 county," and must perform the duties required by the laws of this state. NRS 3.250, and  
14 246.060(1)-(2). A number of statutes which pertain to the court clerk's responsibilities for  
15 administering the records of the district court and receipting or accounting for payments made  
16 to the same court.

17 Record keeping duties assigned to district court clerks by the legislature include  
18 procuring and keeping the district court's seal (NRS 1.150 to 1.190), supplying information to  
19 the state's court administrator from the records of the district court (NRS 1.370(1)) obtaining  
20 and keeping information regarding the nature of civil actions (NRS 3.275), keeping a register of  
21 civil actions (NRS 3.280), preparing a list of all district court matters standing submitted (NRS  
22 3.290 and 3.295), keeping the exhibits submitted to the district court (NRS 3.305 and 2.307),  
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1 recording the district court's decisions in the minutes of the court and ensuring the same  
2 decisions are filed in the court's records (NRS 3.180), accepting a criminal information filed  
3 electronically (NRS 173.049), keeping records of bail bonds accepted by the district court .  
4 (NRS 178.542), notifying the district attorney of bail bond forfeiture (NRS 178.548), accepting  
5 papers in criminal matters for filing in the same manner provided in civil actions (NRS  
6 178.588), preparing the calendar of all criminal actions pending in the district court (NRS  
7 178.592), and maintaining the district court dockets (NRS 17.150 to 17.190). This list is  
8 illustrative, not exhaustive, of the county clerk's *ex officio* statutory record keeping duties  
9 which the legislature requires be performed in the capacity of court clerk to the district court.

10       Clerks of the district court also have numerous receipting and accounting duties  
11 assigned to them by the legislature through the passage of statutes. These duties include:  
12 giving a receipt for and paying over to the county treasurer all payments made to the district  
13 court (NRS 3.270), charging and collecting court fees expressly provided by statute (NRS  
14 19.013 and 19.020) and accepting as well as refunding bail deposits (NRS 31.670 and 31.690).  
15 This list is illustrative, not exhaustive, of the county clerk's *ex officio* statutory financial duties  
16 which the legislature requires be performed in the capacity of court clerk to the district court.

17       At the same time, the legislature has recognized the judiciary's ability to control the  
18 conduct of its ministerial officers as well as make rules for government of the district courts.  
19 NRS 1.210(4), 2.120(1) and 3.025(2)(c). The Association understands these statutory  
20 references to court rulemaking powers are legislative sanction of the court's inherent power to  
21 administer its affairs. ***Goldberg v District Court***, 93 Nev. 614, 616, 572 P.2d 521 (1977).  
22 Pursuant to its inherent administrative powers, this Court has defined the record-keeping and  
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1 financial administration duties of the court clerk. Among the record-keeping responsibilities,  
2 the court clerk is to have custody over and supervise withdrawal (under judicial direction) of  
3 the court records, papers and exhibits (DCR 11), accept for filing the orders, judgments or  
4 decrees of the court (DCR 24), accept the filing of judgments signed by the judge (NRCP  
5 58(b)), enter default judgments when the plaintiff s claim is for a sum certain (NRCP  
6 55(b)(1)), perform other actions respecting the issuance of process which do not require  
7 allowance or order of the court (NRCP 77(c)), and complete the compilation of submitted  
8 causes (NRCP 77(e)). Among the financial responsibilities the court clerk is: to function as the  
9 surety's agent for service of papers affecting liability of the bond or undertaking (NRCP 65.1)  
10 and to accept certain monetary or property deposits in full or partial satisfaction of the relief  
11 sought in civil actions (NRCP 67(1)). These lists of court-defined record keeping and financial  
12 duties are illustrative, not exhaustive, and show that this Court has further elaborated the duties  
13 of the county clerk in that officer's *ex officio* capacity as district court clerk.

14 The critical issue in this original proceeding is whether a district court can transfer  
15 legislatively prescribed and court-defined duties to the district court's appointed court  
16 administrator based on the separation of powers provision in our state constitution and based  
17 on the district court's inherent power.

18 **B. SECTION 1(1) IN ARTICLE 3 OF THE NEVADA**  
19 **CONSTITUTION DOES NOT REQUIRE COMPLETE**  
20 **SEPARATION AND TRANSFER OF THE COURT**  
21 **CLERK'S DUTIES TO THE COURT ADMINISTRATOR.**

22 The initial need for separation of the court clerk's function from that of the balance of the  
23 county clerk's office is explained from the viewpoint of the District Judges in the Washoe  
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1 County Clerk's Complaint and Application:

2 By the nature of his position, the Clerk of Court is subject to the direction  
3 and supervision of the District Judges. Over the years, the distinction between  
4 the office of County Clerk and Clerk of Court has been lost because both offices  
5 are held by the same person, and because the District Judges have not insisted  
6 upon maintaining the distinction. Personnel have been used interchangeably  
7 between the two offices and funds have been commingled, and the offices have  
8 been operated as if they were one office.

9 It is the intention of the District Judges to exercise their administrative  
10 authority over, and responsibility for the operation of the office of the Clerk of  
11 Court in order to assure the efficient administration of justice. In order to carry  
12 out this intention, it is necessary to separate all of the functions of the two  
13 offices. This separation would have been made whether or not a Court  
14 Administrator was employed. The District Judges, of course, have no interest in  
15 the office of County Clerk.

16 Exhibit 1:1-2. This apparent need for separation of the court clerk's function from the balance  
17 of the county clerk's office is made more difficult by the declarations in subsection A in section  
18 1 of Washoe County Ordinance number 230 (June 21, 1974). Exhibit 2:1.

19 The county ordinance provision just cited is now codified as Washoe County Code §  
20 10.010. After referencing section 32 of Article 4 of the Nevada Constitution, sections 3.250 and  
21 246.060 of the Nevada Revised Statutes and section 1 of Article 3 of the Nevada  
22 Constitution, the county ordinance describes the relationship of the employees in the office of  
23 the court clerk and the district court in the following terms:

24 ...[E]mployees in the office of the office of the clerk of the district court are  
25 **under complete jurisdiction and control** of the district judges and are exempt  
employees pursuant to [paragraph (a) of subsection 3] of Section 5.045 of the  
Washoe County Code [Emphasis supplied].

Washoe County Code section 10.010(1).

1 The county code ignores the appointment and supervisory responsibility for deputies  
2 placed on the county clerk when acting as the district court clerk by NRS 3.260 and 246.030. It  
3 also ignores this Court's statement of the respective responsibilities of the court clerk and  
4 district judge concerning record-keeping:

5 It is the duty of the clerk to keep a correct record of all proceedings of the court  
6 legitimately pertaining to the trial of every case. It is the duty of the court to  
7 exercise supervisory power over its own records and to see that the record book  
8 is not encumbered with improper or irrelevant matter.

9 ***County of Washoe v County of Humboldt***, 14 Nev. 123, 133 (1879). The county code  
10 provision quoted in the previous paragraph ignores this Court's statement respecting the court  
11 clerk s responsibility concerning the nonpayment of docket fees:

12 Respondent cannot take advantage of the fact that the clerk instead of the plaintiffs paid  
13 the docket fee.

14 The clerk had the right to refuse to put the case upon the docket unless the  
15 docket fee was paid by the plaintiffs. By entering it upon the docket he became  
16 personally responsible and assumed the payment of the fee, and having paid it,  
17 as he did, the rights of plaintiffs were preserved.

18 ***Rose v Richmond Mining Co.***, 17 Nev. 25, 54-55, 27 P. 1105 (1882) affirmed sub. nom.

19 ***Richmond Mining Co v Rose***, 114 U.S. 576, 5 Sup. Ct. 1055, 29 L.Ed. 273 (1885).

20 Both of these historic cases recognize a certain degree of administrative responsibility  
21 on the part of the county clerk when acting in the ex officio capacity of district court clerk.  
22 These responsibilities are not synonymous with the court clerk's employees being "under the  
23 complete jurisdiction and control of the district judges" as provided in subsection 1 of section  
24 10.010 of the Washoe County Code..  
25

1           The initial need to separate the court clerk's function from the balance of the county  
2 clerk's office did not envision making any changes in the statutory duties of county clerk.

3       Exhibit 1:1. The record-keeping duties and responsibility for receiving and receipting for  
4 payments made to the District Court have shifted from the Clerk to the offices controlled by the  
5 District Court's Court Administrator. Exhibit 3:1-2. and Exhibit 4:1, WDCR 2. This shift in  
6 duties from the county clerk to the court administrator appears to be based upon judicial  
7 directive and the county ordinance. Exhibit 2:1-2, **see** Washoe County Code section 10.030(2)  
8 ("The court administrator shall under the supervision and direction of the district judges: ...  
9 [a]ttend to such other matters as may be assigned by the district judges ").

10           The district judges have justified this shift of responsibilities based on Nevada's  
11 constitutional guarantee of a separation of governmental powers found in section 1(1) of Article  
12 3 of the Nevada Constitution. Exhibit 1:2-3 and Exhibit 3:2. The separation of powers  
13 doctrine is cited as justification for Washoe County Ordinance number 230 (June 21, 1974).  
14 Exhibit 2:1. Complete separation of the district court clerk's function from the balance of the  
15 county clerk's functions is not required to satisfy section 1(1) of Article 3 of the Nevada  
16 Constitution.

17           This Court has explained Nevada's separation of powers doctrine in ***Galloway v***  
18 ***Truesdell***, 83 Nev. 13, 422 P.2d 237 (1967). That opinion recognized the constitutionally  
19 expressed powers and functions of the three branches of government. The same opinion  
20 recognized the overlapping of ministerial functions of each branch as part of the proper  
21 functioning of each of the branches of government. The opinion finds this linkage to be part of  
22 "a co-ordinated and interdependent **system** of government " [Emphasis in original] ***Id.***, at 21.  
23  
24  
25

1 "While the Departments become a co-ordinated, efficient system under such a process, yet  
2 each Department must maintain its separate autonomy ". *Id.* The autonomy of the county clerk  
3 functioning in the ex officio capacity of court clerk comes from having an independently elected  
4 county officer serve as the ministerial official for the state judiciary's primary trial court of  
5 original jurisdiction. The balance in this relationship has not been decided by this Court in a  
6 definitive sense.

7       There are some hints as to the proper balance for this relationship in this Court's  
8 previous decisions. In *State v Tilford*, 1 Nev. 240 (1865), the ability of the legislature to  
9 abolish certain education offices was at issue. This Court concluded that where the state  
10 constitution calls for election of certain county officers (those named in Nev. Const. Art. 4 §§  
11 26 and 32), the legislature could not abolish the office and the incumbent would have a right to  
12 hold office until 1867 because of the provisions of section 13 in Article 17 of the Constitution.  
13 *Id.*, at 244. With respect to other county officers not named in the constitution, the legislature  
14 enjoyed full authority to create or abolish the office. *Id.*

15       In *Moore v Humboldt County*, 46 Nev. 220, 204 P. 880 (1922), the legislative ability  
16 to abolish the office of constable was considered. This Court concluded the legislature had  
17 plenary power in the matter of abolishing the office of constable because the office is not of  
18 constitutional origin. *Id.*, at 225-26.

19       In *Galloway v Truesdale, supra*, 83 Nev. 13, the constitutionality of having district  
20 judges issue licenses to ministers for the solemnization of marriages was at issue. In  
21 concluding that the legislation was invalid, this Court said:

1 It is well settled by the courts that the Legislature, in the absence of special  
2 authorization in the Constitution, is without power to abolish a constitutional  
3 office **or to change, alter or modify its constitutional powers and functions.**  
4 [Emphasis in original]

5 *Id.* at 26 citing **State v Douglass**, 33 Nev. 82, 92-3, 110 P. 177 (1910).

6 In **Board of County Comm'rs v Devine**, 72 Nev. 57, 294 P.2d 366 (1956) the district  
7 court's ability to appoint an additional bailiff was rejected by this Court because the  
8 appointment was contrary to the statutory allotment of bailiffs in multi-judge judicial districts.  
9 This Court rejected the district court's invocation of inherent power finding the conditions in the  
10 district court "do not even remotely indicate the destruction or serious impairment of the  
11 administration of justice ". *Id.*, at 60-61.

12 Basic to this proceeding is the fact that the framers of Nevada's Constitution thought the  
13 county clerks would be actively involved in their *ex officio* duties as court clerks for the newly-  
14 created district court system. At one point in the constitutional convention, proposed section 33  
15 of Article 4 (currently section 32 of Article 4 in the adopted constitution) was the subject of  
16 possible amendment. The amendment would have added the *ex officio* duties of county auditor  
17 to the other duties of the county clerk. The amendment was not agreed to and the basis for its  
18 rejection was the considerable duties already placed on the county clerk by that officer's *ex*  
19 *officio* duties as clerk of the courts which were being created by the constitution, excepting the  
20 Supreme Court. Andrew J Marsh, **Nevada Constitutional Debates and Proceedings** (1866) at  
21 278-79.

22 Nevada has not had a judge-clerk dispute brought before this Court for litigation where  
23 the basic allocation of the court clerk's responsibilities are at issue. Other states have dealt with  
24  
25

1 these disputes. The decisions in those states show that the allocation of court clerk  
2 responsibilities as structured currently in the Second Judicial District Court is not correct  
3 because responsibilities which are properly those of the Clerk are being assigned to the Court  
4 Administrator.

5 Other states acknowledge their state's constitutional designation of the county clerk as  
6 the *ex officio* court clerk to be an active rather than ceremonial responsibility of the office.  
7 These jurisdictions recognize that any change in the county clerk's official responsibilities must  
8 be initiated by the legislature rather than through unilateral action by the judiciary or board of  
9 county commissioners. The opinions from these other jurisdictions give proper balance to the  
10 nature and extent of judicial supervision of the county clerk when the clerk is performing the  
11 duties of court clerk. These decisions do not allow the judicial supervision to supplant  
12 completely the county clerk's responsibilities to administer that officials duties of office. This  
13 recognition of the proper balance in the relationship between the two offices is found to foster  
14 an efficient, coordinated and interdependent system of government. In short, these decisions  
15 reject the notion that separation of powers necessitates the degree of separation of function  
16 presented by this original proceeding.

17  
18 **C. JURISDICTIONS OTHER THAN NEVADA DO NOT**  
19 **REQUIRE COMPLETE SEPARATION OF THE**  
20 **COURT CLERK'S FUNCTION FROM THE BALANCE**  
21 **OF THE COUNTY CLERK'S OFFICIAL RESPONSIBILITIES**  
22 **ABSENT STATE LEGISLATION TO THAT EFFECT.**

23 The constitutional structure for the court clerk and county clerk in the state of Florida is  
24 the mirror image of Nevada's. In that state the office of the Florida Clerk of the Circuit Court  
25 is created by the state constitution and the constitution provides that this officer is also the ex

1 *officio* clerk of the board of commissioners. Under the framework of the Florida Constitution,  
2 the clerk acts in the dual capacity absent division of the office into two offices by general or  
3 special law of the legislature. ***Times Publishing Co. v Ake***, 645 So.2d 1003, 1004-5 (Fla. App.  
4 1994), rehearing denied 645 So.2d 1005 (Fla. App. 1994) review granted 651 So.2d 1197 (Fla.  
5 1995), decision approved 660 So.2d 255 (Fla. 1995).

6 In ***Zumwalt v Superior Court***, 776 P 2d 247 (Cal 1989) the County Clerk of San  
7 Diego County challenged a local rule which transferred certain court-related duties, and civil  
8 service employees who perform them, from the county clerk's control to that of the Superior  
9 Court's executive officer. The California Supreme Court upheld the validity of this transfer  
10 finding that the duties of the office were statutory and the legislature had the power to change  
11 the duties of the county clerk. *Id.*, at 251, fns 8, 9 and 10.

12 However, ***Zumwalt v Superior Court, supra***, is distinguishable and must not be used  
13 to justify the transfer of record-keeping and financial responsibilities from the County Clerk to  
14 the Court Administrator of the District Court in this case. The constitutional history and textual  
15 provisions in the California constitution are very similar to those found in the Nevada  
16 Constitution. *Id.*, at 249-51. In California, the county clerk's office is named constitutionally  
17 as well. But, more importantly, unlike Nevada, the California legislature enacted  
18 Governmental Code section 69898(d), which provides that superior courts having an executive  
19 or administrative officer can make local court rules which transfer some or all of the county  
20 clerk's judicial or court clerk's duties to the court administrator. ***Zumwalt v Superior Court,***  
21 ***supra***, 776 P.2d 248, fn 1. There is no similar Nevada legislation. The ***Zumwalt*** court  
22 determined that the enactment of Government Code section 69898(d) was lawful, and made the  
23  
24  
25



1 transfer of duties pursuant to local rule lawful. *Id.*, at 249 n. 3.

2 ***Times Publishing Co. v Ake, supra***, and ***Zumwalt v Superior Court, supra***, parallel  
3 Nevada law. The Florida case recognizes the duality of the office of court clerk and county  
4 clerk. This is consistent with the duality in the offices of county clerk and court clerk  
5 recognized in this Court's decisional law. ***Lobenstein v County of Storey***, 22 Nev. 376, 382,  
6 40 P. 1015 (1895). The requirement of legislative action to change the duties of these offices or  
7 divide the offices or transfer the functions to another office noted in both the California and  
8 Florida cases is consistent with this Court's decisions in ***State v Tilford, supra***, ***Moore v***  
9 ***Humboldt County, supra***, and ***Galloway v Truesdale, supra***.

10 Measured against these authorities the provisions in Washoe County Code sections  
11 10.010(1) and 10.030(2), as those provisions have been implemented by the District Judges in  
12 the District Court through WDCR 2, are improper because Nevada law does not contain a  
13 provision like California Government Code section 69898(d) or some other special legislative  
14 enactment which authorizes the transfer of the court clerk's functions as has been done in  
15 Washoe County.

16 **D. THE JUDICIAL SUPERVISORY CONTROL FUNCTION**  
17 **RESPECTING THE PERFORMANCE OF COURT CLERK**  
18 **DOES NOT JUSTIFY TRANSFERRING THOSE DUTIES**  
**FROM THE COUNTY CLERK TO THE COURT ADMINISTRATOR.**

19 The Association is very much aware of and accepts the propriety of judicial supervision  
20 when the county clerk, acting in the *ex officio* capacity of court clerk, is performing ministerial  
21 functions which are part of the judicial function. ***Bing Construction Co v State Dep't of***  
22 ***Taxation***, 107 Nev. 630, 631-32, 817 P.2d 710 (1991); ***Donoho v District Court***, 108 Nev.  
23  
24  
25

1 1027, 1029-30, 842 P.2d 731 (1992), and **Sullivan v District Court**, 111 Nev. 1367, 1369-70,  
2 904 P.2d 1039 (1995). However, none of these cases suggest that the judicial supervisory  
3 function is without limit, or that the supervisory function permits the judiciary to supplant the  
4 county clerk's function as district court clerk with a ministerial court clerk under the control of  
5 a court administrator.

6 The limits of the judicial supervisory function over the court has been litigated in other  
7 jurisdictions in the context of hiring responsibility and compliance with budgetary approval for  
8 retention of employees. The Arizona constitution provides for an elected superior court clerk in  
9 each county. **Roylston v Pima County**, 475 P.2d 233, 234 (Az. 1970). The office of court  
10 clerk is created in the portion of that state's constitution which creates the judicial department  
11 of government. **Id.** Based on this constitutional framework, the Arizona Supreme Court held  
12 the court clerk was part of the judicial branch of government, the judiciary had the duty to  
13 supervise the operation of the office, and the county board of supervisors had the ministerial  
14 duty under state law to consent to the appointment of employees by the clerk unless the board  
15 shows "that the Clerk acted `unreasonably, arbitrarily, and capriciously' in making the  
16 appointment". **Id.**, at 234.

17 Unlike here, the Arizona Constitutional framework creates the office of court clerk as  
18 part of the judicial department, rather than as part of a legislatively defined county office as is  
19 the situation in section 32 of Article 4 in the Nevada Constitution. The Arizona framework  
20 places the court clerk squarely in the control of the judiciary. **Roylston v Pima County, supra**,  
21 475 P.2d 234.

1           However, even this strong judicial control over the Arizona court clerk has limits. In  
2 **Maricopa County v Dann**, 758 P.2d 1298 (Az. 1988), the superior court judge refused to  
3 comply with a hiring freeze put in place by the county board of supervisors. The judge  
4 contended that the county policy was an unwarranted intrusion on the judicial branch of  
5 government, and ordered the county to process the court's personnel requisitions. The Arizona  
6 Supreme Court determined that the county's hiring freeze was not unreasonable and the  
7 superior court judge should comply with the policy. *Id.*, at 1301-02. Even in a constitutional  
8 framework which places supervision of the court clerk in the hands of the judiciary, that  
9 supervisory function must give way to powers posited in other branches of government. In  
10 **Maricopa County v Dann, supra**, the judicial power to hire gave way to the legislative power  
11 of producing a balanced county budget which rests with the board of supervisors. *Id.*, at 1301.

12           In Idaho, the office of the clerk of the district court is created in the article of that state's  
13 constitution creating the judicial branch of government. **Crooks v Maynard**, 732 P.2d 281,  
14 284 (Id. 1987). However, the elected district court clerk is also the county auditor and recorder.  
15 *Id.*, at 286. When the clerks of the Idaho District Courts are discharging clerical functions of the  
16 district courts, they are subject to judicial supervision. *Id.*, at 286 .When they are  
17 performing their other county functions, they are not. *Id.* The power and control of the  
18 judicial branch over the clerk of the district court in Idaho is not absolute because the power  
19 does not include "the authority or power to dictate who shall be hired as an assistant or as a  
20 deputy ". *Id.*, at 287. "If a district judge is able to dictate who the district court clerk hires, he  
21 ultimately is able to usurp the power of county auditor and recorder This result is contrary to  
22 art 2 § 1 [Idaho's separation of powers provision] ". *Id.*, at 287

1 In Oklahoma, the district court clerk is an elected county officer but that does not mean  
2 that the court clerk has the right to exercise unbridled discretion over the administration of the  
3 office. *Petuskey v Cannon*, 742 P.2d 1117, 1120 (Ok. 1987). The court clerk is subject to  
4 judicial supervisory control in the clerk's performance of ministerial functions for the judiciary.  
5 *Id.*, at 1121. This authority to supervise the district court clerk in the performance of  
6 ministerial duties "does **not** include the power to dictate who shall be hired as a deputy and at  
7 what rate of compensation". *Id.*, at 1122. [emphasis in original]

8 In the concurring opinion some guidelines are stated which are apropos to this original  
9 proceeding:

10  
11 Personnel management of human resources on the clerk's payroll as his  
12 deputies is not a **ministerial** but rather an **executive** function dischargeable by  
13 the clerk in his capacity as a **county** official. Courtroom deputies stand under a  
14 judge's **direct** and **exclusive** control only for so long as they are **actually**  
15 performing duties within a courtroom, the judge's chambers the jury room or  
16 some other courthouse space directly controlled by the judges. These deputies  
17 remain under like control when they are on a **ministerial** mission elsewhere in  
18 the courthouse pursuant to a judge's direction.

19  
20 Judges are powerless to exercise pure **managerial control** over **any** of the  
21 court clerk's deputies. They may **not**: (a) choose the deputies who are to be  
22 assigned to them for courtroom service; (b) dictate to the court clerk either the  
23 salary terms or other payroll benefits a courtroom deputy is to receive and (c)  
24 specify the time period a courtroom deputy may be off on vacation leave.

25  
26 A presiding judge **may, without advance notice or hearing**, [a] direct the  
27 court clerk to assign courtroom deputies, as needed, for duty with individual  
28 judges and [b] authorize each judge to regulate, on any given day, the time when  
29 an assigned courtroom deputy is to report for service and to return to the court  
30 clerk's office. A deputy is deemed to be under the exclusive control of the court  
31 clerk both **before** and **after** he enters upon daily courtroom assignment duty.

32  
33 In short, the quantum of control the judiciary may exercise over the court  
34 clerk's office must vary with, and be tailored to, the function whose performance  
35 is to be exacted Court clerk personnel ordered for assignment to courtroom

1 duty may be **temporarily requisitioned and supervised as a needed resource** for  
2 so long as their service to the judiciary is termed essential; [footnote omitted]  
3 but these deputies may **not** be chosen for **hiring**, slated for **firing** or otherwise  
4 treated as if they were judicial staff persons. If need be, a presiding judge may  
5 **direct** that a courtroom deputy be relieved of duty for unacceptable job  
6 performance and that a person with adequate skills be assigned as replacement.  
Although deployable to the full extent necessary for the performance of the  
court's constitutionally mandated mission, courtroom deputies must nonetheless  
be utilized in a manner that does not invade the court clerk's managerial  
prerogative over any human resources in his employ as a **county** official.  
[Emphasis in original]

7 **Petuskey v Cannon, supra**, 742 P.2d 1125-26 (Opala, Justice, concurring). The Association  
8 agrees with Justice Opala's "easy-to-follow **guidelines** for a more **harmonious** interaction of  
9 the court clerk with the presiding judge. . . ." [Emphasis in original] **Id.**, at 1125. Measured  
10 against these guidelines, the relationship in the District Court between the Clerk in her *ex*  
11 *officio* capacity as court clerk, and the Court Administrator does not fare very well because of  
12 Washoe County's treatment of these positions as if they were judicial staff persons. WDCR 2.

13 Part of the problem for the poor relationship may be placed on the way provisions like  
14 Washoe County Code sections 10.010(1) and 10.030(2) have been worded legislatively and  
15 implemented judicially. The Association addresses this point next.

16 **E. WASHOE COUNTY CODE SECTION 10.010(1)**  
17 **PLACING EMPLOYEES IN THE DISTRICT**  
18 **COURT CLERK'S OFFICE UNDER THE**  
19 **COMPLETE JURISDICTION AND CONTROL OF**  
20 **THE DISTRICT JUDGES IS AN INAPPROPRIATE**  
**LEGISLATIVE INTRUSION ON THE COUNTY**  
**CLERK'S MANAGERIAL PREROGATIVE OVER**  
**THE HUMAN RESOURCES EMPLOYED BY THE CLERK.**

21 Washoe County Code section 10.010(1) took the employees in the office of the court  
22 clerk, made them exempt employees, and placed them "under the complete jurisdiction and  
23  
24  
25

1 control of the district judges . . . . " This is an impermissible policy legislated by the board of  
2 county commissioners which limits or directs personnel decisions which should be made by the  
3 county clerk rather than the district judges at the behest of the county commission.

4 In ***Estep v Commrs of Boundary County***, 834 P.23d 862 (Id. 1992), the elected clerk  
5 of the district court hired a deputy clerk from outside the work force of county government.  
6 The county commission issued an order directing the clerk to hire another person who was  
7 already an employee of county government. The order was based on a county personnel policy  
8 requiring vacancies to be filled from within the county's work force "whenever practicable"  
9 thus enhancing "career service by providing upward mobility ". ***Id.***, at 863. Citing ***Crooks v***  
10 ***Maynard, supra***, the Idaho Supreme Court said:

11 The hiring of a deputy clerk is a judicial function which is performed by the  
12 clerk of the district court as a judicial officer. Under art. 5 of the Idaho  
13 Constitution, *Estep*, as a judicial officer, is not governed by an order of the  
Commissioners regarding her hiring policies.

14 ***Estep v Comm'rs of Boundary County, supra***, 834 P.2d 864.

15 In ***Osborn v Grant County***, 926 P.2d 911 (Wash 1996), the county commission  
16 created and funded a temporary position in the county clerk's office. The county clerk hired an  
17 employee for this temporary position while the employee was serving a suspension without pay  
18 from the employee's normal employment with the district court. The county commission  
19 learned of the county clerk's hiring decision, disapproved of the decision and threatened not to  
20 authorize payment for this temporary employee's work. At issue was the county commission's  
21 attempt to interfere with the county clerk's decision to hire a temporary employee into a

1 position properly created and already funded. *Id.*, at 913. The Washington Supreme Court,  
2 quoting from an earlier decision said:

3 [O]nce the board has authorized the hiring of deputies in a county office, 'the  
4 officer in whose office the deputies are to serve, being responsible on his bond  
5 for their conduct, has the **absolute right to determine the personnel of such  
deputies . . .**' [Emphasis in original] [Citation omitted]

6 *Id.*, at 915.

7 The single employee hiring flaps in *Estep, supra*, and *Osborn, supra*, were found to be  
8 improper intrusions by county commissions on the managerial prerogative of the county clerks  
9 to administer the human resources of their offices. Likewise, the Association must question the  
10 propriety and the legality of the Washoe County Commission's purported "assignment" of 32  
11 employees of the Washoe County Clerk to the District Judges of the Second Judicial District  
12 Court. Exhibit 2:2. As discussed in part III D of this brief, *supra* the jurists had no legal  
13 authority to accept full responsibility for these "assigned" employees after the county  
14 commission treated them as if they were judicial staff persons. Additionally, the Clerk remains  
15 liable for the malfeasance or nonfeasance of these "assigned" employees when the "assigned"  
16 employees perform the court clerk duties which by state law continue to be the responsibility of  
17 the county clerk. NRS 246.030(2).

18 The characterization of these employees as being exempt is subject to question.  
19 Complaint and Application 11:15 to 12:5. Section 245.216(2) of the Nevada Revised Statutes  
20 suggests that a smaller number of employees are allowed to be characterized as exempt from  
21 the county's merit system. Additionally, *Seidler v Municipal Court*, 16 Cal. Rptr. 2d 90 (Cal.  
22 App. 1993) suggests that subordinate employees working in the service of officials like the court  
23 clerk.

1 or court administrator are entitled to civil service protections. The California statute  
2 (Government Code section 72002.1) has no counterpart in Nevada statutes. However, NRS  
3 245.216 contains no exemption from merit system coverage for county employees who properly  
4 are hired and fired by the county clerk, simply because those employees work in a portion of the  
5 county clerk's office which serves as the clerk of the district court. Merit system coverage, while  
6 serious, is secondary to the county commission's legislative effort to "transfer" employees  
7 properly in the employ of the county clerk to the "complete jurisdiction and control of the district  
8 judges" and allow these employees to be treated as if they were judicial staff persons pursuant  
9 to local court rule.

10 **F. OF THE REMEDIES PLEADED BY THE WASHOE**  
11 **COUNTY CLERK IN THIS ORIGINAL PROCEEDING,**  
12 **THE EXTRAORDINARY WRIT OF PROHIBITION**  
13 **IS THE MOST APPROPRIATE REMEDY.**

14 Under the circumstances presented here, several remedies which are most appropriate  
15 are not available. One of these remedies is unavailable because it is fashioned in another  
16 branch of government.

17 Oregon passed the Court Reorganization Act creating state-employed district court  
18 clerks which preempted the function of the county office of district court clerk. ***Buchanan v***  
19 ***Wood***, 720 P.2d 1285 (Or. App 1986). In ***Zumwalt v Superior Court, supra***, the California  
20 legislature passed a statute permitting the transfer of court clerk duties from the county clerk to  
21 the court administrator by local court rule. The Association is not advocating either legislative  
22 approach. The Association simply points out that having the debate conducted in the legislature,  
23 would foster institutional balance and control and allow the issues to be resolved in a more  
24 definitive  
25



1 sense. Given the tenor of the situation existing in Washoe County, however, the issues  
2 presented here cannot afford to wait to 2001 for Legislative resolution.

3 A second remedy is to have the State's Court Administrator review the matter pursuant  
4 to NRS 1.360(1) and make recommendations to this Court for improvement of the operational  
5 relationship between the Court Clerk and District Court in Washoe County. This Court can then  
6 make rules in accord with NRS 2.120 to implement the Court Administrator's recommendation.  
7 Like the legislative remedy, this approach has the advantage of producing a definitive solution.  
8 What makes this remedy "unavailable" is time. In *Petuskey v Cannon, supra*, the court clerk  
9 and the presiding judge of the judicial administrative district were characterized as "two  
10 **constitutional officers** [footnote omitted] [emphasis in original] now locked in combat for the  
11 control of certain management functions in the operation of the district court." *Id.*, 742 P.2d  
12 1125 (Opala, Justice, concurring). Given the tenor of exhibits 3 and 4 to the Clerk's Complaint  
13 and Application as well as the adoption of new WDCR 2, the relationship appears equally  
14 strained here.

15 In *Petuskey v Cannon, supra*, the Oklahoma Supreme Court assumed original  
16 jurisdiction of the proceeding, which requested writs of mandamus and prohibition, to resolve  
17 the particular judge-clerk dispute presented there. The Court issued the writ to resolve the  
18 dispute and used the matter as an opportunity to channel future disputes to Oklahoma's  
19 Administrative Director of the Courts. *Id.*, at 1123. The Association thinks the approach taken in  
20 *Petuskey* is appropriate here.

21  
22 The cases of *Mulford v Davey*, 64 Nev. 506, 186 P.2d 360 (1947); *Mann v County of*  
23 *Maricopa*, 456 P.2d 931 (Az. 1969); *Estep v Commrs of Boundary County, supra*, and  
24  
25



1 prohibition. In the writ, this Court should resolve the instant dispute, provide guidance for a  
2 more effective and harmonious interaction between the Court Clerk and the District Judges in  
3 Washoe County which will benefit clerks and district judges throughout the state and outline  
4 administrative channels which may be employed to resolve future judge-clerk disputes before  
5 resort has to be made to the adjudicative process.

6 DATED this 9th day of March, 2000.

7  
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15 And County Election Officials  
16  
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 THE STATE OF NEVADA, EX REL, AMY ) CASE NO 35144  
3 HARVEY, THE DULY-ELECTED COUNTY )  
4 CLERK OF WASHOE COUNTY AND EX )  
5 OFFICIO COURT CLERK OF THE SECOND )  
6 JUDICIAL DISTRICT COURT, AND AMY )  
7 HARVEY IN HER OFFICIAL CAPACITY AS )  
8 CLERK OF THE SECOND JUDICIAL )  
9 DISTRICT COURT, )

6 Plaintiff/Petitioners, )

7 vs )

8 THE SECOND JUDICIAL DISTRICT COURT )  
9 OF THE STATE OF NEVADA, IN AND FOR )  
10 THE COUNTY OF WASHOE, AND THE )  
11 HONORABLE CHARLES M. McGEE, CHIEF )  
12 JUDGE, SECOND JUDICIAL DISTRICT )  
13 COURT; THE HONORABLE BRENT T. )  
14 ADAMS, DISTRICT JUDGE, SECOND )  
15 JUDICIAL DISTRICT COURT; THE )  
16 HONORABLE JANET J. BERRY, DISTRICT )  
17 JUDGE, THE SECOND JUDICIAL DISTRICT )  
18 COURT; THE HONORABLE PETER I. )  
19 BREEN, DISTRICT JUDGE, SECOND )  
20 JUDICIAL DISTRICT COURT; THE )  
21 HONORABLE STEVEN P. ELLIOTT, )  
22 DISTRICT JUDGE, SECOND JUDICIAL )  
23 DISTRICT COURT; THE HONORABLE )  
24 JAMES W. HARDESTY, DISTRICT JUDGE, )  
25 SECOND JUDICIAL DISTRICT COURT; )  
THE HONORABLE SCOTT JORDAN, )  
DISTRICT JUDGE, SECOND JUDICIAL )  
DISTRICT COURT; THE HONORABLE )  
STEVEN R. KOSACH, DISTRICT JUDGE, )  
SECOND JUDICIAL DISTRICT COURT; )  
THE HONORABLE JEROME M. POLAHA, )  
DISTRICT JUDGE, SECOND JUDICIAL )  
DISTRICT COURT; THE HONORABLE )  
DEBORAH SCHUMACHER, DISTRICT )  
JUDGE, SECOND JUDICIAL DISTRICT )  
COURT; AND THE HONORABLE CONNIE J. )  
STEINHEIMER, DISTRICT JUDGE, )  
SECOND JUDICIAL DISTRICT COURT; )

22 Defendants/Respondents and Real )  
23 Parties in Interest. )

24 **ATTORNEY'S CERTIFICATE**  
25 (NRAP 28A)

1 I hereby certify that I have read this amicus curiae brief, and to the best of my  
2 knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.  
3 I further certify that this brief complies with all applicable Nevada Rules of Appellate  
4 Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding  
5 matters in the record to be supported by a reference to the page of the transcript or appendix  
6 where the matter relied on is to be found I understand that I may be subject to sanctions in the  
7 event that the accompanying brief is not in conformity with the requirements of the Nevada  
8 Rules of Appellate Procedure.

9 DATED this 9th day of March, 2000.

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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 THE STATE OF NEVADA, EX REL, AMY )  
3 HARVEY, THE DULY-ELECTED COUNTY )  
4 CLERK OF WASHOE COUNTY AND EX )  
5 OFFICIO COURT CLERK OF THE SECOND )  
6 JUDICIAL DISTRICT COURT, AND AMY )  
7 HARVEY IN HER OFFICIAL CAPACITY AS )  
8 CLERK OF THE SECOND JUDICIAL )  
9 DISTRICT COURT, )

CASE NO 35144

6 Plaintiff/Petitioners, )

7 vs )

8 THE SECOND JUDICIAL DISTRICT COURT )  
9 OF THE STATE OF NEVADA, IN AND FOR )  
10 THE COUNTY OF WASHOE, AND THE )  
11 HONORABLE CHARLES M McGEE, CHIEF )  
12 JUDGE, SECOND JUDICIAL DISTRICT )  
13 COURT, THE HONORABLE BRENT T )  
14 ADAMS, DISTRICT JUDGE, SECOND )  
15 JUDICIAL DISTRICT COURT, THE )  
16 HONORABLE JANET J BERRY, DISTRICT )  
17 JUDGE, THE SECOND JUDICIAL DISTRICT )  
18 COURT, THE HONORABLE PETER I )  
19 BREEN, DISTRICT JUDGE, SECOND )  
20 JUDICIAL DISTRICT COURT, THE )  
21 HONORABLE STEVEN P ELLIOTT, )  
22 DISTRICT JUDGE, SECOND JUDICIAL )  
23 DISTRICT COURT, THE HONORABLE )  
24 JAMES W HARDESTY, DISTRICT JUDGE, )  
25 SECOND JUDICIAL DISTRICT COURT, )  
THE HONORABLE SCOTT JORDAN, )  
DISTRICT JUDGE, SECOND JUDICIAL )  
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STEVEN R KOSACH, DISTRICT JUDGE, )  
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DEBORAH SCHUMACHER, DISTRICT )  
JUDGE, SECOND JUDICIAL DISTRICT )  
COURT, AND THE HONORABLE CONNIE J )  
STEINHEIMER, DISTRICT JUDGE, )  
SECOND JUDICIAL DISTRICT COURT, )

Defendants/Respondents and Real )  
Parties in Interest. )

**CERTIFICATE OF SERVICE**

1 I certify that I am an employee of the District Attorney of Douglas County, Nevada, and  
2 pursuant to NRAP 25(d) on this day I deposited in the U S Mail true copies of the Motion for  
3 Leave to File a Brief of an Amicus Curiae, addressed to:

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13 DATED this 9th day of March 2000  
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