

**REPORT TO THE 74th REGULAR SESSION OF  
THE NEVADA STATE LEGISLATURE, 2007,  
REGARDING THE CREATION OF  
THE NEVADA COURT OF APPEALS**

Pursuant to Senate Bill 234, 73rd Legislative Session, 2005





**REPORT TO THE 74TH REGULAR SESSION OF  
THE NEVADA STATE LEGISLATURE, 2007,  
REGARDING THE CREATION OF  
THE NEVADA COURT OF APPEALS**

Pursuant to Senate Bill 234, 73rd Legislative Session, 2005

Submitted by Supreme Court of Nevada  
201 South Carson Street  
Carson City, Nevada 89701



March 2007

**Supreme Court of Nevada**

Chief Justice A. William Maupin

Justice Mark Gibbons

Justice James W. Hardesty

Justice Ron Parraguirre

Justice Michael Douglas

Justice Michael Cherry

Justice Nancy Saitta

Prepared by

**Joan E. Neuffer**

Staff Counsel

Administrative Office of the Courts

**SB 234 Study Committee**

**All Justices**

Janette Bloom, Clerk of the Court

Ron Titus, Director & State Court Administrator

Robin Sweet, Deputy Director

**REPORT TO THE 74TH REGULAR SESSION OF  
THE NEVADA STATE LEGISLATURE, 2007  
SENATE BILL 234**

<b>TABLE OF CONTENTS</b>
--------------------------

<b>SECTION</b>	<b>PAGE</b>
<b>A. Introduction</b>	
1. Executive Summary	1
2. Conclusions	2
<b>B. The Nevada Court of Appeals - A Historical Perspective</b>	
1. Legislative History	3
a. Years 1977 to 1980	3
b. Years 1989 to 1992	4
c. Years 1993 to 2001	5
d. Years 2003 to the present	6
<b>C. Intermediate Appellate Courts in Other Jurisdictions; A Comparison</b>	
1. Nevada's Court System	7
a. <b>Figure 1.</b>	7
2. Intermediate Appellate Courts in the United States	8
a. <b>Table 1.</b>	10
3. Nevada Supreme Court Caseload	11
a. Population Growth	11
1. <b>Figure 2.</b>	11
b. Caseload Growth	12
1. <b>Figure 3.</b>	12
2. <b>Table 2.</b>	13
4. Optimum Relative Workload	14
5. States Without an Intermediate Appellate Court; Comparison	15
a. <b>Table 3.</b>	16

6.	Selected States with an Intermediate Appellate Court; Comparison	16
a.	<b>Table 4.</b>	17
<b>D.</b>	<b>The Nevada Court of Appeals: A Reality</b>	
1.	Access to Justice	17
2.	Appropriate Standards for Nevada's Intermediate Appellate Courts	18
a.	Quality of Services	18
b.	Reduction of Delay	19
c.	Timeliness	20
1.	<b>Table 5.</b>	22
2.	<b>Table 6.</b>	22
3.	<b>Table 7.</b>	23
4.	<b>Table 8.</b>	24
d.	Error Correction Function	25
e.	Number of Authored (Published) Opinions	26
3.	Nevada's Growing Population and Effect on the Courts	28
a.	Nevada's Population	28
1.	<b>Table 10.</b>	29
b.	Clark County/Eighth Judicial District	30
1.	<b>Table 11.</b>	30
c.	Washoe County/Second Judicial District	31
1.	<b>Table 12.</b>	31
<b>E.</b>	<b>Creation of the Nevada Court of Appeals</b>	
1.	Proposed Legislation	32
2.	Name of the New Court	33
3.	Jurisdictional Authority; Considerations	33
a.	Bill Draft Request C-661	33
b.	New Mexico model	33
c.	Jurisdiction of the Nevada Supreme Court	34
1.	Direct Appeals and Via Writ	34
2.	Discretionary Review	35
3.	Subject Matter Jurisdiction	35
4.	Transfers Between Courts	35

d.	Jurisdiction of the Nevada Court of Appeals	36
1.	Dispute Deciding Function	36
2.	Court Rule	36
4.	Caseload Management for Both Courts	36
5.	Setting Up the Nevada Court of Appeals	37
a.	New Judges	37
1.	Terms	37
2.	Qualifications	38
3.	Salaries	39
b.	Additional Legal and Support Staff	39
1.	Law Clerks	39
2.	Judicial Executive Assistants	40
3.	Deputy Clerks	40
4.	Security Personnel	40
c.	Facilities	40
d.	Sharing Resources	41
1.	Clerk's Office	41
2.	Central Legal Staff	41
e.	Costs	41
1.	<b>Table 13.</b>	42
f.	Timing	42
6.	Potential Impact on Nevada's Court System	42
a.	State Court System	43
b.	Judicial Process	43
<b>F.</b>	<b>Conclusions</b>	
1.	Summary Recommendations	44

## APPENDIX

1.	Senate Bill 234	
----	-----------------	--



# REPORT TO THE 74TH REGULAR SESSION OF THE NEVADA STATE LEGISLATURE, 2007, REGARDING THE CREATION OF THE NEVADA COURT OF APPEALS

## A. Introduction

### 1. Executive Summary

Over the past 30 years, members of the Judicial Branch have proposed legislation required for the creation of an intermediate appellate court in Nevada. In acknowledging the efforts of the Judicial Branch, the Nevada State Legislature has approved and passed seven joint resolutions toward the goal of establishing the new court.

After successful passage of AJR 2 in 1977 and 1979, *Question Seven* was placed on the ballot in 1980. *Question Seven* was subsequently rejected by nearly 53 percent of the voters. Following defeat of *Question Seven*, members of the Judicial Branch and the Nevada State Legislature worked together to pass SJR 12 in 1989, and again in 1991, sending the measure to the voters for a second time in 1992. Unfortunately, *Question Six* was also defeated with 54 percent of the votes against.

During the 73rd Legislative Session in 2005, Senate Bill 234 was passed to evaluate the need for the new court. The language in SB 234 acknowledges Nevada's rapid population growth, the increase in the number of cases filed statewide, and the extraordinary workload before the Supreme Court. Recent statistics underscore this concern. During the 2006 fiscal year alone, 2,086 appeals were filed in the Supreme Court, representing a 3 percent increase from the previous year.

In response to passage of SB 234, a study committee was formed by the Justices of the Nevada Supreme Court, joined by the Clerk of the Court, the Director, Deputy Director and Staff Counsel from the Administrative Office of the Courts (SB 234 Study Committee). Committee members examined the legislative history, reviewed statistics compiled by the U.S. Census Bureau and the National Center for State Courts (NCSC), discussed appellate standards proposed by the American Bar Association and the NCSC, and compared documentation and statistics gathered by AOC and the Clerk's Office for the Annual Report of the Nevada Judiciary for fiscal year 2006. The Committee agreed that discussion of proposed standards for appellate courts was appropriate in assessing our state's current structure, and to determine what improvements are necessary to accomplish the work of the Court.

Results of the SB 234 Study reveal that our state court system would clearly benefit from the addition of an intermediate appellate court. An intermediate appellate court will ensure that the citizens of Nevada continue to have access to justice at all levels.

Committee members believe the new court will provide critical support services, and will join with the Nevada Supreme Court in seeking to:

- Maintain high quality in the judicial process
- Efficiently manage all appeals
- Minimize delay in processing appeals
- Ensure appellate decisions are rendered in a timely manner
- Establish a traditional error correction court
- Increase the number of authored opinions for those cases that establish our state's common law

Review of the legislative history reveals some opposition for the concept of the new court by lawmakers and their constituents. Opponents have pointed to the high cost and expense, and expressed fear that a new court would create "another step to the process of litigation." Cost is a primary concern and must be considered. However, with the completion of the Regional Justice Center in 2005, some critical resources can be shared, thereby reducing overall expense.

The Nevada Court of Appeals will provide a much needed alternative for those seeking review of trial court decisions, and will provide a more efficient appellate process for all litigants. With careful planning and wise use of resources, the Nevada Court of Appeals will soon become an essential and integral part of our state court system.

Those who have been working toward the goal of establishing a new court will undoubtedly agree that the biggest hurdle in the process is obtaining the support of the voters. Long term support for the new court can only be obtained by providing accurate, relevant information to the voting public in a timely manner.

## **2. Conclusions**

The Committee is optimistic that the Legislature will continue to be a supportive partner during the next two legislative sessions. The Committee believes that the voting public must be provided with information necessary to make an informed decision in 2010. To that end, the Committee provides this data, costs analysis, and plan for a court of appeals that will ultimately improve the efficiency of the entire judicial system of our state.

## B. The Nevada Court of Appeals - A Historical Perspective

The Nevada State Legislature has recognized and acknowledged the need for an intermediate appellate court for over 30 years. Members of the Legislature have remained supportive of efforts by the judiciary to propose and pass legislation necessary for the creation of an intermediate appellate court.

Article 16 of the Nevada State Constitution provides the authority and process for the establishment of the new court. In order to amend our state constitution, a joint resolution must be proposed and approved by lawmakers in two consecutive legislative sessions. The joint resolution must then be placed on the ballot and ratified by a majority of the electors in the next election.<sup>1</sup> This discussion will focus on the legislative history leading up to the elections in 1980 and 1992, and the most recent legislation in 2005 in the form of Senate Bill 234.

### 1. Legislative History

Developing a working knowledge of the legislative history in connection with efforts to establish an intermediate appellate court is a necessary part of the process. Committee members reviewed all joint resolutions submitted from both the Senate and the Assembly, resolution summaries, testimony recorded from committee meetings, reports, exhibits, and ballot information and records.

#### a. Years 1977 to 1980

In response to a directive<sup>2</sup> from the Nevada Legislature in 1975, the Legislative Commission Subcommittee prepared **Bulletin No. 77-3, Training, Qualifications, Workloads and Leave Policies of the Judiciary and District Attorneys.**<sup>3</sup> The 1976 study revealed that an intermediate appellate court was necessary in light of the Supreme Court's increasing workload.<sup>4</sup>

---

<sup>1</sup> Nevada Const. art. 16, § 1.

<sup>2</sup> A. Con. Res. 49, 58th Leg. Sess. (Nevada 1975).

<sup>3</sup> **Bulletin No. 77-3** was prepared in September 1976 and submitted during the 59th State Legislature in 1977.

<sup>4</sup> *Id.* **Bulletin**, at 7-8 provides, ". . . The subcommittee is fully persuaded that over the long term the creation of an intermediate appellate court will be a more satisfactory method of relieving congestion of the supreme court than enlargement of the latter and division into panels . . . The key to effective use of an intermediate appellate court is to keep both its size and its jurisdiction flexible, so that those categories of cases which at a particular time are overloading the supreme court may be sifted through the intermediate appellate court without depriving any litigant of the right to one appeal, and the number of judges be increased or diminished as these categories and the number of cases in them change. **The [legislature] should . . . consider both the imminence of the need for relief of the supreme court's workload . . .**" [Emphasis added.]

As a result of the 1976 study, Assembly Joint Resolution 2 (AJR 2) was drafted and submitted during the 59th Legislative Session in 1977.<sup>5</sup> Supreme Court Justice Elmer Millard (E.M.) Gunderson testified in favor of the resolution, stating,

*Two years ago our case load went up 28%, last year it went up 45% and it is going up again this year. Right now we have a case load that exceeds the per judge case load of the 9th circuit and the 5th circuit courts, which are considered to be among the busiest appellate (sic) courts in the country.*<sup>6</sup>

The Nevada State Legislature subsequently passed AJR 2, sending it on to the second phase of approval by state lawmakers. In 1979, the Legislature again considered AJR 2. Chief Justice John Mowbray testified in support of the resolution. A Cost Estimate was submitted indicating a net expense for the new court of approximately \$382,686 annually.<sup>7</sup> AJR 2 subsequently passed, allowing the measure to go to the voters the following year.

In 1980, *Question Seven* was defeated by almost 53 percent of the voters.<sup>8</sup> Legislation for the intermediate appellate court was not proposed again until 1989.

#### **b. Years 1989 to 1992**

During the 65th Legislative Session in 1989, Senate Joint Resolution 12 (SJR 12) was approved, which provided for the creation of an intermediate appellate court. The resolution passed again during the 66th Legislative Session in 1991, sending the measure on to a second vote of the people.

In 1992, *Question Six* was placed on the ballot. *Question Six* contained a more detailed explanation of the amendment, along with a fact-based argument in support of passage. A fiscal note was included on the ballot with an estimated cost for the new court of approximately \$2.7 million for the first year, excluding facility expenses. The ballot also included the complete amendment consisting of six full pages of text.

*Question Six* was defeated with 54 percent of the votes against.<sup>9</sup>

---

<sup>5</sup> A. Joint Res. 2, 59th Leg. Sess. (NV 1977).

<sup>6</sup> Hearing before the Senate Judiciary Committee, 3-30-1977, 59th Leg. Sess. (NV 1977) (statement of Justice Gunderson, p. 3).

<sup>7</sup> A. Joint Res. 2, Legislative History of AJR 2, 1979, at 41-42. Estimates were exclusive of costs associated with separate facilities for the intermediate appellate court.

<sup>8</sup> The 1980 Ballot provided, ". . . *Question No. 7 - Shall-- Assembly Joint Resolution No. 2 proposing to amend the State constitution to create an intermediate court of appeals be approved?*" From a total number of 225,064 votes, 106,131 votes were in favor and 118,933 votes were against the measure. See Ballot for 1980. See Constitutional Amendments To Be Voted Upon, General Election, 11-4-1980, *Question No. 7*, pg. 16.

### c. Years 1993 to 2001

During the 67th Legislative Session in 1993, lawmakers again considered legislation for the appellate court in the form of Senate Joint Resolution 25 (SJR 25). Chief Justice Robert Rose testified in support of the resolution and expressed his belief that *Question Six* failed due to anticipated costs associated with a new court, conflict between members of the Court, and the lack of adequate explanation of the measure to the voters.<sup>10</sup> Chief Justice Rose also testified that the Supreme Court's caseload doubled since 1968.<sup>11</sup> SJR 25 was passed and held for the following session.

During the 68th Legislative Session in 1995, SJR 25<sup>12</sup> was considered for the second phase of the approval process. In addition, Assembly Bill 259 was proposed as a solution to reduce the backlog of cases by increasing the number of Supreme Court Justices from five to seven, and allowing the Court to utilize a panel system. Although the Court was unified in their support for SJR 25, two members did not agree that expansion of the Court was appropriate. SJR 25 was approved in the Senate, but was killed in Assembly committee. AB 259 was defeated following a committee vote.

During the 69th Legislative Session in 1997, efforts for the appellate court were revived in Senate Joint Resolution 14 (SJR 14). Justice Rose testified that with 2,000 cases being filed each year, the average disposition for each case would be two to three years.<sup>13</sup> Lawmakers also considered Assembly Bill 343, which allowed for the expansion of the Court from five to seven Justices beginning in 1999. AB 343 also authorized the high court to sit, hear, and decide cases in panels of three. Both measures passed.<sup>14</sup>

During the 70th Legislative Session in 1999, lawmakers considered a new version of SJR 14, renamed Assembly Joint Resolution 22 (AJR 22). AJR 22 was passed, and at the request of the Supreme Court, considered a "first" resolution in the process.

---

<sup>9</sup> From a total number of 466,356 votes, 213,407 votes were in favor and 252,950 votes were against the measure. See Nevada Ballot Questions 1992, *Question No. 6*, 7 pgs.

<sup>10</sup> Hearing before the Senate Committee on Judiciary, 4-23-1993, 67th Leg. Sess. (NV 1993) (statement of Chief Justice Rose, p. 4).

<sup>11</sup> Id.

<sup>12</sup> S. Joint Res. 25, 66th Leg. Sess. (NV 1995). An Analysis of Estimated Costs was also submitted to the Committee on Judiciary.

<sup>13</sup> Hearing before the Senate Committee on Judiciary, 4-30-1997, 69th Leg. Sess. (NV 1997) (statement of Chief Justice Rose, p. 7).

<sup>14</sup> AB 343 amended NRS 2.010 allowing for a seven member court "*effective until the date on which the voters approve a constitutional amendment establishing the intermediate court of appeals.*" Once the voters approve the new court, the "sunset" provisions would require the number of Supreme Court Justices to be reduced from seven back to five.

In 2001, Assembly Joint Resolution 12 (AJR 12) was proposed to replace AJR 22 and to be treated as a "first" resolution in the process during the 71st Legislative Session. At that time, and as a result of implementation of AB 343 in 1999, the backlog of cases had been reduced. By the end of June 2001, the Court had reduced the number of pending cases by 262.<sup>15</sup> AJR 12 was subsequently approved and passed.

**d. Years 2003 to the present**

During the 72nd Legislative Session in 2003, Senate Joint Resolution 5 (SJR 5) was submitted as a replacement of AJR 12, and treated as a "first" resolution in the process.

SJR 5 represented a significant change from prior resolutions, in that it contained language which made the creation of the intermediate appellate court permissive rather than mandatory.<sup>16</sup> Chief Justice Deborah Agosti testified,

*The language of the current bill is discretionary and says the Legislature "may" construct an intermediate appellate court. The reason for that change is not because we don't think one is necessary now; we do. But recognizing that it will go for a vote, we are not assured, given the financial climate that the state finds itself in now, that the public would be of a mind to vote for something that would tie the hands of the Legislature and require them to expend funds. There will be a financial impact if an intermediate appellate court is constructed. That impact will be minimized because the Supreme Court was increased from five members to seven, five years ago - with the idea that the Court would go back down to five, and two of those positions would become intermediate appellate court positions.<sup>17</sup>*

SJR 5 passed without objection and held for the 73rd Legislature for consideration in 2005. However, because the actual number of pending cases before the Court had in fact been reduced, and because the number of case filings in the Supreme Court had stabilized, the resolution was withdrawn from consideration. During that same session, Senate Bill 234 was proposed and approved.

---

<sup>15</sup> See Annual Report of the Nevada Judiciary, Fiscal Year 2000-2001, Table 2, showing the number of cases pending for fiscal year 2000-2001 was 1,628 as compared to 1,890 pending cases in fiscal year 1999-2000. The Report provides, "*The Justices continued to make every effort to reduce the backlog of cases. More than 2,000 cases were disposed of fiscal year 2000-2001, up slightly from the year before. This effort reduced the Supreme Court backlog to 1,628 cases pending. The highest backlog was 2,521 cases pending at the end of 1997 - a reduction of 893 cases.*" *Id.* at 8.

<sup>16</sup> Senate Joint Resolution 5 provides: *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 . . .*"

<sup>17</sup> Hearing before the Assembly Committee on Constitutional Amendments, 3-28-2003, 72nd Leg. Sess. (NV 2003) (statement of Chief Justice Agosti, p. 2).

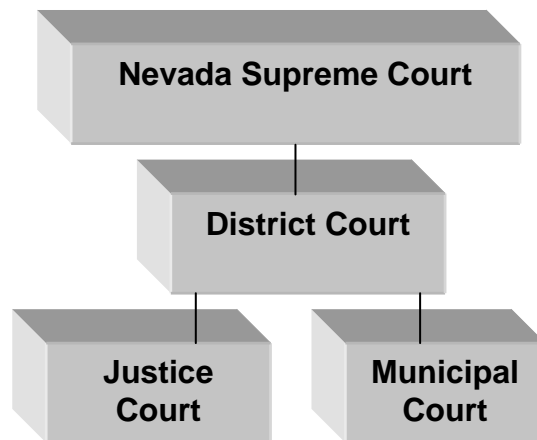
Senate Bill 234 called for the Court to conduct an analysis of whether Nevada would benefit from the establishment of an intermediate appellate court.<sup>18</sup> Accordingly, an analysis and discussion of the benefits of the new court follows.

### C. Intermediate Appellate Courts in Other Jurisdictions: A Comparison

#### 1. Nevada's Court System

The **Nevada Supreme Court** serves as our state's final appellate court. The Supreme Court hears all appeals from final decisions in the District Courts. The high court functions as both an error correction court and a court of last resort in the development of the state's common law. Presently, there are seven Justices who hear and decide cases in three-judge panels and with a full court (En Banc.)

**Figure 1. The Nevada Court System and Structure**



**Nevada's District Courts** serve as trial courts of general jurisdiction. The District Courts preside over criminal felony and gross misdemeanor, family, juvenile, and civil cases with a stated value in excess of \$10,000. There are 17 District Courts and 64 District Court judges. All appeals are taken directly to the Supreme Court.

**Justice Courts** handle criminal misdemeanor filings, and preside over preliminary hearings for gross misdemeanor and felony crimes. Justice Courts also hear traffic filings, landlord/tenant, and civil disputes. Currently, there are 43 Justice Courts with 60 Justices of the Peace. All appeals are filed in the District Court, which has final appellate jurisdiction.

<sup>18</sup> **Senate Bill 234** includes an acknowledgement of the challenges facing our state due to the continuous increase in population, ". . . Sec. 4. 1. The Legislature hereby finds and declares that: (a) The State of Nevada continues to have the highest rate of population growth in the country; . . . ."

**Municipal Courts** resolve criminal misdemeanor and traffic filings in local jurisdictions. There are 18 Municipal Courts with 31 Municipal Court Judges. All appeals are filed in the District Court, which has final appellate jurisdiction.

Presently, ten lower court judges serve as both a Justice of the Peace and as a Municipal Court Judge.

## **2. Intermediate Appellate Courts in the United States**

In order to understand the need for an intermediate appellate court in Nevada, it is important to become familiar with our court system and existing resources. A comparison with other states that have intermediate appellate courts is helpful in the analysis of the benefits of such a court in our state.<sup>19</sup>

Presently, 39 states have established an intermediate court of appeals.<sup>20</sup> As of July 1, 2006, Nevada ranks 35th in the nation in population.<sup>21</sup> Five states that have lower population and growth rates than Nevada have an intermediate court of appeals; namely New Mexico, Nebraska, Idaho, Hawaii, and Alaska. Utah, ranked at 34, also has an intermediate appellate court and is included in this comparison. A short summary of the court structure for each of these six "comparison" states follows.

**Utah**, with a slightly higher population than Nevada, is ranked at 34. Utah's population is also increasing at a rapid rate showing a 2.4 percent growth in 2006. Utah's appellate system includes a Supreme Court with five justices, and a Court of Appeals with seven judges who sit in panels of three. Utah has 40 District Courts with 70 judges and seven domestic court commissioners, and a Juvenile Court with 27 judges and 1 commissioner. Utah has 136 Justice Courts with 103 judges.

**New Mexico**, ranked at 36th in population, has one Court of Appeals with ten judges who sit in panels of three. The Supreme Court of New Mexico has five justices. New Mexico's court system includes 13 District Courts with 78 judges, and four other lower courts of limited jurisdiction, including 53 Magistrate Courts with 65 judges, 83 Municipal Courts with 85 judges, a Metropolitan Court with 18 judges, and 33 Probate Courts with 33 judges. New Mexico's growth rate of 1.5 percent in 2006 was less than half of Nevada's rate for the same period.

---

<sup>19</sup> See **Senate Bill 234 Subsection 1.(f)(4)**. Court structure and statistical information was obtained from the National Center for State Courts (NCSC) utilizing 2004 data at website address: <http://www.ncsconline.org>, Supreme Court of Nebraska 2005 Annual Report, and the Utah State Courts 2006 Annual Report.

<sup>20</sup> Eleven states, including Nevada, do not have an intermediate appellate court: Delaware, Maine, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming. Washington, D.C., does not have an intermediate appellate court but is not included in this comparison. See National Center for State Courts, website address: <http://www.ncsconline.org>.

<sup>21</sup> U.S. Census Bureau statistics for 2005-2006; website address: <http://www.census.gov>. See *infra* **Table 1**, U.S. Population Growth 2005-2006, p. 10.

New Mexico's appellate system may also provide a framework for discussion regarding appropriate jurisdiction for Nevada's intermediate appellate court.<sup>22</sup>

**Nebraska** is ranked at 38th in population, with a growth rate of only 0.06 percent. Nebraska has a Supreme Court consisting of seven justices, and a Court of Appeals with six judges. Nebraska's court system also includes 12 District Courts with 55 judges, a Juvenile Court with 10 judges, 93 County Courts with 59 judges, and a Worker's Compensation Court with seven judges.

**Idaho** is the third fastest growing state in the nation, with an increase in population of 2.6 percent last year. Idaho, ranked 39th in population, has a Supreme Court with five justices, and a Court of Appeals with three judges. Idaho's system includes seven District Courts with 39 judges, and a Magistrates Division with 83 magistrate judges.

Both **Hawaii** and **Alaska** have fewer citizens and less than one-third the population growth of Nevada, yet have established appellate courts. **Hawaii** ranks 42nd in total population, has a Supreme Court with five justices and an Intermediate Court of Appeals with six judges. There are four Circuit/Family Courts with 33 judges, and four District Courts with 36 judges.

**Alaska** has the lowest population of the states with an intermediate appellate court and is ranked 47th in population. Alaska has a Supreme Court with five justices and a Court of Appeals with three judges. Alaska's system includes 16 Superior Courts with 34 judges and 9 masters, and 58 District Courts with 21 judges and 52 magistrates.

According to the most recent data from the U.S. Census Bureau, Nevada's population increased by 3.5 percent, making it the second fastest growing state in the nation in 2006.<sup>23</sup> For the previous 19 years, Nevada had maintained the top spot in population growth.

**Table 1** below reflects current population rankings and growth in the United States between July 1, 2005 and July 1, 2006. Arizona, Nevada and selected comparison states have been highlighted.

<b>Table 1. U.S. Population Growth 2005 - 2006</b>
--

---

<sup>22</sup> See infra p. 33.

<sup>23</sup> U.S. Census Bureau News Release, December 22, 2006, Louisiana Loses Population; Arizona Edges Nevada as Fastest Growing State, pg. 1 providing, ". . . Arizona was the nation's fastest growing state over the period, breaking Nevada's grip on the title, with its population rising 3.6 percent. Nevada ranked second this time, as its population climbed by 3.5 percent, followed by Idaho (2.6 percent), Georgia (2.6 percent) and Texas (2.5 percent). . ." Website address: <http://www.census.gov>.

Table 1: Estimates of Population Change for the United States and States, and for Puerto Rico and State Rankings: July 1, 2005 to July 1, 2006								
Geographic Area	Population estimates		Change, 2005 to 2006		National rankings of regions and of states			
	July 1, 2006	July 1, 2005	Number	Percent	Population estimates		Change, 2005 to 2006	
					July 1, 2006	July 1, 2005	Number	Percent
<b>United States</b>	<b>299,398,484</b>	<b>296,507,061</b>	<b>2,891,423</b>	<b>1.0</b>	(X)	(X)	(X)	(X)
<b>Northeast</b>	54,741,353	54,679,292	62,061	0.1	4	4	4	4
<b>Midwest</b>	66,217,736	65,936,397	281,339	0.4	3	3	3	3
<b>South</b>	109,083,752	107,552,100	1,531,652	1.4	1	1	1	2
<b>West</b>	69,355,643	68,339,272	1,016,371	1.5	2	2	2	1
<b>Alabama</b>	4,599,030	4,548,327	50,703	1.1	23	23	16	18
<b>Alaska</b>	670,053	663,253	6,800	1.0	47	47	38	21
<b>Arizona</b>	6,166,318	5,953,007	213,311	3.6	16	17	5	1
<b>Arkansas</b>	2,810,872	2,775,708	35,164	1.3	32	32	23	16
<b>California</b>	36,457,549	36,154,147	303,402	0.8	1	1	3	25
<b>Colorado</b>	4,753,377	4,663,295	90,082	1.9	22	22	8	8
<b>Connecticut</b>	3,504,809	3,500,701	4,108	0.1	29	29	41	43
<b>Delaware</b>	853,476	841,741	11,735	1.4	45	45	32	15
<b>District of Columbia</b>	581,530	582,049	-519	-0.1	50	50	47	49
<b>Florida</b>	18,089,888	17,768,191	321,697	1.8	4	4	2	9
<b>Georgia</b>	9,363,941	9,132,553	231,388	2.5	9	9	4	4
<b>Hawaii</b>	1,285,498	1,273,278	12,220	1.0	42	42	31	23
<b>Idaho</b>	1,466,465	1,429,367	37,098	2.6	39	39	20	3
<b>Illinois</b>	12,831,970	12,765,427	66,543	0.5	5	5	13	35
<b>Indiana</b>	6,313,520	6,266,019	47,501	0.8	15	15	17	29
<b>Iowa</b>	2,982,085	2,965,524	16,561	0.6	30	30	29	33
<b>Kansas</b>	2,764,075	2,748,172	15,903	0.6	33	33	30	31
<b>Kentucky</b>	4,206,074	4,172,608	33,466	0.8	26	26	24	26
<b>Louisiana</b>	4,287,768	4,507,331	-219,563	-4.9	25	24	51	51
<b>Maine</b>	1,321,574	1,318,220	3,354	0.3	40	40	43	38
<b>Maryland</b>	5,615,727	5,589,599	26,128	0.5	19	19	27	36
<b>Massachusetts</b>	6,437,193	6,433,367	3,826	0.1	13	13	42	46
<b>Michigan</b>	10,095,643	10,100,833	-5,190	-0.1	8	8	48	48
<b>Minnesota</b>	5,167,101	5,126,739	40,362	0.8	21	21	19	27
<b>Mississippi</b>	2,910,540	2,908,496	2,044	0.1	31	31	44	44
<b>Missouri</b>	5,842,713	5,797,703	45,010	0.8	18	18	18	28
<b>Montana</b>	944,632	934,737	9,895	1.1	44	44	34	19
<b>Nebraska</b>	1,768,331	1,758,163	10,168	0.6	38	38	33	32
<b>Nevada</b>	2,495,529	2,412,301	83,228	3.5	35	35	9	2
<b>New Hampshire</b>	1,314,895	1,306,819	8,076	0.6	41	41	35	30
<b>New Jersey</b>	8,724,560	8,703,150	21,410	0.2	11	10	28	39
<b>New Mexico</b>	1,954,599	1,925,985	28,614	1.5	36	36	26	13
<b>New York</b>	19,306,183	19,315,721	-9,538	0.0	3	3	50	47
<b>North Carolina</b>	8,856,505	8,672,459	184,046	2.1	10	11	6	7
<b>North Dakota</b>	635,867	634,605	1,262	0.2	48	48	46	42
<b>Ohio</b>	11,478,006	11,470,685	7,321	0.1	7	7	36	45
<b>Oklahoma</b>	3,579,212	3,543,442	35,770	1.0	28	28	21	22
<b>Oregon</b>	3,700,758	3,638,871	61,887	1.7	27	27	14	11
<b>Pennsylvania</b>	12,440,621	12,405,348	35,273	0.3	6	6	22	37
<b>Rhode Island</b>	1,067,610	1,073,579	-5,969	-0.6	43	43	49	50
<b>South Carolina</b>	4,321,249	4,246,933	74,316	1.7	24	25	12	10
<b>South Dakota</b>	781,919	774,883	7,036	0.9	46	46	37	24
<b>Tennessee</b>	6,038,803	5,955,745	83,058	1.4	17	16	10	14
<b>Texas</b>	23,507,783	22,928,508	579,275	2.5	2	2	1	5
<b>Utah</b>	2,550,063	2,490,334	59,729	2.4	34	34	15	6
<b>Vermont</b>	623,908	622,387	1,521	0.2	49	49	45	40
<b>Virginia</b>	7,642,884	7,564,327	78,557	1.0	12	12	11	20
<b>Washington</b>	6,395,798	6,291,899	103,899	1.7	14	14	7	12
<b>West Virginia</b>	1,818,470	1,814,083	4,387	0.2	37	37	40	41
<b>Wisconsin</b>	5,556,506	5,527,644	28,862	0.5	20	20	25	34
<b>Wyoming</b>	515,004	508,798	6,206	1.2	51	51	39	17
<b>Puerto Rico</b>	3,927,776	3,911,810	15,966	0.4	(X)	(X)	(X)	(X)

(X) Not Applicable.

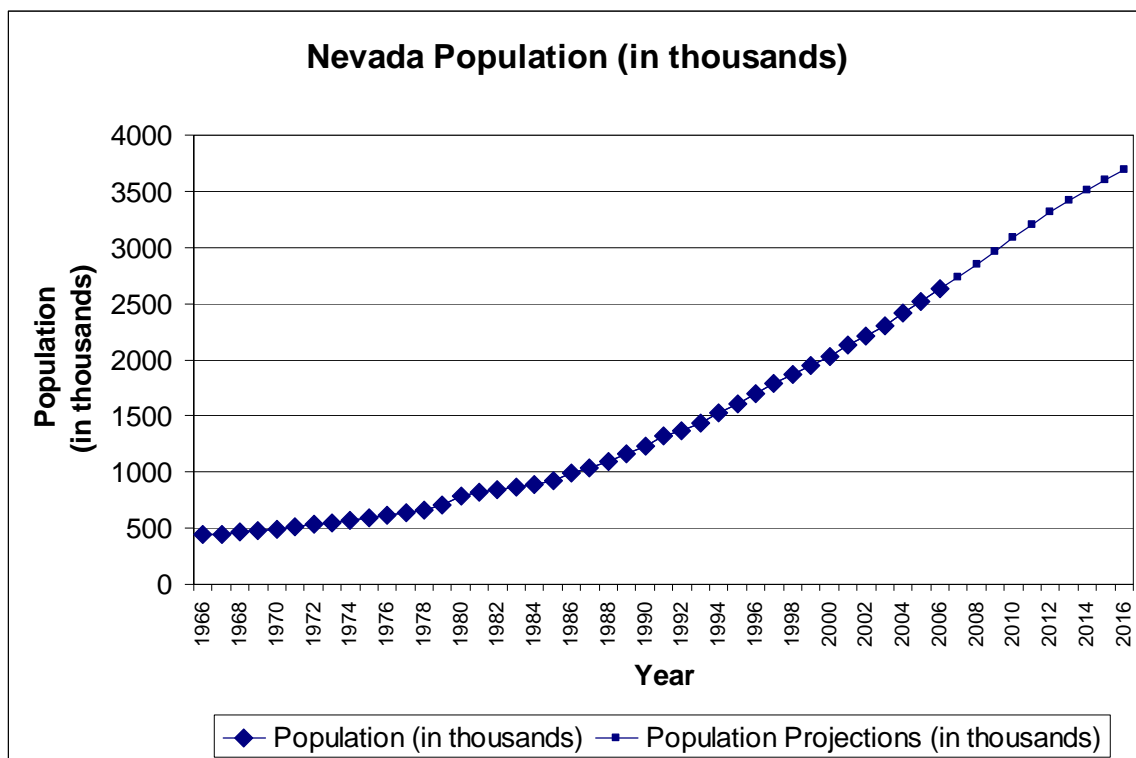
### 3. Nevada Supreme Court Caseload

Over the last 19 years, Nevada has experienced tremendous population growth, along with an increase in the number of court cases filed and appeals from decisions of the lower courts. Although there is no direct correlation between population growth and increase in the number of appeals filed in the Supreme Court, it is reasonable to expect current trends will continue. The Court must anticipate and plan for growth, and should support legislative efforts to provide court services accessible to all citizens.

#### a. Population Growth

**Figure 2** was created using data compiled by Jeff Hardcastle, Nevada State Demographer.<sup>24</sup> As indicated, Nevada has experienced exponential population growth in recent years. Using this model, future population growth can be projected for the next ten years.

**Figure 2. Nevada Population Growth from 1966 to 2006; Projections**



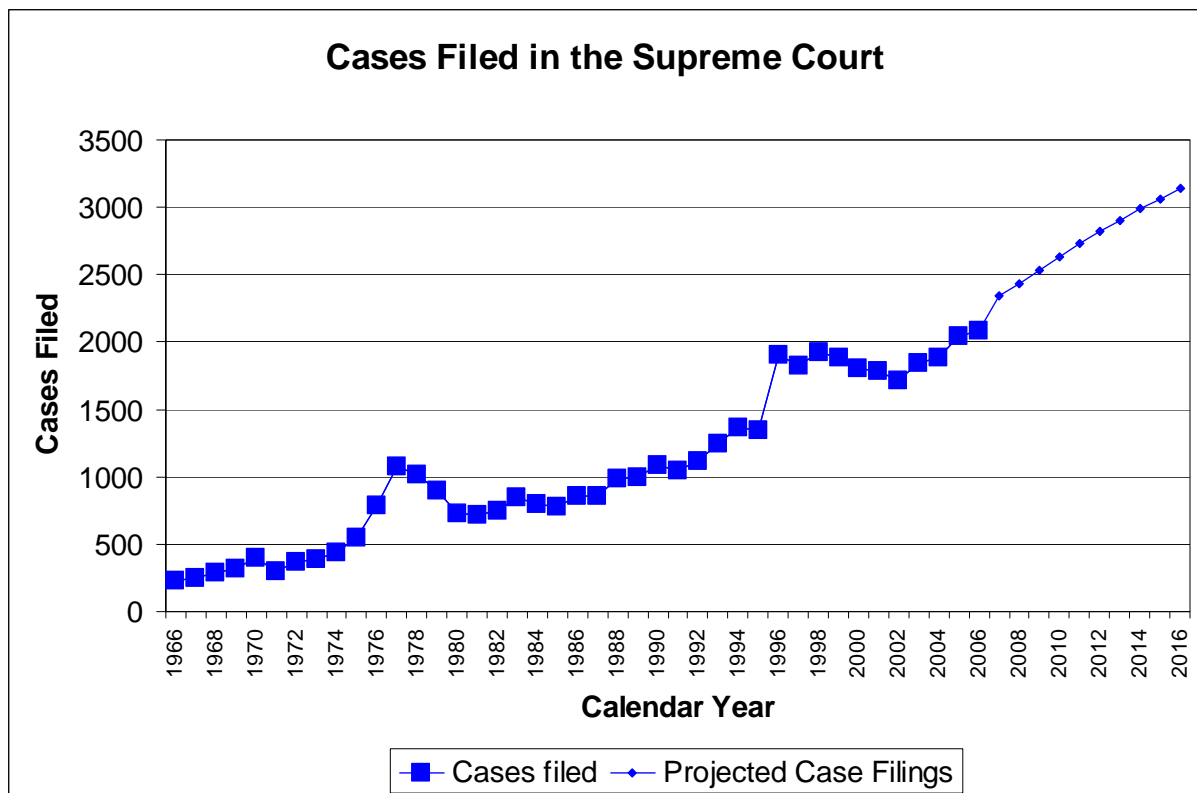
<sup>24</sup> Source: Jeff Hardcastle, Nevada State Demographer's Office, website address: <http://www.nsbdc.org>.

**b. Caseload Growth**

**Figure 3** was created from data obtained from the Nevada Supreme Court Clerk's Office. As indicated, the Court's overall caseload has grown steadily over the past 40 years. The Clerk's Office has indicated to the Committee that in years past, the number of cases filed in the Supreme Court has increased rapidly, followed by a "leveling off" period.

For purposes of this report, the Committee has utilized a simple linear forecasting method to estimate the number of new case filings. Using this method, the number of cases filed in the Nevada Supreme Court in 2013 is expected to be almost 2,900. By the year 2016, that number will increase to nearly 3,100.

**Figure 3. Supreme Court Cases Filed from 1966 to 2006; Projections**



The actual number and rate of increase of appellate filings should also be considered in the analysis.<sup>25</sup> During fiscal year 2002, the Nevada Supreme Court processed 1,752 new appeals. See **Table 2**<sup>26</sup> below.

**Table 2. Nevada Supreme Court Cases Filed and Disposed  
Fiscal Years 2002 - 2006**

	Fiscal Year 2002	Fiscal Year 2003	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006
<b>Cases Filed</b>					
Bar Matters	29	29	50	40	28
Appeals	1,478	1,519	1,541	1,646	1,735
Original Proceedings	226	282	248	317	305
Other	4	1	7	8	6
Reinstated	15	10	6	11	12
<b>Total Cases Filed</b>	<b>1,752</b>	<b>1,841</b>	<b>1,852</b>	<b>2,022</b>	<b>2,086</b>
<b>Cases Disposed</b>					
By Opinions	81	87	83	93	122
By Order	1,825	1,802	1,667	1,887	2,007
<b>Total Cases Disposed</b>	<b>1,906</b>	<b>1,889</b>	<b>1,750</b>	<b>1,980</b>	<b>2,129</b>
<b>Cases Pending</b>	<b>1,474</b>	<b>1,426</b>	<b>1,528</b>	<b>1,570</b>	<b>1,464</b>
<b>Number of Opinions Written*</b>	<b>77</b>	<b>85</b>	<b>78</b>	<b>91</b>	<b>106</b>

\* Includes opinions that do not dispose of cases.

Source: Nevada Supreme Court Clerk's Office.

**Table 2** shows that during the last fiscal year, a total of 2,086 new cases were filed in the Supreme Court, representing an increase of 3 percent from the previous year. This is a staggering caseload even for our expanded Court.

During that same fiscal year, the Nevada Supreme Court successfully disposed of 2,129 cases, up by 8 percent from the previous year. The Court attributes its success to the dedication and commitment of all seven members, implementation of the new case management system, the efficient use of the panel system, a hardworking Central Legal Staff, and a smoothly running Clerk's Office. The high court also acknowledges both the "fast track" program for criminal appeals and the new court rule requiring settlement conferences have played a part in keeping the high court's caseload from spinning out of control.<sup>27</sup>

<sup>25</sup> See **Senate Bill 234 Subsection 1. (f)(1)**.

<sup>26</sup> Annual Report of the Nevada Judiciary, Fiscal Year 2006.

<sup>27</sup> See **NRAP 3C**, Fast Track Criminal Appeals, added 9-1-1996; **NRAP 16**, Settlement Conferences in Civil Appeals, added 2-26-1997.

#### 4. Optimum Relative Workload

During the 65th Legislative Session in 1989, the Nevada Supreme Court formed a committee to study the impact of Senate Joint Resolution 12 (SJR 12). As a result of the committee's work, the *Report of the Nevada Supreme Court Committee on the Intermediate Court of Appeals* was prepared and submitted on the Administrative Docket, ADKT 123, on September 28, 1990 (hereinafter referred to as the 1990 Report). Information from the 1990 Report has been useful in this study.<sup>28</sup>

The 1990 Report included a discussion regarding the "optimum relative workload" for appellate courts, and provides,

*The relative workload of a court may be determined by taking the total number of cases decided by the court and dividing that number by the number of justices sitting on the court. The resulting number may be compared with the number of cases that experts consider to be the optimum for an appellate judge to decide in a year. Taking into account the other duties of a judge, [citation omitted] experts suggest that an appellate court with the "usual mix" of cases, like the Nevada Supreme Court, should be required to dispose of no more than 100 cases per judge per year . . . .<sup>29</sup>*

In this context, the optimum relative workload number of 100 is based upon the number of cases in which each Justice must prepare a written decision, and does not include decisions rendered following oral argument. **Table 2** indicates that the Nevada Supreme Court has exceeded, and continues to exceed, the optimum relative workload of 100 dispositions per Justice per year. In his book, *Justice on Appeal*, Professor Paul D. Carrington cautions,

*It is possible that some courts may be able to decide more than 100 cases per judgeship per year consistently with the imperatives of appellate justice. But it is unlikely . . . . A legislative body which has allowed its appellate courts to accumulate a heavier load than 100 dispositions per judge per year, without such a showing of unusual circumstance, is neglecting its responsibility for appellate justice and for the general quality of government.<sup>30</sup>*

In considering our state's rising population, current trends and projections, and the present number of cases per Justice each year, continuing efforts to establish the new court is the only responsible approach. Without relief, our appellate court system will

---

<sup>28</sup> See Senate Bill 234 Subsection 1.(f)(4).

<sup>29</sup> 1990 Report, p. 14-15, citing Carrington, Meador and Rosenberg, *Justice on Appeal* 145 West Publishing (1976).

<sup>30</sup> Carrington, Meador, and Rosenberg, *Justice on Appeal* 146 West Publishing (1976) (hereinafter Carrington).

not continue to function at an acceptable level. The citizens of Nevada deserve a court system and an administration that not only addresses existing needs, but that can anticipate future challenges as well.

## **5. States Without an Intermediate Appellate Court; Comparison**

Presently, ten other states, including the District of Columbia, do not have an intermediate appellate court. **Table 3** was compiled with information obtained by the National Center for State Courts. **Table 3** compares Nevada and these other states using a "disposition per justice" ratio for fiscal or calendar year 2004.<sup>31</sup> During that year, our Supreme Court Justices were handling approximately 278 cases each - the highest number for all states compared.

By June 30, 2006, the Court's "disposition per justice" ratio increased to 289.<sup>32</sup> Using **Figure 3**<sup>33</sup> projections for a seven-member Court, by 2013, each Justice would be expected to dispose of over 400 cases each year.

---

<sup>31</sup> Source: National Center for State Courts, 2006, using 2004 calendar year/fiscal year data. Website address: <http://www.ncsconline.org>.

<sup>32</sup> Annual Report of the Nevada Judiciary, Fiscal Year 2006. At the end of calendar year 2006, the Clerk's Office reported 2,171 new cases were filed and 2,387 cases were disposed, or approximately 341 cases per justice.

<sup>33</sup> See supra **Table 2**. p. 13

**Table 3. Cases Filed and Disposed Per Justice in States with No Intermediate Appellate Court (CY or FY 2004 data)**

	Number of Justices	Total Cases Filed	Percent Mandatory	Filings per 100,000 population	Total Dispositions	Dispositions per Justice
<b>Nevada</b>	<b>7</b>	<b>1,896</b>	<b>100</b>	<b>81</b>	<b>1,949</b>	<b>278</b>
West Virginia	5	2,433	0	134	1,167	233
District of Columbia	9	1,762	99	318	1,755	195
New Hampshire	5	906	0	70	721	144
Delaware	5	564	100	68	586	117
Vermont	5	554	95	89	576	115
Montana	7	882	79	95	800	114
Maine	7	679	77	52	672	96
South Dakota	5	405	88	53	455	91
North Dakota	5	379	96	60	397	79
Rhode Island	5	394	68	36	386	77
Wyoming	5	272	100	54	299	60
<b>Median</b>			<b>92</b>	<b>69</b>	<b>629</b>	<b>115</b>

## 6. Selected States with an Intermediate Appellate Court; Comparison

As previously discussed, other states which have comparable or lower population and growth rates than Nevada have established intermediate appellate courts. **Table 4** was created using statistics gathered from the comparison states' most recent annual reports available online and/or information compiled by the National Center for State Courts for 2004.<sup>34</sup>

**Table 4** compares Nevada and these six "comparison" states using a "disposition per justice" ratio.<sup>35</sup> It appears that other states that have integrated an intermediate appellate court have established workable caseloads closer to the ideal.<sup>36</sup> It is reasonable to expect that creation of an intermediate appellate court in Nevada would provide similar positive results.

<sup>34</sup> Court Statistics Project, State Court Caseload Statistics, 2005 (National Center for State Courts 2006, website address: <http://ncsconline.org>, Supreme Court of Nebraska 2005 Annual Report; Utah State Courts 2006 Annual Report.

<sup>35</sup> See Senate Bill 234 Subsection 1.(f)(4).

<sup>36</sup> See Carrington, 145.

**Table 4. Dispositions Per Justice or Judge in Selected States with an Intermediate Appellate Court (using 2004-2006 data)**

<u>State</u>	<u>New Filings</u>	<u>Cases Disposed</u>	<u>Total Dispo Per Justice/Judge</u>
<b>Utah</b> (2006)			
Supreme Court (5)	635	616	123.2
Court of Appeals (7)	939	1035	147.8
<b>New Mexico</b> (2004)			
Supreme Court (5)	691	628	125.6
Court of Appeals (10)	897	884	88.4
<b>Nebraska</b> (2005)			
Supreme Court (7)	543	257	36.7
Court of Appeals (6)	1496	1330	221.6
<b>Idaho</b> (2004)			
Supreme Court (5)	762	745	149
Court of Appeals (3)	547	552	78.8
<b>Hawaii</b> (2004)			
Supreme Court (5)	806	952	190.4
Int. Court of Appeals (6)	298	232	38.6
<b>Alaska</b> (2004)			
Supreme Court (5)	415	395	79
Court of Appeals (3)	219	285	95

## **D. The Nevada Court of Appeals: A Reality**

### **1. Access to Justice**

Based upon a "disposition per justice" ratio, the Nevada Supreme Court has a substantially higher caseload than all other states without intermediate appellate courts. Unreasonable caseloads and limited resources often result in a less than desirable standard of service for those who use our courts. For example, parties involved in a case may have to wait for months, or even years, before a decision is rendered. An overloaded court may have no choice but to reduce the number of written opinions and/or use "short form" orders which provide a summary of the decision. Short form orders are inadequate when they do not provide the parties with a clear explanation of the reasoning for a decision.

The Court remains committed to providing and maintaining access to justice for all citizens of Nevada at every level of our court system. Examination and discussion of

appropriate standards for appellate courts is helpful in realizing the benefits of an intermediate court of appeals in our state.<sup>37</sup>

## 2. Appropriate Standards for Nevada's Appellate Courts

In 1999, The Appellate Court Performance Standards Commission (Commission) was formed to establish performance standards for our nation's appellate courts. The Commission created Standards complementary to the American Bar Association's (ABA) Standards Relating to Appellate Courts.<sup>38</sup> Standards proposed by both the ACPS Commission and the ABA should be considered.

This discussion will focus upon appropriate standards for our state appellate courts: the Nevada Supreme Court and the future Nevada Court of Appeals. Standards relevant to this analysis include quality of the judicial process, reduction of delay, timeliness, recognizing error correction as a primary function of an intermediate appellate court, and the manner in which an appellate court should render its opinions.

### a. Quality of Services

Subject to jurisdictional limitations, Nevada's intermediate appellate court will share the workload with the Supreme Court. Reducing the Court's caseload to a manageable level will allow additional time in the decision making process. Commission Standard 2.1 applies:

#### **Standard 2.1 Quality of the Judicial Process**

Appellate court systems should ensure adequate consideration of each case and decisions based on legally relevant factors, thereby affording every litigant the full benefit of the judicial process.<sup>39</sup>

Standard 2.1 Commentary provides, “. . . *Quality of the appellate judicial process is not measured by the amount of time devoted to each case, but rather that each case is managed – from beginning to end – in a manner consistent with the principles of fairness and justice.*”<sup>40</sup>

Justices of the Supreme Court have a duty and obligation to hear and decide cases before them. In addition to those primary duties, however, each Justice must also perform administrative tasks that are necessary to accomplish the work of the Court. In his book, *Justice on Appeal*, Professor Carrington explains,

<sup>37</sup> See Senate Bill 234 Subsection 1. (f) (3) and (4).

<sup>38</sup> Standards Relating to App. Cts.(1994).

<sup>39</sup> Appellate Court Performance Standards and Measures, National Center for State Courts, § 2.1 (1999).

<sup>40</sup> *Id.* at 6.

*The appellate court must maintain a supervisory relationship to its own staff. It must also oversee the discipline of the bar and sometimes of the lower courts. These responsibilities generate a significant volume of business in the form of motions or administrative actions. Rule making authority also exacts additional time. Each judge must also supervise his personal staff. These duties require the maintenance of a network of personal relationships and attendance at a variety of meetings, as well as many individual encounters. Moreover, it is essential to the very nature of this deliberative act of judging that the job not be performed at a frenetic pace. Time for reflection and study is essential. So is mental and physical health. It is undebatably (sic) in the public interest that the judge not be compelled to devote every waking minute to his judicial duties. He should be expected to maintain healthy non-legal affairs to a reasonable degree.<sup>41</sup>*

The Court's "disposition per justice" ratio has steadily increased since 1975. Subsequent to the submission of the 1990 Report, the Nevada Legislature provided much needed relief in the passage of AB 343, which allowed two additional Justices to join the Court in 1999. However, even with the expansion of the Court, the "disposition per justice" ratio is far from the ideal.<sup>42</sup>

In considering all the options, the best approach is to establish a second appellate court that can share the workload. In utilizing a central Clerk's Office, both courts can ensure cases are managed appropriately, and that those cases which require more time and attention will get proper consideration.

#### **b. Reduction of Delay**

Appropriate caseload management is critical to the long term success of Nevada's entire court system. Standard 4.2 provides:

#### **Standard 4.2 Case Management, Efficiency and Productivity**

Appellate court systems should manage their caseload effectively and use available resources efficiently and productively.<sup>43</sup>

Standard 4.2 Commentary provides, ". . . Resources should be distributed according to case complexity with more complex cases receiving greater resources. Cases should be monitored throughout their processing to ensure the efficient use of resources assigned to them. Screening procedures should be developed to identify routine cases

---

<sup>41</sup> Carrington, 145.

<sup>42</sup> In CY 1975, each Justice disposed of 126.8 cases. By 1989, that number had increased to 209.4. By June 30, 2006 (fiscal year 2006), the "disposition per justice" ratio had climbed to 289.

<sup>43</sup> Appellate Court Performance Standards and Measures, National Center for State Courts, § 4.2 (1999).

*that can be processed and resolved expeditiously so that court staff and judges can spend more time on complex appeals.*<sup>44</sup>

The Nevada Supreme Court already performs a screening process to facilitate panel assignments. The next logical step in the process of successful case management is to structure the intermediate appellate court so that the workload can be shared and any delay can be minimized and/or managed. Once the workload between the courts has been established, existing resources can be allocated based upon the number and types of cases being heard by each court. Law clerks and support staff hired to assist the new judges would be assigned as necessary.

A Nevada Court of Appeals will provide a critical resource to our existing appellate system. Three additional judges will share the existing caseload, perform a necessary "dispute deciding" function and ultimately develop expertise for its own docket. With the assistance of additional judges, the Supreme Court could focus on matters on direct review and other precedent setting cases that serve to develop our state's unique common law.

### **c. Timeliness**

The Nevada Supreme Court has demonstrated its commitment to the timely disposition of all appeals. In 1997, the high court found itself in "crisis mode" with an inventory of approximately 2,500 cases. In response, the Nevada Legislature passed AB 343, which provided two new justices to the high court, and which authorized the use of panels. Commission Standard 2.4 is relevant:

#### **Standard 2.4 Timeliness**

Appellate court systems should resolve cases expeditiously.<sup>45</sup>

Standard 2.4 Commentary is also instructive: ". . . *Time standards applicable to appellate court cases should be responsive, when appropriate, to the special needs of individual cases when doing so does not sacrifice the quality of appellate justice.*"<sup>46</sup>

The ABA has also proposed time standards for appellate cases.<sup>47</sup> § 3.52 provides in part,

---

<sup>44</sup> *Id.* at 15.

<sup>45</sup> Appellate Court Performance Standards and Measures, National Center for State Courts, § 2.4 (1999).

<sup>46</sup> *Id.* at 9.

<sup>47</sup> Standards Relating to App. Cts. § 3.52 (1994).

### § 3.52 Standards of Timely Disposition of Appellate Cases

.....

**(c) Reference Model: Time Standards for Supreme Courts.**

*(i) 50% of all cases should be resolved within 290 days from the time of the petition for certiorari from the intermediate court of appeals or from filing of the notice of appeal.*

***(ii) 90% of all cases should be resolved within one year of the petition for certiorari from the intermediate court of appeals or from the filing of the notice of appeal.***

*(iii) The remaining ten percent should be resolved as expeditiously as possible, given the length of the record, the complexity of the issues, or other unusual circumstances.*

**(d) Reference Model: Time Standards for Intermediate Courts of Appeals.**

*(i) 75% of all cases should be resolved within 290 days from filing of the notice of appeal.*

*(ii) 95% of all cases should be resolved within one year of the filing of the notice of appeal.*

*(iii) The remaining five percent of the caseload of an intermediate court of appeals should be resolved as expeditiously as possible, given the length of the record, the complexity of the issues, or other unusual circumstances. [Emphasis added.]*

In reviewing ABA standards, the Committee analyzed "time to disposition" statistics for the Supreme Court between calendar years 2001 through 2006. **Tables 5 through 8** were prepared using information compiled by the Clerk's Office.<sup>48</sup>

**Table 5** indicates that in calendar year 2001, 77 percent of civil appeals were decided in less than 30 months; 23 percent took 30 months or more. For criminal appeals, the results were better. More than 93 percent of the cases were resolved in less than 30 months. Almost 7 percent of the cases took 30 months or more.

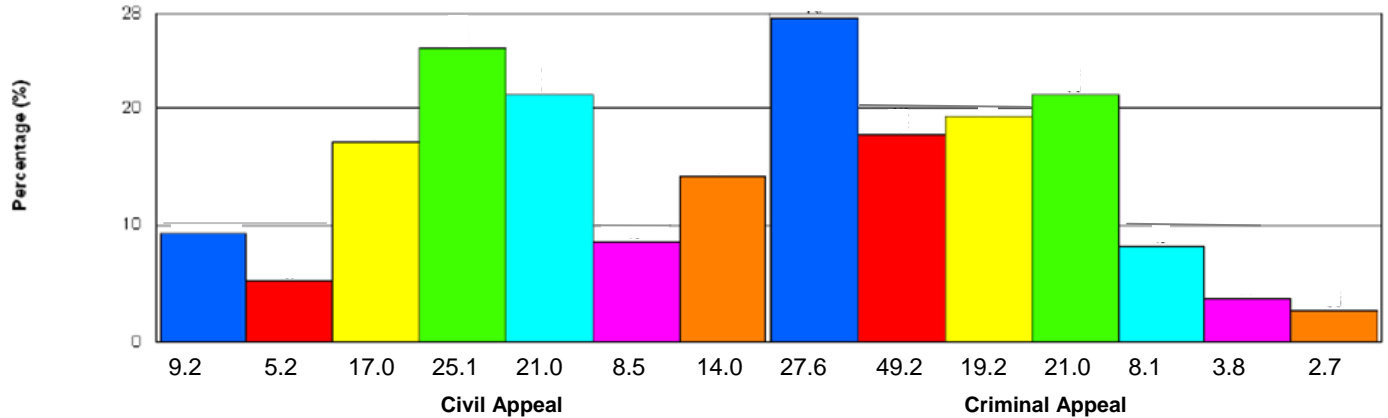
For the same period, **Table 6** shows that from a total of 1,094 cases decided on the merits, 856 cases were resolved in less than 2 years.

---

<sup>48</sup> The Clerk's Office compiled "time to disposition" information for all cases filed in the Supreme Court during calendar years 2001 to 2006. "Time to disposition" ranged from less than six months to over three years. Tables 5 through 8 represent a portion of the total number of cases filed. Tables 5 through 8 include the number of civil and criminal appeals decided "on the merits" and do not include those cases that were filed and subsequently dismissed by stipulation or due to lack of jurisdiction or other technical bases.

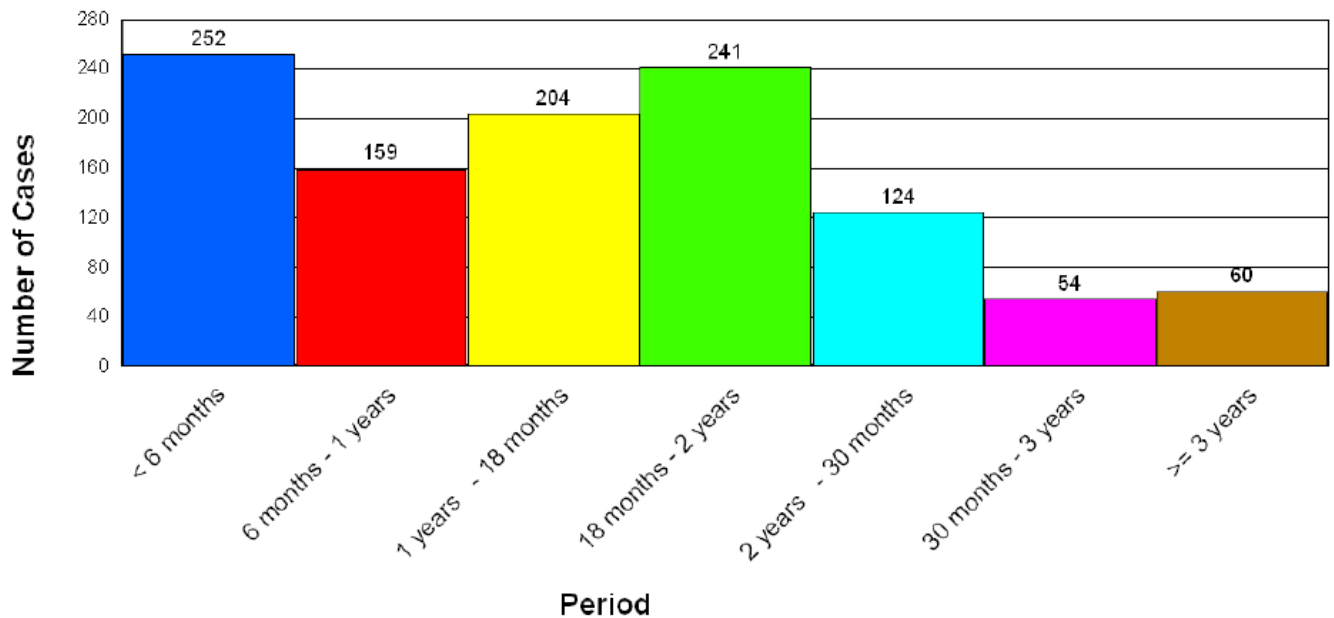
**Table 5. Civil and Criminal Cases Decided on the Merits in 2001 - Docketing to Disposition; Graph and Chart Showing Percentages of Cases in Each Time Period**

Disposed Period: January 01, 2001 - December 31, 2001



	< 6 months	6 months - 1 years	1 years - 18 months	18 months - 2 years	2 years - 30 months	30 months - 3 years	>= 3 years	Total
Civil Appeal	25	14	46	68	57	23	38	271
Criminal Appeal	227	145	158	173	67	31	22	823
Total	252	159	204	241	124	54	60	1,094

**Table 6. Civil and Criminal Cases Decided on the Merits in 2001 - Docketing to Disposition; Graph Showing Number of Cases in Each Time Period**

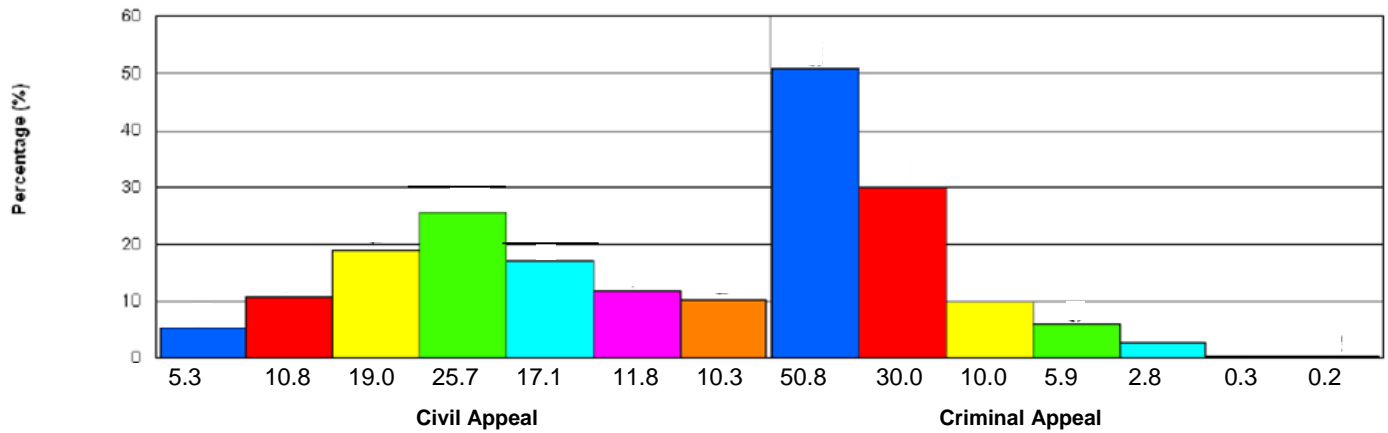


**Table 7** indicates that in calendar year 2006, almost 78 percent of civil appeals were decided in less than 30 months; 22 percent were resolved within 30 months or more. For criminal cases, 99 percent were resolved in less than 30 months. Less than 1 percent of the cases exceeded 30 months.

For the same period, **Table 8** shows that from a total of 1,280 cases decided on the merits, 1,088 cases were resolved in less than 2 years.

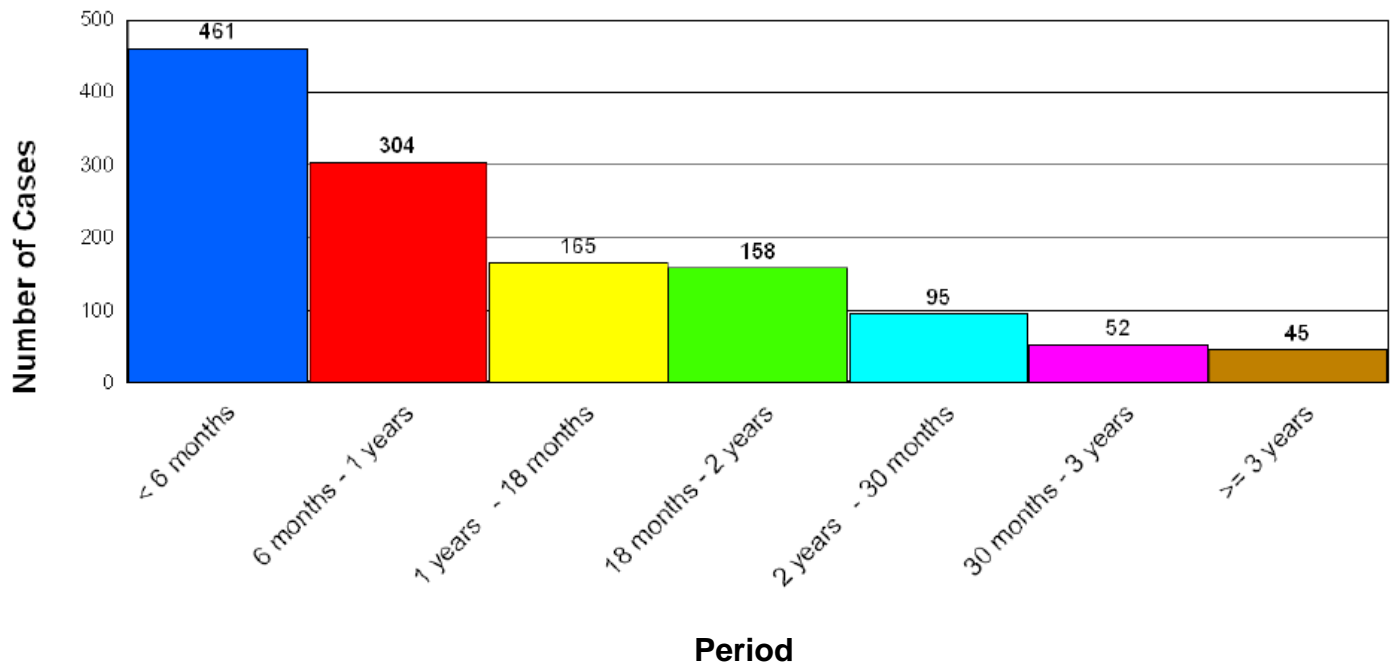
**Table 7. Civil and Criminal Cases Decided on the Merits in 2006 - Docketing to Disposition; Graph and Chart Showing Percentages of Cases in Each Time Period**

Disposed Period: January 01, 2006 - December 31, 2006



	< 6 months	6 months - 1 years	1 years - 18 months	18 months - 2 years	2 years - 30 months	30 months - 3 years	>= 3 years	Total
Civil Appeal	22	45	79	107	71	49	43	416
Criminal Appeal	439	259	86	51	24	3	2	864
Total	461	304	165	158	95	52	45	1,280

**Table 8. Civil and Criminal Cases Decided on the Merits in 2006 - Docketing to Disposition; Graph Showing Number of Cases in Each Time Period**



**Tables 5, 6, 7 and 8** indicate that over the last five calendar years, the total number of civil and criminal appeals filed and decided on the merits has increased by 186; from 1,094 to 1,280. While the time for civil case disposition has remained about the same, time to disposition periods for most criminal appeals continue to improve.

The ABA recommends that 90 percent of all cases be resolved within one year from the filing of the notice of appeal.<sup>49</sup> Information reflected in the preceding tables show that for calendar year 2001,<sup>50</sup> the Court fell far short of this goal with only 38 percent of those cases decided within one year. Calendar year 2006 was much better; the Court decided almost 60 percent of the cases represented within one year, with criminal appeals making up 91 percent of the total. The Committee attributes the improvement to the successful implementation of the fast track criminal appeal program pursuant to NRAP 3C.

<sup>49</sup> See Standards Relating to App. Cts. § 3.52(c) (1994).

<sup>50</sup> Please note **Tables 5, 6, 7 and 8** represent the number of civil and criminal cases decided on the merits - not the total number of cases filed per calendar year.

Prior to the passage of AB 343, the average disposition for all cases filed in the Supreme Court was estimated to be between two to three years.<sup>51</sup> The expansion of the Court in 1999 resulted in a slight reduction of the number of pending cases for subsequent years. Time to disposition periods for criminal appeals continues to improve. However, even with the assistance of two new members, and the success of the fast track program, the Court has been unable to achieve and maintain ABA standards as set forth in § 3.52(c)(ii).

Due in part to the successful reduction of pending cases, some have suggested that the Court be expanded again to accommodate the increasing workload. However, further expansion of the Supreme Court is not a viable option at the present time. During the 68th Legislative Session in 1995, Chief Justice Thomas L. Steffen expressed his opposition to expanding the high court and questioned whether simply adding new Justices was the best solution.<sup>52</sup> The issue was also addressed in the 1990 Report, as follows:

*Even if we were to disregard the complications and counterproductive aspects of court expansion, it does not appear that increasing the number of judges would solve existing problems of volume for long . . . . The notion of expanding the court therefore merely buys time. By adding two justices, Nevada could purchase a theoretical amount of relief for no more than five years, at a high price in terms of dispositions per justice.<sup>53</sup>*

Ensuring timeliness is dependent upon maintaining manageable caseloads for both the Nevada Supreme Court and the Nevada Court of Appeals. If expansion of the Court is not feasible, the only practical solution is the creation of an intermediate appellate court. Establishment of the Nevada Court of Appeals can provide the resources necessary to ensure that all appeals are handled in a timely manner.

#### **d. Error Correction Function**

The Nevada Supreme Court presently serves as an "error correction" court and the court of last resort in the development of our state's common law. Ideally, the Nevada Court of Appeals would assume the primary duty of error correction. Standard 1.3 provides guidance:

---

<sup>51</sup> See supra p. 5.

<sup>52</sup> Hearing before the Senate Judiciary Committee, 1-31-1995, 68th Leg. Sess. (NV 1995) (statement of Chief Justice Steffen, p. 4).

<sup>53</sup> 1990 Report, p. 29.

### Standard 1.3 Error Correction

Appellate court systems should provide review sufficient to correct prejudicial errors made by lower tribunals.<sup>54</sup>

Standard 1.3 Commentary provides thoughtful analysis of the two functions of appellate courts,

*A key function of appellate courts is the correction of prejudicial errors in fact or law made by lower tribunals . . . The error-correcting function for a court of last resort is fundamentally different from the error-correcting function for an intermediate appellate court. **A court of last resort is a court of precedent whose primary function is to interpret and to develop case law, rather than to correct errors in individual cases.** [Emphasis added.]*

*On the other hand, an intermediate appellate court serves primarily as a court of error correction, following precedent created by the courts of last resort. Of course, in the absence of binding precedent, an intermediate appellate court must also interpret and develop the law. Because review is normally discretionary in courts of last resort, these intermediate appellate court decisions may serve an important function in the development of law.*

*The ability of appellate court systems to correct errors protects the rule of law and improves the manner in which lower tribunals decide cases and dispense justice. In turn, intermediate appellate and trial courts more ably apply the law. The result is increased confidence in the entire judicial process.<sup>55</sup>*

Establishment of an intermediate appellate court is critical to the successful growth and natural development of Nevada's appellate court system. Once established, the Nevada Court of Appeals should be designated as an "error correction" court. Our Supreme Court can then focus on its precedent setting function; to hear and decide those matters which have widespread impact, such as death penalty cases, interpretation of our state constitution and issues of first impression.

#### e. Number of Authored (Published) Opinions

The number of written opinions produced by the Court has increased over the last five years. **Table 2**<sup>56</sup> indicates that at the end of fiscal year 2002, the Court prepared 77 written opinions, averaging 11 opinions per year per Justice. By June 30, 2006, the Court had issued 106 opinions for an average of 15 per Justice. According to the

---

<sup>54</sup> Appellate Court Performance Standards and Measures, National Center for State Courts, § 1.3 (1999).

<sup>55</sup> *Id.* at 3-4.

<sup>56</sup> See supra **Table 2.**, p. 13.

Clerk's Office, for calendar year ending 2006, the number increased to 121, resulting in an average of 17 written opinions per Justice.

Although the number of published opinions has increased, the Court is committed to providing more authored opinions focusing on decisions that establish and define Nevada's common law. Providing an adequate number of published opinions is also essential in light of the increasing complexity of appellate issues brought before the Court.

The standard suggested by Professor Carrington is for each Justice to prepare a full opinion in one of every four cases, or approximately 25 full opinions per Justice per year.<sup>57</sup> It is suggested that a reduction in the Court's caseload will allow more time for authored opinions and/or *per curiam* opinions, as compared to those issued by unpublished orders (sometimes referred to as a memorandum opinions).<sup>58</sup> Section 3.36 of the ABA Standards provides guidance in the manner and method of rendering judicial decisions as follows,

**§ 3.36 Decisions and Opinions**

(a) *Conferences by the Court. The judges who are to decide a case should confer after argument is completed and before a decision is formulated. The process by which an opinion is prepared may appropriately vary, but all participating judges should join in its formulation. Every decision should indicate the judges who participated in it.*

(b) *. . . A full written opinion reciting the facts, the questions presented, and analysis of pertinent authorities and principles, should be rendered in cases involving new or unsettled questions of general importance. Cases not involving such questions should be decided by memorandum opinion.*<sup>59</sup>

The commentary to § 3.36 provides,

*An appellate court may appropriately render oral opinions from the bench in cases that are orally argued, but such a procedure should be used with great caution. . . . It is not essential that every case be decided by full opinion. . . . The public's interest is served by the court's ability to allocate its efforts according to the complexity and importance of the questions it must decide. . . . Cases of*

<sup>57</sup> See Carrington, 144.

<sup>58</sup> A **memorandum order** is an appellate decision that briefly reports the court's conclusion without elaboration because the decision follows a well-established legal principle or does not relate to any point of law. A **per curiam opinion** is an opinion handed down by an appellate court without identifying the individual judge who wrote the opinion. See Black's Law Dictionary, Eighth Edition, p. 1125, West Publishing (2004).

<sup>59</sup> Standards Relating to App. Cts. § 3.36 (1994).

*substantial difficulty, however, should be decided through opinions that deal with them adequately and candidly; memorandum opinions should not be used to avoid responsibility for reasoned, legally supported resolution of difficult cases. Litigants are entitled to assurance that their cases have been thoughtfully considered. The public, also, is entitled to assurance that the court is thus performing its duty.*<sup>60</sup>

The need for an intermediate appellate court in Nevada cannot be overstated. The addition of a second appellate court is essential to ensure quality of the judicial process, to provide that decisions are rendered in a timely manner, and ultimately to protect the rule of law.

## **2. Nevada's Growing Population and Effect on the Courts**

### **a. Nevada's Population**

According to current United States Census Bureau data, Nevada is ranked 35th of the 50 states, with a population of nearly 2.5 million.<sup>61</sup> Statistical trends indicate that by the year 2016, Nevada will have a population of approximately 3.5 million people.<sup>62</sup>

**Table 10** indicates that all Nevada's trial courts have experienced an increase in their annual caseloads.<sup>63</sup>

---

<sup>60</sup> *Id.* at 66-67.

<sup>61</sup> U.S. Census Bureau News 2006, Website address: [http:// www.census.gov](http://www.census.gov).

<sup>62</sup> See supra **Figure 2.**, p. 11.

<sup>63</sup> See **Senate Bill 234 Subsection 1.(f)(1)**.

**Table 10. Statewide Trial Court Caseload for Fiscal Years 2002-2006<sup>64</sup>**

Court	Fiscal Year	Criminal <sup>1</sup>	Civil <sup>2</sup>	Family <sup>2</sup>	Juvenile	Total Nontraffic caseload
District	2006	14,863	29,088	59,571	15,093	118,615
	2005	14,056	29,447	58,111	15,177	116,791
	2004	13,203	29,013	54,961	15,799	112,976
	2003	12,001	28,077	52,258	14,319	106,655
	2002	12,191	25,303	47,676	14,149	99,319
Justice	2006	80,407	125,994	NJ	NJ	206,401
	2005	80,996	123,716	NJ	NJ	204,712
	2004	77,748	116,551	NJ	NJ	194,299
	2003	76,078	106,593	NJ	NJ	182,671
	2002	76,928	101,204	NJ	NJ	178,132
Municipal	2006	58,208	7	NJ	NJ	58,215
	2005	58,521	0	NJ	NJ	58,521
	2004	58,235	20	NJ	NJ	58,255
	2003	59,074	3	NJ	NJ	59,077
	2002	56,796	125	NJ	NJ	56,921
<b>TOTAL</b>	2006	153,478	155,089	59,571	15,093	383,231
	2005	153,573	153,163	58,111	15,177	380,024
	2004	149,186	145,584	54,961	15,799	365,530
	2003	147,153	134,673	52,258	14,319	348,403
	2002	145,915	126,632	47,676	14,149	334,372
NJ	Not within court jurisdiction.					
r	Data totals revised from previous annual reports owing to improved data collection.					
1	Criminal includes felony, gross misdemeanor, and nontraffic misdemeanor filings and are counted by defendant.					
2	Reopened cases (see glossary) are included in totals.					

As our population has increased, so have the number of cases filed in Nevada's state trial courts overall. See **Table 10**. The most dramatic increases have occurred in the Eighth Judicial District Court in Las Vegas and the Second Judicial District Court in Reno.

<sup>64</sup> Source: Uniform System for Judicial Records, Nevada AOC, Planning & Analysis Division.

**b. Clark County/Eighth Judicial District**

Clark County, which comprises Las Vegas, North Las Vegas, Henderson, and surrounding cities, is the most populous county in Nevada.<sup>65</sup> The Eighth Judicial District Court (Eighth JD) serves this area. Between July 1, 1999, and June 30, 2005, the population in Clark County increased by an astounding 35 percent.<sup>66</sup> The Clark County system has felt the effects: overcrowded courtrooms and dockets, lack of space and existing resources that are stretched to the limit.

**Table 11** was created using information obtained from the Clerk's Office for calendar years 1990 through 2006. **Table 11** indicates steady growth in the number of appeals filed in the Eighth JD over a sixteen-year period. In 1990, the total number of appeals from the District Court was 499. In 2006, that number had increased to 1,153 - over twice the amount in 1990. During the last fiscal year, the Eighth JD Clerk's Office recorded an 8 percent increase in the number of appeals of District Court decisions filed compared to the previous fiscal year.<sup>67</sup>

Additionally, and as a result of the passage of Senate Bill 195 in 2005, four new District Court Judges have been added to the Clark County court system. An increase in the number of cases being heard and decided will undoubtedly result in an increase in the number of decisions appealed to the Nevada Supreme Court.<sup>68</sup>

**Table 11. Clark County, Eighth Judicial District Court  
Number of Appeals from CY 1990 to CY 2006**

Number of Appeals from Clark County/Eighth Judicial District Court, CY 1990-2006							
Year	Civil Appeals	Criminal Appeals	Total Appeals	Year	Civil Appeals	Criminal Appeals	Total Appeals
1990	197	302	<b>499</b>	2000	491	419	910
1991	232	279	511	2001	484	408	892
1992	203	240	443	2002	454	426	880
1993	225	318	543	2003	523	469	992
1994	288	389	677	2004	486	541	1,027
1995	267	347	614	2005	470	614	1,084
1996	396	484	880	2006	509	644	<b>1,153</b>
1997	465	436	901				
1998	509	448	957				
1999	545	477	1,022				

<sup>65</sup> For the past two years, Lyon County has been the fastest growing county in Nevada.

<sup>66</sup> Source: Jeff Hardcastle, Nevada State Demographer's Office. Website address: <http://nsbdc.org>.

<sup>67</sup> Annual Report of the Nevada Judiciary, Fiscal Year 2006.

<sup>68</sup> See Senate Bill 234 Subsection 1.(f)(4).

**c. Washoe County/Second Judicial District Court**

The Second Judicial District Court provides services to Washoe County, which is comprised of Reno, Sparks, and the surrounding areas. Washoe County has also experienced steady growth both in population and caseloads. Between July 1, 1999, and June 30, 2005, the population in Washoe County increased by over 18 percent.<sup>69</sup>

**Table 12** was created using information obtained from the Clerk's Office for calendar years 1990 through 2006. **Table 12** indicates steady growth in the total number of appeals filed from the District Court in Washoe County. Between 1990 and 2006, the total number of appeals filed nearly doubled.

**Table 12. Washoe County, Second Judicial District Court  
Number of Appeals from CY 1990 to CY 2006**

Number of Appeals from Washoe County/Second Judicial District Court, CY 1990-2006							
Year	Civil Appeals	Criminal Appeals	Total Appeals	Year	Civil Appeals	Criminal Appeals	Total Appeals
1990	103	82	<b>185</b>	2000	122	249	371
1991	88	70	158	2001	124	243	367
1992	121	101	222	2002	140	207	347
1993	104	132	236	2003	145	199	344
1994	103	144	247	2004	136	178	314
1995	98	167	265	2005	143	264	407
1996	125	241	366	2006	120	251	<b>371</b>
1997	128	244	372				
1998	115	264	379				
1999	124	227	351				

**Table 12** also indicates a "leveling off" period between 1999 and 2006. The reduction in the total number of appeals filed in 2006 compared to the previous year may be attributed, in part, to the closing of the Second Judicial District Court for a three-week period as a result of the unfortunate events of June 12, 2006, involving the Honorable Judge Charles E. Weller. It is reasonable to expect that the total number of appeals from decisions in the Second Judicial District for calendar year 2007 will be in excess of 400.

The passage of implementation of AB 343 in 1999 was critical; expansion of the Court and the utilization of the panel system helped to stem the tide and maintain some control of the appellate process. However, considering the significant increase in population in Clark and Washoe Counties, and the overall increase in the number of

<sup>69</sup> Source: Jeff Hardcastle, Nevada State Demographer's Office. Website address: <http://nsbdc.org>.

appeals from the District Courts since that time, our existing appellate court process and structure remains at risk.

Our appellate court system must be maintained and afforded appropriate relief. Creation of the intermediate appellate court is an essential step toward improving and preserving our existing court system and maintaining quality in the appellate process.

## **E. Creation of the Nevada Court of Appeals**

Judicial power for our state court system is derived from Article 6 of the Nevada State Constitution. Article 6 provides the authority for establishment of the Nevada Supreme Court and other courts which comprise the Judicial Branch. Article 6, §1 provides:

*The Judicial Power of this State is vested in a court system, comprising a Supreme Court, 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.*

### **1. Proposed Legislation**

A Bill Draft Request for a joint resolution in support of establishing an intermediate appellate court, having been timely submitted, will be presented during the 74th Legislative Session in 2007. Bill Draft Request C-661 (BDR C-661) mirrors Senate Joint Resolution 5, which was approved, but later withdrawn, during the 73rd Legislative Session in 2005. BDR C-661 will be the "first step" in the process that is required under our state constitution to establish the new court.<sup>70</sup>

BDR C-661 proposes in part,

*Resolved, by the Senate and Assembly of the State of Nevada, Jointly, That a new section be added to article 6 and sections 1, 4, 7, 8, 11, 15, 20 and 21 of article 6 of the constitution of the State of Nevada be amended to read respectively as follows:*

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

---

<sup>70</sup> BDR C-661 is subject to revision and will be properly designated and numbered as a joint resolution. During the revision process, the stakeholders will request that the final resolution reflect appropriate provisions addressing the selection and initial terms of the new judges, and that the Supreme Court exercise its rule making authority in fixing appropriate jurisdiction for the court of appeals.

## 2. Name of the New Court

The name of the new court should be The Nevada Court of Appeals,<sup>71</sup> consistent with the intent and the language of BDR C-661 in its present form.

## 3. Jurisdictional Authority; Considerations

### a. Bill Draft Request C-661

BDR C-661, in its final form, will propose jurisdiction for the new court of appeals be established by the Supreme Court as follows:

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

**Sec. 4. 1.** *The supreme court 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 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 their jurisdiction. Each 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 the issuing justice or judge or the court of which the justice or judge is a member, or before any district court in the state or any judge of a district court.*

### b. New Mexico Model

In considering the appropriate jurisdiction for the new court, the Committee reviewed several other state systems and methods.<sup>72</sup> Jurisdiction may be established by constitutional amendment, through the legislative process and/or by court rule.

In determining appropriate jurisdictional limits, the New Mexico model is instructive. Authority for establishment of the New Mexico Court of Appeals is provided in Article VI, §§ 1, 3 and 28 of the New Mexico State Constitution. New Mexico's Court of Appeals has ten judges who sit in panels of three. Article VI, § 1 provides,

---

<sup>71</sup> See Senate Bill 234 Subsection 2.(d).

<sup>72</sup> See Senate Bill 234 Subsection 2.(c).  
Report to the 74th Regular Session of  
The Nevada State Legislature, 2007  
Senate Bill 234 - Page 33

**Section 1. Judicial Power Vested.** *The judicial power of the state shall be vested in the senate when sitting as a court of impeachment, a supreme court, a court of appeals, district courts; probate courts, magistrate courts and other such courts inferior to the district courts as may be established from time to time . . . .* [Emphasis added.]

Jurisdiction of the New Mexico Court of Appeals is established by statute. Chapter 34, Article 5 of the New Mexico Statutes provides that the Court of Appeals may review:

(1) *any civil action not specifically reserved to the jurisdiction of the supreme court by the constitution or by law;*

(2) *all actions under the Workmen's Compensation Act [Workers' Compensation Act], the New Mexico Occupational Disease Disablement Law [ 52-3-1 NMSA 1978], the Subsequent Injury Act and the federal Employers' Liability Act[s];*

(3) *criminal actions, except those in which a judgment of the district court imposes a sentence of death or life imprisonment;*

(4) *post conviction remedy proceedings, except where the sentence involved is death or life imprisonment;*

(5) *actions for violation of municipal or county ordinances where a fine or imprisonment is imposed;*

(6) *decisions of administrative agencies of the state; and*

(7) *decisions in any other action as may be provided by law.*

*B. The supreme court may provide for the transfer of any action or decision enumerated in this section from the court of appeals to the supreme court in addition to the transfers provided for in Section 34-5-10 and Subsection C of Section 34-5-14 NMSA 1978.*

In fixing jurisdiction for the Nevada court of appeals, the New Mexico model would be utilized to include amendatory language providing the Supreme Court with authority to decide cases that raise issues of first impression. For example, subsections (2) through (6) may include language or words to the effect, "*excepting cases which raise issues of first impression or constitutional law.*" Further discussion of the New Mexico model follows.

## **c. Jurisdiction of the Nevada Supreme Court**

### **1. Direct Appeals and Via Writ**

The Nevada Supreme Court should retain exclusive jurisdiction in certain cases. For example, using the New Mexico model, our Supreme Court would hear direct appeals in criminal cases where the penalty is either death or a life sentence. Appeals that raise constitutional claims should always be heard and decided by our Supreme Court. The Supreme Court should also retain jurisdiction to hear original petitions for all extraordinary writs necessary or proper in the exercise of its jurisdiction.

Cases which involve "issues of first impression" and/or matters that will ultimately lead to new legal precedent should be accepted by and/or transferred to the Supreme Court. This can be accomplished by using a modified New Mexico model and/or adopting rules which provide the Supreme Court with appropriate authority.

## **2. Discretionary Review**

The Supreme Court should also be empowered with discretionary review; to accept or deny review of appeals from the Court of Appeals. In seeking discretionary review, a litigant would file a petition for a writ of certiorari ("cert"), which is a request that the court accept review of a decision of the Nevada Court of Appeals or the District Court. Using its discretion, the Supreme Court would choose to grant review based upon the type of case and/or the issues involved.

Excepting those cases properly filed via direct review, the Court's discretionary power would essentially eliminate appeals "as of right" from decisions of the District Courts. Appropriate use of the Court's discretionary power will serve to equalize the caseload, minimize the number of "double appeals"<sup>73</sup> and keep the Supreme Court's focus on those cases which ultimately define and shape our state's common law.

## **3. Subject Matter Jurisdiction**

The Supreme Court presently screens all appeals for purposes of making panel assignments. Ideally, the Court would continue to screen cases and assign them on a case-by-case basis between itself and the Nevada Court of Appeals. The method of screening and allocating cases between courts is referred to as "pour over jurisdiction."<sup>74</sup>

## **4. Transfers Between Courts**

The Nevada Supreme Court should also adopt rules and procedures that will facilitate transfers of cases between both courts.

Subsection (7)(b) of the New Mexico model provides for transfers of cases from the intermediate appellate court to the Supreme Court. The New Mexico model would also

---

<sup>73</sup> The 1990 Report provides in part, ". . . Creation of an intermediate appellate court generally reduces delay on appeal because supreme court backlog is diminished and access to review is facilitated. On the other hand, a two-tiered system presents the possibility of double appeals, to the intermediate court and then to the supreme court. Double appeals obviously increase the time required for final decision; they delay resolution of the litigants' dispute and may delay resolution of important legal questions. They also increase litigant expense, and they drain judicial resources through some duplication of effort by the two appellate courts. Hence, the judicial system should be designed to reduce double appeals. Double appeals cannot and ought not to be entirely eliminated, however; review by the intermediate appellate court can serve to winnow and clarify issues for incisive consideration by the supreme court." 1990 Report, p. 38.

<sup>74</sup> *Id.* at 32.

be a good fit considering the Court's existing structure, screening and case assignment processes.

Similarly, the Nevada Supreme Court could utilize "push down" authority to transfer a case originally filed in the Supreme Court to the court of appeals. For example, the majority of civil appeals filed in the Supreme Court are subject to the mandatory settlement program pursuant to NRAP 16. If a case is found to be exempt, or cannot be settled, briefing is required. Following briefing, the Court could then determine whether the case raises constitutional issues or issues of first impression. If not, the Court would assign the case to the court of appeals.

NRAP 3C specifies which criminal appeals may be resolved through the fast track program. Similarly, the Court would determine whether the criminal appeal raises new issues, a constitutional claim or issues of first impression. If not, the appeal would be appropriately assigned to the court of appeals.

#### **d. Jurisdiction of the Nevada Court of Appeals**

##### **1. Dispute Deciding Function**

The Committee recommends that the jurisdiction of the Nevada Court of Appeals ultimately reflect its primary function as an "error correcting" court.

With some exceptions, the New Mexico model may be used as a starting point in determining the appropriate jurisdiction of the Nevada Court of Appeals. From the outset, the Court should be empowered to hear most civil and criminal appeals, including post conviction relief actions which do not impose a sentence of death or life imprisonment. The Court should also have jurisdiction to consider original petitions for writs which are necessary or proper in the exercise of its jurisdiction.

##### **2. Court Rule**

The Nevada Court of Appeals should also be empowered to establish jurisdiction to hear and decide other cases through local court rules adopted by the Supreme Court. For example, the Court may establish a rule which allows consideration of a broad category of appeals in order to equalize the workload between both appellate courts. Court rules may also be established to effect screening processes, "pour over jurisdiction" and the Supreme Court's "push down" authority.

##### **4. Caseload Management for Both Courts**

An important consideration in the discussion of jurisdiction is the types of cases which will be assigned to each court. Proper case assignment and management will result in a more efficient process and a better result for our appellate system.

Types of cases appropriately assigned to the court of appeals would include appeals from petitions for judicial review of administrative agency decisions, appeals from petitions for post conviction relief except in cases involving a death sentence, and fast track criminal appeals. The court of appeals would also hear all original proceedings challenging a ruling in a criminal case, except in cases in which the death sentence is sought.<sup>75</sup> These types of cases currently make up the majority of those filed. Issues in these cases involve error correction, record review, and application of existing law. Typically, these cases are less complex and time consuming. The court of appeals could conceivably dispose of a large number of cases in a shorter period of time.

Appeals reserved for the Supreme Court would be limited to matters involving novel issues of first impression and constitutional interpretation, and would necessarily require more time and attention to detail. The Supreme Court would also seek to increase the number of published opinions, which would provide guidance for the lower courts and protect the rule of law.

## 5. Setting up the Nevada Court of Appeals

As previously discussed, legislative approval is only the first step in the process of creating an intermediate appellate court. Once the measure is approved by the voters, the Legislature and the Judicial Branch must coordinate efforts in organizing the new court. This will involve financial commitment, establishing a workable budget, determining a suitable location, transferring existing staff where appropriate, hiring new employees and initiating the appointment process for the new judges.

### a. New Judges

The number, terms, qualifications and salaries for the new judges of the Nevada Court of Appeals should be considered during the early stages of the process.<sup>76</sup> BDR C-661 proposes in Sec 3A. 2. (a), "*The Court of Appeals must consist of **three judges** or such greater number as the Legislature may provide by law. . . .*" [Emphasis added.]

#### 1. Terms

Terms for a judge serving on the Nevada Court of Appeals should be the same as those for a Nevada Supreme Court Justice. **NRS 2.030** provides:

1. *The justices of the Supreme Court must be chosen at general elections by the qualified electors of this State . . . . each justice holds his office for a term of 6 years from and including the first Monday of January next after his election.*

---

<sup>75</sup> A large majority of criminal appeals filed in calendar year 2006 could have been appropriately assigned to an intermediate appellate court using "push down" authority as described herein. The Clerk of the Court has indicated that during that year, the Court accepted 169 writ petitions, 300 direct appeals not involving death or life sentences, 400 post conviction appeals not involving death sentences, and 220 other types of appeals, including probation revocation and pretrial appeals, for a total of 1,089 cases.

<sup>76</sup> See Senate Bill 234 Subsection 2.(a).  
Report to the 74th Regular Session of  
The Nevada State Legislature, 2007  
Senate Bill 234 - Page 37

BDR C-661 proposes that following the initial terms, the new judges be elected at the first general election following the creation of the court of appeals. Upon taking office, new judges would then serve six-year terms. BDR C-661 proposes in part,

**Sec 3A.2.(b)***except as otherwise provided in paragraph (c):*

(1) *After the initial terms, 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.*

(2) *The initial judges must be elected by the qualified electors of this state at the first general election following the creation of the court of appeals.*

## **2. Qualifications**

Professional qualifications for a judge on the Nevada Court of Appeals should be the same as those for a Nevada Supreme Court Justice. Qualifications for a Supreme Court Justice are set forth in **NRS 2.02**, which provides,

1. *A person may not be a candidate for or be eligible to the office of justice of the Supreme Court:*

(a) *Unless he has attained the age of 25 years.*

(b) *Unless he is an attorney licensed and admitted to practice law in the courts of this State at the time of his election or appointment.*

(c) *Unless he has been an attorney licensed and admitted to practice law in the courts of this State, another state or the District of Columbia for not less than 15 years at any time preceding his election or appointment, at least 2 years of which has been in this State.*

(d) *Unless he is a qualified elector and has been a bona fide resident of this State for 2 years next preceding the election or appointment.*

(e) *If he has ever been removed from any judicial office by the Legislature or removed or retired from any judicial office by the Commission on Judicial Discipline.*

2. *For the purposes of this section, a person is eligible to be a candidate for the office of justice of the Supreme Court if a decision to remove or retire him from a judicial office is pending appeal before the Supreme Court or has been overturned by the Supreme Court.*

Requiring the new judges to adhere to the same standards as those on the high court will serve to attract and retain talented and experienced jurists. Further, the judges of the Nevada Court of Appeals will be expected to perform duties similar to those of the Justices, and will likely have a higher caseload. The judges of the new court will undoubtedly face unique challenges during the first several years of operation.

### **3. Salaries**

Compensation for a judge on the Nevada Court of Appeals should reflect the challenging and complex nature of the tasks required, as well as the person's qualifications.

The base salary for a Nevada Supreme Court Justice is set by statute.<sup>77</sup> Salaries for the new judges should also be established by law, taking into consideration the current compensation for new Supreme Court Justices and District Court Judges.

Presently, the annual base/starting salary for a Nevada Supreme Court Justice is \$140,000. With fringe benefits at approximately \$31,500 per year, the total annual compensation is \$171,500.<sup>78</sup> A new District Court Judge is given an annual salary of \$130,000. With fringe benefits of approximately \$29,250 per year, the total annual compensation is \$159,250.

It is suggested that salary and benefits for a judge for the Nevada Court of Appeals should be set at an amount higher than that for a District Court Judge and slightly below that of a Justice.

#### **b. Additional Legal and Support Staff**

The Nevada Court of Appeals should be properly staffed with law clerks and a sufficient number of administrative support staff.<sup>79</sup> Based on current and projected caseloads, some additional staff will be required for the new court.

Each new judge should have two law clerks and one judicial secretary. The Clerk's Office should hire three new deputy clerks. The Court should also be assigned at least one additional person to join the existing security staff in Las Vegas.

#### **1. Law Clerks**

Law clerks provide valuable research and support for our judges. Law clerks typically work for one to two years. Starting salary for a law clerk is presently \$58,622. With fringe benefits at approximately \$11,577 per year, the total annual compensation is \$70,199.

---

<sup>77</sup> See **NRS 2.050; NRS 2.060.**

<sup>78</sup> Calculations for 2007 salaries and benefits for members of the judiciary and staff were obtained from the Administrative Office of the Courts Personnel Division.

<sup>79</sup> See **Senate Bill 234 Subsection 2.(b).**

## 2. Judicial Executive Assistants

Judicial executive assistants comprise most of the support staff for our judges and are typically long term hires. Starting salary for a judicial executive assistant is \$69,843. With fringe benefits at approximately \$13,794 per year, the total annual compensation is \$83,637.

## 3. Deputy Clerks

Additional deputy clerks will be needed to join the staff of the Clerk's Office in Las Vegas. Starting salary for a deputy clerk is \$39,505. With fringe benefits at approximately \$7,802 per year, the total annual compensation is \$47,307.

## 4. Security Personnel

The Capitol Police provide security services for the Nevada Supreme Court. Starting salary for our security personnel is presently \$66,753. With fringe benefits at approximately \$13,183 per year, the total annual compensation is \$79,937.<sup>80</sup>

### c. Facilities

During the 72nd Legislative Session in 2003, Chief Justice Agosti testified in support of SJR 5, stating,

*The Legislature also approved and appropriated money to give the Supreme Court a generous amount of space on the top floor of the Regional Justice Center . . . in Las Vegas, the idea was that this would serve as quarters already in place for the intermediate appellate court when it's constructed.<sup>81</sup>*

Consistent with Chief Justice Agosti's testimony, the new court should be located in Las Vegas. In order to avoid a capital expenditure, the Nevada Court of Appeals should be initially housed in the Regional Justice Center in Las Vegas.<sup>82</sup> Presently, the Court leases space on the 17th floor from Clark County. The existing lease expires on November 20, 2025.

Existing space on the 17th floor will accommodate three new judges and all legal and secretarial support staff. Some changes and modifications will be necessary, such as the construction of "build outs" in areas on the 17th floor to provide office space for new law clerks and support staff.

---

<sup>80</sup> This is an estimated amount. The Administrative Office of the Courts does not process compensation for Capitol Police.

<sup>81</sup> Hearing before the Assembly Committee on Constitutional Amendments, 3-28-2003, 72nd Leg. Sess. (NV 2003) (statement of Chief Justice Agosti, p. 2).

<sup>82</sup> See Senate Bill 234 Subsection 2.(b).

#### **d. Sharing Resources**

Presently, the Nevada Supreme Court is located in Carson City, with additional office space in the Regional Justice Center in Las Vegas. Locating the Nevada Court of Appeals in the Regional Justice Center allows both courts the ability to share vital resources.<sup>83</sup>

##### **1. Clerk's Office**

Both courts should share a central Clerk's Office. Appeals for either court would be filed with the Clerk's Office in Carson City or in Las Vegas. The process of filing and accepting appeals may be facilitated through the use of an electronic filing system, which will be implemented by the Clerk's Office in 2007.

The number of appeals filed and processed will not increase based solely on the addition of a new court. However, the Clerk's Office may need to consider the restructuring and reallocation of personnel in order to accommodate changes necessary to integrate the new court. For example, filing and screening procedures must be developed consistent with the jurisdictional authority of both courts, and to ensure efficient handling of all appeals.

Presently, the Clerk's Office has 23 staff, 6 of which are attorneys.

##### **2. Central Legal Staff**

The Central Legal Staff consists of 21 attorneys and 4 judicial assistants. The Court maintains 9 attorneys in the Civil Division and 12 attorneys in the Criminal Division.

The Committee anticipates that the duties of Central Staff attorneys will be reallocated in order to accommodate the new judges. Equalization of the caseload between the Supreme Court and the Court of Appeals will ultimately determine what changes will be necessary and appropriate for our Central Legal Staff.

#### **d. Costs**

Costs associated with the new court will primarily involve salaries for the new judges, law clerks and support staff.<sup>84</sup> There will also be costs associated with constructing additional workspace within the confines of the 17th floor. Estimates for construction should be calculated based upon the actual number of new staff on a date closer in time to opening day.

---

<sup>83</sup> See Senate Bill 234 Subsection 1.(f)(2).

<sup>84</sup> See Senate Bill 234 Subsection 2.(e).

Using today's dollars, the estimated costs for the new judges, law clerks, and support staff are reflected in **Table 13** below. Salaries for the new judges have been calculated using the current salary for a Supreme Court Justice.

**Table 13. Estimated Annual Costs for New Judges, Law Clerks and Staff**

<u>Judges</u> (3)	<u>Law Clerks</u> (6)	<u>Jud. Exec. Assistants</u> (3)	<u>Deputy Clerks</u> (3)	<u>Security Personnel</u> (1)
\$514,500	\$210,597	\$250,913	\$141,921	\$79,937
<b>Total Annual Estimated Costs:</b>			<b>\$1,197,868</b>	

**e. Timing**

The Committee is optimistic that a joint resolution for the court of appeals will pass during the 74th Legislative Session in 2007, and again in 2009. The Court also acknowledges and accepts the challenge of presenting the measure to the voters to ensure approval in 2010.

The Committee anticipates that the 2011 Legislature will provide by law for the creation of the new court, and will take into consideration the recommendations of the Committee pursuant to this study and from others who have supported the project. Upon formal establishment of the jurisdictional authority of the Nevada Court of Appeals and the creation and adoption of appropriate court rules, the Administrative Office of the Courts will initiate the hiring process for support staff.

If judges for the court of appeals are elected for their initial terms, the new court could open its doors during the first week of January 2013.<sup>85</sup> However, if the Legislature adopts a judicial selection method that allows for the appointment of judges, the new court could begin operations at least one year earlier and directly following the 76th Legislative Session in 2011. If the new judges are appointed, rather than elected, the Nevada Court of Appeals could begin its work during the first week of January 2012.

**6. Potential Impact on Nevada's state court system**

Establishing the Nevada Court of Appeals will require time, money and the concerted efforts of members of all three branches of government. The Committee believes that creation of the new court will, over time, have an overall positive effect on our entire state court system and judicial process.

<sup>85</sup> See Senate Bill 234 Subsection 2. (d).

## **a. State Court System**

The most important impact on the Judicial Branch and our state court system will be absorbing the cost for the new court.<sup>86</sup> Accordingly, funding for the new court is a primary consideration.<sup>87</sup>

The Judicial Branch and the Legislature should work together to obtain the necessary funding essential to provide access to justice for all citizens. The Judicial Branch is vested with inherent power and broad authority to administer justice. In carrying out these duties, the Judicial Branch should actively seek funding for reasonable and necessary expenditures for the operation of the court system.<sup>88</sup> Lawmakers also have a duty to propose laws that ensure sufficient funding of the courts for its citizens.<sup>89</sup>

Creation of the Nevada Court of Appeals is a reasonable and necessary expense deserving of sufficient funding. Presently, the Judicial Branch receives funding with general fund dollars and administrative assessments collected by the courts pursuant to NRS 176.059.<sup>90</sup>

The budget for the Nevada Court of Appeals should be funded with both general fund dollars and from administrative assessments. A supplementary cost estimate and fiscal analysis, along with a forecast for future expenses should be prepared and submitted to the Committee on Judiciary during the 75th Legislative Session in 2009.

## **b. Judicial Process**

The Committee agrees that the most dramatic impact will be the reorganization of the current workload of the Nevada Supreme Court.<sup>91</sup> Considering the increasing population and corresponding number of appeals filed each year, the Committee recommends that a seven-member Court remain intact and that the "sunset" provisions of NRS 2.010 be repealed.

---

<sup>86</sup> See Senate Bill 234 Subsections 1.(f)(2) and (f)(3).

<sup>87</sup> See Senate Bill 234 Subsection 1. (f)(4).

<sup>88</sup> See **Young v. Board of County Commissioners**, 91 Nev. 52 (1975), citing **State ex rel. Kitzmeyer v. Davis**, 26 Nev. 373 (1902); Nevada Const. art. 6, § 19.

<sup>89</sup> See **Marshall v. Holland**, 168 Ark. 449, 270 S.W. 609 (1925); **Cook v. Municipal Court**, 287 Ark. 382, 699 S.W. 2d 741 (1985).

<sup>90</sup> Assembly Bill 166 will be considered during the 74th Legislative Session in 2007. AB 166 proposes the courts retain all funds collected as administrative assessments pursuant to NRS 176.059.

<sup>91</sup> See SB 234 Subsection 1.(f)(3).

The existing workload of the Supreme Court will be equalized by the addition of three new appellate judges. The use of discretionary review by the Supreme Court will serve to eliminate most appeals "as of right," thereby reducing the Supreme Court's caseload. The Nevada Court of Appeals will focus its efforts on the task of error correction so that the Supreme Court can hear and decide cases on direct appeal and those accepted through discretionary review.

Both the Supreme Court and the Nevada Court of Appeals must develop appropriate court rules that address jurisdictional issues, screening processes, and filing procedures.

Nevada's District Courts may also be impacted. A large number of cases filed with the Supreme Court will be redirected to the Court of Appeals. New procedures must be developed to advise appellants of their rights on appeal. The District Courts may also experience shorter periods between the filing of the appeal and the return of the case on remand. District Court Judges will need to familiarize themselves with new rules adopted by both courts.

Appeals filed from decisions of the Justice Courts and the Municipal Courts will continue to be routed to the District Courts. As such, there will be minimal impact on these courts.

## **F. Conclusions**

### **1. Summary Recommendations**

Increasing population and rising caseloads in Nevada's trial courts and the Supreme Court mandate the establishment of the Nevada Court of Appeals.

The creation of the Nevada Court of Appeals is essential to the successful growth and development of our state appellate court system. As an integral part of our system, the new court will provide the resources necessary to maintain quality services to those who find themselves involved in the appellate process. A second appellate court will also support efficiency, minimize delay, and ensure timeliness of decisions. The Nevada Court of Appeals will serve a vital function in correcting errors of the lower courts, thereby allowing the Supreme Court to focus on its primary role as our state's court of last resort.

The Committee recommends that a task force be organized to discuss methods and provide a means to educate the public, so that we can obtain their support and confidence. The task force should also conduct an in-depth analysis of all current and projected costs and expenses associated with opening the new court in 2013.

Upon approval by the voters in 2010, the Judicial Branch and the Legislature must work together to determine appropriate jurisdiction for the new court. It is suggested that the New Mexico model serve as a starting point in these discussions.

The Committee suggests that existing facilities in the Regional Justice Center in Las Vegas serve as the location for the new court. With three new judges, additional law clerks and support staff must be hired. Both courts should cooperate in sharing existing resources, including office space, the Clerk's Office, and Central Legal Staff, so that expenses can be minimized. Funding necessary for the Nevada Court of Appeals should be set aside in the General Fund and from the total amount collected by the courts through administrative assessments.

The Committee requests your support in passage of legislation required to establish the new court during the 74th Legislative Session in 2007 and again in 2009. With the combined efforts of all involved, the Nevada Court of Appeals will become a reality.