

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

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

10 Plaintiff/Petitioner,)

11 v.)

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

Defendants/Respondents and Real)
Parties in Interest.)

**RESPONDENTS' ANSWER TO
AMICUS CURIAE BRIEF OF
NEVADA ASSOCIATION OF
COUNTY CLERKS AND COUNTY
ELECTION OFFICIALS**

Defendants/Respondents above named by and through their counsel, Frankie Sue Del Papa,
Attorney General of the State of Nevada, and Creighton C. Skau, Assistant Solicitor General, hereby

1 present their Answer to the Amicus Curiae Brief of Nevada Association of County Clerks and County.
2 Election Officials (hereafter "Association"). This answer is filed in accordance with the Court's Order of
3 March 21, 2000.

4 **ANSWERING POINTS AND AUTHORITIES**

5 Respondents appreciate the efforts of Association to bring clarity to the relationship between the
6 courts and the clerk of the courts. Respondents have presented their case in chief. as it were. in their
7 Motion to Dismiss, which was filed with their Answer To Application And Complaint on March 24, 2000. It
8 is not necessary to iterate all those points and authorities. Instead, Respondents hereby incorporate them
9 by this reference. Here, Respondents will direct their Answer to the authorities, cited by Association.

10 Association cites **Maricopa County v. Dann**, 758 P.2d 1298 (Az. 1988) for the proposition that
11 judges have limits on their power. Respondents agree. In **Maricopa County**, the court held the party
12 challenging the judge's exercise of their personnel hiring power must make a "clear showing that the
13 judges acted unreasonably, arbitrarily, or capriciously in making the request [for hiring from the county
14 board of supervisors]." *Id.*, at 1300. The burden was met in that case where the county faced a five million
15 dollar deficit, had instituted a hiring freeze, and the court sought 20 new positions. In the instant case,
16 Respondents' justification for their actions is supported by the Supreme Court's and Legislature's
17 directives, the Respondent's modernization and improvement efforts and the study recommending
18 changes. Applicant has not met her burden of showing how any act has been arbitrary or unreasonable in
19 view of these legitimate goals.

20 Association cites **Estep v. Commrs of Boundary County**, 834 P.2d 862 (Id. 1992). **Osborn v.**
21 **Grant County**, 926 P.2d 911 (Wash. 1996), and **Roylston v. Pima County**, 475 P.2d 233 (Az. 1970) for
22 the assertion that the clerk of the court has authority to hire clerks. These cases are inapposite in that
23 they concern efforts by county commissioners to challenge a court clerk's hiring decisions on behalf of the
24 judicial department. The county commissioners do not exercise administrative or inherent judicial power
25 and cannot be analogized to a conflict between the chief judge and the county clerk. The cases did not
address the issue of whether judges have power superior to the clerk of the court's in court clerk hiring
decisions, should they choose to exercise it.

1 Association cites **Petusky v. Cannon**, 742 P.2d 1117 (Okl. 1987). There the court held the
2 county clerk is under the administrative control of the judges in all matters, except as to whom to hire as
3 deputy court clerks and at what rate of pay. **Petusky** actually supports Respondents' assertion of
4 authority in all matters except as to authority to direct whom to hire as deputy court clerks and at what
5 rate of pay. However, **Petusky** did not consider the court's inherent power, nor did it involve a court rule
6 comparable to WDCR Rule 2, nor did it
7 consider whether the court could hire its own employees separate from deputy court clerks and assign
8 duties to the court employees which were formerly performed by the deputy court clerk. Respondents
9 suggest that under the authorities cited in the Motion to Dismiss, Respondents have these powers.

10 Association cites **Crooks v. Maynard**, 732 P.2d 281 (Id. 1987) for the proposition that
11 Respondents cannot control whom the clerk of the court hires as a deputy.¹ In **Crooks** the clerk of the
12 court is also *ex officio* county auditor and recorder and a deputy clerk apparently performs duties as a
13 judicial court clerk as well as duties as a deputy recorder and deputy auditor. The court found that since
14 the duties performed by a clerk included not just judicial branch functions, but also the legislative branch
15 functions of recorder and auditor, it would be an improper assertion of legislative authority for the judges
16 to determine whom the clerk could hire.

17 In the instant case, the statutes appear to provide for the hiring of separate deputy county clerks and
18 deputy court clerks, and in fact the deputy court clerks perform only court clerk functions, not county clerk
19 functions.² Respondents do not assert authority over deputy county clerks or deputy county clerk
20 functions. Accordingly, Association's reliance on **Crooks** is misplaced.

21 **Crooks** is also significant in its recognition of the extensive powers of the judge. The court
22 recognized the legislature has no power to supervise clerks when exercising judicial functions and
23 supervision must only come from an appropriate judicial official. *Id.*, at 286. The court also recognized
24 that the district judge, in exercising his supervisory power over the clerk, controls the assignments and
25 reassignments of persons hired by the clerk. *Id.*, at 287. Finally, the court recognized that the judge has

¹ **Crooks** did hold, however, that the judges could control the deputy clerks' judicially related functions and could set guidelines for hiring of clerks.

² Compare, NRS 3.260 and NRS 246.030.

1 authority to appraise the qualifications and integrity of a deputy clerk and determine whether they are
2 acceptable for the performance of a particular judicial function. *Id.*, at 288.

3 Association takes the position that the best remedies would be for either the legislature to
4 resolve this dispute through legislation, or the Supreme Court to resolve the dispute through its
5 rulemaking power in accord with NRS 2.120 after a study by the State's Court Administrator.
6 (Association brief, pp. 25-26). Respondents submit this is a matter of judicial administrative concern
7 and legislative intervention is inappropriate.³ Accordingly, Respondents agree with Association that the
8 best solution is Supreme Court rulemaking. However, this has already occurred. WDCR Rule 2 places
9 the powers at issue squarely in the hands of the chief judge. Accordingly, the complaint should be
10 dismissed and the petition denied.

11 Dated this 5th day of April, 2000.

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14 Attorney General

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23 ¹ Respondents acknowledge the legislature has the best interests of the judiciary in mind. However, judicial administration
24 is directed to the judiciary under our constitution. Also, legislation must of necessity be directed across the board to all
25 judicial districts, whereas the more flexible judicial rulemaking power is better suited to the individual needs of each judicial
district.

1 **CERTIFICATE OF SERVICE**

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3 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that

4 on this 5TH day of April, 2000, I served a copy of the foregoing **RESPONDENTS' ANSWER TO**

5 **AMICUS CURIAE BRIEF OF NEVADA ASSOCIATION OF COUNTY CLERKS AND**

6 **COUNTY ELECTION OFFICIALS**, by mailing a true copy to the following:

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