



Office of the County Clerk

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SENT VIA FEDERAL EXPRESS

October 4, 2007

Mr. Bruce Andrew Horstmanshoff
Chief Assistant Clerk
Supreme Court of Nevada
Supreme Court Building
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702


Re: ADKT 405

Dear Andy:

Enclosed are the original and 8 copies of the County Clerk's Response to District Court's Supplemental Report Dated September 14, 2007.

Please file the original and return a file stamped copy in the enclosed return addressed envelope. Please provide copies to the seven Supreme Court Justices.

Sincerely,


SHIRLEY B. PARRAGUIRRE
COUNTY CLERK

SBP/mcc

Encl.

cc: Honorable Janette Bloom

Ex-Officio Clerk of:

*Board of County Commissioners • Clark County Board of Equalization
Clark County Liquor and Gaming Board • Mt. Charleston Fire Protection District
Clark County Water Reclamation District Board of Trustees • Clark County Debt Management Commission
Big Bend Water District Board of Trustees • Clark County Redevelopment Agency
University Medical Center of Southern Nevada Board of Trustees*

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**COUNTY CLERK'S RESPONSE TO
DISTRICT COURT'S SUPPLEMENTAL REPORT
DATED SEPTEMBER 14, 2007
ADKT 405**

I have reviewed the District Court's Supplemental Report dated September 14, 2007 in response to the Supreme Court's ORDER EXTENDING SUSPENSION OF APPLICATION OF NRCP 38 GOVERNING THE DEPOSIT OF JUROR FEES IN THE EIGHTH JUDICIAL DISTRICT COURT and greatly appreciate the consideration provided me by the Supreme Court to file either a written response or participate in the public hearing on this matter. Due to the complexities of the issues and the ease in which statements of facts can often be misinterpreted or even misstated, I feel that a detailed written response would be of greater benefit to those who must evaluate the pertinence of the information provided and weigh all substantive facets of this issue.

In May of this year when District Court provided its first required report to the Supreme Court on the suspension of NRCP 38, I provided a written response that was more general than specific due to the preliminary nature of the District Court's report and, as I had stated, my lack of access to records that would provide the opportunity for a more specific response. Inasmuch as the Court essentially repeats the May report in its September 14 report, I feel obligated, for the record, to reiterate portions of my May response at this time. In my May response I took issue with some of the comments and allegations contained in the Court's report. I, once again, strongly take exception to the editorial comments the District Court takes liberty to add to their reports to the Supreme Court. ~~It is one thing to document factual findings for the Supreme Court's consideration, but quite another to insert self-serving and manipulative editorial commentary as though it, too, is a factual interpretation of those findings.~~ In my May response, I

1 wholeheartedly supported the involvement of an audit being performed by an objective auditor.
2 It is my contention that only through objectivity, with no ulterior justifications being inserted,
3 will legitimate applicable information be reported. I reiterate my support of an independent audit
4 being completed and, once again, would ask that members of my current staff and I be included
5 in discussions with the independent auditors. Again, as previously stated, the historical
6 deficiencies of the Blackstone case management system (CMS) and the workarounds that have
7 been in place, some even prior to my administration, are certainly not obvious nor are they easily
8 identifiable without some historical perspective being provided. My final repetitive statement
9 from the May response is to emphasize that only by replacing the deficient and archaic
10 Blackstone system was there any possibility for a genuine resolution to so many flawed aspects
11 of the case management processes within District Court, part of which included the financial
12 programs that are the heart of this discussion today. Early on in my administration as County
13 Clerk and *ex officio Clerk of the Court*, I made it a priority to research available technology
14 and/or develop alternatives, and unfortunately for so many of those early years unsuccessfully
15 attempted to convince District Court administration that Blackstone absolutely must be replaced.
16 I was painfully and disappointingly aware of the limitations of the Blackstone system to support
17 the current volume being handled by District Court, let alone the ever increasing caseloads. So I
18 trust that those who read this response can understand that it is even more offensive to me
19 personally and professionally to have the inadequacies of that system used as a weapon to assault
20 my reputation and that of my administration. These shortcomings could have been resolved
21 years before now had District Court administration placed as much priority on them then, as they
22 now want the Supreme Court to do, rather than place greater priority on misguided loyalty to the
23 existing CMS vendor. By their own admission in the May report and as reiterated in the
24 September report, the Court now clearly states that the only resolution to some of the financial
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1 deficiencies is a replacement of the CMS. Obviously, I concur with that conclusion. However,
2 for District Court to use the overall magnitude of the deficiency of the CMS to support a
3 continuation of the suspension of NRCP 38 is inappropriate.

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5 There are specific statements made in the September report that I will address starting
6 with the District Court's claim that they "*believe that this supplemental report demonstrates*
7 *considerable progress toward these goals and our Clerk of the Court's continuous commitment*
8 *to restore the financial public trust and confidence of this office.*" Although the supplemental
9 report demonstrates considerable hours have been invested, "*progress*" is certainly not a word
10 that the September report supports—not when, as reported, the verification of over \$27,000,000
11 in checks that was of such grave concern in the May report has yet to be completed even after
12 eight months of oversight. Another task deemed to be important in May, the maintenance of the
13 Trust Fund spreadsheet, is now being discontinued due to inability to sustain it. If their original
14 goal, as they claim, was to resolve fundamental financial problems, progress would be achieved,
15 again by their own admission, with the new CMS. This step was already underway prior to
16 NRCP 38 being suspended and even prior to the Clerk of Court functions being moved to Court
17 Administration. In addition, it is certainly not accurate for District Court to take credit for
18 making "*progress*" through the use of disparaging semantics only, as was attempted with the use
19 of the phrase, "*restoring the public trust*". ~~Credit should not be given for restoring something~~
20 ~~that was not lost.~~ If anything, by using the overall deficiencies of the financial process to support
21 suspension of NRCP 38, District Court itself cast aspersions on the credibility of the process, but
22 only since January 2007. The public trust was in tact prior to that time, certainly since early in
23 my administration when the deficiencies of the financial system first became known to me and
24 prudent steps taken to protect the reliability of financial transactions. If in fact District Court had
25 truly believed that the public trust needed "*restoring*" as they now claim, they most certainly

1 would have provided this serious concern as part of the justification for their assumption of the
2 Clerk of the Court functions. However, the need to *restore the public trust* was certainly not
3 voiced as a concern of District Court between 1999 and 2004 when the Clerk of the Court was
4 attempting in vain to convince them that the CMS did not provide adequate functionality to
5 manage the needs of the court cases, including the financial accounting; nor was *restoring the*
6 *public trust* an issue between 2004 and the end of 2006 as my staff had to argue repetitively
7 against the objections of District Court Administration for essential functionality and necessary
8 modifications to the new CMS to ensure proper management of the financial transactions and
9 accountability of the same. I can only assume that these are now some of the "*balancing*
10 *capabilities of trust fund transactions [that are] essential 'go live' requirements for the new case*
11 *management system*", as the September report now states. I agree that these are essential
12 requirements. However, they certainly shouldn't be announced or looked upon as new
13 discoveries nor did they arise as a result of the transition nor should this be used as the decision
14 maker as to the whether NRCP 38 should be suspended. (However, if it were to be used in the
15 decision, it would tend to support the reinstatement of the jury demand since the technology will
16 soon be in place to efficiently manage those deposits.)

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20 The May report had as an attachment a two-page memo from Clark County Internal
21 Audit that described some concerns that were noted immediately after the transition. I have no
22 reason to doubt that Internal Audit reported what it witnessed on those days. If I had been asked
23 at the time, I would certainly have been willing to address the issues cited. However, in its own
24 memo, Internal Audit clearly states that the report does "*not represent a complete examination of*
25 *the clerk's office and should not be construed as an audit of the clerk's office.*"

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28 To reiterate the importance of this item, I stated in my response to the May report that we
had been in contact with County Internal Audit on several occasions throughout my

1 administration. Internal Audit was not only aware of the antiquated CMS system and its
2 limitations, since they had previously completed official audits of the Clerk's Office, the latest
3 one being completed in 2006, but they would certainly have raised concerns if they had observed
4 situations where "public trust" was at stake. By the same token, the official audit completed less
5 than a year prior to the transition had not raised any of the issues it noted as problem areas in the
6 January memo, with the exception of the inability of the CMS to handle NSF's. In fact, the 2006
7 Audit Results in Brief stated the following: *"Based on the audit procedures performed and the
8 results of testing, it appears that court services revenue for the period July 1, 2004, through June
9 30, 2005, was fairly stated and recorded receipts were properly deposited. Additionally, internal
10 controls over court services revenues and receipts are adequate to provide reasonable assurance
11 that transactions are recorded and receipts are properly safeguarded."*

14 As for the Court's conversion to on-line banking, I agree that this type of functionality
15 will streamline the processes and provide more efficient controls and accountability. This new
16 service was reviewed in my office as an option with the bank only after the Court's
17 announcement was made to take over the Clerk of the Court functions. As a result of the
18 unfortunate timing it was not pursued prior to the transition. However, the report further states
19 that "this feature will facilitate daily reconciliation of the Trust Account." This statement can be
20 misleading. The Court reported, and the Internal Audit memo of January 2007 reiterated, the
21 Trust Account cannot be reconciled using either the manual ledger cards or the unreliable
22 Blackstone CMS. They each acknowledged that reconciliation will only be feasible once the
23 new CMS is properly developed and implemented. Therefore, to advise that a "daily
24 reconciliation" will be done could arguably leave the impression that a true "reconciliation" is
25 being done on a daily basis. I can only assume by these statements made in the report that a
26 "reconciliation of daily receipts with deposits" will be done. This would certainly be consistent
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1 with the daily procedure initiated early in my administration, after meetings with the vendor
2 confirmed that only through an unrealistic stoppage of all transactions for a period of possibly
3 weeks at a time might there be a possible reconciliation between the Blackstone CMS and the
4 trust account. Being provided with no other alternative by the vendor, the daily "reconciliation"
5 became part of the standard procedure.
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7 In the May report the Court made very bold statements about millions of dollars being at
8 risk due to cases being placed in the escheatment file. They referenced a single example where
9 they make the claim that a ~~\$5,000 check was at risk of being paid out a third time.~~ Again, as I
10 indicated in the May response, it is very possible that ~~human error together with the sometimes~~
11 ~~inaccurate information~~ provided in the archaic Blackstone system, could certainly have permitted
12 ~~an error of some type.~~ However, ~~steps were in place to minimize errors to as "close to zero"~~ as
13 possible. But to use the one isolated incident to taint every single item placed in the escheatment
14 file was not only premature and prejudicial, it was also unfounded and proven by their findings
15 to have been unwarranted. The procedure in place during my administration for the escheatment
16 process was to carefully review every item prior to escheatment to the state, including verifying
17 stop payments on checks previously issued, and, pursuant to NRS, a final notification sent to the
18 identified parties. This statement in the May report was another example of premature statements
19 being used to exaggerate their arguments in support of extending the suspension of NRCP 38
20 and, at the same time make another unsubstantiated assault at my administration. I will reiterate
21 that those funds were only at risk if Court staff, who now have control of the process, failed to
22 exercise due diligence and follow appropriate procedures for escheatment which had been in
23 place since I took office. The deadline set by the State of Nevada for submitting the report and
24 money for escheatment is November 1. During the months prior to the deadline it was always
25 the practice of the Clerk's Office to diligently investigate all money identified for possible
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1 escheatment to assure every possible avenue had been exhausted before escheating money to the
2 State.

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4 Another area I will address has to do with statements being made regarding the number
5 of full time employees (FTEs) that would become available for reassignment if the suspension of
6 NRCP 38 is extended. Granted, managing the manual trust account process has always been
7 extremely time consuming. However, one of the reasons there were so many checks cut at the
8 end of my administration was to bring the trust account as current as possible prior to the
9 transition. (This was made possible, as I've indicated previously, by a report that was ultimately
10 developed in November of 2006 by the Clerk's I.T. Manager; a report that had previously been
11 unavailable through the current Blackstone system.) Much of that volume, however, had to be
12 completed on an overtime basis because staff hours were not available during regular shifts to
13 support these added tasks. However, the claim of hours saved brings many questions to mind,
14 the first being that if the suspension of NRCP 38 frees up either 2 or 3 FTEs (I am not
15 acknowledging that either number sounds accurate but as was reported by District Court), and if
16 NRCP 38 has been suspended since January of this year, then what are those resources doing
17 now aside from handling fewer deposits coming in each day and researching the remaining
18 previously deposited jury demands? If NRCP 38 suspension has already reduced the volume,
19 which theoretically it should have, then why does the Court report that they had to discontinue
20 maintaining the new spreadsheet they developed to manage the previous trust account deposits
21 because it was "time prohibitive" and why are they also having difficulty managing even the
22 closed case accounts? (During my administration, the majority of the closed case accounts were
23 routinely being completed by the end of the following month.) If suspension of NRCP 38 freed
24 up 2 or 3 FTEs, wouldn't those positions now be available to maintain the spreadsheet and keep
25 the closed case accounts current? As you know, my staff and I no longer have access to the daily
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1 records, so we can only base these comments on years of past experience. Aside from handling
2 any backlog of cases, we have been unable to calculate that the suspension of NRCP 38 justifies
3 even one FTE when considering the routine duties associated with the jury demand process. I
4 believe it is an exaggerated statement for the Court to indicate that it uses 2 or 3 FTEs solely for
5 the jury demand process.
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7 District Court is asking the Supreme Court to allow them to refund all NRCP 38 jury
8 demands and N.R.A.P. 7 appeal bonds in order to clean up records for conversion to Odyssey,
9 the new case management system. (It is not as though they'll be able to remove all deposits from
10 Blackstone, so why not deal with these deposits during conversion?) As long as they can be
11 identified as being posted to the right case, then verification at the time of conversion should not
12 be an issue. I can understand researching each one to ensure that it is on the right case, but then
13 why refund it? It appears they are adding work to the process. As long as they already have the
14 deposit, and the case is still active, they need simply verify it is on the right case and then keep
15 the funds in the account. It would seem the problem the Court is going to have in conversion is
16 when monies that are "hidden" somewhere in Blackstone don't convert properly to Odyssey.
17 That will be the conversion problem, not the jury demands nor the appeal bonds. Aside from
18 reporting that the suspension of NRCP 38 will save 2 or 3 FTEs, District Court has found yet
19 another way to save staff time, and that is by eliminating additional work altogether. I cannot
20 find fault with that approach. We should always be looking to eliminate work that is
21 unnecessary and serves no valuable purpose. If the Supreme Court determines that neither
22 NRCP 38 and/or N.R.A.P. 7 are within that category or at least temporarily dispensable, then the
23 work would be eliminated and staff hours freed up for reassignment, whether the number of staff
24 available for reassignment turns out to be 2 or 3 or fewer. Statistics do tell a story and
25 sometimes the same statistics can support opposing views of the same story, depending on how
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1 they are compiled and presented. Therefore, I'm sure that the anecdotal input received at the
2 public hearing, along with the case statistics provided by District Court, will prove to be a
3 beneficial combination in the decision making process.
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5 Concerning the reconciliation of the trust account, I would like to point out that at the end
6 of 1998, prior to my taking office in January of 1999, Chuck Short, Court Administrator,
7 indicated to me that the trust account did not balance with the ledger cards and further stated I
8 was walking into a "real mess." As mentioned above, during the time I served as Clerk of Court,
9 I had several meetings with the County's internal audit department and several meetings with the
10 Blackstone vendor in an attempt to be able to reconcile the trust ledger cards with the
11 Blackstone financial program. District Court never once was concerned enough about the trust
12 account to offer to lend any assistance toward the reconciliation. In fact, to the contrary, District
13 Court waited approximately five years to commence the process for a new case management
14 system which is what we had been told would be necessary for any reconciliation. I will point
15 out that District Court came to me with numerous issues on which they requested changes to
16 processes and any offer of assistance on the trust account would have been readily accepted as
17 well. To now use the deficiencies of the current case management system as justification for the
18 suspension of the rules defies logic.
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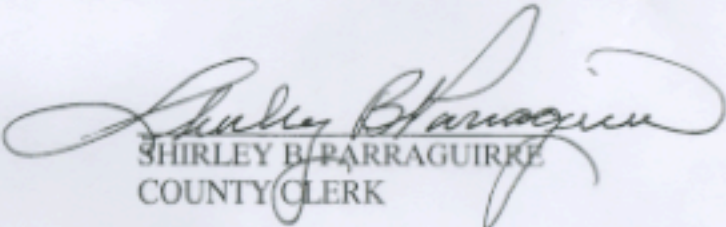
22 The jury fee deposits and the costs on appeal bonds, in my opinion, could continue with
23 the use of one FTE. I certainly would need more convincing that 2 or 3 FTEs would be freed up
24 to work on other functions.

25 Lastly, I would like to point out that on Page 11 of the Court's report, Line 15, the Court
26 stated that "Internal audit is reviewing each payment over \$100,000 from the date of deposit thru
27 August 2007 to ensure that these amounts have not cleared the bank more than once. This
28 represents about 90% of the dollar amount of all of the 3,200 plus checks written by the County

1 Clerk during her last three months as Clerk of the Court." On September 28, 2007, subsequent to
2 the Court filing their report, I received an e-mail from Jerry Carroll, Clark County Director of
3 Internal Audit, in which he states: "You were asking me about audits the other day. The Court's
4 did ask us for other work. I don't think you would call this an audit but we compared 26
5 previously issued checks for the period of October 15, 2006 through January 15, 2007, to
6 previous bank statements to insure that there were no duplicates. The 26 checks represented a
7 little over \$24M and 91% of the population of all checks. We didn't find any duplicates. I am
8 sending a memo to Chuck right now about this."
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11 Thank you for the opportunity to provide input on this issue. I took pride in everything I
12 was able to accomplish, with the help of very capable staff, while serving as the Clerk of Court.
13 This Response sets forth many of the barriers we faced, but as I have stated before, I accept
14 responsibility for the work completed during my administration. I hope the information
15 provided will be of some assistance to you.
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17 Respectfully submitted,

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20 SHIRLEY B. PARRAGUIRKE
21 COUNTY CLERK
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