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COMPLAINT FOR USURPATION OF OFFICE UNDER NRS 35.050

AND

APPLICATION FOR WRIT OF PROHIBITION

1. NATURE OF ACTION: JURISDICTION

1.1 AMY HARVEY, (hereinafter "Court Clerk"), is the duly elected County Clerk of Washoe County and the ex officio Clerk of the Second Judicial District Court. On relation of the State of Nevada and in her own official capacity, AMY HARVEY pursues two claims for relief, namely, (1) an action for usurpation of office under NRS 35.050 (Quo Warranto), entitled "action for usurpation by claimant in name of state", and (2) an application for a writ of prohibition to an "inferior tribunal," namely, the Second Judicial District Court and to the district judges of the Second Judicial District Court, "persons," as defined by NRS 34.330.

1.2 With respect to the first civil action, plaintiff Court Clerk's Complaint under NRS Chapter 35, Court Clerk avers that the Supreme Court has jurisdiction under NRS 35.080 ("An action under this chapter can be brought in the supreme court ...") and further avers that the Supreme Court has jurisdiction under NRS 35.050 ("action for usurpation") by reason of the fact that (a) she is in the terms of the statute, a person who is "entitled to [the] public office" of Clerk of the Court of the Second Judicial District Court and (b) the said public office has, during her tenure as Court Clerk, been usurped, held and exercised, and continues to be usurped, held and exercised, by defendants, Second Judicial

1 District Court and the District Judges thereof.

2 1.3 With respect to the second civil action, Applicant Court  
3 Clerk's Application for Writ of Prohibition, Court Clerk avers that  
4 the Supreme Court has jurisdiction under NRS 34.330 ("Writ may be  
5 issued only by the supreme court to an inferior tribunal, or to a  
6 ... person, in all cases where there is not a plain, speedy and  
7 adequate remedy in the ordinary course of law"). Court Clerk  
8 further avers (a) that the Second Judicial District Court for  
9 Washoe County is "an inferior tribunal" that is unlawfully usurping  
10 holding, and exercising the public office of Clerk of the Court, in  
11 the manner described herein, and that the Second Judicial District  
12 Court, in so doing is acting "in excess of the jurisdiction of such  
13 tribunal"; (b) that the named respondent district judges are  
14 "person[s]" (as defined by NRS 34.330), who are acting "in excess  
15 of [their] jurisdiction"; and (c) that Court Clerk is entitled to  
16 extraordinary relief in the form of a writ of prohibition because  
17 there is no plain, speedy or adequate remedy that is available to  
18 her in the ordinary course of law. In compliance with NRS 34.330,  
19 which requires that application for a writ of prohibition be  
20 "issued upon affidavit," Court Clerk presents both of her two  
21 claims, for usurpation of office and for a writ of prohibition, in  
22 affidavit form by sworn verification.  
23

24 1.4 Court Clerk has, as stated, presented two claims for  
25 relief, one a Complaint under Chapter 35 (Quo Warranto) and, the  
26 other, an Application for Writ of Prohibition under NRS 34.330.  
27 Plaintiff/Applicant Harvey proceeds in this manner because of the  
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1 rather unusual and exceptional nature of this controversy, a  
2 controversy in which either or both remedies might be found by this  
3 Honorable Court to apply to the facts averred in this Complaint and  
4 Application. If, in the judgment of the court, a choice in remedy  
5 is required, or if the remedies sought by Court Clerk are in any  
6 way inconsistent or contradictory, Court Clerk submits to the sound  
7 discretion of the Court the form of remedy to be granted in this  
8 matter.

9  
10 1.5 With respect to the requirement of the provisions of NRS  
11 35.050 that plaintiff must "enter into an undertaking with two  
12 sufficient sureties," Court Clerk avers that she is not required to  
13 provide an undertaking and refers to NRS 20.040 which provides that  
14 county officers are not required to do so.

15 2. FORMAT OF COMPLAINT AND APPLICATION: COMPLIANCE WITH NRAP 21.

16 Court Clerk uses as a format for her two claims the  
17 guidelines of NRAP 21(a) and (b), which Court Clerk reads to  
18 require her to furnish, in addition to "proof of service on the  
19 respondent judge or judges," the following: (1) "a statement of the  
20 facts necessary to an understanding of the issues presented," (2)  
21 "a statement of the issues presented and of the relief sought," and  
22 (3) "copies of any order or opinion or parts of the record which  
23 may be essential to an understanding of the matters set forth ...."  
24 Guided by this rule, Court Clerk will proceed in the Complaint and  
25 Application to plead in the following four prescribed categories:  
26 (1) Statement of Facts, (2) Statement of Issues and Relief Sought,  
27 (3) Statement of Reasons Why Relief Should be Granted, and (4)  
28

1 Pertinent Copies of Record.

2 3. STATEMENT OF FACTS: BACKGROUND.

3 3.1 Court Clerk is the duly-elected County Clerk of Washoe  
4 County, having received the majority of votes cast for said office  
5 in November, 1998. Under Nevada Constitution, Art. 4, § 32, Court  
6 Clerk is the *ex officio* Clerk of the Second Judicial District Court  
7 for Washoe County. Under NRS 246.060 Court Clerk is "clerk of the  
8 district court of [her] county," namely, Washoe County.

9  
10 3.2 Under Nevada Constitution, Art. 4, § 32, the Legislature  
11 is given power to provide for the election of the County Clerk, *ex*  
12 *officio* Clerk of the District Court. The same constitutional  
13 provision authorizes the Legislature, not district judges or boards  
14 of county commissioners, to "fix by law" the powers and duties of  
15 clerks of the district court.

16 3.3 The Legislature has "fix[ed] by law" the powers, duties  
17 and responsibilities of court clerks and, particularly, the duties  
18 of plaintiff Court Clerk, in NRS 3.250 through NRS 3.305 and NRS  
19 246.060 through NRS 246.080. These powers, duties and  
20 responsibilities include, but are not limited to: (a) the power to  
21 appoint deputy clerks of the district court (NRS 3.260); (b) the  
22 legal responsibility for official malfeasance or nonfeasance of  
23 deputy court clerks (NRS 3.280); and (c) the duty of keeping a  
24 register of all court actions (NRS 3.280).

25  
26 3.4 In addition to the mandatory, statutory duties and  
27 responsibilities referred to in ¶ 3.3 above, Court Clerk has  
28

1 certain additional duties that fall within the office of court  
2 clerk as commonly understood. These duties and responsibilities  
3 include "entry of judgments for the record, entry of defaults,  
4 approval of certain bonds given in the course of judicial  
5 proceedings, the taking of acknowledgments, the making and keeping  
6 of the court orders and adjudges [sic], the power to attest and to  
7 certify the records kept by the clerk for a court, the custody and  
8 care of funds paid into the court, and other ministerial duties  
9 ordered by the court." (Opinion of Washoe County District  
10 Attorney, July 8, 1975, at page 8.)

11  
12 3.5 For some 110 years, (from 1865 to 1975), the court clerk  
13 of the Washoe County District Court attended to her or his  
14 constitutional, statutory, and customary duties and  
15 responsibilities without any person's usurping, holding, exercising  
16 or otherwise interfering with the elective public office of clerk  
17 of the district court.

18 3.6 In 1975, certain Washoe County district judges started  
19 taking actions which were intended and designed to have district  
20 judges exercise the legal, constitutional and customary duties of  
21 the Court Clerk. The judges claimed to have the "authority over,  
22 and responsibility for the operation of the office of the Clerk of  
23 the Court ...." (See Letter of District Judge Guinan to Alex Coon,  
24 Clerk of the Court, January 30, 1975, attached hereto as exhibit  
25 1.) The principal means by which the district judges usurped, held  
26 and exercised the office of Clerk of the Court of the Second  
27 Judicial District Court was (as stated by Judge Guinan in the cited  
28



1 letter) to hire a court administrator who would "exercise ... the  
2 authority of the District Judges in supervising the office of the  
3 Clerk of the Court ...." (Id.)

4 3.7 In March of 1975, the Washoe County district judges  
5 sponsored county legislation designed to facilitate the take-over  
6 and holding of the office of the Court Clerk by the Court and its  
7 judges. The Court and the District Judges were successful in  
8 having the Washoe County Board of County Commissioners enact an  
9 ordinance which "[r]ecognize[d] that the employees of the office of  
10 the Clerk of the District Court are under the complete jurisdiction  
11 of the District Judges" and by which a number of deputy clerks (32)  
12 were "assigned as exempt employees of the District Judges." (A copy  
13 of said ordinance is attached hereto as Exhibit 2.)  
14

15 3.8 Pursuant to the aforementioned statement of intention  
16 formulated by former District Judge Guinan and abetted by the  
17 county ordinance mentioned in the preceding subparagraph, the  
18 Second Judicial District Court and the District Judges in the  
19 Washoe County District Court, commencing in 1975, have actively and  
20 continuously usurped, held and exercised the office of the ex  
21 officio Clerk of the District Court in Washoe County by issuing ex  
22 parte administrative orders which had the effect of depriving the  
23 Clerk of the District Court of most of the constitutional and  
24 statutory duties and responsibilities that attend the office of  
25 Clerk of the District Court and have placed the Court Clerk's  
26 office "under complete jurisdiction and control of the District  
27 Judges."  
28

1           3.9 Court Clerk AMY HARVEY took office as Clerk of the Court  
2 in January, 1999. In the factual averments appearing in paragraph  
3 4 below, Court Clerk will describe the various ways in which the  
4 Second Judicial District Court and the defendant judges who sit on  
5 that court have unlawfully usurped, held and exercised the office  
6 of Second Judicial District Court Clerk.

7           4.    STATEMENT OF FACTS: USURPATION OF OFFICE BY DISTRICT COURT AND  
8                DISTRICT JUDGES.

9           4.1    Legislative Grant of Power to County Clerks and Deputies.

10 The Legislature has prescribed mandatory and indispensable  
11 conditions and formalities that must be employed in order to  
12 empower those persons who are to be "authorized to transact all  
13 official business appertaining to the office of *ex officio* court  
14 clerk. The Legislature has mandated that only "county clerks are  
15 authorized to appoint" those persons who are, by law, "authorized  
16 to transact all official business appertaining to the office" of  
17 Court Clerk. NRS 246.030. *Ex officio* Court Clerks are legally  
18 "responsible ... for all official malfeasance of [her] deputies" of  
19 *ex officio* Court Clerk. Under law, neither the Second Judicial  
20 District Court nor the district judges who make up that court has  
21 the legal power or authority to appoint deputy clerks or to employ  
22 or empower any person who purports or pretends to "transact" the  
23 official business appertaining to the office of the County Clerk.  
24 "All appointments [by the Court Clerk] of deputies must be in  
25 writing, and must, together with the oath of office of the  
26 deputies, be filed and recorded in a book provided for that purpose  
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1 in the office of the recorder of the county ...." (NRS 246.030.)  
2 4.2 Defendants'/Respondents' Unlawful Utilization of  
3 Uncredentialed "Employees" or "Staff" to "Transact [the] Official  
4 Business" of Deputy Court Clerks. Defendants/Respondents, Court  
5 and Judges, have, under color of their office, employed certain  
6 persons, whom they call "court employees" or "court staff," and  
7 have, without legal authority, directed those persons to "transact  
8 all official business appertaining to the office" of Clerk of the  
9 Court of the Second Judicial District Court. NRS 246.030. Unlike  
10 duly-appointed deputy clerks, "court staff" employees are not  
11 employed "in writing" and are not "appointed" by the Court Clerk  
12 and do not have their written appointments recorded in the  
13 Recorder's office as required by NRS 246.030. Further, NRS 246.030  
14 requires that revocations of deputy clerk appointments must also be  
15 in writing and recorded in the Recorder's office. Neither the  
16 Second Judicial District Court nor the District Judges follow the  
17 formalities mandated by NRS 246.030, and consequently, all persons  
18 who are "employed" or directed by Defendants/Respondents to  
19 transact the official business appertaining to the office of Court  
20 Clerk are acting without legal authority and in a manner that can  
21 have no official legal force or effect. These "court employees" or  
22 "court staff" are hired by Defendants/Respondents without the  
23 consent of the Court Clerk, and without benefit of written  
24 appointment by the Court Clerk, without the recording required by  
25 the statute. Further, such employees are regularly dismissed, or  
26 otherwise disciplined, without writing, without cause, without  
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1 notice or appeal, and without the recording required by NRS  
2 246.030.

3 4.3 Consequences of Unauthorized Employment of Deputy Clerks.

4 The consequences of the described extra-legal hirings are three  
5 fold: (a) The validity and authenticity of the official actions,  
6 (issuance of subpoenas, certifying official court documents and  
7 such), of the mentioned employees are, at the very least, subject  
8 to grave doubt. (b) The employees, sometimes called "court staff  
9 clerks," are subject to discriminatory job status, being denied the  
10 civil service privileges enjoyed by duly-appointed deputy court  
11 clerks. (c) An intolerable and ever-increasing conflict has arisen  
12 out of the creation of a special class of "court staff clerks" who  
13 are required to work with duly-appointed clerks in the same work  
14 space.  
15

16 4.4 Invalidity of "Official" Actions of Unauthorized "Staff  
17 Clerks." The Legislature has, for very sound reasons, provided

18 that those who are to be deputized to act as official judicial  
19 officers in issuing subpoenas, certifying copies of official court  
20 documents, taking custody of official documents and the like, and  
21 as to be invested with the considerable powers of that office, must  
22 be formally installed by a legislatively-prescribed formal process.  
23 To be empowered to perform the kinds of official duties that deputy  
24 court clerks perform, deputy court clerks must, as mentioned above,  
25 abide by the following three conditions: (a) court clerks must be  
26 appointed by the elected Clerk of the Court, for, by statute, only  
27 ex officio court clerks are "authorized to appoint" those who are  
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1 authorized to "transact" the mentioned court-related functions;  
2 (b) appointments must be in writing; and (c) written appointments,  
3 accompanied by a form of oath taken by the appointed deputy clerk,  
4 must be recorded in the Recorder's office. Court Clerk avers that  
5 none of the three formalities which are required by law to empower  
6 a deputy clerk to perform his or her official functions as a court  
7 clerk is carried out when Defendants/Respondents hire what they  
8 call "staff clerks." This being the case, it is difficult to  
9 escape the conclusion that there exists, and continues to exist, in  
10 the Washoe County District Court, any number of fugitive and  
11 invalid court documents. (For example, for a period of time, the  
12 Court Administrator was issuing legally inoperative, non-binding  
13 subpoenas bearing the title of the Second Judicial District Court.)

14  
15 4.5 Job Discrimination. By employing "judicial employees" to  
16 perform the official duties prescribed by law to be performed by  
17 duly appointed deputy court clerks, defendants, Court and Judges,  
18 created a special class of public employees who have been, and  
19 continue to be, denied the civil service and statutory benefits and  
20 privileges enjoyed by duly-appointed deputy court clerks. This has  
21 resulted in the existence of two classes of persons working out of  
22 the clerk's office, one official, duly-appointed, civil service  
23 deputy clerks and the other, arbitrarily employed and discharged  
24 "court staff" employees. The two classes of clerks must share in  
25 the performance of largely undefined and overlapping duties, with  
26 one class of clerk, the "court staff" employee, being subject to  
27 arbitrary dismissal at any time. Court Clerk knows of at least one  
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1 example of a "court staff" employee being terminated without notice  
2 by being physically removed from the court house without being  
3 permitted to assemble the personal belongings in her desk. These  
4 kind of events are, in part, the cause of the tension and conflict  
5 averred herein.

6       4.6 Tension and Conflict Between Duly-Appointed Clerks and  
7 "Staff Clerks" Employees. An accelerating condition of tension,  
8 conflict and turmoil exists between the duly-appointed Court Clerk  
9 staff and the "judicial employees." Judicial employees are  
10 instructed by Defendants/Respondents to keep surveillance over the  
11 Court Clerk and on her officially-appointed deputies, apparently to  
12 make sure that the Court Clerk and Deputy Clerks have no access to  
13 court files that would ordinarily be in the custody of the Court  
14 Clerk. Court documents and files are claimed by  
15 Defendants/Respondents to be in the "complete jurisdiction and  
16 control of the District Judges," and Court Clerk and her official  
17 deputies are denied access to files and documents lodged in the  
18 Office of the Court Clerk.

19  
20       4.7 There are two classes of deputy clerks with an undefined  
21 or ill-defined scope of duties and responsibilities. Court Clerk  
22 respectfully avers that the condition of having two classes of  
23 court personnel in her office must be remedied, and that if it is  
24 not, the integrity of her public office as well as the expeditious  
25 operation and administration of the Second Judicial District Court  
26 will be in constant jeopardy.

27       4.8 Specific Usurpations, Holding and Exercising the Office  
28

1 of Court Clerk by the Second Judicial District Court and its  
2 District Judges. The following represent but a few examples of the  
3 ways in which the Court and its Judges have usurped, held and  
4 exercised the constitutional, elective the office of the Clerk, and  
5 the constitutional office of *ex officio* Clerk of the Second  
6 Judicial District Court.

7           4.8.1     The defendants, District Court and its judges,  
8                     have physically taken over the Court Clerk's  
9                     office, as exemplified by the September 8,  
10                    1999, directive of the Administrative Judge  
11                    that the Court Clerk and her deputies have no  
12                    "official reason or function to be retrieving  
13                    or replacing District Court case files from  
14                    the stacks unless the physical case is  
15                    scheduled for microfilming." (See Exhibit 3,  
16                    attached hereto.)

17  
18           4.8.2     When Court Clerk decided to make some physical  
19                     changes in the Clerk's Office counters and  
20                     fixtures relative to the placement of the  
21                     marriage license counter, a surveillance of  
22                     the operation was undertaken by Defendants in  
23                     the form of all eleven District Judges and the  
24                     Court Administrator marching into the Clerk's  
25                     Office to challenge the mentioned counter  
26                     arrangement because, it appeared, Court Clerk  
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was suspected of encroaching upon some ten inches upon what might well, under the circumstances, be called "district judge territory."

4.8.3 Defendants'/Respondents' "judicial employees," at the direction of the Court and its judges, have now "occupied" the Clerk's Office. This is a fact that has (as would be expected) resulted in constant friction and conflict between Court Clerk and her deputies and persons hired by Defendants/Respondents to take over the statutory duties of the Court Clerk and her deputies. Court employees have been directed by Defendants to be ever on the alert to insure that the Court Clerk and her deputies do not perform any of the official duties that are assigned to the Court Clerk by law. The Clerk and her deputies are not allowed, except under court-ordered exceptions, to touch any of the court files or other documents. "Court employees," on the other hand, have been given full access to the Court Clerk's files, as well as to the Court Clerk's vault. On one occasion, October 23, 1999, the Court employees left the vault wide open and inadequately tended. Because the



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contents of the vault and the security of the vault are clearly the responsibility of the Court Clerk, it was necessary for the Court Clerk to plead with the Administrative Judge to instruct court employees to take heed in protecting Court Clerk's vault.

4.8.4

Court Clerk avers that one of the most disruptive usurpations of her office lies in the intrusion by defendant Court and its judges upon her financial duties and responsibilities. NRS 3.270 requires the "clerk of a district court [to] give a receipt on demand of any party paying a fee" and requires the clerk to pay over monthly to the county treasurer all monies received during the month, "together with a brief note of the cases in which the same were received." Intrusions and usurpations by the Court and the district judges, of the kind described above, have made it necessary for the Court Clerk to append to her official reports the following notation: "... neither myself, or my staff are informed nor do we have access to any of the daily figures as relates to the cashier's intake of monies with District Court. Therefore, I have no knowledge on

1 which to base whether or not this report is a  
2 true reflection of the receipts of the Second  
3 Judicial District Court." (See Exhibit 4  
4 attached hereto.)

5 4.8.5 NRS 3.275 requires Court Clerk "to obtain and  
6 file information regarding the nature of each  
7 civil case filed with the district court" and  
8 to perform other duties provided in that  
9 statute. NRS 3.280 requires the Court Clerk  
10 to keep a register of civil actions. Without  
11 access and control of the files, the Court  
12 Clerk cannot fulfill her statutory duties.

13  
14 5. STATEMENT OF ISSUES AND RELIEF SOUGHT

15 A. STATEMENT OF ISSUES

16 5.A.1. ISSUE ONE: Whether the Nevada Constitution, Article 4,  
17 § 32, which provides that "County Clerks shall be *ex officio* Clerks  
18 of the Courts of Record" (and therefore clerks of the district  
19 courts) is, as claimed by Defendants/Respondents, unenforceable by  
20 reason of its being facially incompatible with the Separation of  
21 Powers inherent in the Nevada Constitution.<sup>1</sup>

22  
23 <sup>1</sup>  
24 Court Clerk states this issue as her first and preeminent issue by virtue of  
25 repeated claims by defendant judges that the "Separation of Powers" doctrine  
26 empowers them to take over the duties of the Court Clerk and to exercise  
27 "complete jurisdiction and control" over "employees in the office of the Clerk  
28 of the District Court." It may appear to the Supreme Court that it is idle to  
argue that the framers of the Constitution were not aware of the separation of  
the powers that is central to this document when they prescribed that County  
Clerks should be *ex officio* clerks of the district courts. Our state  
constitution can hardly be said to be "unconstitutional" by virtue of a supposed  
violation of the Separation of Powers doctrine manifest within the four corners  
of that document; still Court Clerk asks the Supreme Court to decide this issue

1           5.A.2.     ISSUE TWO: Whether the concept of "inherent powers"  
2 of the court, (generally thought of as those powers reasonably  
3 required to enable a court to perform efficiently its judicial  
4 functions), justifies repudiation, in whole or part, of the  
5 constitutional mandate that county clerks shall serve as *ex officio*  
6 clerks of the district court?

7           5.A.3.     ISSUE THREE: Whether the Second Judicial District  
8 Court for Washoe County or the District Judges of that court have  
9 some kind of "inherent" or other judicial, legislative or executive  
10 power which would lawfully justify their usurping, holding and  
11 exercising the powers, duties, and responsibilities of the Washoe  
12 County District Court Clerk that are prescribed in the Nevada  
13 Constitution, laws and the customary practices traditionally  
14 employed throughout history in Nevada?

15           5.A.4.    ISSUE FOUR: Whether the usurpations and intrusions by  
16 the Second Judicial District Court for Washoe County, and its  
17 district judges as described in this complaint, have the effect of  
18 unconstitutionally and unlawfully eliminating the office of *Ex*  
19 *Officio* Clerk of the Court; and whether such actions are,  
20 therefore, contrary to the ruling in State v. Tilford, 1 Nev. 240  
21 (1885), and subsequent related cases, in that the actions of the  
22 district court and district judges of Washoe County, in taking over  
23 the core duties and responsibilities of the Court Clerk, have, for  
24

25  
26 \_\_\_\_\_  
27 and to hold that plaintiff Court Clerk is, in fact, the constitutionally-  
28 entitled to perform the duties inherent in that office and the duties that are,  
(in the term employed by Article 4, § 32), "fixed by law."



1 all intents and purposes, substantially abolished the  
2 constitutional office of ex officio Clerk of the Court, as created  
3 and mandated by Article 4, §5?

4 **B. Relief Sought.**

5 5.B.1. That the Court make findings of fact that are  
6 in harmony with the facts stated in Paragraph 4; or, if there  
7 should be a dispute in material facts, that issues of fact be  
8 determined by a jury in accordance with NRS 35.260.

9 5.B.2. That the Court make conclusions of law in which  
10 it is concluded that Article 4, § 32, of the Constitution of Nevada  
11 is not internally inconsistent or in violation of the Separation of  
12 Powers inherent in the Nevada Constitution; and that the Court  
13 conclude further that, as a matter of law, Article 4, § 32, and  
14 implementing legislation, empowers plaintiff Court Clerk to perform  
15 all of the prescribed constitutional, statutory, and customary  
16 duties of Clerk of the Court, without usurpation, interference or  
17 intrusion by the Second Judicial District Court or its district  
18 judges.<sup>2</sup>

19  
20 5.B.3. That the Court make conclusions of law that  
21 Court Clerk's performance of the ordinary constitutional, statutory  
22 and customary duties of that office are not an infringement upon  
23 Defendants/Respondents inherent judicial powers that would  
24

25 <sup>1</sup>  
26 Court Clerk has never contended, nor does she now contend, that she and her  
27 deputies are not subject to all lawful orders of district judges in matters  
28 judicial. The controversy relates solely to what Court Clerk has referred to as  
the "taking over" of the Clerk's Office, or the Clerk's deputies and other  
personnel and the traditional clerical duties provided for by constitution, law,  
and custom.

1 substantially interfere with their carrying out their lawful  
2 judicial functions.

3           5.B.4.     That the Court make conclusions of law that the  
4 Second Judicial District Court has, together with the district  
5 judges of that court, usurped and unlawfully "held and exercised"  
6 the constitutional, elective office of Clerk of the Court of the  
7 Second Judicial District, as understood and contemplated by NRS  
8 35.050.

9           5.B.5.     That the Court make conclusions of law to the  
10 effect that in order for the Second Judicial District Court and the  
11 District Judges who make up that court to usurp, hold and exercise  
12 the office of Clerk of the court in a lawful manner, it would be  
13 necessary that the Constitution of Nevada be amended.<sup>3</sup>

14           5.B.6.     That the Court enter judgment in favor of  
15 Plaintiff/Applicant Amy Harvey and against Defendants/Respondents  
16 ousting Defendants/Respondents from the office of the Clerk of the  
17 Court of the Second Judicial District Court for Washoe County and  
18 prohibiting Defendants/Respondents from holding or exercising any  
19 of the constitutional, statutory and customary duties of that  
20 elective office.

21  
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24 \_\_\_\_\_  
25 <sup>3</sup>  
26 Court Clerk notes that "Simplifying the Maze," the Report of the Judicial  
27 Assessment Commission, issued September, 1994, recommended that all deputy clerks  
28 "performing Court Clerk duties involving the filing, maintaining records,  
calendaring, etc., for the court system should come under the Chief Judge or  
designated administrator within the court system;" however the Report went on to  
point out, correctly, that a "constitutional amendment would be required to  
implement this change."

1 6. STATEMENT OF REASONS WHY RELIEF SHOULD BE GRANTED.

2 6.1 Following Abraham Lincoln's dictum that a "house  
3 divided against itself cannot stand," Court Clerk states as the  
4 main reason why relief should be granted is that the usurpation  
5 complained of is violative of the integrity of the constitutional  
6 office of *ex officio* clerk of the court and that it is  
7 constitutionally, legally and practically impermissible for the  
8 Washoe County court system to continue operating with two parallel  
9 and conflicting court clerk staffs. The administration of justice  
10 is severely hampered by the conditions described in the complaint  
11 and it is imperative that the Supreme Court intervene so that this  
12 condition will not worsen.

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14 6.2 NRS 35.250 provides that "[actions under this  
15 chapter in any court shall have precedence of any civil business  
16 pending therein." NRS 35.250 further provides that on proper  
17 motion, "if the matter is of public concern," the court shall  
18 "require as speedy a trial of the merits of the case as may be  
19 consistent with the rights of the parties." Court Clerk, through  
20 her attorney, respectfully moves that the Supreme Court give  
21 precedence to this matter in the manner contemplated by NRS 35.250.

22 7. PERTINENT COPIES OF RECORD.

23 Court Clerk has included in this complaint correct references  
24 to all matters of record deemed to be material to the making of a  
25 decision in this matter and has not burdened the complaint with  
26 unnecessary attachments from items in the record referred to in  
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1 this complaint. Appropriate records will be presented and  
2 introduced at the trial of this matter if issues of fact remain.

3 8. DEMAND FOR JUDGMENT

4 8.1 Plaintiff Court Clerk demands judgment under NRS Chapter  
5 35, adjudging that the Second Judicial District Court of Washoe  
6 County and the defendant District Judges of that court have  
7 unlawfully usurped, held and exercised the constitutional office of  
8 Clerk of the Court of the Second Judicial District Court. Court  
9 Clerk demands that a judgment of ouster be entered in accordance  
10 with NRS 35.120 and that judgment be "rendered upon the right of  
11 the defendant[s] and also upon the right of [Court Clerk,] the  
12 person averred to be entitled to" carry out and exercise the office  
13 of Court Clerk of the Second Judicial District Court.  
14

15 8.2 Applicant Court Clerk demands judgment under NRS 34.330  
16 and that an alternative writ of prohibition issue in which  
17 Respondent Second Judicial District Court and Respondent District  
18 Judges are prohibited from usurping, intruding upon or holding and  
19 exercising the office of Clerk of the Court of the Second Judicial  
20 District Court.

21 8.3 Plaintiff/Applicant AMY HARVEY demands judgment in any  
22 form that will declare the respective rights and duties of the  
23 Second Judicial District Court and its judges relative to the

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1 constitutional office held by her, Clerk of the Second Judicial  
2 Court for Washoe County.

3 Respectfully submitted this 16 day of November, 1999.

4 Michael E. Langton

5 Michael E. Langton, Esq.  
6 Nevada Bar # 00290  
7 801 Riverside Drive  
8 Reno, NV 89503  
9 (775) 329-7557

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VERIFICATION

STATE OF NEVADA )  
 ) ss.  
COUNTY OF WASHOE )

AMY HARVEY, being first duly sworn, under the penalty of perjury, deposes and says:

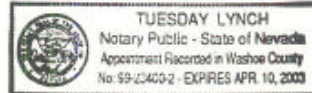
That I am the Clerk of the Second Judicial District Court and am the Plaintiff/Applicant in the above-referenced matter; that I have read the foregoing Complaint for Usurpation of Office Under NRS 35.050 and Application for Writ of Prohibition and know the contents thereof; that the same is true of my own knowledge except to those matters therein contained which are based upon information and belief and as to those matters, I believe them to be true.

Further your affiant sayeth naught.

*Amy Harvey*  
AMY HARVEY

ACKNOWLEDGED before me this 10th day of November, 1999, by AMY HARVEY.

*Tuesday Lynch*  
NOTARY PUBLIC





AFFIDAVIT OF SERVICE

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STATE OF NEVADA )  
                  ) ss.  
COUNTY OF WASHOE )

Tuesday Lynch being first duly sworn, under the penalty of perjury, deposes and says:

1. That I am an employee of the Law Offices of Michael E. Langton, and am a citizen of the United States of America over the age of 18 years.

2. That on the 17<sup>th</sup> day of November, 1999, I gave to an employee of Reno-Carson Messenger Service true and identical copies of the attached Complaint for Usurpation of Office Under NRS 35.050 and Application for Writ of Prohibition and instructed that person to deliver said copies to the following:

The Second Judicial District  
Court of the State of Nevada  
in and for the County of Washoe  
c/o The Honorable Charles M. McGee, Chief Judge  
75 Court Street.  
Reno, NV 89501

The Honorable Charles M. McGee, Chief Judge  
Department 2  
Second Judicial District Court  
75 Court Street  
Reno, NV 89501

The Honorable Janet Barry  
Department 1  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89503

The Honorable Jerry Polaha  
Department 3  
Second Judicial District Court  
75 Court Street  
Reno, NV 89501

1 The Honorable Connie J. Steinheimer  
Department 4  
2 Second Judicial District Court  
75 Court Street  
3 Reno, NV 89501

4 The Honorable Deborah Schumacher  
Department 5  
5 Second Judicial District Court  
75 Court Street  
6 Reno, NV 89501

7 The Honorable Brent T. Adams  
Department 6  
8 Second Judicial District Court  
9 75 Court Street  
10 Reno, NV 89501

11 The Honorable Peter I. Breen  
Department 7  
12 Second Judicial District Court  
75 Court Street  
13 Reno, NV 89501

14 The Honorable Steven R. Kosach  
Department 8  
15 Second Judicial District Court  
75 Court Street  
16 Reno, NV 89501

17 The Honorable James W. Hardesty  
Department 9  
18 Second Judicial District Court  
75 Court Street  
19 Reno, NV 89501

20 The Honorable Steven P. Elliott  
Department 10  
21 Second Judicial District Court  
22 75 Court Street  
23 Reno, NV 89501

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The Honorable Scott T. Jordan  
Department 11  
Second Judicial District Court  
75 Court Street  
Reno, NV 89501

Further your affiant sayeth naught.

*Tuesday Lynch*  
Tuesday Lynch

ACKNOWLEDGED before me this  
17 day of November, 1999,  
by TUESDAY LYNCH.

*Michelle Towery*  
NOTARY PUBLIC

