**TITLE: Law Clerks**

**SPONSOR: Douglas Miller on Behalf of Clerk’s Association**

**STATUTES AFFECTED: 1-712**

**COUNTY OFFICES or DEPARTMENTS AFFECTED (*Must Affect at least 2*): Commissioners and Clerks**

**COUNTIES AFFECTED (*Must Affect at least 2):* All**

**ISSUE/PROBLEM:** The counties are currently paying the salaries and benefits of law clerks and/or district court “staff attorneys” (hereinafter collectively referred to as “law clerks”), but these law clerks do not report to county officials. District court judges, who are state employees, work with and supervise these employees.

**BACKGROUND & DATA:** District court judges rely on assistance from law clerks. These law clerks are accountable directly to their supervising judge, a state employee, but the law clerks are county employees who are paid from county budgets.

Idaho law currently gives administrative judges the authority to appoint personnel when needed to attend to the courts (Idaho Code § 1-907(l)). Current law also requires each county to provide for the staff, personnel, and other expenses of the district court. (Idaho Code § 1-1613). Accordingly, counties thus far have paid the salaries and other related expenses of law clerks, while exercising no control over these employees.

The first problem with this structure is the fragmentation of the lines of authority. The administrative judge controls county employees who are paid by the county, and yet county elected officials, such as the county clerk and the board of county commissioners, cannot hire, discipline, or fire these employees.

The second problem is liability. While Idaho Code § 1-1613A indicates that county employees are considered state employees when performing judicial functions, this protection has its deficiencies. Most notably, liability that falls outside the Idaho tort claims act could remain with the counties. Furthermore, counties bear the liability for law clerk behavior that is not within the scope of performing judicial functions, even though the counties cannot manage their own liability exposure by making personnel decisions regarding these law clerks.

These problems currently create a situation in which the counties are required to bear the liability for employees that they pay but cannot choose or control.

**PROPOSED POLICY:** Enact section 1-712, Idaho Code, which would establish that law clerks are to be state employees paid directly by the state.

**ARGUMENTS & ENTITIES IN SUPPORT:** Idaho Supreme Court has indicated their support for this proposal.

**ARGUMENTS & ENTITIES AGAINST:** List potential arguments and entities against your proposed policy.

**FEASIBILITY:**

**OTHER STAKEHOLDERS AFFECTED & NATURE OF IMPACT:** District Judges would be positively impacted, as they would have greater ability to manage those directly in their supervision.

**FISCAL IMPACT:** This will reduce the burden on county justice funds but will increase the Idaho Supreme Court’s budget.