

AN INTERVIEW WITH CHIEF JUSTICE MARK GIBBONS



In late November, Nevada Lawyer Editorial Board Chair Beau Sterling met with incoming Chief Justice Mark Gibbons to discuss the position and some of the major issues which will affect the year ahead.

Q: What is the role of the Chief Justice of the Nevada Supreme Court?

A: The chief justice under the Nevada constitution is the administrative head of the entire court system in the state. It's in Article 6, Section 19. He, or she, supervises the State Bar of Nevada as well. The chief justice is the point person.

Q: How is the chief justice determined each year?

A: It's determined under the constitution. Every two years there's a mandatory change based on terms of office, or

you can agree to divide the two-year term for one term each. Justice Maupin and I got together, and we could have either flipped a coin to see who would do a two-year term or we could make an agreement between ourselves as to each of us doing a one-year term, and which year we would do. So that's what he and I did. We agreed that he would do the 2007 year and I'd do 2008.

Q: You mentioned the flip of the coin; that's actually in our Constitution?

A: Well, it says 'draw lots' in the Constitution. I guess, historically, they've flipped coins. What will happen is in the 2009/2010 year is that Justices Hardesty and Parraguirre will [both] be eligible to be chief, so they'll have to do the same thing-- either agree to split it, or to flip a coin.

Q: What do you view as the challenges for the court system in general and specifically for the Nevada Supreme Court in 2008?

A: It's going to be really exciting to see what happens. AB 505 passed, changing the judges' filing dates to the first two weeks of January, and we've amended our canons of ethics so that you can't fund-raise unless you have an opponent. By the way, the State Bar of Nevada was critical in getting this thing passed through the Legislature; they came over and testified before the Senate and the Assembly. I don't think we could have done it without the assistance of the state bar. The thing I'm looking forward to seeing is how much money lawyers will save. In Clark County, we've got 38 district judges including Family Court. Most of the people are up for election next year except for six family court seats, and they'd all have to go out and start fundraising.

Statistically, probably 60 percent of them wouldn't have an opponent, anyway, so we just did a pre-emptive strike. Now we wait until filing closes and only the people in contested races can fund-raise. To me, I think that's a big plus for the bar. It's the first time we've ever done it, and so I'm looking forward to seeing if there are any hitches with that. I suspect it will be smooth, but we'll wait and see. I'm proud of being able to work on that particular project. I was designated by the [previous] chief justice to work on that on behalf of the court, and I'm happy we got that accomplished.

Other issues: We have an executive committee consisting of three justices. Right now it's Justices Maupin, Hardesty and myself. It's like a management committee of a law firm. We meet quite regularly and make management decisions for the court, and if there's anything major we

just put it on an agenda so all seven justices can vote on it. With this executive committee we have a continuous agenda. In the past we've had problems where chief justices [change] and balls get dropped, and that's why I think this executive committee is so valuable to the court in managing its operations. Next year the three members [of the executive committee] will be Hardesty, Parraguirre and myself.

Q: Has anybody challenged the campaign regulations?

A: It hasn't happened yet that I've seen. When we wrote that up we made the point in the commentary that we know it's a restriction on the First Amendment on fundraising, but in Nevada all you need is one vote to win. So, whether you're running for Justice of the Peace, District, Municipal or Supreme Court, it's one vote and you're in if you're running unopposed, so we felt it could survive the constitutional test. If it winds up in federal court we'll find out.

Q: How's the court doing with the backlog of cases?

A: We're doing really well. We've got some really complicated cases we've been working on. But as far as our total dispositions and all, I think probably about as many cases as come in we're getting out. So even though there are fewer opinions, the disposition rate has been very good. Everybody's been working double-time with the panels and the en banc dockets.

Q: There has been a proposal to create an intermediate appellate court. How do you feel about that?

A: It'll probably be on the ballot in 2010. It has to go through the Legislature one more time. Certainly we're going to need it very badly. If you look at the growth of our state, we're now the largest state in population that doesn't have an intermediate appellate court. It's becoming more and more critical, so hopefully in 2010 we'll explain that to the voters and see what happens.

Q: What are your goals for 2008?

A: My main goal is that I want to make the court operations more user-friendly [to members]. For example, we now have podcasts of our oral arguments. If there's an oral argument up here, whether it's in Las Vegas or in Carson City, about 15 minutes after it's over you can go to your

computer and listen to the audio. We're trying to see how much it will cost to do it by video. I think [about] going back to my days as a lawyer when I argued cases—what a valuable training tool, to be able to listen to these arguments and hear what questions the justices are asking. And if there's video, that's even better.

One of the other things I want to do next year: I was involved with the short jury trial rules, and we're probably going to make some changes to simplify them. The big thing that I'd like to do, and this was the goal when we set these up, is to attempt to try these smaller jury cases as inexpensively as possible. Lawyers spend a lot of money on just a regular jury trial with the fees and the experts and all the costs, so we're trying to streamline the process to make it more economically feasible for not only the litigants, but both the plaintiff's side and the defense' side. We're always trying to simplify that and make it more user-friendly, and we're taking another good look at those rules right now.

Q: How can the state bar be of assistance to the court in accomplishing its future goals?

A: Anything we're doing for court improvement (assuming the Board of Governors agrees with what we're doing), if it requires testimony before the Legislature, to have the officers of the state bar come in and testify. For example, in the resolution for the court of appeals will be up for a second reading in 2009, and it will help to have some members of the Board of Governors or officers of the state bar come in and testify in support of it and to explain to the legislators why we need it. Basically, I think legislation is a big place where the state bar can help us.

The other thing is that we want to know what we can do to help the state bar. I don't want to have this mystique about Carson City, where we're up on the third floor in the Supreme Court building and who knows what's going on? It's an ivory-tower mentality, and I think we've broken away from that in the past few years and become more user-friendly and more open. We get out, making educational presentations for the state bar. I'm really big on openness and also on educating attorneys to help them. We can't go out and discuss specific cases, but we can give pointers on oral arguments and briefing and different things. I want to get more judges out into the community, explaining that to law firms. I know we have a bench/bar committee that is terrific with that interaction, but time permitting, I'll probably go out [next year] and meet with big law firms and any medium-sized law firms, district attorneys, public

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defenders, whole cross-sections of the bar – civil, criminal and family – and basically listen and say “What are some of the issues you have? What can we do to help you let you do your job more easily and economically?” I’ll take the ideas back to the executive committee and we’ll see if we can get them implemented.

Q: Does the court plan to hold oral arguments in any rural counties in 2008?

A: As of the moment, no. We had them in Ely last March in conjunction with the family law meeting there. Either in February or April, we’re going to have en banc oral arguments at the Boyd Law School at their new facility there. We’ve had several panels there but this will be a first. When we’ve been there [in the past] we kind of explained to the students and to everybody what we do and how we do it and what the process is. It takes some of the mystique out of how we process these cases.

Q: How have you seen the practice of law change since you started?

A: Well, I’m an old-timer, I hate to say it. I was admitted in 1975. In 1975 in Las Vegas we knew everybody. When I practiced, if you did litigation, within a couple of years you met everybody in town and you could trust people’s word – you need an extension? Fine, you get it. There were no confirming letters or things like that. Now with our bar having thousands and thousands of members, we have to be a little more formal but that’s the biggest change. My bar number is 222. I was there when they first assigned bar numbers. It’s changed quite a bit and I think the court has to be cognizant of the changes and be more user-friendly to the bar as things change and as time goes on.

Q: Is there any discussion of having briefs or orders online on the court website?

A: We’re working with electronic filing. The IT committee is working on developing those protocols for electronic filing and for putting briefs online. So, the answer is yes. It’s just a question of how much it’s going to cost and the logistics of getting it done.

Q: Anything else?

Another thing I’ve been working on for years is the Senior Judge Program. One thing we’re doing, especially in the area of family law, is a lot of times you have one party which is pro se and the other is represented by an attorney, and you’ve got a stalemate because the person who is pro se doesn’t know how to do it. We’ve started a program with our senior judges: if it’s minimal community property and minimal legal issues, they just go in there and in an hour do a trial and wrap the case up and adjudicate it [or] take a shot at settling it. It’s more efficient and quicker. We’ve done it in Clark County, and it’s been extremely successful in Family Court. We’re just starting to do it in Washoe County. So we have the seniors also backfilling for judges. For example, I was the trial judge on the Venetian case when it was filed in 1997, and when I got that with all of the ramifications, I basically had to shut down my department and not do anything else except that case. So we assigned the Venetian case to a senior judge so that I could just do the regular docket. We’re doing just the reverse now. If I were still in the District Court and I got the Venetian case, I would do it as the elected judge and then we’d backfill my department in District Court with senior judges doing the motions and arraignments and whatever so we could focus on using our trial judges, who have a little more experience and are elected, to handle these big cases. We’ve been doing that with our Senior Judge Program, and the Legislature allowed us to expand it. We got a little more money to do it. Right now we’re a little short on senior judges. [Some judges] left the program, so we’re really working on filling the gaps for the judges. That should help the attorneys so we can get these cases processed and not continued. **NL**

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