

NEVADA LAWYER

EDITORIAL BOARD

Lisa Wong Lackland, Chair	Michael T. Saunders
Mark A. Hinueber, Chair-Elect	Gregory R. Shannon
Patricia D. Cafferata, Vice Chair	Stephen F. Smith
Scott G. Wasserman,	Beau Sterling
Immediate Past Chair	Heidi Parry Stern
Erin Barnett	Kristen Simmons
Hon. Robert J. Johnston	Richard D. Williamson
Scott McKenna	John Zimmerman

BOARD OF GOVERNORS

President:

Cam Ferenbach, Las Vegas

President-Elect:

Constance Akridge, Las Vegas

Vice President:

Frank Flaherty, Carson City

Immediate Past President:

Kathleen England, Las Vegas

James Bradshaw, Reno	Alan Lefebvre, Las Vegas
Elizabeth Brickfield, Las Vegas	Vincent Ochoa, Las Vegas
Amber L. Candelaria, Las Vegas	Richard Scotti, Las Vegas
Laurence Digesti, Reno	Mason Simons, Elko
Elana Turner Graham, Las Vegas	Ex-Officio
Bruce Hahn, Reno	Dean John Valery White,
Jenny Hubach, Reno	UNLV Boyd School of Law

STATE BAR STAFF

Executive Director: Kimberly K. Farmer

Bar Counsel: Rob Bare

Deputy Bar Counsel/

General Counsel: David Clark

Director of Finance & Information

Systems: Marc Mersol

Director of Continuing Legal Education: Emily Ihrke

NEVADA LAWYER STAFF

Publications Manager:

Jennifer Smith (jennifers@nvbar.org)

Nevada Lawyer Coordinator:

Melinda Catren (melindac@nvbar.org)

GRAPHIC DESIGN

Georgina Corbalan

ADVERTISING INDEX

ARMSTRONG TEASDALE.....	20	LAWYERS CONCERNED	
BANK OF GEORGE.....	13	FOR LAWYERS	24
BANK OF NEVADA.....	9	LEGISLATIVE COUNSEL BUREAU	BC
CASEMAKERS.....	16	MANN LAW FIRM	33
COGBURN LAW OFFICE.....	17	MARSH	13
CRESCENT REAL ESTATE.....	29	NATIONAL FORENSIC LOAN AUDIT	12
DANIELS-HEAD INSURANCE.....	31	SATURNA TRUST COMPANY.....	25
FASTCASE.....	IBC	TOMPKINS & PETERS.....	19
GAMING LAW SECTION.....	18	THOMSON REUTERS.....	IFC
HUTCHISON & STEFFEN.....	14	TOP OF THE WORLD RESTAURANT.....	37
JAMS.....	23	VERTI CONSULTING.....	11
JEFFREY BURR.....	35		

Message from the President

Cam Ferenbach, State Bar of Nevada President



BALLOT QUESTION 1

"If Vince were alive today, he would be thrilled to learn that, during our August 18th meeting in Elko, the Board of Governors voted to support approval of Question 1, which gives voters the opportunity to approve the constitutional amendment proposed by SJR 2."

All of us who knew Vince Consul mourned his sudden passing earlier this year. Vince was the third state bar president I worked with as a member of the Board of Governors. He was a fine lawyer and an exemplary human being, living a productive balance of work, family and community service.

Vince's first president's message, published in July, 2005, was entitled, "THINKING BOLDLY." Here's how it began:

I dislike judicial elections. Based upon my conversations with members of the state bar over the years, so do a lot of you. However, the general consensus seems to be that the Nevada procedure for the election of judges simply can't be changed. *The Las Vegas Review-Journal* has been a strident supporter of the election of judges for as long as I have been in town. The Nevada Legislature has never seriously addressed the issue of change to the current procedure. The electronic media appear to be biased in favor of elections due to the substantial advertising income generated during our election cycle which, with primaries and odd-year municipal elections, appears to be almost continual, so lawyers shrug their shoulders and say it can't be changed.

During the two legislative sessions after Vince wrote these words, much hard work by a number of legislators and community leaders led by state bar members Bill Raggio and Barbara Buckley, resulted in the passage of Senate Joint Resolution 2 - a proposed constitutional amendment establishing merit selection of judges in Nevada.

If Vince were alive today, he would be thrilled to learn that, during our August 18th meeting in Elko, the Board of Governors voted to support approval of Question 1, which gives voters the opportunity to approve the constitutional amendment proposed by SJR 2.

Question 1 asks: **Shall the Nevada Constitution be amended to provide for the appointment of Supreme Court justices and District Court judges by the Governor for their initial term from lists of candidates nominated by the Commission on Judicial Selection, with subsequent retention of those justices and judges after independent performance evaluations and**

voter approval?

After a period of thoughtful discussion comparing the details of the proposed Merit Selection Plan with our current system, as well as arguments for and against Question 1, a majority of the State Bar of Nevada Board of Governors voted in favor of supporting this question.

Consistent with this vote, as state bar president, I am publically urging the approval of this ballot question. As lawyers, our duties to our clients sometimes require us to take positions we don't personally agree with, as long as they are supported by the law and the facts. With regard to Question 1, my advocacy on behalf of the state bar is consistent with my own personal opinion.

I urge every reader of this column to review SJR 2 passed most recently by the 2009 legislature. Here's the link: http://www.leg.state.nv.us/Session/75th2009/Bills/SJR/SJR2_74_EN.pdf. If Question 1 passes, SJR 2 will become part of our constitution. When you understand the details of this joint resolution, you will see that the resolution's drafters crafted a workable and efficient balance between (1) giving voters meaningful control over who serves as judges in District Court and justices of the Supreme Court; and (2) ensuring that only qualified judicial candidates are initially presented to the governor for appointment, with the successful candidate standing for a retention election based on actual performance on the bench, at most two years after his or her appointment. A separate Judicial Performance Commission will examine objective data gathered from attorneys, staff, jurors, litigants and others with actual experience in the judge's courtroom. The commission will then publish the data and its recommendation regarding each judge. That report must be published at least six weeks before the general election.

Arizona has had judicial merit selection in place for many years. All Arizona attorneys I have talked to enthusiastically support this method of appointing and retaining judges. Retention elections focus on the incumbent's performance and employ minimal advertising budgets. The voters make informed decisions and the taint of fundraising by sitting judges is minimized.

I also urge you to read Vince's column. Here's the link: http://www.nvbar.org/Publications/NevadaLawyer/2005/July/Nevada_Lawyer-Vince-Consul-President_Message-July2005.pdf. Times have changed. The legislature has acted. Many community leaders, business leaders and even media leaders have recognized that Question 1 deserves support. Organized support is emerging throughout a broad spectrum of our community. For more information you can go to: <http://www.morequalifiedjudges.com/>. The thoughts Vince expressed in this column five years ago ring true today. If lawyers who support merit selection of judges get engaged, there is a good chance that this much needed change will become a reality. ■

For more on both sides of Ballot Question 1, see page 28.

BALLOT QUESTION NO. 1

As you read in the president's column on page 4, the State Bar of Nevada's Board of Governors endorses Senate Joint Resolution No. 2, making this the official position of the state bar. Here are some of the arguments on both sides of the issue.

COURTESY OF NEVADA'S OFFICE OF THE SECRETARY OF STATE

Amendment to the Nevada Constitution Senate Joint Resolution No. 2 of the 74th Session

Shall the Nevada Constitution be amended to provide for the appointment of Supreme Court justices and District Court judges by the Governor for their initial terms from lists of candidates nominated by the Commission on Judicial Selection, with subsequent retention of those justices and judges after independent performance evaluations and voter approval?

ARGUMENTS FOR PASSAGE



A fair and independent judiciary is essential to maintaining the public trust and confidence in Nevada's court system and preserving the rights of all citizens. Justices and judges are not intended to be politicians, yet they are required to campaign and engage in fundraising. The extent to which they are able to impartially interpret and apply laws depends upon their ability to remain free from political pressure and outside influence from campaign contributors.

In recent years, judicial campaigns have been characterized by increased fundraising and spending. Thus, elections may be based on a candidate's ability to raise funds rather than the merits of the candidate's legal career or judicial performance.

Justices and judges in the state of Nevada are allowed to solicit money directly from campaign contributors and are not required to recuse themselves or give notice when a campaign contributor appears before them in court. Typical contributors to judicial campaigns include attorneys, law firms, litigants, potential litigants and special interest groups who may have pending legal cases. In addition, justices and judges who are subject to political campaigns cannot focus their full attention on their judicial responsibilities.

The appointment and retention of justices and judges based on merit rather than the ability to mount a successful political campaign would remove them from partisan politics while maintaining the people's ability to vote whether to retain or remove

a justice or judge. Further, merit selection will give full consideration to the ability, character and qualifications of a judicial candidate before his or her name is placed on the ballot for retention and will allow voters to focus on the candidate's judicial record when casting their ballots.



ARGUMENTS AGAINST PASSAGE

The ability of the public to elect justices and judges in Nevada is an important aspect of democracy. Providing that candidates for justice or judge must be nominated by the Commission on Judicial Selection and appointed by the governor does not ensure judicial competence and integrity. Passage of this question would eliminate the right of voters to initially elect justices and judges.

Appointment removes an essential level of public scrutiny and is an undemocratic way to select justices and judges that ignores the will of the people. This question assumes an uninformed electorate and presumes that a select group of individuals are better qualified to choose those who will sit on the bench. It also promotes a system in which those in the legal profession can recommend colleagues to the highest positions of the judicial branch. Qualified candidates may be excluded from consideration by the Commission on Judicial Selection for arbitrary reasons. Similarly, justices and judges may be unfairly evaluated by the Commission on Judicial Performance.

This question will not eliminate the potential for judicial corruption and political influence. Several states have addressed this concern in other ways. For example, some states prohibit judicial candidates from accepting campaign contributions and others require recusal from cases in which a party or their attorneys have contributed to the justice's or judge's campaign. These alternatives would solve the problem of political campaigning and fundraising without eliminating the right of the people to elect their judiciary. Finally, Rule 4.2 of the Nevada Code of Judicial Conduct currently provides that justices and judges cannot raise campaign funds if they run for election unopposed. ■