

# NEVADA LAWYER

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## GRAPHIC DESIGN

## ADVERTISING INDEX

ALLISON MACKENZIE .....	22	LEGISLATIVE COUNSEL BUREAU .....	BC
ALVERSON TAYLOR MORTENSEN		MARSH .....	31
& SANDERS .....	7	McCORMICK BARSTOW .....	19
ARMSTRONG TEASDALE .....	41	NEEMAN & MILLS .....	15
BANK OF NEVADA .....	39	NEVADA GOVERNMENT CIVIL	
CLARK COUNTY BAR ASSOCIATION .....	8	ATTORNEYS CONFERENCE .....	25
COGBURN LAW OFFICES .....	17	RIGHT LAWYERS .....	11
FASTCASE .....	BC	SANTORO WHITMIRE .....	16
GAMING LAW SECTION .....	18	STATE BAR OF NEVADA .....	48, 49
HUTCHISON & STEFFEN .....	13	THOMSON REUTERS .....	IFC
JAMS .....	23	TOP OF THE WORLD RESTAURANT .....	34
LAWYERS CONCERNED		TRANSITIONING INTO PRACTICE .....	20
FOR LAWYERS .....	30	VERITI CONSULTING .....	12
LAWYER REFERRAL &			
INFORMATION SERVICE .....	24		

# Message from the President

Connie Akridge, Esq., State Bar of Nevada President



## NO INTERMEDIATE APPELLATE COURT, NO JUSTICE, NO FREEDOM

“While the state’s population and resulting court filings have substantially increased in the last 20 years, the access of Nevadans to a court of appeal has not kept pace.”

This year’s theme for Law Day – No Courts, No Justice, No Freedom – emphasizes the importance of the courts and their role in making sure all Americans have access to justice. In Nevada, as in other states, there is a crisis in the ability of the courts to provide access to justice, due to the reduction in court funding and increasing workloads. Nevada courts have, among other measures, been forced to make staff pay cuts, increase filing fees and reduce operating hours to make ends meet. There aren’t any remaining efficiencies that can be squeezed out of our court system.

The most urgent need, however (*as in the need to declare a state of emergency sense*) is the need for an Intermediate Appellate Court (IAC) to be named “the Nevada Court of Appeals.” Nevada is one of just 11 states and the District of Columbia that does not have an IAC, placing the burden on the Nevada Supreme Court to resolve all appeals. While the state’s population and resulting court filings have substantially increased in the last 20 years, the access of Nevadans to a court of appeal has not kept pace.

One-third of the 60,000 cases submitted to the Nevada Supreme Court since statehood was ratified 148 years ago were filed in the past 9½ years. The court had 2,395 filings in fiscal year (FY) 2011, which was almost a 6 percent increase over FY 2010. After disposing of 2,220 cases in 2011, the Supreme Court ended FY 2011 with a pending caseload of 1,689 cases, its highest level since FY 2000.

According to the “Annual Report of the Nevada Judiciary Fiscal Year 2011” (<http://www.nevadajudiciary.us/index.php/supnews/1373-nevada-judiciary-annual-report-released>), compared with the other state appellate courts, Nevada has the second-highest number of filings per justice. While West Virginia reported a higher number of filings per justice, its court has five justices; Nevada has seven. Nevada has the highest number of Supreme Court filings (2,395), which exceeds the combined number of filings for both the Supreme Courts and Courts of Appeals for New Mexico (1,529), Utah (1,491) and Idaho (1,678). When comparing Court of Appeals filings to Supreme Court filings, generally, the Courts of Appeals

have a much higher number of filings, suggesting that an IAC in Nevada would provide greater and more timely access to justice.

The cost of the IAC has been estimated at \$1.6 million a year. Its judges would use existing state Supreme Court buildings and staff in Carson City and Las Vegas. The cost, however, is far greater if the IAC is not adopted. Instead of limiting its attention to cases of first impression, public importance, constitutional questions, cases involving the death penalty, termination of parental rights, election issues, and judicial and bar discipline, our Supreme Court is forced to spend an inordinate amount of time on “error-correction” cases, which could be handled by an IAC. The addition of an intermediate appellate court will improve access to justice, the quality of judicial decisions and the timeliness of appellate court decisions.

Jennifer Smith in the February 9, 2012, issue of the *Wall Street Journal* (<http://blogs.wsj.com/law/2012/02/09/justice-delayed-lawyers-unpaid/>) reported on the American Bar Association’s campaign to alert the bar and the public that slashing the judicial budget/reducing access to justice could end up costing states more money than it saves them in the long run. David Boies, co-chair of the ABA’s Task Force on Preservation of the Judicial System with former U.S. Solicitor General Ted Olson, was quoted in Smith’s story. “If you don’t have a reliable way of enforcing contracts, if you don’t have a reliable way of resolving disputes, you can’t run efficient businesses,” Boies said. “We’re turning into a third-world country in terms of our administration of justice in some areas.”

The IAC has been voted down by Nevada voters in the past. The last time it appeared on the November 2, 2010 ballot as Question 2 and was narrowly rejected by 53 percent of the 670,126 votes cast. During the 2011 session, the Legislature passed Senate Joint Resolution No. 14, which proposes to amend the Nevada Constitution to add a Section 3A to create an IAC. The measure must be passed again by the 2013 Legislature and be approved and ratified by Nevada voters at the 2014 General Election. If passed by voters in 2014, it would take effect on November 25, 2014 and establishment of the court would likely take another two years.

The court would consist of three judges or such greater number as the Legislature may provide by law. The initial three judges would be appointed by the governor for a two-year term. After the initial terms, each judge must be elected to a six-year term. The Chief Justice of the Supreme Court shall appoint one of the judges of the court of appeals to be chief judge.

Working to ensure that our courts may meaningfully provide Nevadans access to justice should be a top priority for all attorneys in the state in furtherance of our duty to preserve the justice system. Please join me in working to insure the adoption of the IAC in the Legislature in 2013 and at the polls in 2014. ■

## Letter to the Editor



This letter is in reference to page 6 of the March issue of the *Nevada Lawyer*. It is my understanding that this article was based on a Nevada Supreme Court press release dated January 27, 2012.

According to the press release and the *Nevada Lawyer*, “The US Department of Justice (DOJ) Access to Justice Initiative has identified the State of Nevada Foreclosure Mediation Program as a model program for initiating foreclosure mediation programs across the United States.”

This is a blatant misrepresentation of the content of the recent U.S. Department of Justice (DOJ) Access to Justice Initiative report on which the press release is based. That report does not refer to the Nevada Program as a “model program”; In fact, the report barely mentions the Nevada program. When it does, it is critical, stating that the Program’s “confidentiality policy” bars disclosing data on program outcomes, calling the policy a “challenge to collecting and analyzing foreclosure mediation data.”

Readers are invited to review the original DOJ report at <http://www.justice.gov/atj/foreclosure-mediation.pdf>.