

ESTABLISHING A NEVADA COURT OF APPEALS MEANS GREATER ACCESS TO JUSTICE AND GREATER STABILITY FOR NEVADA'S BUSINESSES

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This article concerns the issue of amending the Nevada Constitution to allow for the creation of an intermediate appellate court – the Nevada Court of Appeals. Currently, Article 6 of the Nevada Constitution only allows for the establishment of one appellate court, the Nevada Supreme Court. And, all appeals from decisions rendered by Nevada's 82 district courts must be reviewed by the Nevada Supreme Court. This two-tier court structure has resulted in a staggering caseload for the Nevada Supreme Court.



This article begins with a statistical review of the caseload at the Nevada Supreme Court, and then examines the current legislative measure for amending the Nevada Constitution to allow for the creation of the Nevada Court of Appeals – Senate Joint Resolution (SJR) 14. The measure was approved by the 2011 Nevada Legislature and is ready for presentation to the 2013 Nevada Legislature. Passage of SJR 14 by the 2013 Nevada Legislature will place the issue on the 2014 ballot for voters to approve a constitutional amendment, and, if passed, the Nevada Court of Appeals will be established.

The Caseload of the Nevada Supreme Court

The Nevada Supreme Court has one of the heaviest caseloads in the nation, with seven justices addressing more than 2,200 matters annually. This is due to the fact that Nevada is one of only 11 states without an intermediate appellate court, which places the burden of resolving all appeals on the Nevada Supreme Court.¹ Graph 1 shows the overall caseload that the Nevada Supreme Court has reviewed during the past five years:

Graph 1

	2008	2009	2010	2011	2012
TOTAL CASES FILED	2,238	2,152	2,266	2,395	2,500
Cases Disposed by Opinion*	90	98	63	71	92
Cases Disposed by Order	1,869	2,069	2,356	2,149	2,178
Total Cases Disposed	1,959	2,167	2,419	2,220	2,270

Graph 1 also alludes to a side-effect of the Nevada Supreme Court's steadily increasing caseload: namely, the justices have less time to write opinions that develop and clarify Nevada law for the benefit of all litigants, including businesses.²

To fully appreciate the staggering nature of the caseload at the Nevada Supreme Court, Graph 2 provides a side-by-side comparison of Nevada with other selected states with court of appeals:

Graph 2: Characteristics of Nevada and Other Selected States With Court of Appeals*

	Nevada	California	Arizona	Oregon	New Mexico	Utah	Idaho
Population rank	35	1	16	27	36	34	39
COURT OF APPEALS							
Justices	0	105	22	10	10	7	4
Cases filed	22,515		3,907	3,416	881	922	561
Cases per justice	214	178	342	88	132	140	
SUPREME COURT							
Justices	7	7	5	7	5	5	5
Cases filed	2,500	9,562	1,018	1,229	621	619	1,016
Cases per justice	357	1,366	204	176	124	124	203

* All data from respective states' most recent annual report or web page (2010-2012).

Graph 2 demonstrates the following: (1) compared with other similarly-situated appellate courts, the Nevada Supreme Court must deal with the highest number of filings per justice; and (2) compared with other similarly-situated appellate courts, the Nevada Supreme Court must address the highest number of filings (2,500); in fact, its caseload exceeds the combined number of filings for both appellate courts for either New Mexico, Utah or Idaho. Further, as compared to Oregon, the Nevada Supreme Court must review approximately double the number of appeals as the Oregon Supreme Court due to the lack of an appellate court.

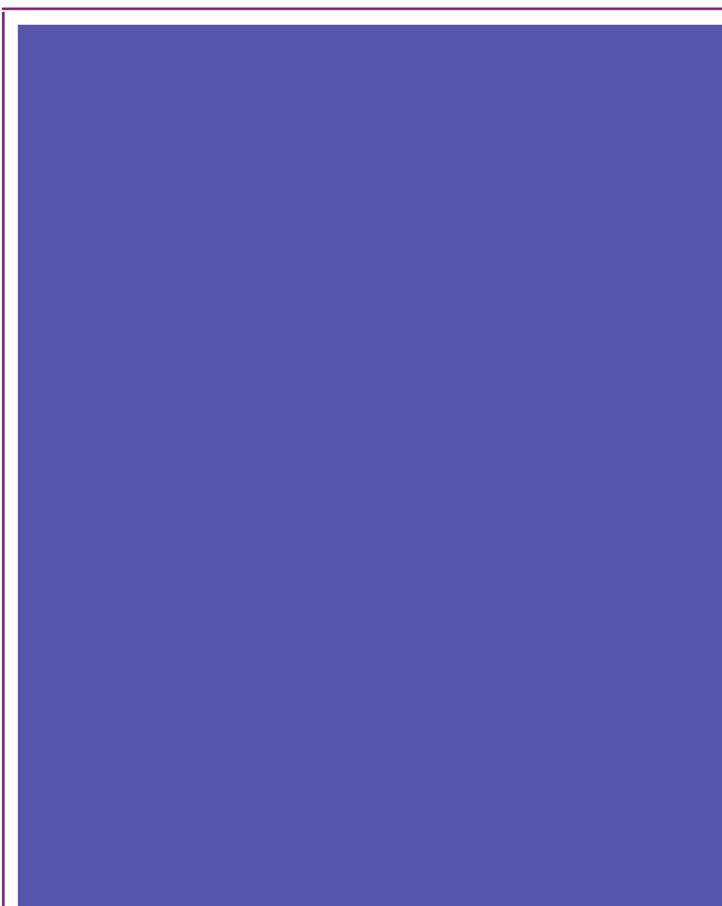
Currently, the Nevada Supreme Court uses multiple administrative measures to review and dispose of its large caseload. These measures include:

1. Case management of appeals through strictly enforced timeframes;
2. Fast-track procedures;
3. Panel hearings with only three reviewing justices; and
4. Settlement conferences.³

Notwithstanding these measures, certain indicators emphasize the need for the Nevada Court of Appeals. Namely, the suggested annual caseload for an appellate judge is 100 cases; however, each justice must currently review over three-fold that recommended number. Furthermore, “[t]he American Bar Association [(ABA)] has proposed time standards for appellate cases wherein 90 percent of all cases should be resolved within 1 year.”⁴ Upon review of the Nevada Supreme Court’s calendar years 2004, 2006 and 2008, the court is not meeting the ABA-proposed time standards because, for each of the three years only 73 percent of cases were disposed within one year. With a caseload of 2,500 appeals, the Nevada Supreme Court would have to dispose of approximately six cases each calendar day to meet the ABA-proposed time standards. Thus, despite its efforts, the Nevada Supreme Court may never be able to meet the ABA proposed time standards due to Nevada’s continually growing population and the increasing appellate caseload.

In sum, the Nevada Supreme Court has benefitted from

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its current administrative measures in response to the state's population growth and the increasing appellate caseload; however, Nevada has outgrown these administrative measures and must now look to creating the Nevada Court of Appeals to assist with improving access to justice.

The Key Components of SJR 14

SJR 14, which is pending before the 2013 Nevada Legislature, includes two key components: (1) the Nevada Supreme Court's business plan for the creation and operation of a cost-effective Nevada Court of Appeals; and (2) within the court's business plan, a "push down" system for the establishment of a Nevada Court of Appeals that provides greater access to justice and greater stability for Nevada's businesses.

The Nevada Supreme Court's Business Plan

The cost to create the Nevada Court of Appeals is estimated at \$1,700,000 based upon the Nevada Supreme Court's business plan. This plan consists of the following components⁵:

- A three-judge court sitting in the Regional Justice Center in Las Vegas
- No facility costs, operating costs of \$1,700,000
- Implementation of the "push down" system
- No need for a new clerk or central staff office
- No added judicial bureaucracy with writ review only to the Nevada Supreme Court

The business plan limits the cost of the Nevada Court of Appeals almost exclusively to the salaries for judges and staff because the new court would reside in the Regional Justice Center in Las Vegas – an existing Nevada Supreme Court space – and the current Nevada Supreme Court Clerk's Office would operate as the Clerk's Office for the new court.

The "Push Down" System

Under the "push down" system, all appeals would be filed in the Nevada Supreme Court and, through proper case assignment, the Nevada Supreme Court and the Nevada Court of Appeals would be assigned certain case types to efficiently address all appeals.¹ Specifically, upon the filing of an appeal, the Nevada Supreme Court would receive

briefing to determine whether the issues raised by the appeal fall under its exclusive jurisdiction. If the case does not raise such issues, the Nevada Supreme Court would assign it to the Nevada Court of Appeals.

As to case assignments, the Nevada Supreme Court would retain exclusive jurisdiction over the following case types:

1. Death penalty and life sentence cases;
2. Appeals raising constitutional claims;
3. All original extraordinary writ petitions within its jurisdiction;
4. Appeals raising issues of first impression;
5. Appeals that would result in the development of our state's common law; and
6. Appeals that require interpretation of Nevada statutes having statewide application.

Also, the Nevada Supreme Court would likely maintain

discretionary review of appeals from the Nevada Court of Appeals and, thus, have the authority to choose whether to grant review based on the case types. Such discretionary power would allow the Nevada Supreme Court to minimize the occurrence of "double appeals."⁷

Alternatively, the Nevada Court of Appeals would function primarily as an "error correcting" court. Thus, the new court would have

jurisdiction over the following case types:

1. Civil and criminal appeals that involve correcting an error, reviewing the appellate record and applying existing law;
2. Petitions for post-conviction relief, except death penalty cases; and
3. Original proceedings concerning challenges to a district court's ruling in a criminal case, except death penalty and life sentence cases.⁸

Importantly, the case types that would fall under the Nevada Court of Appeals' jurisdiction make up the largest portion of those appeals filed in the Nevada Supreme Court. Thus, the "push down" system would provide for a speedy disposition of case types that ordinary litigants face, such as divorces, personal injury claims and foreclosures. The establishment of the Nevada Court of Appeals would likely attract more businesses to Nevada as the new court would allow for a quicker resolution of general business disputes

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SJR 14 vs. the 2010 Ballot Measure

In 2010, Nevadans voted on a similar measure that would have given the Nevada Legislature discretionary authority to create the Nevada Court of Appeals. The measure was presented in State Question No. 2 of the 2010 ballot. While the 2010 ballot measure did not pass, the Nevada Legislature again considered a similar measure in 2011, SJR 14. The measure has been approved by the 2011 Nevada Legislature and is ready for presentation to the 2013 Nevada Legislature. Passage of the measure by the 2013 Nevada Legislature will place the issue on the 2014 ballot for voters to approve a constitutional amendment, and, if passed, the Nevada Court of Appeals will be established.

SJR 14 and the 2010 ballot measure are similar in that they both propose amending the Nevada Constitution to provide for the Nevada Court of Appeals, but the two measures are materially different. The 2010 ballot measure gave the Nevada Legislature the discretionary authority to create the Nevada Court of Appeals, but did not necessarily require the Nevada Legislature to follow the Nevada Supreme Court's business plan for the Nevada Court of Appeals.⁹ SJR 14 creates the Nevada Court of Appeals and grants to the Nevada Supreme Court the authority to establish the jurisdiction of the Nevada Court of Appeals. This grant of authority would allow the Nevada Supreme Court to balance the workload between the appellate courts, and effectively implement the "push down" system.

By the express terms of SJR 14, the Nevada Court of Appeals would become operational as soon as the first three appellate court judges are appointed by the governor, which is projected to be in January of 2015. Those initial judges would be selected through the judicial selection/appointment process and serve until the next general election period. All three appellate court seats would then be elected for a six-year term.¹⁰

It is noteworthy that, although unsuccessful, the 2010 ballot measure was only narrowly defeated as 46.82 percent of Nevada voters favored creating the Nevada Court of Appeals, while 53.18 percent did not. The measure passed in Clark County.

Conclusion

By creating the Nevada Court of Appeals, Nevada's judiciary will be able to succeed in its efforts to efficiently address the overwhelming caseload currently before the Nevada Supreme Court and, thus, provide greater stability for its economic community and access to justice for its citizens. ■

- 1 Annual Report of the Nevada Judiciary 31, Table 4 (2012) (hereinafter "2012 Annual Report"). Much of the data in this article, including the graphical data, is available in the 2012 Annual Report.
- 2 See Minutes of the Senate Committee on Judiciary, 76th Session, 2-3 (April 4, 2011) (hereinafter "2011 Senate Minutes") (The Honorable Michael L. Douglas, then-Chief Justice of the Nevada Supreme Court, explaining that "the business community would like to see more written [opinions]. They would like to understand the predictability of the law in Nevada. Having an [intermediate] appellate court would give us more time to weigh the cases and to write opinions").
- 3 Robin L. Sweet, *Jurisdiction of the Proposed Nevada Court of Appeals* 14-15 (May 2009) (hereinafter "Sweet Paper").

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- 4 *Id.* at 21 (citing American Bar Association, *Standards relating to appellate courts*: ABA, Judicial Administration Division, *Standards of Judicial Administration*, v. 3, 1994, section 3.52).
- 5 2011 Senate Minutes at 3, Exhibits C & D; see Report to the 74th Regular Session of the Nevada State Legislature, 2007, Regarding the Creation of the Nevada Court of Appeals 34 (March 2007) (hereinafter “2007 Legislature Report”) (discussing the Nevada Supreme Court’s jurisdiction over writ review).
- 6 2007 Legislature Report at 35-36 (noting that the Nevada Supreme Court already “screens all appeals for purposes of making panel assignments”).
- 7 *Id.* at 34-35.
- 8 *Id.* at 36-37.
- 9 2007 Legislature Report at 32 (“The legislature may provide by law for the creation of a court of appeals.” (Emphasis added)); see also November 2, 2010, Nevada Ballot, Nevada Appellate Court Amendment, Question No. 2 (empowering the Nevada Legislature to create a Nevada Court of Appeals without expressing any limitations or guidance as to how the new court would be established or operated).
- 10 Senate Joint Resolution 14, § 3A.2.



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