

CONVERSATION WITH THE CHIEF JUSTICE

BY JENNIFER SMITH, NEVADA LAWYER STAFF

Chief Justice Michael A. Cherry was first elected to the Nevada Supreme Court in 2006, following several years of service in judicial positions and a long career in private practice. A native of St. Louis, he began his Nevada legal career in 1970. He assumed the administrative post of Chief Justice on May 7, 2012, to conclude in January 2013. Cherry spoke with *Nevada Lawyer* magazine on the current challenges and goals of the Nevada judiciary, including economic challenges, the need for an intermediate court of appeals, challenges and opportunities for newly admitted attorneys, and more.

NL: What do you find the most challenging about being Chief Justice?

Justice Cherry: The most challenging thing is also the most challenging for all of us – the case load is just enormous. We’re probably the busiest ... court in the country, because Nevada doesn’t have a court of appeals. ... One day we can be doing a death penalty case, the next day we could be doing a products liability case with a million-dollar verdict and the next day we could be doing a revocation of a driver’s license. So, managing the case load is probably the most difficult thing.

The second most difficult thing that we run into is the fact that our employees are furloughed and have a reduction in their base pay because of the financial worries in this state, and it’s tough to keep people.

NL: What personal goals have you accomplished during your term as chief?

Justice Cherry: One of my goals was to fill all of the vacancies that we had. ... With high unemployment, I felt that was definitely an issue. There’s no reason for us to have vacancies when the state has allocated us money to pay for people in those vacant positions.



NL: Can you think of any other ways that the economy has impacted the courts?

Justice Cherry: Everything we do is impacted by the economy. We’re not a little state anymore. [It’s] not what it was when I moved here in 1970 – it’s really changed. As an example, when I came here in 1970, there were 18 district court judges, now there are 82. And there are more than 100 courts of limited jurisdiction.

NL: What sort of adaptations has the court had to make to manage all these changes?

Justice Cherry: Technical changes – we live and die by e-mails, by iPhones, by cellular phones. If it weren’t for technology, I don’t think we could handle it.

NL: How is technology changing the way that attorneys interact with the courts?

Justice Cherry: They didn’t have e-filing when I first practiced law, and now it’s everywhere. It’s in all the courts; it’s very important.

And we do a lot of videoconferencing [and] teleconferencing. An attorney in Reno who has a court appearance in Las Vegas [used] to fly down [to Las Vegas] for a court appearance that may only last a few minutes. It was a waste of time. One of the things we did [when] I was presiding justice of the Northern Panel ... we decided that if the [court was hearing] overflow cases from Clark County, instead of [the attorneys] coming to us, we came down here. The lawyers loved it.

NL: What sort of feedback have you been getting from attorneys using videoconferencing and teleconferencing?

Justice Cherry: They're much in favor of it, especially when you have a Washoe or Clark County attorney that's going to the rurals. If they can do something by video or by teleconference, it saves all that time. We have a vast state. I didn't realize how big it was until I went from Carson City to Elko or Winnemucca or West Wendover.

NL: What can you tell me about how the courts have been using social media?

Justice Cherry: When I went to the Conference of Chief Justices in Atlanta in July 2011 ... the whole topic of the Conference of Chief Justices was social media. We have some constraints with ... what we can say, if there's a pending case ... But certainly something could go out over social media about what's pending. And in fact, if you ... take a look at our website, it's incredible. Not only do we have our opinions published, but we have our unpublished orders, so that people can see everything that's going on in this court. ... It's just incredible.

Justice Cherry: Here are some statistics about our work load:

As of August 31, we had 2,089 cases pending, and since January 2012 we had 1,661 cases come in and 1,371 dispositions. So, we're loaded with work. You have to remember also that the Supreme Court Settlement Judges settle anywhere from 40 to 60 percent of the cases that come before them. ... Imagine if we had those cases, we wouldn't know what to do with ourselves.

Also, senior judges do a lot of settlements throughout the state, especially in family court, where they have a tremendous percentage of settlements. In Clark County, senior judges have a 76 percent settlement rate. It's incredible. ... So, but for the fact that there are all these settlements, and the fact that a lot of criminals plead guilty, we'd be overwhelmed. ... We're too busy right now. We're not a little state anymore and people have got to realize that when we vote on the court of appeals in 2014.

NL: What would you say to change people's minds if they oppose the creation of a court of appeals?

Justice Cherry: I'd tell people that justice delayed is justice denied ... sometimes we have cases that are so old, we have birthdays!

... We're the largest state without a court of appeals. There are somewhere between eight [and] 11 states that do not have a court of appeals. As an example, Indiana has five Supreme Court justices, and we have seven, but Indiana has 15 court of appeals judges. Fifteen!

We've come up with push-down plan. In other words, we'd decide what jurisdiction the court of appeals has, and that would be a final judgment in the cases heard by the court of appeals. Then we can ... hear the cases that we want to hear, just like the nine in Washington. Wouldn't it be great if we get to decide what we wanted to hear from the court of appeals?

[The court of appeals has] to pass the Legislature again in 2013. It passed in 2011, and it'll hopefully pass in '13, although there [are] a bunch of brand-new legislators and we don't know what their position is going to be ... We're going to have to educate them, and hopefully it'll pass the Legislature.

Then we have to take it to the voters again. ... The court of appeals passed in Clark County, but it failed in the rurals

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and Washoe. So, as a county commissioner said in Winnemucca, we did a terrible P.R. job. That's because the [majority of] P.R. [that year] was on retention.

NL: So, you feel the message was diluted for the public?

Justice Cherry: Definitely.... In 2014, it'll be a busy election, and this will be on the ballot, hopefully.

We've got a courtroom [ready] for [the appellate court, in Las Vegas], and we've got a courtroom up north, in Carson. And the sad part is by the time we get three court of appeals' judges, we'll probably need six, or maybe nine.

NL: What advice do you have for newly admitted attorneys?

Justice Cherry: It's going to be tough. If [you] get admitted in October of 2012, whether in Reno or Las Vegas, and there are no jobs, what do [you] do?

I hope that the state bar will be able to get mentors for all of the new attorneys, so, even if they can't get a job and decide to hang up a shingle [they'll have some guidance]. And believe it or not, you used to be able to do that – you just hung up a shingle. I did it with Ted Manos.... We were general practitioners.

In this day and age, you ... have to have some type of specialization.... The problem is going to be mentoring.... I'm really worried about it. I've got two worries, the court of appeals and this.





NL: What can these attorneys do to best set themselves up for success?

Justice Cherry: Find some people that are compatible, that can help each other out, and that are patient with each other: a love affair between law partners. Try to do the best they can to set up practices.

And find a niche in the various communities. Some people might want to go to the rurals. Las Vegas is not a small town like when I came here in the '70s. Now it's [got more than] 2 million people. It's a major metropolitan area. Reno's [got more than] 400,000. Maybe some of the places in the rurals are good places to look.

NL: What can new attorneys or solo practitioners do to avoid common mistakes?

Justice Cherry: Call the [Ethics Hotline] at the state bar.... I've been to some of the training sessions for discipline with David Clark and his team, and the fact that they will answer questions [when] you call in ... is great. In fact, I did it, even when I was an experienced lawyer. ■

State Bar Ethics Hotline: (800) 254-2797

Attorneys and their staff with questions regarding ethics issues and the Rules of Professional Conduct can contact the Office of Bar Counsel for informal guidance during any business day. The phone number for the State Bar's ethics hotline is **(702) 382-2200** or toll free **(800) 254-2797**.

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