



CHIEF JUDGE DOUGLAS E. SMITH

Justice Court, Las Vegas Township

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, SEVENTH FLOOR
BOX 552511
LAS VEGAS NV 89155-2511
(702) 671-3353 -- OFFICE
(702) 671-3352 -- FAX

June 19, 2007

FILED

JUN 21 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Chief Justice Maupin
Nevada Supreme Court
201 S. Carson Street, Suite 201
Carson City, NV 89701

ADKT 297
ADKT 413

Dear Chief Justice Maupin:

I am sorry this letter is so late. I tried to change some personal matters to allow me to travel to Carson City, but was unable to accomplish the task.

I appreciate the position of the Supreme Court in making any proposed sweeping changes.

In essence, I support Judge Dahl's attached letter regarding the issues before this court. I believe the Judicial Council provides important, needed feedback and communication between the Supreme Court and lower courts. I firmly believe feedback is a protectable treasure to administrative arms of government and request that you modify the meeting times of the council without total elimination of the organization.

Secondly, I truly believe that citizens' First Amendment rights must zealously be protected by the courts. I would request you not to hinder our free speech rights, even slightly.

I am positive this Supreme body will do the right thing in the protection of our basic free speech rights.



Sincerely,

[Signature]

Chief Justice of the Peace

Attachment

07-28511



JUDGE STEPHEN J. DAHL

Justice Court, North Las Vegas Township

2428 NORTH MARTIN LUTHER KING BOULEVARD

NORTH LAS VEGAS, NEVADA 89032-3100

(702) 455-7804 -- OFFICE

(702) 455-7831 -- FAX

June 18, 2007

Chief Justice William Maupin
Supreme Court Building
201 South Carson Street, Suite 300
Carson City, Nevada 89701-4702

Dear Chief Justice Maupin:

I am writing, as president of the Nevada Judges' Association, to provide comments concerning matters that will be heard on the Supreme Court's June 21st administrative docket. We want to provide some thoughts on both the future of the Judicial Council, and the proposed restrictions on campaign activities for judicial elections. I hope to address both in this letter.

As to the future of the Judicial Council, while there are obviously different opinions among our membership, it appears to me that most of the members of the Nevada Judges' Association feel that the Judicial Council and the regional councils have not been especially effective in responding to or addressing the needs and concerns of the Nevada judiciary. Opinions range from a rather harsh, "It's a waste of time," to a more sympathetic, "It doesn't do much, but it's the best (only) thing we have for communication between the judiciary throughout the state." If I were to attempt to distill the many opinions I have heard about the Judicial Council, I would say that it has not been able to function effectively as an independent body of judges trying to address issues and provide guidance to the judiciary statewide. The main reason for that is anticipated in one of the questions contained in the Order Scheduling Public Hearing to Review the Operation of the Judicial Council of the State of Nevada. Question 2 in that Order raises the question of "whether the Nevada Judicial Council and Regional Judicial Councils remain viable organizations or have the Nevada District Judges' Association and the Nevada Judges' Association rendered the Council obsolete?" In my opinion, and I believe the opinion of most of NJA's membership, the answer to Question 2 is a qualified "yes." I say "qualified," because I also believe that most of our membership would prefer having the judicial councils as opposed to having nothing at all.

Even though the Judicial Council as currently constituted may not be fulfilling its intended purpose, we would suggest that abolition of the council is not the answer. There still needs to be a way for the supreme, district and limited jurisdiction courts to communicate together on a regular and organized basis, and to try to work together in addressing the needs and concerns of all the judges in our state. Many of those needs and concerns are shared by all of us, and could best be addressed by an organized and concerted effort from the Supreme Court and the two major judicial associations. We would suggest that the Judicial Council be reorganized to get those parties together, and that the membership of the State Judicial Council be composed of the Chief and Vice-Chief Judges of the Supreme Court, two or three officers from the District Court Judges' Association, and two or three officers from the Nevada Judges' Association (soon to be the Nevada Judges of Limited Jurisdiction). The Council would continue to meet on at least a quarterly basis, and the AOC would continue to provide administrative support to the council. The Council could continue to address those concerns set forth in SCR 9. Members of any committees would be selected by the Supreme Court and the associations. The associations could thereby select representatives for the committees who are already most closely working with the issues in question for the respective associations. I don't know that the regional councils would need to continue, in that the interests of the judges from the various regions of the state should be addressed to their respective associations, and could be addressed by the State Judicial Council. This would also help to focus the attention of the judges' associations on the concerns listed in SCR 9.

We hope that the Court will give positive consideration to this proposal. We believe that it will help to ensure continued, and hopefully improved, communications between all the courts in Nevada. It will also encourage the judges in the different courts in Nevada to work with their respective associations, and for those associations to work with all of its members, so that the concerns of judges statewide can be addressed and, hopefully, resolved.

Moving on to the proposed changes to Canon 5 and the Commentary, we realize that there are expectations that accompany the legislature approving a new campaign filing period for judges. To the extent that those expectations include fundraising limitations, as set forth in the proposed amendments to Canon 5 and the Commentary, we support that change, although, to be honest, those of us who have been around for a while and perhaps have some money in reserve for future campaigns, are probably more supportive than those judges who are not in that position. Nevertheless, we understand the need to make some changes, and do not oppose limiting campaign fundraising as proposed.

We do have concerns, however, in that the proposed amendment could be interpreted to go well beyond limits on fundraising. The proposed change to Canon 5C(2) states, "A candidate who is not opposed in an open election may not solicit contributions and **public support** for the candidate's campaign..." (Emphasis added.) While the proposed Commentary changes deal almost exclusively with the issue of campaign fundraising, and the Petition seeking the rules change addresses only the issue of fundraising (see paragraphs 4 and 5 of the Petition), the term "public support" in the proposed amendment to the Canon could reasonably be interpreted to include any activity, including simple speech, that is designed to secure any kind of public support for a candidate. Would a candidate be allowed to talk to his or her neighbor about an upcoming

re-election campaign? Could you mention a possible upcoming election in your Christmas newsletter that was sent to residents of Nevada? Could a potential candidate who is considering running against an incumbent judge test the waters by discussing that possibility with friends or colleagues, or would that potential candidate have to keep it a secret until after filing for office? While Canon 5 encourages candidates to conduct as much business as possible through a committee, how could candidates form committees without, at the same time, soliciting "public support" for their campaigns? That's probably enough hypotheticals, but I think you can understand the concerns that any attempt to restrict simple speech in connection with a potential election campaign could raise. Additionally, it would be the position of the Nevada Judges' Association that attempts to limit speech in that way would violate the First Amendment.

We request that the language of the proposed amendment to Canon 5 be clarified so as to draw a clear distinction between fundraising activities, which would include seeking future donations, and the simple speech entailed in discussing a potential election campaign with advisors, friends, potential committee members, etc. We believe such speech is protected by the First Amendment, and that there is no reason to restrict such speech, even in light of the recent legislative changes to filing dates for judicial campaigns.

The Nevada Judges Association appreciates your consideration of these matters. We also appreciate the support you have shown for our association and the limited court judges in the State of Nevada. We look forward to a continued good working relationship with the justices of the Nevada Supreme Court and the other judges in the State.

Sincerely,



Judge Stephen Dahl
President, Nevada Judges' Association

cc: Justice Mark Gibbons
Justice James W. Hardesty
Justice Ronald Parraguirre
Justice Michael A. Cherry
Justice Nancy M. Saitta
Justice Michael L. Douglas
Janette Bloom, Clerk of the Court