January 1, 2019

Ms. Robin Sweet
Secretary, Commission on Judicial Selection
Nevada Supreme Court
201 S. Carson St., Suite 250
Carson City, Nevada 89701

*Re: Selection of Finalists for Appointment to Court of Appeals Vacancy*

To the Commission on Judicial Selection,

I'd like to bring to your attention some concerns regarding three candidates that have applied for the vacancy on the Court of Appeals. This organization conducts statistical analysis on judicial officers. One of the computations[1] made public is the judges' "error rate on appeal[2]". It is a judge's role to interpret and apply existing law, and it is an appellate court's role to ensure as such by scrutinizing inferior court's decisions and reversing decisions or issuing writs where appropriate. Legal errors undermine the public's confidence in the judiciary and can expose incompetence and bias.

Mr. Charles Hoskin, Mr. Vincent Ochoa, and Mr. Jerry Wiese, each have error rates of 35.48%, 40.00%, and 43.96%; respectively. With respect to the two judges of the family division, this is particularly troubling considering that existing law affords them wide latitude and discretion. They are entitled to a tremendous amount of deference yet they struggle to properly apply the law. With respect to Mr. Wiese, as a non-family division judge he enjoys significantly more feedback from our appellate courts, yet despite 210 dispositions he is more prone to error than even the family division judges (which are scrutinized considerably less often on appeal.) Over time, Mr. Hoskin and Mr. Wiese's error rates have stagnated, and Mr. Ochoa began to worsen around the year 2016.

To underline the contrast, Court of Appeals Judges Jerome Tao and Michael Gibbons have error rates of 17.19% and 28.95%; respectively. Justices[3] Lidia Stiglich, Abbi Silver, Elissa Cadish, James Hardesty, Ronald Parraguirre, and Mark Gibbons, have error rates of 06.49%, 24.56%, 13.62%, 15.17%, 28.57%, 22.39%; respectively.

Our appellate courts need judges who understand basic and complex legal principles, and more importantly, their role in the legal system. When judges render legal decisions based on their subjective idea of what the law is, rather than doing research and deferring to legislative intent and appellate precedent, they become a law unto themselves. A judge who consistently fails to render

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[1] "Correct" decisions consist of affirmance on appeal and the denial of an original writ petition (if based on the merits.) "Erroneous" decisions consist of reversal on appeal and orders granting an original writ petition. A dismissal, confession of error, or denial of a writ petition (if not based on the merits) is omitted from the computation. Orders affirming in part and reversing in part are computed as "erroneous." Some data is still being compiled, but this is primarily older cases which have not yet been uploaded to the Supreme Court of Nevada's website.

[2] Which includes writ review under certain circumstances.

[3] Data for Justice Kristina Pickering could not be compiled.

decisions that are consistent with the law at the trial level, will likely show the same ignorance or ambivalence towards it at the appellate level.

I understand this Commission must comparatively assess the candidates, and it may be the case that the remaining candidates are less appropriate for the vacancy than one or more of the presiding judges who have applied. I have no comment in favor of or against any of the other candidates.

If, regardless, this Committee is inclined to include at least one presiding judge to be forwarded as one of the three finalists to the Governor for appointment, I would urge forwarding Mr. Hoskin.

As a disclaimer, I would like to make clear that Mr. Hoskin, Mr. Ochoa, and Mr. Wiese have never presided over any personal matter, nor am I aware of them having presided over any matters concerning friends, family, or staff.

Sincerely,

Alexander M. Falconi
Administrator of Our Nevada Judges