

Dear Chief Justice Parraguirre and Justice Hardesty,

As mentioned previously, I will be out of the country from October 20th to November 6th. While I will do my best to attend the next ADKT Commission meeting scheduled for November 1st, I may not be able to do so based on my location and potential connectivity issues. Since I may not be available to provide any requested input or answer questions raised by the ADKT Commissioners at the next meeting, I decided to send you this email which I hope will further facilitate the ADKT Commission's discussions on November 1st.

First, I would like to briefly correct for the record the names of the NV Commissioners referenced in the Meeting Summary located in Tab 1 of the Meeting Materials. Mr. Armstrong's first name is Karl, not Paul, and Ms. Humphrey's first name is Stefanie. See Tab 1, p.5 of the Meeting Materials, Section IV (first and third bullet points down).

Second, on behalf of the NV Commission, I would like to inform the ADKT Commission that the NV Commission further discussed Judge Zimmerman's reduced/consolidated procedural rule proposals and Judge Riggs' proposals set forth in the September 23rd Meeting Materials at its quarterly meeting held on October 7th. Please note that the NV Commission's current position on these issues is consistent with the NCJD Comments set forth in Tab 2 of the November 1st Meeting Materials relating to Judge Zimmerman's reduced/consolidated procedural rule proposals. As for Judge Riggs' proposals set forth in her first letter dated September 8, 2022, the NV Commission's current position is consistent with the responses attached to my email to you on September 28th which is also attached to this email for your convenience. Moreover, I noticed in the November 1st Meeting Materials that Judge Riggs submitted an *updated* letter of her proposals, dated October 17, 2022. The only section of this updated letter that the NV Commission has not previously provided a response to is Judge Riggs' additional proposal set forth in the last sentence of paragraph 4 relating to additional qualifications required to appoint members to the NV Commission. The NV Commission believes that these additional qualifications further reduce the available applicant pool, thereby creating even more obstacles to securing appointments to the NV Commission.

Lastly, with respect to the "Summary of Meeting..." attached to the November 1st Meeting Materials, relating to an August 18th meeting among myself and Judges Riggs, Bateman and Higgins, please note the following:

Under paragraph 1, it states that "[t]he solution would appear to be best accomplished by an amendment to the Canons of Judicial Conduct." The NV Commission does not agree with this conclusion. As discussed in my Memorandum, the Constitution confers jurisdiction on the NV Commission over "judges" only, not non-judicial candidates. Amending the Code of Judicial Conduct would not remedy the constitutional limitations on the NV Commission's jurisdiction set forth in the Nevada Constitution.

Under paragraph 2, it states that "[w]e ended with an agreement by Mr. Deyhle that he would present the idea of "voluntary" bifurcation to the voting members of the NCJD." As the Article 6 Commission noted in its Report, bifurcation is not possible without a constitutional amendment. The NV Commissioners believe that they have a responsibility, conferred upon them via the Nevada Constitution, to sit and make determinations during judicial discipline proceedings/trials, not "voluntarily" abdicate those responsibilities to others who have not been authorized to carry them

out. This proposal would also require the appointment of even more members to the NV Commission which has been very problematic as further discussed during these ADKT proceedings.

Under paragraph 3, the NV Commission would agree to change the current designation of “prosecuting officer” in its Procedural Rules to “special counsel.” However, this would also require that the Nevada Rules of Appellate Procedure be revised as well, since it also refers to “prosecuting counsel” and “prosecuting officer” in connection with judicial discipline proceedings. See NRAP, Rule 3D.(d) and (g), respectively.

Under paragraph 5(b) (“Rule 12.1”), it states that “Mr. Deyhle says the NCJD already does this pursuant to Procedural Rule 12.4.” Please refer to the NCJD Comments (“Rule 12.1”) set forth in Tab 2 of the November 1st Meeting Materials, p.11.

Under paragraph 5(d) (“Rule 26”), it states that “Mr. Deyhle considers this problematic.” Please refer to the NCJD Comments (“Rule 26”) set forth in Tab 2 of the November 1st Meeting Materials, p.12.

Thank you for your time and consideration of these matters.

Best regards,

Paul

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**[NCJD Executive Director Paul Deyhle's responses given during his
presentation to the ADKT Commission on September 23, 2022,
regarding Judge Riggs' proposals set forth in Tab 3 (attached)
of the ADKT Meeting Agenda]**

Paragraph 1: I do not believe the NV Commission would object to such a finding but would request that the language “where possible” be inserted after “the Commission’s members” in the 3rd line down. As you know, based on prior discussions during these ADKT proceedings, as well as what is discussed at length in my Memorandum, it may not be possible for such NV Commission members to represent, at all times, the diversity of NV citizens and judges. This just reflects reality and the nature of appointments to boards and commissions throughout the country. The language of Paragraph 1, as currently written, in Tab 3 would be tantamount to proportional diversity quotas which do not exist in any jurisdiction in the U.S. as confirmed by Cynthia Gray of the National Center for State Courts.

Paragraph 2: As mentioned earlier in my presentation and as further addressed in my Memorandum, the NV Commission does not agree with the constitutionality of imposing term limits on the NV Commission’s regular members by statutory enactment as set forth in Tab 5 of the Meeting Materials, which represents BDR-437 that was submitted to the Legislature as a placeholder in the next legislative session.

Paragraph 3: With respect to the first sentence of this paragraph regarding informing the appointing authorities of vacancies or expiration of terms of members, the NV Commission already does this. However, with respect to the second sentence regarding prohibiting the NV Commission from requesting or recommending that an appointing authority appoint a specific person, I believe the NV Commission would characterize such a request as being overreaching, inappropriate and intrusive of our independence as an organization.

There is nothing wrong with requesting that a current member be reappointed to the NV Commission, particularly when that member has requested and is willing to be reappointed. This would likely be the preference of the NV Commission as well as any other board or commission in the State given the importance of continuity, breadth of experience and historical knowledge that such members bring to the boards and commissions on which they serve. Again, I can’t stress this enough, it is ultimately up to the appointing authorities to determine who is appointed or reappointed, not the NV Commission.

Paragraph 4: I do not believe the NV Commission would object to the incorporation of general diversity language in its staff letters to appointing authorities notifying them of vacancies or term expirations.

Paragraph 5: I do not believe that the NV Commission would object to this Paragraph. As discussed in my Memorandum, the appointing authorities can carry out their respective appointing responsibilities in any manner that they see fit. It is not up to the NV Commission or any other board or commission to dictate how the Supreme Court, State Bar Board of Governors or the Governor appoints members.



SECOND JUDICIAL DISTRICT COURT

TAMMY M. RIGGS
DISTRICT JUDGE
DEPARTMENT THREE

STATE OF NEVADA
WASHOE COUNTY

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September 8, 2022

Chief Justice Parraguirre
Nevada Supreme Court
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Carson City, NV 89701

Associate Chief Justice Hardesty
Nevada Supreme Court
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Jamie Gradick, Rural Courts Coordinator
Nevada Supreme Court
Administrative Office of the Courts
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Re: **Recommendations to ADKT 0582 Commission Regarding Diversity, Equity and Inclusion**

Dear Chief Justice Parraguirre and Associate Chief Justice Hardesty:

Following are the recommendations summarized in the conclusion of my presentation to the ADKT 0582 Commission on August 12, 2022, "*Gender Equity, Terms of Office, and Process for Appointment of Commissioners for the Nevada Commission on Judicial Discipline.*" Per your request, they have been prepared in proposal form in anticipation of being voted upon (aye or nay) by the ADKT 0582 Commission at a future meeting.

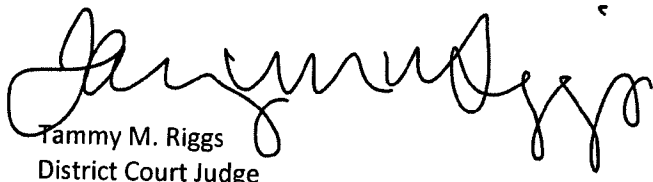
- 1) The ADKT 0582 Commission makes a finding that it is in the interest of fairness to the public and to judges who are subject to the processes of the Nevada Commission on Judicial Discipline that the Commission's members represent the diversity of the citizens of the State of Nevada and the judges who appear before it.
- 2) The ADKT 0582 Commission recommends that NRS 1 be amended to require that the authorities who appoint members to the Nevada Commission on Judicial Discipline (the Nevada Governor,

the Board of Governors of the State Bar of Nevada, and the Nevada Supreme Court) may not appoint any person to the Commission to serve more than two consecutive full terms.

- 3) The ADKT 0582 Commission recommends that the Nevada Commission on Judicial Discipline (NCJD) amend the Procedural Rules of the NCJD, pursuant to Rule 36, to include a rule stating the following: "When a Commissioner's term is expiring, or when a vacancy occurs on the Commission, the Executive Director will inform the appointing authority in writing and/or via electronic communication of the expiration/vacancy. The Executive Director may not advise, recommend, or request that the appointing authority appoint a specific person (including the incumbent) to fill the expiring term/vacancy."
- 4) The ADKT 0582 Commission recommends that the Nevada Commission on Judicial Discipline adopt a policy that, at the time a term expiration/vacancy on the Commission is announced to the appointing authority, the Executive Director inform the appointing authority that the Commission seeks members who reflect the diversity of the people of the State of Nevada, the State Bar of Nevada, and the Nevada Judiciary.
- 5) The ADKT 0582 Commissions recommends to the Nevada Governor, the Board of Governors of State Bar of Nevada, and the Nevada Supreme Court, when informed by the Executive Director of the Nevada Commission on Judicial Discipline that a Commissioner's term is expiring or that a vacancy has occurred, to advertise the vacancy through established modes of communicating with members of the public, State Bar of Nevada, and members of the Nevada Judiciary prior to making the appointment.

I am available to answer any questions that you may have about these proposals at judge.riggs@washocourts.us, or (775) 328-3189. Thank you and the ADKT 0582 Commission for your consideration.

Sincerely,



Tammy M. Riggs
District Court Judge