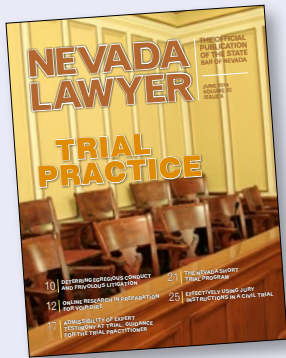


LETTERS TO THE EDITOR

NEVADA LAWYER, June 2014



The “Trial Practice” Issue of the *Nevada Lawyer* included an excellent review of the “Nevada Short Trial Program” authored by Chris A. Beecroft, Jr., Alternative Dispute Resolution Commissioner for the Eighth Judicial District Court. In his article Commissioner Beecroft mentioned that the United State District Court for the District of Nevada has similarly adopted its own rules regarding the implementation of a federal court short trial program. He describes the

federal program as “virtually copying the Nevada short trial rules.” Commissioner Beecroft is correct that the federal program was indeed patterned after the Nevada state program. The federal court’s Short Trial Committee concluded early on that Nevada practitioners were already familiar with the successful state program and where possible the federal program should parallel the state rules. There are, however, certain procedural and substantive distinctions between the two expedited trial programs that practitioners should note:

- Unlike the state program which is initially mandatory in many if not most cases and otherwise voluntary, the federal court program is entirely voluntary, requiring the consent of all parties as well as the approval of the judge assigned to the case.
- The state court program utilizes licensed attorneys who have been appointed pro tempore judges for the short trial program. Trials in the federal program are conducted by a district or magistrate judge.
- Under the state program, litigants are required to remunerate the *pro tempore* judges at the rate of \$150 per hour (with a cap of \$1,500) plus expenses incurred up to \$250. There is no such additional cost to the litigants under the federal program.
- With certain exceptions, federal short trials are to be conducted within 150 days of the assignment of the presiding judge versus 120 days under the state program (or 240 days if the case is entered into the program by stipulation).
- Under the state program, the length of the trial is limited to one day, three hours for each side. Under the federal program, unless otherwise modified by the presiding judge, each side is allowed up to nine hours. Accordingly, if both sides used all of their allotted time, a case in the federal program might span as many as three days, making the program accessible to lawsuits more complex than the typical case handled in the state program.
- While juries in the state program can consist of four, six or eight jurors, the federal short trial jury is comprised of six members.

- In the state program, there is no formal reporting of the trial proceedings unless the parties request and pay for it. In the federal program, all trial proceedings are formally reported.
- Grounds for post-trial motions in the federal program are more limited than in the state program. The federal short trial rules were recently amended (March 13, 2014) and may be found on the District Court’s website, www.nvd.uscourts.gov. The federal program has two administrative judges: Magistrate Judge George W. Foley, Jr., who handles the unofficial southern division of the district, and Magistrate Judge William G. Cobb, who oversees the northern division.

Thank you for bringing the recent adoption of short trial rules in the federal court to the attention of your readers. We hope that the program will be embraced as an important mechanism in appropriate cases for “securing the just, speedy, and inexpensive determination” which FED. R. CIV. P. 1 directs the bench, bar and parties work to achieve in every action.

William G. Cobb,
U.S. Magistrate Judge
Short Trial Program Administrator
Unofficial Northern Division
District of Nevada

George W. Foley, Jr.
U.S. Magistrate Judge
Short Trial Program
Unofficial Southern Division
District of Nevada

NEVADA LAWYER, June 2014

I write to comment upon what appears to be a one-sided approach to publishing letters to the editor. In the June edition, you devoted almost four pages to letters that were critical (some highly) of Alan Lefebvre’s May column on the Attorney General’s decision to withdraw the state’s already-filed brief supporting Judge Jones’ decision upholding Nevada’s constitutional ban on gay marriage. This was curious to me, because I know that many lawyers not only agree with Mr. Lefebvre’s opinion on the AG’s role, but commend his use of the president’s column to present thought-provoking topics. Did *Nevada Lawyer* receive any letters defending Mr. Lefebvre? If so, why were they not published?

No lawyer in Nevada knows Mr. Lefebvre as well as me. I was his partner for many years. I began working for him as a IL, and 14 years later, I continue to work with him closely. Many lawyers have approached me praising Mr. Lefebvre for expressing his opinions and using his column for thoughtful debate. This is why I am curious about the letters you chose to publish. If you have received nothing but venomous criticism, then it is time you received (and published) something else.*

Like anyone who read the May article (and reads the news in general), I have my own opinions. Could the tone of Mr. Lefebvre’s May article be offensive to some? Of course. But are some vilifying Mr. Lefebvre and making presumptions about his character and intellect that are untrue and not based on personal experience? Yes.

Not everyone, of course, would agree with Mr. Lefebvre’s opinions or his manner of expressing them. But can anyone seriously argue that Mr. Lefebvre’s May column represents the policies of the entire board, let alone the opinions of the entire bar? And can any lawyer seriously argue that the role of the AG is so clear pursuant to constitutional and statutory law as to make her decision beyond debate or criticism?

**Nevada Lawyer* published all Letters to the Editor received by the publication dates for the June 2014 and July 2014 issues.

Whether you agree or disagree with Mr. Lefebvre's May column, he must still be praised for using the column for a useful purpose. It is not just "fluff" that readers skip past on their way to finding out if any of their friends or adversaries have gotten into ethical trouble. The June column on the challenges of private practice is another good example. (It just probably won't incite letters, even though managing partners of large law firms are likely "offended," too.) Here's to using *Nevada Lawyer* to spur lively debate. I hope it continues in the future, but it won't if controversial columns are met with a published response that is universally hostile.

Matthew J. Christian, Esq., Las Vegas

NEVADA LAWYER, May 2014

I am writing to express my dismay and concern about the May "Message from the President" column in the *Nevada Lawyer* Magazine.

Mr. Lefebvre is entitled to his personal opinion with respect to the issue of same sex marriage. He is entitled to express that opinion in his personal capacity, in the voting booth and in writing. However, it is deeply troubling to me, as a member of the State Bar of Nevada, that he used the forum of *Nevada Lawyer* Magazine, and his role as president of the state bar to express what is clearly a deeply held personal opinion. His column was dripping with sarcasm, vitriol and animus.

Given that the state bar is a mandatory organization for our profession, I do not have a choice to revoke my membership and stop paying my dues in response to the hateful message from the president of the organization. With that reality, I'm hopeful that the Board of Governors will consider a formal retraction and apology.

Thank you.

Rayna Brachmann, Esq., Reno

NEVADA LAWYER, May 2014

Thank you for your message about "tolerance." Unfortunately, I had overlooked the "Message from the President" in the May 2014 Nevada Lawyer. [The state bar's] email [from May 22] drew my attention to Mr. Lefebvre's comments, and I thank you for doing so.

Mr. Lefebvre's comments are courageous and he is on the side of truth, not the popular trendline. The truth is "hate" only to those who hate the truth.

Of President Lefebvre's comments, the operative question should be, "Is he right?" not "Am I offended?" The answer is clearly that he is right. Whether someone is offended is between them and their conscience.

He is not commenting about "gay rights," he is not "homophobic," he is not "intolerant." As bar president, he is making the unassailable point that our AG has undertaken an office and sworn an oath not to pursue a personal agenda but to defend the Nevada Constitution, and then failed to do so.

I have never met Mr. Lefebvre; I know nothing else about him. I know that his "Message" was eloquent, true and could only be "offensive" to people who seek to be offended, and for whom truth is not a paramount value.

I hate that I even have to say this, but it's the climate we live in: I support gay civil unions. I personally support same-sex marriage and would vote for it if it were on the ballot; but I think people of each state should decide the definition of marriage. It simply is not a constitutional equal protection issue.

I personally risked my military career as an Air Force officer to protect gay friends/fellow airmen from being investigated and/or discharged under the Clinton-era policy of don't-ask/don't-tell. I have deployed in combat operations for Southern Watch, Iraqi Freedom and Enduring Freedom. I continue to serve Nevada as a guardsman.

I care a great deal about the truth. What President Lefebvre wrote is true. It was also very well expressed. To characterize his column as "political" is bizarre. He was expressing the completely *apolitical* idea that, once sworn into office, our AG should represent all Nevadans in upholding our constitution. He was commenting, with sadness, on the fact that the AG abandoned her apolitical oath and embarked on a highly-political decision to refuse to defend the Constitution in order to please a particular constituency.

There was no reason for the Board of Governors to "distance itself" from his comments. Doing so does not speak well of the Board of Governors.

Robert E. Sullivan

NEVADA LAWYER, May 2014

For the first time in all the years I have been reading publications from the state bar (thirty-four, by the way), I found myself reading a "message from the president" whose primary emphasis was to house his political views instead of facts.

When Mr. Lefebvre used the phrase "progressives' pieties" he proved that, not only is he not a progressive in his political views, but he, in fact, feels that progressives somehow control the Attorney General of the state of Nevada.

He could have addressed the lies that were told before the election of Article 1 section 21 which was irrationally referred to as defending marriage. (Amazingly, my over-30-year marriage isn't affected by who else gets married). He could have discussed whether the AG was recognizing that fighting a losing battle (as reflected by what is going on in regard to the same issue in other jurisdictions) is a waste of limited state resources (as reflected by budget cuts in education). These are only a few. Instead, he chose to attack the Attorney General.

The state bar is neither Democrat nor Republican, conservative nor progressive. It does include members that are all of those. Mr. Lefebvre should consider this before he writes his next message.

Kevin Karp, Esq., Reno

