

# PUBLIC OPINION

## Building Trust in the Judicial Process

BY CHIEF JUSTICE ELISSA CADISH, NEVADA SUPREME COURT

**As you are no doubt aware, so many things have become politicized in recent years, and unfortunately that includes public opinion of courts and the entire judicial system. This is truly unfortunate, as our society depends on trust in the court system to resolve disputes fairly and consistently. Without that trust, I fear that over time, our society will devolve into anarchy, rather than governance by the rule of law.**

As officers of the court, all of us are tasked to ensure that the court system lives up to its promise of equal justice under law, and to convey that it does so to the general public. We must treat all parties, and everyone involved in the court system, with dignity and respect. Even losing parties need to feel that they have been heard and understand the decision that was made. Judges need to take the time to listen and read the arguments presented by the parties, and rule based on the facts and consistent application of the law. In areas where courts have discretion, that discretion must be appropriately exercised with these principles in mind.

But this obligation doesn't fall only on judges. It also applies to all attorneys. Each attorney represents all of us and holds the reputation of the legal system in their hands. As attorneys, you cannot treat litigation as a game to be won at all costs, or to see how much you can get away with. Whether dealing with civil, criminal, or

family law cases, we all must follow the applicable statutes, procedural rules, and ethics rules. I'm not saying you should not advocate vigorously for your clients, but you can do so within the bounds of fairness and ethics.

Similarly, do not assume that any attorney who makes an error or doesn't disclose something they should have has acted in bad faith and must be called out and accused of ethics violations in a fiery motion for sanctions. Sometimes, people just make mistakes. Give them a chance to fix it (and if appropriate to bear the costs of the appropriate fixes) before throwing around nasty allegations. And convey to your clients the importance of professionalism and ethics, and that your compliance with these rules helps them in the long run.

Too often it seems the opposite happens; clients push attorneys to act in a way that is not appropriate, and attorneys agree to do so. We cannot feed into the narrative that everyone breaks the rules (or at least goes right up to that line) and you're a sucker if you don't do it. It is up to each of us to model appropriate behavior and convey the message to the public that the system works when we do so.

One of the ways that we can instill such trust in and respect for the court system is through conveying to the public that the judicial system in our state is transparent and accountable in multiple ways. The docket sheets as well as all documents filed with the Nevada Supreme Court and Court of Appeals (with very limited exceptions) are available to the public through the courts' website at [nvcourts.gov](http://nvcourts.gov). Similarly, the courts' published opinions as well as unpublished orders are available online as well. All of our appellate courts' oral arguments are also livestreamed on our YouTube channel, which you can also reach through the website. Any member of the public can attend our arguments in person, and the schedule can be viewed on our website. Moreover, audio recordings of the arguments are also available through the website if you missed an argument but would like to go back and listen to it. Many other courts around the state are using electronic filing and case management systems, and the Administrative Office of the Courts under the direction of the Nevada Supreme Court continues to work hard to support those efforts and bring increased transparency to filings in those courts. In a recent opinion,

the Nevada Supreme Court has recognized the importance of our courtrooms being open and accessible to the public and the press, based on First Amendment principles and the ameliorative effects of public oversight of our judicial functions. *See Falconi v. Eighth Jud. Dist. Ct.*, 140 Nev., Adv. Op. 8 (Nev. 2024).

As all of our judicial officers are elected, many of these campaigns of necessity involve fundraising from lawyers and other people interested in the court system. However, this is not some secretive process that happens behind closed doors. To the contrary, all judicial candidates are required to file multiple Contribution and Expense (C&E) Reports with the Nevada Secretary of State during their election year that includes an itemization of each contributor who gives more than \$100, and any one contributor cannot give more than \$5,000 to a candidate for the primary and \$5,000 for the general election. NRS 294A.100, .200. The reports also require details regarding how campaign money was spent, and the ending campaign account balance. These reports are all publicly available through the Nevada Secretary of State website. *See* [https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/CEFDSearchUU/Search.aspx#individual\\_search](https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/CEFDSearchUU/Search.aspx#individual_search). Additionally, all sitting judges are required to file an annual financial disclosure report with the Administrative Office of the Courts, listing any sources of income outside of their judicial office, gifts they have received in excess of \$200, and expense reimbursements for travel and the like, and these reports are also publicly available. *See* <https://nvcourts.gov/aoc/financialdisclosures/fdsearch> (last visited Aug. 14, 2024).

All Nevada judges and justices are bound by the Nevada Code of Judicial Conduct, as well as statutory provisions that identify circumstances requiring a judge's recusal. *See* NCJC 2.11; NRS 1.225, 1.230. There is also an independent Judicial Discipline Commission created under the Nevada Constitution charged with investigating potential violations of the Code of Judicial Conduct and imposing appropriate discipline when such violations are found, subject to appeals to the Nevada

Supreme Court. *See* Nev. Const. art. 6, § 21; NRS 1.425-1.4695.

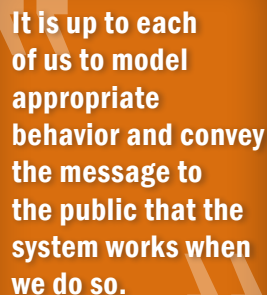
This acts as an important check on the judiciary and should overcome the perception that Nevada judges can do whatever they want and there are no consequences for ethics breaches. I also note that a motion to disqualify a judge must be considered and decided by a judge or judges other than the one at issue. *See* NRS 1.225, 1.235. Thus, when there is an asserted ground for disqualification, if the judge does not agree and declines to recuse, an independent judge will make the decision on the request.

When you, as attorneys, hear people complaining about a lack of accountability in the judicial system, please remind them of all of these checks that are in place and the transparency that exists in Nevada's courts. More importantly, I ask you all to think about how you talk about the court system with your clients, friends, and family. When a court rules against you, do you blame it on a corrupt system or allege

it is because of the judge's connections, or opposing counsel's improper influence? Do you claim there is a bias rather than an honest disagreement on the merits? Many people in our state develop their impressions of the court system based on what they hear from the lawyers they know. When you feed into the narrative that it is a corrupt system, that impression gets reinforced

among those in our circle of influence.

If you step back and think about it, I believe you will agree that on the whole, our court system works very well and largely treats parties fairly and delivers appropriate outcomes. That doesn't mean it is perfect by any means. When you have true concerns about court procedures that do not seem fair, get involved in proposing appropriate rule changes. If a court has ruled against you and you feel strongly it is an incorrect outcome, pursue all of your legal remedies to persuade that judge to change their mind and if that does not work, pursue your appellate remedies. If you are not satisfied with the quality of the judges you appeared before, consider applying for an open seat or running for election yourself or encourage others who you think have the necessary skills to do so.



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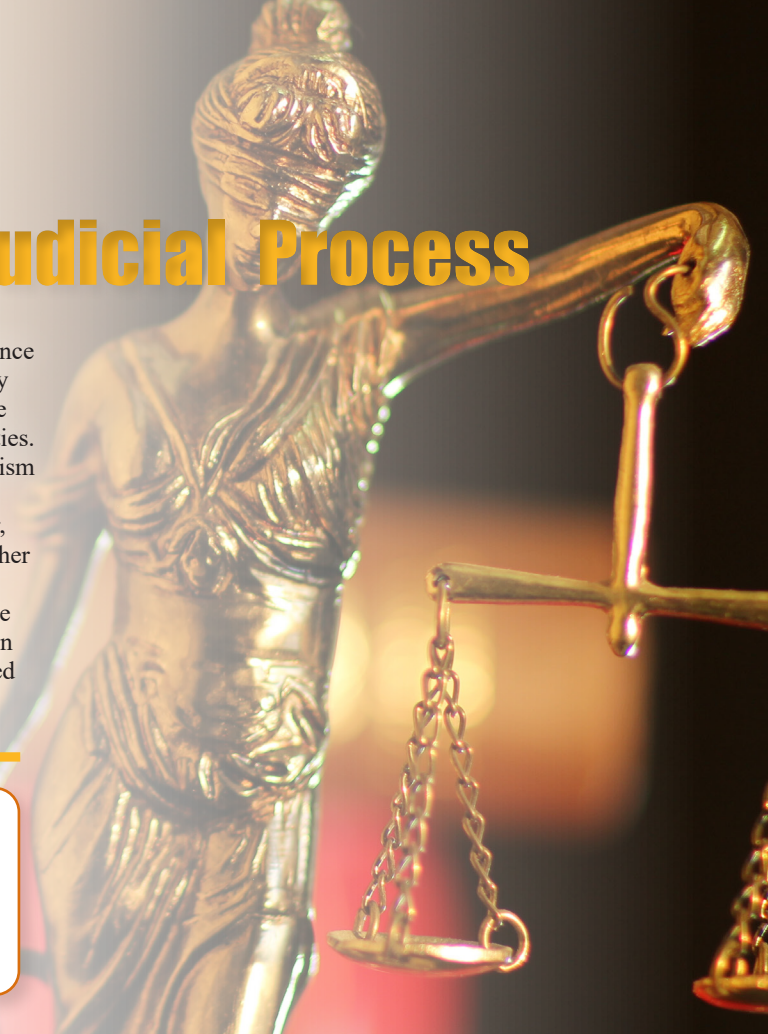
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And if there is truly a basis to believe there is some improper influence affecting a judge’s decisions, then in appropriate circumstances, you may file a motion for disqualification, and ultimately you can (indeed in some circumstances must) file a complaint with the judicial discipline authorities. *See* NRPC 8.3. Simply engaging in wild speculation or unfounded criticism does not solve the problem, but instead makes things worse, and may also violate the Rules of Professional Conduct. *See* NRPC 8.2. However, following these constructive paths will make you part of the solution rather than part of the problem.

I ask you as officers of the court to join with me to share the positive aspects of our judicial system and help solve the problems that exist within it. We are all on the same team, and we are all responsible for the continued viability of the rule of law. This effort has never been more important!

**CHIEF JUSTICE ELISSA CADISH** was first elected to the Nevada Supreme Court in 2018, and this year is her first term as chief justice. Before that, she was a district judge in the Eighth Judicial District Court since 2007.



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