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April 10, 2012

Dean Kevin K. Washburn
Chair, Judicial Nominating Commissions
UNM School of Law
1117 Stanford NE
Albuquerque, NM 87131-0001

Re: **Comments on the merit selection process from a co-sponsor of the constitutional amendment**

Dear Dean Washburn:

I am writing to offer a few comments about New Mexico's judicial selection process, along with a suggestion for improvement. I request that you provide a copy of these comments to the members of the judicial nominating commissions, for their consideration.

As a state senator, I was one of several co-sponsors of the amendment to the New Mexico Constitution that created the current judicial selection process. This amendment had many co-sponsors, on both sides of the aisle, and it would not have passed without bipartisan support. On balance, the merit selection amendment has proved to be a vast improvement over the previous system for electing judges. There is no question in my mind, and in my experience, that the amendment has improved the caliber of the lawyers who serve on the bench.

For this improvement, much credit should be given to the people who serve on judicial nominating commissions, as they undertake the difficult task of trying to figure out, as best they can, which lawyers will make the best judges. It is very hard to predict whether a good lawyer will become a good judge, because judges come in all shapes and sizes and temperaments.

This is why it is a mistake for any judicial selection commission to evaluate candidates based on whether a particular vacancy has been described as a "criminal" judgeship, or a "Family Court" judgeship, or any other specialty court. The commission should nominate the lawyers who have the greatest potential to become good judges, in the most general sense, regardless of the fields in which they have practiced, or the court division where they will initially serve.

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First, the qualities that make a good judge are not defined by specialization. On the contrary, the best judges are generalists. The best judges are the ones who can see the universal rules of justice which cut across all areas of the law.

Second, it is a distortion of the merit selection amendment to designate specialty judgeships for special segments of the bar. The sponsors of the amendment had no such intention. The sponsors wanted the very best lawyers to serve on the bench, if they were willing to.

Third, judges rotate out of their initial judicial assignments, as they should. Appointed judges are likely to serve for many years, so it makes no sense to select them for a slot which they might occupy for only a couple of years. Judicial rotation is the norm, and it is a wise practice.

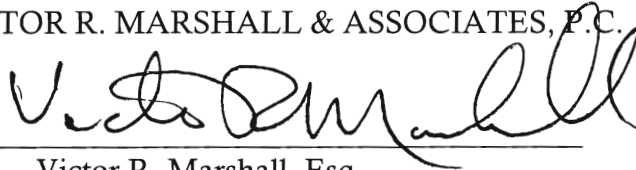
Fourth, if candidates are evaluated based upon specialization, this increases the danger that the merit selection process will be dominated by a small clique of lawyers. This is never a good idea, no matter who the small group might be – criminal defense lawyers, civil plaintiffs lawyers, domestic relations lawyers, insurance defense lawyers, etc. These little groups tend to have narrow and self-serving concepts about what makes a good judge.

In short, the judicial selection commission should nominate the best lawyers with the greatest potential to become the best judges, regardless of specialty, and regardless of the designated vacancy. In the long term, this is the wiser course.

Yours very truly,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By



Victor R. Marshall, Esq.

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