

## BAY AREA REPORTER

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Crime novelist **Michael Nava**, an openly gay staff attorney for California Supreme Court Justice **Carlos Moreno**, has spent the last four years patiently waiting for an appointment to an appellate court seat. But so far Governor **Arnold Schwarzenegger** has passed him over each time a vacancy has arisen on San Francisco's 1st District Court of Appeal.

Now Nava has decided to bypass the appointment process and seek a judicial post via the ballot box. He pulled papers this month to run for a seat next year on the San Francisco County Superior Court. He plans to run for an open seat on the court but does not have to designate which one until next February.

"I filed the paperwork to begin raising money on Monday, October 5. At the moment there is one open seat, and I think just from the gossip mill, there may be a couple of other judges who decide not to run for re-election," Nava told the *Bay Area Reporter* during a phone interview last week. "I would prefer not to run against a sitting judge but I am not ruling out anything at the moment. I am keeping all my options open."

Judicial races are usually quiet affairs, and other than within legal circles, they go largely unnoticed by the voting public. Last year saw an exception when former Supervisor **Gerardo Sandoval** ousted longtime Republican Judge **Thomas Mellon** from the city's superior court. The spirited campaign included lesbian attorney **Mary Mallen** and pro-gay campaign fliers targeted at LGBT voters by the candidates.

Next year's election should also upend the rule. In addition to Nava's campaign the 2010 ballot will also include the state's chief justice, **Ronald George**, and Justice **Ming Chin**, who will both be running to retain their seats on the state's Supreme Court.

Chin is a reliably conservative member of the court who voted against granting LGBT couples marriage rights, while George has vacillated from being praised by the LGBT community for authoring the court's 2008 opinion legalizing same-sex marriage to a year later infuriating LGBT people with his lead role in upholding Proposition 8, the voter-passed same-sex marriage ban.

More than any other the marriage cases brought to the LGBT community's attention the importance of the makeup of the state's courts. After the Supreme Court's 6-1 ruling in May upholding Prop 8, some LGBT activists said they intended to campaign against George and Chin.

While George has defended the court's decision in the Prop 8 case, he recently lashed out at the state's initiative process, saying in an October 10 speech before the American Academy of Arts and Sciences that the ballot box measures have "rendered our state

government dysfunctional." He went on to note that due to last November's election "chickens gained valuable rights in California on the same day that gay men and lesbians lost them."

In an essay explaining his decision to run for judge, Nava writes of the importance of having a diverse judiciary and what impact that has on court decisions. Should he win his race next fall, Nava said he would be the superior court's first openly gay person of color.

"Like the judges I have worked for, I would bring to the bench the perspectives and experience of communities rarely represented in the black robes of a judge: gay, Latino, immigrant, poor," wrote Nava. "Judges are called upon every day to make decisions that affect the lives of poor people, people of color, and all the other outsiders who are more likely than middle-class people to become entangled in the nets of the law. And while no judge can decide a case out of sympathy with one of the parties, the judge who has a personal sense of the complexities of the lives of the people before him may treat those people with greater respect and be more thoughtful in reaching his decisions."

Nava, 55, lives in Daly City with his partner, **George Herzog**, an oncology nurse at the Veteran's Administration hospital in San Francisco. Together seven years, the couple married one year ago this week at a ceremony presided over by Moreno.

There is no residency requirement that a judicial candidate must reside within the boundaries of the court district on which they are seeking a seat. Like many homebuyers, Nava said he and his partner were priced out of San Francisco and opted to buy a house on the Peninsula.

"There is no residency requirement for judges because they administer state law not local laws. They are state judges," explained Nava, who earned his law degree from Stanford in 1981.

Following graduation Nava worked as a deputy city attorney in Los Angeles before joining the Encino-based law firm Horvitz & Levy in 1985. Eventually he made his way to San Francisco, first opening a private practice and then going to work in 1999 for the California Supreme Court as a senior attorney on the criminal central staff.

He also penned a series of award-winning crime novels starring gay Latino criminal defense lawyer Henry Rios. The last of the seven books was published in 2001.

Having worked for Moreno since 2004, Nava decided he had built up enough experience to seek an appellate court seat and applied in December 2005. He earned a favorable rating from the state Bar's evaluation committee but was never interviewed by the governor's judicial appointments secretary, a key step for being picked to fill a vacancy.

After he was passed over again this past June, Nava said he finally "concluded it is just not going to happen" as long as the GOP governor is in office. Since being elected in 2003 Schwarzenegger is known to have appointed a single openly gay judge – **Ron**

**Albers** was tapped this June for a seat on San Francisco's superior court – though four other picks are said to be closeted judges.

With his 60th birthday fast approaching, Nava said time is running out for him to realize his dream of becoming a judge. Also spurring his decision to campaign for a seat is his desire to see a more diverse court.

"I would like a judicial career. I think I would be a good judge. It is important to have gay judges and Latino judges," he said. "I am five years from turning sixty, I really feel that I needed to do this now if it is going to happen."

He is planning several fundraisers for this November and a campaign Web site at [www.navaforjudge.com](http://www.navaforjudge.com) should go live today, Thursday, October 15.