

Report of the Virginia State Bar Judicial Candidate Evaluation Committee

THE HONORABLE DAVID BERNHARD

Seeks Appointment to the Court of Appeals of Virginia

Education:

- Brandeis University, B.A., 1983
- Washington University in St. Louis School of Law, J.D., 1985

Law Licensure:

- Virginia, 1988
- Missouri, 1986
- District of Columbia, 1987
- Maryland, 1989

Judicial Career:

- Fairfax Circuit Court, judge, 2017 – present

Legal Career:

- Bernhard & Gardner, partner, Arlington & Fairfax County, 1991-2017
- David Bernhard, Attorney at Law, sole practitioner, Arlington, 1989-91
- Reagan & Associates, associate, Washington, D.C., 1987-88

Legal Association/Bar/Committee/Organization/Teaching Positions/Awards:

- Fairfax Bar Association
 - Criminal Law Practice Section, co-chair, 2011-14
 - Judicial Selection Committee, screener, 2012-14; panel chair, 2013
 - Membership Task Force, 2011
- Fairfax Bar Association's President's Award, 2011
- Hispanic Bar Association of Virginia
 - Judicial Selection Committee, screener, 2006-14

Civic Affiliations:

- [Redacted] Homeowner Association

Publications:

- *Getting used to cameras in Virginia courtrooms*, Washington Post, 2014 (Opinion discussing policy issues regarding Circuit Courts handling of televised cases)
- *Examining the Limits on Retroactive Criminalization of Conduct by Judicial Interpretation of Statutes, The DUI, "Operation" Example* - Fairfax Bar Journal - 2012
- *Revisiting the Statutory Power to "Suspend the Imposition of Sentence"* - Fairfax Bar Journal - 2011

Residence:

- Fairfax, Virginia

Legal Ability

The committee finds that Judge Bernhard has a superior intellect and legal skills for the position of judge of the Court of Appeals of Virginia.

Integrity

The committee finds that Judge Bernhard possesses the requisite integrity to serve as a Court of Appeals of Virginia judge.

Temperament

The committee finds that Judge Bernhard has an even temperament, well suited to serving as a Court of Appeals of Virginia judge.

Impartiality

The committee finds that Judge Bernhard understands the importance of impartiality as a jurist and would be impartial as a Court of Appeals of Virginia judge.

Diligence

The committee finds that Judge Bernhard would work diligently as a Court of Appeals of Virginia judge.

Summary

Judge Bernhard currently serves as a judge of the 19th Judicial Circuit Court of Virginia in Fairfax, to which he was elected in February 2017 for an 8-year term. As a judge, he has been a proponent and implementer of developing evidence-based sentencing and pre-trial practices.

Before his judicial career, Judge Bernhard worked for 28 years as a trial and appellate attorney – practicing immigration law, criminal law, child support and custody, abuse and neglect cases, and personal injury cases. He also served as a *guardian ad litem*.

Judge Bernhard handled a number of noteworthy cases at the trial level, including *Dulles Toll Road v. Pardillo* (2016), a landmark decision setting aside toll road violation judgments obtained under a fictitious name, and *Commonwealth v. Julio Blanco Garcia* (2013), one of only two criminal trials ever televised in the history of Fairfax County Circuit Court and held as a model for how to conduct such proceedings in the future.

Bernhard estimates that 90 percent of his practice had been criminal, about eight percent civil, and about two percent domestic relations. His practice areas and percentages were different earlier in his career, when, for example, he had an extensive personal injury practice.

Judge Bernhard was born in El Salvador and sought asylum in the U.S. in the late 1970s. His story was featured in *The Washington Post* in 2017 when he was appointed to the circuit court, and in 2018 the *Post* wrote about his embracing a movement away from cash bonds in his courtroom.

The committee’s background investigation found exemplary feedback for Judge Bernhard. Sources called him a spectacular judge and a well-respected practitioner. People spoke to his love of being a judge, his thorough research, and his prolific opinions. One criticism from a source cited his propensity for addressing issues in his opinions that he had not been asked to address. But most comments were that he was erudite, competent, had good control of his courtroom, and that people enjoy appearing in front of him. Sources thought his intellectual rigor and thoughtful approach would make him an ideal choice for the Court of Appeals.

In his interview, Judge Bernhard called himself a vertically integrated lawyer and judge. He touted his broad experience in multiple courts and his succinct writing style. He addressed the criticism of his *sua sponte* opinions by giving an example of one where his resolution of a case, though novel, was not appealed. And he spoke of taking on some workers’ compensations cases as an attorney – in the interest of understanding those cases.

Judge Bernhard touted his commitment to diversity in hiring and spoke about implicit and subliminal bias. He said that people, like him, who have benefited from an unlevel playing field have the obligation to do something.

The committee now finds Judge Bernhard to be **highly qualified** for the Court of Appeals of Virginia.

Committee Evaluation

VOTE

QUALIFIED	Yeas	12	Nays	0
HIGHLY QUALIFIED	Yeas	12	Nays	0

February 19, 2020