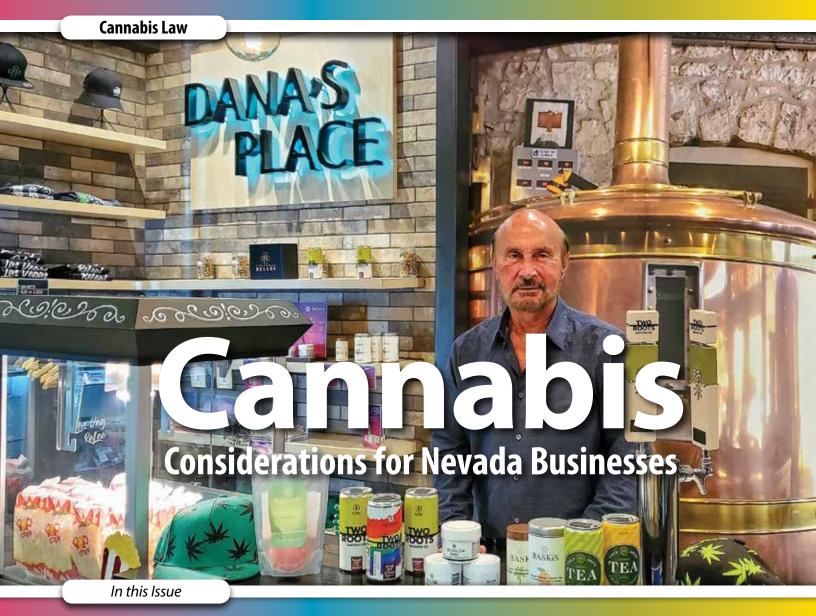


COMMUNIQUÉ THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

APRIL 2020



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View from the Bench

BOOKS FROM THE BAR

The State Bar of Nevada has several reference publications available to meet the needs of Nevada attorneys, from comprehensive guides to compilations of templates in a variety of practice areas.



Nevada Appellate Practice Manual – 2018 EDITION

The 2018 edition has been painstakingly edited by experts in appellate practice and reflects all recent changes in the law as well as the most up-to-date procedures for practicing in Nevada's appellate courts. Some topics covered include: initiating an appeal, jurisdiction, settlement, criminal appeals, fasttrack child custody, oral arguments and record preparation...in addition to many others.



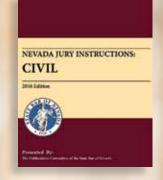
Nevada Gaming Law Practice and Procedure Manual

Written by attorneys with decades of experience in the practice of gaming law, this reference manual includes 18 chapters covering topics such as licensing, financing, gaming devices, race and sports books, compliance reporting requirements, interactive gaming and much more.



Contract Templates for Nevada Attorneys

This publication provides lawyers with a large selection of form contracts drafted for a wide variety of transactions, with specific regard to the laws of Nevada. The customizable forms are designed as a starting point for practitioners to craft custom agreements for use in commercial and residential purchases and leases, employment, intellectual property, deeds and cyber law...to name a few.



Nevada Jury Instructions: Civil - 2018 EDITION

Nevada Jury Instructions: Civil provides attorneys participating in civil jury trials in Nevada with downloadable sample jury instructions in an easy-to-use format. The language in each template has been adapted from documents actually used in trial with an eye to being as partyneutral as possible. The book includes subjects such as: contractual relationships, employment law, evidence, experts, intentional torts, fiduciary relationships, personal injury damages, eminent domain and more!

We've Got More!

The state bar's online store includes additional titles of interest to attorneys practicing in Nevada, such as Nevada Business Entities, Succession Planning in Nevada and the Guide to the Tribal Courts of the Inter-Tribal Council of Nevada.

To see all of the current titles available, visit: <u>www.nvbar.org</u> > Publications > State Bar Publications





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On the Cover

Ed Bernstein displays a variety of health and wellness products available at Dana's Place inside the Las Vegas ReLeaf medical and recreational marijuana dispensary.

CCBA's 40 Year Club of 2020

n March 5, 2020, at the Smith's Center for the Performing Arts, we celebrated the careers of those Clark County Bar members who have been practicing law in the State of Nevada for 40, 45, 50, and 55 years. They are an inspiration, and role models, to their colleagues and the legal community. Their dedication and contributions to the practice of law have left an indelible mark on the legal profession. Congratulations to all of you! (See list of inductees and honorees on page 5).

In a beautiful setting on the 5th floor lobby of the Smith Center, colleagues, family, and friends gathered to celebrate this amazing group. Dan Polsenberg, the Honorary Master of Ceremonies, was able to elicit from each of the attending inductees and honorees stories from the past, advice and tips for young lawyers of today, with timely humorous comments included. You had to be there to appreciate the insightful and sincere recollections of the past and how law was practiced then. A time when a handshake was gold, a passing agreement with opposite counsel made in the halls of the courtroom was enough, and no stipulations or letters were required for a continuance. The advent of the pager, cellphones, emails, and etc., changed things -no direct phone calls, no meetings at lunch, no personal contact with other lawyers. Everything had to be in writing. The price to pay for the incredible advances in technology in the last 40 years. Something they all agreed on was the need to keep your integrity as a lawyer, be collegial, remain professional, and work hard but do not get consumed by your work. A shout out



Mariteresa Rivera-Rog-

ers is an associate at the Las Vegas criminal defense firm Wright Marsh & Levy. Her areas of practice include criminal law and juvenile law. Mariteresa serves as president of the Clark County Bar Association through December of 2020. By Mariteresa Rivera-Rogers

was given to Lawyers for Concerned Lawyers.

Thank you to Dan for a masterful performance and thanks again to all of those who opened up to reveal your souls to the crowd. Inductees' and honorees' words of wisdom and their collective voices of experience were inspiring to those of us in the audience. A special thanks to the members of the Judiciary and elected officials who were present and continue to support our organization.

We look forward to seeing you all at our future events, all of which are listed somewhere in this issue. I encourage you to sign up early for the upcoming 30th Annual Meet Your Judges Mixer to be held at the Smith Center on the new date of July 23, 2020. Tickets are on sale now. Capacity will be limited. For more info, see pages 31-32. **C**

CONGRATULATIONS TO OUR COLLEAGUE

CCBA 40 YEAR CLUB INDUCTEE

Holley Driggs is proud to see Frank honored for his outstanding service to the Southern Nevada legal community. For more than 40 years, Frank has served as a respected transactions and trial lawyer who advises clients on business law and litigation.

We applaud the other 39 members honored and thank them for their service.

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40 Year Club Luncheon group photo: Pictured, front row (I-r): NV Supreme Court Justice Mark Gibbons, Gary Schnitzer, Mariteresa Rivera-Rogers, Arnold Weinstock, Judge Carolyn Ellsworth, John "Jack" Howard, Dan Polsenberg, and Robert Apple. Back row (I-r): W. Randolph Patton, Senior U.S. District Judge Roger Hunt, William Urga, NV Court of Appeals Chief Judge Michael Gibbons, Charles McCrea, U.S. Magistrate Judge Cam Ferenbach, Steven Parsons, Gerald Gillock, Frank Ellis, Kirk Lenhard, Bruce Dickinson, John Muije, F. Kelly Cawley, and Eric Taylor. For more photo highlights, see https://photos.app.goo.gl/ ETcWN2PK3NztNHfF7

CCBA's 40 Year Club (2020):

Inductees (Admitted 1980):

- F. Kelley Cawley
- Bruce Dickinson
- Frank Ellis, III
- Eighth Judicial District Court Judge Carolyn Ellsworth
- U.S. Magistrate Judge Cam
 Ferenbach
- Nevada Court of Appeals Chief Judge Michael Gibbons
- Jodi Goodheart
- Richard Harris
- Stephen Kent
- Ishi Kunin
- Mark Lerner
- John Muije
- W. Randolph Patton
- Michael Pescetta
- Gary Schnitzer
- Don Springmeyer
- Eric Taylor
- Arnold Weinstock
- Kenneth Woloson

Honorees (Admitted 1975):

- Robert Apple
- Peter Bernhard
- Andrew Brignone
- Michael Buckley
- Supreme Court of Nevada
 Justice Mark Gibbons
- Supreme Court of Nevada
 Justice James Hardesty
- Samuel Harding
- John Hall Howard, Jr.
- Dennis Kennedy
- Richard Koch
- Kirk Lenhard
- Charles McCrea
- Steven Parsons

Honorees (Admitted 1970):

- Jay Brown
- (Ret) Justice Michael Cherry
- Gerald Gillock
- Senior U.S. District Judge Roger Hunt
- R. Gardner Jolley
- (Ret) Judge Lawrence Leavitt
- William Urga
- Bruce Woodbury

Honoree (Admitted 1965):

James Bilbray



Advertising Discounts Available to CCBA Members

CCBA Members may get discounted pricing for ad placement orders for display and classified ads.

- *Display ads CCBA Members can get 15% off* the rate for placement of a display ad in the printed magazine, *Communiqué*.
- Classified ads CCBA Members can get 50% off the rate of ad placement for the classified ad format, The Marketplace, in Communiqué or on the CCBA's website.

For more information and to confirm space reservations, proposals of content, artwork specifications, rates, discounts, and deadlines, contact the publisher at Clark County Bar Association, (702) 387-6011, StephanieAbbott@clarkcountybar.org.

Bar Activities

Editor's note: typically, this section of the publication features a list of upcoming bar activities. However, this month, it features a special message from CCBA President Mariteresa Rivera-Rogers.

Dear CCBA Members,

As we navigate the uncharted waters of this COVID-19 pandemic, I want to make sure our Members and staff remain protected and safe. CCBA wants to do its part in following CDC experts' directives at this time. While the federal and state governments declared a state of emergency, local business, schools, state offices and others are closing, we too are taking this matter very seriously.



In order to comply with directives of social distancing, CCBA has cancelled member scheduled meetings in our facility for the next 60 days and some of our planned events in other venues taking place in that same time period. Those events will include the CCBAs 30th Annual Meet Your Judges Mixer, the After Taxes Pub Crawl, and Picture Day. Also cancelled will be our participation in other organization's events originally scheduled for

CCBA Member Services

LawPay Offer for Discounted Credit Card Processing

LawPay has been powering payments in the legal industry for over a decade and is trusted by more than 145,000 professionals. Developed specifically for lawyers, LawPay's easy-to-use solution allows you to securely accept credit card and eCheck payments online. Right now, the experts in legal payments have an exclusive offer just for Clark County Bar members: Open a new LawPay account by April 30, 2020, and receive a \$100 credit toward processing fees! Learn more at https://lawpay.com/member-programs/clark-countybar/?promo=law-spring100&utm_campaign=spring20&utm_content=ccba.

For more information about CCBA member benefits, see https:// www.clarkcountybar.org/membership/membership-benefits/.



April and May 2020, including the UNLV Moot Court Competition, the Nevada Commission on Women's "A Salute to Women's Suffrage" parade, and other planned Law Day activities of the Community Service Committee.

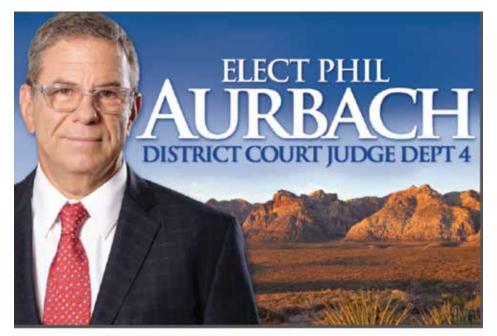
Also, we ask for you not to visit our offices during this time, as the CCBA's staff may not be keeping regular hours and we do not want to expose them to any potential risks. Any questions or contact can be done by email or a phone call.

It is my hope that these drastic measures will help to "bring down the curve," and we all do our part to diminish the impact of this virus in our community.

We appreciate your understanding during these trying times. We will periodically reassess our directives and keep you posted of other changes, if necessary.

Mariteresa Rivera-Rogers 2020 President, Clark County Bar Association

Please note all scheduled bar activities are subject to change without notice. Please contact the CCBA office at (702) 387-6011 to confirm dates and times.



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For more information and to confirm space reservations, proposals of content, artwork specifications, rates, discounts, and deadlines, contact the Clark County Bar Association, (702) 387-6011, StephanieAbbott@clarkcountybar.org.



COMMUNIQUÉ

About Communiqué

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Communiqué accepts advertisements from numerous sources and makes no independent investigation or verification of any claim or statement made in the advertisement. All articles, letters, and advertisements contained in this publication represent the views of the authors and do not necessarily reflect the opinions of the Clark County Bar Association. All legal and other issues discussed are not for the purpose of answering specific legal questions. Attorneys and others are strongly advised to independently research all issues.

Editorial Calendar

Cover dateIssue topicJanuary 2020Five ThingsFebruary 2020Labor & EmpMarch 2020Technology iApril 2020Cannabis LavMay 2020Sports & EntJune/July 2020*Mental HealtAugust 2020Family LawSeptember 2020Appellate Pr.October 2020Local CourtsNovember 2020AdministratiDecember 2020Pro Bono

Five Things Labor & Employment Technology in Law Practice Cannabis Law Sports & Entertainment Law Mental Health Family Law Appellate Practice Local Courts Administrative Law Pro Bono

*The June/July issue is published in June. There is no publication released in July. The editorial calendar may change without notice at any time.

Space reservations are encouraged at least two months in advance. Space is limited with placement only guaranteed to paid advertisements. The deadline for submission of all content is 30 days prior the first day of the desired month of publication.

Communiqué will not publish self-serving articles promoting a specific named product or services of an individual or firm.

Article Opportunities

To write an article for publication, send a proposal to the Clark County Bar Association, Attn: Editor-in-Chief, via e-mail to StephanieAbbott@clarkcountybar.org. Proposals should include the following information:

- Author(s) name(s) and Nevada bar #(s)
- Summary paragraph providing the focus and scope for the article (include relevant rules/ statutes/procedures, etc.)
- Proposed issue for placement (see editorial calendar above)

All proposals and articles submitted will be considered for publication. However, *Communiqué* will not publish self-serving articles promoting a specific named product or services of an individual or firm. Articles must be on topic and original, unpublished works. Preference will be given to articles written by attorney members of the CCBA.

Advertising Opportunities

Space is available for paid announcements of professional achievements, goods, and services. Rates, policies, and specifications are available upon request. Contact the Clark County Bar Association to confirm availability of placement, graphic design services, and discounts.



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Recorded CLE Seminars Index

1. Things You Have Wanted to Ask the Probate Commissioner

Speaker: Probate Commissioner Wesley Yamashita, 8th Judicial District Court Recorded: 12/10/2019 CLE Credits: 2.0 General Price: \$70

2. The Disease of Addiction - A Professional, Community, and Family Affair

Recorded: 11/19/2019 Speakers: Kristine Kuzemka - Nevada Lawyer Assistance Program & LCL , Lance Wilson -District Court Executive - Retired CLE Credit: 1.0 Substance Abuse/Addiction/ Mental Health (AAMH) Price: \$35

3. Frightening Financial Transactions and How to Avoid Them

Recorded: 10/29/2019 Speaker: State Bar of NV Counsel Dan Hooge CLE Credits: 2.0 Ethics Price: \$70.00

4. The Lawyer's Use of Social Media – A Look at Hot Topics and Trends

Recorded: 10/2/2019 Speaker: John Naylor of Naylor & Braster Attorneys at Law CLE Credits: 1.0 Ethics Price: \$35.00

5. Legislative Update from Attorneys Serving in the Nevada Legislature

Recorded: 9/25/2019 Speakers: Lesley Cohen, Esq., Assemblywoman (District 29, Clark Cty.), Shea Backus, Esq., Assemblywoman (District 37, Clark Cty.), Edgar Flores, Esq., Assemblyman (District 28, Clark Cty.) CLE Credits: 2.0 General

6. Highlights of the 2019 Legislative Session's Changes to Probate and Trust Law

Recorded: 9/19/2019 Speakers: Jeffrey Luszeck and Alan Freer of Solomon Dwiggins & Freer, Ltd. CLE Credits: 2.0 General Price: \$70

7. New Lawyers: Things They Didn't Tell You in Law School

Recorded: 5/13/2019 Speaker: Dennis Kennedy, Bailey Kennedy LLP CLE Credits: 2.0 Ethics Price: \$70

8. Meet Your New Bar Counsel

Recorded: 3/7/2019 Speaker: State Bar of NV Counsel Dan Hooge CLE Credits: 1.5 Ethics Price: \$52

9. Preparing for the 2019 Tax Return Filing Season: Changes to the 2018 Tax Code

Recorded: 12/5/2018 Speakers: Suzanne Warren of Silver Law PLC, and Taylor Randolph of Randolph Law Firm CLE Credits: 1.5 General Price: \$52

10. Social Media & Professional Responsibility: Attorney Ethical

Considerations Recorded: 11/14/2018 Speaker: John Naylor, Esq. of Naylor & Braster CLE Credits: 1.5 Ethics Price: \$52

More titles available! See www.clarkcountybar.org.



Clark County Bar presents

CLE Programming for Nevada lawyers

The Clark County Bar Association (CCBA) is an Accredited Provider with the Nevada Board of Continuing Legal Education (CLE).

CCBA offers recorded CLE seminars for Nevada lawyers to download to a computer or mobile device for their review.

Orders for recorded CLE seminars can be made online at ClarkCountyBar.org or via e-mail to CCBA staff.

Contact: Donna at Donnaw@ clarkcountybar.org or (702) 387-6011.

Special thanks to the following businesses for their support of the CCBA's CLE programming services:



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the recorded CLE event

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- er CCBA "New Attorney"
- er CCBA CLE Passport older
- non-member

ry of materials (via e-mail) ast 2 weeks after live event.

Member Moves

Thanks to the following people who submitted updated profile information with the Clark County Bar Association (CCBA). For the attorneys, we have included their listings for areas of practice (AOP) on record at CCBA.

Walter F. Fick is now at Garman Turner Gordon, 7251 Amigo Street, Suite 210, Las Vegas, Nevada, 89119. Phone: (725) 777 3000.

Member updates requested. Please submit updates regarding member information to CCBA, 717 S. 8th Street, Las Vegas, Nevada, 89101. Alternatively, updates may be sent to Donnaw@clarkcountybar.org.

Information provided to the CCBA may be used to update the CCBA member database, to create/ update a listing for the member in the CCBA members directory at https://www.clarkcountybar.org/ members/directory, and to communicate information about activities and services available to the members of the CCBA. For more information, visit the "Membership Benefits" page at https://www.clarkcountybar.org/membership/membership-benefits/.

*Areas of Practice (AOP) listings do not reflect a certified legal specialization in the area listed and are subject to change at any time without notice.

Clark County Bar

Members Directory

Members of the Clark County Bar Association can be listed in the online CCBA Members Directory. See listings at http:// www.clarkcountybar.org/ membership/directory/.

This dynamic directory can be searched to find a member via area of practice, first or last name, firm/company/agency, and other states admitted.

For more information, contact Steph at StephanieAbbott@ clarkcountybar.org or (702) 387-6011.

EMINENT DOMAIN AND INVERSE CONDEMNATION

Reisman Sorokac Is Pleased to Announce the Addition of Its New Practice Area



The firm will now represent property owners in complete takings, partial takings, temporary takings, and takings due to easements, rights-of-way, and air space encroachment.

We are also pleased to announce the addition of **Stanley W. Parry, Esq**., to the firm to chair Reisman Sorokac's Eminent Domain and Inverse Condemnation practice.

Mr. Parry is a renowned real estate, land use and zoning attorney, and a former legal advisor to the Clark County Planning Commission. He has been a trial attorney in Nevada for over 40 years. He was a prosecutor with both the Clark County District Attorney's Office and the U.S. Department of Justice Organized Crime Strike Force. Since the 1990s, Mr. Parry has focused on commercial litigation. In 2016, he retired from his position as a litigation partner of an Am Law 100 national law firm to devote time to his church, serving in Hong Kong as Associate Area (Asia) Legal Counsel for the Church of Jesus Christ of Latter Saints.

Mr. Parry joins Reisman Sorokac as of counsel. In addition to chairing the firm's Eminent Domain and Inverse Condemnation practice, he will focus on complex commercial litigation.



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New Members

Welcome to the following people who recently joined the CCBA, listed with their CCBA Member Type, phone number, and, if they are also a member of the State Bar of Nevada, their selections for areas of practice (AOP)*.

Harry Arnold, a Student Member from George Mason University, Antonin Scalia Law School. Phone: (205) 787-1844.

Amanda Baker, a New Attorney Member from Holland & Hart LLP. Phone: (702) 222-2572. AOP: Bankruptcy Law, Business Litigation, Trial.

Dominique Bosa-Edwards, a Student Member from UNLV William S. Boyd School of Law. Phone: (702) 738-2208.

John Endo, a Merchant Member from Litigation Discovery Group. Phone: (702) 426-3735.

Jordan Doctors, a New Attorney Member from Southern Nevada Senior Law Program. Phone: (702) 229-6596. AOP: Administrative & Agency Matters, Consumer Claims & Protection, Elder Law.

Daniel Gilliam, an Attorney Member from Bighorn Law. Phone: (702) 378-2442.

Eric Honea, a Student Member from University of Missouri Kansas City School of Law. Phone: (702) 510-3904.

Crystal Lyn Eller, an Attorney Member from Eller Law. Phone: (702) 685-6655. AOP: Criminal & Traffic Law, Personal Injury and Wrongful Death Claims, Real Estate Law.

Allison Mann, a Student Member from UNLV William S Boyd School of Law. Phone: (850) 896-0409.

Joseph Ostunio, a Student Member from University of Tennessee, Knoxville. Phone: (714) 914-3962.

Michelle Perales, a Student Member from UNLV William S. Boyd School of Law. Phone: (210) 787-6461.

Mary Perry, an Attorney Member from Law Office of Mary D. Perry. Phone: (702) 523-9517. AOP: Domestic Relations & Family Law.

Jasmin Stewart, a Student Member from Southwestern Law School at Kravis Graham Zucker LLP. Phone: (310) 975-7040.

Diamond Thomas, a JD Member from UNLV William S. Boyd School of Law. Phone: (702) 972-1704.

Michelle Perales, a Student Member from UNLV William S. Boyd School of Law. Phone: (210) 787-6461.

Andréa Vieira, a Student Member from UNLV William S. Boyd School of Law. Phone: (702) 280-2148.

Arnold Weinstock, an Attorney Member from Law Office of Dan M. Winder, P.C. Phone: (702) 474-0523. AOP: Personal Injury and Wrongful Death Claims, Criminal & Traffic Law, DUI Defense.

Yeanhee Yoo, a Student Member from UNLV William S. Boyd School of Law. Phone: (734) 999-8117.

*Areas of Practice (AOP) listings do not reflect a certified legal specialization in the area listed and are subject to change at any time without notice.

Member Updates Requested

Moving or changing firms? Let CCBA know.

CCBA members are encouraged to submit updated information for bar communications and areas of practice (for attorneys only) to Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101. Fax: (702) 387-7867. Email to Donna at donnaw@ clarkcountybar.org.

Updates may be made via login to the website at https:// www.clarkcountybar.org/login/.

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View from the Bench

Offering CLE for Pro Bono to Increase Access to Justice

By Chief Justice Kristina Pickering

n February, the Supreme Court of Nevada entered an order amending the rules requiring continuing legal education (CLE) to provide Nevada lawyers the opportunity to earn CLE credit for pro bono civil representation. Fifteen other states have adopted similar rules, which acknowledge both the need for pro bono services and the educational benefit attorneys derive from undertaking pro bono work.

As amended, Supreme Court Rule 210 now provides that attorneys can earn one (1) CLE credit hour for every three (3) hours of uncompensated legal services up to a maximum of four (4) CLE credit hours per year. To qualify, an attorney must perform the pro bono hours through a legal aid service organization, court, or governmental program approved by the Nevada Access to Justice Commission. Credits can be earned by taking a case through a recognized legal service organization or providing representation through a lawyer-in-thelibrary program.

The amendments to SCR 210 took effect on March 16, 2020. A number of people spoke in support of the amendments at the public hearing that preceded its adoption. Speakers included Paul Matteoni, president, State Bar of Nevada; Noah Malgeri, Pro Bono Project director, Legal Aid Center of Southern Nevada; John Courtney, chairperson of the board of directors, Nevada Legal Services; Sheri Vogel, executive director, Southern Nevada Senior Law Program; James Conway, executive director, Washoe Legal Services; and Patricia Lee, partner, Hutchison & Steffen.

President Matteoni stated, "The State Bar supports this positive new initiative allowing our attorney members to obtain continuing legal education credit by asTo qualify, an attorney must perform the pro bono hours through a legal aid service organization, court, or governmental program approved by the Nevada Access to Justice Commission.

sisting persons of limited means." Other speakers emphasized the educational benefit attorneys derive from representing clients in and out of court, as well as receiving instruction from legal service providers on the diverse array of issues their clients' cases involve.

For more information about pro bono legal services and volunteering, please visit https://onepromisenevada.org/. **C**

Chief Justice Kristina Pickering joined the Nevada Supreme Court in 2009. She co-

chairs the Nevada Access to Justice Commission and is one of the founders of Nevada's appellate pro bono program. She received the Legal Aid Center of Southern Nevada's Judicial Excellence award in 2014 and the Silver Staircase award from the UNLV Boyd Public Interest Law Association in 2016.



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The Cannabis Compliance Board

By Jennifer Roberts, Esq.

t the time of this writing, Governor Steve Sisolak has appointed three of five members of the Cannabis Compliance Board ("Board"). The Board was created pursuant to NRS 678A.360 created during the 2019 legislative session. The law was prompted by one of the first initiatives Governor Sisolak undertook in his administration. Twenty days after taking office, Governor Sisolak created the Advisory Panel for Creation of a Cannabis Compliance Board.

The purpose for the Advisory Panel was to provide guidance and recommendations for creating the law that established the Board and the mechanisms to oversee and regulate the existing medical and recreational cannabis industries. Although cannabis regulation already rested within the Department of Taxation, the Governor wanted to model the new Board after another Nevada state agency that was housed within the Department of Taxation at one time-the Nevada Gaming Control Board.

When Nevada first legalized gambling in 1931, tax and regulation of the industry was conducted by local sheriff's departments. In order to capture some of the revenue from gambling, the Nevada Tax Commission was given state regulatory responsibility over the gambling industry. Seeing a need to combat organized



Jennifer Roberts, Esq. is

currently in Nashville helping set up sports gaming regulation in the State of Tennessee. She continues to maintain her own boutique law firm, Roberts Gaming Law, Ltd. Her legal practice focuses on federal, state, and local liquor laws; land use and zoning; business licensing and compli-

ance; and regulatory and administrative law. She served as a member of the Advisory Panel for Creation of a Cannabis Compliance Board.

... the Governor wanted to model the new Board after another Nevada state agency that was housed within the Department of Taxation at one time – the Nevada Gaming Control Board.



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crime, especially under threat by the federal government of the FBI raiding Nevada casinos, the Nevada Gaming Control Board was established as an arm of the Nevada Tax Commission. Four years later, the Nevada Gaming Commission was established and the Gaming Control Board became a companion agency to the Gaming Commission to provide robust regulation of an industry with a notorious history.

To follow a similar trajectory and have an agency dedicated to vigorous regulation of a growing industry in Nevada, the Cannabis Compliance Board is tasked to conduct thorough reviews of those seeking a license to operate in the industry, to conduct audits that ensure that industry members are properly paying taxes to the state, and to perform enforcement activities that could result in discipline against licensees who are not abiding by regulation.

While the Cannabis Compliance Board is a new agency, there is existing precedent for how a privileged industry can be properly regulated in Nevada. **C**

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CCBA CLE Article #8

Nevada Prohibits Pre-Employment Discrimination for Marijuana Use

By Bridget Kelly, Esq.

n January 1, 2020, Nevada became the first state to prohibit discrimination against prospective employees for testing positive for marijuana on a pre-employment drug screening (Glasser, N. et al., "Nevada Becomes First State to Prohibit Rejection of Applicants Testing Positive for Marijuana," *The National Law Review*, July 1, 2019. https://www.natlawreview.com/article/nevada-becomes-first-state-to-prohibit-rejection-applicants-testing-positive). With the progressive legalization of medical then recreational marijuana, Nevada law has developed corresponding protections for law-abiding users in the workplace. However, these protections are not limitless and employers must balance state and federal requirements with overriding safety concerns.

Discriminatory Disqualification Prohibited

Assembly Bill 132 (2019) amended NRS Chapter 613 to generally prohibit any Nevada employer from failing to or refusing to hire a prospective employee due to the presence of marijuana on a screening test. Two of the bill's sponsors, Assemblywoman Dina Neal (District 7) and Assemblyman Edgar Flores (District 28), stated AB132 was proposed out of concern for law-abiding marijuana users' automatic disqualification from em-



ployment opportunities (Minutes of the Assembly Committee on

Bridget Kelly, Esq. is an at-

torney with Nutile Law, practicing in the areas of corporate and administrative law with a healthcare focus. Commerce and Labor, February 20, 2019, "Assembly Minutes").

The legalization of recreational marijuana in Nevada in 2017 created a disconnect between prospective employees' legal activities and employers' "drug-free" expectations. Marijuana is now essentially on par with alcohol, yet applicants are much less likely to test positive or be disqualified for the presence of alcohol on a screening test compared with marijuana. As detectable levels of marijuana can remain in the system for thirty

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days or more, compared with hours or days for alcohol, marijuana users have been at a distinct disadvantage when applying for jobs which test for such substances as a condition of employment.

According to Assemblywoman Neal, "We are currently in the weird position of saying that one group of individuals is not worthy because they smoke marijuana, but at the same time somebody could be drunk as a skunk last week and still have a job. What is the difference?" (Assembly Minutes, p. 16.)

As Assemblyman Flores stated, AB132 "is only meant to address that individual who says I did not know that a requirement for your job was that I could not smoke marijuana. I smoked it last month. Allow me to go through the interview process and once we form that employee/employer relationship, if you do not want me to drink, smoke, or anything else, I will do that." (Assembly Minutes, p. 27.)

Assembly Bill 132, codified as NRS 613.132, also affects drug screens required within 30 days of employment. Employees who fail such a test have the right to submit an additional screening test in rebuttal, at the employee's expense, which the employer must accept and consider appropriately.

Employer Autonomy Over Workplace Conditions and Job Requirements

The pre-employment discrimination protections of NRS 613.132 do not apply to applicants for positions that, in the determination of the employer, could adversely affect the safety of others. Specifically, the law excludes firefighters, emergency medical technicians, and drivers of motor vehicles subject to federal or state screening tests. The protections also do not apply to the extent they are inconsistent or conflict with provisions of an employment contract, collective bargaining agreement, or federal law; nor do they apply to positions funded by federal grants.

Although NRS 613.132 extends protection of legal substance use to the pre-employment stage, it does nothing to limit an employer's discipline or termination of an employee who is impaired on the job. Employers may still implement drug-free workplace policies and employees may face adverse action for violations. As Assemblywoman Neal stated, "[AB132] deals only with what happens when a recreational user who smokes only on the weekend is looking for employment. It

CLE article *continued on page 22*



Clark County Bar Association presents

CCBA CLE Article #8

How Nevada lawyers may earn 1.0 General CLE credit in three easy steps:

- 1. Read the article, "Nevada Prohibits Pre-Employment Discrimination for Marijuana Use)" (CCBA CLE Article #8). See pages 20-23;
- 2. Take the test. See pages 24; and
- 3. Complete the order form. See page 25.

Questions: Donna Wiessner at the Clark County Bar Association, (702) 387-6011.

CLE article continued from page 21

does not deal with what happens in the workplace. If you get caught smoking on the job, you are going to be fired. If you violate any of the workplace safety rules, you will be fired [Using marijuana] is as legal as being drunk, but nobody is saying you can go to work drunk." (Senate Minutes, p. 6; Assembly Minutes, p. 7.)

Accommodating Employees' Private Use of Legal Substances

Since 1991, it has been unlawful to fail or refuse to hire a prospective employee, or discharge or discriminate against an existing employee, for engaging in the lawful use of any product during non-working hours and outside the employer's premises (NRS 613.333). While this law was enacted primarily to protect tobacco users from discrimination in the workplace, it had since been interpreted to protect users of medical marijuana since its legalization in 2001 (Minutes of the Senate Committee on Commerce and Labor, May 10, 2019, "Senate Minutes," p. 10; (Minutes of the Senate Committee on Commerce and Labor, May 29, 1991, p. 12).

However, NRS 613.333 did not address applicant disqualification for failing a pre-employment drug screen. Employers could choose whether or not to screen applicants for marijuana, and make hiring results based upon those results.

With the growing legalization of both medical and recreational marijuana across the United States, employers have found it increasingly difficult to maintain a marijuana-free workforce. Caesars Entertainment

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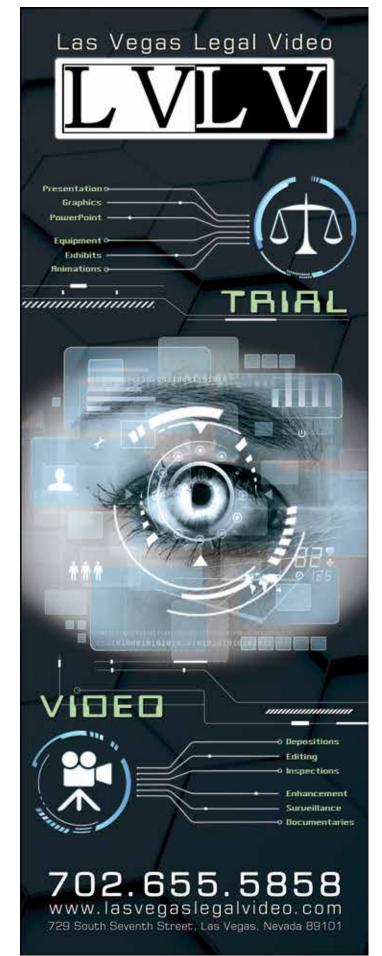
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had voluntarily stopped pre-employment marijuana screening in 2018, in order to find qualified workers (Velota, R., "Caesars no longer screening job applicants for marijuana use," *Las Vegas Review-Journal*, May 7, 2018 https://www.reviewjournal.com/business/casinos-gaming/caesars-no-longer-screening-job-applicants-for-marijuana-use/).

According to Thoran Towler, CEO of the Nevada Association of Employers, approximately half of the associations' over 400 members had already stopped pre-employment screenings for marijuana as of June 2019 (Nevada Association of Employers, "Nevada Firms Barred from Using Marijuana Test to Reject Job Seekers," June 18, 2019 https://www.nevadaemployers. org/nevada-firms-barred-from-using-marijuana-testto-reject-job-seekers/). Senator James A. Settelmeyer noted that in Washoe County, employers "ran out of employees, and many [employers] quit testing because they just cannot find anyone to work who can pass a drug test." (Senate Minutes, p.12.) **C**



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CCBA CLE Article #8 Test

Take the test. Each question has only one correct answer.

1. With certain exceptions, AB132 makes it illegal for employers to disqualify applicants solely for the presence of marijuana on a pre-employment drug screening.

TRUE ____ or FALSE ____

2. Nevada employers are prohibited from requiring prospective employees to undergo pre-employment drug testing.

TRUE ____ or FALSE ____

- 3. Employers may automatically disqualify applicants who test positive for marijuana from the following positions:
 - a. Firefighters and EMTs
 - b. Drivers of motor vehicles subject to state or federal screening tests
 - c. Positions that, in the determination of the employer, could adversely affect the safety of others
 - d. All of the above
- 4. The anti-discrimination protections of AB132 do not apply to the extent they are inconsistent or conflict with an employment contract, a collective bargaining agreement, or federal law.

TRUE ____ or FALSE ____

5. Positions funded by federal grant money are subject to AB132 anti-discrimination protections.

TRUE ____ or FALSE ____

6. Nevada is the only state to implement protections for employees who legally use medical and/or recreational marijuana.

TRUE ____ or FALSE ____

7. Nevada employers are permitted to enforce drugfree workplace policies, including termination of employment for on-the-job impairment.

TRUE ____ or FALSE ____

8. Nevada employers may take adverse action against employees for off-duty marijuana use that does not affect job performance or workplace safety.

TRUE ____ or FALSE ____

9. Under the Americans with Disabilities Act, employers must permit medical marijuana use on the job as a reasonable accommodation.

TRUE ____ or FALSE ____

10. A positive test for marijuana is not necessarily proof of impairment.

TRUE ____ or FALSE ____

11. AB312 is intended to allow users of marijuana to be considered on equal footing with users of other legal substances in the hiring process.

TRUE ____ or FALSE ____

12. Employers who require a drug screening within 30 days of employment do not have to accept a rebuttal drug screening provided at the employee's expense.

Å

Clark County Bar Association – COMMUNIQUÉ – April 2020

CCBA CLE Article #8 Order Form

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CCBA CLE Article #8

P

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Nevada Prohibits Pre-Employment Discrimination for Marijuana Use

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It's "Safe" to Assume That Politics Will Delay the Marijuana Industry's Access to Financial Institutions

By James A. Kohl, Esq.

n 2015, I wrote an article for the Communique outlining the problems faced by the marijuana industry because it was blocked from access to financial institutions. The fundamental problem the industry faced was twofold. First, under federal law, marijuana remains illegal and remains a Schedule I drug pursuant to the federal Controlled Substance Act. 28 U.S.C. § 801 et. seq. Second, financial institutions are prohibited from accepting funds that were derived from criminal activities. As a result, the Federal Reserve remains unwilling to approve a master account for financial institutions that service medical marijuana clients. A master account allows a financial institution to deposit money into a Federal Reserve branch which is converted into an electronic credit. The institution can then transfer money between banks, using the primary nine-digit routing transit number.

In the past five years, Americans have become open to the cultivation, manufacturing, and sale of marijuana products. Even though marijuana is legal in 11 states for adults over the age of 21, and legal for medical use in 33 states, banks remain unwilling to accept funds that are derived from marijuana operations for fear of punitive regulatory action. In interviews with repre-



James A. Kohl is an attorney, mediator, and arbitrator who has practiced in all phases of commercial litigation for over 20 years. He handles a variety of cases in multiple industries and fields, and advises business owners in the creation, acquisition, and disposition of entities and real estate. jkohl@ howardandhoward.com. sentatives from a local bank and a nationally associated bank, they both expressed that they remain strongly averse to accepting funds from marijuana businesses notwithstanding state regulations permitting them. Additionally, both institutions stated that they audit accounts that are suspected to be related to regulated marijuana businesses. If the audits determine that the accounts are associated with regulated marijuana businesses, they close the accounts and return the funds. Neither financial institution were opposed to taking the money *per se*. For them, the math is simple; deposits from regulated marijuana businesses are a mere fraction of the total deposits they control. They are not willing to risk federal discipline and possible prosecution for such a relatively small amount of funds.

As a result, marijuana businesses are literally sitting on piles of cash. The problem is not limited to companies that are directly involved in the cultivation, processing, or sale of marijuana. Financial institutions refuse to accept funds from service providers of state-sanctioned marijuana businesses. The accounts of lawyers, plumbers, landlords, etc. have been closed and returned to their owners because they have accepted funds from regulated marijuana businesses.

To alleviate the problem, on March 7, 2019 Representative Ed Perlmutter (D-CO) introduced the Secure and Fair Enforcement (SAFE) Banking Act. SAFE will stop federal banking regulators from punishing financial institutions that provide banking services to state-regulated marijuana businesses and their related providers. Under this bill, federal regulators will not be allowed to do the following: (1) terminate or limit deposit insurance on the grounds that the financial institution provides services to state-regulated marijuana businesses; (2) prohibit or discourage financial institutions from providing financial services to state-regulated marijuana businesses; (3) recommend or encourage financial institutions to not offer banking services to account holders that are affiliated with state-regulated marijuana businesses; (4) discipline or take adverse action related to a loan that was made to individuals on the sole basis that the individual owns a regulated marijuana business, or leases real estate or equipment to a regulated marijuana business; or (5) penalize financial institutions that chose to provide financial services to regulated marijuana businesses or their providers.

SAFE quickly gained support in the House, and on September 25, 2019, the bill was passed. There are currently 206 members of the House of Representatives who have cosponsored the bill. Almost one half of House Republicans voted to enact SAFE. When the House passed the bill, it appeared that relief was on the horizon for state-regulated marijuana businesses and their providers.

Pundits were hopeful that SAFE would make it through the Senate when Mike Crapo (R-ID), the Senate Banking Committee Chairman, stated that he would put the bill up for a Committee vote in September. That proved to be false hope, as Senator Crapo has not called for a vote and appears to be unlikely to do so anytime in the near future.

On December 18, 2019, Senator Crapo published a laundry list of concerns about SAFE. He stated, "I remain firmly opposed to efforts to legalize marijuana on the federal level, and I am opposed to legalization in the state of Idaho." Senator Crapo further stated that he was concerned that SAFE did not address the level of THC in marijuana, marketing to children, the lack of research on the effects of marijuana, and the need to prevent criminals from laundering their money into the financial system via the marijuana industry. Senator Crapo wants a full referendum on marijuana as opposed to passing SAFE to ensure the denial of access to regulated marijuana business to financial institutions.

According to a Pew Research Center Survey published in November 2019, two thirds of Americans favor legalization of marijuana in some form. Idaho, however, remains firmly opposed to legalizing marijuana. Senator Crapo's holdup of SAFE illustrates the old axiom that all politics are local. Until marijuana is removed from Schedule I or SAFE is passed by the Senate and signed into law, Nevada's regulated marijuana businesses will remain caught in the middle of politics. **C**

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Pro Bono Corner Retired and Semi-Retired Attorneys Make a Huge Difference for Pro Bono Clients

By Noah Malgeri, Esq.

he Pro Bono Project at Legal Aid Center of Southern Nevada enjoys wide support from volunteer attorneys at all stages of their careers. We are always encouraged when new admitees reach out to us to volunteer for their first pro bono case. We also pair law students at Boyd with volunteer attorneys as part of our Partners in Pro Bono mentorship program. However, one of the most significant categories of volunteer attorneys are those who are retired or semi-retired from full-time practice.

Such attorneys bring a wealth of experience, wisdom, and skill to bear on behalf of their vulnerable pro bono clients, and often enjoy additional freedom in their schedules that allows them to take on more significant and satisfying representations. Retired attorneys enjoy additional benefits from participating in pro bono: keeping their skills sharp, networking, and staying in touch with colleagues. Our pro bono volunteers can also attend our free CLEs offered monthly on a host of different topics, as well as have free professional liability insurance coverage through Legal Aid Center.

Some retired attorneys enjoy working in familiar practice areas, whereas others use retirement as an opportunity to learn a new area of law. Many such attorneys become certified to represent children taken from their caregivers due to abuse or neglect, through our Children's Attorneys Project. All necessary training, support, and mentorship is provided through the program to ensure our volunteers have the tools necessary to succeed for their clients.

Finally, some retired attorneys enjoy contributing by volunteering for one of our several periodic ask-a-lawyer programs, where volunteers provide short consultations to customers in a specific area of law. If you are a retired attorney who would like to stay active at a manageable pace, and help people who cannot afford an attorney in the process, please contact Mr. Noah Malgeri, Director of the Pro Bono Project at Legal Aid Center, at nmalgeri@lacsn.org. **C**

Noah Malgeri, Esq. is the Pro Bono Director at the Legal Aid Center of Southern Nevada. Before coming to Legal Aid Center of Southern Neva-

da, Mr. Malgeri worked as a patent litigation attorney at three large, national law firms. Prior to private practice, Mr. Malgeri served as a Captain in the U.S. Army JAG Corps. In that capacity, he worked as an international and operational law advisor and criminal prosecutor for U.S. Army, V Corps in Heidelberg, Germany and Iraq. Mr. Malgeri helped to plan and execute the opening stages of Operation Iraqi Freedom, for which service he was awarded the Bronze Star Medal.



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Clark County Bar Association

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- Provide Meaningful Services to Members
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Membership to the CCBA is offered on an annual basis (January 1 through December 31) and will expire on December 31. Members (current and former) are encouraged to renew their membership at the appropriate membership level before December 31.

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Event ticket notes

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Note: More sponsor package options available. See clarkcountybar.org.

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Ticket delivery – Select for pick-up at will call table at event or provide a business address in Las Vegas for <u>SIGNATURE RECEIPT between 7/2/2020 and 7/17/2020</u>:

Pick up at will call table at event
Delivery to: Attn:
Firm/Co:
Address:
City, State, Zip:

Total amount enclosed \$_

Type of payment enclosed: Check/Money Order Credit Card I authorize the CCBA to charge my: MC VISA AMEX

Name of card holder: ______ Credit Card #: ______

Expiration date: ______ Phone #: _____

Authorized Signature: _____

E-mail receipt to: _____

Submit registration information and

payment to:

Clark County Bar Association 717 S. 8th Street Las Vegas, Nevada, 89101 Phone: (702) 387-6011 Fax: (702) 387-7867



The Clark County Bar Association (CCBA) presents



Thursday, July 23, 2020 5:30-8:30 p.m.

The Smith Center for the Performing Arts Grand Lobby Featuring

- Silent auction
- Hors d'oeuvres
- Drink ticket Valet

This annual event is open to attendance by Nevada's judges, attorneys, legal assistants, legal secretaries, law students, merchants, and candidates. This is a private cocktail reception; no minors allowed. Business casual attire acceptable.

Sponsorship opportunities available.

This will be a ticketed event. No ticket, no entry, no exceptions. Order tickets from CCBA using the event registration form available from the CCBA.

For more information, contact Donna at the CCBA office at (702) 387-6011 or Donnaw@clarkcountybar.org.

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