

# COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

MAY 2020

**Sports & Entertainment Law** 





Looking Forward in a Time of Crisis
#COVID19



In this Issue

Special Report: Practicing Law During the COVID-19 Pandemic Page 18

LVJC's Response to the COVID-19 Crisis
Page 16

Court News Pages 10-15 "Hang In There!"—Nevada's Gaming and Hospitality Industry Faces the COVID-19 Crisis Page 22

Learning to Pivot When Plans Go Awry
Page 4

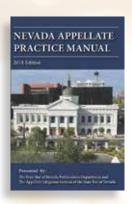
A Victory for Street Artists
Page 25

Social Distancing and Pro Bono Page 27

> Sizzling Summer Sale Pages 31

# **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.



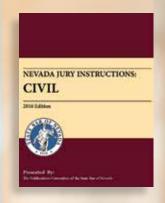
### Nevada Gaming Law Practice and Procedure Manual

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: <a href="https://www.nvbar.org">www.nvbar.org</a> > Publications > State Bar Publications





# COMMUNIQUÉ

Table of contents

Articles Special Report: Practicing Law During the COVID-19 Pandemic By Alia A. Najjar, MD, Esq	18
"Hang in There!"—Nevada's Gaming and Hospitality Industry Faces the COVID-19 Crisis  By Jennifer J. Gaynor, Esq	22
A Victory for Street Artists  By Caleb L. Green, Esq	25
Columns	
Clark County Bar President's Message  Learning to Pivot When Plans Go Awry	
By Mariteresa Rivera-Rogers, Esq	4
View from the Bench Las Vegas Justice Court's Response to the COVID-19 Crisis	
Chief Judge Suzan Baucum	16
Highlights	
Pro Bono Corner Social Distancing and Pro Bono	

By Noah Malgeri, Esq. ......27







### **Departments**

Errata	9
Court News	10
The Marketplace	27

### On the Cover

Pictured on the cover are three authors featured in this issue (left-right): Alia A. Najjar, MD, Esq., Jennifer J. Gaynor, Esq., and Caleb L. Green, Esq.

## **Learning to Pivot When Plans Go Awry**

By Mariteresa Rivera-Rogers, Esq.

long ago for this month to deal with the subject matter of Sports and Entertainment Law. And instead, Sports and Entertainment have been shut down due to concerns for public health in light of the dangers or contagion from the coronavirus/COVID-19, and the emergency directives from Nevada Governor Sisolak. We are to stay home, keep social distancing, no sports are being played, and all casinos and other local entertainment venues deemed non-essential were closed. Lawyers are considered essential but need to adapt, whether it is by working from home, observing all directives in place, and/or dealing with the stress and difficulty that these constraints represent for our profession.

There is no need to reiterate here any of what you all have been hearing from the news channels and widely broadcasted press conferences. We at CCBA are appreciative of our members and will endeavor to provide them with pertinent information related to our local courts and how the business of the law is being conducted under these unprecedented circumstances. Also you will find links and information on how to deal with the stress and how to remain healthy not only physically but mentally. Our website contains a wealth of current information. See https://www.clarkcounty-bar.org/resources/health-and-wellness-resources/.

Special thanks to Jacquelyn Franco, Alia Najjar, Jennifer Gaynor, and all the other CCBA members who helped to produce this issue of *Communiqué*. It is amazing how quickly the editors pivoted to create content in this issue to better reflect the current state of

affairs. Read this issue for content



Mariteresa Rivera-Rogers is an associate at the Las Vegas criminal defense firm Wright Marsh & Levy. Her areas of practice include criminal law and juvenile law.

that reflects concerns related to the early days of the shutdown period. It provides information and resources to bar members for the future.

CCBA staff is working from home, our doors are closed to the public, and only phone and email contact with our members are the norm at this time. Our meetings are on Zoom, recorded CLE's can be checked out from our library [see pp 27-30], or new offerings will be scheduled following the recommendations in place. Donna and Stephanie's dedication is worthy of a great thanks from all of us, as we could not do it without them.

Let's all keep doing our part so we can get out of home confinement for good. Although things may not be the same as before for a while, our strength as a group and the support of each other during these difficult times, will give us hope for a needed recovery. **©** 

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Clark County Bar Association presents

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Special Offer:\*

### **CCBA CLE Passport for \$99**

The CCBA CLE Passport offers 13 CLE credits of live or recorded CLE programming to be provided by the Clark County Bar Association (CCBA).

\*Offer and use of the CCBA CLE Passport is for CCBA members only. Additional restrictions apply. For more information, visit www.clarkcountybar.org or call the CCBA office at 702-387-6011.

Clark County Bar Association (CCBA) presents

# 30th Annual MEET YOUR JUDGES MIXER



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

The Smith Center for the Performing Arts, 361 Symphony Park Avenue, Las Vegas

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For more information, see next page...









### **Event ticket notes**

Register for event tickets and sponsor packages using this form or the online form via ClarkCountyBar.org.

RSVP Deadline: 7/2/2020.

**Ticket orders received BEFORE** July 2, 2020, will be filled and delivered to purchaser. The Clark **County Bar Association is not** responsible for lost or stolen tickets.

**Ticket orders made AFTER** July 2, 2020, will be held for pick up at the event's "will call" registration table. An additional \$15 fee will be charged upon check-in at the event for people who do not register by July 2, 2020. FINAL DATE TO RSVP **WITH PAYMENT IS JULY 17,** 2020.

### **Cancellation & refund policy.**

Cancellations must be submitted in writing and include the return of event tickets to the CCBA by July 2, 2020; qualifying refunds of the event registration fee less a \$15 processing fee. No refunds will be issued after July 2, 2020.

## **MEET YOUR JUDGES MIXER**

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\$55/CCBA member; \$85/non-member; or FREE for Nevada's local, state, and federal judges with RSVP by deadline. (Judges: enter "\$0" in \$ field on ticket order form) and register their guest(s) at CCBA member rate.)

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Name:	Bar#	\$
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"Patron" Sponsor Package @ \$1,300 each includes 1 to event, 1/2 page, 4-color display ad in CCBA's magazin display table, law firms may receive 5 additional admiss	ne, <i>COMMUNIQ</i>	
Note: More sponsor package options available. See clar	kcountybar.org	J <b>.</b>
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### **Clark County Bar**

### **Advertiser index**

Advanced Resolution Management 5, 13
Aldrich Law Firm5
Ara Shirinian Mediation21
Bailey Kennedy, LLP5
Bank of Nevada 5, 6, 7, 27, 32
Collinson Daehnke Inlow & Greco 5
Dickinson Wright PLLC23
Esther Rodriguez
Ghandi Deeter Blackham5
Holley Driggs5
JAMS5, 11 Jason D. Mills & Associates, Ltd
Jason P. Stoffel5, 17
Koeller Nebeker Carlson & Haluck LLP 5
Las Vegas Legal Video 5, 21, 27
Lawrence C. Hill & Associates, LTD . 5, 6, 32
Legal Wings24
Lewis Roca Rothgerber Christie LLP
5, 6, 32
Maricar "Rica" Andrade 17
McDonald Carano5
Nevada Digital Forensics 10
Nevada Legal Services5
Phil Aurbach15
Portraits to You26
Reisman Sorokac9
REPLEC 5
Roberts Stoffel Family Law Group5
State Bar of Nevada2
Welt Law 4
CCDA - stickles and comices

### **CCBA** activities and services

Advertisers Index	8
Communiqué Sizzling Summer Sale.	31
CLE Passport	5, 29
CLE Seminars - Recorded	28-30
Meet Your Judges Mixer5	6, 6, 32
Picture Day	9
Summer Kick-Off BBQ	5

### Advertising space available

For more information and to confirm space reservations, proposals of content, artwork specifications, rates, discounts, and deadlines, contact StephanieAbbott@clarkcountybar.org.



# COMMUNIQUÉ

About Communiqué

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Stephanie Abbott

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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 date Issue topic Five Things January 2020 February 2020 Labor & Employment March 2020 Technology in Law Practice April 2020 Cannabis Law May 2020 Sports & Entertainment Law June/July 2020\* Mental Health August 2020 **Family Law** September 2020 Appellate Practice October 2020 **Local Courts** November 2020 Administrative Law December 2020 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.

**Bar Services** 

### **Picture Day**

Tuesday, August 4, 2020

9:30 a.m. to 2 p.m. only

Clark County Bar Association 717 S. 8th Street, Las Vegas

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### Special offer:

CCBA members will be offered a special price to purchase images directly from the photographer *at this event only*. For more info, visit .clarkcountybar. org or contact Steph at CCBA, (702) 387-6011, StephanieAbbott@clarkcountybar.org.

### **Errata**

### Correction to CLE Article #8 in April Communiqué



The printed edition of last month's issue of *Communiqué* includes an omission of content in "Nevada Prohibits Pre-Employment Discrimination for Marijuana Use" written by Bridget Kelly, Esq. The omission was limited to one line of text in the quiz, under question 12. That question should have read as follows (with the omitted text listed in red font):

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.

TRUE or FALSE

The error was limited to the print edition, as the content was corrected before the online edition was posted. Members are encouraged to write in their answer directly under question 12. Members may complete the quiz as published without penalty. The CCBA staff regrets this error and apologizes for any confusion the error may have caused.

### 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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### **Court News**

uring the months of March and April 2020, the courts have filed a variety of administrative orders that alter court procedures and to protect the community during COVID-19 pandemic. See below for news and information as grouped by individual courts (local, state, and federal).

# Henderson Municipal Court

### Henderson Municipal Court Order of Temporary Alterations in re COVID-19

On March 31, 2020, Henderson Municipal Court Chief Judge Rodney Burr filed an order in the administrative matter regarding the Henderson Municipal Court's procedures regarding the coronavirus disease (COVID 19). See 1st Amended Administrative Order 20-02.

In Administrative Order 20-02, the court lists parameters for the temporary alteration of current court procedures due to the severity of the risk posed to the public by OCVID-19. The order states:

> Effective upon the filing of this Order, the Henderson Municipal Court will operate under the following parameters:

> 1. All currently scheduled court hearings between March 16, 2020 and April 30, 2020 for criminal and traffic arraignments, criminal and traffic trials, specialty courts, and status checks will be

continued for five weeks (35 days) from the date of the currently scheduled hearing.

- 2. In-custody video arraignments will continue to be held as scheduled each business day.
- 3. The court's customer service windows will be closed through April 30, 2020.
- 4. Offenders arrested for misdemeanor offenses who post bail, are released on their own recognizance, or qualify for an Administrative Release pursuant to AO 20-01, will be given a return court date hearing at least eight weeks from their release from custody.
- 5. The time period of any continuance entered as a result of this Order shall be excluded for purposes of calculating speedy trial under NRS 178 .556(2) and NRS 174.511 as the court finds that the ends of justice served by taking this action outweigh the interests of the parties and the public in a speedy trial. Absent further order of the court or any individual judge, the period of exclusion shall be from March 16, 2020 through April 30, 2020. The court may extend the period of exclusion as circumstances warrant.
- 6. The court encourages the use of electronic communications with the Henderson City

**Court** *continued on page 12* 



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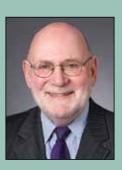
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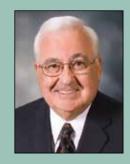
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### **Court** *continued from page 10*

Attorney's Office/Criminal Division for the possible resolution of cases set for trial.

Additionally, the Centers for Disease Control (CDC) has advised people to take precautions and avoid exposure to prevent illness. Court staff may be contacted at 702-267-3300 or via email at HMCCS@ cityofhenderson.com normal business hours Monday -Thursday from 7:30 a.m. to 5:00 p.m. Please refer to the Municipal Court's webpage www.cityofhenderson.com for additional information and resources.

This Order shall be reviewed and updated or rescinded as necessary upon determination by the Court.

Source: Bill Zihlmann, Court Administrator, Henderson Municipal Court

# Las Vegas Justice Court

The Las Vegas Justice Court released several administrative orders that alter court procedures. The following headlines address the changes at the justice court:

- Administrative Order 20-08
   Temporary Procedures in Criminal Cases
- Administrative Order 20-07
   Las Vegas Justice Court's Response to Coronavirus Disease (COVID-19) Implementation of Governor's Emergency

Directive 008

- Administrative Order 20-06

   Unlawful Detainer Cases,

   Including the Supplemental Remedy of Summary Eviction (RESCINDED)
- Administrative Order 20-05
   Temporary Procedures in Criminal Cases
- Administrative Order 20-04
   Temporary Procedures in Criminal and Civil Cases
- Administrative Order 20-03 (AMENDED) - Temporary Procedures in Criminal, Civil, and Traffic Cases
- Administrative Order 20-02
   Temporary Procedures in Criminal Cases
- Administrative Order 20-01

- Suspending Certain Local Rules

For more info about the LVJC administrative orders, see <a href="http://www.lasvegasjusticecourt.us/faq/laws\_and\_rules.php">http://www.lasvegasjusticecourt.us/faq/laws\_and\_rules.php</a>.

# **Eighth Judicial District Court**

The Eighth Judicial District Court released several administrative orders that alter court procedures and published news on their blog accordingly. The following headlines address the changes at the state court:

- What to Do About Your Court Case in Clark County during Coronavirus
- District Court Chief Judge Offers Insight

# PUBLIC NOTICE FOR REAPPOINTMENT OF MAGISTRATE JUDGE NANCY J. KOPPE

The current term of United States Magistrate Judge Nancy J. Koppe will expire on December 31, 2020. The United States District Court, District of Nevada is establishing a panel to consider the reappointment of Judge Koppe to a new 8-year term. For more information visit: https://www.nvd.uscourts.gov/court-information/public-notices/

Written comments, from members of the bar and the public are invited, as to whether Magistrate Judge Koppe should be reappointed by the Court must be received by May 30, 2020.

Email: comments\_magistrate@nvd.uscourts.gov Regular mail:

Magistrate Judges Panel c/o Debra Kempi, Clerk of Court 333 Las Vegas Boulevard South Las Vegas, Nevada 89101

- after Governor Updates **Emergency Declaration**
- Courts With in Line Governor's Directive Matters during Coronavirus Pandemic
- NV EJD Court Admin Order 20-11 Outlines Operations of Civil Domestic Matters to Keep Processing Cases Safely Amid COVID-19
- New Court Order Eliminates Paper to Improve Safety at Courthouse
- Nevada Eighth **Judicial** District Court Order Outlines Management of Civil Matters during the Pandemic
- Violence Domestic

- Temporary Protective Orders Available by Phone for Safety of Those Facing Domestic Violence during the Confines Of The Coronavirus Pandemic
- Nevada Eighth Judicial District Order with Court Response to COVID-19 Regarding Probate
- Nevada Eighth **Judicial** District Order Outlines COVID-19 Response Procedures Matters for Including Abuse and Neglect, Parent Visitation, Specialty Courts and More
- District Court Orders Use Of Video Or Telephones For Alternative Dispute Resolution, Mediation And **Short Trials**

- New District Court Order Defines Criminal Case Management in Response to COVID-19
- Boulder Township Justice Court Issues Administrative Response Order in COVID-19
- Las Vegas Justice Court And Municipal Court Traffic Customer Service Counter is Closed
- Court Ordered Family Mediation to Be Done By Phone
- Nevada **Judicial** Eighth District Modifies Services At Family Court for Protection of Community

Court continued on page 14



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### **Court** *continued from page 13*

NV Eighth JD Court Orders
 No In-person Gatherings
 or Meetings to Discuss
 Court Business In Addition
 to Halting Jury Trials and
 Implementing Telephonic
 Hearings

For more info about the head-lines listed above, see https://eighth-jdcourt.wordpress.com/2020/03/ and https://eighthjdcourt.wordpress.com/2020/04/.

For more info on EJDC administrative orders, see http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/.

# Supreme Court of Nevada

The Supreme Court of Nevada released several news about administrative orders to alter court procedures including:

- ADKT 554 In the Matter of Supreme Court Administrative Orders Related to the Coronavirus Emergency
- ADKT 555 In the Matter of District Court Administrative Orders Related to the Coronavirus Emergency
- ADKT 556 In the Matter of Limited Jurisdiction Court Administrative Orders Related to the Coronavirus Emergency
- Temporary Closing of Supreme Court Law Library
- Appendices Are Now Electronically Available

# LAWYER REPRESENTATIVES FOR UNITED STATES DISTRICT COURT

The United States District Court for the District of Nevada is accepting applications for Lawyer Representatives. Lawyer Representatives provide vital input to the Court on a myriad of issues affecting the operations of the federal courts including but not limited to: rule changes; development of new programs; planning of conferences; and the expenditure of funds from the non-appropriated account.

To be considered for one of these positions, you must be: 1) admitted to practice in the U.S. District Court of Nevada and actively involved in federal practice; 2) interested in the purpose and framework of the Circuit Conference and willing and able to actively contribute to the planning of the District Conference; and 3) willing to assist in implementing conference and district court programs with local bar associations. Lawyer Representatives are also expected to attend the Ninth Circuit Judicial Conference.

In addition to the above criteria, a goal of the Court in the selection of Lawyer Representatives is to ensure the chosen attorneys represent a cross-section of practitioners in federal court which specialize in civil, criminal, appellate and bankruptcy matters. Lawyer Representatives are elected to serve a three-year term.

If you are interested in serving as a Lawyer Representative, please submit a letter of interest detailing your federal experience and reasons you would like to be considered. Letters of interest may be emailed to: NVD\_LawyerRep@nvd.uscourts.gov, or hand delivered or mailed to: Ms. Debra K. Kempi, District Court Executive, Lloyd D. George United States Courthouse, 333 Las Vegas Boulevard South, Suite 1334, Las Vegas, Nevada 89101. Please include your email address and direct telephone number.

Letters of interest must be received by the close of Friday, May 22, 2020. A list of finalists will be selected by the Court and submitted to the Board of Governors of the State Bar of Nevada for the final selections. Please contact Ms. Kempi at (702) 464-5456 with questions regarding the role of a Lawyer Representative or the selection process.

- Cancellation of Oral Argument and Public Hearing
- Visitor Restrictions to Courthouses in Carson City and Las Vegas
- Participating Remotely in Oral Argument

# **U.S. District Court Conference Update**

The Nevada U.S. District Court Conference for 2020 has been canceled. The next conference will be held on Tuesday, May 25, 2021. [Ads for judicial candidates are paid placements and do not constitute endorsements by the CCBA.]

For more info on these headlines and other news from the Supreme Court and Nevada Court of Appeals, see https://nvcourts.gov/Supreme/All\_News/.

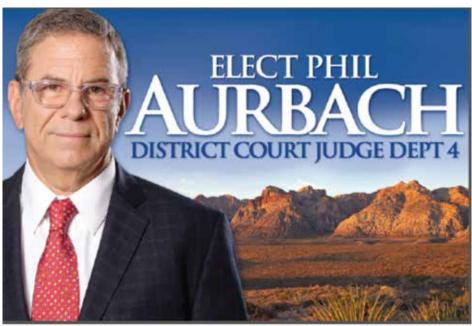
# United States District Court - Nevada

The United States District Court for the District of Nevada released a news about administrative orders to alter court procedures including:

- Press Release March 30, 2020
- Temporary General Order 2020-05
- Press Release March 19, 2020
- Temporary General Order 2020-04
- Press Release March 16, 2020
- Temporary General Order 2020-03
- General Order 2020-02
- Lawyer Representatives
   Opportunity For The
   District Of Nevada
- U.S. District Court Conference (2020) Cancelled

Readers may track the latest federal court orders about court business, operating status, and public and employee safety relating to the coronavirus on the court's website at https://www.uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-covid-19 #COVID19.





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# Las Vegas Justice Court's Response to the COVID-19 Crisis

Chief Judge Suzan Baucum

he Las Vegas Justice Court has implemented drastic changes in order to comply with recent directives for social distancing.

First, the following schedule is being used temporarily for criminal matters. [See right for schedule.]

All matters in Initial-Appearance Court will still be handled by department 9 in lower-level courtroom B.

Second, all criminal out-of-custody hearings (other than preliminary hearings) are continued for at least 60 days based upon departmental calendars. Attorneys should communicate with the court via e-mail (preferred) or phone to obtain new court

Department #	In-custody arraignment docket (conducted by video)		In-custody trials/ preliminary	
	Courtroom	Scheduled Time	hearings (various times)	
1	6A	4:00 PM until done	Courtroom 7A	
2	6A	2:00 PM – 3:00 PM	Courtroom 8B	
3	6A	11:00 AM – 12:00 PM	Courtroom 1B	
5	6A	7:30 AM – 8:00 AM	N/A	
7	6A	3:00 PM – 4:00 PM	Courtroom 8B	
8	6A	10:00 AM – 11:00 AM	Courtroom 1B	
10	6A	12:00 PM – 1:00 PM	Courtroom 8C	
11	6A	8:00 AM – 9:00 AM	Courtroom 7C	
12	6A	9:00 AM - 10:00 AM	Courtroom 7C	
13	6A	7:30 AM – 8:00 AM	Courtroom 1A	
14	6A	1:00 PM – 2:00 PM	Courtroom 8C	
15	6A	4:00 PM until done	Courtroom 7A	

dates. A listing of all e-mails and phone numbers appears at http://www.lasvegasjusticecourt.us/.

Third, for the time being, a person will be released on his or her own recognizance, and given a return court date for no sooner than 60 days, if:

1. The person is arrested on a misdemeanor bench warrant, other than a bench warrant for battery constituting domestic violence or DUI; or

2. The person is arrested on a civil bench warrant.

Chief Judge Suzan Baucum was elected to Las Vegas Justice Court Department 13 in 2010 and was re-elected in 2016 before becoming Chief Judge in 2019.

Fourth, all traffic pre-trial matters are suspended for at least 60 days.

Fifth, certain "essential" civil hearings will be conducted through in-person appearances, although appearance by alternative means under Supreme Court Rules is encouraged when possible. Examples of "essential" hearings include protection orders (TPO's), unlawful towing, and objections to claims of exemption. All currently scheduled "non-essential" civil hearings will be conducted by video or telephone, decided on the papers, or rescheduled unless otherwise ordered. Small-claims hearings and trials are considered "non-essential."

Sixth, all jury trials (civil and criminal) are being rescheduled.

Seventh, the issuance of defaults is now suspended, but the court is processing default-judgment applications. All currently scheduled "non-essential" civil hearings will be conducted by video or telephone, decided on the papers, or rescheduled unless otherwise ordered. Small-claims hearings and trials are considered "non-essential.

Eighth, all evictions have been suspended unless a tenant poses a danger, is committing a crime, or is damaging the property.

Ninth, the issuance of all writs of execution has been suspended.

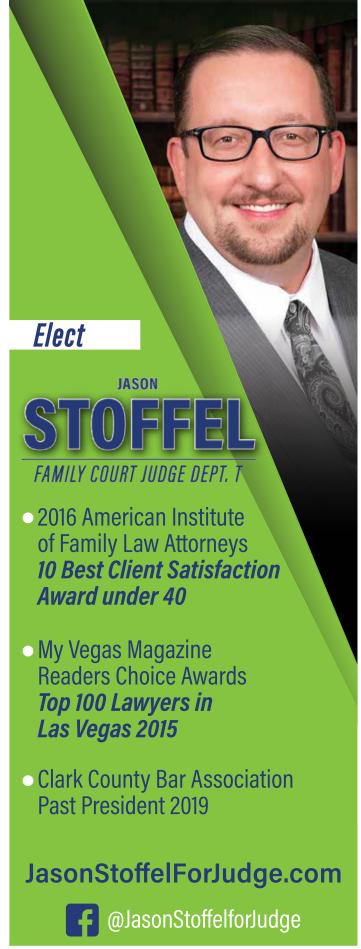
Finally, the court has dedicated phone lines as follows:

• Criminal: (702) 671-3201

Civil: (702) 671-3478Traffic: (702) 671-3444

Please use these numbers to reschedule court appearances, arrange appearances by alternative means, or provide other necessary information to the court during this difficult time. **©** 





# Special Report: Practicing Law During the COVID-19 Pandemic

By Alia A. Najjar, MD, Esq.

hroughout history, whether bacterial or viral and however spread, plagues have been with us. Until recently, most of us have not experienced the devastation caused by such a plague. COVID-19 has certainly impacted how we all conduct business, as well as how we live our lives. As attorneys, however, we must continue to stand ready to assist our clients, colleagues, and society in general to weather this terrifying storm. While it would be impossible to predict the full impact that this virus will have on our practices, those who practice before the courts in Clark County must be mindful of its impact on the courts.

### **Nevada state courts**

The Eighth Judicial District Court issued several orders in response to the state of emergency. While is not clear whether such orders will be in effect when this article is published, some of the changes will likely continue to impact cases even after these orders have been lifted.

All scheduled non-essential district court hearings are to be conducted via telephonic or video-conferencing; decided by the papers on file; or rescheduled unless otherwise directed by the judge during the pendency of the order, which is to be reviewed at 30-day intervals.



Alia A. Najjar, MD, Esq. is an attorney with Nutile Law, whose practice focuses on various aspects of healthcare law, including administrative, corporate, and certain healthcare litigation matters.

During the pendency of the order, all proposed orders, stipulations and orders, requests for orders shortening time, and other documents submitted to the court for judicial signature must be submitted electronically to the appropriate department's email address. Litigants without the ability to electronically file documents may mail such documents as stated in Administrative Order 20-10. All other litigants submitting or filing documents must do so electronically. Further, no courtesy copies are to be sent to the court. Proposed orders and other documents submitted to the court were to be done so electronically or by mail as required. Original signature requirements, except where notary services are required, are suspended. The court also provides a process for sealing documents and requires the use of the code "TSPCA" on the document to be sealed.

The court also noted that the statute of limitations, requests for a trial de novo, and the expert affidavit requirement for medical malpractice matters could not be waived by the court. On March 31, 2020 and as amended on April 1, 2020, however, the governor signed an emergency directive stating that "Any specific time limit set by state statute or regulation for the commencement of any legal action is hereby tolled from the date of this Directive until 30 days from the date the state of emergency declared on March 12, 2020 is terminated." http://gov.nv.gov/News/Emergency\_Orders/2020/2020-04-01\_-\_COVID-19\_Declaration\_of\_Emergency\_Directive\_009\_(Revised)/. Thus, the deadlines for filing such actions, including medical malpractice actions, were tolled.

Civil and criminal jury trials scheduled during the pendency of the order are suspended. Further, the or-

**Special** continued on page 20

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### **Special** continued from page 18

der stays jury and bench trials in civil cases for purposes of NRCP 41(e). Due to difficulties that will likely persist after the administrative order is lifted, courts are likely to more readily grant further trial continuances where difficulties persist, such as witness availability. The court recognized that service of process may be more difficult, and thus properly documented service issues related to COVID-19 are considered good cause for extending the time for service. However, motions to extend service of process must still be filed prior to the expiration of the time to serve. The court also stayed the deadlines for initial disclosures, expert disclosures, supplementing discovery, serving and responding to written discovery, pre-trial disclosures, and filing case conference reports for 30 days.

Motions to extend service of process must be filed prior to expiration of time to serve and properly documented service issues related to COVID-19 is considered good cause. All deadlines for initial disclosures, expert disclosures, supplementing discovery, serving and responding to written discovery, pre-trial disclosures, and filing case conference reports were stayed for 30 days. Though some deadlines were stayed for this 30 day period, the cases themselves are not stayed, and thus parties may still file motions and should prepare for moving forward with cases once stays on deadlines expire.

The court also ordered that all scheduled hearings, conferences, or other meetings assigned to the court ADR program were to be conducted via video or telephone, decided on the papers, or rescheduled. Short jury and bench trials were suspended for 30 days to be rescheduled. For the court annexed arbitration program, the one-year deadline from the date of arbitrator appointment to the date of the hearing pursuant to NAR 12(B) is extended. However, this only applies to cases where the deadline expired between March 17, 2020 and May 17, 2020.

Judicial settlement conferences scheduled during the pendency of the order were vacated. Parties should confer and submit five agreeable dates after June 1, 2020 to Department 30 to be rescheduled. If scheduled through the Senior Judge Program, parties should contact the program directly.

Time to respond to offers of judgment served on or after March 13, 2020 were suspended during the pendency of the order, with parties having 10 days to respond to pending offers once the order is lifted. However, parties are free to accept while the order is in effect. For more information regarding these and other changes, see http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/#Administrative%20Orders.

### Federal courts

Similar to the state court, the federal court has issued its own set of emergency provisions. On March 16, 2020, the federal court continued all civil and criminal trials and associated deadlines until April 10, 2020 pending further court order; postponed all non-case related events scheduled in the courthouse (such as Inn of Court) pending further court order; and excluded the time period of the continuances pursuant to this order under the Speedy Trial Act with regard to criminal matters. Subsequently, on April 9, 2020, the court amended the order, noting that the court had determined that jury trials must be further postponed, and that each presiding judge was to address any needed continuance of trial in their individual cases.

On March 20, 2020, the federal court temporarily closed the Clerk's Office (please note that this does not impact filings and all deadlines remain in effect until otherwise ordered by the presiding judge). Filings are processed via electronic filing and either mail or delivery to drop boxes in the lobby of the courthouses. Mailed filings are deemed filing on the date indicated on the postage stamp. Manual filings may be served on opposing parties without securing a file stamped copy. Payment by check or money order are accepted by mail or drop box. No cash payments during this time.

Courts will attempt to conduct hearings by video conference or telephone (with the defendant's consent in criminal cases) and the courtroom will be closed. Members of the public can call in to listen to hearings. The order does not impact motions that can be resolved without court appearances. This order was to be amended or vacated no later than April 30, 2020, and at the time of this writing, it was not clear whether this was likely to be further extended.

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") authorizing the use of video and telephone conferencing under certain circumstances and with the consent of the defendant for various criminal hearings during the course of the COVID-19 emergency. See CARES Act, H.R. 748, Public Law No. 116-136. Subsequently, on March 30, 2020, the federal court issued

Temporary General Order 2020-05, which authorized the use of video or telephone conferencing (if video conferencing is not available) for certain criminal proceedings as provided in the CARES Act. Pursuant to Section 15002(b)(3) of the CARES Act, this authorization will remain in effect for 90 days unless terminated earlier. If emergency conditions persist 90 days from the entry of the court's order, the court will review and determine whether to extend. For more information regarding federal court changes, see https://www.nvd.uscourts.gov/court-information/rules-and-orders/general-orders/.

Again, as attorneys, we must remain vigilant in ensuring our clients' rights are protected, but we must remember to be patient and courteous with one another during this stressful and everchanging time. We are all in this together. For additional guidance and helpful resources for attorneys, see https://www.nvbar.org/covid-19-update/. **©** 





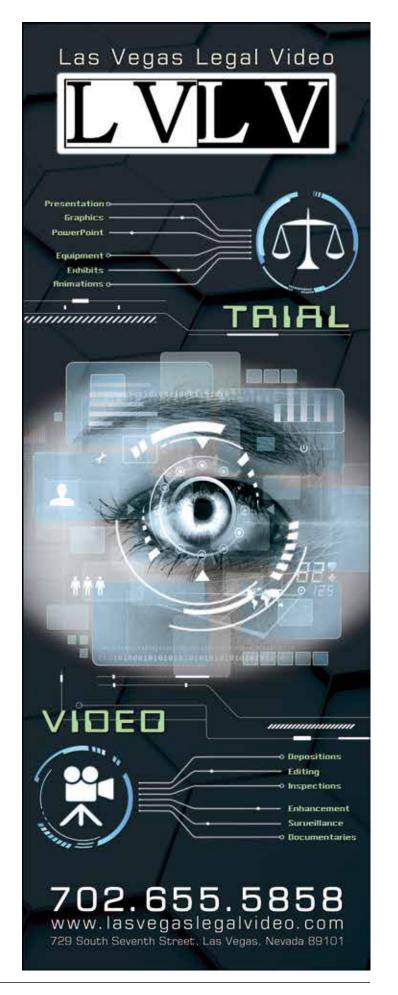
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# "Hang in There!"— Nevada's Gaming and Hospitality Industry Faces the COVID-19 Crisis

By Jennifer J. Gaynor, Esq.

The gaming and hospitality industry, much like the travel industry, has been hit especially hard by the business closures mandated by the COVID-19 pandemic.

**Jennifer J. Gaynor** is a member partner at the Dickinson Wright's Las Vegas office. She represents



clients before the Nevada Legislature in Carson City and practices before various professional and licensing boards and state and local tax authorities, and represents clients on matters involving First Amendment law, public records and open meeting law, gaming law and regulatory agency actions.

Te've all seen the posters and memes with the cute little orange kitten, hanging on to a screen door with all of its might, with the inspirational message "Hang in There!" That kitten could well represent the gaming and hospitality industry today, given the unprecedented COVID-19 global pandemic and the associated shutdowns of casinos and other gaming properties across not only Nevada, but the world.

The gaming and hospitality industry, much like the travel industry, has been hit especially hard by the business closures mandated by the COVID-19 pandemic. According to mid-March estimates from the American Gaming Association, nearly 616,000 casino gaming and resort employees nationally are out of work due to casino closures, including some 206,000 workers in Nevada. As noted by US senator from Nevada, Catherine Cortez Masto, during discussions about the COVID-19 economic recovery package, "[Nevada's] hospitality industry generates nearly \$68 billion annually and supports more than 450,000 jobs across the state."

In the short term, the industry is scrambling to simply sustain itself through the crisis: industry representatives and elected officials in the areas that are hardest-hit, including Nevada, have reached out to the federal government to get disaster relief for the gaming and hospitality industry. These efforts are a work in progress.

Hang continued on page 24



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### **Hang** *continued from page 22*

To the dismay of the gaming industry, the Paycheck Protection Program, the loan program administered by the Small Business Administration as part of the Coronavirus Aid, Relief and Economic Security (CARES) Act to help small businesses weather the COVID-19 shutdowns, has language that means it cannot be utilized by small businesses that make more than one-third of their revenue from gaming. Nevada's representatives and the gaming industry are working to correct this.

What about the long term? Although it is difficult to look to the future when the future is so uncertain, it is clear that the industry, and Las Vegas in particular, is still gambling on a rosier future. All it takes is a walk down the eerily silent Las Vegas Strip to see that many of the brick and mortar construction projects are continuing to move forward, such as the expanded Las Vegas Convention Center, Resorts World, the new Virgin casino renovations, and, of course, the Las Vegas Raiders stadium project at the south end of the strip.

Perhaps more importantly, we've seen several of southern Nevada's largest gaming and casino companies step up on behalf of their workers during this crisis. For example, Joe Asher, the CEO for William Hill's US operations, created a foundation to help furloughed William Hill employees and is donating his salary to it. Similarly, a number of Wynn Resorts executives and board members are giving up at least a third of their salaries in exchange for stock as a way to free up much-needed cash during the crisis and to demonstrate that they are invested in the company's future. Wynn Resorts also announced at the time of the March shutdowns that it plans to keep paying employees for 30 days at Wynn Las Vegas and Encore, and similar plans to continue paying employees (at least for some period of time) during the shutdown have been announced from companies including Sands Hotel & Casino, Station Casinos, Penn National Gaming, and The Cosmopolitan of Las Vegas.

Although it is difficult to predict what the longterm impact of these events will be, it is guaranteed that the industry will look somewhat different when we come out of this crisis. It is likely that companies will look to diversify into online gaming to a greater extent, will speed up movement to cash-free gaming alternatives as well as hands-free gaming options, and will increase social distancing and sanitization efforts on casino floors. My hope, however, is that we will also see

We've seen Las Vegas come together following tragedy in the past, and there is little doubt that we will emerge from this #VegasStrong.

our gaming and hospitality industry continue to step up to protect its workers and their future, and that all Nevadans will come together (literally, if not physically) to forge a bright post-pandemic future. We've seen Las Vegas come together following tragedy in the past, and there is little doubt that we will emerge from this #VegasStrong. C



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# A Victory for Street Artists

By Caleb L. Green, Esq.

n response to the widespread transmission of COVID-19, the state of Nevada has taken several measures to reduce the spread of the virus. This includes Governor Sisolak's directive that temporarily banned non-essential businesses. As a result, several businesses throughout southern Nevada have ceased operation, boarding up their businesses. However, with the proper consent, street artists have adorned many of these boarded businesses with artistic murals and paintings to deter crime and uplift spirits within the Las Vegas community.

The consensual application of artistic works to physical buildings illuminates an interesting legal inquiry regarding the crossover of intellectual property law and real property. The novel case of *Castillo v. G&M Realty L.P.*, 950 F.3d 155 (2d Cir. 2020), as amended (Feb. 21, 2020), provides guidance on how courts balance the intellectual property interests of an artist against the property rights of a business owner.

### **Facts & Background**

In 2002, Gerald Wolkoff, the owner of several New York warehouses, enlisted Ionathan Cohen, a renowned artist, to turn his warehouses into an exhibition space for artists. Under Cohen's leadership, this artist space-known as 5Pointsz-evolved into the epicenter for street art, attracting thousands of visitors and extensive media coverage. In 2013, Cohen learned that Wolkoff sought to demolish the 5Pointz site and build luxury apartments in its place. Wolkoff deployed a group of workers to whitewash and destroy 49 of the existing artworks. Cohen and his host of artists, whose artworks were ultimately destroyed, sued under the Visual Artists Rights Act (VARA) and were awarded \$6.75 million in statutory damages. On February 20, 2020, the Court of Appeals for the Second Circuit affirmed the judgment.

### What is VARA?

VARA is an amendment to the Copyright Act that protects a limited set of an artist's moral rights, specifically: (1) the right of integrity and (2) the right of attribution. An artist's right of integrity includes the right to prevent modification, mutilation, distortion, or destruction of the artist's work. While rights of attribution include an artist's right to be recognized as the author of his or her work, to publish anonymously, and to prevent his or her work from being attributed to other artists, the statutory coverage of VARA is restricted to specific categories of fine art, namely, paintings, drawings, and sculptures.

### **Key Takeaways**

*Castillo* is a victory for artists' intellectual property and moral rights. Below are a few takeaways from this landmark case:

# 1. Street art may be protectable under VARA and property owners should take caution before destroying or altering it.

The *Castillo* court affirmed that the artists' street art adorning Wolkoff's building constituted art of "recognized stature"—a basic requirement for invoking

**Victory** continued on page 26

**Caleb L. Green** is a William S. Boyd School of Law graduate, an intellectual property attorney at Dickinson Wright PLLC, and the Corporate Sponsorship and Fundraising Chair of the Las Vegas Chapter of the National Bar Association.



### **Victory** continued from page 25

VARA protection. The Second Circuit provided a clear definition of VARA protected works as those of "high quality" that have been acknowledged as such by the relevant community. The court went on to acknowledge that evidence from art historians, art critics, curators, and other experts supporting the quality of a work could demonstrate street art as one of recognized stature warranting moral-right protections under VARA. The *Castillo* court also noted that the temporary lifespan of street art did not bar the artists' VARA claim against Wolkoff.

# 2. Property owners can limit their liability under VARA by taking proper measures.

The *Castillo* court noted that Wolkoff could have mitigated his liability by either: (1) entering into a written agreement with the artists prior to installation of their creative works, or (2) providing 90-day notice and giving artists an opportunity to preserve their artistic works before destruction of the artworks or property, pursuant to VARA.

# 3. Artists may obtain a more favorable judgment from a bench trial proceeding than a jury trial.

Castillo is a unique case because both the jury and judge operated as finders of fact. Towards the end of the trial, the parties stipulated to waiving a jury trial. Accordingly, the jury operated as an advisory jury and both the jury and judge provided findings of fact. Ultimately, the judge's findings were more favorable to the plaintiff than the jury's findings. Of the 45 destroyed works, the advisory jury found VARA violations for only 36 of the works, whereas the court found violations for 45.  $\mathbf{c}$ 



Pro Bono Corner

### Social Distancing and Pro Bono

By Noah Malgeri, Esq.

with the state, country, and much of the world on lock-down, so much of the routine activity of our lives has come to a standstill. Elective medical procedures are being postponed, we can't go to the gym, and we are all finally learning how to use that webinar app to communicate with our colleagues. Some are already speculating that "things will never be the same" after we get through the current waning public health and burgeoning economic crises. Through it all, we are being cautioned to stay away from each other.

One thing that has not changed, however, is that Clark County children, from newborns to teens, continue to flow into the foster care system due to abuse and neglect. One can scarcely imagine the level of confusion or even terror experienced by young children trying to make sense of the rapid changes they observe in their world due to the pandemic, and the anxiety they intuit on the faces of the adults around them and on television, compounded by being taken away from all familiar circumstances. Soon additional stress, in the form of judicial proceedings to find them a permanent and safe home, will arrive. The social distancing for them is multifaceted and traumatic.

Over 150 such children, currently in foster care, patiently await volunteer attorneys to help them navigate this intimidating process. So many of our amazing colleagues here in Clark County have already answered the call to come to the aid of these children. You too can become a part of this important work. The time commitment is low, hearings are currently remote, the training takes the form of a free-two hour CLE you can join online, and the impact is tremendous. Please use your skills in this time to bring reassurance and comfort to a scared child right now. Contact Noah Malgeri, Director of the Pro Bono Project at Legal Aid Center of Southern Nevada, Inc., at nmalgeri@lacsn.org to learn how to get involved. **©** 

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

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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### 15. Hot Topics & Recent Developments in DUI/DWI Including Marijuana

Recorded: 7/19/2018

Speakers: Robert F. Purdy of Law Office of Andrew M. Leavitt and Bruce W. Nelson of Clark County District Attorney's Office

CLE Credits: 1.5 General

Price: \$52

### 16. Evictions Practice & Process

Recorded: 6/19/2018

Speaker: LVJC Hearing Master David F. Brown

CLE Credits: 1.0 General

Price: \$35

### 17. Federal Income Tax Considerations in Divorce Cases

Recorded: 5/18/2018

Speakers: Chris J. Sheldon and Suzanne M.

Warren of Silver Law PLC CLE Credits: 1.5 General

Price: \$52

### 18. Ethics: Current Topics for New (and Not So New) Lawyers

Recorded: 5/9/2018

Speaker: Dennis Kennedy, Bailey Kennedy LLP

**CLE Credits: 1.5 Ethics** 

Price: \$52

### 19. Business Court Basics

Recorded: 5/1/2018

Speakers: EJDC Judges Kathleen Delaney (Dept. 25) and Mark Denton (Dept. 13)

CLE Credits: 1.0 General

Price: \$35

### 20. ADR in a Nutshell & Changes to the ADR Program

Recorded: 4/12/2018

Speaker: EJDC ADR Commissioner Erin Lee

Truman

CLE Credits: 1.0 General

Price: \$35

### 21. Tax & Estate Considerations in Personal Injury Settlements

Recorded: 3/2/2018

Speakers: Steven E. Hollingworth and Jeffrey P.

 $Luszeck\ of\ Solomon\ Dwiggins\ \&\ Freer,\ Ltd.$ 

CLE Credits: 1.5 General

Price: \$52

### 22. "Top Ten Things" Business Court Judges Want You to Know

Recorded: 12/15/2017

Speakers: EJDC Judge Nancy Allf (Dept. 27) and

EJDC Judge Joe Hardy, Jr. (Dept. 15)

CLE Credits: 1.5 General

Price: \$52

Catalog continued on page 30

**Seminars Index** 

# Recorded CLE

More titles of recorded CLE seminars will be added to this index throughout the year.

Contact the CCBA office at (702) 387-6011 to inquire about upcoming live CLE seminars to be recored and any more recent titles to be made available.

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The Clark County Bar Association (CCBA) presents

# **30th Annual MEET YOUR JUDGES** MIXER











### 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

Sponsorship opportunities available.

For more information, see pages 5-6, visit https://www.clarkcountybar.org, or contact Donna at Donnaw@clarkcountybar.org.





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