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COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

The Torts Law Issue

August 2021

Do you know any of these people?
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Rogue: The Far Reaching Impact
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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, fast-track child custody, oral arguments and record preparation...in addition to many others.



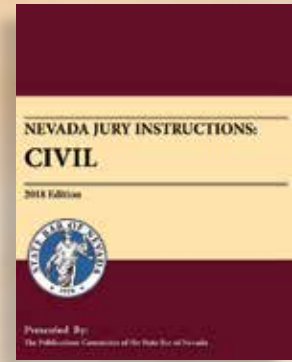
Nevada Gaming Law Practice and Procedure Manual

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 party-neutral 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:
www.nvbar.org > Publications > State Bar Publications





COMMUNIQUE

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CCBA's Diversity and Inclusion Committee for Equity members (left to right) Sheri Ann Forbes, Michael Nunez, Andréa Vieira, Paul Ray, Annette Bradley, Paul Lal, Augusta Massey, Will Sykes, Mariteresa Rivera-Rogers, John Fortin, Kari Stephens, Peter Goatz, and Martha Menendez. Photo taken by Stephanie Abbott.

The Torts Law Issue

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Do you know any of these people?

By Annette Bradley, Esq.

Adriana Rincon White, Andrea Vieira, Annette Bradley, Atif Sheikh, Augusta Massey, Chaka Crome, Elody Tignor, Eric Dobberstein, John Fortin, Kari Stephens, Mariteresa Rivera-Rogers, Martha E. Menendez, Michael Nunez, Noah Malgeri, Paul Lal, Paul Ray, Peter Goatz, Reginald Thomas, Sheri Ann Forbes, Will Sykes. They are all members of the Clark County Bar Association's Diversity and Inclusion Committee for Equity (DICE). DICE is part of the Clark County Bar's continued interest in and efforts to increase diversity, inclusion, and equity within Nevada's legal profession.

By way of background, in 1993, out of approximately 4,000 lawyers in Nevada, only 40 were African American and less than 39 were Hispanic. Letter to managing partners from State Bar of Nevada Minority Relations Committee Chairman District Court Judge Lee Gates, December 1993. In recognition of the role both gender and race discrimination played in the legal profession, District Judge Lee Gates (who was then Chair of the State Bar of Nevada and Minority Relations Committee) wrote a letter to law firm managing partners regarding the need for increased diversity in the Nevada legal profession. In this letter, he also referenced a newly developed Clark County Bar Association program designed to introduce high school minority students to the legal profession. This program

They are all members of the Clark County Bar Association's Diversity and Inclusion Committee for Equity (DICE).

has since morphed into the Trial by Peers program and is now operated by the Clark County Law Foundation.

Moving forward 28 years, the legal profession continues to strive for increased diversity and inclusion. Why? Why strive for increased diversity and inclusion within the legal community? Although I'm glad you asked that question, there is no one right answer; nor is there one right way to achieve diversity and inclusion (spoken like a lawyer). That said, the answer — both nuanced and complex—lies in both social and economic considerations. Those considerations range from an improved public image to increased perception of accessibility to representation, to a more congenial, professionally satisfying and productive work environment.

DICE had its first meeting in March 2021. Given the broad breadth of approaches to this issue, the Com-



Annette Bradley, Esq. recently retired as General Counsel for the Southern Nevada Health District and while continuing to be an active member of the Nevada bar, is looking forward to enjoying family, friends, and travel.



CCBA's Diversity and Inclusion Committee for Equity members (left to right): Sheri Ann Forbes, Michael Nunez, Andréa Vieira, Paul Ray, Annette Bradley, Paul Lal, Augusta Massey, Will Sykes, Mariteresa Rivera-Rogers, John Fortin, Kari Stephens, Peter Goatz, and Martha Menendez. Photo taken by Stephanie Abbott next to Pipe Dream by Tim Bavington a commissioned art installation located at the east end of The Smith Center's two-acre Donald W. Reynolds Symphony Park.

mittee had many robust discussions identifying and honing their mission to ensure it reflected what the Committee wanted to accomplish. To that end, the DICE mission is to organize educational programs that facilitate constructive discussion and enhance understanding of diversity issues. The Committee promotes diversity, equity, inclusion, and the removal of barriers to success within the CCBA and the communities we serve.

Once the mission was developed, DICE then identified five mission-centered objectives, including the following: i) Increase cultural understanding (competence) within the profession; ii) Encourage communication related to diversity and inclusion; iii) Assist members to develop and improve diversity goals; iv) Build and support a diversity pipeline to the legal profession; and v) Promote a greater understanding of equity and inclusion. But, the Committee knew we couldn't stop there. DICE knew that without action, the mission and objectives were empty. So, the next big discussion was how to implement the mission and objectives? Beginning with this *Communiqué* article, the Committee identified the means to accomplish their goals. Over the coming months, look for thought and

Mark your calendars

October 21, 2021

**Clark County Bar Luncheon
Featuring Panel Presentation on
Diversity and Inclusion**

Offers 1.0 CLE (NV)

Details to be announced soon!

discussion provoking diversity, inclusion, and equity CLEs, look for educational content. The Committee has already identified some powerful speakers to lead, develop, and present content for a Clark County Bar Luncheon; develop a quarterly lecture series; and develop an annual meet and greet event for managing partners and law students.

This is who we are, this is what we've accomplished, and this is the committee seeking your input and energy. We meet the last Friday of each month at noon. Join us. Be a part of change. **C**

Vegas Golden Knights Chief Legal Officer Chip Seigel to Address Clark County Bar on August 12, 2021

By Stephanie Abbott

On August 12, 2021, Chip Seigel III, the Chief Legal Officer of the Vegas Golden Knights (VGK), will make a special presentation for members of Nevada’s legal community during the Clark County Bar Luncheon sponsored by Bank of Nevada, Dillon Health, and Prominence Health Plan.

Charles A. “Chip” Seigel III is the new Chief Legal Officer of VGK, having joined the team in February of 2021. Prior to VGK, Chip was the Chief Legal Officer of Qdoba Restaurant Corporation where he was part of a team that carved out the business from parent company Jack in the Box to become a stand-alone entity. Prior to Qdoba, Chip was the Chief Legal Officer of CKE Restaurants, parent company of Carl’s Jr. and Hardee’s. Chip received his accounting degree from the George Washington University and his law degree from the Washington University School of Law in St. Louis. Outside of work, Chip loves participating in all outdoor sports, especially fishing and hiking. He is also a big hockey and baseball fan and played amateur hockey through high school. Chip’s favorite VGK memory is when the team made the Stanley Cup Finals in its inaugural season.

Seigel will present “Tips for Confronting and Playing Through Risk” for the continuing legal education (CLE) of Nevada’s lawyers. The presentation will include information relevant to attorneys who provide direction on major legal and regulatory issues and work to minimize legal risks for their clients.




Stephanie Abbott is the communications manager for the Clark County Bar Association. Stephanie enjoys writing about activities in the Las Vegas legal community.

The Clark County Bar Luncheon will be a private event with the planned agenda to be as follows:

- Check-in and networking: 11:30 AM to 12:00 PM
- Bar business and sponsor announcements: 12:00 to 12:15 PM
- Speaker’s presentation: 12:15 to 1:15 PM
- Closing remarks: 1:15 PM

The Clark County Bar Luncheon will be held in person at the MacKenzie River Pizza at City National Arena, 1550 S. Pavilion Center Drive, Las Vegas, Nevada, 89135. Choices for entrée are Flank Steak, Blackened Salmon, or Vegetarian Lasagna. The fee to attend this event is \$50 for CCBA member or \$60 per non-member.

To attend this event, submit your name, choice of entrée, and payment to the Clark County Bar Association by Monday, August 9, 2021.

For more information and to register for this event, contact Donna Wiessner at Donnaw@clark-countybar.org, (702) 387-6011. 

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For more information about our publication's editorial calendar, deadlines, editorial policy, author guidelines, ad rates, ad specifications, and deadlines, contact the publisher at Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101. Phone: (702) 387-6011.

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Editorial Calendar

Cover Date	Topic of Articles	Closing Date
January 2021	Five Things	11/29/2020
February 2021	Racial Justice	1/2/2021
March 2021	Health Care Law	2/3/2021
April 2021	Bankruptcy Law	3/2/2021
May 2021	Law Practice Management	4/1/2021
June/July* 2021	Ethics	5/1/2021
August 2021	Torts	7/1/2021
September 2021	Real Estate Law	8/3/2021
October 2021	Family Law	9/1/2021
November 2021	Estate Planning Law	10/1/2021
December 2021	Pro Bono	11/2/2021

*The combined June/July issue will be released in June. The editorial calendars, schedules, editorial policies, and writer's guidelines for the *Communiqué* are subject to change without notice.

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CCBA to Host “Summer Mixer & After Bar Exam Chill” Event on August 5

On August 5, 2021, from 5:00 p.m. to 7:00 p.m., the CCBA will host the “Summer Mixer & After Bar Exam Chill” event at Nevada Brew Works. This private social mixer is hosted by the CCBA’s New Lawyers Committee and sponsored by Hamilton Law and WestPac Wealth Partners.



The event will feature complimentary drink tickets and food (while supplies last) for CCBA members and July SBN bar exam takers. No minors allowed.



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RSVP to the CCBA is required. RSVP to Donnaw@clarkcountybar.org by Tuesday, August 3, 2021. Mix and mingle responsibly.

CCBA Picture Day on September 1

On Wednesday, September 1, 2021, from 9:30 a.m. to 2 p.m. only, the CCBA will host CCBA Picture Day for members of the bar, bench, and supporting legal staff to sit for a professional portrait at the Clark County Bar Association, 717 S. 8th Street, Las Vegas.



Attend this event for these special offers*:

- 20% off purchases of professional portraits for CCBA members!
- 10% off print purchases of holiday/family portraits!
- No sitting fees (\$49 value) for this and holiday/family portrait sessions!

For more info and to schedule an appointment, contact Stephanie at the CCBA, StephanieAbbott@clarkcountybar.org, (702) 387-6011. **C**

Activities for CCBA Members to Support Community at Large

By Stephanie Abbott

Members of the CCBA are invited to participate in organized activities to benefit the community at large in southern Nevada. See below for a list of upcoming community service activities. Please sign up to participate in at least one of these events.

22 Warriors Foundation August BBQ Mixer

On Tuesday, August 10, 2021, from 5:30pm to 8pm, CCBA members are invited to attend a mixer and BBQ hosted by the 22 Warriors Foundation at Las Vegas Distillery, 7330 Eastgate Road, #100, Henderson, NV 89011.

This networking event brings together local veterans, businesses, and first responders. Please register early as their monthly BBQ is a popular event. Tickets to the BBQ can be found at the link below or at the door. \$10 for an online ticket or \$15 at the door. Proceeds will benefit 22 Warriors Foundation, a Nevada nonprofit organization founded to help veterans.

Register at <https://22-warriors-foundation-networkforgood.com/events/32014-22-warriors-monthly-2nd-tuesday-mixer-and-bbq-august-2021>.



Stephanie Abbott is the communications manager for the Clark County Bar Association. Stephanie serves as liaison for the CCBA's Community Service Committee.



¡Andale! 5K Run/Walk! Team

CCBA members are invited to participate in the ¡Andale! 5K Run/Walk on Saturday, September 18,

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2021. The CCBA Diversity and Inclusion Committee for Equity is fielding a team for this event. Join in the fun and support our team—CCBA DICE Rollers! For more info and to register to participate, see <https://www.andal5k.com/>. #ANDALE5K2021

Project 150 Volunteer Day

CCBA members are invited to volunteer at a group event to benefit people served by Project 150, a charity dedicated to providing free help and services to homeless, displaced, or disadvantaged high school students in southern Nevada.

Our group activity is scheduled for Saturday, September 25, 2021 (9AM-12PM). Volunteers will be sorting clothing/accessories and sorting/packing food, school, and hygiene supplies. Dress code: Comfortable shirt, pants, and closed-toe shoes. CCBA members may




bring family members too. Minimum age to volunteer is 10 years old. Volunteers ages 10-13 require a guard-



ian. To sign up to volunteer or request more information about the CCBA's group activity, contact Stephanie at the CCBA.

Tour de Summerlin Team

CCBA members are invited to participate in Tour de Summerlin, a charity bike ride to benefit Breakaway Cycling a non-profit organization, on Saturday, April 23, 2022. The CCBA's Community Service Committee is fielding a team for this event. To sign up for (or get more information about) the CCBA team, contact CCBA Team Captain Mark Blackman at markbl@bdf-group.com, (818) 515-6670. 

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Augusta Massey to Present “Corporations & Partnerships” CLE Program on August 19, 2021

Business consultant and bankruptcy lawyer Augusta Massey of Massey & Associates Law Firm, PLLC will be the featured speaker in a CLE program produced by the CCBA’s CLE Committee on Thursday, August 19, 2021.


Augusta Massey practices in the firm’s business litigation and bankruptcy department, among other areas. Ms. Massey is also a Judge Pro Tempore, Small Claims Court, located in Clark County, Nevada, and the author of three non-fiction books and two self-study courses. Ms. Massey speaks, coaches, and consults with business owners and world leaders on legacy building, succession planning, global business strategies, and ethical business practices through workshops, seminars, keynote speeches, and one on one VIP consultation.

Augusta will present “Corporations & Partnerships: A Lawyer’s Road Map to Business Litigation” to highlight relevant information for Nevada lawyers. Key takeaways from this event:

- Discover who your client is when representing a corporation or partnerships
- Identify opportunities to assist clients facing litigation (defendant’s attorney) or before beginning a lawsuit (plaintiff’s attorney)
- Understand the process for filing a lawsuit in accordance with our local laws
- Learn how to spot issues regarding liability and conflicts of interest
- Avoid pitfalls that are inherent in representation of corporations or partnerships

This CLE program will be held online via Zoom, from 12:00 to 1:15 p.m., Thursday, August 19, 2021. The presentation will offer 1.0 CLE credit to CCBA members only. Pricing of the live event and CLE is included with the 2021 CCBA membership. The live event is for CCBA members only. CCBA membership will be verified upon RSVP. During the event, attendance will be taken and only those members in attendance will have their attendance reported to the NV CLE Board.

For more information and to RSVP for this event, contact Donna Wiessner at Donnaw@clarkcountybar.org, (702) 387-6011.

CCBA’s CLE programming is sponsored by Bank of Nevada and Las Vegas Legal Video. 

This live webcast is free for CCBA members!

RSVP to the CCBA by August 17, 2021.



CCBA’s CLE programming sponsors



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THERE IS NO CHARGE FOR THIS EVENT.
PLEASE RSVP by **AUGUST 9th: bit.ly/2021COJ**



Discovery and ADR Commissioners Erin Lee Truman and Jay Young to Present CLE Series This Fall



Discovery and ADR Commissioners Erin Lee Truman and Jay Young will be the featured speakers in a series of CLE programs produced by Stephen Smith, Esq. of the Clark County Bar Association’s CLE Committee that are scheduled to run from late September to mid-October.

The Eighth Judicial District Court Discovery and ADR Commissioners hear pre-trial discovery disputes and oversee cases assigned to the Court Annexed Arbitration Program, Court Annexed Mediation Program, Nevada Short Trial Program, and Nevada Foreclosure Mediation Program for the EJDC in Clark County.


The CLE series “Discovery & ADR CLE with The Commissioners” will be held online via Zoom, from 12:30 to 1:30 PM, on Tuesday for three occurrences:

- Part 1: Hot Topics in Civil Discovery – Tuesday, September 28, 2021
- Part 2: ADR: What do you Need to Know? – Tuesday, October 5, 2021
- Part 3: Hot Topics in Family Court Discovery – Tuesday, October 12, 2021

To learn about the topics that will be discussed during each part or the series, check out the course outlines listed to the right.

Each part of the series will offer 1.0 hour of continuing legal education for members of the Nevada bench and bar. During each part, attendance will be taken and reported to the NV CLE Board by the CCBA. All three parts are available at \$60 per CCBA member and \$120 per non-member.

For more information and to register to attend this series, contact Donna Wiessner at Donnaw@clarkcountybar.org, (702) 387-6011.

CCBA’s CLE programming is sponsored by Bank of Nevada and Las Vegas Legal Video. 

Check out the course outlines...

Part 1 Hot Topics in Civil Discovery

1. Conducting a Meaningful Meet & Confer
2. Rule 2.40 Requirement
3. Moving for Fees and Costs
4. Limits on Discovery
Commissioner Authority
5. Boilerplate Objections
6. Rule 26(g)
7. Q&A

CCBA’s CLE programming sponsors



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Part 2

ADR: What do you Need to Know?

1. Arbitration

- A. Arbitration Program Overview.
- B. What cases are exempt from arbitration?
 - 1. How (and when) to properly seek exemption.
- C. Discovery and pre-arbitration procedure.
 - 1. What motions are heard by the District Court/ arbitrator?
- D. Arbitration Hearings.
- E. Post-arbitration considerations.
 - 1. Applications for fees, costs and interest.
 - 2. Requests for Trial de novo.
 - 3. Judgment on arbitration award.
- F. Avoiding Sanctions.

2. Short Trial

- A. Short Trial Program Overview.
- B. Timelines.
- C. Role of the Short Trial Judge.
- D. Pre-trial Procedure.
 - 1. Discovery.
 - 2. Pre-trial motions.
- E. Pre-trial conference.
 - 1. Evidentiary booklets.
 - 2. Jury instructions.
- F. Conduct at Short Trial.
 - 1. Jury selection and *voir dire*.
 - 2. Presentation of case.
 - 3. Jury deliberation.

- 4. Post-trial motions.
- 5. Final judgment.
- 6. Unique issues.
 - a) Time constraints.
 - b) No court support personnel.
 - c) Recording of trial.

3. Mediation

- A. What is the Court Annexed Mediation Program?
- B. What cases may proceed in the Court Annexed Program?
- C. Can parties select their own mediator?
- D. Procedures during the mediation proceeding.
- E. What happens if a case is not resolved through the mediation?
- F. Confidentiality of mediations.

4. What is new on the Horizon for ADR?

- A. Rule changes for Arbitration.
- B. Rule changes for Short Trial.

Part 3

Hot Topics in Family Court Discovery

- 1. Conducting a Meaningful Meet & Confer
- 2. Rule 2.40 Requirement
- 3. Moving for Fees and Costs
- 4. Limits on Discovery Commissioner Authority
- 5. Boilerplate Objections
- 6. Rule 26(g)
- 7. Q&A



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Clark County Bar Association's 30th Annual

MEET YOUR JUDGES MIXER

Thursday, November 4, 2021 • 5:30-8:30 p.m.

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



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Event registration form

Order individual tickets or sponsor package

Individual tickets:

\$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.)

Names of guests to attend event:

Name: _____ Bar# _____ \$ _____

Name: _____ Bar# _____ \$ _____

Sponsorship packages (more packages available. See clarkcountybar.org):

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Ticket orders made AFTER October 22, 2021, 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 October 26, 2021. **FINAL DATE TO RSVP WITH PAYMENT IS OCTOBER 26, 2021.**

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The Eighth Judicial District Court's Truancy Diversion Program (TDP) is currently seeking volunteers to serve as Truancy Diversion Judges to work with the Clark County School District and Charter School Authority in an effort to reduce absenteeism in schools.

A TDP Judge commits one morning each week to preside over a truancy calendar at an assigned school. Wearing a judicial robe, the TDP judge, an educational liaison and a family advocate meet with students and their families to address each student's attendance record, behavioral issues, and barriers to regular

school attendance.

The TDP judge imparts formality to the proceedings while also providing students with an approachable authority figure. The interaction between the judge and family provides participants with enhanced social skills, a sense of empowerment, and an increased appreciation for the value of education. Total time commitment: 2.5 hours per week for the length of the semester or year. Have any questions, or ready to get involved? Contact the Truancy Diversion Program at TDP@clarkcountycourts.us. 📧

Masks Required Again at Clark County Courts

Mandatory face coverings are required at all court facilities in

Clark County, Nevada, effective immediately. See administrative orders from the Eighth Judicial District Court (Admin Order 21-05) and Las Vegas Justice Court (Admin Order 21-07).

For more information about Eighth Judicial District Court's rules and administrative orders, visit <http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/>.

For more information about the Las Vegas Justice Court's rules and administrative orders, visit http://www.lasvegasjusticecourt.us/faq/laws_and_rules.php.

Similar announcements may be made by other courts located in Clark County. 📧

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Las Vegas Municipal Courthouse is Open

By Chief Judge Bert Brown

On May 3, 2021, Las Vegas Municipal Court opened its doors to a brand new courthouse located at 100 East Clark Ave., southwest of the Regional Justice Center. The 140,000-square-foot building houses six Criminal Departments, Traffic Court, the Criminal Division of the City Attorney's Office, Department of Public Safety Dispatch, as well as the many departments of the Las Vegas Municipal Court. With about 150 employees that work at the new municipal courthouse as well as our customers, lawyers, litigants, and witnesses, we see about 1,000 people in this building each day.

This Municipal Court is very different from where it began almost 110 years ago. Las Vegas Municipal Court has always, in the past, shared space with others. In 1911, when the city of Las Vegas was incorporated and the court was created, it shared a small building with Clark County offices. Then, in 1914, a two-story courthouse was built at Third Street and Bridger Avenue, housing the county courts as well as the Municipal Court. In 1931, Las Vegas Municipal Court moved to a large room behind the jail that was attached to the Las Vegas Police Station. This was behind the Apache Hotel, where Binion's Gambling Hall is now located. In

1947, the court moved into a trailer behind a new police station,



Chief Judge Bert Brown was first elected to the Las Vegas Municipal Court in 1999. He presides over his normal calendar and HOPE Specialty Court, dealing with chronic repeat offenders.

In the courthouse, masks are required and we will follow CDC guidelines.

currently the California Hotel-Casino parking lot. In 1974, we moved into a new City Hall which is now the home of Zappo's. An expansion at this site occurred in 1996, which was affectionately called the trailers.

In 2005, the Municipal Court moved into the Regional Justice Center (RJC) along with Las Vegas Justice Court, Eighth Judicial District Court, and the Supreme Court of Nevada. When the RJC opened, Justice Court had nine departments and District Court had 21. Now Justice Court has 15 departments; District Court has 32. Having all the courts in one location was a great idea and made sense, but it did not take long before the courts outgrew the space.


About five years ago, the mayor and City Council set in motion this wonderful new building, where the Las Vegas Municipal Court could be on its own.

The Las Vegas Municipal Courthouse is open from 7 a.m. to 5 p.m., Monday through Thursday, with the



entrance located on the northwest corner of Clark Avenue and First Street. Paid parking is available in the lot located on First Street and Bonneville or in the City Parking Garage at 500 S. Main St. In the courthouse, masks are required and we will follow CDC guidelines. Municipal Court has resumed in-person appearances at full capacity but this could change to adhere to CDC guidelines. Accordingly, we do offer virtual court ap-

Photo courtesy of CCBA Past President ('05) and current Las Vegas City Attorney Bryan Scott.

pearances via BlueJeans for most types of proceedings. More information is available on our website: www.lasvegasnevada.gov/MunicipalCourt or by calling 702-38-COURT (702-382-6878). 

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From Dram Shop Law to “Gram” Shop Law: No Civil Liability for Licensed Establishments

By John J. Savage, Esq.

Nevada remains in a small minority of states that do not recognize dram shop liability, at least for establishments licensed to sell alcohol (the term “dram shop” dates back to when alcohol was served by the “dram”, which is one-eighth of an ounce). Many states have passed dram shop laws that now hold establishments liable if they serve alcohol to underage or intoxicated persons who then injure a third-person while intoxicated.

However, the Supreme Court of Nevada has repeatedly refused to judicially create a cause of action for dram shop liability where none existed at common law. See *Hamm v. Carson City Nugget, Inc.*, 450 P.2d 358 (Nev. 1969); *Snyder v. Viani*, 885 P.2d 610 (Nev. 1994) (discussing *Hamm* and its progeny). The Court reasoned that creating dram shop liability “is the function of the legislative, not the judicial, branch of government.” *Hingardner v. Marcor Resorts, L.P.V.*, 844 P.2d 800 (Nev. 1992).

As a result, establishments licensed to sell alcohol in Nevada remain immune from civil liability for injuries caused by their patrons’ drunken negligence. NRS 41.1305 expressly provides such immunity to licensed alcohol es-

Licensed establishments remain exempt from civil liability because regulatory penalties exist to deter licensed establishments from selling and serving alcohol to minors. Id. Social hosts have no such regulatory deterrence.

tablissements, but the statute imposes civil liability on any unlicensed person who knowingly serves or sells alcohol to an underage person or who knowingly allows an underage person to consume alcohol on premises controlled by the unlicensed person.

The legislative intent behind NRS 41.1305 was to impose civil liability on social hosts only. See Nevada Assembly Committee Minutes, 5/3/2007. Licensed es-



John J. Savage, Esq. is a shareholder at Holley Driggs. His practice focuses on business litigation and personal injury defense. He also defends clients in CCB and NSBME disciplinary actions, and serves as an arbitrator for the EJDC.

tablishments remain exempt from civil liability because regulatory penalties exist to deter licensed establishments from selling and serving alcohol to minors. *Id.* Social hosts have no such regulatory deterrence.

Nevada's new "gram" shop law

Nevada's dram shop law for alcohol will now apply to cannabis as well. This past legislative session, Nevada became one of the first states to allow cannabis to be consumed in licensed establishments when the 2021 Nevada Legislature passed Assembly Bill 341 ("AB 341") and Governor Sisolak signed the same into law. Some legal prognosticators have colloquially referred to anticipated laws regulating civil liability in the cannabis industry as "gram shop" laws because, like the "dram" once was for alcohol, a gram is the smallest quantity in which cannabis can be purchased.

The Cannabis Compliance Board ("CCB") will be tasked with promulgating new regulations for Nevada's new "gram shop" law, which will likely include stiff penalties for serving cannabis to underage persons. Under the current Nevada Cannabis Compliance Regulations ("NCCR"), cannabis establishments are subject to a Category II regulatory violation for "[f]ailing to verify the age of, or selling or otherwise providing cannabis or cannabis paraphernalia to, a person who is less than 21 years of age." *See* NCCR 4.040(1)(a)(3). Category II violations subject cannabis establishments to civil penalties up to \$25,000 and a license suspension up to 20 days for the first such violation, civil penalties up to \$75,000 and a license suspension up to 30 days for the second such violation, and license revocation for the third such violation. *See* NCCR 4.040(2)(a).

However, licensed consumption lounges will not need to worry about civil liability for injuries caused by their patrons while under the influence of cannabis consumed in their lounges. AB 341 included a mirror image of NRS 41.1305 for cannabis consumption, which will be added as a new section to Chapter 41 of the Nevada Revised Statutes.

Insurance implications a win for the cannabis industry

The protections afforded to consumption lounges by AB 341 should also help keep insurance premiums reasonable for general liability policies. This is a win for the lobbyists of the cannabis industry who have been advocating for such immunities. **G**

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When Third Party Trespassers Commit Crimes, Who is Liable?

By Amanda Ebert, Esq.

When are property owners liable for criminal acts of a trespasser that occurred on their properties? There is substantial case law available to guide attorneys through cases stemming from a criminal act committed on a person's property by an employee or other invitee (*Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217 (1996), *Wood v. Safeway*, 121 Nev. 724 (2005), for example). But what about when the criminal act is committed by an unwelcome trespasser on the property? Property owners are commonly named in negligence-based lawsuits for such acts. The analyses of these cases must be fact specific.

Negligence cases stemming from a third-party trespasser's criminal act hinge on a defendant's breach of a duty to protect a victim from the trespasser's criminal act. Generally, this duty exists if the criminal act was reasonably foreseeable: "[T]he duty element of a negligence cause of action must be determined as a matter of law by considering whether the wrongful act that precipitated the plaintiff's injury was foreseeable." *Estate of Smith v. Mahoney's Silver Nugget, Inc.*, 127 Nev. 855 (2011).

Foreseeability boils down to whether a defendant reasonably should have anticipated that a willful criminal act would occur on the property. If foreseeability is es-

tablished, the question is whether the property owner should have taken action to prevent the event from occurring, thus providing the causal link between the breach of duty and the plaintiff's injury. There is generally no duty to protect against a criminal act that is not reasonably foreseeable (*see* NRS 615.015).

When is a criminal act of a third-party trespasser considered reasonably foreseeable?

Three categories are helpful when determining whether a criminal act of a trespasser was foreseeable:

1. Distance and Proximity of the Crime to the Property;
2. Frequency of General Crime in the Area; and
3. Past History of Similar Crimes.

Courts are more likely to find that a crime committed on-property was more foreseeable than one committed off-property. Indeed, the criminal actor in an "off-property" case may not be considered a trespasser if he was merely near the subject property. However, if the crime occurred in an area "sufficiently proximate" to the property, like a parking lot or neighboring building, that closeness can be enough to establish foresee-



Amanda Ebert, Esq. is an attorney in the Las Vegas office of Lipson Neilson. She focuses her practice on professional liability and insurance defense.

ability. See *Novikova v. Greenbriar Owners Corp.*, 694 N.Y.S.2d 445 (1999).

Had similar criminal activity occurred at/near the property before the crime? If so, courts are more likely to find foreseeability. For example, the United States Court of Appeals for the Ninth Circuit discussed a “prior similar acts test,” finding that a past history of violent fights at a city park was not sufficient to make a shooting that occurred there months later foreseeable. See *McKown v. Simon Prop. Group, Inc.*, 689 F.3d 1086. A past of violent incidents alone may not be enough to establish foreseeability.

The mere existence of trespassers in an area that eventually becomes the crime scene in a negligence case is insufficient as a matter of law to find that a plaintiff’s injury at the hands of a subsequent trespasser was reasonably foreseeable. See *Tompkins v. Union Pac. R.R.*, 2015 U.S. Dist. LEXIS 82210. Even knowledge that the same criminal trespasser who eventually committed the crime causing injury had previously trespassed in the area beforehand does not establish foreseeability. The presence of “nonthreatening transients” on the property is also insufficient to find foreseeability.

McIntosh v. United States, 2008 U.S. Dist. LEXIS 80281.

Finally, how many prior, similar crimes must have been committed to establish foreseeability? In *Ander-son v. Mandalay Corp.*, 131 Nev. 825 (2015), a guest of a hotel was attacked inside her room by a hotel employ-ee. The court found that evidence of five prior attacks on patrons at the hands of employees was sufficient to find a question of fact regarding foreseeability. While there is no hard-line number of prior, similar crimes necessary to support foreseeability, as few as five may be enough.

Establishing foreseeability is an issue of fact dependent on the precise facts of each case. The facts must establish a history of crimes committed by trespass-ers at or near the area of injury such that the criminal causation of injury to the plaintiff was reasonably fore-seeable. **G**



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Setting a Rogue to Catch a Rogue: The Far Reaching Impact of the False Claims Act

By Nadia Ahmed, Esq. and Crane Pomerantz, Esq.

Summary: The False Claims Act was enacted during the Civil War to combat defrauding the government and has evolved over time to serve as a versatile and important tool to identify, go after, and recover damages from fraudsters across a multitude of government settings. Integral to its successful implementation has been the reliance upon qui tam suits led by private citizen “whistleblowers.”

History and purpose of the FCA

Between 1861 and 1863, in desperate need of supplies, the Union Army bought rations, horses, mules, and weapons from anyone who could procure them, and paid the price both in dollars and in quality. Desperation, greed, and opportunity set against the backdrop of the Civil War had converged to create a pervasive internal enemy for the United States - in a word: fraudsters. So incensed by their conduct, President Lincoln reportedly declared “worse than traitors in arms are the men who pretend loyalty to the flag, feast and fatten on the misfortunes of the nation while patriotic blood is crimsoning the plains of the south and their countrymen are moldering in the dust.” To combat this fraud, Congress enacted the False Claims Act (FCA), 31 U.S.C. § 3729 et seq., on March 2, 1863.

The FCA initially provided that any person who knowingly submitted false claims to the government was liable for double the government’s damages plus a penalty of \$2,000 for each false claim. Amended multiple times over the years, the FCA now provides that violators are liable for treble damages plus a penalty adjusted for inflation. Chief among the FCA’s features making it an attractive enforcement tool for the government is its lower burden of proof as a civil statute — preponderance of the evidence — contrasted with the higher “beyond a reasonable doubt” standard in criminal matters, and that it only requires general intent, rather than specific intent to defraud.

Additionally, from inception to the present, at the heart of the FCA is its leverage of the *qui tam* suit. The FCA, seeking to root out fraud schemes about which the government might otherwise never learn, empowered private citizens acting as “relators” to file suits on



Nadia Ahmed and Crane Pomerantz are attorneys at Sklar Williams PLLC, a firm specializing in healthcare litigation, transaction, and regulatory work. Both authors previously served as Assistant United States Attorneys where they prosecuted healthcare and opioid diversion cases.

The FCA, seeking to root out fraud schemes about which the government might otherwise never learn, empowered private citizens acting as “relators” to file suits on behalf of the government against parties allegedly defrauding the government.

behalf of the government against parties allegedly defrauding the government. A suit filed by a relator is initially filed under seal and the government is then given sixty days to investigate and determine whether it will join in the suit or leave it to the relator to litigate. Relators who prevail in *qui tam* actions receive a portion of the government’s recovery ranging between 15 and 30 percent.

In proposing the *qui tam* mechanism for inclusion in the FCA in 1863, Senator Jacob Howard explained that he based this provision “upon the old-fashioned idea of holding out a temptation, and ‘setting a rogue to catch a rogue,’ which is the safest and most expeditious way I have ever discovered of bringing rogues to justice.” Over a hundred and fifty years later, the FCA remains the federal government’s primary civil enforcement mechanism for uncovering, combating, and recouping fraudulent claims for federal funds and property across a multitude of government operations and functions, ranging from defense procurement to health care fraud to small business loans and beyond. And the *qui tam* cases responsible for bringing this fraud to account have been a mixed bag of true whistleblowers and the “rogues” Senator Howard envisioned.

Modern day application

Relator actions have proven tremendously successful for the federal government, as evidenced by the statistics released by the Department of Justice (DOJ) regarding FCA actions in fiscal year ending September 30, 2020. The pandemic notwithstanding, DOJ obtained more than \$2.2 billion in settlements and judgments from civil cases involving fraud and false claims against the government. Whistleblowers filed 672 *qui tam* suits in fiscal 2020 and led to over \$1.6 billion recovered in this same time frame.

The recovery amounts alone demonstrate that the FCA has managed to stay true to its purpose and continues to motivate relators to serve as boots on the ground in combating fraud whether brought by concerned citizens or rogues. The recognition by the drafters that opportunity would always unearth opportunists has held true with respect to both the relators and the defendants in *qui tam* actions, as demonstrated by the robust world of professional *qui tam* litigants who have learned to use data analytics to identify fraudsters and bring suits against them. As always, the contours of the FCA, in light of emerging trends such as this, are often shaped in case law, as circuits across the country scrutinize the sufficiency of such evidence to support professional relators bringing suit under the FCA. Whether sufficient, alone, to bring such claims, the use of data analytics has once again pushed FCA enforcement forward, particularly in the field of healthcare fraud.

What the monetary recoveries and emerging trends reflect as a whole is that the FCA, enacted in response to a specific wartime scenario, remains relevant, robust, and far-reaching today. Indeed use of the FCA has proved an important tool in countering the nationwide opioid epidemic. This includes an October 2020 global resolution with Purdue Pharma LP, which included a payment of \$2.8 billion for Purdue’s alleged FCA violations arising from its unlawful promotion of its opioid drugs for improper uses and related kickback schemes to induce prescriptions of its opioids. The global resolution also required Purdue’s owners to pay \$225 million to resolve their individual FCA liability—the DOJ’s largest FCA settlement with a noncorporate entity to date. The FCA was also used to combat fraudulent schemes contributing to the rising costs of prescription drugs and schemes taking advantage of the vulnerable elderly population in relation to inadequate or unnecessary care and misleading marketing of drugs for off-label uses such as to treat dementia.

In sum, the FCA is uniquely adaptable to a multitude of scenarios, and has translated well from efforts to combat defense fraud to efforts to combat healthcare fraud in all its facets. So long as there are those who would “feast and fatten on the misfortunes of the nation,” the FCA and relator-led lawsuits, will continue to be an important and effective tool to combat unlawful schemes to defraud the government. **■**

Responding to the COVID-19 Eviction Crisis

By Jim Berchtold, Esq.

Nevada tenants have never needed legal help more than they do right now. With thousands facing eviction in the shadow of COVID-19, attorney representation is more important than ever.

The numbers are staggering. Some estimates indicate that 14 percent of Nevada renters, roughly 128,000 residents, were behind on rent at the end of June. For those unlucky families, the collateral consequences of eviction can be serious and long-term and can include homelessness, worsening mental/physical health, loss of possessions, lower quality or unsafe housing, negative impact on children's education, and financial strain and job loss.

But there's hope. The Nevada Legislature recently passed AB486 to synchronize the distribution of Nevada's roughly \$360 million dollars in federal rental assistance with Nevada's eviction process and the Nevada Supreme Court's residential eviction mediation program. Ideally, this coordinated effort will result in tenants being evaluated for rental assistance early in the eviction process so that by the time the case reaches mediation, the great bulk of unnecessary evictions can be avoided.

Your help through this process could be a game changer for a tenant. Studies show that only three percent of tenants have representation compared to 81 percent of landlords. But compared to self-represented

tenants, tenants with counsel are statistically more likely to remain

Your help through this process could be a game changer for a tenant.

in their homes or otherwise win or settle their cases and are more likely to be given more time to leave if they have to move. Represented tenants are even more likely to get their cases sealed so the evictions do not follow them as they seek new housing.

And now, helping to prevent an eviction as a tenant's pro bono attorney could not be easier. Legal Aid Center has recorded a training entitled *Eviction Prevention: Responding to the COVID Eviction Crisis* that covers everything from the basics of Nevada eviction law to AB486, rental assistance, and the new eviction mediation program. Contact Legal Aid Center's new Pro Bono Director, Mike Wendlberger, at mwendlberger@lacs.org, 702-386-1429, to learn how to get involved. Pro bono opportunities have never been easier or more needed. ●



Jim Berchtold, Esq. is the Directing Attorney of the Consumer Rights Project at the Legal Aid Center of Southern Nevada, Inc.



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13 RNO 2:05pm	14 RNO 1:05pm	15 RNO 7:05pm	16	17 TAC 7:05pm	18 TAC 7:05pm	19 TAC 7:05pm
20 TAC 7:05pm	21 TAC 7:05pm	22 TAC 7:05pm	23	24 SL 5:35pm	25 SL 5:35pm	26 SL 5:35pm
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JULY

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4 SAC 1:05pm	5 SAC 1:05pm	6 SAC 7:05pm	7	8 RNO 8:35pm	9 RNO 6:35pm	10 RNO 6:35pm
11 RNO 1:05pm	12 RNO 9:35pm	13 RNO 6:35pm	14	15 ELP 7:05pm	16 ELP 7:05pm	17 ELP 7:05pm
18 ELP 7:05pm	19 ELP 7:05pm	20 ELP 7:05pm	21	22 SL 5:35pm	23 SL 5:35pm	24 SL 5:35pm
25 SL 12:05pm	26 SL 5:35pm	27 SL 5:35pm	28	29 TAC 7:05pm	30 TAC 1:05pm	31 TAC 1:05pm

AUGUST

SUN	MON	TUE	WED	THU	FRI	SAT
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8 SL 7:05pm	9 SL 7:05pm	10 SL 7:05pm	11	12 TAC 7:05pm	13 TAC 7:05pm	14 TAC 7:05pm
15 TAC 1:35pm	16 TAC 1:35pm	17 TAC 7:05pm	18	19 ABQ 7:05pm	20 ABQ 1:05pm	21 ABQ 7:05pm
22 ABQ 7:05pm	23 ABQ 7:05pm	24 ABQ 7:05pm	25	26 OKC 5:05pm	27 OKC 5:05pm	28 OKC 5:05pm
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Request a quote

Contact Stephanie at the CCBA office, (702) 387-6011, StephanieAbbott@clarkcountybar.org.

Office Space

Downtown Las Vegas Office Space Available Immediately. LawBank offers shared office space that caters to solo practitioners and small law firms in a plug and play environment. With business development opportunities that speak right to your bottom-line, our downtown Las Vegas office boasts parking options, three conference rooms, and a variety of furnished offices that are move-in ready. LawBank also encourages networking, cross-selling, and upselling among occupants. Schedule a tour at our Fourth Street location today by calling (725) 222-0025 or visit: <https://law-bank.com/locations/lawbank-las-vegas/>.

Office Space Available: <http://www.crestkey.com/officerental>.

Office for rent in estate planning and real estate law firm. Large office with mountain/strip view. Furnished or unfurnished. Includes internet/utilities/janitorial/use of conference room. Henderson near St. Rose and the 125. \$650 (702) 452-1500.

Services

JUDGMENTS & DEBTS COLLECTED: Experienced Collection Attorney-Nevada & California. Referral Fees Paid per NRPC 1.5. Joel Selik, NV Bar #402, 702-243-1930, Joel@SelikLaw.com.

LEGAL MALPRACTICE & ETHICS referrals of legal malpractice cases. Co-counsel California and Nevada. Joel Selik, NV Bar #402, 702-243-1930, Joel@SelikLaw.com.

CCBA Picture Day Scheduled for September 1 —For attorneys, judges, and legal support staff

CCBA members are invited to sit for a professional portrait at this event:

- **What:** CCBA Picture Day
- **When:** Wednesday, September 1, 2021, 9:30 a.m. to 2 p.m. only
- **Where:** Clark County Bar, 717 S. 8th Street, Las Vegas

Attend this event for these special offers*:

- 20% off purchases of professional portraits for CCBA members!
- 10% off print purchases of holiday/family portraits!
- No sitting fees (\$49 value) for this and holiday/family portrait sessions!

Schedule an appointment today! Contact: StephanieAbbott@clarkcountybar.org



Affordable Health Insurance for Association Members

Choose Association Health Plans for Better Rates!

Clark County Bar Association members with 2 (unrelated) to 50 full-time employees can now offer insurance coverage for their employees and their families with a high-quality, affordable Association Health Plan from Prominence.

Not an Association member? Enroll at www.clarkcountybar.org

Large Group Benefits for Small Employer Groups

- A range of coinsurance options
- Copays for widely used benefits like PCP visits, specialists and lab services
- Statewide HMO open access
- National PPO network access

Employers Have Options... and Flexibility

- Choose from six health plan options, including HSA-qualified - see reverse
- Affordable monthly premiums



PARTICIPATING AREAS INCLUDE: Clark County and Nye County

PROMINENCE ASSOCIATION HEALTH PLANS

Our Association Health Plans allow small employers to join as one entity to purchase the type of coverage that is traditionally available to large group employers. This results in less expensive and richer health plan options that can then be passed along to the employee.

Plan Highlights You Don't Want to Miss!

- **NEW! wellPORTAL Primary Care Provider Network** - Members can earn up to \$120 annually for getting the care they need from the region's top doctors.
- **National Network** - Prominence has partnered with Cigna to allow access to a national network for use outside of Nevada for members enrolled in either a POS or PPO health plan.
- **Teladoc** - 24/7 care via telephone or video from licensed physicians, psychiatrists, and counselors for a \$0 cost share. Note, High Deductible Health Plans are subject to deductible first and benefits will be rendered at the contractual service rate.

Contact your broker or PHP-GroupQuotes@uhsinc.com for more information!



Prominence[®]
Health Plan

Please join us at this LIVE, IN-PERSON event!

Vegas Golden Knights Chief Legal Officer Chip Seigel to Speak at Bar Luncheon on August 12, 2021



Special presentation of
**"Tips for Confronting and
Playing Through Risk"**

Offering 1.0 CLE (NV)

RSVP to CCBA by August 9.

Event sponsors



For more information, see page 6 or call CCBA at (702) 387-6011.