



Employment Law Class Actions in Nevada—a CLE webcast
Free for CCBA members on February 8, 2022!
See page 8

COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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The Employment Law Issue

FEBRUARY 2022

Featuring

Employment Law Class Actions in Nevada

By Montgomery Paek and
Diana Dickinson of Littler
Mendelson

See page 22



Featured inside

CCBA President's Message
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Volunteer Appreciation
Luncheon
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Court Takes Measures To Safely
Keep Cases Moving As Pandemic
Conditions Evolve
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Employer-Mandated
Vaccinations for COVID-19
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Pro Bono Corner
See page 30

Ballet Ticket Special Offers for
CCBA Members
See page 30

New date!

**Meet Your
Law Students
Mixer**

March 24, 2022

See page 10

A black and white photograph of a motorcycle's handlebars and dashboard, viewed from the rider's perspective. The image is framed by a thick orange border. The text 'HANDLE BAR' is overlaid in large, white, sans-serif capital letters on the right side of the image.

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*Montgomery Y. Paek, Esq. and Diana G. Dickinson, Esq. of Littler Mendelson.
Photo courtesy of Stephanie Abbott.*

COMMUNIQUE

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Editorial Calendar

Cover Date	Topic of Articles	Closing Date
January 2022	Five Things	12/1/2021
February 2022	Employment Law	1/7/2022
March 2022	Educational Law	2/1/2022
April 2022	Environmental Law	3/1/2022
May 2022	Discovery	4/1/2022
June/July 2022	Ethics	5/3/2022
August 2022	Post-COVID Legalities	7/1/2022
September 2022	Election Law	8/1/2022
October 2022	Cyber Law	9/1/2022
November 2022	Family Law	9/23/2022
December 2022	Pro Bono	11/1/2022

*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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Picture Day at CCBA

Wed., March 9, 2022
9:30 AM - 2:00 PM

Sit for a professional portrait at this special portrait session.

Special offer available to CCBA Members!

Drop-ins are welcome; Appointments are preferred.

See Clarkcountybar.org or call 702-387-6011.

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Choose to Resolve and Develop New Strategies for Connection and Practice

By Nedda Ghandi, Esq.

As I look forward to what 2022 will bring, I cannot help but reflect on the past year. I find myself trying to make sense of the continuing ordeal that we have all been living through. Many of us have experienced loss over the past couple of years. Those losses vary for each of us. Some have experienced the very emotional and difficult loss of loved ones. Some have experienced economic loss or medical issues. All of us have experienced the loss of life experiences—from the mundane, going out with friends or to the movies, to the monumental, such as weddings, funerals, or graduations. Many of us feel as though life was placed on hold for over a year. We repeatedly have thought that we were moving forward back towards “normal” only to have a new hurdle placed in the way.

The weight of these losses can become very heavy if we do not remember to also look for our blessings in these moments in order to lighten the load. As we continue to navigate through the current events impacting our everyday lives, it is critical that we continue to choose to see the good. I choose to find ways to celebrate our collective resilience. I choose to recognize the everyday heroes among us. I choose to resolve to develop new strategies for connection and practice.

The pandemic has brought the practice of law at least one significant benefit—firms had to develop processes for working remotely. In the years prior to the pandemic, I was

May we find a balance between the ways things were done “before” and the new methods of practice that we have developed in the past two years.

an advocate for technological advancements in the practice of law but also could not imagine a fully remote office. We were set up for remote work and did have two lawyers but an entire office remote was a different thought completely. While I look forward to the return to in-person consultations and court appearances, I am grateful that the Pandemic opened our eyes to the flexibility that was possible when we utilize technology.

Telephonic court appearances, virtual client consultations, Zoom depositions, remotely working from home, and flexible schedules can all be incorporated in some manner as we emerge out of the Pandemic (whenever that may be).

Moving forward into 2022, I hope that we find a balance between our past and present. May we find a balance between the ways things were done “before” and the new methods of practice that we have developed in the past two years. May we continue to navigate through this positively and with ingenuity. **G**



Nedda Ghandi, Esq. is a partner with Ghandi Deeter Blackham Law Office. Nedda's primary practice area involves bankruptcy for both individual and business debtors. She also litigates complex family law cases that often involve family-owned businesses or complicated financial battles. Nedda serves as the president of the Clark County Bar Association through December 2022.

Volunteer Appreciation Luncheon

Featuring:

**Nevada Supreme Court Update
By the Honorable Abbi Silver,
Justice, Supreme Court of Nevada**



Also featuring:

- **Swearing-in of CCBA President ('22) Nedda Ghandi** and the CCBA Executive Board
- **Awards presentation by CCBA President ('21) James Harper** to recognize volunteers who actively supported the CCBA's committees, activities, and member services throughout 2021
- Plated lunch (entrée choices): Ribeye Steak, Broiled Salmon, Chicken Christopher, Pasta Primavera, or Vegan Pasta



Where & When:

- Thursday, March 31, 2022
- Check-in & networking: 11:30 a.m.
- Luncheon & program: 12:00 to 1 p.m.
- Morton's The Steakhouse, 400 E. Flamingo Road, Las Vegas



Price:

- ACTIVE 2021 CCBA Committee member (FREE)*
- CCBA Member (\$50)
- Non-Member (\$60)

RSVP required to CCBA by 3/25/2022.

For more information, see Clarkcountybar.org or call 702-387-6011. Sponsorship opportunities available.

*Restrictions apply. The offer for a free lunch is available only to CCBA members who actively participated in the committee activities and attended the majority of the CCBA committee meetings during 2021. To confirm eligibility, contact Steph or Donna at the CCBA.



Littler Attorneys to Present Employment Law Class Actions in Nevada Program on February 8, 2022

By Stephanie Abbott

On Tuesday, February 8, 2022, employment lawyers Montgomery Y. Paek and Diana G. Dickinson will make a special presentation for the continuing legal education of Nevada lawyers in a program produced by the Clark County Bar Association.


Montgomery Paek is a Shareholder in Littler Mendelson's Las Vegas office. He is lead counsel in complex/high stakes employment litigation such as class actions, noncompete/trade secrets, and discrimination/harassment and has handled dozens of class actions from inception through successful appeal.

Diana Dickinson is an Associate in Littler Mendelson's Las Vegas office. Diana represents employers in noncompete and trade secrets cases, class and collective actions brought under federal and state wage and hour laws, discrimination/harassment matters, and appellate proceedings.

The speakers will present the program, "Employment Law Class Actions in Nevada." Topics to be discussed include:

- Two-Tiered Minimum Wage
- Daily Overtime and 24-hour Workday
- Off-the-Clock Work and Class Action Avoidance

The program will be held online via Zoom, from 12:00 to 1:15 p.m., Tuesday, February 8, 2022. The presentation will offer 1.0 CLE credit to CCBA members only. Pricing of the event is included with the 2022 CCBA membership. This 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. 



*Stephanie Abbott is the communications manager for the Clark County Bar Association. Stephanie manages the bar's journal *Communiqué*, website ClarkCountyBar.org, and social media channels.*



The presentation will offer 1.0 CLE credit to CCBA members only. Pricing of the event is included with the 2022 CCBA membership.

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Bar Members Invited to Participate in Community Outreach Activities

The CCBA invites members of the bar to participate in these upcoming activities:

Book Drive

- **When:** Now through Saturday, March 26, 2022
- **Where:** CCBA, 717 S. 8th Street, Las Vegas
- **About:** Committee members to clean and repair donated books at the CCBA office on Saturday, March 26, 2022, from 9:00 a.m. to 11:00 a.m. Books will be donated to Spread the Word Nevada.

Meet Your Law Students Mixer

- **When:** March 24, 2022, 5:30-7:30 p.m. —*New date!*
- **Where:** CCBA, 717 S. 8th Street, Las Vegas
- **Featuring:** Complimentary food and drink tickets while supplies last
- **Premier sponsors:**
 - Bailey Kennedy, LLP
 - Lagomarsino Law

- **Who:** UNLV Boyd Law Students and managing/hiring partners from law firms in southern Nevada are invited to attend this private event. However, space will be limited to those who RSVP to the CCBA by March 21, 2022. Sponsorship opportunities available.
- **Participating firms (to date):**
 - Bailey Kennedy, LLP
 - Hall Jaffe & Clayton, LLP
 - Thorndal Armstrong Delk Balkenbush & Eisinger
 - Zumpano Patricios Popok & Helsten
- **Hosts:**
 - Diversity and Inclusion Committee for Equity (DICE)
 - Community Service Committee
 - New Lawyers Committee
- **Note:** Due to the recent increase in COVID concerns, the event may be rescheduled.

Special Event

Meet Your *Law Students* Mixer



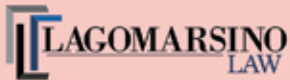

March 24, 2022
New date!

Check-in & networking: 5:30 p.m. to 7:30 p.m.
Clark County Bar Association, 717 S. 8th Street, Las Vegas

UNLV Law Students and managing partners and hiring partners from law firms in southern Nevada are invited to attend this private event. However, space will be limited.

For more information and to RSVP, contact the CCBA at 702-387-6011 or Donnaw@clarkcountybar.org.

Premier sponsors



Sponsor opportunities available

Out of the Darkness Walk

- **When:** Saturday, April 9, 2022
- **Where:** Sunset Park
- **Start time:** 10:00 am
- **Team captain:** Tiffany Welt Doctors, Esq.
- **Note:** Sign up at <https://supporting.afsp.org/team/clarkcountybar>. All donations support the American Foundation for Suicide Prevention.

UNLV Moot Court Competition

- **When:** Friday, April 15 (evening) and Saturday, April 16 (morning and evening), 2022
- **Where:** UNLV Law School
- **Volunteer judges needed:** To qualify to judge at the moot court competitions, the volunteer must be at least a law school graduate. Judges act as an appellate court judge hearing oral argument for the case, asking questions and scoring students on their appellate advocacy skills. Judging the competition qualifies as pro bono service (pursuant to NRPC 6.1).



- **Volunteers:** RSVP to CCBA New Lawyers Committee Co-Chair Josh Dresslove at joshdresslove@yahoo.com by Friday, April 8, 2022.

19th Annual Walk with the Heart of a Child

- **When:** Saturday, April 23, 2022
- **Where:** Craig Ranch Regional Park
- **Start time:** TBA
- **Team captain:** Benjamin Gordon, Esq.
- **Note:** The annual community walk raises funds to support the 1 in 100 children who are born with a congenital heart disease (CHD) each year in the United States. More information TBA.

Tour De Summerlin

- **When:** Saturday, April 23, 2022
- **Where:** TBA
- **Team:** The CCBA would like to field a team (min. of 10 riders). Interested bar members will need to complete our team form (PDF file) and send it to team captain Mark Blackman at markbl@bdfgroup.com.

Clark County Bar Association presents

Basics of Handling 1983 Claims

A CLE program offering 1.0 hour of continuing legal education (CLE) for Nevada lawyers

Wednesday, March 30, 2022
12:00 PM – 1:15 PM

Free live webcast for CCBA members only

RSVP to the CCBA now

For more information, visit
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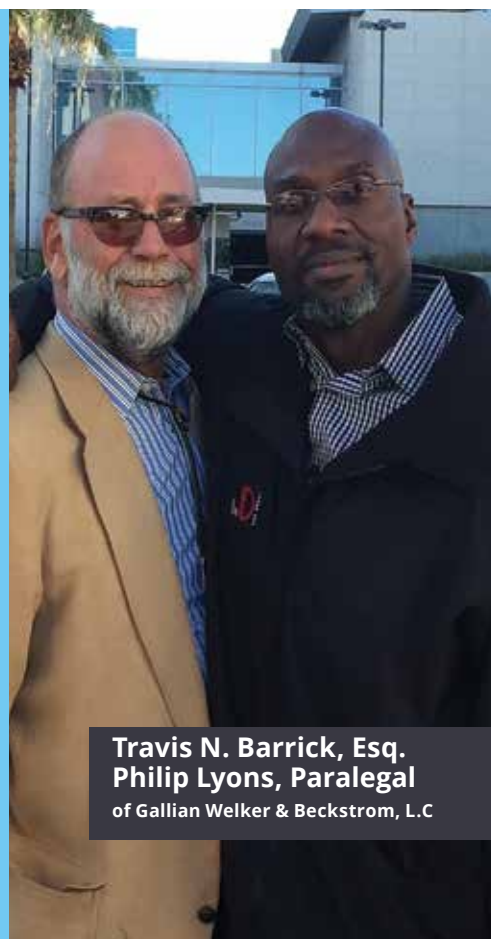
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of Gallian Welker & Beckstrom, L.C

Court Order Pauses Jury Trials Expected to Take Longer Than a Calendar Week

On January 12, 2022, the Eighth Judicial District Court filed an order in the administrative matter of pausing jury trials that are expected to take longer than a calendar week in response to COVID-19. *See* administrative Order 22-02.

The order cites the current state of emergency declared in response to the COVID-19 pandemic and the EJDC's significant measures to keep court cases moving in a safe manner. For more information, read "Court Takes Measures To Safely Keep Cases Moving As Pandemic Conditions Evolve" written by Chief Judge Linda Bell (*Communiqué*, Feb. 2022). *See* page 16.

Court Order Addresses Backlog and Delay of Civil Trials

On December 30, 2021, the Eighth Judicial District Court (EJDC) filed an order in the administrative matter regarding jury trial settings, continuances, calendar call, and civil reassignment calendar. *See* Administrative Order 21-09.

The order cites that due to the Covid-19 pandemic, the Eighth Judicial District Court is experiencing a significant backlog and delay in the disposition of civil trials. The Eighth Judicial District Court and the Nevada Supreme Court are working collaboratively to stress to Judges and attorneys the seriousness of the backlog, the adverse effect on the litigants and the importance of resolving matters in a safe, timely, and efficient manner. Notwithstanding the efforts of the bench and bar, however, the backlog has grown requiring additional initiatives to effectively resolve civil cases pending in the Eighth Judicial District. One useful case management tool is the use of a civil reassignment calendar, particularly where, as here, judicial resources are available to assist in the trial of pending, overflow civil cases.

As outlined in this order, any case ready to go to trial but unable to be tried by the trial judge to whom the case is presently assigned will be reassigned to an available trial judge to ensure the prompt and timely disposition of civil cases.

To learn more, read the order. Get a copy at <http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/#Administrative%20Orders>.

Court Orders Interim Procedures for Probate Department

On December 22, 2021, the Eighth Judicial District Court (EJDC) filed an order in the administrative matter of interim procedures for the probate department. *See* Administrative Order 21-08. The order took effect upon filing and affects procedures to several EJDC Rules including:

- Rule 4.03, Probate commissioner - The assignment of cases until a new probate commissioner is selected

Court continued on page 14



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- Rule 4.08, Transfer of cases to the probate judge – How to file a Request to Transfer to Probate Judge
- Rule 4.17, Discovery in contested / litigated matters

For more information, read the order. See <http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/#Administrative%20Orders>.

Court Order Modifying Guardianship Procedures and Assignment of Minor's Compromise Proceedings

On January 6, 2022, the Eighth Judicial District Court (EJDC) filed an order in the administrative matter of modifying guardianship procedures and assignment of minor's compromise proceedings. See Administrative Order 22-01.

Effective January 6, 2022, the order modifies three procedures:

- Revises procedures governing minor guardianship cases by creating separate cases for each proposed protected minor
- Provides for parties in all guardianship matters to appear by alternative means
- Assigns minor's compromise matters to the civil department

For more information, read the order. See <http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/#Administrative%20Orders>.

Las Vegas Justice Court - Courtroom Assignments Effective January 1, 2022

Courtroom	June/Dept. - (Chambers)
LLB	Graham/Dept. 1 - (6C)
1A	Chelini/Dept. 14 - (1A)
1B	Zimmerman/Dept. 8 - (8D)
1C	De La Garza/Dept. 15 - (6D)
6A	Joe Bonaventure/Dept. 9 - (6A)
6C	(Evictions AM) Kern/Dept. 6 - (6B)
6D	Suzan Baucum/Dept. 13 - (2nd Floor) (Small Claims PM)
7A	Cruz/Dept. 5 - (7A)
7B	Goodman/Dept. 11 - (7B)
7C	Sullivan/Dept. 12 - (7C)
7D	Dotson/Dept. 10 - (1B) Saragosa/Dept. 4 - (7D)
8A	Bennett-Haron/Dept. 7 - (8A)
8B	Sciscento/Dept. 2 - (8B)
8C	Letizia/Dept. 3 (8C) (Evictions PM)
8D	Traffic Arraignments


North Las Vegas Justice Court Rules Changed

On December 13, 2021, the Supreme Court of Nevada filed an order in the matter of the amendment of the Justice Court Rules of North Las Vegas Township 6.6, 34, and 42 and Deleting Rule 48.5. See ADKT 0586.

The order is in response to a petition filed by Natalie L. Tyrell, Chief Judge, Justice Court of North Las Vegas Township. The Supreme Court of Nevada ordered that the proposed amendments to JCRNLV 6.6, 34, and 42 shall be adopted and Rule 48.5 shall be deleted. The rules shall read as set forth in Exhibit A. The Supreme Court of Nevada further ordered that the amendments to JCRNLV 6.6, 34, and 42 and the deletion of rule 48.5 shall be effective 60 days from the date of the order.

To view the administrative case for ADKT 0586, visit the Appellate Case Management System at <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=62566&combined=true>.

Las Vegas Justice Court Judge's Meeting Set for March 9, 2022

The Las Vegas Justice Court Judges' Meeting scheduled for January 12, 2022, at 11:30 am, was cancelled. The next Open Judges Meeting is scheduled for March 9, 2022. This may be an in-person meeting. RSVP to Maureen Lowe Judicial Executive Assistant to Chief Judge Melissa Saragosa, Las Vegas Justice Court Dept 4, (702) 671-3367, maureen.lowe@clarkcountynv.gov. 

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Court Takes Measures To Safely Keep Cases Moving As Pandemic Conditions Evolve

By Judge Linda Marie Bell

Since March 13, 2020, when an Eighth Judicial District Court (EJDC) order halted jury trials and implemented telephonic hearings, the court has adapted swiftly to keep cases moving in a safe and effective manner. With safety protocols developed in consultation with health professionals and procedures in place, we were able to begin handling jury trials on a limited basis toward the end of 2020.

Despite significant effort from the court, the past six months conducting trials has failed to decrease our backlog. This is a matter of great concern to the Eighth Judicial District Court and the Supreme Court of Nevada. To address the backlog, joint Administrative Order 21-09 was issued. The Order is available on the court's website clark-countycourts.us. AO 21-09 reiterates several of our EDJC rules with the intent to keep cases moving forward. The situation on the ground, however, continues to evolve. The Omicron variant is spreading quickly, leading to staffing shortages. It is a reality that portends the need for constant re-evaluation as conditions change.

Administrative Order 22-02 limits trials to those scheduled to go for no more than a calendar week. The Order is to be in effect for 30 days. The court will implement the measures outlined in AO 21-09 and judges will be required to follow and enforce the EDJC rules for continuing trials, including making a finding of good cause for a

Once a trial is set at calendar call, per the order, any continuance requires a written motion and a finding by the judge of extraordinary circumstances. COVID infections support a finding of good cause.

continuance. Once a trial is set at calendar call, per the Order, any continuance requires a written motion and a finding by the judge of extraordinary circumstances. COVID



Judge Linda Marie Bell is the chief judge for the Eighth Judicial District Court. She has been serving in department 7 since 2009, handling civil and criminal cases, managing Grand Juries and overseeing the criminal division specialty courts.



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AO 21-09 creates a civil trial reassignment calendar. Civil judges will be setting trials that are ready to go - when they are ready to go. Any trials the judge cannot manage because of conflicts with other trials, will be reassigned.

infections support a finding of good cause. The court will be sensitive to people's health related concerns and consider giving them the option to file affidavits under seal where appropriate.

A motion to continue must be supported by an affidavit, or if there is not sufficient time, oral sworn testimony from the lawyer. Also, if a witness is unavailable, EDCR 7.30(b) has specific requirements that must be imposed. Trials may not be vacated by stipulation, and a motion to withdraw may not be granted if it would delay trial. EDCR 2.69 requires lawyers to appear at calendar call ready to go with exhibits, jury instructions, proposed voir dire questions, etc.

AO 21-09 creates a civil trial reassignment calendar. Civil judges will be setting trials that are ready to go - when they are ready to go. Any trials the judge cannot manage because of conflicts with other trials, will be reassigned. The court will have a calendar every Thursday to address any trials that need reassignment for the next week. Peremptory challenges are not permitted by rule; however, to address concerns that have previously made civil reassignments unsuccessful, we will try a "strike list" method at the assignment calendar.

Also, if the case has settled, the parties must provide a written stipulation or agree to enter the agreement in the minutes of the court. If the agreement is entered into the minutes, the judge will set a status check within 21 days to ensure the settlement documents are provided.

I understand that this will be a significant practice change for some, and I appreciate everyone's understanding and adherence to these essential measures. I would like to thank the members of the Executive Committee for their hard work and assistance during this process.

Administrative Order AO 21-09 and all court administrative orders can be found on the District Court website at clarkcountycourts.us. **C**



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Employer-Mandated Vaccinations for COVID-19: Legally Required? Legally Allowed?

By Doreen Spears Hartwell, Esq. and Laura Thalacker, Esq.

The ongoing scourge of the pandemic, coupled with the widespread availability of safe and effective COVID-19 vaccines in the U.S., have left private employers grappling with a critical question: *can and should they mandate that employees get vaccinated?*

For some employers, requiring that their workers get vaccinated for COVID-19 seemed not to be a choice, but instead a legal obligation imposed by the federal Occupational Safety and Health Administration (“OSHA”) pursuant to its November 5, 2021, Emergency Temporary Standard on COVID-19 Vaccination and Testing (the “ETS”). 29 C.F.R. §1910.501. The ETS, now placed on hold by the U.S. Supreme Court as of January 13, 2022, requires that employers with 100 or more employees have a COVID-19 mandatory vaccination policy or, alternatively, a policy mandating that employees either get vaccinated or, in lieu of vaccination, undergo regular COVID-19 testing and wear a face covering at work. The ETS covers two-thirds of all workers in the private sector in the U.S. and allows exceptions for workers who cannot be vaccinated due to medical reasons or as a reasonable accommodation, absent undue hardship for the employer, on disability or religious grounds. It includes other provisions impacting employers such as protocols for removing COVID-positive employees from the workplace, paid time off for employees to get vaccinated and for vaccine side effects, and verifica-

Because Nevada is one of several states operating its own OSHA-approved workplace safety and health program (which, by law, must have standards in place at least as effective as those adopted by federal OSHA), Nevada adopted a different time frame for implementing the ETS.

tion of vaccination status.

After court challenges to the ETS resulted in conflicting decisions from federal appeals courts, the ETS took effect in many jurisdictions on January 10, 2022 (with OSHA indicating it would defer enforcement until February 2022). Because Nevada is one of several states operating its own OSHA-approved workplace safety and health program (which, by law, must have standards in place at least as effective as those adopted by federal OSHA), Nevada adopted a different time frame for implementing the ETS. The Nevada Department of Business and Industry, Division of Industrial Relations, Occupational Safety &

Employer *continued on page 20*



Doreen Spears Hartwell and Laura Thalacker are the founding members of Hartwell Thalacker, Ltd. Ms. Hartwell’s practice focuses on employment litigation and business litigation. Ms. Thalacker has practiced employment law and litigation in Nevada since 1994 and helps businesses comply with the complex patchwork of laws governing the employment relationship.

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Employer *continued from page 18*

Health Administration ("Nevada OSHA") announced on December 27, 2021, that it was not adopting the ETS until January 24, 2022. Further, Nevada OSHA indicated it would "exercise enforcement discretion for noncompliance with the ETS for a period of 30 days for any requirement of the ETS (60 days for testing requirements)" if employers were "making reasonable and good faith efforts to come into compliance with the standard."

[https://dir.nv.gov/uploadedFiles/dir.nv.gov/content/OSHA/Features/12-27-21%20\(Nevada%20OSHA%20Enforcement%20Updates%20Regarding%20COVID-19\).pdf](https://dir.nv.gov/uploadedFiles/dir.nv.gov/content/OSHA/Features/12-27-21%20(Nevada%20OSHA%20Enforcement%20Updates%20Regarding%20COVID-19).pdf)

On January 13, 2022, the Supreme Court issued a stay of the ETS, finding that OSHA had likely acted outside of its authority in adopting the sweeping vaccine and testing measures. (In another January 13th decision, the Supreme Court allowed a separate interim final rule to take effect, which was issued by the Center for Medicare and Medicaid Services and requires COVID-19 vaccination of healthcare



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workers at Medicare and Medicaid-certified providers and suppliers). While litigation over the ETS will continue to proceed in the lower court, given the Supreme Court's reasoning, it is highly unlikely the ETS will be reinstated as currently drafted. A response from Nevada OSHA regarding the impact of the Supreme Court's stay on its own state OSHA plan is likely forthcoming.

Even with the vaccine and testing ETS currently blocked, it remains true that all private employers in Nevada are generally free to mandate the COVID-19 vaccine for their workforces (unless prevented from doing so by a collective bargaining agreement or other employment contract). Unlike some states, Nevada does not have any law prohibiting employers from mandating the COVID-19 vaccine. Likewise, guidance from the federal Equal Employment Opportunity Commission ("EEOC") and the Centers for Disease Control and Prevention ("CDC") affirms an employer's right to require vaccinations (with medical and religious exemptions). *See* EEOC website



<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (website visited January 12, 2022); *see also* CDC website [https://www.cdc.gov/coronavirus/2019-ncov/vac-](https://www.cdc.gov/coronavirus/2019-ncov/vac)

<cines/recommendations/essentialworker/workplace-vaccination-program.html> (website visited January 12, 2022). For employers covered by the Americans with Disabilities Act and Title VII of the 1964 Civil Rights Act, vaccination mandates must address reasonable accommodation for employees who are unable to get vaccinated due to, respectively, a disability or sincerely held religious belief.

So, while employers *can* legally mandate COVID-19 vaccinations, will they? In a November 2021 survey conducted by the Society for Human Resource Management, 75 percent of responding employers said they would be unlikely to adopt a COVID-19 vaccination mandate or testing requirement if the ETS is permanently struck down. "Large Employers Hesitant About Vax Mandate," *CFO Magazine* (December 14, 2021) (<https://www/cfo.com/covid-19/2021/12/large-employers-hesitant-about-vax-mandate/>). As the pandemic rages on, it remains to be seen what approach Nevada employers will take with respect to vaccine mandates. **G**

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Employment Law Class Actions in Nevada

By Montgomery Y. Paek, Esq. and Diana G. Dickinson, Esq.

Employment law class actions continue to grow in Nevada and nationwide, with the vast majority concerning wage and hour laws. The stakes are high as individual damages multiplied classwide can easily reach seven figures –or more– in what is sometimes bet-the-company litigation.

Although many employers believe they are in compliance, the reality is that due to the complexity that arises from new rulings and changes in both federal and state laws, many employers are unaware of potential claims involving wage and hour laws.

Nevada's Two-Tiered Minimum Wage

Nevada's minimum wage has generated significant class action litigation and appellate review. Unlike the single-rate federal minimum wage (currently \$7.25/hour), Nevada's two-tiered minimum wage under the Minimum Wage Amendment in the Nevada Constitution ("MWA") requires employers to pay an upper tier minimum wage that is \$1.00 per hour higher than the lower tier minimum wage where the employer does not offer health insurance to its employees. Nev. Const. Art. 15, Sec. 16.

To offer the lower tier, the health benefits must meet several requirements. For example, the insurance plan must be "for the employee and the employee's dependents at a total cost to the employee for premiums of not more than

Although many employers believe they are in compliance, the reality is that due to the complexity that arises from new rulings and changes in both federal and state laws, many employers are unaware of potential claims involving wage and hour laws.

10 percent of the employee's gross taxable income from the employer." Nev. Const., Art. 15, Sec. 16 (A). The Supreme Court of Nevada has held that "employee tips do not count toward taxable income for determining the 10-percent wage cap for premiums," *MDC Restaurants, LLC v. Eighth Jud. Dist. Ct.* ("MDC I"), 383 P.3d 262 (Nev. 2016), and that an employer must also show it provided the insurance "equal to a value of at least an additional dollar per hour in wages." *MDC Restaurants, LLC v. The Eighth Jud. Dist. Ct.* ("MDC II"), 419 P.3d 148 (Nev. 2018).

In 2019, NRS 608.258 and NRS 608.250(1) were amended to require that qualified health insurance have minimum levels of coverage for certain categories of medical services, and to add an annual increase of \$0.75 per year to the MWA, respectively. Thus, Nevada's current minimum

Montgomery Paek is a Shareholder in Littler Mendelson's Las Vegas office. He is lead counsel in complex/high stakes employment litigation such as class actions, noncompete/trade secrets, and discrimination/harassment and has handled dozens of class actions from inception through successful appeal.



Diana Dickinson is an Associate in Littler Mendelson's Las Vegas office. Diana represents employers in noncompete and trade secrets cases, class and collective actions brought under federal and state wage and hour laws, discrimination/harassment matters, and appellate proceedings.

wage is \$8.75 per hour lower tier and \$9.75 per hour upper tier through June 30, 2022 and will increase to \$9.50 lower tier/\$10.50 upper tier on July 1, 2022. NRS 608.250(1)(b)-(1)(c). Both tiers will continue to adjust by \$0.75/hour on July 1 of every year until \$11.00 lower tier/\$12.00 upper tier are reached in 2024. NRS 608.250(1)(f).

This two-tiered minimum wage may be replaced if Nevadans vote to ratify a proposed amendment to the MWA that would eliminate the health insurance requirement and two-tiered system for a single \$12.00 minimum wage.

Nevada Daily Overtime and 24-hour Workday

Under the Fair Labor Standards (“FLSA”), overtime accrues at 1 ½ times the regular rate whenever an employee works more than 40 hours a week. 29 U.S.C. § 207(a). Nevada has an additional requirement of daily overtime for any work in excess of 8 hours a day. NRS 608.018(1)(b). As such, even if an employee works below 40 hours a week, each day must be examined for work performed over 8 hours.

Additionally, unlike the FLSA’s use of a calendar day, Nevada defines a workday as “a period of 24 consecutive

hours which begins when the employee begins work.” NRS 608.0126. Thus, class action suits have been brought for shift changes where an employee’s second day started at an earlier shift under the theory that the earlier shift start dips into the prior day’s 24-hour period for daily overtime.

Off-the-Clock Work

The most pervasive area for wage and hour class actions is off-the-clock work. Claims for pre- and post-shift work often arise from allegations that employees do incidental work outside of clocked times. For example, suits have been brought for employees waiting for their computer to boot-up prior to being able to clock in. Other suits involve employees doing prep work prior to clocking in such as taking out garbage or sweeping work areas.

Class Action Avoidance

The best protection against these types of suits is prevention through review and audit with experienced employment law counsel. Due to continuing changes in laws, vigilant employers will review their practices under the most recent and creative applications of wage and hour laws. **C**

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2. Probate and the Pandemic: Trust and Estate Legislative Update

Speakers: Alan D. Freer and Jeffrey P. Luszeck of Solomon, Dwiggin, Freer & Steadman, Ltd.

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3. What Every Lawyer Should Know about Estate Planning

Speaker: A. Collins Hunsaker, Esq. of Law Firm of Jeffrey Burr

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4. Legislative Update: Looking In and Out

Speakers: Lesley Cohen, Esq. Assemblywoman, District 29; Edgar Flores, Esq. Assemblyman District 28; Shea Backus, Esq. Backus Carranza & Burden

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5. Diversity in the Legal Profession CLE Luncheon

Speakers: Judge Tierra D. Jones, Eighth Judicial District Court; Bryan K. Scott, Las Vegas City Attorney; Lora Picini, Senior VP, Inclusion and Talent Management, Everi Holdings; Nedda Ghandi, Partner, Ghandi Deeter Blackham; Annette Bradley, Chair, CCBA's Diversity and Inclusion Committee for Equity

Recorded: 10/21/2021

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6. Half!! – The Four-Letter Word in Divorce Court – a CLE Program

Speaker: Rock Rocheleau, Esq. of Right Lawyers

Where: Online via Zoom

When: Thursday, October 14, 2021, 12:00-1:00 PM

: 1.0 hours of CLE (NV)

Price: \$25/CCBA member, \$50/non-member

7. Wanna Stay Out of Trouble in Discovery?

Authors: ADR/Discovery

Commissioners Jay Young and Erin Truman

Published: *Communiqué* (Oct. 2021)

CLE: Offers 1.0 CLE Credit (NV)

Price: \$25/CCBA member, \$50/Non-member

8. Hot Topics in Family Court Discovery

(AKA Part 3 of Discovery & ADR CLE With The Commissioners)

Speaker: Jay Young, ADR/Discovery Commissioner for the Eighth Judicial District Court

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Format: Audio/Video

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9. ADR: What do you Need to Know?

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11. Real Estate Finance 101: Deed of Trust Litigation

Speakers: Phil Aurbach, Marquis Aurbach Coffing

Eleissa Lavelle, JAMS

Melanie Morgan, Akerman LLP

Bob Olson, Snell & Wilmer LLP

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12. Corporations & Partnerships: A Lawyer's Road Map to Business Litigation

Speaker: Augusta Massey, Esq. of Massey & Associates Law Firm, PLLC

Recorded: 8/19/2021

Format: Audio/Video

CLE: 1.0 CLE Credit (NV)

Price: \$25/CCBA member, \$50/non-member

13. The Unauthorized Practice of Law – A Trap for the Unwary

Speaker: John Naylor, Esq. of Naylor & Braster

Recorded: 7/15/2021

Format: Audio/Video

CLE: 1.0 Ethics CLE Credit (NV)

Price: \$25/CCBA member, \$50/non-member

14. What Exactly Is The Unauthorized Practice of Law?

Author: John Naylor, Esq. of Naylor & Braster

Published: Communiqué (June/July 2021)

Format: PDF file (CCBA-CLE-ARTICLE-9-(ETHICS).pdf)

CLE: 1 Ethics CLE Credit (NV)

Price: \$25 for CCBA member, \$50 for Non-Member

15. Ethics Unbound and Unmasked

Speaker: Dennis L. Kennedy, Esq. of Bailey Kennedy

Recorded: 6/18/2021

Format: Audio/Video

CLE: 2.0 Ethics CLE (NV)

Price: \$50/CCBA member, \$100/non-member

16. Ethical Landmines in Today's World & How to Avoid Them

Speaker: Rob Bare, Esq. of The Law Office of Rob Bare, PLLC

Recorded: 6/17/2021

Format: Audio/Video

CLE: 1.0 Ethics CLE Credit (NV)

Price: \$25/CCBA member, \$50/non-member

17. What You Need to Know When Starting Your Own Firm

Speaker: Jennifer L. Braster, Esq. of Naylor & Braster

Recorded: 5/27/2021

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Library *continued on page 26*

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*Restrictions apply to the CCBA's CLE Library. See page 27.

Library *continued from page 25*

18. Bankruptcy Nuts and Bolts

Speaker: Marjorie Guymon of Goldsmith & Guymon
Recorded: 4/22/2021
Format: Audio/Video
CLE: 1.0 CLE Credit (NV)
Price: \$25/CCBA member, \$50/non-member

19. The Disease of Addiction & Mental Health Awareness

Speaker: Mel Pohl, MD, DFASAM, Family Practitioner and Senior Medical Consultant, Landmark Recovery, Las Vegas
Recorded: 3/18/2021
Format: Audio/Video
CLE: 1.0 Substance Abuse CLE Credit (NV)
Price: \$25/CCBA member, \$50/non-member

20. Gazed and Confused: Brief Overview of Administrative Procedures & Clues of DUI SFSTs: HGN, WAT, and OLS

Speaker: Lance J. Hendron, Esq. of Hendron Law Group, LLC
Recorded: 3/16/2021
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21. Lost in the Desert: Addiction & Recovery for Legal Professionals

Speaker: Douglas C. Crawford
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CLE: 1.0 Substance Abuse/Addiction/Mental Health (AAMH) CLE credit (NV)
Price: \$25/CCBA member, \$50/non-member

22. Ethics in Review: From the Desk of Bar Counsel

Speaker: Nevada Bar Counsel Dan Hooe
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Speaker: Phillip S. Aurbach of Marquis Aurbach Coffing
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24. Fraud Detection, Prevention, and Investigation

Speakers: Mark Rich, CPA, CFF and Joseph Garrett, CPA, CVA, CFE of Rich, Wightman & Company, CPAs, LLC
Recorded: 9/22/2020
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25. Streamlined Bankruptcy Option for Small Business

Speakers: Candace Carlyon, Esq. and Dawn Cica, Esq. of Carlyon Cica Chtd.
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26. Federal Faux Pas: The "Do's and "Don'ts" of Federal Practice

Speakers: U.S. Magistrate Judge Brenda Weksler, David Chavez, Judicial Term Clerk, and Emily Gesmundo, Judicial Career Clerk
Recorded: 8/3/2020
CLE: 1.0 General CLE Credit (NV)
Price: \$25/CCBA member, \$50/non-member

27. Preparing a Better Deposition: Don't Let a Deposition Sink Your Case

Speakers: Mike Carman, Esq. and Corinne Price, Esq. of Fine Carman Price
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Recorded programs are presented in the following formats: MP3 (audio), and MP4 (video). For MP3/MP4 orders, materials will be provided via e-mail with a hyperlink for the user to download the requested title(s) and the supporting educational material. Electronic files (MP4, MP3, PDF) do not have to be returned.

It is the program attendees' responsibility to report their completion of each program to the CCBA. Upon completion of a CCBA CLE program by a Nevada bar member, the CCBA will submit their record of attendance directly with the Nevada Board of Continuing Legal Education and send a confirmation of the filing to the attendee via email. If the attendee has attended the live program or previously viewed any of these titles, CLE credit will not be awarded again. Additional restrictions may apply.

Spring CLE Bundle #1 and Summer CLE Bundle #2 include a specific set of CLE programs with no substitutions available. For more info, see <https://clarkcountybar.org/marketplace/recorded-cle-programs/>.

Bundles of 13 of credit hours:

☐ 2022 CCBA CLE Passport @ \$200

☐ CLE Bundle (Summer Bundle #2) @ \$200

Total Amount Enclosed: \$ _____

Payment type:

☐ I want to use my pre-paid 2021 CCBA CLE Passport towards this order

☐ Check or money order

☐ Cash (exact amount only)

☐ Credit card* (select): Mastercard • VISA • AMEX

☐ I will call CCBA with my credit card information or

☐ I authorize the CCBA to charge my credit card:

Name of card holder: _____

Credit Card #: _____

Expiration date: _____ Phone #: _____

Authorized Signature: _____

Contact email: _____

**Submit order with payment to
Clark County Bar Association,
717 S. 8th Street, Las Vegas, NV, 89101.** Phone:
702-387-6011. Fax: (702) 387-7867.

***Do not send credit card details to CCBA via e-mail.**

Areas of Practice Listings Special Offer

Attorney members of the CCBA can get listed via area of practice (AOP) in the Discovery issue of the *Communiqué* (May 2022). This service is included with the 2022 CCBA membership! To get listed, complete the form below and submit to the CCBA by April 1, 2022. **Note: If you completed the form when you submitted your 2022 membership fee, then you can update your choices by completing this form by the deadline.**

Name: _____

NV Bar #: _____ Phone #: _____

Areas of Practice - Select up to three (3) areas of practice from the list below:

- | | | |
|---|---|--|
| <input type="checkbox"/> Administrative & Agency Matters | <input type="checkbox"/> DUI Defense | <input type="checkbox"/> Military Law |
| <input type="checkbox"/> Animal Law | <input type="checkbox"/> Education Law | <input type="checkbox"/> Mining Law |
| <input type="checkbox"/> Antitrust & Trade Regulation | <input type="checkbox"/> Elder Law | <input type="checkbox"/> Natural Resources |
| <input type="checkbox"/> Appellate Practice | <input type="checkbox"/> Eminent Domain & Condemnation Law | <input type="checkbox"/> Patents |
| <input type="checkbox"/> Arbitration & Mediation | <input type="checkbox"/> Employment Law | <input type="checkbox"/> Pension, Profit Sharing & Employee Benefits |
| <input type="checkbox"/> Aviation | <input type="checkbox"/> Environmental Law | <input type="checkbox"/> Personal Injury and Wrongful Death Claims |
| <input type="checkbox"/> Banking Law | <input type="checkbox"/> Ethics & Professional Responsibility | <input type="checkbox"/> Premises Liability |
| <input type="checkbox"/> Bankruptcy Law | <input type="checkbox"/> Federal Indian Law | <input type="checkbox"/> Product Liability |
| <input type="checkbox"/> Business Litigation | <input type="checkbox"/> Franchise & Distribution | <input type="checkbox"/> Professional Malpractice |
| <input type="checkbox"/> Child Welfare | <input type="checkbox"/> Gaming Law | <input type="checkbox"/> Public Utility Matters |
| <input type="checkbox"/> City/County/Local Government | <input type="checkbox"/> Government Relations | <input type="checkbox"/> Public Interest Law |
| <input type="checkbox"/> Civil Defense | <input type="checkbox"/> Guardianship | <input type="checkbox"/> Real Estate Law |
| <input type="checkbox"/> Civil Trial Advocacy | <input type="checkbox"/> Health Care Law | <input type="checkbox"/> Real Property Law |
| <input type="checkbox"/> Collection Law | <input type="checkbox"/> Immigration & Customs Law | <input type="checkbox"/> Social Security Disability |
| <input type="checkbox"/> Common Interest Community /Homeowners Associations | <input type="checkbox"/> Insurance Law | <input type="checkbox"/> Special Education |
| <input type="checkbox"/> Constitutional Law | <input type="checkbox"/> Intellectual Property | <input type="checkbox"/> Sports & Entertainment Law |
| <input type="checkbox"/> Construction Law | <input type="checkbox"/> International & Foreign Law | <input type="checkbox"/> State/Federal & Admin |
| <input type="checkbox"/> Consumer Claims & Protection | <input type="checkbox"/> Internet Law | <input type="checkbox"/> Taxation Law |
| <input type="checkbox"/> Copyright & Trademark Law | <input type="checkbox"/> Job Discrimination & Civil Rights | <input type="checkbox"/> Transportation Law |
| <input type="checkbox"/> Corporate Finance & Securities Law | <input type="checkbox"/> Juvenile Law | <input type="checkbox"/> Travel & Entertainment Law |
| <input type="checkbox"/> Corporation & Business Law | <input type="checkbox"/> Labor Law | <input type="checkbox"/> Trial |
| <input type="checkbox"/> Creditor & Debtor Law | <input type="checkbox"/> Land Use, Planning, Zoning | <input type="checkbox"/> Veterans Administration & Affairs |
| <input type="checkbox"/> Criminal & Traffic Law | <input type="checkbox"/> Legal Malpractice | <input type="checkbox"/> Water Rights Law |
| <input type="checkbox"/> Domestic Relations & Family Law | <input type="checkbox"/> Legislative Matters | <input type="checkbox"/> Wills, Estates, Estate Planning & Probate |
| | <input type="checkbox"/> Medical Malpractice | <input type="checkbox"/> Workers' Compensation |
| | <input type="checkbox"/> Medical Marijuana | |
| | <input type="checkbox"/> Mergers & Acquisitions | |

Complete this form and return to the CCBA no later than 4/1/2022.

Clark County Bar Association
717 S. Eighth Street, Las Vegas, NV 89101
Fax: (702) 387-7867
E-mail: 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 seven 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 or to get a quote for your company. You do not need to wait for your renewal date - groups can enroll at any time!



Prominence[®]
Health Plan

REV SEPT21

Pro Bono – An Extension of Public Service

By Micaela Rustia Moore, Esq.

As a municipal attorney, it is a tremendous honor and privilege to work with the City of North Las Vegas team for the betterment of our community. We have taken an innovative approach to government to save the City from economic collapse and improve the quality of life for our residents. COVID presented the City with various opportunities to rethink operations and ramp up services—from widespread vaccination and testing, to housing assistance, the launch of our new business startup program, homeless services initiative, and a micro-school to tackle pandemic learning loss. The municipal court expanded to offer diversionary programs focusing on rehabilitation as part of an overall effort to increase access to justice. It is gratifying to work hard for our residents and see our efforts make a difference. However, there are some community issues that cannot be resolved at the local level. Pro bono service complements our mission as government lawyers to serve the public.



Micaela Rustia Moore, Esq. is the City Attorney for the City of North Las Vegas and is on the Executive Council of the State Bar of Nevada Public Lawyers Section. Micaela volunteers with the Children's Attorney Project and the Junior League of Las Vegas.

While pro bono participation by government attorneys can present unique challenges, there are many options available, such as the great need to represent the most vulnerable in our community: abused and neglected children in the foster care system through the Children's Attorney Project. Every civil attorney in my office has taken CAP cases and it is resoundingly life-changing for us to help children have a voice. To see children flourish and succeed, despite what they have been through, is profoundly inspiring. The ability to see positive impacts on an individual level is incredibly rewarding. Collectively, attorneys can make a much larger impact for this portion of our community by volunteering. Thank you LACSN for providing training, support, and malpractice insurance to volunteers so public attorneys can provide services above and beyond their existing duties. **G**

Nevada Ballet Offers

CCBA Members: We have a select number of tickets for select performances of the Nevada Ballet available at no charge. Reach out to Donnaw@clarkcountybar.org for more information.

Also--check out this value pricing for select performance:

Two World Premiers

Sat. 2/5/2022

7:30 p.m.

The Smith Center for the Performing Arts, Reynolds Hall

Special Offer -

Save 15% -

Use code NBTCCBA2122

Buy tickets at <https://thesmithcenter.com/tickets/2122/two-world-premieres/?promo=NBTC-CBA2122>

Or call 702-749-2000 and mention NBTCCBA2122.

*Limit 8 tickets per performance. Restrictions apply. Box Office Fees Additional Note: Children 5 years of age and older with a ticket are welcome to attend this performance.

NEVADA BALLET THEATRE
NBT

Employment

Bailey Kennedy is looking for an Associate Attorney with at least two years of litigation experience who is a strategic thinker with a demonstrable record of achievement; thrives in a dynamic, collaborative, and inclusive environment; has a desire for professional growth and development; and seeks flexibility, work-life balance, and a high-end compensation and benefits package. If this applies to you, please submit a cover letter, resume, and three writing samples to the Firm's Hiring Partner, Joshua Dickey, at JDickey@BaileyKennedy.com.

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.

Advertise in The Marketplace

Need to hire staff? Renting office space? Providing professional services? Place a classified ad. For more information about advertising in The Marketplace, see <https://clarkcountybar.org/marketplace/classified-advertising-rates-specs/>.

Portraits to You

is happy to be partnering with CCBA to provide all of your photography needs. We offer special pricing for professional portraits both at our home studio or your office.

We also offer studio and location sessions in a variety of portraiture including family, children, and high school seniors.



www.PortraitstoYou.net 702-499-9930
debra.portraitstoyou@cox.net

BAILEY KENNEDY

ATTORNEYS AT LAW

**is looking for an Associate Attorney
with at least two years of litigation experience who:**

- ❖ *Is a strategic thinker with a demonstrable record of achievement;*
- ❖ *Thrives in a dynamic, collaborative and inclusive environment, and has a desire for professional growth and development; and*
- ❖ *Seeks flexibility, work-life balance, and a high-end compensation and benefits package.*

**If this applies to you,
please submit a cover letter, resume, and three writing samples
to the Firm's Hiring Partner, Joshua Dickey, at JDickey@BaileyKennedy.com.**

**Want to promote your business's professional services to the members of the CCBA?
Call (702) 387-6011 to inquire about advertising opportunities in the *Communiqué*.**