








## Cannabis Law CLE program webcast

Free for CCBA members on August 25, 2022

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# COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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The Litigation Issue

AUGUST 2022



Featuring

## Digging Deeper: Punitive Damages in Intoxicated Driver Cases

By Mona Kaveh and Breanna Switzler  
of Kemp Jones, LLP

See page 26

### Featured inside

Jon Ralston Provides Nevada  
Election Overview on August  
18, 2022

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View from the Bench: A  
Fresh Start for Unhoused  
Misdemeanor Defendants

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Preparing For Trial From Day  
One

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From "New Normal" To Now  
Normal: The Pandemic's  
Influence On Litigation In  
Nevada

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November 3, 2022

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*Mona Kaveh and Breanna Switzler of Kemp Jones, LLP. Photo courtesy of Stephanie Abbott.*



# COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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## Editorial Calendar

Cover Date	Topic of Articles	Closing Date
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
January 2023	Five Things	12/1/2022
February 2023	Civil Rights	1/2/2023
March 2023	Sports Law	2/1/2023
April 2023	Administrative Law	3/1/2023
May 2023	Natural Resources	4/1/2023
June/July 2023	Membership Matters	5/1/2023
August 2023	Real Estate	7/1/2023

\*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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## AFTER BAR CHILL

**AUG 4, 2022**  
5 to 7 p.m.

Horse Trailer Hideout  
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This is a private social mixer featuring complimentary drink tickets and food (while supplies last) for CCBA members and July SBN bar exam takers. No minors allowed. Mix and mingle responsibly. RSVP to [Donnaw@clarkcountybar.org](mailto:Donnaw@clarkcountybar.org) required before Tuesday, August 2, 2022.

## Picture Day at CCBA

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# Professional Courtesies and Proactive Communications

*By Nedda Ghandi, Esq.*

**B**ob Dylan has been warning us all for over half a century – change with the times or “you’ll sink like a stone.” But attorneys are a stubborn and constant lot. We cling to traditions and so-called “best practices” even when newer and better alternatives present themselves. We are often criticized for being resistant to change. The pandemic forced our industry to move forward into the future in ways that many had doggedly resisted for years. Much of our lives, our offices, the courtroom, the client-market, our day-to-day interactions, and thus, the practice of law itself – may never be the same. It is no secret that the legal profession has been thought of as having a protectionist mindset that sees innovation as a threat. Even before the pandemic, attorneys were being challenged on their stance against new methods for delivering service and models for practicing in the modern world. However, the pandemic highlighted, in ways no studies or committees ever could, the fundamental shortcomings of the legal system as it was. A rigidly structured guild system of courts and services delivery, designed by lawyers for lawyers as their exclusive domain. The old system simply was not up to meeting the challenges of a world that demanded agility and flexibility. The pandemic forced the embrace of innovation on an accelerated scale and there is no going back.

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***Even before the pandemic, attorneys were being challenged on their stance against new methods for delivering service and models for practicing in the modern world.***

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For years prior to the pandemic, in part because of the access-to-justice crisis and the growing numbers of self-represented litigants, courts have been overwhelmed by demand and underfunded to deal with it. Consumed with the struggle to keep up with this demand, courts were unable to formulate the innovations that would help them keep up. But with the pandemic, there was a fundamental rethinking and restructuring of the courts. We found ourselves in a moment when the courts could no longer function as the world paused even while the need for the service did not abate. Courts adapted in the short-term allowing for telephonic and video appearances and offering more online services. And as the short-term adaptations



*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.*

took root, the courts and practitioners realized that the adaptations were not only solving problems but were increasing efficiency and reducing costs. These short-term adaptations will inevitably lead to long-term changes.

All of the innovation, remoting in, videoconferencing, and lack of in-person appearances provides the benefits of efficiency, reduced cost, and ease of access. However, it is not without obvious drawbacks. A critical component to the practice of law is the development of relationships with other attorneys and the building of a reputation with the court. Without personal interactions, it can be difficult to foster positive relationships. We have lost the ability to discuss a case in person before or after a hearing in order to try to resolve ongoing issues or reach a resolution. Remote practice will inevitably translate into a possible slide towards being inflammatory, inconsiderate, and indifferent to attorneys who we can

---

***A critical component to the practice of law is the development of relationships with other attorneys and the building of a reputation with the court.***

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keep at a distance. When we do not have to look each other in the eye as we walk out of the courtroom, advocacy can take a turn towards admonishment and insults. Now, more than ever, we have to be proactive in communication with each other. We have to put ourselves out there. We will have to recommit ourselves to pro-

fessional courtesies and ethical practice. We will need to collectively be mindful of the impact of these innovations and learn the ebb and flow of the changing tide. As Bob said, “We better start swimmin’ or we’ll sink like a stone, for the times, they are a changing’.” **G**

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# Cannabis Law CLE Program Set for August 25, 2022

On Thursday, August 25, 2022, business law attorneys Shamus Flynn, Daniel Giudici, and A. William “Bill” Maupin will make a special presentation for the continuing legal education of Nevada lawyers in a program produced by the Clark County Bar Association (CCBA) and sponsored by Bank of Nevada and Las Vegas Legal Video.

A former Marine and Ninth Circuit clerk, Shamus Flynn helps clients grapple with sophisticated and vexing issues, especially those touching on the emerging cannabis industry.

A third generation Nevadan and an accomplished business attorney, Daniel Giudici is a thought leader in the cannabis industry and routinely publishes articles analyzing important cannabis-related issues, especially those that touch on tax concerns such as section 280E.

Elected to two terms to the Supreme Court of Nevada from 1997 to 2009, Chief Justice Maupin’s 50-year legal career includes significant public and private sector experience.

The speakers will present “State of Play Cannabis Law 2022” and address the following topics:


- Cannabis legislative and regulatory updates
- Short overview of proposed federal legislation involving cannabis legalization and banking
- Nevada cannabis legislative and regulatory updates
  - Consumption lounge licenses
  - New cannabis DUI law
  - Nevada Cannabis Compliance Board update
- Updates on active NV cannabis litigation cases
  - Bill Maupin’s Department of Taxation litigation overview
- Section 280E
  - Quick overview of Section 280E
  - Section 280E’s status with Congress and courts
  - Salient 2021 cases involving Section 280E

The presentation will offer 1.0 general CLE credit (NV) to CCBA members only and will be held online via Zoom, from 12:00 to 1:15 p.m., Thursday, Au-



gust 25, 2022. Pricing of the live webcast event is included with the 2022 CCBA membership. 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.

The event will be recorded for use in the CCBA’s audio/visual library. The recorded versions of the program will be offered for rental use at a small fee (to cover administrative costs).

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

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## Bank of Nevada and First Independent Bank Increase Interest Rates Specific to IOLTA

The CCBA is pleased to share with bar members the following announcement from the Bank of Nevada:

“Bank of Nevada and First Independent Bank, divisions of Western Alliance Bank, share a history of support for Nevada’s legal community. As a leader in the amount of Interest On Lawyer Trust Accounts (IOLTA) funding provided to the Nevada Bar Foundation, Bank of Nevada and First Independent Bank would like to offer the following interest rate increases specific to IOLTA funds.

With an additional \$50MM in new IOLTA deposits, we will increase the IOLTA interest rate from .75 Annual Percentage Yield (APY) to .85 APY.

With an additional \$100MM in new IOLTA deposits, we will increase the IOLTA interest rate to 2.00 APY.

Bank of Nevada and First Independent Bank are proud to work in partnership with Nevada’s legal community and understand the critical services IOLTA funds provide to many seeking access to justice.

Bank of Nevada and First Independent Bank are divisions of Western Alliance Bank. Member FDIC.”



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## Attorney Memorial Service Scheduled for September 9, 2022

Bar members are invited to attend the Annual Attorney Memorial Service, a special event to honor Nevada attorneys who have passed on during the last year. This year’s event will be held in-person at the federal courthouse. See below for details.

- Date: Friday, September 9, 2022
- Time: 3:00 p.m. to 5:00 p.m.
- Note: Service to begin promptly at 3:00 p.m. with a reception to follow immediately.
- Location: Lloyd D. George U.S. Courthouse, Courtroom 6C, 333 Las Vegas Boulevard South, Las Vegas



The Annual Attorney Memorial Service is produced by the Clark County Law Foundation in conjunction with the Clark County Bar Association, State Bar of Nevada, Eighth Judicial District Court, U.S. District Court, and the Federal Bar Association-Las Vegas Chapter.

Event organizers are seeking volunteers to assist with this year’s event. To learn more, contact Patrick Montejano at Clark County Law Foundation, (702) 333-8877, [director@clarkcountylawfoundation.org](mailto:director@clarkcountylawfoundation.org). 

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***Event organizers are seeking volunteers to assist with this year’s event.***

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# Jon Ralston Provides Nevada Election Overview at Bar Luncheon on August 18, 2022


Jon Ralston, CEO of *The Nevada Independent*, will make a special presentation for members of the Clark County Bar Association during a luncheon event at the Las Vegas Country Club on Thursday, August 18, 2022. Bar members are invited to attend and learn what this dynamic speaker has to say about the politics and candidates relevant to Nevada elections.

It may be an off-year in the presidential contest, but the 2022 election season in Nevada has major implications for the balance of power in the U.S. Senate and the trajectory of policy within the swingy Silver State. Democrats dominate now but are playing defense in a cycle expected to be less favorable to the party in control in the White House. Plus, new maps drawn through redistricting will introduce fresh dynamics for congressional and legislative races, and it's unclear whether they will produce democratic gains as designed.

This CCBA luncheon is hosted by the Clark County Bar Association and sponsored by Bank of Nevada and First Legal. Doors open at 11:30 a.m. for check-in and networking. The luncheon program will begin at 12:00 on Thursday, August 18, 2022.

This event will be open to attendance by all members of the Nevada legal community; however, admission will be limited to persons who RSVP to the CCBA by the published deadline.

RSVP with payment to the Clark County Bar Association no later than Friday, August 12, 2022.

For more information and RSVP form, visit <https://clarkcountybar.org/> or call the CCBA office at (702) 387-6011. 



Jon Ralston, CEO  
*The Nevada Independent*

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***RSVP with payment to the Clark County Bar Association no later than Friday, August 12, 2022.***

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# Baseball Ticket Offer for CCBA Members

The CCBA holds a limited number of tickets to select home games for the 2022 Las Vegas Aviators season schedule. CCBA is pleased to offer\* the use of the available tickets to current and paid CCBA members on a first come, first served basis. To request use of the CCBA tickets, CCBA members need to submit a request, via email to [DonnaW@clarkcountybar.org](mailto:DonnaW@clarkcountybar.org), with the following information:

- CCBA member name
- Email address
- 1st, 2nd, and 3rd choices of home game day.

See right for a list of available game days (as of 7/20/2022).

As tickets are claimed by CCBA members, the list will be updated. To see an updated list, contact Donna at the CCBA office or visit the bar's website at <https://clarkcountybar.org/member-benefits/aviators-baseball-special-offer/>.

For more information call the CCBA office at (702) 387-6011.

**C**

\*Restrictions apply to the CCBA Baseball Tickets Offer. Use of tickets are restricted to paid CCBA members. CCBA's tickets are not available for use by persons with a free membership type (e.g. law student members). Participating members may only attend one game per season. Available tickets will be provided electronically via a transfer from our account to the CCBA member's account via the Las Vegas Ballpark Account Manager. Participating CCBA members will need to access tickets on the Summerlin App and login to your Las Vegas Ballpark account. If you have an account set up with the Las Vegas Ballpark Account Manager, access tickets at account at <https://am.ticketmaster.com/aviatorslv/>. For more information about accessing tickets, see digital guide at <https://www.milb.com/las-vegas/tickets/digitalticketguide>. Be sure to stay up to date on the Las Vegas Ballpark's health and safety guidelines. Learn more at <https://www.milb.com/las-vegas/ballpark/health-safety-guidelines>.

## Las Vegas Aviators Schedule (Home Games)

(All times PST – Times subject to change)

Availability of CCBA's tickets is limited. See below for a list of available game days (as of 7/14/2022).

- August 2 Tue RENO 7:05PM
- August 3 Wed RENO 7:05PM
- August 4 Thu RENO 7:05PM
- August 5 Fri RENO 7:05PM
- August 6 Sat RENO 7:05PM
- August 7 Sun RENO 7:05PM
- August 19 Fri SACRAMENTO 7:05PM
- August 20 Sat SACRAMENTO 7:05PM
- August 21 Sun SACRAMENTO 7:05PM
- August 23 Tue SUGAR LAND 7:05PM
- August 24 Wed SUGAR LAND 7:05PM
- August 25 Thu SUGAR LAND 7:05PM
- August 26 Fri SUGAR LAND 7:05PM
- August 27 Sat SUGAR LAND 7:05PM
- August 28 Sun SUGAR LAND 7:05PM
- September 13 Tue TACOMA 7:05PM
- September 14 Wed TACOMA 7:05PM
- September 15 Thu TACOMA 7:05PM
- September 16 Fri TACOMA 7:05PM
- September 17 Sat TACOMA 7:05PM
- September 18 Sun TACOMA 12:05PM
- September 20 Tue RENO 7:05PM
- September 21 Wed RENO 7:05PM
- September 22 Thu RENO 7:05PM
- September 23 Fri RENO 7:05PM
- September 24 Sat RENO 7:05PM
- September 25 Sun RENO 12:05PM

Days listed in gray are no longer available as part of the CCBA ticket offer.



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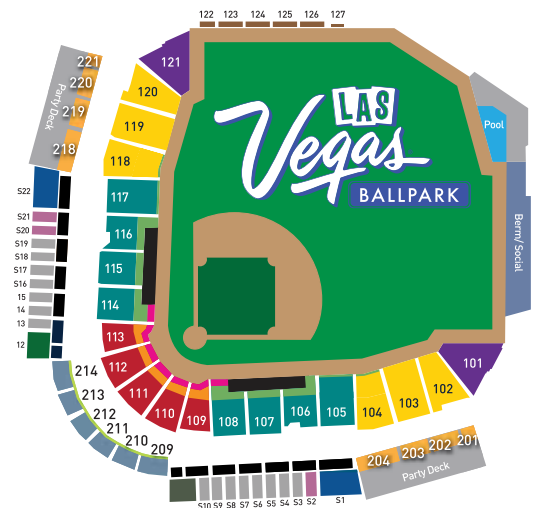
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# Nominations for Judicial Award of Excellence Due September 23, 2022

**T**he Clark County Bar Association is accepting nominations for the 2022 Annual Judicial Award of Excellence. The award will be presented at the 31st annual Meet Your Judges Mixer, Thursday, November 3, 2022, to be held at The Las Vegas Country Club.

The Annual Award of Judicial Excellence honors an individual who has demonstrated judicial excellence through his or her service and commitment to the judiciary and the legal community in Clark County.

The recipient is a past or present member of the judiciary who enhances, or has enhanced, the reputation and function of the judiciary by demonstrating judicial excellence, fostering access to justice, improving judicial efficiency and economy, and developing the quality and comradery of the bar through service to the legal community.

Previous Award Recipients:

- 2019 – Sr. Judge Nancy Oesterle
- 2020 – Judge Ken Cory
- 2021 – Justice Abbi Silver

Nomination criteria:

- Demonstrates judicial excellence through conduct upholding the rule of law and the impartial administration of justice
- Fosters access to justice through formal or informal programs or other contributions
- Leads process improvements that improve judicial efficiency or economy
- Develops the quality and comradery of the bar through service to the legal community in Clark County, Nevada.

Nominations must include:

- First and last name
- Address
- Phone number
- A brief description of the nominee and how he or she meets the criteria mentioned above. In your description, make sure to include any organizations this person is currently involved in and specific contributions that demonstrate the nomination criteria.



Submit nominations by Friday, September 23, 2022, to:

Donna S. Wiessner, Executive Director

Clark County Bar Association  
DonnaW@ClarkCountyBar.org  
717 South Eighth Street  
Las Vegas, NV  
Fax (702) 387-7867 ☎





## SPECIAL EVENT

**When:** Thursday, November 3, 2022, 5:30-8:30 p.m.

**Where:** The Las Vegas Country Club, 3000 Joe W. Brown Drive, Las Vegas

**Featuring:** Silent auction by Charity Benefits, delicious food, drink ticket!

**Who:** This is a private event for members of the Nevada legal community, including Nevada's judges, attorneys, legal support staff, law students, merchants, and candidates. Business casual attire acceptable. This is a cocktail reception; no minors allowed.

**Admission:** Admission to this private event will be made via event registration purchased from the Clark County Bar Association (CCBA). This is a ticketless event. Attendees must check-in personally at the event's check-in tables.

**Admission fee:** \$55 per CCBA Member; \$85 per non-member; FREE per Nevada's local, state, and federal judges with RSVP by the published deadline.

**RSVP Deadline:** 10/28/2022. For more information, call 702-387-6011 or visit our website [ClarkCountyBar.org](http://ClarkCountyBar.org).

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31st Annual

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### Eighth Judicial District Court Admin Order 22-10

On June 30, 2022, the Eighth Judicial District Court filed an order in the administrative matter of civil and criminal division case reassignments for Departments 1 and 9. *See* Administrative Order 22-10. The order becomes effective July 11, 2022. Per the order, the following civil/criminal division assignments are expected:

“Department 9 will have a civil assignment. Fifty percent of civil cases currently being heard by Department 1 are reassigned to Department 9. All criminal cases currently being heard by Department 9 will be reassigned to Department 1. Department 1 will continue to preside over Mental Health Court, supervise the Co-Occurring Specialty Court program, supervise civil commitment cases and determine family civil commitment petitions. Department 1 will replace Department 9 on Track 13 of the Criminal Case Flow Model.”

Additionally, the order directs Court Administration to publish the list of cases affected by the reassignments mentioned above on the court’s website and to further publish an updated Criminal Case Flow Model. Finally, this Administrative Order is to supersede any prior administrative orders regarding these assignments.

For more information, visit the court’s website at <http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/>.

### Eighth Judicial District Court Admin Order 22-09

On June 2, 2022, the Eighth Judicial District Court filed an order in the administrative matter of assignments in juvenile delinquency, juvenile dependency, and civil-criminal division. *See* Administrative Order 22-09.

Administrative Order 22-09 modifies current assignments particularly related to juvenile delinquency matters under NRS Title 5 and juvenile dependency matters under NRS 432B. It also addresses a case reassignment in the Civil-Criminal Division due to a new Chief Judge starting on July 1, 2022. Finally, Administrative Order 22-09 directs the Rules Committee of the Eighth Judicial District Court to review and revise Section 1 of the Eighth Judicial District Court Rules.

For more information, read the 3-page order. It’s available to download from the court’s website at <http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/>.

### Maria Gall Appointed to the Eighth Judicial District Court, Dept 9

On June 27, 2022, Nevada Governor Steve Sisolak appointed Maria A. Gall to the Eighth Judicial District Court, Dept. 9. This appointment fills the judicial vacancy left by Cristina D. Silva, who was appointed by President Biden to the U.S. District Court in Nevada.

The Nevada Commission on Judicial Selection convened on June 9, 2022, to interview two applicants for this vacancy before sending its recommendation to

Governor Sisolak to interview. Nevada attorneys with 10 years of legal experience and 2 years of Nevada residency were eligible to apply. Maria Gall previously

practiced law in the Eighth Judicial District Court in Clark County, the Second Judicial District Court in Washoe County, the First Judicial District Court in Carson City, the U.S. District Court for the District of Nevada, the Ninth Circuit Court of Appeals as well as courts in Delaware, New York, Kentucky, and Florida.

To serve the entirety of the appointment for Department 9, the appointed judge is required to file as a candidate in the November 8, 2022, general election. Due to the timing of the appointment, a special filing period was held open until July 22, 2022.



### Judge Bitia Yeager Nominated to Clark County Bar Board

The CCBA is pleased to announce that Eighth Judicial District Court Judge Bitia Yeager has been nominated to the board of directors of the



Clark County Bar Association. Judge Yeager will replace Judge Jerry Wiese II who has filled the judicial appointee position for the past four years.

Learn more about Judge Bitia Yeager at <http://www.clarkcountycourts.us/departments/judicial/civil-criminal-division/departments-1/>.

## Judge Michael Villani Retires

On July 6, 2022, the Eighth Judicial District Court announced that Judge Michael P. Villani plans to retire effective July 14 of this year. See “Judge Michael Villani To Retire After 15 Years On The District Court Bench” at <http://www.clarkcountycourts.us/judge-michael-villani-to-retire-after-15-years-on-the-district-court-bench/>.



Per the blog post, “Judge Villani was appointed to the Eighth Judicial District Court of Nevada in April 2007. In his letter of resignation Judge Villani said, ‘I have been honored to serve the citizens of the State of Nevada for the last 15 years. Words cannot express my appreciation for having had the opportunity to be a member of the judiciary.’”

Chief Judge Jerry Wiese noted, “We appreciate Judge Villani’s service on the District Court bench, for more than 15 years, and his commitment to ensuring that justice was served. His career is marked with impressive accomplishments, and we hope he can enjoy time with his family as he steps back from the rigors of a heavy civil/criminal District Court docket.”

Villani’s departure will create a vacancy in Department 17 at the court. Announcements related to the process to fill the vacant seat on the bench are expected to be posted to the court’s blog.

**Court** *continued on page 18*

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## Las Vegas Justice Court Administrative Order #22-05

On June 15, 2022, the Las Vegas Justice Court filed an order in the administrative matter of mandatory electronic filing in criminal traffic cases. See Administrative Order #22-06.

The order addresses the significant impact of the practice of bulk filing motions, pleadings, and documents has on the court's ability to provide necessary customer service and access to justice for all litigants appearing at the Las Vegas Justice Court clerk's office.

Per the order, the court orders:

"[A]ll criminal traffic motions, confirmation of counsel submissions, and pleadings of any kind must be filed into the Court's case management system utilizing the Court's electronic filing system. Any motion or pleading submitted to the Clerk's office will be returned to comply with this electronic filing mandate.

[A]ll documentation establishing proof of vehicle registration, driver's license, or insurance must be uploaded using the Court's Online Dispute Resolution platform (Matterhorn).

[I]n order to provide adequate advance notice of mandatory electronic filing requirement, this administrative order will be become **effective on July 1, 2022.**"

## Matterhorn Attorney Portal

Matterhorn, the Las Vegas Justice Court's online resolution platform used for traffic cases, now allows attorneys to independently register on behalf of their client. The attorney must complete both the **Defendant Information** and **Attorney Information** fields when registering. Attorneys will be able to see their own dashboard listing the cases they registered for as the attorney. If the same attorney's email address was used previously to register as the defendant, these cases will continue to appear on the attorney's dashboard.

Please note that solely registering as the attorney through Matterhorn does **not** add the attorney as the attorney of record in Odyssey. The attorney must still submit a Confirmation of Counsel via File & Serve or at the Customer Service Division to be added as the attorney in Odyssey.

The image shows a screenshot of the Matterhorn Attorney Portal registration form. It consists of two side-by-side sections: "Defendant Information" and "Attorney Information". Both sections have identical fields: a checkbox for "Are you outside of the United States and Canada?", text boxes for "First", "Middle", and "Last" names, a "Street" field, "City", "State" (with a dropdown arrow), "Zip", "Email", and "Phone" fields. There is also a checkbox for "Mobile Phone" at the bottom of each section.

## Judges Sought for Truancy Diversion Program

The Eighth Judicial District Court is seeking volunteer Truancy Diversion Program (TDP) judges to work with the Clark County School District and the Clark County Charter Schools to reduce absenteeism in school to reduce the number of youths entering the formal juvenile justice system.


### The role of a TDP judge

TDP judges make a difference in the lives of the children and families who appear before them. A TDP judge commits one morning each week to preside over a truancy calendar at an assigned CCSD/charter 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 Judge encourages and rewards positive behavior, with incentives provided by the TDP program for student's progress. If a student is not following the program guidelines, consequences such as essay writing, agreed upon removal of privileges at home, etc. are utilized.

The TDP judge imparts authority to the proceedings while also providing students with an approachable authority figure. The interaction between judge and family provides participants with enhanced social skills and a sense of increased empowerment, leading to more effective parenting, better family communication and an increased appreciation for the value of education.

Requirements: Must be at least 21, pass a background check, and attend a training session. The total time commitment is approximately 2.5 hours per week.

Have questions, or ready to get involved? Contact Michelle Young at 702-455-1755 or [TDP@clarkcountycourts.us](mailto:TDP@clarkcountycourts.us). 

## Save the dates!

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## Leaders in Law: Celebrating Hispanic Heritage in the Legal Community September 28, 2022 • [TIME TBA]

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Sponsor: Nevada Latino Bar Association

Location: The Mob Museum

Price: Free for attendees



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## Critical Race Theory on Civil Rights and Criminalization November 4, 2022 • 12-1:30 PM

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Speakers:

- **Professor Roy L. Brooks**, University San Diego School of Law
- **Professor Frank Rudy Cooper**, Director, UNLV Program on Race Gender & Policing
- **Professor Addie Rolnick**, UNLV William S. Boyd School of Law
- **Professor Stewart Chang**, UNLV William S. Boyd School of Law

Sponsors:

- Las Vegas Chapter of the National Bar Association
- UNLV Race, Gender & Policing Program

Location: State Bar of Nevada

Price: Free for attendees



## UNLV Program on Race Gender & Policing

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# A Fresh Start for Unhoused Misdemeanor Defendants

By Judge Shannon Nordstrom

**L**as Vegas Municipal Court currently has two programs specifically focused on the unhoused population— Fresh Start Traffic and Fresh Start Court. Fresh Start Court is Municipal Court’s newest and seventh specialty court.

Fresh Start Traffic officially started as a program with Las Vegas Municipal Court in April 2019 to identify homeless defendants with traffic, bicycle, and pedestrian violations to help connect them to community resources to attain stable housing and stable income. Most defendants have several barriers preventing them from attaining stable housing and income. With the collaboration of community partners, the program connects participants to resources that address all of their barriers, including but not limited to substance use and mental health counseling, Medicaid, SNAP, and obtaining vital documents. While in the Fresh Start program, the participants must go to the referrals made by the court and return every six weeks on the Fresh Start session with an update. Interns and community partners provide updates and maintain contact with the participants in the interim.

Once a defendant achieves stable housing and income, they are placed on a broad stay out of trouble order for six months with the goal of maintaining their housing and income. If, at the end, they still have stable housing and income, their fines and fees are waived and their open cases

closed. The Fresh Start Traffic program has graduated 41 participants since its inception.

In September 2020, in the middle of the pandemic, the court started a pilot program to expand Fresh Start to include most criminal misdemeanor cases. Due to the success of the pilot program Fresh Start Court is now Municipal Court’s newest specialty court, holding its first graduation of seven graduates on March 31, 2022.



Participants for Fresh Start Court are identified through Metro officers with the Community Oriented Policing (“COP”) squads in the Bolden and Downtown Area



*Judge Shannon Nordstrom serves as a Hearing Commissioner/Alternate Judge in Department 20 of Las Vegas Municipal Court and as the Fresh Start Traffic and Fresh Start Court Judge.*

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Commands, and the criminal departments within Municipal Court, including the judges, compliance officers, prosecutors, and defense attorneys.

Fresh Start Court currently takes place every other Thursday afternoon. Entrance to the program is voluntary. To be eligible for the program a participant must be unhoused and have at least one criminal charge with Las Vegas Municipal Court. A recent violent history as well as some other specified convictions can exclude a defendant from participation. Once a defendant initially qualifies, they are seen for their first appearance on a Fresh Start session. Between the first and second appearances, the program coordinator performs an assessment to determine final eligibility, the defendant's needs, and supervision level. During this time an analysis is also performed regarding whether the defendant is a better candidate for one of the court's six other Specialty Court programs.

Together, we are bettering our community one life at a time! 

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***Participants for Fresh Start Court are identified through Metro officers with the Community Oriented Policing ("COP") squads in the Bolden and Downtown Area Commands, and the criminal departments within Municipal Court, including the judges, compliance officers, prosecutors, and defense attorneys.***

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# Preparing For Trial From Day One

By Kevin Diamond, Esq.

**“**This case will never see the inside of a courtroom.”  
“This case will settle.” “We just need initial discovery and then we can file our motion for summary judgment.”

Many attorneys find reasons why they don't think about trial. That is a mistake, even if you believe your case will never proceed to trial. You should be thinking about trial *from day one*. This should guide every aspect of your case. There should be a determination at the outset regarding what needs to be proven at trial. While it may change, your theory of the case should be in mind after your first client meeting.

Attorneys have an obligation to diligently and zealously advocate for their clients. If you aren't thinking of the end game, not only is this obligation not being met, but also you place yourself at a disadvantage.

It is imperative to assess all evidence and every witness. For example, you learn the plaintiff in a slip and fall case was convicted of DUI twice last year. Well, okay, but your case does not involve driving or impairment. Will that evidence be admissible? Will it be relevant per NRS 48.015 and 48.025? If you clear that hurdle, will you be able to argue it is more probative than prejudicial per NRS 48.035?

Thinking about trial helps in formulating discovery. Solely using a template for written discovery is not thinking about trial. If you are not concentrating on what you need to prove or how to defend the case against your client,

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***Thinking about trial helps in formulating discovery. Solely using a template for written discovery is not thinking about trial.***

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how is the discovery going to be of any benefit?

Most clients request evaluations early and often, so working towards trial helps. Rarely will a client want to know if you found any great evidence for mediation. They want to know what will likely happen at trial. Plus, unless your “smoking gun” evidence is admissible, the other side will not be concerned about it. For example, if you retain an OSHA expert with no medical background and he renders a spectacular opinion about why your client needs a future surgery, will it matter? Is that expert ever going to present that opinion?

Thinking about trial is not just about whether evidence will be admissible. This will also help to detect and prevent spoliation. Perhaps it will help you to determine whether evidence has been spoliated and whether you will be entitled to an adverse inference or rebuttable presumption. *See Bass Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006).



*Kevin Diamond, Esq. grew up in Vegas and is a Shareholder at Thorndal, Armstrong, Delk, Balkenbush & Eisinger. He has practiced as a civil litigator since 1993. He serves as a Short Trial Judge, Arbitrator, Mediator, and is a CAP (Children's Attorneys Project) attorney for LACSN.*

Sometimes you may be called to the scene of an incident right after it occurs. If you are not wearing your trial hat, the results could be disastrous. This is especially true if you are accompanied by an expert and evidence is not preserved, is altered, or is destroyed.

Focusing on trial helps to evaluate witnesses. Does the witness have personal knowledge of the event or was he told about it by his friend's cousin's brother? *See* NRS 50.025. Will the witness' testimony about what someone told him find a way around the hearsay rule in NRS 51.065? If not, the witness has no value.

It is particularly important to think about trial during a deposition. Pursuant to NRCP 32, a deposition transcript can be utilized in a number of ways, including for impeachment. This becomes even more critical if the deposition is being taken to preserve testimony of a witness who will be unavailable. NRCP 32(a)(4). Further, making proper deposition objections is important so they are not waived at the time of trial. *See* NRCP 32(d).

Something as simple as obtaining records needs to be done with trial in mind. Will adverse counsel stipulate to their admissibility? It is more likely they will if a custodian of records verification is included. *See* NRS 52.260.

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## ***Trial mindfulness typically dictates that experts should be retained early.***

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Trial mindfulness typically dictates that experts should be retained early. If a decision is made not to utilize them to testify, they can be used as a consultant. This is magnified if you know or should have known you will need an expert for a certain issue. NRCP 16.1(a)(2)(E)(ii) provides that a rebuttal expert is not one "whose purpose is to contradict a portion of another party's case in chief that should have been expected and anticipated by the disclosing party, or to present any opinions outside the scope of another parties disclosure." If you don't know what you need to prove or what you need to defend against, you could miss out on retaining the proper expert at the proper time and be precluded from calling an expert at trial. For example, an accident reconstruction expert in a disputed liability auto case is probably not a rebuttal expert.

**Preparing** *continued on page 24*



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## Preparing *continued from page 23*

Having a trial mindset reminds you that all documentation and tangible things a party has in its control and “may use” to support its claims or defenses, including for impeachment or rebuttal, must be produced. NRCR Rule 16.1. Further, pursuant to NRCR 26(e), there is an ongoing duty to supplement any such disclosures. A failure here could result in evidence being stricken.

Trial forethought mandates keeping track of evidence which is disclosed during discovery that you may need to exclude with pretrial motions. There may be evidence provided which requires additional foundation to cure evidentiary problems so it will not become the subject of a motion. If that is not on your mind, you may lose the ability to utilize evidence.

Finally, if you have dutifully kept track of trial issues throughout, you will have a strong head start on any trial briefs you may submit to the court pursuant to EDCR Rule 7.27. And, of course, your case may *actually* go to trial.

There are many reasons why attorneys should think of trial ramifications from day one. Without doing so, you arguably are not zealously representing your clients and not handling their cases to its fullest extent. **G**

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***There are many reasons why attorneys should think of trial ramifications from day one. Without doing so, you arguably are not zealously representing your clients and not handling their cases to its fullest extent.***

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# Digging Deeper: Punitive Damages in Intoxicated Driver Cases

By Mona Kaveh, Esq. and Breanna Switzler, Esq.

Civil litigation attorneys are all generally familiar with NRS 42.005, the statute on punitive damages. Among other things, this statute discusses a bifurcated trial separated into two different phases (compensatory and punitive damages); the clear and convincing evidentiary standard; a finding of oppression, fraud, or express/implied malice; and a cap on certain punitive damages awards. Lurking beneath this more generalized statute, however, is another punitive damages statute—NRS 42.010—which sets forth a completely different presumptive process when an accident is caused by a driver who willfully consumed alcohol or another substance.

## What does NRS 42.010 really mean?

While subsection 1 of NRS 42.010 provides the requirements for determining the applicability of the statute, more interesting is subsection (2), which provides that “[t]he provisions of *NRS 42.005* do not apply to any cause of action brought pursuant to *this section* [emphasis added].” So what does subsection 2 of this statute really mean, not only by its plain language, but also from a litigation per-

spective? On its face, NRS 42.010(2) appears to strip away the provisions of NRS 42.005, including the bifurcation requirement; heightened evidentiary standard; a finding of oppression, fraud, or express/implied malice; and any caps. If true, this application of the statute would completely change the litigation process and many traditionally-held litigation strategies. Therefore, let’s dig deeper.

## Don’t forget about legislative history

Although case law in Nevada is increasing, pointed precedent is not always available. That’s why it’s important to not forget about legislative history. While legislative history may sometimes be difficult to find or seemingly unnecessary when the statute’s language is clear, it may assist in explicitly confirming the interpretation of a statute, like here. *See A.J. v. Eighth Judicial District Court*, 133 Nev. 202, 206, 394 P.3d 1209, 1213 (2017) (“[A]mbiguity is not always a prerequisite to using extrinsic aids.” (quoting 2A Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* § 48:1, at 554 (7th ed. 2014))).

**Digging** *continued on page 26*



*Mona Kaveh, Esq. is a partner at Kemp Jones, LLP and practices primarily in the areas of complex civil and commercial litigation. She also dedicates a portion of her practice to pro bono legal services, and is actively involved with the Children’s Attorneys Project through the Legal Aid Center of Southern Nevada.*

*Breanna Switzler, Esq. is an associate at Kemp Jones, LLP and practices primarily in the areas of complex civil and commercial litigation.*



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## ***After digging through hundreds of pages of legislative history, it became clear that the Nevada Legislature expressly excluded the provisions of NRS 42.005 when an intoxicated driver is involved.***

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After digging through hundreds of pages of legislative history, it became clear that the Nevada Legislature expressly excluded the provisions of NRS 42.005 when an intoxicated driver is involved. *See* AB 307, 65th Sess. (Nev. 1989). At a Senate Committee meeting regarding AB 307, a deputy legislative counsel of the Legislative Counsel Bureau explained that NRS 42.010(2) was added to “mak[e] it clear that . . . punitive damages against persons that have caused injury as a result of [DUI] of alcohol or controlled substance *are not subject to the limitations on the caps, to the bifurcation, to the clear and convincing evidence standard* that is set forth in [NRS 42.005] [emphasis added].” *See* Senate Committee on Judiciary on AB 307, 65th Sess. 32 (May 18, 1989); *see also* Assembly Daily Journal on AB 307, 65th Sess. 32 (May 8, 1989) (Assemblyman Sader stating, “[t]here is extremely strong public sentiment to keep drunk drivers off the roads. Criminal penalties are not enough. People who elect to drink and drive must also realize they will be punished financially, without regard to limitations.”).

### **NRS 42.010’s impact on the litigation process**

No Supreme Court of Nevada decisions exist on the interpretation of NRS 42.010 and its impact on the litigation process, but the plain language of the statute (and its legislative history) is clear. Depending on the stage of litigation, below are different considerations and strategies to keep in mind when a civil case involves an intoxicated driver:

- Commencement of Action: Allege punitive damages in the complaint and cite to NRS 42.010 to immediately highlight its applicability.

- Discovery: Request financial documents early and raise NRS 42.010 as a basis to obtain them.
- Dispositive Motions: File a motion for summary judgment as to punitive liability early in the case and argue the applicability of NRS 42.010, as well as its effect on the litigation process.
- Bench Brief: A bench brief can raise this statute and its applicability to the court.
- Motions in Limine: Submit a motion to pre-admit financial documents for use at trial.
- Jury Instructions: Submit pre-instructions or jury instructions on NRS 42.010.
- Verdict Form: Submit one verdict form with both compensatory and punitive damages.
- Trial Presentation: Evidence at trial could include financial information typically reserved for a separate punitive damages phase.

Laws and procedures commonly evolve or change, so by digging deeper and pursuing answers, it might just change your outlook on the overall litigation process and ultimately result in a better outcome for your clients. **C**



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# From “New Normal” To Now Normal: The Pandemic’s Influence On Litigation In Nevada

By *Laura Langburg, Esq. and Maliq Kendricks, Esq.*

**T**he COVID-19 pandemic upended the practice of law in ways that will continue to impact litigation in Nevada for years to come. From initial delays due to court closures and the clumsy transition to work-from-home environments, firms quickly pivoted to meet client needs as businesses modified strategic plans to preserve resources and embrace the unknown amid statewide shutdowns. Out of necessity, we collectively adapted our behaviors and expectations. We began calling it “the new normal”—an apt but now tired term for the hodgepodge of evolving adjustments to life and practice.

Some adjustments have impacted law firm culture across disciplines. Videoconferencing has become an acceptable substitute for in-person meetings. Advances in secure, remote-work technology are empowering people to work from anywhere and take more working vacations. Although expectations vary among firms of different sizes and backgrounds, the Nevada market is adapting. The “great resignation” and other economic factors contributed to a seller’s market where staff and attorneys increasingly expect more flexibility in their schedules. These expectations present their own challenges, including in training

and mentoring a new generation of tech-savvy professionals with fresh perspectives on traditional law firm practices.

For litigators, the impact of pandemic-era adjustments remains in flux. Although delays in trial dates and resolution of motions have been a big part of the pandemic story for litigation in Nevada, courts’ backlogged dockets will catch up in time. Perhaps more interesting to track in the long term is Nevada judges’ ongoing receptiveness to remote appearances, which became particularly prevalent in jurisdictions like the Eighth Judicial District where live hearings on motions were the pre-pandemic norm. The ability to appear remotely has been a welcome development for many practitioners given the valuable efficiencies they create for clients and counsel. However, now that courts are open, some judges expect attorneys to appear in person. Others now strictly enforce the Supreme Court of Nevada’s rules governing requests to appear by audiovisual means, which require advance notice.

Nevada’s state and federal judges are also more likely than ever to order parties into remote depositions under NRCP and FRCP 30(b)(4) when presented with scheduling or travel disputes. In addition to the general time and

*Laura Langberg, Esq., a shareholder with Brownstein, litigates complex commercial matters, bringing a detail-oriented approach and creative solutions to complicated issues. She helps businesses navigate and litigate disagreements among their principals and stakeholders. She also assists individuals and businesses in disagreements with others over contractual obligations, real property issues, intellectual property rights and defamation.*



*Maliq Kendricks, Esq., an associate with Brownstein, is a talented legal writer and native Nevadan, Maliq Kendricks focuses his practice on corporate law and commercial litigation. Maliq came to Brownstein from Hutchison & Steffen in Las Vegas, specializing in business and commercial disputes related to partnerships, merchandise sales, licensing, construction and real estate.*

***Nevada's state and federal judges are also more likely than ever to order parties into remote depositions under NRCP and FRCP 30(b)(4) when presented with scheduling or travel disputes.***

cost savings that likewise make remote court appearances attractive, remote depositions benefit clients who may otherwise elect to forego out-of-state depositions due to prohibitive travel costs. On May 9, 2022, the Eighth Judicial District implicitly recognized the benefits of remote depositions when it issued Administrative Order 22-08 regarding deposition behavior. The order acknowledges that depositions will normally take place in person, but reiterates NRCP 30(b)(4)'s "good cause" standard for requiring depositions by remote means. The order also articulates the rule set forth in Supreme Court of Nevada precedent that "[e]xamining counsel may generally set the deposition for an appropriate location of their choosing subject to the Court's power to grant a protective order."

Whether permitted or ordered, all remote procedures come with risks. Even careful practitioners commit gaffes with mute buttons and background noises that can create a lasting impression. After all, 2020's United States Supreme Court toilet-flushing incident was a national sensation. The risks are not always cosmetic or comedic. Precious and limited deposition time can be burned with video delays and confusion with exhibits. Opportunists may intentionally exaggerate these problems (or worse, attempt to coach a witness), forcing opposing counsel to weigh the costs and benefits of seeking judicial intervention. In remote court appearances, litigators risk losing a judge's patience when technical issues arise. There also remains an intangible (real or perceived) benefit to arguing motions in person, particularly for higher-stakes hearings.

Time will tell the extent to which the Nevada bench and bar continue to embrace alternative work environments and remote procedures. What is clear is that "the new normal" is no longer new, and at least some practices brought to the forefront by the pandemic have staying power. **G**

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# The Pro Bono Experience

By Widad Sairafe

**A**s a Future Pro Bono attorney, I am completing my Community Justice Fellowship after practicing for three months in each of the Legal Aid Center's main project areas: Consumer Rights Project, Family Justice Project, and Children's Attorneys Project.

I was anxious at my first solo hearing, arguing for a TPO for a domestic violence survivor. However, I had a deep conviction in doing what was right for my client and knowing I went to law school precisely for this moment. I listened attentively to opposing counsel's arguments. When it was my turn, I used my anxiety to fuel my argument and incorporated any counterarguments I had written down. I stuck to the facts and high-

lighted the evidence in a way most favorable to my client. The judge agreed and denied opposing party's motion to dissolve the TPO. I was overjoyed! I won my first hearing and felt on cloud nine all day.

It is my belief that all graduating law students should do a year in a fellowship like this one where they explore fields they have little background in. Not only does doing so create a

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***It is my belief that all graduating law students should do a year in a fellowship like this one where they explore fields they have little background in.***

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more well-rounded attorney, but also clients who need the most help are assisted along the way. These experiences – for my clients and myself – would not have been possible without Legal Aid Center and Paul Padda Law.

Legal Aid Center's Community Justice Fellowship, sponsored by Paul Padda Law, is a one-year fellowship for law school graduates. For more information, visit <https://www.lacsn.org/communityfellowship>. **C**



**Widad Sairafe is a graduate of UC Irvine's School of Law where she was**

**active in the Expungement Clinic, International Refugee Assistance Project, ACLU Court Watch, and the American Constitution Society.**

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