



Ethics From the Desk of Bar Counsel CLE webcast
Free for CCBA members on September 20, 2022!
See page 10

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The Election Issue

SEPTEMBER 2022

Running for Office or Infringement? Intellectual Property in Politics

By Caleb L. Green, Esq.
of Dickinson Wright

See page 24



Featured inside

Call for Nominations to Serve
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Trial Practice Boot Camp Covers
The Rosenberg Spy Case
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How do we analyze whether a
candidate will be an effective
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Mid-Term Judicial Selection in
Nevada
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November 3, 2022

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On the cover



Caleb Green of Dickinson Wright at the Regional Justice Center. Photo courtesy of Stephanie Abbott.

Writing opportunities

The editors of the *Communique* welcome proposals from CCBA members to write for the publication.

Learn more about this opportunity on page 30.

COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

Communiqué is published eleven times per year with an issue published monthly, except for July, by the Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101-7006. Phone: (702) 387-6011. *Communiqué* is mailed to all paid members of CCBA, with subscriptions available to non-members for \$75.00 per year.

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ments contained in this publication represent the views of the authors and do not necessarily reflect the opinions of the Clark County Bar Association. All legal and other issues discussed are not for the purpose of answering specific legal questions. Attorneys and others are strongly advised to independently research all issues.

For more information about our publication's editorial calendar, deadlines, editorial policy, author guidelines, ad rates, ad specifications, and deadlines, contact the publisher at Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101-7006. Phone: (702) 387-6011.

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 Health	3/1/2022
May 2022	Discovery	4/1/2022
June/July 2022	Ethics	5/3/2022
August 2022	Litigation	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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Taking the Time to Become a Bar Leader

By Nedda Ghandi, Esq.

When I joined the Clark County Bar Association in 2009, I was looking for way to network in the Nevada legal community and I joined the CCBA very early in my legal career. The CCBA provides numerous events and functions that cater to fostering connections with other attorneys, judges, legal assistants, law students, and merchants. After a short while, I began to appreciate CCBA for its numerous outreach and service opportunities to both the legal community and the community at large. There are so many different ways to contribute to this organization in a meaningful way.

Bar associations are only as good as their staff and the effort and time that their members put into the bar association. When the lawyers who comprise a local bar treat it with the same diligence and attention they give to their work, then it is likely to be that much more useful to its members. I encourage you to give your time to serving on the CCBA's committees and its Board. If you are interested in serving on the Executive Board, nominations are being accepted through November 1, 2022. Elections for serving on the 2023 CCBA Executive Board will be held at the

If you are interested in serving on the Executive Board, nominations are being accepted through November 1, 2022.



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.

CCBA Annual Meeting & 40 Year Club Luncheon in December. More information is below.

2023 CCBA Executive Board Election

Deadline for nominations is November 1, 2022

Nominations from members to serve on the 2023 CCBA Executive Board will be accepted through Tuesday, November 1, 2022, at 4:00 p.m. Nominations should be sent to the CCBA President Nedda Ghandi at Prez@ClarkCountyBar.org. The nominating committee shall consider the following criteria and characteristics as applied to each prospective nominee in their application:

- Current CCBA membership in good standing
- Demonstrated past service to the CCBA
- Contribution to creating balance on the executive board of representation amongst various areas and types of the practice of law
- Professionalism
- Knowledge and expertise in an area in which the CCBA needs or desires assistance
- Such other factors as the nominating committee may deem relevant and appropriate

The election will be held at the CCBA Annual Meeting & 40 Year Club Luncheon in December. More details are available at www.clarkcountybar.org or call (702) 387-6011. **©**

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In recognition of **Hispanic Heritage Month**, The Mob Museum welcomes esteemed Las Vegas Latino legal pioneers, including judges Cristina Silva, Adriana Escobar, Vincent Ochoa and general counsel for the Nevada Attorney General's Office Leslie Nino Piro, for a panel discussion on their careers and the growing demand for more Hispanic voices in Southern Nevada's legal community.

Developed in collaboration with the Clark County Bar Association and the Nevada Latino Bar Association, The Mob Museum invites visitors to be a part of this noteworthy conversation.

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This event offers 1.0 Ethics CLE Credit for Nevada lawyers. The CCBA is an Accredited Provider with the Nevada Board of Continuing Legal Education.



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Clark County Law Library Dedication Honored Thomas D. Beatty, Esq.

By Summer Youngquist

On June 4, 2022, a dedication ceremony and Celebration of Life was held at the Clark County Law Library to honor the life and career of Thomas D. Beatty, Esq. The Law Library conference room was dedicated to the memory of Thomas D. Beatty, Esq. for his nearly 40 years of unwavering dedication and service to the Clark County Law Library Board of Trustees. Mr. Beatty served as President of the Law Library Board from 1982 until his passing on April 27, 2020.

Those attending the ceremony and celebration of life included family and colleagues of Mr. Beatty. Speakers included Chanteyl Hasse, Law Library Director; Hon. Philip M. Pro (Ret.); Mrs. Sharon Beatty; Ms. Linda Snyder; and Tamara Beatty-Peterson, President, Clark County Law Library Board of Trustees.

In addition to his service to the Law Library, Mr. Beatty was a staple in the legal community of Las Vegas. Whether his work in private practice, the Public Defender's office, or District Attorney's Office, his involvement in numerous commissions, panels, and committees, or lecturing, training, and mentoring, Mr. Beatty was a true champion of justice.

The Law Library is honored to house a portrait of Mr. Beatty as well as an exhibit highlighting many of his professional achievements. The Law Library also has many books in its collection which Mr. Beatty has donated over the years, as well as the comparative analysis he wrote on Nevada law, rules, and practice with the A.B.A. standards of criminal justice. 📖

Summer Youngquist is the law librarian at the Clark County Law Library.

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@clark-countylawfoundation.org. 📞

Stephanie Abbott is the communications manager for the Clark County Bar Association.



Champions of Justice **2022** *Awards Lunch*

You're Invited

Thursday, October 13, 2022 | 12PM

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\$75 Per Person | RSVP by September 28

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Bridget Reyna Meadows

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Ghandi, Deeter, Blackham

The Center Partnership Award

Joel Selik

Marshal Willick Special Recognition Award

Terry Johnson

Partner Organization of the Year

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To RSVP, please contact Yrene Chavez:

(702) 386-0404 Ext.145 or ychavez@nevadalegalservices.org

Ethics from the Desk of Bar Counsel

CLE Program Free for CCBA Members on September 20, 2022

On Tuesday, September 20, 2022, Nevada Bar Counsel Daniel Hooge will make a special presentation for the continuing legal education of Nevada lawyers in a program produced by the Clark County Bar Association and sponsored by Bank of Nevada and Las Vegas Legal Video.

Mr. Hooge is Chief Bar Counsel for the State Bar of Nevada. While the Supreme Court of Nevada retains ultimate authority to regulate the legal profession, Mr. Hooge and the Office of the Bar Counsel serve as the Court's arm to investigate and prosecute claims that a lawyer has violated the Rules of Professional Conduct.

Mr. Hooge grew up in central California. He earned his J.D. in 2007 from Brigham Young University and his B.A. in Business Management and Finance in 2003 from Brigham Young University. He is admitted to the bars of Nevada and Utah. After law school, he moved to rural Nevada to work in the two-man Lincoln County district attorney's office. He successfully ran for district attorney a few years later. He enjoyed two terms as district attorney before accepting the position of Chief Bar Counsel.

When Daniel isn't working, he spends his leisure time with his wife, Natalie, and six children watching BYU football, cycling, snowboarding at Brianhead, or boating on Lake Mead.

During "Ethics from the Desk of Bar Counsel" presentation, Daniel plans to discuss these topics:

- Clients – New & Conflict Checks
- Trust Accounts & Retainers
- Making Threats
- Doing Business, and Other Things, with Clients
- Advertising & Marketing
- Disputes with Clients
- Goal of Discipline & Process
- Aggravating & Mitigating Factors
- Bar Counsel's Tips

The presentation will offer 2.0 Ethics CLE credit (NV) to CCBA members only online via Zoom, from 12:00 to 2:15 p.m., Tuesday, September 20, 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@clarkcounty-bar.org, (702) 387-6011.

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Trial Practice Boot Camp for Las Vegas New Attorneys Set for October 20, 2022

On Thursday, October 20, 2022, a special event for the continuing legal education of Nevada lawyers will be held in-person from 8:00 a.m. to 5:30 p.m. in Judge Richard Boulware's Courtroom at the U.S. District Court for the District of Nevada, 333 Las Vegas Blvd. So., Las Vegas. This event is sponsored by the American College of Trial Lawyers and the Clark County Bar Association.

"Trial Practice Boot Camp for Las Vegas New Attorneys" will be hosted by:

- **Tamara Beatty Peterson**, Peterson Baker, PLLC
- **Kirk Lenhard**, Brownstein Hyatt Farber Schreck, LLP
- **Marc DiGiacomo**, Chief Deputy, Clark County District Attorney
- **Christopher Oram**, Christopher Oram Law Office
- **D. Lee Roberts, Jr.**, Weinberg Wheeler Hudgins Gunn & Dial

Attendees will learn about the legal process made during the Rosenberg Spy Case. Julius and Ethel Rosenberg were American citizens who were convicted of spying on behalf of the Soviet Union. See below for a tentative agenda.

Morning Session:

- | | |
|--------------------|--|
| 8:00 – 8:15 a.m. | Call to Order, Opening Remarks and Welcome |
| 8:15 – 8:45 a.m. | Discussion of Case Analysis, Theory of the Case, Civility, and Professionalism |
| 8:45 – 9:10 a.m. | Lecture: Opening Statements |
| 9:10 – 9:40 a.m. | Demonstration of Opening Statements |
| 9:40 – 10:15 a.m. | Panel Discussion - Critique of Opening Statements |
| 10:15 – 10:30 a.m. | Break |
| 10:30 – 11:05 a.m. | Lecture on Direct Examination |
| 11:05 – 11:35 a.m. | Demonstration of Direct Examination |
| 11:35 – 12:15 p.m. | Panel Discussion -- Critique of Direct Examination |
| 12:15 – 12:45 p.m. | Recess; Luncheon |


Afternoon Session:

- | | |
|-------------------|--|
| 12:45 – 1:30 p.m. | Panel Discussion: What Judges Want from Trial Lawyers |
| 1:30 – 2:10 p.m. | Lecture on Cross-Examination |
| 2:10 – 2:40 p.m. | Demonstration of Cross-Examination |
| 2:40 – 3:15 p.m. | Panel Discussion – Critique of Cross-Examination |
| 3:15 – 3:40 p.m. | Lecture on Closing Arguments |
| 3:40 – 4:10 p.m. | Demonstration of Closing Arguments |
| 4:10 – 4:50 p.m. | Panel Discussion – Critique of Closing Arguments; |
| 4:50 – 5:10 p.m. | Concluding Lecture – Twelve Secrets of Persuasive Argument |
| 5:10 – 5:30 p.m. | Closing Remarks |

An updated agenda and list of instructors will be published on the bar's website <https://clarkcountybar.org/>.

The event will offer a total of 8.0 hours of general CLE credit (NV). During each presentation, attendance will be taken and only those members of the bar who are in attendance will have their attendance reported to the NV CLE Board. The CCBA is an Accredited Provider with the Nevada Board of Continuing Legal Education.

Attorneys interested in attending this special event will need to RSVP with the CCBA as soon as possible. Space will be limited.

Pricing includes luncheon, materials, and CLE credit filed with the Nevada CLE Board. Price: \$125/attorney admitted to practice less than 5 years; \$150/CCBA member; \$300/non-member. RSVP with payment to the Clark County Bar Association, 717 S. 8th Street, Las Vegas, NV, 89101. To RSVP, complete the web form at <https://clarkcountybar.org/> or call the CCBA's office at (702) 387-6011. 

Event sponsors



Business Court Bench Bar Meeting

When: Thursday, September 8, 2022, noon to 1:00 p.m.

Where: Courtroom 16A at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada. Additionally, the meeting will be streamed live on the Clark County Courts' website found at <http://www.clarkcountycourts.us/>.

What: Duane Frizell will moderate a panel regarding Rule 16 conferences and Rule 16.1 application in Business Court cases. Food will be provided by Frizell Law for the first 20 people attending the meeting in-person at the RJC.

Civil Bench Bar Meeting

When: Tuesday, September 13, 2022, noon to 1:00 p.m.

Where: Online via Zoom

What: Learn what's happening at the court and discuss any modifications of processes in the civil department. For more info, send inquiries to EJDC-BenchBar@gmail.com.

Court Order in Re DUI, Vehicular Crimes Case Assignments

On July 26, 2022, the Las Vegas Justice Court filed regarding an administrative order in the matter regarding DUI and Vehicular Crimes Case Assignments. See Administrative Order #22-07. The order became effective immediately. See http://www.lasvegasjusticecourt.us/faq/laws_and_rules.php. **G**

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Special Event

Nevada Center for Foreign Relations Event October 20, 2022

On Thursday, October 20, 2022, the Nevada Center for Foreign Relations (NCFR) will host a special event featuring the former foreign minister to the Russian Federation.

Andrei Kosyrev will speak on the Elusive Fate of Russian Democracy. Boris Yeltsin appointed Mr. Kosyrev

the first, post-Soviet Union Russian Federation Foreign Minister. Mr. Kosyrev directly participated in the dissolution of the Soviet Union.

The event will be held at Las Vegas City Hall Chambers, 495 S. Main Street, Las Vegas from 10:30 a.m. to 11:30 a.m., on October 20, 2022. Members of the bar are invited to attend. RSVP to the NCFR is required. For more information about this event, visit <https://www.nvcfr.org/> or contact Paul Ray Paul C. Ray, Chtd., and President & COO of the NCFR, at (702) 823-2292, paulcraylaw@gmail.com. **G**

RSVP Now

SPECIAL EVENT

November 3, 2022

5:30-8:30 p.m.

The Las Vegas Country Club
3000 Joe W. Brown Drive
Las Vegas

Featuring:

Silent auction
by Charity Benefits

Hors d'oeuvres

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 event will be made via event registration purchased from the Clark County Bar Association. 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.

Sponsorship opportunities available.

For more information and to RSVP, call 702-387-6011 or visit <https://clarkcountybar.org/>.



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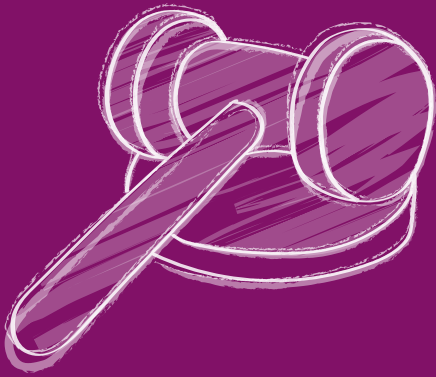
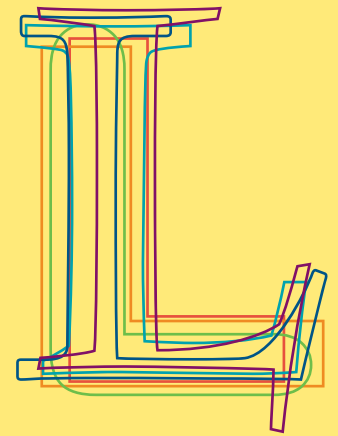
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How do we analyze whether a candidate will be an effective judge?

By Chief Judge Jerry Wiese

As the newly elected Chief Judge of the Eighth Judicial District Court, I appreciate the opportunity to share some thoughts about our upcoming elections. As members of the legal community, those who read the CCBA Communique are generally what we would consider the “educated electorate.” Many people, however, have no idea who to vote for, and they may vote based on how a name sounds, how an advertisement looks, or who made the fewest robo-calls. In this brief article, I hope to encourage you to do your homework and encourage others to do the same.

The first thing we should do, when conducting our election research, is consider the position for which an individual is running. Determine what types of decisions that elected person will make, and how those decisions will affect you and your community.

With regard to partisan elections, it’s important to explore a candidate’s positions or viewpoints on the issues that are important to you. A candidate’s website usually lists their platform and positions. Look for any speeches that they may have given, and their voting record if an incumbent. If possible, meet the candidate in person, and ask questions. Consider whether a particular candidate supports diversity, and whether they have any biases or prejudices which may affect that candidate’s decisions. If there

is a candidate debate, consider focusing less on how well a candidate presents on television, and focus more on the positions taken on the various issues debated. However, how a candidate appears in public, may have a huge impact on the candidate’s effectiveness if elected.

For judicial elections, a judge’s role is to be neutral and unbiased. As voters, we cannot evaluate a candidate’s position or viewpoint on a specific issue. We elect judges to be fair and to maintain justice. So how do we analyze whether a candidate will be an effective judge? In googling “what makes a good judge?” the responses included qualities like patience, humility, and integrity. Judges need logic and intelligence, to be able to understand, analyze, and apply rules and laws. Judges need a temperament that allows them to communicate with counsel, jurors, witnesses, and parties, calmly, courteously, and with respect. Perhaps most importantly, judges need a personal code of ethics, which sets them apart from others, and which allows them to make fair, impartial, and unbiased decisions, without regard to the identity of the parties or attorneys, and without regard to how the decisions might affect the judge politically.

Please take the time to research and decide which candidates will be the “best” in their respective elections. Once you have decided, vote yourself, and discuss your findings with others. We want the best and the brightest in all branches of government. **e**



Chief Judge Jerry Wiese was elected to the District Court Dept. 30 bench in 2011. He now serves as the Chief Judge of the Eighth Judicial District Court.



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Who's the Judge? Mid-Term Judicial Selection in Nevada

By Alia A. Najjar, M.D., Esq.


What happens when a Nevada state court judge, and specifically, a district court judge vacates the bench in the middle of his/her term? How are such vacancies filled? The Commission on Judicial Selection (Commission), which was created by Article 6, Section 20 of the Nevada State Constitution, fills mid-term vacancies for the Supreme Court of Nevada, Court of Appeals, and the district court. It is governed by NRS 1.380 through NRS 1.410 and consists of seven regular members, who serve four-year terms: the Chief Justice of the Supreme Court of Nevada, three attorneys appointed by the bar, and three non-attorneys appointed by the Governor. For district court vacancies, two temporary members also serve until nominations are submitted to the Governor.

Notice of vacancies are provided to every active bar member and interested applicants must submit an application to the Commission by the deadline. Before the candidate selection meeting, the Commission may meet to eliminate any applicants determined to be unqualified, plan for further investigation/screening of applicants, and create subcommittees for further investigation of applicants.

Remaining applicants are interviewed during a candidate selection meeting commenced in public session. Certain portions of the meeting may be held in closed session. Three applicants are selected for submission to the Governor. If there are three or fewer qualified applicants for a

Otherwise, voting proceeds by secret ballot in a series of rounds to narrow the pool of applicants to three candidates, whose names are delivered to the Governor in alphabetical order.

vacancy, the Commission may refer all three names to the Governor without voting on the merits of the applications, postpone the selection process to solicit additional applicants, or by two-thirds vote, disqualify all applicants and re-start the process. Otherwise, voting proceeds by secret ballot in a series of rounds to narrow the pool of applicants to three candidates, whose names are delivered to the Governor in alphabetical order. The Governor appoints one candidate to fill the vacancy. The Commission may consider more than one vacancy in the same district in a single selection process.

For more detailed information on the selection process, the Nevada Commission on Judicial Selection Rules, revised October 11, 2021, may be found online at <https://nvcourts.gov/AOC/Templates/documents.aspx?folderID=8938>. 



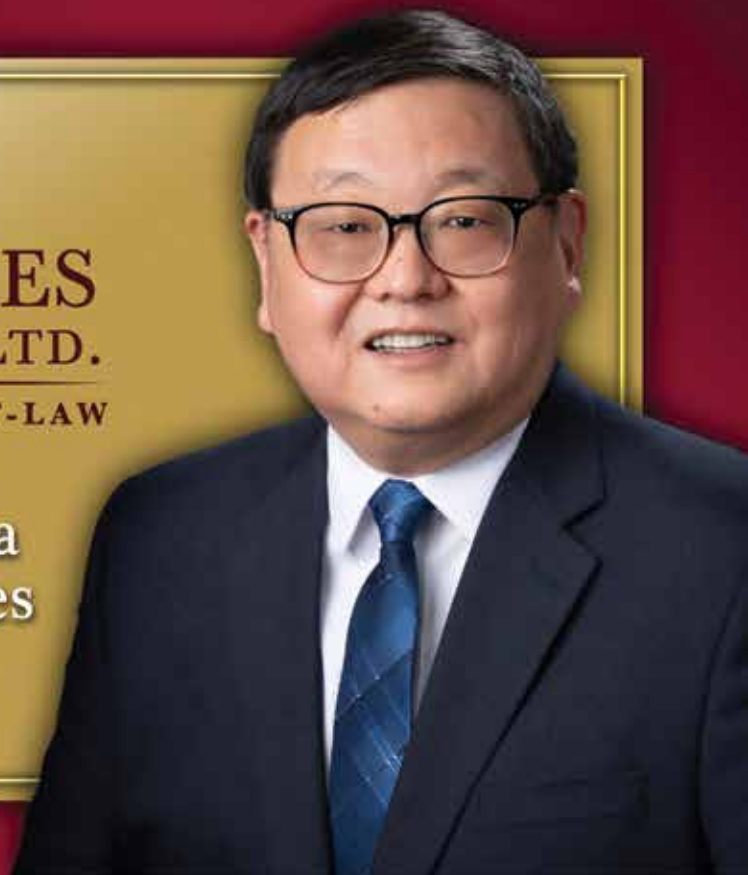
Alia A. Najjar, M.D., Esq. is an attorney at Ladah Law Firm. She practices in the area of personal injury litigation. She currently serves as editor-in-chief of the Communiqué.



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Wes has presented seminars in probate and trust matters for NBI and CLE for the Clark County and State Bars of Nevada, practiced in the areas of Probate & Estate for 20 years, and has completed courses on mediation.

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Election law changes you should know about

By John M. Naylor, Esq.

Introduction

The new year ushered in several important changes to Nevada's election laws which became effective on January 1st. This article summarizes the major changes, as well as the ballot initiative that you will see in November.

The Changes

Assembly Bill 121, effective January 1, 2022, is designed to assist voters with disabilities to register to vote, request an absentee ballot, and cast their vote electronically. The changes are based on NRS 293D.200, *et seq.* which allows certain members of the military and their dependents to register to vote, request an absentee ballot, and cast their ballot electronically. *Id.* As a result of the amendment, persons with disabilities may now also take advantage of these electronic services. AB 121 does not specifically define disability, and presumably the definition in NRS 426.068 applies. Generally, disability is defined as having physical or mental impairments that substantially limits one or more of the activities of daily life. *Id.* The changes are enrolled in numerous sections throughout NRS Chapter 293, and the text of AB 121 details where those exact changes are codified.

Assembly Bill 126 abolished the caucus system for the selection of presidential candidates. Nevada had a long and varied history of using different procedures to select presidential candidates. *See* "Nevada Primary and Caucus His-

tory," Legislative Counsel Bureau's Legal Division, www.nvsos.gov/sos/elections/election-information/about-elections/nevada-primary-and-caucus-history (accessed July 31, 2022). These efforts culminated in primary elections divided by political party in 1976 and 1980. *Id.* Primary elections were abolished, however, in 1981 and replaced with the caucus system. *Id.*

Assembly Bill 126 returns Nevada to what is technically called a "presidential preference primary election." Each major political party will conduct a presidential primary election on the first Tuesday of February of each presidential election year. The goal was to make Nevada one of the first primaries in the country due to the state's diversity. ("Nevada Moving to Vote Before Iowa in 2024. Harry Reid Makes the Case," *The New York Times*, February 22, 2021). It remains to be seen as to whether this goal will be achieved as Iowa and New Hampshire will certainly not want to lose their spots in the selection process.

Another bill deals with mail-in ballots. In 2020, an emergency session of the Legislature approved and the governor signed into law a temporary measure requiring election officials to send mail-in ballots to all registered voters. (Assembly Bill 4, 2020). Then candidate Donald Trump challenged the law, but his lawsuit was dismissed. *Donald J. Trump for President, Inc. v. Cegavske*, Case No. 2:20-cv-01445-JCM-VCF, 2020 WL 5229116 (August 4, 2020). Assembly Bill 321, which became effective on January 1,

Changes *continued on page 22*



John M. Naylor, Esq. has been licensed for nearly 35 years and is a cofounder of Naylor & Braster, a Las Vegas law firm specializing in business litigation. He practices in the areas of commercial litigation, appellate work and construction law.



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Changes *continued from page 20*

2022, makes AB 4's temporary measures permanent. Now, election officials must send mail-in ballots to all registered voters. These changes are enrolled at NRS §§ 293.3088-293.340 and 293C.304-293C.340. While the new law makes permanent most of AB 4's provisions, it tightens several of the old law's time limits. Now, ballots must be received by election officials within four days of the election rather than seven. AB 321, Section 8(1)(b)(2). Also, unlike the temporary provisions, registered voters will have only 6 days to cure any defect with their signature. *Id.* at Section 11(6). Finally, election officials must finish counting the mail in ballots within seven days of the election. *Id.* at Section 61(1).

In November, you will see initiative C-01-2021, known as the "Better Voting Nevada Initiative," which could dramatically change the way that elections for partisan offices are conducted. The initiative would change Nevada law to allow voters to cast their ballots for any person running in a primary regardless of the party affiliation of the candidate or voter. This is in contrast to a closed primary where voters may only vote for candidates who share their party affiliation, i.e., Democrats can only vote for Democratic

candidates and Republicans can only vote for Republican candidates. The initiative allows voters to cross party lines and vote for whomever they wish.

This procedure only covers elections of U.S. Senators, U.S. Representatives, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Representatives. The initiative specifically excludes primaries for the President and Vice President.

The general election will use a "ranked-choice voting" system. This means that voters will rank the candidates in order of preference. Each ballot will count as one vote for the top ranked person on that ballot. If a person wins a majority of the ballots cast, they will be declared the winner. If no candidate wins a majority during this initial round of tabulation, the initiative provides for a counting procedure designed to winnow down the candidates to an eventual winner. This may result in someone being declared a winner with a relatively small plurality.

Conclusion

These are only the highlights of the changes affecting this year's elections. **C**

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Running for Office or Infringement? Intellectual Property in Politics

By Caleb L. Green, Esq.

In this modern era, political candidates often rely on pop culture and social media to convey their platforms to voters and even criticize their opponents through advertisements and print materials. However, unauthorized use of photos, videos, and even music in political advertisements can result in significant liability that can upend one's political aspirations.

Copyright law

U.S. copyright law protects original works of authorship, such as photographs, video footage, and music, from being used without permission from the copyright owner. Copyright infringement can result in significant liability, including monetary damages and up to \$150,000 in statutory damages (with no proof of actual damages required). This can result in harm to a campaign's finances, efficiency, and reputation.

Although there are some exceptions and defenses to copyright infringement, they are often narrow and specific. One defense is the fair use doctrine, which allows the use of protected works without the author's permission. However, fair use is not a get-out-jail-free card that can be applied to every use in politics. Further, there is no bright line rule regarding what constitutes fair use versus infringe-

A copyright infringement lawsuit is the last thing anyone wants, especially when you're a busy politician seeking a contested elected position.

ment. On the contrary, fair use is a mixed question of law and fact that requires careful analysis. U.S. courts consider the following four factors when evaluating if the fair use doctrine applies or not:

1. The purpose and character of the use;
2. The nature of the copyright-protected work;
3. The amount and substantiality of the use; and
4. The effect on the market of the copyright-protected work.

Copyright infringement in political campaigns

A copyright infringement lawsuit is the last thing anyone wants, especially when you're a busy politician seeking a contested elected position. Unfortunately, the use of unauthorized content is so widespread during election season that it is not uncommon for a candidate to face multiple



Caleb L. Green, Esq. is an intellectual property and government affairs attorney at Dickinson Wright, as well as the Treasurer of the Las Vegas Chapter of the National Bar Association.

copyright claims throughout their campaign. Consequently, these claims can divert valuable campaign funds and efforts away from acquiring more votes to defending against a civil copyright dispute.

For example, during her 2010 midterm election bid for U.S. Senate against Harry Reid, Tea Party candidate Sharron Angle found herself on both sides of the copyright battle. Angle accused the Reid campaign of using unauthorized copies of her old campaign webpages in attack advertisements and threatened to file a copyright claim against Reid. However, ironically, Angle found herself defending a copyright claim against serial copyright litigant Righthaven for her unauthorized use of two news articles to attack Harry Reid. Faced with the decision to either fight a lengthy civil court battle or resolve the dispute, the Angle campaign settled the matter.

In addition, even using popular memes can expose you to copyright liability. In a more recent account, Iowa Representative Steve King modified the viral meme “Success Kid” in a campaign fundraising advertisement. The “Success Kid” photo features a toddler named Sam raising his fist to the camera with an intense look on his face. King’s campaign modified the image and included a link to King’s fundraising website. On December 30, 2022, Sam’s mother, who was the photographer and copyright owner of the “Success Kid” meme, filed a copyright lawsuit against King and his campaign for using the image.

Additionally, several candidates, including John McCain and, more recently, Donald Trump, have also faced copyright claims for using popular songs at campaign rallies and in political advertisements without proper licenses.

Conclusion

Nobody wants the headache of defending a litigious copyright claim, especially not a busy politician or political action committee (“PAC”). The examples above represent just a few instances where political campaigns underestimate the importance of understanding the scope of copyright protection of existing works and content. Given the complexities of the fair use doctrine, it is not enough to rely on it to bail you out of unauthorized use of a work in a political advertisement. Without proper guidance, candidates and PACs may engage in avoidable copyright infringement. Therefore, it is imperative that politicians and their campaign team consult with an intellectual property attorney, conduct clearance searches, and acquire the proper licenses before using content and musical works owned by someone else. ●

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Re-Kindling the Spark of the Noble Lawyer

By Judge Nadia Krall

As you sit reading these words, you may be ready for a distraction from your day. Some lawyers stretched to their limit, click onto the *Las Vegas Law Blog* for their daily stress relief.

The Kindling

Many of us started our legal careers inspired by Atticus Finch in *To Kill a Mockingbird*. Atticus was a wise man. Whether Atticus won or lost, he maintained his calm. To him, there was a hopefulness in the practice of law.

Atticus was able to serve in the state legislature, represent his clients, and weave in pro bono cases, all while being a single father of two young children.

Atticus' pro bono work started with helping the Cunninghams. They were too poor to pay for the legal services they needed. What they could not pay in monetary amounts, they repaid with gathered items from the woods and their gratitude.

When it came to Mr. Robinson's case, he could have easily turned it down. Yet, Atticus' steadfast belief in honor of the legal profession prevented him from doing so. Even though he lost at trial, Atticus still maintained his sense of service to his community.

The Spark

After years of practicing law, many of us have lost the spark that once ignited our legal passion. Too often, you win a case and your client does not much care. You are a lawyer. You are the top in your field. They expected you to win.

Whether you represent a spouse in the throws of a divorce, a high stakes business dispute, or either side of a personal injury case, it is frequently business

as usual. Once a case is resolved, you are off to the next file. A pro bono case can be the spark that ignites your enthusiasm again.

The Fuel

A pro bono client will give you something a paying client rarely does: gratitude. This is sustenance for the soul.

One memorable pro bono case I took was helping re-unite a son with his father. Caught up in the foster system, no one seemed to care that he wanted to be with his father again. Without a pro bono lawyer, father and son would have been forever severed. Even through the years, I still think about that father and son.

Maybe in addition to checking the law blog to take your mind off work, you consider taking a pro bono case.

There is honor in the legal profession. You as a lawyer are the only one with the privilege to stand in court for our community. As you weave in a pro bono case, your day will change. You may also change the course of someone's life.

Maybe taking a pro bono case is just the distraction that you need.

I look forward to seeing you in court.

Judge Nadia Krall, Dept. IV



Nadia Krall is a Judge in Dept IV District court, Clark County, Nevada.

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Bar Activity Highlights

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Editors Accepting Proposals for Bar Journal *Communiqué*

The editors of *Communiqué* have set the editorial calendar for the next year. Limited space is available for articles, features, highlights, and other editorial content. CCBA members are invited to submit proposals to write content for the publication.

Proposals should include the following information:


- Topic and summary paragraph providing the focus and scope for content (including relevant rules/statutes/procedures, etc.):
- Author(s) name(s), Nevada bar number(s), short biographical statement; and
- Proposed issue for publication (see editorial calendar)

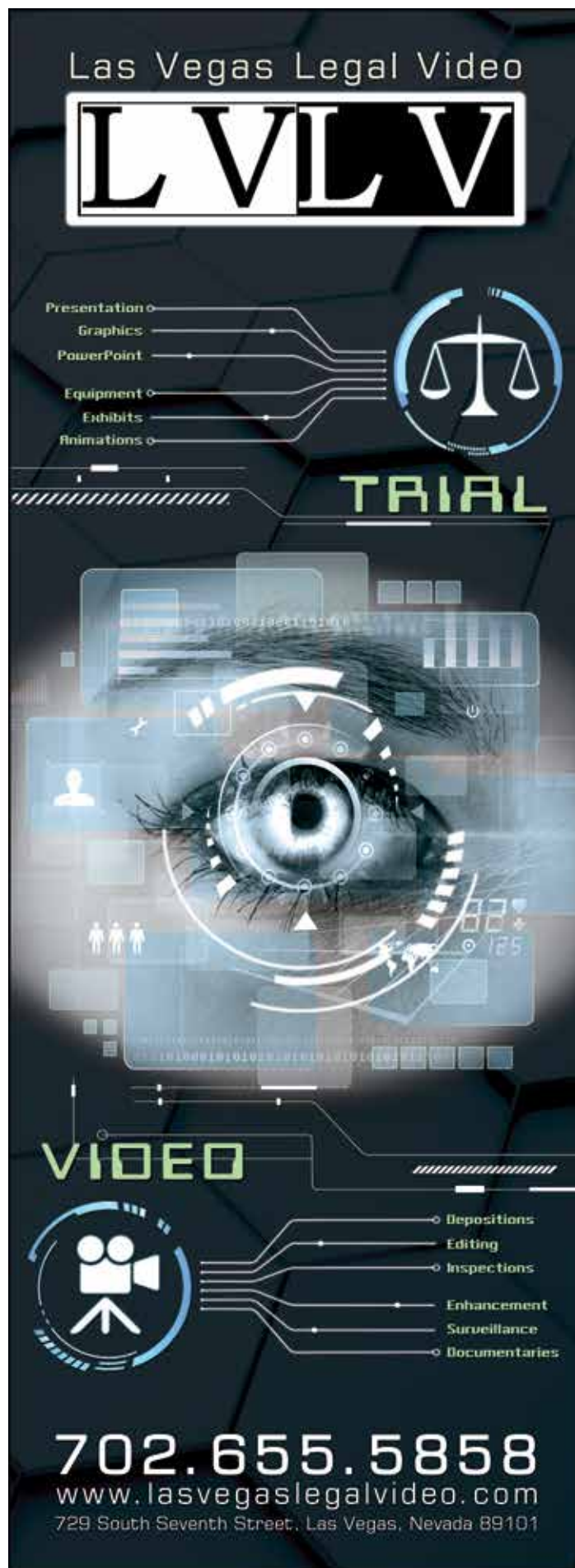
The *Communiqué* editorial calendar is listed below with the assigned topic and cover date for each issue:

- January 2023 - Five Things
- February 2023 - Civil Rights
- March 2023 - Sports Law
- April 2023 - Administrative Law
- May 2023 - Natural Resources
- June/July* 2023 - Membership Matters
- August 2023 - Real Estate
- September 2023 - Legislative Wrap-up
- October 2023 - Gig Economy
- November 2023 - Gaming Law
- December 2023 - Pro Bono

Proposals should be sent several months in advance of the cover date to the Editor-in-Chief c/o Stephanie Abbott@clarkcountybar.org. Proposals will be forwarded to members of the editorial board for review. The editors will review proposals at their next scheduled meeting.

All authors must follow the guidelines for composition and submission of content as noted in the *Communiqué* Editorial Policy and Guidelines (PDF).

*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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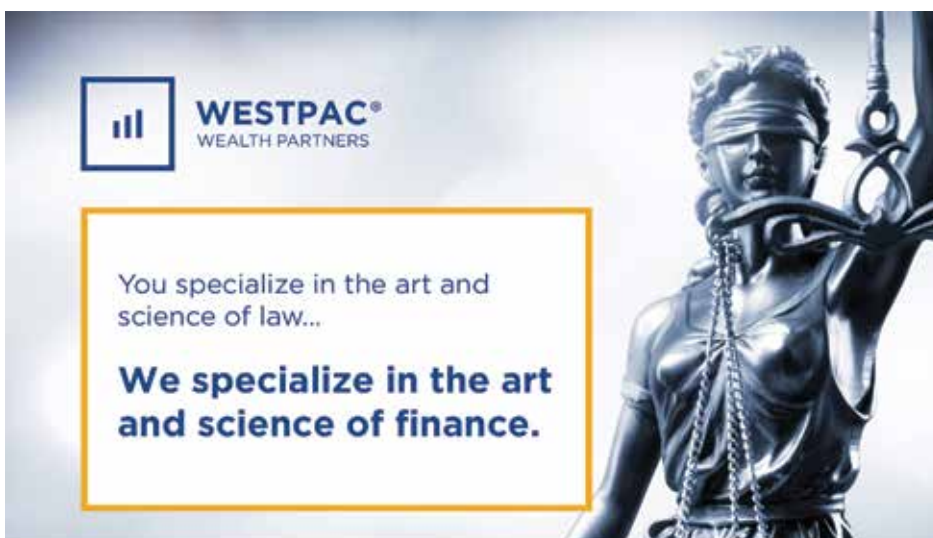
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